

**ALL PARTIES AGREE THAT ANY DISAGREEMENTS, DISPUTES OR CLAIMS ARISING UNDER THIS AGREEMENT SHALL BE SETTLED BY BINDING ARBITRATION ACCORDING TO THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION. THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO BRING CLAIMS UNDER THIS AGREEMENT IN ANY COURT OF PROPER JURISDICTION AND AGREE TO BE BOUND BY THE ARBITRATORS' DECISION.**

## **SERVICES AGREEMENT**

This Services Agreement ("Agreement") is between Sheidow Consulting, Inc., a Oregon corporation d/b/a TSS Arena ("TSS"), and [redacted], a [redacted] [corporation] ("User"). The Effective Date of this Agreement shall be from February 1, 2016 to February 28, 2018.

WHEREAS, USER desires to engage TSS to provide certain services and materials as set forth in this Agreement.

### **1. DEFINITIONS**

1.1 **"Deliverables"** means all software, modifications and updates to existing software, documents or other tangible deliverables, developed, produced or otherwise provided by TSS during the course of performing the Services outlined in this Agreement.

1.2 **"Licensed Materials"** means all software, script, programming code, data or other information owned or being licensed by TSS, including any and all materials created by TSS after the Effective Date of this Agreement which is part of the materials provided for the TSS System.

1.3 **"Services"** refers to TSS's comprehensive web-based training and quality control system, manuals, and training materials, to train and support outpatient substance abuse counselors for the treatment for adolescent substance use and abuse. We train therapists how to use the system, we monitor and assess treatment results and we monitor adherence to the treatment. See Section 2 below.

1.4 **"Contingency Management with Adolescents and Their Families (CM Treatment)"** is the name of the substance abuse treatment that we are training therapists to use. Our quality control tools and ongoing training are all designed to ensure that the therapists use this treatment effectively as it was designed to be used.

1.5 **"Patient"** is the client of User, including parent or child, for which the purpose of this system is being leased and licensed.

1.6 **"Lead Trainer"** is the employee or subcontractor of TSS who is assigned to each User upon lease or license of the TSS system.

1.7 **"Third Party License/Licensors"** refers to a license secured by TSS to utilize or incorporate products, services, applications or products from vendors other than the parties to this Agreement.

1.8 **"Training Support System ("TSS System")"** refers to the system or product TSS developed and is marketed through TSS Arena, and which is the purpose of this Agreement. This system is completely web-based with accompanying Licensed Materials. Only licensed Users can

access the system through a username and password. TSS, in its sole discretion, determines if an organization can become licensed to use this system and qualify as a “User” as that term is used under this Agreement. Once TSS has approved the organization, TSS will issue the unique username and password.

1.9 “**User**” refers to the organization authorized and licensed by TSS to use the products and services, which are the purpose of this Agreement. TSS, in its sole discretion, shall determine if an organization that wants to utilize the TSS System can be licensed to do so and qualifies as a User as that term is used herein.

1.10 “**CM-TAM**” is the Contingency Management Therapist Adherence Measure. This is a paper and pencil written survey that User Patients complete each month of treatment. The User is required to collect the CM-TAM as a part of the quality control system and enter the responses into the TSS Dashboard.

## 2. **SERVICES.**

2.1 **TSS Dashboard.** This is the web-based ([www.tssarena.com](http://www.tssarena.com)) quality control and treatment outcome database. This database is entirely web-based. Users log in to the Dashboard to access the following support, resources and quality control features:

**CM-TAM:** This is the Contingency Management Therapist Adherence Measure. This is a written survey that the User’s Patients complete each month of treatment. The User is required to collect the CM-TAM as a part of the quality control system and enter the responses into the TSS Dashboard.

**Session Review:** Each User is required to submit, to TSS, an audio recording of therapy sessions. TSS (i.e. the Lead Trainer assigned to that organization) listens to these recordings and scores them. TSS will not store the audio recordings. All recordings are destroyed once a score is determined.

**Intake Data:** Users are required to enter each Patient into the TSS system at intake into treatment. User is required to enter all patients who are in the CM Treatment program, regardless of length of treatment.

