

Texas Department of Information Resources
APPENDIX E to DIR CONTRACT NUMBER DIR-TSO-3044

PRODUCT LICENSING AGREEMENT

This Product Licensing Agreement (this "Agreement") is made effective on _____(date) by and between _____, having a place of business at _____, (hereinafter "**LICENSEE**"), and Access Sciences Corporation, a Texas corporation, having a place of business at 1900 West Loop South, Suite 250, Houston, Texas 77027 (hereinafter "**LICENSOR**"). **LICENSEE** and **LICENSOR** are sometimes referred to herein individually as a "**PARTY**" and collectively as the "**PARTIES**".

RECITALS

WHEREAS, **LICENSOR** is engaged in the business of designing and developing computer-related software, hardware systems, document products, training and other related products and has created and developed a Product called _____ ("Product") that is intended to enhance information management and governance for **LICENSEE** and is described in greater detail in the attached **Exhibit 1A – Product Description**; and

WHEREAS, **LICENSEE** desires to utilize such Product in conjunction with enhancing information management and governance using Product;

WHEREAS, **LICENSOR** and **LICENSEE** believe it is in their mutual interest and desire to enter into an agreement whereby **LICENSEE** would use **LICENSOR**'s Product pursuant to the terms and conditions hereinafter provided, either (check one box below):

- on its local area network,
- on a **LICENSOR**-hosted network, or
- on another agreed location as described here _____.

NOW, THEREFORE, in consideration of the mutual promises and agreements set out herein, the Parties, intending to be legally bound, hereby agree as follows:

1. **LICENSE TO OPERATE.** **LICENSOR** hereby grants to **LICENSEE**, for the term of this Agreement, a nonexclusive, nonassignable, right and license to operate the Product in connection with enhancing information management and governance on the network or other location indicated above for up to ___named users ("Licensed Users"), who are uniquely identified and named and agreed in **Exhibit 1B - Licensed Users**, or for **LICENSOR** to operate on behalf of **LICENSEE** for up to _____ objects, as indicated and agreed in **Exhibit 1B - Licensed Users** and **Exhibit 1C Pricing and Payment Schedule**.
2. **LICENSED USER LIMITATIONS.** This license is expressly limited to the **LICENSEE**'s employees and contractors or **LICENSOR** operating on behalf of **LICENSEE** as uniquely identified and named in **Exhibit 1B - Licensed Users** and **Exhibit 1C Pricing and Payment Schedule**. In the event that **LICENSEE** desires to provide Product access to more Licensed Users or to be used for additional objects, **LICENSEE** shall notify **LICENSOR** of such, provide **LICENSOR** with the additional names to be added or the number of additional objects desired, and agree to pay the

Additional Fees recited in **Exhibit 1C - Pricing and Payment Schedule** attached hereto.

3. **SINGLE LOCATION; NO COPIES.**

To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, then:

No right or license is being conveyed to LICENSEE to use the Product at any other location. LICENSEE is prohibited from making any copies, archival or otherwise, of the Product. LICENSEE is further prohibited from using the Product in any manner other than as described herein.

4. **INVOICING AND PAYMENT.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 8, Pricing, Purchase Order, Invoices, and Payments.

5. **TERM AND TERMINATION.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 4.A, General Provisions and Section 11.B, Termination.

6. **INTELLECTUAL PROPERTY AND OWNERSHIP.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 5, Intellectual Property Matters.

7. **CONFIDENTIALITY.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 10.H, Confidentiality.

8. **INSTALLATION, TRAINING, AND ACCEPTANCE.**

To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, then:

LICENSOR shall install the Product on the server indicated above in accordance with the Delivery Schedule recited in **Exhibit 1D – Delivery Schedule** attached hereto. At the time of such installation, LICENSOR shall provide LICENSEE with standard documentation for the Product.

If purchased by LICENSEE, at the time of installation of the Product, LICENSOR shall train employees of LICENSEE in the use of the Product, according to the terms outlined in **Exhibit 1C - Pricing and Payment Schedule**. If purchased by LICENSEE, after installation of the Product, LICENSOR shall train employees of LICENSEE in the use of the Product according to the terms outlined in **Exhibit 1C - Pricing and Payment Schedule**.

In the event that LICENSEE fails to notify LICENSOR of any difficulties or problems with the Product within Acceptance Period of five (5) business days after installation thereof, LICENSEE shall be deemed to have accepted the Product. Prior to acceptance of such Product, LICENSOR shall have the right to repair or replace the Product at its discretion. Upon acceptance of such Product, LICENSOR shall be under no obligation to repair or replace such Product except as provided for in the Warranty provision in this Agreement.

9. **WARRANTY AND LIMITATION.** These terms shall comply with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, and Chapter 2251 of the Texas Government Code.

To the extent that the following does not conflict with the State of Texas DIR Contract for Products and Related Services, the State of Texas DIR Standard Terms and Conditions for Products and Related Services Contracts, or Chapter 2251 of the Texas Government Code, then:

The Warranty and Limitation Policy as of Contract date is:

LICENSOR warrants that the Product provided under this Agreement shall perform in accordance with the specifications thereof set forth in **Exhibit 1A – Product Description**, and that all warranty work hereunder shall be performed in a good and workmanlike manner, consistent with industry standards. LICENSOR further represents and warrants that the Product will not infringe any valid rights of any third party. **THE WARRANTY PROVIDED FOR HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, THAT MAY ARISE EITHER BY AGREEMENT BETWEEN THE PARTIES OR BY OPERATION OF LAW, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

In the event of a claim by LICENSEE under this warranty, LICENSOR shall have the option to either repair or replace the Product.

- 10. **INDEMNIFICATION AND LIABILITY LIMITATION.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 10.A, Indemnification and Section 10.K, Limitation of Liability.
- 11. **ASSIGNMENT.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 4.D, Assignment.
- 12. **FORCE MAJEURE.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 11.C, Force Majeure.
- 13. **NON-SOLICITATION.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts.
- 14. **NOTICES.**

To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 12, Notification, then:

All notices, requests, demands, and other communications under this Agreement shall be in writing and, unless otherwise directed in writing, shall be sent by commercial air courier service or registered mail to each of the Parties at the addresses shown below:

LICENSOR
Access Sciences Corporation
1900 West Loop South, Suite 250
Houston, TX 77027
Fax: (713) 664-4825
Attention: Anne G. Tulek

LICENSEE
(Insert LICENSEE information)

Fax: ()
Attention:

- 15. **TAXES.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 8.E, Tax-Exempt.

16. **AMENDMENTS**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 4.B, Modification of Contract Terms and/or Amendments.

17. **GOVERNING LAW**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 4.F, Choice of Law.

NON-WAIVER, DISPUTE RESOLUTION, JURISDICTION AND VENUE. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 11.A, Enforcement of Contract and Dispute Resolution.

18. **STATUS**.
To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, then:

The Parties will perform all services and duties hereunder as independent contractors. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant between the Parties.

19. **COMPLIANCE WITH LAWS**.
To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 4.F, Choice of Law, then:

LICENSOR agrees to comply with all local, state or federal laws applicable to employment of LICENSOR's employees or pertaining to LICENSOR's performance of work contracted for hereunder. LICENSOR shall comply with all such laws; including, without limitation, laws requiring payment of taxes and contributions arising from such employment of LICENSOR employees and any laws protecting copyrights, trade secrets or patents of third parties.

20. **INSURANCE**. These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 10.N, Required Insurance Coverage.

21. **WORKSPACE AND EQUIPMENT**.
To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, Section 10.I, Security of Premises, Equipment, Data and Personnel and Section 10.O, Use of State Property, then:

As needed and upon request by LICENSOR, LICENSEE will provide adequate workspace for LICENSOR team members at those locations for the scheduled work period, including access to telephone, fax machine, and other requested information and data for performing services under this Agreement. As appropriate per LICENSEE safety protocol and at LICENSEE's discretion, LICENSEE will provide LICENSOR all required safety training, equipment and clothing.

22. **OUT OF SCOPE**.
To the extent that the following does not conflict with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts, then:

Any modification requested by LICENSEE in the Services described herein which results in a change in the period of performance of LICENSOR' obligations, or the nature of the work to be performed, or an increase in LICENSOR labor time and/or materials or other direct or indirect

costs, shall be deemed to be “out of scope” work. If LICENSEE requests LICENSOR to provide “out of scope” services, and LICENSOR agrees to provide said services, the Parties will enter into a Change Order under the Change Order Process or a new Statement of Work, as applicable. LICENSEE and LICENSOR shall prepare and execute an addendum to this Agreement, including a Statement of Work or Change Order, which shall be subject to all of the terms and conditions contained in this Agreement with each incorporated herein by reference. LICENSOR will commence work on such “out of scope” work upon LICENSEE’S execution of a Statement of Work or Change Order, as applicable, which shall include sufficient information about the additional work, the fees for and terms of such work, and invoice procedures.

