



- (b) County shall review such invoices and approve them within thirty (30) calendar days with such modifications as are consistent with this Amendment and forward same to the Auditor for processing. County shall pay each approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.
4. **Limit of Appropriation.** CaseWorthy clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of nineteen thousand twenty and 00/100 dollars (\$19,020.00), specifically allocated to fully discharge any and all liabilities County may incur. CaseWorthy does further understand and agree, said understanding an agreement also being of the absolute essence of this Agreement, that the total maximum compensation that CaseWorthy may become entitled to and the total maximum sum that County may become liable to pay to CaseWorthy shall not under any conditions, circumstances, or interpretations thereof exceed nineteen thousand twenty and 00/100 dollars (\$19,020.00).
  5. **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
  6. **Taxes.** County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
  7. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
  8. **Confidential Information.** CaseWorthy expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by CaseWorthy shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.
  9. **Performance Warranty.** CaseWorthy warrants to County that CaseWorthy has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and CaseWorthy will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
  10. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless CaseWorthy for any reason are hereby deleted. CaseWorthy shall Indemnify and defend county against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of CaseWorthy, its agents, servants or employees, performed under this agreement that result

from the negligent act, error, or omission of CaseWorthy or any of CaseWorthy's agents, servants or employees.

11. **Software Assurance.** CaseWorthy represents and warrants that its software and any related systems and/or services related to its software (collectively, the "Software") furnished by CaseWorthy to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. CaseWorthy will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against County by settlement or final judgment of a court that is based on a claim that the use of the CaseWorthy's Software infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and the CaseWorthy's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the Parties.
12. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by CaseWorthy in any way associated with the Agreement.
13. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to dispute resolution or binding arbitration. Therefore, any references to dispute resolution or binding arbitration or to the waiver of a right to litigate a dispute are hereby deleted.
14. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.
15. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content.
  - a. Agreement to Not Boycott Israel Chapter 2270 Texas Government Code. By signature below, CaseWorthy verifies CaseWorthy does not boycott Israel and will not boycott Israel during the term of this Agreement.
  - b. Texas Government Code §2251.152 Acknowledgment. By signature below, CaseWorthy represents pursuant to Section 2252.152 of the Texas Government Code, that CaseWorthy is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.
16. **Entire Agreement.** This Agreement, together with all agreements between the Parties referenced in this Addendum, embodies the entire understanding between the Parties with respect to the Terms and Conditions, and there are no prior effective representations, warranties or agreements between the Parties with respect to the Terms and Conditions. This Agreement shall supersede and replace all previous agreements pertaining to the Terms and Conditions between any of the Parties. No waiver of any provision hereof shall be effective, unless set forth in a written instrument signed by authorized representatives of each of the Parties.
17. **Conflict.** In the event there is a conflict between this Addendum and the attached CaseWorthy M.L.A. or M.S.A., this Addendum controls.
18. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the exhibits and attachments hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

**LICENSEE: FORT BEND COUNTY**

**LICENSOR: CASEWORTHY, INC.**

\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Authorized Agent - Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Agent – Printed Name

ATTEST:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Laura Richard, County Clerk

\_\_\_\_\_  
Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$\_\_\_\_\_ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

\_\_\_\_\_  
Robert E. Sturdivant, County Auditor

Attachment A: CaseWorthy Schedule A – Order Form

Attachment B: CaseWorthy M.L.A. and M.S.A.

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the exhibits and attachments hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

**LICENSEE: FORT BEND COUNTY**

\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

**LICENSOR: CASEWORTHY, INC.**

  
\_\_\_\_\_  
Authorized Agent - Signature

Platt Perkins  
\_\_\_\_\_  
Authorized Agent - Printed Name

President  
\_\_\_\_\_  
Title

9-17-14  
\_\_\_\_\_  
Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$ \_\_\_\_\_ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

\_\_\_\_\_  
Robert E. Sturdivant, County Auditor

Attachment A: CaseWorthy Schedule A – Order Form

Attachment B: CaseWorthy M.L.A. and M.S.A.

# Attachment A

## CASEWORTHY SCHEDULE A - ORDER FORM

CaseWorthy Reference No.: FBC06042019  
 Order Form for CaseWorthy Application(s)

**Between**

CaseWorthy, Inc.  
 3995 South 700 East, Suite 420  
 Salt Lake City, UT 84107 (“CaseWorthy”)

**And**

Fort Bend County  
 4520 Reading Road, Suite 900-A  
 Rosenberg, Texas 77471 (“Customer”)

**1. ORDER FORM AND AGREEMENT TABLE OF DOCUMENTS:** This Schedule A - Order Form (hereinafter, “Order Form”) as issued by CaseWorthy is an offer by CaseWorthy. When signed and returned to CaseWorthy by Customer on or prior to the offer expiration date, it becomes a binding agreement for the CaseWorthy Software License(s) and applicable Professional Services, if any, listed in this Order Form and is effective on the Effective Date designated in the Agreement by the Parties.

**Offer Expiration Date: July 19, 2019**

This Order Form is governed by and is incorporated within the Agreement between the Parties that constitutes the following documents in effect as of the Effective Date, and if any terms and conditions of any of the Agreement’s other documents conflict with the terms and conditions of this Order Form, this Order Form will control. All documents listed in the table that follows, for the sole purpose of this Order Form, are collectively referred to as the “Agreement.”

AGREEMENT DOCUMENTS	PURPOSE
<b>Schedule A - Order Form for the Agreement (hereinafter, “Order Form”)</b>	Defines what Customer has purchased from CaseWorthy, whether Software Licenses or Professional Services or both, and some of the various terms and conditions for those purchases, particularly financial terms and Subscription Term dates for the Software Licenses.
<b>SaaS Master Licensing Agreement (MLA) and Master Services Agreement (MSA) with SLA &amp; BAA (collectively, the “Agreement”)</b>	Defines the general terms and conditions for the License(s) of CaseWorthy Application(s) as well as the terms and conditions for all applicable Professional Services work that CaseWorthy shall perform for Customer.
<ul style="list-style-type: none"> <li>Exhibit A Service Level Agreement (SLA)</li> </ul>	Defines the service level agreements for the purchased CaseWorthy Application(s), including Application(s) maintenance support offerings.
<ul style="list-style-type: none"> <li>Exhibit B Business Associate Agreement (BAA)</li> </ul>	Defines the terms and conditions for how CaseWorthy will handle all P.H.I. that CaseWorthy may receive or access from Customer, subject to H.I.P.A.A.

Customer has had the opportunity to review the referenced Agreement documents prior to executing this Order Form. All defined terms in the Agreement used in this Order Form have the same meanings as stated in the Agreement. All references in this Order Form and any applicable Schedules, exhibits, or supplement(s) to “Services” mean “Professional Services,” and to “Named Users” mean “Authorized Users.”

**2. CASEWORTHY APPLICATION(S):**

**2.1 AUTHORIZED ADMINISTRATORS AND CUSTOMER LOCATION:** Customer contacts for order confirmation and system notices are governed by the Agreement’s terms and conditions. If the Agreement is silent with respect to Customer contacts, the Parties will establish the proper communication channels for system notices and order confirmations. Customer has provided its primary access location as the one listed in the Signatures page herein. This is the primary (but not the only) location from which Customer will access the Application(s). If Customer does not provide a primary access location, CaseWorthy will incorporate a default primary access location to Customer’s sold-to address. The primary access location is used by CaseWorthy for the determination of any applicable taxes.

**2.2 CASEWORTHY APPLICATION(S) ORDER:** The CaseWorthy Pricing Table within Section 2.4 herein provides the purchased Application(s), Usage Metrics, Subscription Term, and fees.

(A) For the SaaS or self-hosted software Application(s) services, Customer’s Subscription Term will begin on the start date and will be effective until the end date, which are provided herein within sections 2.2(A)(i) and 2.2(A)(ii), respectively, unless Customer is otherwise notified by CaseWorthy.

- (i) Customer’s Subscription Term Start Date: **May 1, 2019**
- (ii) Customer’s Subscription Term End Date: **April 30, 2020**

(B) The Subscription Term and any renewals and extensions will automatically renew for one year unless Customer notifies CaseWorthy of its intention not to renew at least one month in advance of the expiration of the current Subscription Term or CaseWorthy notifies Customer of its intention not to renew at least three months prior to the expiration of the current Subscription Term.

**2.3 EXCESS USE:** Customer’s use of the Application(s) is subject to the terms and conditions of the Agreement, including the Usage Metrics stated herein. Any use of the Application(s) that exceeds the Usage Metrics will be subject to additional fees. Fees accrue from the date the excess use began. Customer will execute an additional Order Form to document subscriptions for additional Usage Metrics. CaseWorthy may invoice and Customer will pay for excess use based on applicable pricing in an Order Form.

**2.4 CASEWORTHY PRICING TABLE:**

PRODUCT OR SERVICE	QUANTITY	RATE	TOTAL COST
<b>Annual Software Fees<sup>1</sup></b>			
Annual Users Fee <sup>2</sup>	16 Concurrent Users	\$795	\$12,720
Annual Users Fee <sup>2</sup>	10 Concurrent Users	\$630	\$6,300
<b>Total of Annual Software Fees</b>	<b>26 Concurrent Users</b>	<b>MIXED</b>	<b>\$19,020</b>

**TABLE KEY:**

<sup>1</sup> = CaseWorthy increases Annual Software Fees by about 4% each year to account for the rising costs of doing business.  
<sup>2</sup> = *These Annual Users Fees include pricing for annual maintenance support. Unless otherwise provided for within this Schedule A – Order Form, in addition to unlimited “how-to” support, CaseWorthy shall provide Customer with 105 support hours per Subscription Term year pursuant to the Exhibit A SLA to this Agreement. Because of the manner in which CaseWorthy provides annual maintenance support, for renewal terms, the annual 4% escalation may not apply to that component of the Annual Users Fees. The 105 amount of support hours provided will cover both of the itemized user counts (i.e., for the 16-user and 10-user line items), which means that Customer will receive only 105 support hours for the entire Customer account per Subscription Term year, and not 105 support hours for each line item in the CaseWorthy Pricing Table.*

### **3. PAYMENT AND INVOICES**

**3.1 FEES AND INVOICING:** Fees for the Application(s) (a.k.a., Annual Software Fees) will be invoiced by CaseWorthy in advance and paid by Customer in twelve monthly payments per year on a Net-30 payment schedule. Fees for the Services, if any, will be invoiced by CaseWorthy and paid by Customer on a Net-30 payment schedule unless otherwise stated herein. Customer purchase orders are for administrative convenience and are not a condition of payment. Unless otherwise stated herein, payment for Application(s) fees is not dependent upon completion of any Services. Customer may not withhold any amounts due hereunder and CaseWorthy reserves the right to cease work without penalty if amounts are not paid when due. Any late payment will be subject to any costs of collection and will bear interest at the rate of one (1) percent per month or a fraction thereof until paid. CaseWorthy may provide invoices to an email address provided by Customer. Unless otherwise negotiated by the Parties, except for fee increases applied under Section 3.2, Application(s) fees for renewal terms will be equal to the fees for the immediately preceding term for the same Application(s) and Usage Metrics. Pursuant to IRS guidelines, Customer will reimburse CaseWorthy for all pre-approved (by Customer) and appropriately-documented travel costs and related expenses incurred by CaseWorthy in performing any Services for the Application(s). Onsite meetings will require reimbursement to CaseWorthy for its reasonable and necessary costs of travel, which is generally \$1,500 (flat rate) for each visit, and out-of-pocket costs for photocopying, overnight courier, unusual long-distance telephone calls, and the like. All non-local trips must be approved by Customer before commencing. Any applicable sales tax is to be paid by Customer.

