

ESSENCE SOFTWARE LICENSE

THIS SOFTWARE LICENSE AGREEMENT (the "Agreement") is entered into by and between:

- (i) The Johns Hopkins University, acting through its Applied Physics Laboratory (renamed as The Johns Hopkins University Applied Physics Laboratory, LLC) a Maryland limited liability company, with offices at 11100 Johns Hopkins Road, Laurel, Maryland 20723-6099 (the "Licensor"); and
- (ii) The Department of State Health Services ("DSHS") (the "Licensee"), an agency of the State of Texas, located 1100 West 49th Street, Austin, Texas 78756. The Agreement is effective from the date the last of the parties hereto has executed the Agreement (the "Effective Date").

NOW THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the parties hereto agree as follows:

Background

1. Under U.S. Government sponsorship, the Licensor has developed and intends to continue to develop an Electronic Surveillance System for the Early Notification of Community-Based Epidemics (ESSENCE), including proprietary software and accompanying documentation, if any (the "Software"). The U.S. Government may have certain retained rights in ESSENCE.

2. ESSENCE receives health information, formatted as data sets or logs, transmitted electronically from various geographically distributed information providers, such as hospitals, Over The Counter (OTC) sales centers, etc. Exemplary health information includes ICD9 codes and Emergency Department (ED) logs (also referred to as ED data) transmitted to ESSENCE routinely, e.g., daily. ESSENCE includes an automated parsing program that efficiently processes the received health information, i.e., data sets, to produce processed data, which includes elements of the received health information ESSENCE presents the processed, i.e., grouped data to public health officials via secure communication connections, such as a secure ESSENCE web site. As used herein, "ESSENCE data" refers to the received health information received and/or the processed data produced by ESSENCE and made available for review.

3. Licensee desires to upgrade its own automated disease surveillance site(s) within its jurisdiction (i.e., the State of Texas) and use the Software in connection with operating such site(s). Accordingly, Licensee desires to obtain a license from Licensor to use the Software in accordance with this Agreement.

4. Licensor seeks to receive from Licensee health information, health information does not include protected health information, pertaining to residents in Licensee's jurisdiction, and to use such information to perform testing and near real-time monitoring of ESSENCE, and further research and development aimed at improving the functions and effectiveness of ESSENCE.

Terms

1. Rights and Duties.

1.1 Grant. Subject to the terms and conditions hereof, Licensor grants to Licensee a limited, non-exclusive, non-transferable and royalty-free license to:

- (a) use one copy of the Software on one computer/server solely for disease surveillance within Licensee's jurisdiction; and

(b) make one back-up copy of the Software for archival purposes, wherein the back-up copy may also be used on a temporary basis on a computer/server employed for fail-over support of the installation of 1.1(a).

This License grant is made subject to any retained rights of the U.S. Government in the Software, if any, under provisions of Public Laws 96-517 and 98-620.

1.2 Delivery. Licensor shall deliver to Licensee a master copy of a current version of the Software in object code form.

1.3 Installation. Licensor shall provide reasonable assistance to Licensee, at no cost to Licensee, in the installation and initial check-out of the Software, so long as Licensor is receiving funding from a Government Agency in support of such effort.

1.4 Updates. Licensor agrees to provide Licensee with updated copies of the Software, provided Licensor is receiving funding from a Government Agency in support of such effort.

1.5 Health Information. Only if applicable, Licensee shall provide to Licensor data elements including health information pertaining to the residents in Licensee's jurisdiction, in accordance with the terms and conditions set forth in a Data Sharing Agreement separate from this License Agreement.

1.6 Grant Back. Licensee grants to Licensor a non-exclusive, paid-up, transferable, irrevocable, worldwide license to use, reproduce, and distribute any improvements to the Software made by Licensee.

2. License Restrictions.

2.1 Restrictions on assignment, transfers and use. Except as expressly set forth in Section 1, Licensee shall not: (a) assign, transfer, distribute, or sublicense the Software to any third party; (b) permit any third party to use the Software; (c) use the Software for the benefit of any third party other than the citizens in Licensee's jurisdiction; (d) use the Software for any commercial purposes whatsoever.

2.2 Restrictions on copying and reverse engineering. Except as expressly set forth in Section 1, Licensee may not, in whole or in part, reproduce, modify, translate, reverse engineer, disassemble, de-compile, create derivative works based on the Software, or remove any proprietary notices or labels on the Software without the prior written consent of Licensor. Any use, reproduction or redistribution of the Software not in accordance with the terms of this Agreement is expressly prohibited.

2.3 Proprietary Notices. Licensee agrees to respect and not to remove, obliterate, or cancel from view any attribution notice, including copyright, trademark, and confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and to reproduce and include same on each copy of the Software.

3. Fees and Payment Terms. This is a royalty-free license.

4. Protection of Proprietary Information.

4.1 Ownership of Proprietary Information. Licensee acknowledges and Licensor represents that all components of the Software ("Proprietary Information") constitute commercially valuable, proprietary products of Licensor. Licensee further acknowledges that the Proprietary Information contains substantial trade secrets of Licensor, and shall treat such Proprietary Information as trade secrets of Licensor. Licensor retains all rights, title and ownership in and to the Proprietary Information. This Agreement shall not be construed to transfer or sell to Licensee any rights, title, ownership, or other interest in and to the Software, except for the limited license granted hereunder.

4.2 Confidentiality Obligations. Licensee shall not, at any time, use, copy, sell, transfer, publish, disclose, display or otherwise make available any Proprietary Information to any other person, firm, organization, or to any employee or agent of Licensee who does not need to obtain access thereto in connection with Licensee's exercise of its right under this Agreement. Licensee shall take steps to ensure that all individuals having access to the Proprietary Information observe and perform the obligations set forth in this Section 4. Licensee agrees to notify Licensor immediately of the possession, use or knowledge of all or part of any Proprietary Information by any person or entity not authorized by this Agreement, to have such possession, use or knowledge. Licensee's obligations of confidentiality and non-disclosure shall not apply to any information which Licensee can show by means of dated, documentary evidence: (a) was known to or readily ascertainable by proper means by Licensee before being disclosed to Licensee by Licensor; (b) is or becomes available to the general public without fault or action of Licensee; (c) is lawfully disclosed to Licensee by a third party who is under no obligation of confidentiality to Licensor with respect to such information; or (d) was independently developed by the Licensee. Information that comprises a combination of features shall not be within any of the exceptions set forth above merely because individual features are known or received by Licensee or are in or fall into the public domain, but only if the combination is known or received by Licensee or is in or falls into the public domain as provided above. Licensor acknowledges that Licensee is a governmental body of the State of Texas and is required to comply with the Texas Public Information Act, Chapter 552 of the Texas Government Code. Licensee may disclose information otherwise deemed confidential under this Agreement if such disclosure is required by applicable law. Upon notification to Licensor, such disclosures shall not be a breach of this Agreement.

5. Term and Termination.

5.1 Term. This Agreement shall be automatically renewed for successive ten (10) year periods unless Licensee or Licensor terminates for any reason by giving written notice of termination to the other party at least sixty (60) days prior to the date of expiration.

5.2 Termination. This Agreement may be terminated by mutual agreement upon sixty (60) days prior written notice. Either party may terminate this Agreement immediately in the event that the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice from the non-breaching party.

5.3 Effects of Expiration/Termination. Upon termination of this Agreement for any reason and when the Term of this Agreement expires: (a) all license rights granted hereunder will terminate and revert to Licensor; (b) Licensee shall immediately discontinue use of the Software; and (c) within ten days thereafter, Licensee shall either return to Licensor all copies of the Software or certify in writing to Licensor that all copies or portions of such Software have been destroyed. The following sections shall survive termination of this Agreement: Section 4, 5.3, 6, 7, 8 and 9.

6. Disclaimer of Warranties. NO WARRANTY. THE SOFTWARE AND DOCUMENTATION IS PROVIDED TO LICENSEE "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSOR DOES NOT WARRANT THAT (i) THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR (ii) THE DATA PRODUCED BY THE SOFTWARE WILL BE ERROR FREE. LICENSOR DISCLAIMS ALL WARRANTIES IN THE SOFTWARE AND DOCUMENTATION AND ANY DATA PRODUCED BY THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) ANY AND ALL IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR SYSTEM INTEGRATION.

7. Limitation of Liability. LICENSEE ASSUMES THE ENTIRE RISK AND LIABILITY FOR USING THE SOFTWARE OR THE DATA PRODUCED THEREBY. IN NO EVENT SHALL LICENSOR BE

LIABLE TO LICENSEE FOR ANY ACTUAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES ARISING FROM THE USE OF, OR INABILITY TO USE, THE SOFTWARE OR THE DATA PRODUCED THEREBY, INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION OR LOSS OF DATA EVEN IF LICENSOR HAS BEEN ADVISED OF THE PROBABILITY OF SUCH DAMAGES.

8. **Audit Rights.** Licensor, at its own expense, shall have the right at any time during the term of this Agreement, and upon termination of this Agreement, to request in a manner consistent with reasonable business practices documentation from the Licensee identifying (i) the type, (ii) location, i.e., address, and (iii) network access limitations, of the machines having the Software installed thereon for the purpose of verifying whether Licensee's use of the Software has been in compliance with the terms and conditions of this Agreement. An authorized officer of the Licensee shall certify in writing that such documents are a true and accurate record of Licensee's use of the Software.

9. **Miscellaneous.**

9.1 **Assignment.** Licensee shall not assign or otherwise transfer this Agreement without the prior written consent of Licensor. Any attempt to assign in contravention of this Section shall be null and void and of no effect. The assignment or transfer of the rights and duties provided under this Agreement to another agency of the State of Texas made pursuant to authority of law, and upon notification to Licensor, is permitted under this section and shall not breach this Agreement.

9.2 **Relationship of the Parties.** The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in the Agreement will be construed to: (a) give any party the power to direct or control the day-to-day activities of the other; (b) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (c) make either party an agent for the other for any purpose whatsoever. Except as specifically set forth in this Agreement, neither party nor its agents or employees is the representative of the other for any purpose and neither has the power or authority to act as agent, to represent, act for, bind or otherwise create or assume any obligations on behalf of the other.

9.3 **Construction.** This Agreement may not be modified or amended except by a writing, which is signed by authorized representatives of each of the parties. The failure of either party to exercise any right or the waiver of either party of any breach will not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of this Agreement. If any provision of this Agreement is deemed invalid, illegal or unenforceable by a court of competent jurisdiction under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible. Captions are inserted only for convenience and are in no way to be construed as part of this Agreement.

9.4 **Equitable Remedies.** Licensee recognizes that money damages may not be an adequate remedy for any breach or threatened breach of any obligation under this Agreement involving Licensor's Proprietary Information. Licensee therefore agrees that in addition to any other remedies available under this Agreement, by law or otherwise, Licensor shall be entitled to seek an injunction against any breach by Licensee of such obligations without the necessity of posting bond.

9.5 **Governing Law.** This Agreement shall be deemed to have been made and executed in the State of Texas, U.S.A., and any dispute arising hereunder shall be resolved in accordance with the laws of the State of Texas, U.S.A. (without regard to its principles of conflicts of law).

9.6 **Force Majeure.** Neither party shall be considered in default or liable for any delay or failure to perform any provisions of this Agreement if such delay or failure arises out of labor disputes, fire, casualties,

acts of the public enemy, sovereign acts or regulations or any other similar causes beyond the reasonable control of the parties.

9.7 Notices. Termination, Term Extension and Audit Rights notices shall be first faxed and then confirmed, on the same day ("Confirmation Copy") by either registered or certified mail or by reputable expedited courier service, return receipt requested, postage prepaid to the addressee thereof at the address set forth on page 1 of this Agreement, or at such other address as either party may hereafter communicate in like manner. Notices shall be deemed received 3 days after the Confirmation Copy has been mailed or otherwise dispatched.

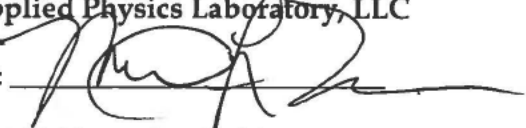
9.8 Entire Agreement. The parties represent this Agreement is the entire agreement between Licensor and Licensee with respect to the subject matter of this Agreement, and Licensor and Licensee agree that all other prior agreements, proposals, representations and other understandings concerning this Agreement, whether oral or written, are superseded and replaced in their entirety by this Agreement.

9.9 Export Control. The software is subject to export controls under the jurisdiction of the U.S. Department of Commerce. Licensee shall comply with all applicable U.S. Export Control laws and regulations in connection with Licensee's use of the Software. Licensee shall not export or re-export the Software.

9.10 Third Party Software Notice. The Software utilizes certain software, including programs and/or libraries in object code form, which may be owned or controlled by a party other than Licensor ("Third Party Software"). Any such Third Party Software is subject to the terms of its accompanying Third Party Software license, if any, listed in Appendix A. Appendix A lists the Third Party Software and provides, either by link or incorporation, (i) copies of the applicable Third Party Software license(s), and (ii) the Third Party Software itself as appropriate.

IN WITNESS WHEREOF, Licensor and Licensee have executed this Agreement as of the Effective Date.