**Discharge Data:** Users are required to discharge each client from the TSS system at the conclusion of treatment. User is required to enter all patients who are in the CM Treatment program, regardless of length of treatment.

**Live Chat:** TSS utilizes a live chat feature program and software. A User can click on the live chat button to reach their TSS Lead Trainer for immediate assistance. This is a text-based chatting program that enables TSS to chat in real time and provides a mechanism to share documents. TSS has secured a Third Party License to use this live chat program. The Live Chat feature will be available during normal business hours.

**Adobe Connect:** TSS offers training, webinars and one-on-one consultation through Adobe Connect. Adobe is a Third Party Licensor of TSS. This enables TSS to hold ongoing training in which Users can participate and allows for live, digital, interactive meetings. TSS will periodically send out notices of such training seminars, and will provide all pertinent information for User participation. Limited space is available for such seminars, and they will be filled at a first come, first serve basis.

eLibrary: TSS maintains an extensive online “library” of resources. This is a collection of PDF and Word documents, PowerPoint presentations, videos and links to resources on the web. Each User will have full access to the eLibrary. This library includes TSS documents and forms, which are Licensed Materials. The eLibrary will also include licensed and copyrighted materials from other resources and User could be liable for uses other than those anticipated by TSS, which may violate intellectual property laws of the United States and other countries.

**2.2 Access.** TSS will provide User with login credentials to access the TSS Dashboard and System, Licensed Materials and continuing consultation with the Lead Trainer upon receipt of a fully executed copy of this Agreement.

**2.3 Quarterly Quality Control Reports.** User shall have access to reports which are required to be turned in to TSS each quarter through the TSS Access listed above in 2.2.

**2.4 Set-Up Services.** TSS shall provide the following to User as Set-up of the TSS System:

Initial Conference Call. A two-hour screening conference call will be held with User to introduce User to TSS and CM Treatment and discuss in depth the steps and procedures for implementing TSS.

Telephone Assistance. TSS will provide all assistance to User to overcome any barriers to successful implementation that will be identified in the Initial Conference Call noted above.

**2.5 Start-Up Services.** TSS shall provide the following to User as Start-up of the TSS System:

Initial Meeting with User. TSS will meet with User at User’s location for a one and one-half (1.5) day on-site program kick-off meeting. A Lead Trainer or TSS representative will travel to the User’s offices for meetings, treatment overview presentations and overall assistance in enrolling the User in TSS.

Initial Licensed Materials. Each User will receive copies of *Henggeler, S., et al. (2012). Contingency Management for Adolescent Substance Abuse: A Practitioners Guide*. New York, New York: The Guilford Press and *Contingency Management with Adolescents and Their Families: CM-CAT Training Companion*. Users will be provided enough copies so each registered User who is a part of the CM program will get their own copies.

Assistance. TSS will provide any and all assistance to User which TSS, in its sole discretion, deems is necessary to help User implement TSS into their operations.

Training. Each employee of User who will be providing CM Treatment and utilizing TSS and its applications shall complete the CM-CAT online training.

**2.6 Quality Assurance Services.** TSS shall provide the following upon implementation of TSS into the operations of User:

Lead Trainer. TSS shall appoint User a designated Lead Trainer, who will be the User's primary contact for all training and support. User shall have as needed access, during normal business hours, to the Lead Trainer for support with; completing the CM-CAT; implementing the treatment system; understanding treatment outcomes; advice in promoting, marketing, funding the program, program development and any other issues impacting quality and adherence to the system.

Access. As noted in section 2.2 above.

Additional Training. In year One of the Service Agreement, User shall be entitled to one (1) additional training session in addition to the 1.5 Day Training noted above in Section 2.4. This additional training, should it be required, shall not exceed eight (8) hours. After eight (8) hours of additional training, applicable billing rates shall apply (see Fee Schedule Attached). This additional training shall be conducted in digital format only and does not include any site visits or travel to User's location unless otherwise specified elsewhere in this Agreement. During Year Two (2) of the Services provided under this Agreement, User shall be entitled to a total of eight (8) hours of training in digital format. Any training required beyond this eight (8) hours during Year Two shall be billed at the applicable hourly rates (See Fee Schedule Attached).

Provider Network: TSS will host monthly networking calls with Users. Users can dial in to the call and participate in discussions, learn about new features, pose questions to the group and otherwise use the networking call for any matter within the scope of this Agreement and the Services provided hereunder.

Session Reviews. User is entitled to two (2) audio tape session reviews per year. Additional tape reviews can be requested by the organization for an additional fee as set forth in the Fee Schedule attached to this and part of this Agreement.

Quarterly Lead Trainer Reviews. User treatment outcomes, implementation report summarizing outcomes, measures of quality assurance and recommendations for program development and/or improvement will be generated by the Lead Trainer and reviewed with the organization once per quarter at times designated by agreement between User and TSS.

### **3. USER OBLIGATIONS AND RESPONSIBILITIES**

3.1 **Follow Proper TSS System Procedures.** User must utilize the TSS System, including all training and quality control applications, in order to effectively provide the CM Treatment. They must agree to comply with the policies and procedures in the Licensed Materials provided by TSS that outlines how to use the treatment and how to use the TSS Dashboard system. Failure to properly utilize the TSS System, including all reporting and quality control measures, could result in termination of the License granted hereunder and the fees outlined herein are non-refundable.

3.2 **Staff Access.** Each User will need to ensure that therapists have access to Internet and computers so that they can complete the training, access the Lead Trainer and submit treatment data for quality control and assurance.

3.3 **Authorized Agents of User.** Each User must ensure that employees utilizing the TSS System are competent and fully understand how to use the system so that data collection and reporting is accurate and timely. This is User's responsibility and TSS will not be held liable for any incorrect use of the TSS System by User or authorized agents of User. Any and all staff members of User participating in the TSS System must be registered properly in the System and use all appropriate usernames and passwords for User or each individual staff member if appropriate.

3.4 **Collection and Input of Data.** Each User is required to follow the TSS System training and quality control requirements as outlined in the Licensed Materials and training. This includes collecting the data TSS requires for proper implementation of the TSS System and entering all required data into the TSS System within 30 days of the collection of the data.

3.5 **Patient Data.** Patients of User receiving CM Treatment must be recorded in the TSS System at intake and all proper and necessary information must be submitted when the Patient is discharged from treatment.

3.6 **Collection Rate for CM-TAM.** CM-TAM collection rate must be at least 65% of all possible CM-TAM data.

3.7 **Collection Rate for TAM.** At least 1 TAM needs to be collected from at least 90% of all possible Patients each quarter.

3.8 **Audio Recordings Submissions.** Each therapist of User must submit a minimum of 2 audiotape recordings of a CM sessions per year.

3.9. **Failure to Collect Date.** A continued failure on behalf of User to collect CM-TAM data or session tapes of Patients will result in TSS having to intervene with the User to develop a remedy to the collection problem. User shall be directly responsible for all payments, costs, fees, TSS time or any costs whatsoever incurred as a result of this intervention. Intervention shall be determined at the sole discretion of TSS.

3.10 **Notification.** User must inform TSS immediately if their ability to provide the treatment or participate in the Quality Control system is impaired in any way. At no time should an agent of the User violate professional standards, ethics, etc. in order to meet TSS Quality Control measures. Users must adhere to all applicable HIPPA and Health laws which protect both the privacy and well-being of all Patients. It is the sole responsibility of User to identify any law, statute or ordinance which could impair User's ability to properly perform the responsibilities and actions under this Agreement and/or otherwise participate in the TSS System.

#### 4. **HARDWARE**

4.1 User is solely responsible for providing all hardware necessary for utilizing the Services and Licensed Materials which are included under this Agreement. TSS makes no recommendations or reviews as to the hardware necessary to utilize TSS and the components of TSS, its vendors, Third Party Licensors or any other product or service necessary to properly use and access all the functions and services provided herein. Any and all statements by any

employee, Lead Trainer, agent, whether having actual or apparent authority to make such statements, of TSS in regard to any hardware or equipment User plans to use in implementing the services and products associated with TSS Arena or TSS, are hereby null and void and TSS shall not be liable for any damages to User for relying on such statement.

4.2 Without voiding section 4.1 above, to get the most usability out of the online system and to avoid any issues with login or functioning TSS makes the following recommendations for User's computers and hardware basic requirements: (1) Computers should be able to run Internet Explorer 9.0 or higher; Google Chrome 25.x or higher; Safari 5.x or higher (2) Computers should be running Windows XP or higher; Apple OS 10.1 or higher, and (3) all computers shall run current antivirus software. TSS will provide a computers/technology inventory form that we will complete with each User to make sure their software is up-to-date. We will revisit this inventory at each 2-year renewal to make sure computers remain up-to-date.

## 5. CHARGES, PAYMENT AND TAXES

5.1 **Fees for Services.** As part of participation in a grant study, the Per Site, Per Counselor and Per Seat Fees (as shown on the TSS Arena Fee Sheet) are waived during the dates of this contract.

5.2 **Invoicing and Payment.** No Invoicing or Payment will be necessary during the dates of this contract

5.3 **Expenses.** User shall solely be responsible for any and all costs for services or products or expenses resulting from services provided by TSS which are not incorporated or specifically outlined in this Agreement. Any services or products not specifically outlined herein shall be billed at a rate as set forth in the Fee Schedule attached and incorporated herein. Any and all expenses shall be reimbursed by User upon the proper documentation being provided to User for costs directly related to any service or product not a part of this Agreement. User shall reimburse TSS for any properly documented expenses outside this Agreement within fifteen (15) days of presentment of documentation of such expenses.

## 6. OWNERSHIP; LICENSE ONLY

6.1 **License Only.** User is granted a License for Use ONLY, all intellectual property rights and ownership of any kind rests and remains with the Medical University of South Carolina, who has granted an exclusive license to TSS under a License Agreement executed between Sheidow Consulting, Inc. (Parent Company of TSS Arena) and the MUSC Foundation for Research and Development . Except as otherwise set forth herein, all right, title and interest in and to all, (i) registered and unregistered trademarks, service marks and logos; (ii) patents, patent applications, and patentable ideas, inventions, and/or improvements; (iii) trade secrets, proprietary information, and know-how; (iv) all divisions, continuations, reissues, renewals, and extensions thereof now existing or hereafter filed, issued, or acquired; (v) registered and unregistered copyrights including, without limitation, any forms, images, audiovisual displays, text, software and (vi) all other intellectual property, proprietary rights or other rights related to tangible and intangible property which are used, developed, comprising, embodied in, or practiced in connection with any of the Deliverables, Licensed Materials and/or Services identified herein ("TSS Intellectual Property Rights") are owned by TSS or its Third Party Licensors, and User agrees to make no claim of interest in or ownership of any such TSS Intellectual Property Rights. User acknowledges that no title to the TSS Intellectual Property Rights is transferred to User, and that User does not

obtain any rights, express or implied, in TSS or its Third Party Licensors' services, other than the rights expressly granted in this Agreement. To the extent that User creates any Derivative Work (any work that is based upon one or more preexisting versions of a work provided to you, such as an enhancement or modification, revision, translation, abridgement, condensation, expansion, collection, compilation or any other form in which such preexisting works may be recast, transformed or adapted) such Derivative Work shall be owned by TSS and all right, title and interest in and to each such Derivative Work shall automatically vest in TSS. TSS shall have no obligation to grant you any right in any such Derivative Work.

**6.2 Limited Use for Advertising and Billing.** User may promote the CM Treatment and/or TSS System for advertising purposes (e.g. print brochures that say they offer CM Treatment, have meetings where they explain what CM Treatment is to funders or referral sources, display on their website or marketing materials that they provide the CM Treatment) but User cannot act on behalf of TSS to sell the products or services covered in this Agreement, nor can they distribute the product or materials associated with the TSS System. Confidential Information applies only to TSS materials, not to the User's Patient information. Patients are the User's responsibility. TSS does not provide treatment and TSS is not maintaining User's Patient clinical files. It is likely that Users will be required to provide information and make certain disclosures to funding sources (Medicaid, Managed Care, insurance company, etc.) in order to secure payments or funding for their organization. However, these disclosures MUST be limited to the requirements of the funding source and any and all disclosures should be brought to the attention of TSS PRIOR to disclosure if any portion of this Agreement will be breached by such production.

**7. ACCEPTANCE OF DELIVERABLES** Upon access of User in accordance with this Agreement, TSS shall, with the participation of User, test the TSS System in accordance with the terms and conditions set forth in the applicable Licensed Materials and this Agreement. If it is determined that the TSS System does not conform to the terms and conditions set forth in the applicable documents, then User may notify TSS of the issue and TSS shall have seven (7) days from such time to correct the non-conformities that were identified during the testing process. User understands that periodically the TSS System may be unavailable for updates, maintenance or any other reason TSS may require that the TSS System be unavailable for the needs of TSS, and that such unavailability shall not be deemed a breach of this Agreement or a breach of the services promised to User.

## **8. TERM AND TERMINATION**

**8.1 Term.** This Agreement shall commence on its Effective Date. This Service Agreement is for the duration of the R##### Grant Study Participation. Upon completion of Grant Study Participation or Expiration of this Service Agreement, a new Service Agreement will need to be established for any Services to continue.

**8.2 Termination of Agreement.** Either party may terminate this Agreement for any reason upon sixty (30) days written notice to the other party. If this Agreement is terminated for ANY REASON, User shall cease immediately using any and all portions of the services or documentation provided under this Agreement. Upon Termination TSS shall immediately revoke, cancel and termination all Log-In and Access capabilities of TSS. Upon Termination for any reason, User shall cease any and all advertising or promotion stating that they are licensed in the TSS System.

## 9. WARRANTIES

**9.1 EXCLUSIVE REMEDY; TIME LIMITATION ON FILING ANY CLAIM.** USER AGREES THAT TSS's ENTIRE LIABILITY, AND USER's EXCLUSIVE REMEDY, IN LAW, IN EQUITY, OR OTHERWISE, WITH RESPECT TO ANY TSS SERVICE(S) and PRODUCTS or MATERIALS PROVIDED UNDER THIS AGREEMENT AND/OR FOR ANY BREACH OF THIS AGREEMENT IS SOLELY LIMITED TO THE AMOUNT USER PAID FOR SUCH SERVICE(S) and PRODUCTS or MATERIALS DURING THE TERM OF THIS AGREEMENT. IN NO EVENT SHALL TSS, ITS THIRD PARTY LICENSORS AND/OR CONTRACTORS (INCLUDING, BUT NOT LIMITED TO, THIRD PARTIES PROVIDING SERVICES AS PART OF THE SERVICE) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES EVEN IF TSS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT THAT A STATE DOES NOT PERMIT THE EXCLUSION OR LIMITATION OF LIABILITY AS SET FORTH HEREIN TSS'S LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW IN SUCH STATES. TSS and its licensors and contractors disclaim any and all loss or liability resulting from, but not limited to: (1) loss or liability resulting from access delays or access interruptions; (2) loss or liability resulting from data non-delivery or data mis-delivery; (3) loss or liability resulting from acts of God; (4) loss or liability resulting from the unauthorized use or misuse of your account number, password or security authentication option; (5) loss or liability resulting from errors, omissions, or misstatements in any and all information or service(s) provided under this agreement; (6) loss or liability relating to the deletion of or failure to store information; (7) loss or liability resulting from the development or interruption of your access; (8) loss or liability from your inability to use our service; (9) loss or liability that you may incur in connection with our processing of your application for our services, our processing of any authorized modification to your Agreement or User's agent's failure to pay any fees, including the initial fee or fees; or (10) loss or liability relating to limitations, incompatibilities, defects, or other problems inherent in xml, xkms, or any other standard not under TSS's sole control. YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OF OUR SERVICES MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR SUCH CLAIM SHALL BE FOREVER BARRED.

**9.2 DISCLAIMER OF WARRANTIES.** USER AGREE THAT USE OF OUR SERVICE(S) OR OUR LICENSORS' SERVICES IS SOLELY AT USER'S OWN RISK. USER AGREES THAT ALL OF SUCH SERVICES ARE PROVIDED ON AN "AS IS," AND "AS AVAILABLE" BASIS, EXCEPT AS OTHERWISE NOTED IN THIS AGREEMENT. TSS AND OUR LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NEITHER TSS NOR OUR LICENSORS MAKE ANY WARRANTY THAT SERVICE(S) LICENSED HEREUNDER WILL MEET USER'S REQUIREMENTS, OR THAT THE SERVICE(S) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DO WE OR OUR LICENSORS MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE(S) OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH OUR SERVICES. USER UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF OUR SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. TSS MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH ANY OF OUR SERVICES OR ANY TRANSACTIONS

ENTERED INTO THROUGH SUCH SERVICES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY USER FROM TSS OR THROUGH OUR SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN, YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. TO THE EXTENT JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. WE ARE NOT RESPONSIBLE FOR AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY PRODUCTS AND/OR SERVICES PURCHASED BY YOU FROM A THIRD PARTY.

## **10. INDEMNITY**

10.1 User shall indemnify, defend and hold harmless TSS, its successors and assigns, and their affiliates, officers, directors, employees, representatives and agents from and against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs and expenses (including reasonable attorneys' fees) (any or all of the foregoing hereinafter referred to as "Losses") insofar as such Losses (or actions in respect thereof) arise out of or are based on claims arising out of User's use of the TSS System in a manner for which it was not intended, by its employees, subcontractors or agents. TSS shall not be liable for any actions of User, or any authorized staff of User.

## **11. CONFIDENTIALITY**

11.1 Each party acknowledges and agrees that in performing its obligations under this Agreement, each party may have access to or be exposed to, directly and indirectly, data, knowledge and proprietary and trade secret information of the other party in oral, graphic, written, electronic or machine readable form (hereinafter collectively referred to as "Confidential Information"). Confidential Information shall also include, without limitation, information concerning TSS's business, product plans, designs, costs, prices and names, customer lists, finances, marketing plans, business opportunities, personnel, research, development or know-how. The party obtaining access or being exposed to such Confidential Information is hereinafter referred to as the "receiving party" and the party disclosing such information is hereinafter referred to as the "disclosing party." Confidential Information shall also include the terms and conditions of this Agreement. TSS's Confidential Information shall include, without limitation, the Licensed Materials, which include, without limitation, software design, programming techniques, flow charts, source codes and documentation thereof, reports, screen displays and other output generated by the software, data elements, data structures, database design and stored procedures.

11.2 Confidential Information shall not include information that (A) is now or subsequently becomes generally available to the public through no fault or breach on the part of the receiving party, (B) the receiving party can demonstrate to have had rightfully in its possession prior to disclosure to the receiving party by the disclosing party; provided the receiving party did not obtain such Confidential Information from a source that the receiving party knew was bound by a confidentiality agreement or other legal or fiduciary obligation of confidentiality to the disclosing party, (C) is independently developed by the receiving party without the use of any Confidential Information, or (D) the receiving party rightfully obtains from a third party who, to the receiving party's knowledge, is not bound by a confidentiality agreement or other legal or fiduciary obligation of confidentiality to the disclosing party and has the right to transfer or disclose it.

11.3 The receiving party agrees to use reasonable care, and in any event no less than the same degree of care that it uses to protect its own confidential and proprietary information of similar importance, to prevent the unauthorized use, disclosure, publication or dissemination of

Confidential Information. The receiving party may not disclose the Confidential Information to any third party. Notwithstanding the foregoing, the receiving party may disclose Confidential Information (A) to its officers, directors, employees, attorneys, accountants and advisors who reasonably require access to such information on a need-to-know basis, provided they are advised of the confidential nature of the information and the receiving party's confidentiality obligations with respect thereto, and (B) if required by any judicial or governmental request, requirement or order; provided that the receiving party will, to the extent practicable under the circumstances, take reasonable steps to give the disclosing party sufficient prior notice in order to contest such request, requirement or order by notifying the disclosing party of such request.

11.4 User acknowledges and agrees that TSS is the sole owner of all data generated or otherwise transmitted in connection with User's use of the TSS System, and all such data shall be deemed the Confidential Information of TSS. User shall have no right, title, or interest in any such data, and User shall not extrapolate any of such data or other Confidential Information of TSS for any purpose other than those specifically authorized in this Agreement.

11.5 Without limiting any rights or remedies the disclosing party may have for the receiving party's breach of the receiving party's obligations set forth in this Section, the disclosing party shall be entitled (without the necessity of posting any bond or establishing the inadequacy of damages as a remedy) to injunctive and/or equitable relief to prevent any such breach.

## 12. **NON-SOLICITATION; NON-COMPETE**

12.1 User agrees that, during the term of this Agreement and for a period of two (2) years thereafter, neither User nor any of its affiliates will solicit, encourage, hire, contract, employ or request any employee of TSS to work or perform services for User or any of such affiliates or any contractor for any of them or to leave the employ of TSS. User also agrees not to compete with TSS in the same business or service as those provided to User under this Agreement.

12.2 Without limiting any rights or remedies TSS may have for breach of User's obligations set forth as set forth in this Agreement, TSS shall be entitled (without the necessity of posting any bond or establishing the inadequacy of damages as a remedy) to injunctive and/or equitable relief to prevent any such breach.

## 13. **DEFAULT**

13.1 Any action or inaction by User, or any of its authorized staff, which violates any terms or conditions in this Agreement shall constitute a default by User, and TSS may take any action available to TSS outlined in this Agreement or at law or in equity, and by not exercising TSS's right to take any action outlined herein or at law or in equity, shall not act as a waiver of TSS's right to bring all such actions as are legal and available to TSS at a later time.

13.2 Upon notice of Default to User from TSS, TSS shall terminate access to the TSS System immediately until such time as the default is remedied. Default by User which results in the permanent termination of services by TSS shall NOT entitle User to a refund of fees paid.

## 14. **GENERAL PROVISIONS**

14.1 **Effect of Agreement.** This Agreement embodies the entire understanding between the parties with respect to the Agreement and supersedes any prior understanding or agreements, whether oral or written, relating to the matters covered by this Agreement.

14.2 **Assignment.** User shall not assign this Agreement, in whole or in part, whether by operation of law or otherwise. TSS may assign this Agreement, in whole or in part, with the advance written consent of User. Notwithstanding the foregoing, either party may assign this Agreement to a subsidiary, without the consent of the other party.

14.3 **Compliance with Laws.** User will comply with all applicable international, federal, state, and local laws and regulations in performing User's obligations hereunder and in its use and access to the TSS System and all of its parts and operations.

14.4 **Waiver.** Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby. Failure of the party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

14.5 **Governing Law; Arbitration.** This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the State of South Carolina, without reference to its conflicts of laws rules. Notwithstanding the foregoing, this Agreement shall not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Act ("UCITA") or any other act derived from or related to UCITA, even if such law is adopted in South Carolina. Any controversy arising out of or relating to this Agreement shall be submitted to binding arbitration in the City of Charleston, South Carolina in accordance with the rules and regulations of the American Arbitration Association. The arbitration proceedings shall be conducted before a neutral arbitrator selected from a panel of persons having experience with and knowledge of information technology transactions in the United States. Nothing in this provision shall limit a party's right to obtain injunctive relief in the federal and state courts located in South Carolina in the event of violation by the other party of any intellectual property, proprietary, and/or confidentiality right defined herein.