**3.2 FEE INCREASES:** At the beginning of each renewal term, which follows the current Subscription Term provided in Section 2.2(A) herein, CaseWorthy may increase certain Annual Software Fees to reflect annual increases in consumer and business prices or costs. This increase will not exceed 4.0% per annum unless CaseWorthy provides at least sixty (60) days of notice of an increase exceeding 4.0% per annum before the next Subscription Term year begins. The increase is applied on a cumulative, year-over-year basis beginning on either the start of the preceding term or date of last increase, whichever is later. Not raising fees is not a waiver of CaseWorthy's right to do so.

**3.3 PRICE AND INVOICES:** The first-year (a.k.a., "Y1") contract amount, pursuant to this Order Form is:

**\$19,020**

As part of the contract process, Customer will supply CaseWorthy a copy of its sales and use tax exemption certificate, when applicable. Monthly Application(s) fees will be invoiced pursuant to this Order Form's Section 3.1 herein.

## SIGNATURE PAGE

The Parties agree that a facsimile of this Order Form shall be considered as the original, and that such facsimile, when counter-signed by the other Party, and any copy thereof, shall be as legally binding as the original.

WITNESS OUR SIGNATURES:

CASEWORTHY, INC.

CUSTOMER

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CaseWorthy, Inc.  
3995 South 700 East, Suite 420  
Salt Lake City, Utah 84107

Fort Bend County  
4520 Reading Road, Suite 900-A  
Rosenberg, Texas 77471



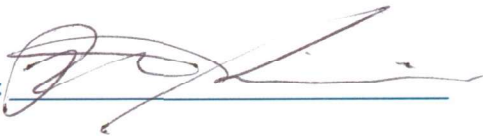
## SIGNATURE PAGE

The Parties agree that a facsimile of this Order Form shall be considered as the original, and that such facsimile, when counter-signed by the other Party, and any copy thereof, shall be as legally binding as the original.

WITNESS OUR SIGNATURES:

CASEWORTHY, INC.

CUSTOMER

By: 

By: \_\_\_\_\_

Name: Brett Rockling

Name: \_\_\_\_\_

Title: President

Title: \_\_\_\_\_

Date: 9-17-19

Date: \_\_\_\_\_

CaseWorthy, Inc.  
3995 South 700 East, Suite 420  
Salt Lake City, Utah 84107

Fort Bend County  
4520 Reading Road, Suite 900-A  
Rosenberg, Texas 77471

# **Attachment B**

## CaseWorthy’s Software-as-a-Service M.L.A. and M.S.A.

THIS SOFTWARE-AS-A-SERVICE (“SaaS”) MASTER LICENSE AGREEMENT and MASTER SERVICES AGREEMENT (hereinafter “Agreement”), effective on the date specified in the Signatures page herein (the “Effective Date”) by and between CaseWorthy, Inc. (hereinafter “CaseWorthy”), a Utah corporation having its principal place of business at 3995 South 700 East, Suite 420, Salt Lake City, Utah 84107 and Fort Bend County (hereinafter “Customer”) having its principal place of business at 4520 Reading Road, Suite 900-A, Rosenberg, Texas 77471 (collectively, the “Parties”).

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and agreements contained herein, CaseWorthy and Customer agree to work together under the terms and conditions hereby agreed upon.

WHEREAS, CaseWorthy is engaged in the business of developing, marketing, and selling case management operational collaboration and reporting applications, and providing, via license grant, access to the CaseWorthy application solution (hereinafter “Application” or “Application(s)”) and CaseWorthy’s Application servers, as well as providing professional services (hereinafter “Professional Services or Services”) for the Application;

WHEREAS, Customer desires to retain CaseWorthy to provide the software license(s) (hereinafter “License(s)”) provided for in this Agreement and Services when applicable and pursuant to a statement of work (hereinafter “SOW”) or schedule to this Agreement;

WHEREAS, this Agreement is a required purchase; and

NOW THEREFORE, this Agreement grants Customer a License to the Application as outlined herein in consideration of payment terms and conditions set forth herein.

THE MUTUAL PROMISE AND AGREEMENTS contained herein shall apply to License(s) and Services provided to Customer under this Agreement and all SOW(s) and all other applicable schedules attached to this Agreement or subsequently entered into by the Parties. All applicable schedules, properly endorsed by an authorized representative of CaseWorthy and Customer, shall specify the License(s) and Services to be provided and the obligations of the Parties, including all fees and charges that shall become the Customer’s responsibility.

### **1. DEFINITIONS:**

**1.1 “Services”** shall mean Professional Services work performed or to be performed by CaseWorthy for Customer pursuant to an SOW or schedule to this Agreement agreed to by the Parties in writing, subject to the terms and conditions of this Agreement between the Parties. The SOW or schedule will be agreed upon by the Parties and be subject to the availability of qualified employees of both Parties.

**1.2 “Statement of Work,”** whether plural or singular, shall mean CaseWorthy’s standard form for ordering Services that specifies the Services to be provided. Each Statement of Work (a.k.a., “SOW”) shall be governed by the terms of this Agreement and shall reference this Agreement and the Effective Date specified herein. In case of contradiction between the terms of this Agreement and the terms of an SOW, generally, unless stated otherwise in an SOW, the terms of the SOW shall prevail. All SOW(s) must be signed by both Parties.

**1.3 “Schedule A – Order Form”** shall mean CaseWorthy’s standard pricing order form for establishing the price for the License(s) (if applicable) and Services (if applicable) to CaseWorthy customers. A Schedule A – Order Form will often include an SOW and its various terms and conditions. Each Schedule A – Order Form (a.k.a., “Order Form” or “Schedule A”) shall be governed by the terms of this Agreement for software terms and for Services terms and shall reference this Agreement and the Effective Date specified herein. In case of contradiction between the terms of this Agreement and the terms of a Schedule A - Order Form, the terms of the Schedule A - Order Form shall prevail. The Schedule A – Order Form must be signed by both Parties.

- 1.4 “Schedules,”** whether capitalized, shall mean any Schedule A – Order Form or any other applicable schedule entered into by the Parties subject to this Agreement or both.
- 1.5 “Software License” or “License”** shall mean the license of any software, technology, or proprietary information owned by CaseWorthy and for which a license has been obtained by Customer.
- 1.6 “Effective Date,”** whether capitalized, shall mean the date which both CaseWorthy and Customer have designated for the start of the term of this Agreement, regardless of the order of signing or when the Parties have signed the Agreement.
- 1.7 “Party,”** whether capitalized, shall mean either CaseWorthy or Customer, and in the plural, shall mean both CaseWorthy and Customer.
- 1.8 “Affiliate”** of a party means any legal entity in which a Party, directly or indirectly, holds more than fifty percent (50%) of the entity’s shares or voting rights.
- 1.9 “Authorized User”** means any individual to whom Customer grants access authorization to use the Application that is an employee, agent, contractor, or representative of:
- (a) Customer;
  - (b) Customer's Affiliates; or
  - (c) Customer’s and Customer’s Affiliates’ Business Partners.
- 1.10 “Business Partner”** means a legal entity that requires use of the Application in connection with Customer’s and its Affiliates’ business operations. These may include customers, distributors, service providers, and/or suppliers of Customer.
- 1.11 “Application Materials”** mean any materials provided or developed by CaseWorthy, independently or with Customer’s cooperation, in the course of performance under the Agreement, including the delivery of any support or Services to Customer. Application Materials do not include the Customer Data, Customer Confidential Information, or the Application.
- 1.12 “Confidential Information,”** which is further defined in Section 11.1(a) means:
- (a) With respect to Customer: (i) the Customer Data; (ii) Customer marketing and business requirements; (iii) Customer implementation plans; and (iv) Customer financial information; and
  - (b) With respect to CaseWorthy: (i) the Application; Documentation; and Application Materials; and (ii) information regarding CaseWorthy research and development, product offerings, pricing, and availability.
  - (c) Confidential Information of either CaseWorthy or Customer also includes information that the disclosing Party protects against unrestricted disclosure to others that: (i) the disclosing Party or its representatives designate as confidential at the time of disclosure; or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 1.13 “Customer Data”** means any content, materials, data, and information that Authorized Users enter into the *Production* system of the Application or that Customer derives from its use of and stores in the Application (e.g., Customer-specific reports). Customer Data and its derivatives will not include CaseWorthy’s Confidential Information.
- 1.14 “Documentation”** means CaseWorthy's then-current technical and functional documentation, which may be in the form of video or audio recordings, for the Application that is made available to Customer.
- 1.15 “CaseWorthy Policies”** means the operational guidelines and policies applied by CaseWorthy to provide and support the Application.
- 1.16 “Subscription Term”** means the term of the Application subscription identified in the applicable Schedule A - Order Form, including all renewals.
- 1.17 “Usage Metric”** means the standard of measurement for determining the permitted use and calculating the fees due for the Application as set forth in a Schedule A - Order Form.
- 1.18 “Exhibit A”** means the Service Level Agreement (hereinafter “SLA”) for the Application, which is provided as an exhibit to this Agreement or incorporated by reference.
- 1.19 “Exhibit B”** means the Business Associate Agreement (hereinafter “BAA”) that is provided as an exhibit to this Agreement or incorporated by reference.

## **2. GRANT OF LICENSE(S) AND USAGE RIGHTS AND RESTRICTIONS:**

**2.1 Grant of License(s):** Subject to the terms and conditions herein, CaseWorthy hereby grants Customer a non-exclusive, non-transferable, and world-wide right License to use the Application solely for Customer's and its Affiliates' business operations on CaseWorthy's Application server(s). Nothing in this Agreement shall be construed as limiting in any manner CaseWorthy's marketing or distribution activities or its appointment of or business with other licensees, dealers, distributors, or agents.

**2.1.1** Subject to the restrictions on use as set forth herein, Customer will have access to the Application for the purpose of using the Application for its intended purpose and in accordance with the specifications set forth herein. Such use and access will be continuous on a 24-hour basis except for interruptions by reason of maintenance or downtime beyond CaseWorthy's reasonable control. All purchased features and functions of the Application will be available to Customer as part of the License fee(s).

**2.1.2** Customer will use the Application only for its business operations and will not permit the Application to be used by or for the benefit of anyone other than Customer. Customer will not have the right to re-license or sell rights to access or use the licensed Application or to transfer or assign rights to access or use the Application, except as expressly provided herein. Customer agrees to use the Application in a manner that complies with all applicable laws including intellectual property and copyright laws. CaseWorthy expressly reserves all rights not expressly granted to Customer herein.

**2.2 Authorized Users:** Customer may permit Authorized Users to use the Application. Usage is limited to the Usage Metrics and volumes stated in the applicable Schedule A - Order Form. Access credentials for the Application may not be used by more than one individual but may be transferred from one individual to another if the original user is no longer permitted to use the Application. Customer is responsible for breaches of the Agreement caused by Authorized Users. Customer will not:

- (a) Transmit or share identification or password codes to persons other than Authorized Users;
- (b) Permit the identification or password codes to be cached in proxy servers and accessed by individuals who are not Authorized Users; or
- (c) Permit access to the Application through a single identification or password code being made available to multiple users on a network.

**2.3 Acceptable Use Policy:** With respect to the Application, Customer will not:

- (a) Disassemble, de-compile, reverse-engineer, copy, translate, make derivative works, or attempt to reconstruct or discover any source code or underlying ideas or algorithms or file formats or programming or interoperability interfaces of the Application or of any files contained in or generated using the Application;
- (b) Transmit any content or data that is unlawful or infringes any intellectual property rights;
- (c) Do or authorize any third party to do any act that would invalidate or adversely affect in a material manner any intellectual property rights of CaseWorthy, or do or authorize any third party to make any omission, which by its omission, would have that effect; or
- (d) Circumvent or endanger its operation or security.

**2.4 Verification of Use:** CaseWorthy shall monitor use to verify compliance with the Agreement.

**2.5 Suspension of Application:** CaseWorthy may suspend use of the Application if continued use may result in material harm to the Application or its users. CaseWorthy will promptly notify Customer of the suspension. CaseWorthy will limit the suspension in time and scope as reasonably necessary under the circumstances.

**2.6 Third-Party Web Services:** The Application may include integrations with web services made available by third parties that are accessed through the Application and which are subject to terms and conditions with those third parties. Those third-party web services are not part of the Application and the Agreement does not apply to them.

**2.7 Storage Capacity:** CaseWorthy will provide 50 gigabytes of data storage space on the Application server(s) for Customer to use for storage of data necessary for use of the Application. If Customer's use exceeds the standard storage space allotted herein, Customer shall pay a current and commercially-reasonable market rate for Customer's additional data storage needs, which will be negotiated and subsequently approved by the Parties in a written agreement.

**2.8 Customer Hardware:** Customer will be responsible for providing all Customer equipment to establish a connection to the internet, and for paying for any fees (including telephone service or other telecommunications service, computers,

and modems) associated with such services.

**2.9 Requirement for Customer System Administrator:** Customer shall assign a system administrator to the CaseWorthy Application and designate one or two primary points of contact with CaseWorthy. Customer's system administrator must complete formal system administration training delivered by CaseWorthy or a CaseWorthy partner. If Customer does not have a designated CaseWorthy system administrator who has received system administrator training from CaseWorthy, Customer shall notify CaseWorthy within 30 days of Customer's lack of system administrator to arrange for system administrator training to occur within 30 days of that notice, which will result in additional fees to Customer for those training services.

### **3. CASEWORTHY RESPONSIBILITIES:**

**3.1 Provisioning:** CaseWorthy provides access to the Application as described in the Agreement herein.

**3.2 Support:** CaseWorthy provides maintenance support for the Application as referenced in an applicable Schedule A - Order Form and Exhibit A SLA provided herein.

**3.2.1 Maintenance Support:** Support is described in the attached Exhibit A SLA. The cost of maintenance support is included in the maintenance support fees, if purchased by Customer.

**3.2.2 Application Maintenance:** CaseWorthy will maintain the Application during the term of this Agreement pursuant to the SLA herein. If the Application software code has been customized ("customized" is defined as software code changes, as opposed to software configurations), and CaseWorthy personnel performed those customizations, CaseWorthy will agree to maintain the Application as customized.

**3.2.3 Application Updates/Point Releases:** Customer will be offered, as part of the maintenance support fees, all Application upgrades, including point releases. All custom forms, workflows, reports, etc. will require client-testing and approval before Application updates are applied. Included are continued compliance updates and continued application enhancements for the entire Application offering if Customer has purchased maintenance support services pursuant to a Schedule A – Order Form.

**3.3 Security:** CaseWorthy uses commercially-reasonable security technologies in providing the Application. As a data processor, CaseWorthy will implement technical and organizational measures referenced in the applicable Schedule A - Order Form and the Exhibit A SLA to secure data processed in the Application in accordance with applicable data protection laws, statutes, and regulations.

#### **3.4 Modifications:**

(a) The Application and CaseWorthy Policies may be modified by CaseWorthy. CaseWorthy will inform Customer of modifications by email, release notes, Documentation, the Application, or through other standard communication channels. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Application.

(b) If Customer in good faith establishes that a modification is not solely an enhancement and materially reduces the Application, pursuant to Section 6 herein, Customer may terminate its subscriptions to the affected Application by providing written notice to CaseWorthy within thirty days after receipt of CaseWorthy's informational notice.

### **4. CUSTOMER AND PERSONAL DATA:**

**4.1 Customer Data:** Customer is responsible for the Customer Data and entering it into the Application. Customer grants to CaseWorthy (including CaseWorthy subcontractors) a non-exclusive right to process Customer Data solely to provide and support the Application. Customer owns its data hosted by CaseWorthy.

**4.2 Personal Data:** Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws, statutes, and regulations.

**4.3 Security:** Customer will maintain reasonable security standards for its Authorized Users' use of the Application.

#### **4.4 Access to Customer Data:**

(a) During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format (e.g., a CSV file). Export and retrieval may be subject to

technical limitations, in which case, CaseWorthy and Customer will find a reasonable method to allow Customer access to Customer Data.

(b) Before the Subscription Term expires, Customer may use CaseWorthy's self-service export tools (as available) to perform a final export of Customer Data from the Application.

(c) At the end of the Subscription Term, CaseWorthy will delete the Customer Data remaining on servers hosting the Application unless applicable law requires retention. Retained data is subject to the confidentiality provisions of this Agreement herein.

(d) In the event of third-party legal proceedings relating to the Customer Data, CaseWorthy will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

## **5. FEES AND TAXES:**

**5.1 License Fees and Payment:** Customer will pay fees as stated pursuant to an applicable Schedule A – Order Form. After prior written notice, CaseWorthy may suspend Customer's use of the Application until payment is made. Unless otherwise provided herein or within an SOW or Schedule subject to this Agreement, Customer cannot withhold, reduce, or set-off fees owed, nor reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancelable, and fees are non-refundable.

**5.2 Scope and Fees for Professional Services:** Scope of Services will be established in an applicable Schedule A – Order Form or SOW. CaseWorthy does not generally provide scoping services, i.e., needs analysis/discovery work, without having an agreement in place with Customer that provides for payment by Customer to CaseWorthy for those Services. If Customer requires CaseWorthy to perform needs analysis/discovery work for a future Services engagement, CaseWorthy will generally require Customer to purchase a block of Services hours for CaseWorthy to provide those Services.

**5.3 Payments for Professional Services Work:** Fees and payments for Services will be governed by an applicable Schedule A - Order Form. Fees for fixed-price Services shall be billed in advance, unless the applicable Schedule(s) dictate(s) otherwise (i.e., such as "milestones billing"). Fees for hourly Services shall generally be invoiced bi-weekly unless the applicable Schedules state otherwise. Notwithstanding that, in general, payments for Services are due within thirty (30) days of the delivery schedule identified in an applicable Schedule A - Order Form. An invoice will be prepared identifying the payment phase to assist with accounting records. Payments that are tied to the delivery of functionality identified in an applicable SOW or Schedule A – Order Form may be withheld if said functionality is not delivered in compliance with the described dates. To withhold phase payment, Customer must inform CaseWorthy of said breach in writing within ten (10) business days of the phase delivery date. CaseWorthy will respond with a remedy approach and delivery date within ten (10) business days of receipt. Upon resolution, Customer will pay CaseWorthy pursuant to the normal payment schedule, including any past due amounts, if any. Invoices shall be deemed overdue if they remain unpaid for thirty (30) days after the invoice date. If Customer's procedures require that an invoice be submitted against a purchase order before payment can be made, Customer will be responsible for issuing such purchase order fifteen (15) days before the payment due date. If full payment is not received within thirty (30) days of the invoice date, Customer may be charged interest at one (1) percent per month on the outstanding balance. If after thirty (30) days from the invoice date, full payment has not been received, all work may be suspended at the election of CaseWorthy. Services will recommence upon receipt of payment of the outstanding balance.

### **5.4 Incidental Expenses**

**5.4.1** Pursuant to current IRS guidelines, Customer shall reimburse CaseWorthy for reasonable travel, administrative, equipment, and out-of-pocket expenses incurred in conjunction with Services to be performed for Customer as set out in the applicable Schedule A – Order Form or SOW. All such expenses are not included in any monetary limits unless stated in the applicable Schedule A – Order Form or SOW and unless expressly itemized. All expenses will be approved in advance by Customer. Generally, CaseWorthy bills a flat rate of \$1,500 for each onsite visit. If CaseWorthy declines to do so or is requested by the Customer to provide itemized billing, this subsection 5.4.1. and subsection 5.4.2. shall generally apply.

**5.4.2** Pursuant to current IRS guidelines, incidental travel expenses will typically be for travel, transportation, lodging, and subsistence expenses, including, but not limited to: mileage reimbursement for use of personal automobiles or

commercial coach class airfare; commercial livery services for local transportation or rental of mid-sized rental cars for same; standard rooms at hotels located within reasonable distances from Customer; up to \$90 per day for per diem unless otherwise stated in the applicable Schedule A – Order Form or SOW; and incidentals for necessary laundry and dry cleaning of clothing required for work performance.

**5.5 Taxes:** Fees and other charges imposed under an applicable Schedule A - Order Form will not include taxes, such as VAT (value-added tax), or duties, all of which will be for Customer's account. Customer is responsible for all taxes, other than CaseWorthy's income and payroll taxes. Customer must provide to CaseWorthy any direct pay permits or valid tax-exempt certificates prior to or contemporaneously with the signing of an applicable Schedule A - Order Form. If CaseWorthy is required to pay taxes (other than its income and payroll taxes) or duties, Customer will reimburse CaseWorthy for those amounts and indemnify CaseWorthy for any taxes, duties, and related costs paid or payable by CaseWorthy attributable to those taxes, duties, or related costs.

## **6. TERM AND TERMINATION:**

**6.1 Term:** The Subscription Term is as stated in the applicable Schedule A - Order Form, which shall be for a term of at least three (3) years unless that applicable Schedule A - Order Form states otherwise. Thereafter, this Agreement will be automatically renewed pursuant to the terms of the applicable Schedule A - Order Form. Customer shall have thirty (30) days to notify CaseWorthy of its intent not to renew, unless terminated earlier per the terms contained within this Agreement. CaseWorthy must notify Customer of its intention not to renew at least three (3) months prior to the expiration of the current Subscription Term.

**6.2 Termination:** A party may terminate the Agreement:

- (a) Upon thirty (30) days of written notice of the other Party's material breach unless the breach is cured during that thirty-(30)-day period;
- (b) As permitted under Sections 3.4(b), 7.3(b), 7.4(c), or 8.1.3 (with termination effective thirty (30) days after receipt of notice in each of these cases); or
- (c) Subject to the provisions of the federal bankruptcy code or any applicable state law receivership code(s), either Party may terminate this Agreement effective immediately upon written notice thereof to the other Party in the event of a bankruptcy, insolvency, or liquidation or similar proceedings of the other Party or if such other Party admits in writing its inability to pay its debts when due, or makes an assignment for the benefit of its creditors, or otherwise materially breaches Sections 11 or 12.6.

**6.3 Refund and Payments:** For termination by Customer or an 8.1.3 termination, Customer will be entitled to:

- (a) A pro-rata refund in the amount of the unused portion of pre-paid fees for the terminated Subscription Term calculated as of the effective date of termination; and
- (b) A release from the obligation to pay fees due for periods after the effective date of termination.

**6.4 Effect of Expiration or Termination:** Upon the effective date of expiration or termination of the Agreement:

- (a) Customer's right to use the Application and all CaseWorthy Confidential Information will end;
- (b) Confidential Information of the disclosing Party will be returned or destroyed as required by the Agreement;
- (c) Termination or expiration of the Agreement does not affect other agreements between the Parties, and any applicable SOW not fully completed at the time of termination shall continue to be governed by this Agreement as if it has not been terminated; and
- (d) Each Party understands that the termination rights hereunder are absolute. Unless this Agreement provides otherwise, neither Party shall incur any liability whatsoever for any damages, losses, or expenses of any kind suffered or incurred by the other arising from or pursuant to any termination of this Agreement by such Party in accordance with the terms of this Agreement whether such Party is aware of any such damages, losses, or expenses. Termination is not the sole remedy hereunder, and whether termination occurs, all other remedies shall remain available, including injunctive relief. Termination shall not relieve either Party of its obligation to pay all charges that accrued prior to such termination.

**6.5 Survival:** Sections 1, 2.3, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, 12.1, 12.2, 12.4, 12.9, 12.12, and 12.13 will survive the

expiration or termination of the Agreement.

## **7. WARRANTIES:**

**7.1 Compliance:** Each Party warrants and represents that this Agreement has been duly authorized, executed, and delivered and is legal, valid, binding, and is enforceable in accordance with its terms, and each Party has the legal right, power, and authority to enter into this Agreement. Each Party warrants its current and continuing compliance with all laws and regulations applicable to it as well as any organizational rules and regulations each Party is bound by in connection with:

(a) In the case of CaseWorthy: (i) the operation of CaseWorthy's business as it relates to the Application; and (ii) the Services and Software Licenses under this Agreement shall not infringe or misappropriate any third-party intellectual property rights, including without limitation, patent rights, copyrights, trade secrets, trademarks, service marks, or any other rights of any person or entity. Furthermore, CaseWorthy represents and warrants that the Services and Software Licenses under this Agreement shall not violate CaseWorthy's non-disclosure duties to any third party; and

(b) In the case of Customer, the Customer Data and Customer's use of the Application.

### **7.2 Good Industry Practices:**

(a) CaseWorthy warrants that it will provide the Application and Services in substantial conformance with any applicable Documentation, if any;

(b) CaseWorthy warrants that it will provide the Application and Services with the degree of skill and care reasonably expected from a skilled and experienced national supplier of software services similar to the nature and complexity of the Application;

(c) CaseWorthy represents and warrants that it owns or otherwise has the irrevocable right to provide the Services hereunder and that it possesses all rights and interests in the Services and Software Licenses necessary to enter into this Agreement; and

(d) CaseWorthy represents and warrants that it will: (i) perform the Services in a professional manner consistent with the standards of CaseWorthy's industry using appropriately trained and qualified personnel; and (ii) perform the Services in compliance and in accordance with the provisions of this Agreement and the applicable SOW(s) and Schedule(s).

**7.3 Remedy:** Customer must report any material deficiencies in the Application to CaseWorthy in writing within thirty (30) days of Customer's discovery of the defect. Customer's sole and exclusive remedies and CaseWorthy's entire liability for breach of the warranty under Section 7.2 will be:

(a) The repair of any applicable deficient functionalities of the Application; and

(b) If CaseWorthy fails to re-perform, Customer may terminate its subscription for the affected Application and Customer shall be entitled to recover the fees paid to CaseWorthy for the deficient Services, if any. Any termination must occur within three months of CaseWorthy's failure to re-perform.

### **7.4 System Availability:**

(a) CaseWorthy warrants to maintain an average monthly system availability for Customer's *Production* environment of the Application as defined in the applicable Exhibit A SLA.

(b) Customer's sole and exclusive remedy for CaseWorthy's breach of the SLA's *Error Correction Language* section is the issuance of a credit in the amount described in the Exhibit A SLA. Customer will follow CaseWorthy's posted credit claim procedure. When the validity of the service credit is confirmed by CaseWorthy in writing (email permitted), Customer may apply the credit to a future invoice for the Application or request a refund for the amount of the credit if no future invoice is due.

(c) If CaseWorthy fails to meet the SLA: (i) for four (4) consecutive months; or (ii) for five (5) or more months during any twelve-month period; or (iii) at a system availability level of at least 95% for one (1) calendar month, pursuant to Section 6 herein, Customer may terminate its Subscription Term for the affected Application by providing CaseWorthy with written notice within thirty (30) days after the failure. Notwithstanding the foregoing, in no event will a system availability level be determined by factors or hardware components that are not subject

to CaseWorthy's or CaseWorthy's data-center partner's exclusive control.

**7.5 Warranty Exclusions:** The warranties in Sections 7.2 and 7.4 will not apply if:

- (a) The Application is not used in accordance with the Agreement or any applicable Documentation;
- (b) Any non-conformity is caused by Customer, or by any product or service not provided by CaseWorthy;
- (c) Without the direct involvement of CaseWorthy personnel, the Application or parts of the Application are configured solely by Customer or a third party using the CaseWorthy apBuilders tool-set;
- (d) Customer is not on a version of the Application for which CaseWorthy provides maintenance and support (e.g., Customer refuses a mandatory upgrade); or
- (e) The Application was provided for no fee.

**7.6 Disclaimer:**

**7.6.1 Software Disclaimer:** Except as expressly provided in the Agreement, neither CaseWorthy nor its Affiliates or subcontractors make any representations or warranties, express or implied, statutory or otherwise, regarding any matter, including non-infringement, the merchantability, suitability, originality, or fitness for a particular use or purpose, or results to be derived from the use of or integration with any products or software services provided under the Agreement, or that the operation of any products or software services will be secure, uninterrupted, or error free. CaseWorthy expressly disclaims all other warranties. Customer agrees that it is not relying on delivery of future functionality, public comments, or advertising of CaseWorthy or product roadmaps in obtaining subscriptions for any CaseWorthy Application. CaseWorthy expressly disclaims any warranties or guarantees for any custom functionality that Customer performs, executes, configures, etc. via the CaseWorthy apBuilders framework.

**7.6.2 Professional Services Disclaimer:** CaseWorthy grants no warranties or guarantees for Services unless specifically provided herein or otherwise specified in an applicable SOW or Schedule. Nothing in this Agreement and nothing in CaseWorthy's statements to Customer can or shall be construed as a promise or guarantee about the successful outcome of the Services to be provided under this Agreement or under any applicable SOW or Schedule. Customer acknowledges and agrees that the accomplishment of the goals established for this engagement will require each Party to fully cooperate with the other Party, to fulfill its role, perform its obligations in a timely manner with personnel qualified to perform the tasks assigned, and to coordinate its efforts with the efforts of the other Party, and that all Services provided will be the result of the Parties' joint inputs and efforts. Accordingly, Customer shall retain the right and the responsibility to make decisions with respect to the selection of third-party software and the third-party software services and their collective implementation with respect to its business, and CaseWorthy makes no representation or warranty with respect thereto. Customer agrees to hold CaseWorthy, its officers, directors, employees, shareholders, subcontractors, agents, and affiliates harmless in the event that such third-party software or third-party software services may either: (i) adversely affect the performance of its existing software and systems including, without limitation, date-dependent data, computations, output or other functions; and/or (ii) not comply with the technical changes or fixes that the vendor of such software or service may have represented, provided that CaseWorthy gives Customer advance written notice of such adverse effect or non-compliance and Customer directs CaseWorthy to proceed.

**8. THIRD PARTY CLAIMS:**

**8.1 Infringement Indemnity:**

**8.1.1** Each Party ("Provider") will indemnify and hold harmless the other Party ("Recipient") and its Affiliates or subcontractors against all third-party claims that any information, design, specification, instruction, software, data, or material furnished by the Provider (collectively, "Material") and used by the Recipient for the Application(s) or Services infringes a copyright, patent claim, or trade secret right provided that: (a) the Recipient notifies the Provider in writing within the final acceptance period of the project, if any is declared in an applicable SOW or Schedule; and (b) the Recipient provides the Provider with the assistance, information, and authority reasonably necessary to perform the Provider's indemnification duties. Reasonable out-of-pocket expenses incurred by the Recipient in providing such assistance will be reimbursed by the Provider. Notwithstanding the foregoing, if Provider engages in settlement discussions that involves or affects the Recipient, the Provider will not enter into the settlement without the prior written approval of the Recipient, which shall not be unreasonably withheld.

**8.1.2.** The Provider shall have no liability for any claim of infringement resulting from: (a) the Recipient's use of a superseded or altered release of some or all the Material if infringement would have been avoided using a subsequent unaltered release of the Material that the Provider provided to the Recipient; or (b) any information, design, specification, instruction, software, data, or material not furnished by the Provider. In addition, CaseWorthy's obligations under Section 8.1 will not apply if the claim results from: (i) Customer's breach of Section 2; (ii) use of the Application in conjunction with any product or service not provided by CaseWorthy; or (iii) use of the Application that was provided to Customer for no fee. Customer's obligations to indemnify and hold CaseWorthy harmless under this Section 8.1 herein will not apply if the infringement claim is related to Customer Data that is the result of CaseWorthy's negligence or willful misconduct.

**8.1.3.** If some or all the Material is held or is reasonably believed by the Provider to infringe, the Provider shall have the option, at its expense, to: (a) modify the Material to be non-infringing; (b) obtain for the Recipient a license to continue using the Material; or (c) require return of the infringing Material and all rights thereto from the Recipient. If CaseWorthy is the Provider and such return materially affects Customer's ability to meet its obligations under this Agreement or an applicable SOW or Schedules, then Customer may, at its option and upon thirty days' prior written notice to CaseWorthy, terminate the SOW or applicable Schedule(s) and shall be entitled to recover the fees paid by Customer for that portion of the Material. If Customer is the Provider and such return materially affects CaseWorthy's ability to meet its obligations under the applicable SOW or Schedule(s), then CaseWorthy may, at its option and upon thirty days of written notice to Customer, terminate the applicable SOW or Schedule(s) and Customer shall pay CaseWorthy for the Services rendered through the date of termination on a "time and materials" or percent-of-completion basis as applicable.

**8.2 Third-Party Claim Procedure:**

- (a) The Party against whom a third-party claim is brought will timely notify the other Party in writing of any claim.
- (b) The Party that is obligated to defend a claim will have the right to fully control the defense.

**8.3 Exclusive Remedy:** The provisions of Section 8 herein state the sole, exclusive, and entire liability of the Parties, their Affiliates, Business Partners, and subcontractors to the other Party, and is the other Party's sole remedy, with respect to covered third-party claims and to the infringement or misappropriation of third-party intellectual property rights. Neither Party will be liable to the other for special, indirect, or consequential damages incurred or suffered by the other arising as a result of or related to the use of the Application or the performance of Services, whether in contract, tort, or otherwise, even if the other has been advised of the possibility of such loss or damages.

**9. LIMITATION OF LIABILITY**

**9.1 Unlimited Liability:** Neither Party will exclude or limit its liability for damages resulting from:

- (a) The Parties' obligations under Section 8.1.1;
- (b) Unauthorized use or disclosure of Confidential Information;
- (c) Either Party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data; or
- (d) Any failure by Customer to pay any fees due under the Agreement.

**9.2 Liability Cap:** Subject to Sections 9.1 and 9.3, the maximum aggregate liability of either Party (or its respective Affiliates or CaseWorthy's subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve-month period will not exceed the annual Subscription Term fees paid for the applicable Application directly causing the damage for that twelve-month period, or in the event of damages claims attributed to Services, in no event shall the liability for damages hereunder exceed the amount of fees paid by Customer to CaseWorthy for Services rendered pursuant to the applicable Schedule A – Order Forms or SOWs that govern the Services that are the subject of the damages claim(s).

**9.3 Exclusion of Damages:** Subject to Section 9.1:

- (a) NEITHER PARTY, NOR ITS RESPECTIVE AFFILIATES, OR IN THE CASE OF CASEWORTHY, CASEWORTHY'S SUBCONTRACTORS, WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE, OR CONSEQUENTIAL DAMAGES, WORK STOPPAGE, OR DAMAGES FOR LOSS OF GOODWILL OR BUSINESS PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN

ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; and

(b) CaseWorthy will not be liable for any damages caused by any Application provided for no fee.

**9.4 Risk Allocation:** The Agreement allocates the risks between CaseWorthy and Customer. The fees for the Application and Services reflect this allocation of risk and limitations of liability.

## **10. INTELLECTUAL PROPERTY RIGHTS**

**10.1 CaseWorthy Ownership:** CaseWorthy and their Affiliates (if in existence) or licensors (if in existence) own all intellectual property rights in and related to the Application, Application Materials, Documentation, Services, design contributions, related knowledge or processes, any derivative works of them, and their proprietary information. Proprietary information includes information in any medium previously disclosed or currently or subsequently disclosed by CaseWorthy to Customer, or which Customer learns from CaseWorthy, relating to the CaseWorthy Application(s), the properties, composition or structure thereof, or CaseWorthy's business (including, without limitation: computer programs; algorithms; names and expertise of employees and consultants; know-how; formulas; processes; ideas; inventions (whether patentable); schematics and other technical, business, and financial information; CaseWorthy product development plans; forecasts; strategies; and information), and such information is the confidential property of CaseWorthy. All rights not expressly granted to Customer are reserved to CaseWorthy and its Affiliates (if in existence) and licensors (if in existence).

**10.2 Customer Ownership:** Customer retains all rights in and related to the Customer Data. CaseWorthy may use Customer-provided trademarks solely to provide and support the Application.

**10.3 Non-Assertion of Rights:** Customer covenants on behalf of itself and its successors and assigns not to assert against CaseWorthy, their Affiliates (if in existence) or licensors (if in existence), any rights, or any claims of any rights, in any Application, Application Materials, Documentation, or Services.

**10.4 Additional Remedies:** Each Party recognizes and acknowledges that the other Party's proprietary information (which is defined in the foregoing Section 10.1 herein) and the confidential nature thereof is critical to the business of the disclosing Party and that the disclosing Party would not enter into this Agreement without assurance that its proprietary information and the value thereof shall be protected as provided in Section 11 herein and elsewhere in this Agreement. Each Party acknowledges that due to the unique nature of the other Party's proprietary information, there may be no adequate remedy at law for any breach of Section 11 obligations hereunder, that any such breach may allow the breaching Party or third parties to unfairly compete with the Party whose information was disclosed resulting in irreparable harm to it, and therefore, that upon any such breach or any threat thereof, the Party whose information was disclosed will be entitled to apply for appropriate equitable relief in addition to whatever remedies it might have at law, in connection with any breach or enforcement of the other Party's obligations hereunder or the unauthorized use or release of any such proprietary information. A breaching Party shall notify the other Party in writing immediately upon the occurrence of any such unauthorized release or other breach.

## **11. CONFIDENTIALITY:**

### **11.1 Use of Confidential Information:**

(a) The Parties acknowledge that during the course of the relationship under this Agreement and all subsequent applicable SOWs and Schedules (e.g., an applicable Schedule A – Order Form), the Parties may receive, have access to, and create documents, records, and information of confidential and proprietary nature to the Parties, their customers, clients, and Affiliates, including but not limited to, the names and addresses of customers, clients, and prospective customers or clients, business mix information and information related to profit and profit margins, price lists, contract prices for the Parties' services, business plans and prospects, ledgers and general information, mailing lists, accounts receivable and payable ledgers, financial and other records, training and operational manuals, information concerning the Parties' general financial positions and securities and other investments, research, policies, plans and systems, and other similar matters (all such information being hereinafter referred to as "Confidential Information"), all of which would not be readily available to the Parties

except for the relationship governed by this Agreement and subsequent applicable SOWs and Schedules. The receiving Party will protect all Confidential Information of the disclosing Party as strictly confidential to the same extent it protects its own Confidential Information, and with not less than a commercially-reasonable standard of care. The receiving Party will not disclose any Confidential Information of the disclosing Party to any person or entity other than its personnel, representatives, or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this Section 11 herein. Customer will not disclose the Agreement or the pricing to any third party.

(b) Confidential Information of either Party disclosed prior to execution of the Agreement will be subject to this Section 11.

(c) In the event of legal proceedings relating to the Confidential Information, the receiving Party will cooperate with the disclosing Party and comply with applicable law (all at disclosing Party's expense) with respect to handling of the Confidential Information.

(d) Upon discovery of any unauthorized possession, use, or knowledge of any of the Confidential Information, the receiving Party shall immediately notify the disclosing Party of the same and shall cooperate with the disclosing Party to regain possession or prevent further unauthorized use of the Confidential Information. If such unauthorized possession or use of the Confidential Information is the result of the negligence of the receiving Party or of any breach by the receiving Party of the terms of this Agreement, the receiving Party, at its own expense, shall take all reasonable actions, including if likely to be effective, court proceedings, to recover possession of, or (as the case may be) to prevent further unauthorized use or disclosure of the Confidential Information.

(e) Upon demand, each Party shall return to the other Party any originals, duplicates, copies, reproductions, and summaries of Confidential Information received from the other Party.

(f) All Confidential Information is and shall remain the property of the disclosing Party. By disclosing such information, each Party does not grant to the other Party any express or implied right to any of its patents, copyrights, trademarks, or secret information.

**11.2 Exceptions:** The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

(a) Is independently developed by the receiving Party without reference to the disclosing Party's Confidential Information;

(b) Is generally available to the public without breach of the Agreement by the receiving Party;

(c) At the time of disclosure, was known to the receiving Party free of confidentiality restrictions as evidenced by the receiving Party's written records prepared prior to such disclosure;

(d) Is disclosed to a third party by the disclosing Party without similar confidentiality restrictions on such third party's rights or is approved for release by written authorization of the disclosing Party;

(e) The disclosing Party agrees in writing is free of confidentiality restrictions; or

(f) Is in response to a valid order of a court or other governmental body of the United States, is otherwise required by law, or is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

**11.3 Publicity and Marketing Efforts:** Neither Party will use the name of the other Party in publicity activities without the prior written consent of the other, except that Customer agrees that CaseWorthy may use Customer's name in customer listings or quarterly calls with its investors or Affiliates (if either are in existence), or at times mutually agreeable to the Parties, as part of CaseWorthy's marketing efforts (including reference calls and stories, press testimonials, site visits, and various conferences participation).

## **12. MISCELLANEOUS:**

**12.1 Severability:** Except with respect to the limitation of liability and the Section 12.11 Force Majeure paragraphs herein, in which event the entire Agreement shall be deemed to have failed its purpose, if any other provisions or portions

of other provisions of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and the remaining terms shall continue in effect and be binding on the Parties.