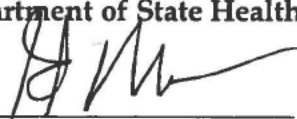
**The Johns Hopkins University,
Applied Physics Laboratory, LLC**

BY: 

NAME: Norma Lee Todd
TITLE: Office of Technology Transfer Supervisor

DATE: 3/31/16

The Department of State Health Services

BY: 

NAME: Ed House
TITLE: Chief Operating Officer

DATE: 4/7/16

ADDENDUM to ESSENCE Software License

This Addendum to the ESSENCE SOFTWARE LICENSE AGREEMENT (SLA) # SW-16-SMR46 provides funding for JHU/APL from DSHS to conduct ESSENCE-related R&D services as described in the attached SOW. Accordingly, the terms of this Addendum apply solely to the R&D services and shall not be interpreted to supersede nor conflict with the terms of the SLA.

1. STATEMENT OF WORK

JHU/APL shall provide all facilities, materials and qualified personnel necessary in the performance of the effort described in the Statement of Work, entitled "**Statement of Work for Enhancement of Texas ESSENCE, February 15, 2016**" (Attachment A).

2. TERM OF ADDENDUM

This Addendum shall remain in effect for the period commencing on the Effective Date of this Addendum and ending August 31, 2016.

3. PRICING ARRANGEMENT

Cost-Plus-Fixed-Fee, Completion

4. ESTIMATED COST AND FIXED FEE

The Estimated Cost, and Fixed Fee for this Addendum are as follows:

Estimated Cost	\$ <u>61,071.00</u>
Fixed Fee (@ 6.5%)	\$ <u>3,929.00</u>
Total Estimated Cost and Fixed Fee	\$ <u>65,000.00</u>

The total amount of DSHS's obligation under this Addendum will not exceed \$65,000.00.

5. FIXED FEE

In addition to all other costs to be paid under this Addendum, DSHS shall pay JHU/APL, for performance under this Addendum, the entire fixed fee specified above.

6. PAYMENT FOR SERVICES

Each month, JHU/APL shall invoice DSHS for all direct and indirect cost incurred in the performance of work under this Addendum, plus a pro rata share of the fixed fee, and DSHS agrees to pay such invoice(s) in accordance with the Texas Prompt Pay Act, Chapter 2251 of the Texas Government Code. Performance under this Addendum shall be deemed complete by JHU/APL upon the earlier of (1) completion of the effort described in the statement of work, or (2) when the total direct and indirect cost

(exclusive of fee) incurred by JHU/APL reaches the Estimated Cost specified in Article 4 above.

7. CHANGES

From time to time, changes to the scope of work may be necessary due to changed conditions or unanticipated facts discovered during performance of this Addendum. To the extent practical, DSHS shall request changes in writing. Prior to the start of any requested change, DSHS and JHU/APL shall agree on the cost of such change, and DSHS and JHU/APL shall modify this Addendum accordingly. In any event, DSHS agrees to reimburse JHU/APL for all costs incurred as a result of any change performed under this Addendum, plus a pro rata share of fee. All changes or modifications to this Addendum must be agreed to in writing by both parties.

8. DISPUTES

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute.

9. FORCE MAJEURE

If performance by JHU/APL under this Addendum is prevented, restricted, or interfered with for any reason beyond the control of JHU/APL, then such performance shall, upon notice to DSHS, be suspended during the continuance of such hindrance. In such event, JHU/APL shall use reasonable efforts to avoid, remove or overcome such causes of non-performance. Temporary work stoppage may result in additional cost (reflecting a change in scope) beyond that outlined in JHU/APL's original cost estimate. In no event will either party's liability exceed the amount identified in Section 4.

10. TERMINATION

Either party may terminate this Addendum for any reason upon three (3) days written notice to the other party. In the event this Addendum is terminated, DSHS agrees to reimburse JHU/APL for all costs incurred up to the point of termination, including all costs incurred as a result of such termination, plus a pro rata share of the fixed fee.

11. SEVERABILITY

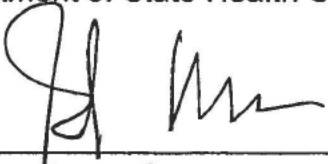
In the event any portion of this Addendum shall be held illegal, void or ineffective, the remaining portions hereof shall remain in full force and effect, as long as it does not materially alter the purpose and performance of this Addendum.

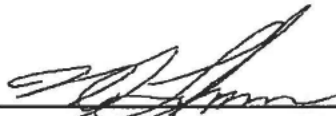
ESSENCE Addendum

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their duly authorized representative, to be effective on the date of the last party to sign.

Department of State Health Services

JOHNS HOPKINS UNIVERSITY
APPLIED PHYSICS LABORATORY

By: 

By: 

Name: Ed House

Name: Nicholas J. Langhauser, CTO

Title: Chief Operating Officer

Title: _____

Date: 4/7/16

Date: 4/9/16