- 23. **ARTICLE HEADINGS.** The articles headings of this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.
- 24. **EXHIBITS.** The following documents are attached hereto as exhibits, the terms of which are incorporated by reference in their entirety: **Exhibit 1A – Product Description, Exhibit 1B – Licensed Users, and Exhibit 1C – Pricing and Payment.**
- 25. **PRECEDENCE.** These terms shall comply with DIR Contract DIR-TSO-3044.
- 26. **ENTIRE AGREEMENT.** These terms shall comply with DIR Contract DIR-TSO-3044, Appendix A, Standard Terms and Conditions For Services Contracts.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of the Agreement duly authorized by all necessary and appropriate corporate action to execute this Agreement.

Access Sciences Corporation
 “LICENSOR”
 1900 West Loop South, Suite 250
 Houston, TX 77027

_____,
 “LICENSEE”
 (Insert address information)

 Authorized Representative Signature

 Authorized Representative Signature

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT 1A – PRODUCT DESCRIPTION

ATTACHED TO

PRODUCT LICENSE AGREEMENT

_____ (DATED)

BETWEEN

_____ (LICENSOR)

AND

_____ (LICENSEE)

PRODUCT DESCRIPTION

The Product described herein is called _____, and it is intended to do the following:

- _____
- _____
- _____

Any and all use for another purpose, creation of or dissemination of copies, creation of or dissemination of extensions is strictly forbidden.

ACCEPTED:

Access Sciences Corporation
"LICENSOR"
1900 West Loop South, Suite 250
Houston, TX 77027

_____,
"LICENSEE"
(Insert address information)

Authorized Representative Signature

Name: _____

Title: _____

Date: _____

Authorized Representative Signature

Name: _____

Title: _____

Date: _____

EXHIBIT 1B – LICENSED USERS

ATTACHED TO

PRODUCT LICENSE AGREEMENT

_____ (DATED)

BETWEEN

_____ (LICENSOR)

AND

_____ (LICENSEE)

LICENSED USERS

The Product described herein is licensed for use by the following named users. Any use whatsoever by others is strictly forbidden. All Licensed Users must be listed below.

User Full Name	User Location	PC Serial Number	License Number	Expires

Additional Licensed Users may be added upon:

- execution of additional Agreements and Exhibits which add Licensed Users,
- receipt by LICENSOR from LICENSEE (or from authorized payor on behalf of LICENSEE) of all fees, and
- agreement between LICENSOR and LICENSEE on a delivery date.

ACCEPTED:

Access Sciences Corporation
"LICENSOR"
1900 West Loop South, Suite 250
Houston, TX 77027

_____,
"LICENSEE"
(Insert address information)

Authorized Representative Signature

Name: _____

Title: _____

Date: _____

Authorized Representative Signature

Name: _____

Title: _____

Date: _____

EXHIBIT 1C – PRICING AND PAYMENT

TO

SOFTWARE LICENSE AGREEMENT

_____ (DATE)

BETWEEN

_____ (LICENSOR)

AND

_____ (LICENSEE)

1. LICENSED USER FEES

Products with fees per licensed user have the following fee structure:

2. OBJECT (FILE) FEES

Products with fees per object have the following fee structure:

3. INSTALLATION FEE

For the installation of the Product by LICENSOR on LICENSEE's network or hosted LICENSOR network , LICENSEE agrees to pay LICENSOR an Installation Fee of \$_____

4. ADDITIONAL INSTALLATION FEE

For each additional Installation made by LICENSOR after the initial installation, LICENSEE agrees to pay LICENSOR an Additional Installation Fee of \$_____

5. DELIVERY SCHEDULE

LICENSEE agrees to deliver the Product within _____ days after:

- execution of the Product Licensing Agreement and all associated Exhibits,
- receipt by LICENSOR from LICENSEE (or from authorized payor on behalf of LICENSEE) of all fees, and
- agreement between LICENSOR and LICENSEE on a delivery date.

OR

- According to the terms outlined in the DIR Contract DIR-TSO-3044 Appendix A, Standard Terms and Conditions for Product and Related Services Contracts, whichever is earlier.

6. FEE PAYMENT SCHEDULE

The User Fee and Installation Fee shall be payable as follows:

ACCEPTED:

Access Sciences Corporation
"LICENSOR"
1900 West Loop South, Suite 250
Houston, TX 77027

_____,
"LICENSEE"
(Insert address information)

Authorized Representative Signature

Name: _____

Title: _____

Date: _____

Authorized Representative Signature

Name: _____

Title: _____

Date: _____