**12.2 No Waiver:** A waiver of any breach of the Agreement is not deemed a waiver of any other breach. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

**12.3 Electronic Signature:** Electronic signatures that comply with applicable law are deemed original signatures.

**12.4 Regulatory Matters:** CaseWorthy Confidential Information is subject to export control laws of the United States. Customer will not submit CaseWorthy Confidential Information to any government agency for licensing consideration or other regulatory approval, and will not export CaseWorthy Confidential Information to countries, persons, or entities if prohibited by export laws.

**12.5 Notices:** Notices will generally be in writing and given when delivered to the address set forth in the Signatures page herein with a copy to the other Party's legal department. Notices by CaseWorthy relating to the operation or support of the Application and those under Sections 3.4 and 5.1 may be in the form of an electronic notice to Customer's authorized representative or administrator. Notices are validly given upon the confirmed receipt by the receiving Party. Other than notices given for the purpose of terminating this Agreement, notices from either Party may also be delivered by fax or email and will be validly given upon written confirmation of receipt. Either Party may change its address for purposes of notice by giving notice to the other Party in accordance with these provisions.

**12.6 Assignment:** Without CaseWorthy's prior written consent, Customer may not assign or transfer the Agreement (or any of its rights or obligations) to any party. CaseWorthy may assign the Agreement to its Affiliates (if in existence). CaseWorthy may also assign this Agreement to a successor in interest in the case of an initial public offering (IPO) or in the case of a corporate reorganization where the intent is to allow CaseWorthy to incorporate in another state within the United States of America, in which case, written consent of Customer will not be required in such circumstances. This provision does not preclude CaseWorthy from determining the mix of personnel, including the use of subcontractors, in performing services, if applicable and subject to an applicable SOW or Schedule; however, the use by CaseWorthy of subcontractors shall not relieve CaseWorthy of its obligations under this Agreement or an applicable SOW or Schedule. Subject to the foregoing, this Agreement shall inure to the benefit and be binding upon the successors and legal assigns of the Parties hereto.

**12.7 Subcontracting:** CaseWorthy may subcontract parts of the Application or Services to third parties. CaseWorthy is responsible for breaches of the Agreement caused by its subcontractors.

**12.8 Relationship of the Parties:** The Parties are independent entities, and no partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties is created by the Agreement. CaseWorthy shall have no authority to bind or otherwise obligate Customer in any manner, nor shall CaseWorthy represent to anyone that it has a right to do so.

**12.9 Non-Solicitation and Non-Compete:**

**12.9.1 Non-Solicitation:** During the term of this Agreement and for a period of 12 months after the termination of this Agreement and without CaseWorthy's prior written consent and the Parties' mutual agreement, neither Customer nor any of its subsidiaries or Affiliates shall directly or indirectly solicit for employment or offer employment to any individual who is then employed by CaseWorthy, or any individual who was employed by CaseWorthy or any of its Affiliates and who was in any way related to CaseWorthy's applicable SOWs or performances of Services with Customer. If this clause is breached, compensatory damages equal to twelve (12) months of the employee's salary plus any legal expenses involved with the enforcement of this provision shall be paid by Customer to CaseWorthy. However, nothing in this Section 12.9.1 shall prohibit the use of a general and open solicitation for employment by Customer in a publication or by other means.

**12.9.2 Non-Compete:** Both Parties agree to refrain from using the other Party's trade secrets to launch a competing product during the time of the executed agreement and within three (3) years following the termination of this Agreement.

**12.10 Service Changes and Mutual Cooperation:**

**12.10.1** Customer's request for any change in Services must be in writing; this requirement pertains to all such requests,

including but not limited to, requests for changes in project plans, scope, specifications, schedule, designs, or requirements. CaseWorthy shall not be obligated to perform tasks described in Customer's request until both Parties agree in writing to the proposed change. CaseWorthy reserves the right to reject the requested changes for valid reasons.

**12.10.2** Customer acknowledges that its timely provision of and access to office accommodations, facilities, equipment, assistance, cooperation, complete and accurate information and data from its officers, agents, and employees, and suitably configured computer products (collectively, "Cooperation") are essential to the performance of any Services, and that CaseWorthy shall not be liable for any deficiency in performing Services if such deficiency results from Customer's failure to provide full Cooperation. CaseWorthy shall inform Customer in writing of any lack of Cooperation that may affect the progress of the Services. If after being informed, the problems are not cured by Customer, Section 6.2 shall apply.

**12.11 Force Majeure:** If either Party is unable to perform any of its obligations under this Agreement, other than for payment of amounts due, due to a natural disaster, acts of God, actions or decrees of governmental bodies, a labor dispute, strikes, a war, embargoes, a loss or interruption of electrical power or other public utility, or other delays not the fault of the affected Party (hereinafter, a "Force Majeure Event"), the Party who has been so affected shall give notice to the other Party as soon as possible under the circumstances and shall be extended to the extent of any such inability to perform and neither Party shall incur any liability as a result of such delay. If the period of non-performance exceeds thirty (30) calendar days from the receipt of notice of the Force Majeure Event, pursuant to Section 6 herein, the Party whose ability to perform has not been so affected may terminate this Agreement by written notice to the other Party. A Force Majeure event shall not constitute a breach hereunder.

**12.12 Governing Law:** This Agreement shall be governed by and construed and interpreted in accordance with the laws of Utah without references to its principles of conflict of laws. All disputes arising out of this Agreement shall be brought in and resolved in by a competent court in Utah. In lieu of resolving the dispute in a competent court in Utah, the Parties, through written agreement, may agree to submit the dispute to binding arbitration by a single arbitrator, who must be a licensed attorney familiar with Utah law as well as software-related law, with the American Arbitration Association (AAA), in accordance with its relevant industry rules, if any. The arbitration will be held in Utah or may be held via a teleconference upon request of either of the Parties. The arbitrator will have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgment on any award rendered by the arbitrator may be entered in any Court of competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement if Customer is an entity located outside the United States and whose Authorized Users are located outside the United States. Either Party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

**12.12.1 Resolution of Disputes:** In any dispute between the Parties arising out of the duties and obligations of this Agreement, the Parties shall take all reasonable steps to resolve such disputes prior to the initiation of formal action. Such steps shall include, but are not limited to, clear notification by one Party to the other of any perceived failure to perform under this Agreement (hereinafter, an "Event of Default") and a reasonable time period for cure, which shall not be less than 10 business days in any event. Upon the occurrence of an Event of Default and the other Party's failure to cure such Event of Default, a Party shall deliver to the defaulting Party a notice of intent to terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for thirty (30) days, the Party may terminate this Agreement and the License(s) granted herein by delivering to the defaulting Party a notice of termination that identifies the effective date of the termination, which date shall not be less than thirty (30) days after the date of delivery of the notice of intent to terminate.

**12.12.2 Attorneys' Fees:** With the exception of the indemnification provisions of Section 8: Third Party Claims, generally, in the event of dispute proceedings between the Parties regarding this Agreement, each Party agrees to bear its own cost and agrees to forego any claims for attorney fees from the other Party.

**12.13 Entire Agreement:** The Agreement, including all incorporated Schedules and exhibits constitute the complete and exclusive statement of the agreement between CaseWorthy and Customer in connection with the Parties' business



relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the Parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both Parties, except as permitted under Section 3.4. The Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if CaseWorthy accepts or does not otherwise reject the purchase order. Any ambiguous language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party, regardless of whether either Party drafted the Agreement. The Parties represent that neither Party has made any change to any documents constituting the Agreement that have not been brought to the attention of other Party via a “red-lined” document, email correspondence, or other means reasonably calculated to put the other Party on notice of the change. Any such change shall render this Agreement terminable for breach by the other Party, at that Party’s discretion, even if that Party has executed the Agreement.

**12.14 Section Headings:** Section headings in this Agreement and the incorporated Schedules and exhibits are for convenience only and shall not be construed to affect the interpretation of this Agreement.

**12.15 Software Escrow Agreement:** CaseWorthy has established a source-code escrow account (hereinafter, “Escrow Account”). The Parties may, to the extent desired by Customer and at Customer's expense, and at such time as determined by Customer following the Effective Date of this Agreement, become a beneficiary to the Escrow Account. If Customer becomes a beneficiary of the Escrow Account, Customer will have the right to obtain the source code to the software in accordance with the release conditions set forth in the Escrow Account agreement. CaseWorthy will immediately notify Customer in writing if the Escrow Account is terminated for any reason; in such event, CaseWorthy will promptly replace the terminated Escrow Account with a reasonably-equivalent one.

**SIGNATURES**

The Parties agree that a facsimile of this Agreement shall be considered as the original, and that such facsimile, when counter-signed by the other Party, and any copy thereof, shall be as legally binding as the original. Regardless of the date of execution of this Agreement or the order in which the Parties have executed this Agreement, the Parties agree that this Agreement shall have an Effective Date of May 1, 2019.

CASEWORTHY, INC.

CUSTOMER

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CaseWorthy, Inc.  
3995 South 700 East, Suite 420  
Salt Lake City, Utah 84107

Fort Bend County  
4520 Reading Road, Suite 900-A  
Rosenberg, Texas 77471



relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the Parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both Parties, except as permitted under Section 3.4. The Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if CaseWorthy accepts or does not otherwise reject the purchase order. Any ambiguous language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party, regardless of whether either Party drafted the Agreement. The Parties represent that neither Party has made any change to any documents constituting the Agreement that have not been brought to the attention of other Party via a "red-lined" document, email correspondence, or other means reasonably calculated to put the other Party on notice of the change. Any such change shall render this Agreement terminable for breach by the other Party, at that Party's discretion, even if that Party has executed the Agreement.

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CASEWORTHY, INC.

CUSTOMER

By: 

By: \_\_\_\_\_

Name: Brett Pickens

Name: \_\_\_\_\_

Title: President

Title: \_\_\_\_\_

Date: 9-17-19

Date: \_\_\_\_\_

CaseWorthy, Inc.  
3995 South 700 East, Suite 420  
Salt Lake City, Utah 84107

Fort Bend County  
4520 Reading Road, Suite 900-A  
Rosenberg, Texas 77471

## **EXHIBIT A: SERVICE LEVEL AGREEMENT**

Pursuant to this Agreement entered into by the Parties, this Service Level Agreement ("SLA") sets forth the details regarding the levels of service and support for the Application including related new releases, point releases, updates, bug fixes, and enhancements.

### **1. CUSTOMER SUPPORT:**

A. A member of CaseWorthy's Customer Success Team (hereinafter, "CCST") will be available to assist Customer with problems and questions regarding the Application(s). CaseWorthy will supply telephone or email support to Customer regarding the Application(s) Monday through Friday between the hours of 7:00 AM and 6:00 PM MST. All support issues will be responded to in less than twenty-four (24) hours of receipt provided that the issue isn't raised on a Friday or before a national holiday that CaseWorthy recognizes.

B. As part of Customer's standard annual maintenance support fee(s), in addition to a free, unlimited "how-to" support component, which Customer may ONLY use when Customer needs tips or quick instructions as to how to use the Application(s) (*i.e., Customer may not cite an issue needing repair when using this "how-to" support service*), Customer will receive a finite amount of support hours for the Application(s). Unless the Schedule A – Order Form to this Agreement dictates otherwise, the amount of support hours provided to Customer and how Customer may use those support hours is defined in this SLA Section 1B herein. Customer may contact the CCST help desk via email at [support@CaseWorthy.com](mailto:support@CaseWorthy.com) or by telephone at 877-347-0877. CaseWorthy may, from time to time, develop additional methods for Customer to contact the help desk, and will make information regarding such methods available on CaseWorthy's website.

I. The amount of support hours for baseline or custom support functionality needs that Customer may have is calculated by determining the average amount of actual support hours that Customer has consumed in the prior years (generally the last three) of its account with CaseWorthy. If Customer's average actual support hours multiplied by CaseWorthy's internal support costs exceeds the annual maintenance support (a.k.a., "M/S") fee component of Customer's Annual Users Fee that Customer is scheduled to pay, the amount of support hours provided will be reduced to an amount of support hours that is fair to both Parties (hereinafter "Break-Even Cost"). ***Because Customer has averaged 227 hours of actual support per year over the last three years, which exceeds CaseWorthy's Break-Even Cost for providing support, Customer will receive 105 support hours per year for this renewal Subscription Term.*** If Customer exhausts the 105 hours of support, Customer will have to buy additional support hours or only "how-to" support will be provided for the remainder of Customer's Subscription Term year. Should Customer choose to renew, CaseWorthy will continue to determine support hours on the same basis, which will be priced accordingly when needed and not just subject to CaseWorthy's standard 4% annual escalation for the renewal term.

II. Customer may not "carry" or "roll-over" unused support hours into subsequent Subscription Term years (e.g., Customer's license runs from May 1<sup>st</sup> to April 30<sup>th</sup> every year, and Customer has 15 unused support hours from Year 1 of the Agreement when May 1<sup>st</sup> of Year 2 begins; those hours are considered expired and may not be rolled into Year 2).

III. Customer may access the CaseWorthy Customer Support Portal at any time to determine how many support hours have been used, what issues those support hours were used to resolve, how those issues were resolved, and how many support hours remain for Customer's usage. Support hours will be decremented in fifteen-minute intervals.

IV. Customer is limited to one or two main points-of-contact for Application(s) support needs. CaseWorthy

reserves the right to deny support to Customer users who are not designated as one of the two main points-of-contact for Customer's Application(s) support needs.

V. CaseWorthy will not charge Customer or dock Customer support hours when CaseWorthy makes source code changes, i.e., to the SQL database layer, which causes Application(s) functionality that previously worked correctly to not execute correctly, whether CaseWorthy developed it or Customer or a third party on Customer's behalf developed it.

VI. Upon providing Customer with 30 days of notice, CaseWorthy reserves the right to amend this support policy if Customer's use of the free, unlimited "how-to" support service becomes excessive, which is subject to CaseWorthy's exclusive determination, which shall be commercially reasonable. If that occurs, Customer may be requested to purchase additional support hours due to Customer's consistent need for additional support relative to other similarly-sized CaseWorthy customers. Customer is required to have a dedicated system administrator for the CaseWorthy Application(s) in order to ensure that "how-to" support services provided by CaseWorthy do not become excessive.

C. CaseWorthy provides an issues-tracking system for reporting and recording issues and suggestions for the Application. These issues are responded to within twenty-four hours of receipt provided that the issue isn't raised on a Friday or before a national holiday that CaseWorthy recognizes.

D. CaseWorthy will provide 24x7 hardware monitoring and response for all SaaS deployments. After-hours support will be limited to hardware that manages *Production* databases only. CaseWorthy has continued-monitoring of servers and will be directly notified upon any outage events. For issues with *Testing* and *Training* databases, responses will be deferred to the next business day's normal operation hours.

E. Error Correction Language: Refer to Section Two of this Exhibit A for details concerning how CaseWorthy performs this type of technical support.

F. The after-hours support classification will be known as a Class 1 AH Error, which is defined as any error that renders continued use of the Application either impossible or seriously impractical.

1. Response Time: CaseWorthy shall respond to Customer's initial error reports with off-site telephone consultation, assistance, and advice within four (4) hours for Class 1 AH Errors.
2. Any hardware provided and managed by a self-host Customer will not be subject to this monitoring.
3. After-hours technical support will be known as a Class 1 AH Error. This will be limited to *Production* environments only for Licensees running a live system. For issues with *Testing* and *Training* databases, responses will be deferred to the next business day's normal operation hours.
4. Notification Process: Customer will send an email to [Support@CaseWorthy.com](mailto:Support@CaseWorthy.com) providing the issue in detail. An auto-response will identify the phone number of the individual on call that evening. This support is limited to Class 1 AH Errors only. "How-To" questions or any other work functions that can be accomplished via a manual paper-based process (e.g., an intake of an agency's client at a physical provider location such as a homeless shelter) or the functional equivalent will be deferred to the next business day.

G. Limitation of Support of Prior CaseWorthy Application Versions: In no event will CaseWorthy provide Application support for a version of the CaseWorthy Application that is more than two (2) prior sequential versions older than the most current version. If Customer opts to not upgrade to a version for which CaseWorthy provides support, the Customer will not receive maintenance support from CCST.

**2. ERROR CORRECTION LANGUAGE:** As part of the maintenance support services, CaseWorthy shall provide the

services set forth in this exhibit. CaseWorthy is only responsible for the Application(s) as developed or modified by CaseWorthy. If CaseWorthy hosts, it will include hardware availability under this section. Any interruptions due to malfunctions of the operating system or hardware maintained by Customer, the third-party hosting services provider used by Customer (if applicable), or any other third party used by Customer are not included or warranted under this provision.

A. **Services Error Classifications:** Each error or problem (hereinafter “Error”) with the Application(s) encountered by Customer, the third-party hosting services provider, or other designee of the Customer will be classified by such party into one of the following classifications:

1. **Class 1 Error:** Any Error that renders continued use of the Application(s) either impossible, seriously impractical, or either interrupts the normal business operations of Customer or makes continued business operations substantially costly to Customer.
2. **Class 2 Error:** Any material non-conformance of the Application(s) with its specifications or documentation that is not a Class 1 Error.
3. **Class 3 Error:** Any Application(s) Error that is not a Class 1 Error or a Class 2 Error.
4. **Notification of Errors and Escalation:** CaseWorthy will provide a list of persons and their telephone numbers for Customer to notify CaseWorthy that maintenance support services are not being provided to Customer’s satisfaction. When reporting any Error, Customer will provide the classification and description of the Error and include the Customer’s operations hours.
5. **Response Time:** CaseWorthy shall respond to Customer’s initial Error reports with off-site telephone consultation, assistance, and advice within four hours for Class 1 Errors, within eight hours for Class 2 Errors, and within three business days for Class 3 Errors.

B. **Correction of Errors:**

1. **Class 1 Errors and Class 2 Errors:** For any Class 1 Error or Class 2 Error, CaseWorthy shall take all necessary steps to supply a correction to Customer as soon as possible. This will include assigning qualified, dedicated staff to work on the Error until the Error has been resolved. Upon detecting or being notified of a Class 1 Error or Class 2 Error, CaseWorthy shall assemble the appropriate personnel to analyze the problem, identify potential solutions, and determine the best plan of action, which may include providing a temporary work-around acceptable to Customer until a permanent correction can be provided. Customer shall be permitted to participate in this process. CaseWorthy personnel shall be dedicated to resolving the Error until an acceptable correction is supplied. A CaseWorthy representative shall keep Customer informed of the status. If CaseWorthy provides Customer with a work-around acceptable to Customer for a Class 1 Error, such Error will be re-classified as a Class 2 Error.
2. **Class 3 Errors:** For any Class 3 Error, CaseWorthy shall work with Customer to document the Error through mutually-established standards. Class 3 Errors shall be resolved according to mutually-agreed-upon priorities. CaseWorthy personnel shall be dedicated to resolving Class 3 Errors through CaseWorthy’s normal software support procedures, but in any event, each Class 3 Error shall be resolved no later than the date of the next release of the applicable Application.

C. **Remedies for Error Correction Failures:**

1. **Class 1 Errors:** If CaseWorthy does not respond and begin to remedy any Class 1 Error within four (4) hours of receipt of such request or shall fail to remedy such Class 1 Error within twenty-four (24) hours after receipt of such request, upon Customer’s request, CaseWorthy shall for each such failure provide Customer with a credit of one-three-hundred-sixtieth (1/360) of the annual maintenance support fees payable under the Agreement (hereinafter a “Unit”) against future fees payable hereunder for every business day that CaseWorthy fails to respond to or remedy the Error.
2. **Class 2 Errors:** If CaseWorthy does not respond and begin to remedy any Class 2 Error within seventy-two (72) hours of receipt of such request or shall fail to remedy such Class 2 Error within five (5) days after receipt of

such request, upon Customer's request, CaseWorthy shall for each such failure provide Customer with a credit of one (1) Unit against future fees for every day that CaseWorthy fails to respond to or remedy the Error.

**3. APPLICATION UPDATES/POINT RELEASES:** Customer will be offered, as part of the annual maintenance support service, all major updates of the Application when available. All updates will be scheduled with Customer to minimize downtime in the *Production* environment. CaseWorthy will notify Customer and receive written approval from Customer prior to introducing any updates into the live *Production* environment. Scheduled maintenance will be handled in a similar manner as updates previously defined herein. In addition to the notification, CaseWorthy will attempt to provide these maintenance items in off-peak hours to further reduce the impact on the *Production* environment.

#### **4. PRIVACY AND SECURITY:**

A. CaseWorthy will take all action to reasonably safeguard the Application(s), including encryption, firewalls, and proprietary, security-level protection to ensure that Customer's data and information is secure and only disclosed to those designated by Customer.

B. Customer shall maintain processes to ensure Customer confidentiality in the use of the Application(s).

C. Customer is responsible for maintaining processes to ensure confidentiality in the use of the Application(s) for the Authorized Users permitted by Customer to access and use the Application(s).

**5. DATABASES:** CaseWorthy will maintain up to three databases for the use of the Application(s) for Customer, which are:

A. **Testing:** The Testing database is used for new development of features and new released enhancements by CaseWorthy. New development may include new features like workflows, forms, business rules, and reports that either CaseWorthy or Customer has implemented based on changing or new requirements. The Testing database is also the environment that is updated with new releases and enhancements so that they can be tested prior to releasing new and changed functionality into Production. Because Customer may have a significant number of customized or custom-configured features, these features are re-tested once a new release has been applied. When new enhancements or releases are approved by Customer, a synchronization process is scheduled to move these enhancements from Testing to Production.

B. **Training:** This database is used for training Customer's staff. The Training database is the environment that is updated with new releases and enhancements so that they can be user-trained after testing.

C. **Production:** This is the actual live environment for the day-to-day Application(s) activities. New development and new releases are only migrated into Production once they have been quality-assurance-tested in the Testing environment.

**6. SYSTEM UP-TIME GUARANTEE:** CaseWorthy guarantees 99.95% network and power up-time for active servers.

## **EXHIBIT B: BUSINESS ASSOCIATE ADDENDUM**

The parties to the Agreement are committed to complying with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated there under (collectively “HIPAA”). To ensure such compliance, this HIPAA Exhibit sets forth the terms and conditions pursuant to which Protected Health Information (“PHI”) that is provided to, or created or received by, a Business Associate from or on behalf of a Covered Entity will be handled.

### **1. DEFINITIONS:**

- A. **Business Associate:** “Business Associate” shall mean CaseWorthy, Inc.
- B. **Covered Entity:** “Covered Entity” shall mean Fort Bend County.
- C. **Designated Record Set:** The phrase, “Designated Record Set,” shall have the same meaning as the phrase, “designated record set,” set forth within the Privacy and Security Rule, as may be amended from time to time.
- D. **Individual:** The term, “Individual,” shall have the same meaning as the term, “individual,” in the Privacy and Security Rule and shall include a person who qualifies as a personal representative in accordance with the Privacy and Security Rule.
- E. **Privacy and Security Rule:** The phrase, “Privacy and Security Rule,” shall mean the Standards for Privacy of Individually Identifiable Information and the Security Standards for the Protection of Electronic Health Information at 45 C.F.R. part 160 and part 164, as amended from time to time.
- F. **Protected Health Information:** The phrase, “Protected Health Information,” shall have the same meaning as the phrase, “protected health information,” set forth within the Privacy and Security Rule, as may be amended from time to time, to the extent such information is provided to, or created or received by, Business Associate from or on behalf of Covered Entity.
- G. **Secretary:** The term, “Secretary,” shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.

Terms or phrases used, but not otherwise defined, in this HIPAA Exhibit shall have the same meaning as those terms in the Privacy and Security Rule.

**2. SCOPE:** This HIPAA exhibit applies to all actions, relationships, and transactions between Covered Entity and Business Associate pursuant to the Agreement and through which Covered Entity provides Protected Health Information to the Business Associate in any form or medium whatsoever.

**3. PURPOSE; GENERAL RULES REGARDING PROTECTED HEALTH INFORMATION:** This HIPAA exhibit sets forth the terms and conditions pursuant to which Protected Health Information that is held, transmitted, disclosed, received, or created by Business Associate from or on behalf of Covered Entity will be handled. Except as otherwise specified herein, Business Associate may make all uses and disclosures of Protected Health Information necessary to perform its obligations to Covered Entity under the Agreement or pursuant to Covered Entity’s written instruction, provided that such uses or disclosures would not violate the Privacy and Security Rule. All other uses and disclosures not required by law, authorized by this HIPAA exhibit, or authorized by any other written agreement with Covered Entity or Covered Entity’s written instructions are prohibited.

**4. BUSINESS ACTIVITIES OF THE BUSINESS ASSOCIATE:** Unless otherwise limited herein, Business Associate may:

- A. Use and/or disclose Protected Health Information in its possession for the proper management and administration of Business Associate as it relates to the services provided to Covered Entity, provided that such uses and/or disclosures are permitted by federal and state laws;
- B. Disclose Protected Health Information in its possession to third parties for the proper management and administration of Business Associate or to fulfill any present or future legal responsibilities of Business Associate, provided that the disclosures are required by law, or Business Associate represents to Covered Entity in writing that Business Associate has obtained reasonable assurances from the third party that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party and the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
- C. Use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B), except as otherwise limited in this HIPAA exhibit; and
- D. Use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. Section 164.502(j)(1).

**5. RESPONSIBILITIES OF BUSINESS ASSOCIATE:** Regarding its use and/or disclosure of Protected Health Information, Business Associate hereby agrees to do the following:

- A. Use and/or disclose the Protected Health Information in its possession only as permitted by this HIPAA exhibit or otherwise permitted or required by federal and state laws;
- B. Ensure that all its employees, representatives, subcontractors, or agents that receive, use, or have access to Protected Health Information under this HIPAA exhibit agree to comply with the same terms and conditions on the use and/or disclosure of Protected Health Information that apply herein, including the obligation to return, destroy, or maintain the confidentiality of Protected Health Information as provided under Section 8(B)(2) of this HIPAA exhibit;
- C. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity, as required by the Privacy and Security Rule;
- D. Establish procedures for mitigating improper use and/or disclosure of Protected Health Information in the event Business Associate discloses Protected Health Information to any third party for purposes other than “treatment,” “payment,” or “health care operations,” as those terms are used and defined within the Privacy and Security Rule. Business Associate shall provide prompt notice of the date and purpose of each disclosure as well as the name and address of the recipient to the Covered Entity at the address set forth in the licensing Agreement.
- E. Report to the designated Privacy Officer of Covered Entity in writing any use and/or disclosure of the Protected Health Information that is not permitted or required by this HIPAA exhibit or a security incident of which Business Associate becomes aware of within ten (10) days of Business Associate’s discovery of such unauthorized use and/or disclosure or security incident;
- F. Upon written request, make available during normal business hours at Business Associate’s offices all records, books, agreements, policies, and procedures relating to the use and/or disclosure of Protected Health Information to Covered Entity within ten (10) days of receiving the request for purposes of enabling Covered Entity to determine Business Associate’s compliance with the terms of this HIPAA exhibit;
- G. Make available all records, books, agreements, policies, and procedures relating to the use and/or disclosure of

Protected Health Information to the Secretary for purposes of determining Covered Entity's compliance with the Privacy and Security Rule, subject to attorney-client privilege and other applicable legal privileges; and

H. Within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an Individual to account for disclosures of the Individual's Protected Health Information or to amend the Individual's Protected Health Information in accordance with Section 7 of this HIPAA exhibit.

#### **6. RESPONSIBILITIES OF COVERED ENTITY:**

- A. Provide Business Associate with a copy of the notice of privacy practices that it utilizes in accordance with the Privacy and Security Rule, as well as inform Business Associate of any changes in said notice;
- B. Inform Business Associate of any changes in or revocation of permission by the Individual to use or disclose Protected Health Information if such changes affect Business Associate's permitted or required uses or disclosures; and
- C. Notify Business Associate in writing and in a timely manner of any restrictions on the use and/or disclosure of Protected Health Information agreed to by Covered Entity in accordance with the Privacy and Security Rule.

#### **7. HANDLING OF DESIGNATED RECORD SETS:** If the Protected Health Information received or created by the Business Associate on behalf of the Covered Entity constitutes a Designated Record Set:

- A. Business Associate agrees to make any amendments to the Protected Health Information that the Covered Entity directs pursuant to the Privacy and Security Rule and at the request of the Covered Entity or the Individual and in the time and manner reasonably designated by Covered Entity.
- B. Covered Entity agrees to:
  - 1. Notify Business Associate in writing of any Protected Health Information Covered Entity seeks to make available to an Individual pursuant to the Privacy and Security Rule and the time and manner in which Business Associate should provide such access; and
  - 2. Notify Business Associate in writing of any amendments to the Protected Health Information in the possession of Business Associate that Business Associate should make and the time and manner in which such amendments should be made.

#### **8. TERM AND TERMINATION:**

- A. Term: The provisions of this HIPAA exhibit shall remain in effect for the term of the Agreement, unless otherwise provided in this HIPAA exhibit.
- B. Termination: Unless otherwise provided herein, this HIPAA exhibit shall terminate when all the 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 if it is infeasible to return or destroy the Protected Health Information, protections are extended to such information in accordance with the provisions of this section.
  - 1. As provided under the Privacy and Security Rule, upon Covered Entity's knowledge of a material breach of the terms of this HIPAA exhibit by Business Associate, Covered Entity shall provide Business Associate with an opportunity to cure said material breach in accordance with the terms of the Agreement. Covered Entity shall

make any reports deemed necessary, in its sole discretion, to the Secretary.

2. Unless Business Associate has an independent legal right to the Protected Health Information provided to or created or received by Business Associate on behalf of Covered Entity, Business Associate shall return to Covered Entity or destroy, as requested by Covered Entity, within sixty (60) days of the termination of the Agreement, Protected Health Information in Business Associate's possession and retain no copies or back-up files or tapes. If Business Associate retains Protected Health Information, the terms of this HIPAA Exhibit shall remain in effect for so long as Business Associate remains in possession of any Protected Health Information provided to or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of agents or subcontractors of Business Associate.

3. In the event Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon agreement of the parties that return or destruction of the PHI is infeasible, Business Associate shall extend the protections of this HIPAA exhibit to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## **9. MISCELLANEOUS:**

- A. **No Third-Party Beneficiaries:** There are no intended third-party beneficiaries to the provisions of this HIPAA exhibit. Without in any way limiting the foregoing, it is the parties' specific intent that nothing contained in this HIPAA exhibit give rise to any right or cause of action, contractual or otherwise, in or on behalf of any Individual whose Protected Health Information is used or disclosed pursuant to this HIPAA exhibit.
- B. **References:** A reference in this HIPAA exhibit to a section in the Privacy and Security Rule means the section as in effect or as amended, and for which compliance is required.
- C. **Amendment:** The parties agree to take such action as is necessary to amend this HIPAA exhibit from time to time in order for Covered Entity to comply with the requirements of the Privacy and Security Rule. No amendment to this HIPAA exhibit shall be effective until reduced to writing and signed by the parties.
- D. **Survival:** The respective rights and obligations of Business Associate and Covered Entity set forth in this HIPAA exhibit shall survive the termination of the Agreement.