

## **NACCRRARware LICENSE AGREEMENT ADDENDUM**

This NACCRRARware License Addendum, effective this **X day of MONTH YEAR** is made by and between The National Association of Child Care Resource & Referral Agencies (NACCRRRA), 1515 N. Courthouse Rd – 3rd Fl., Arlington, VA 22201 and **AGENCY NAME (AGENCY ID)**. Licensee is hereby, upon execution of this Addendum, granted a non-exclusive, non-transferable, revocable license to use the NACCRRRA Data Services Product(s) subject to the terms and conditions as set forth herein. For purposes of this License Addendum, "NACCRRRA Data Services Products" (hereinafter referred to as "NDS Products") includes but is not limited to legacy NACCRRARware local Installation software releases and related services and systems, as well as NACCRRARware.net Hosted Suite of Data Services which includes but is not limited to: NACCRRARware; Internet Mask Module; Online Referral Module; Child Care Online; Training and Technical Assistance Management (TIAM); Training Tracking; Technical Assistance; Online Training Calendar; Training Registry; and Online Trainer and Trainee Portal and Credit Card Processing modules and systems. NACCRRRA may determine, in its sole discretion, from time to time, to add or remove modules and systems that are part of NDS Products.

### **1. INCORPORATED TERMS:**

Except as modified herein, the terms and conditions of any and all existing and or previous NACCRRARware License Agreements (Hereinafter referred to, inclusive of all exhibits thereto, as Master License) are fully incorporated herein by reference and shall remain in full force and effect. In the event of any conflict in the terms between the Master License and this license Addendum, this license Addendum shall control however, in all other respects, this License Addendum is supplemental to the Master License.

### **2. NDS PRODUCTS- AUTHORIZED USE:**

NDS Products are internet accessible through Licensor issued user names and passwords. The License granted herein does not include any other means of use or access by Licensee. Licensee shall take all commercially reasonable steps to safeguard the user names and passwords. Licensee, its employees or other persons under its control, shall not, directly or indirectly, attempt to or hack any NDS Products or server, attempt to or decompile, disassemble NDS Products, transmit any virus-laden or similarly destructive data via email, FTP or any other means, to or through any NDS Products server, or make any unlawful use of any NDS Products.

### **3. WARRANTIES, DISCLAIMERS AND LIMITATION OF LIABILITY:**

Licensee assumes and accepts sole responsibility for the selection of, use of and any results obtained from the NDS Products, NACCRRRA warrants that the NDS Products will operate in all material aspects as previously described and demonstrated to licensee and that NDS Products will be of a professional quality conforming to generally accepted industry standards and practices. In the event there is a breach of this warranty, Licensee's sole and exclusive remedy and NACCRRRA's sole and exclusive liability will be for NACCRRRA to a) correct any program errors that have caused breach of the warranty; or b) if NACCRRRA cannot substantially correct the error in a commercially reasonable time and manner, Licensee may end this license Agreement and shall be entitled to a pro-rata refund of any fees paid for

the license. Any claim under this warranty must be made to NACCRRRA in writing within fifteen (15) days of delivery of program services. Licensee shall not make any additions, deletions, or modifications to NDS Products except as specifically set forth in the NDS Products user documentation or as authorized in writing by NACCRRRA. Unauthorized modification of NACCRRRA Products shall immediately terminate any applicable warranty as established herein.

Except as expressly set forth herein, all NDS Products, are provided "as-is" without any warranty of any kind, express or implied, including but not limited to any implied warranty of merchantability, fitness for a particular purpose, title, non-infringement of intellectual property rights of any third party or any warranties or conditions arising out of any other legal requirement. NACCRRRA does not guarantee that NDS Products will perform error free, uninterrupted, will run properly on all hardware that the licensed software, hosted services or any other products as listed herein will meet the needs or requirements of Licensee or its users or that NACCRRRA will correct all program errors.

In no event shall NACCRRRA be liable for any third party claims, special, indirect, incidental, punitive or consequential damages, including but not limited to loss or damage to data, inaccuracy of data, loss of anticipated revenue or profits, work stoppage or impairment of any other assets or loss of good will. In no event shall NACCRRRA's liability under this Agreement, exceed the individual fee paid for the NACCRRRA Product Individual License Agreement. The foregoing limitations apply to all causes of action whether in contract, tort or otherwise.