14.6 **No Agency or Partnership Between TSS and User.** Nothing in this Agreement or any of the transactions, obligations or relationships contemplated hereby shall, in and of itself, constitute either TSS or User as the agent, employee or legal representative for the other for any purpose whatsoever, nor shall any party to this Agreement hold itself out as such. This Agreement does not create and shall not be deemed to create a relationship of partners, joint venturers, associates or principal-and-agent between TSS and User and each of the parties hereto acknowledges that each is acting as a principal hereunder. It is understood and agreed that TSS will perform its obligations hereunder as an independent contractor, and that during the performance of its obligations hereunder, its employees will not be considered employees of User within the meaning or application of any federal, state or local laws or regulations, including, but not limited to, laws or regulations covering unemployment insurance, old age benefits, workers' compensation insurance, industrial accident, labor or taxes of any kind. It is understood and agreed that TSS's employees shall not be considered User's employees within the meaning or application of User/employee fringe benefit programs, for purposes of, among other things, vacations, holidays, pension, group life insurance, accidental death, medical, hospitalization and/or surgical benefits.

14.7 **Injunction and Specific Performance.** In the event either party shall fail or refuse to perform its obligations under this Agreement, the other party shall have, in addition to any other remedy at law or in equity, the right to an injunction or specific performance, as the case may require, all such rights and remedies being cumulative, not exclusive, and enforceable alternatively, successively or concurrently, or at such time or times as the nondefaulting party shall in its discretion determine. In the event of any action to enforce the provisions of this Agreement,

the defaulting party shall waive the defense that there is no adequate remedy at law.

14.8 **Further Assurances.** From time to time after the date hereof, User and TSS shall execute all such additional instruments, licenses and certificates and shall take all such other actions as User or TSS, as the case may be, may reasonably request in connection with the consummation of this Agreement and effecting the intent and purpose hereof.

14.9 **Notices.** Any notice, demand or other communication (“Notice”) that may be or is required to be given hereunder or with respect hereto shall be in writing and shall be given either (i) by personal delivery, (ii) by certified mail, return receipt requested, (iii) by facsimile, or (iv) by e-mail. Any such Notice shall be deemed to have been given or made when personally delivered, on the date on which the party receiving such Notice given or made by facsimile acknowledges receipt thereof (as required below), or five (5) days after the date such Notice is deposited in the mail, first class postage prepaid, as the case may be, addressed as follows:

If to TSS:        Sheidow Consulting, Inc. d/b/a TSS Arena  
                         1808 E. 28<sup>th</sup> Ave.  
                         Eugene, Oregon 97403

**If to USER:**

If a party receives from the other party any Notice given or made by facsimile or e-mail, the receiving party shall immediately acknowledge receipt thereof. Such acknowledgement shall be transmitted to the other party by facsimile or e-mail.

14.10 **Prevailing Party Fees.** In any arbitration, litigation, or other proceeding arising out of or related to this Agreement, the prevailing party shall be entitled to receive its reasonable attorney fees, and costs and expenses directly associated with such action.

14.11 **Third Party Beneficiaries.** User agrees that affiliates, parents or subsidiaries of TSS are intended third party beneficiaries of this Agreement as amended from time to time.

14.12 **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

14.13 **Captions.** The captions of Sections of this Agreement are for convenience of reference only and shall not control or affect the meaning or constructions of any of the provisions of this Agreement.

14.14 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

14.15 **Time is of the Essence.** The parties agree that time is of the essence in each party’s performance of this Agreement.

**14.16 Modification; Priority of Documents.** No modification of this Agreement shall be binding unless it is in writing and is signed by an authorized representative of both parties and intended to specifically modify this Agreement.

**14.17 Limitation of Liability.** TSS shall in no event be liable for indirect, consequential, punitive or other special damages, or damages for loss of profits or revenue, incurred by User or any third party, whether in an action in contract or tort, even if TSS has been advised of the possibility of such damages.

**14.18 Research Studies and Use of Data.** TSS shall be entitled to access and use of any and all information and data entered into the TSS System by User in association with research studies for the National Institute of Health (NIH) in relation to grant funded research, and use for any other legitimate purpose in furtherance of the qualification for grants and research in the field.

WHEREFORE, the Parties to this Agreement set their hand and seal below as attestation that all the terms and conditions noted within this Agreement are binding upon each party;

TSS ARENA:

Authorized Agent:

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Print Name/Title:

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**USER:**

Name of Organization:

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Authorized Agent:

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Print Name/Title:

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