#### 4. INDEMNIFICATION:

Licensee agrees to indemnify and hold harmless NACCRRRA, its officers, directors, employees, contractors, customers, and agents from any and all claims, losses, liabilities, damages, expenses and costs including attorney's fees and court costs arising out of or resulting from the acts, errors, omissions of Licensee, any breach of any representation made by Licensee or any misrepresentation made by Licensee in connection with their duties under this Agreement. NACCRRRA shall have no responsibility to indemnify Licensee or liability for claims brought against it for infringement, misappropriation or violation of a third party's patent, trademark or copyright rights under trade secret laws to the extent that such claims are based on: a) any use of a product after notification by NACCRRRA to discontinue use; b) modifications to the products not made or authorized by NACCRRRA; c) use of the products in combination with any products or services not supplied by NACCRRRA except where such combination is reasonably necessary for the intended use of the NACCRRRA products; d) third party software; or e) any use whatsoever in violation of the terms and conditions of this Agreement, misuse or unauthorized use of the products. Licensee understands and agrees that NACCRRRA has no control over the particular conditions or circumstances under which Licensee uses the products and that NACCRRRA shall not incur any liability thereof.

If NACCRRRA determines that any of the products may have violated a third party's intellectual property rights, NACCRRRA will either modify the product to be non-infringing or will obtain a license to allow for continued use, if these options are not available to NACCRRRA to remedy the alleged infringement, NACCRRRA may end this License Agreement, request the return of the infringing product and refund any fees paid for the product.

5. DISPUTES-VENUE:

The Parties shall use their best efforts to settle any claim, controversy, or dispute concerning questions of fact or law arising out of or relating to this Agreement or to performance of either Party hereunder. If the Parties are unable to resolve the dispute within thirty (30) days, the dispute shall be governed by, construed and enforced in accordance with the substantive laws of the Commonwealth of Virginia without regard to any principles of conflicts of laws that would direct the application of the laws of another jurisdiction. The parties submit to the jurisdiction of the courts in the County of Arlington, Virginia for any claim or dispute arising out of or related to this Agreement. Each party to such shall be responsible for its own legal fees and costs (Costs) provided however, that the court may direct the non-prevailing party to reimburse all or part of the prevailing party's costs if the court determines that the non-prevailing party's claims or defenses are frivolous.

6. ADDITIONAL REQUIREMENTS: LOCAL INSTALL SOFTWARE ONLY

The following terms and conditions shall only apply to Licensees who are utilizing legacy NACCRRAware local installation software and any subsequent releases or related services.

A. REPLACEMENT OF TERMS: This License Addendum shall replace the License Addendum for all NACCRRAware Local Installation software upon full execution. The terms and conditions as set forth herein shall supersede that License Addendum for Local Install and any previous versions, expectations, understandings, representations and agreements with respect to the subject matter therein and this License Addendum sets forth all of the terms, promises, agreements, conditions, understandings, and warranties between the parties.

B. SUNSET CLAUSE FOR SUPPORT

NACCRRRA has informed Licensee that it is in the process of moving exclusively to internet based access for NACCRRAware and any related software products. NACCRRRA will be phasing-out and discontinuing all existing licenses for "Local" (Licensee- installed or managed) copies of NACCRRAware and any related software products. As a result of entering into this License Addendum, the parties hereto agree that the Training and Technical Support Agreement and Software Upgrades Agreement (Schedule Band C to the Master License) shall terminate no later than July 15, 2011 as it pertains to support for Local copies of NACCRRAware and any related software products. Licensee shall be eligible to enter into any successor agreements, under the same terms and conditions as other NACCRRRA members, whereby all NACCRRAware- related titles will be exclusively internet based.

C. EQUIPMENT REQUIREMENTS:

Licensee understands and agrees that the server equipment on which NACCRRAware Local Install Version 3.9.2, and any subsequent releases or updates thereto, is installed and must be connected to the internet whenever the Local copy is in use. The Local Install copy is dependent upon internet connectivity in order to transmit Licensee verification data to NACCRRRA, such as Licensee's number of daily concurrent users. The transmitted data does not include any confidential information about users or Licensee's customers. Notice is hereby provided to end users that the Local Install copy contains a disabling code and will disable itself if internet

connectivity is unavailable for an extended time period. NACCRRRA reserves the right to terminate this License Addendum for a violation of this internet connectivity requirement. For general information or instructions on usage and installation you may contact NACCRRRA Data Services Help Desk at 866-789-7590.

7. ACCEPTANCE:

Licensee's rights hereunder shall be effective only after the review and approval by NACCRRRA of all required forms, signature and payment has been received. NACCRRRA may issue a unique License Number to Licensee, which will serve as confirmation of NACCRRRA acceptance hereto.

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed intending to be bound thereby as of the date as written herein.

NACCRRRA:

BY:

Printed Name:

Title:

Date:

Phone: (703) 341- 4100

LICENSEE

Licensee Name:

BY:

Printed Name:

Title:

Date:

Phone: