

This Addendum is entered into between the State of Minnesota, Commissioner of Commerce ("Licensee") and Consumer Health Technologies, Inc. ("CHT") to amend the ezNotify™ Software License and Support Agreement (the "Agreement"). Both parties agree to the following terms and conditions and expressly agree that if any of the following terms and conditions are in conflict with the terms and conditions of the Agreement, the following terms and conditions will prevail.

The terms and conditions of this Addendum are governed by the Agreement, this Addendum and any other amendments which are agreed to by both parties. Any additions or changes to this Addendum must be in writing and must be agreed to by each party by having the proper authorized designees sign each amendment, exhibit, and addendum.

1. Affirmative Action (when applicable). CHT certifies it has received a certificate of compliance from the Commissioner of Human Rights pursuant to Minn. Stat. § 363A.36 or, if appropriate, has certified that it is in compliance with federal affirmative action requirements. The Licensee intends to carry out its responsibility for requiring affirmative action by CHT.

***Covered Contracts and Contractors.*** If the Contract exceeds \$100,000 and CHT employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then CHT must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

***Minn. Stat. § 363A.36.*** Minn. Stat. § 363A.36 requires CHT to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

***Minn. R. 5000.3400-5000.3600.*** (A) *General.* Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining CHT's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

***Disabled Workers.*** CHT must comply with the following affirmative action requirements for disabled workers.

- (1) CHT must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. CHT agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) CHT agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (3) In the event of CHT's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (4) CHT agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state CHT's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- (5) CHT must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that CHT is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

*Consequences.* The consequences for CHT's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.

*Certification.* CHT hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for non-compliance.

## 2. Employee Status

### **E-Verify Certification (In accordance with Minn. Stat. § 16C.075)**

For services valued in excess of \$50,000, CHT certifies that as of the date of services performed on behalf of the Licensee, CHT and all its subcontractors will have implemented or be in the

process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the Licensee. CHT is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with CHT and made available to the Licensee upon request.

### 3. INSURANCE REQUIREMENTS

CHT, and/or their authorized distributor, manufacturer's representative, dealer, reseller, subcontractor (Subcontractor), shall maintain insurance to cover claims which may arise from operations under this Contract, whether such operations are by the CHT, their Subcontractor, or by anyone directly or indirectly employed under this Contract. The State will determine whether the CHT or CHT's Subcontractor insurance will be filed with the State.

CHT, or their Subcontractor, shall not commence work under the Contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. CHT, or their Subcontractor, shall maintain such insurance in force and effect throughout the term of the Contract. CHT, or their Subcontractor, under this Contract can provide applicable services to the State of Minnesota, hereinafter referred to as Owner.

All coverages and limits shall remain in force and effect throughout the term of the Contract.

**NOTICE TO THE CHT OR THEIR SUBCONTRACTOR:** The failure of the State of Minnesota to obtain a Certificate of Insurance, for the policies required under this Contract or renewals thereof or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the Owner to the CHT, or their Subcontractor, to provide such insurance.

The Owner reserves the right to immediately terminate the Contract if CHT, or their Subcontractor, is not in compliance with the insurance requirements and the Owner retains all rights to pursue any legal remedies against the CHT or their Subcontractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized agent upon written request.

**NOTICE TO INSURER:** CHT's insurance company(ies), or their Subcontractor's insurance company(ies), waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

**REQUIREMENTS FOR THE CHT OR THEIR SUBCONTRACTOR:** CHT's policy(ies), or their Subcontractor's policy(ies), shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of CHT's, or their Subcontractor's, performance under this Contract.

If CHT receives a cancellation notice from an insurance carrier affording coverage herein, CHT agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless CHT's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota.

CHT, or their Subcontractor, is responsible for payment of Contract related insurance premiums and deductibles.

If CHT, or their Subcontractor, is self-insured, a Certificate of Self-Insurance must be attached.

CHT, or their Subcontractor, shall obtain insurance policy(ies) from insurance company(ies) that either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the MN Department of Commerce if they are not rated by AM Best.

CHT's, or their Subcontractor's, Umbrella or Excess Liability insurance policy may be used to supplement CHT's, or their Subcontractor's, policy limits to satisfy the full policy limits required by the Contract.

#### **POLICY REQUIREMENTS:**

1. Workers' Compensation Insurance: Except as provided below, CHT, or their Subcontractor, must provide Workers' Compensation insurance for all their employees in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Minimum limits of liability:

Coverage B - Employer's Liability  
\$100,000 Bodily Injury by Disease per Employee  
\$500,000 Bodily Injury by Disease Aggregate  
\$100,000 Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts CHT, or their Subcontractor, from Workers' Compensation insurance or if CHT, or their Subcontractor, has no employees in the State of Minnesota, CHT, or their Subcontractor, must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excludes CHT, or their Subcontractor, from MN Workers' Compensation requirements.

If during the course of the Contract CHT, or their Subcontractor, becomes eligible for Workers' Compensation, CHT, or their Subcontractor, must comply with the Workers' Compensation Insurance requirements included herein and provide the State of Minnesota with a certificate of insurance.

Evidence of Subcontractor insurance shall be filed with CHT or as directed by the State.

2. Automobile Liability or Garage Liability Insurance:

CHT, or their Subcontractor, shall maintain insurance to cover liability arising out of the ownership, operation, use, or maintenance of all owned, non-owned and hired automobiles.

Auto Liability insurance is required for CHT, or their Subcontractor, performing warranty or service work on mobile equipment.

Garage Liability insurance is required for CHT, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State of Minnesota.

A. Minimum Limits of Liability:

\$2,000,000 - Per Occurrence – Bodily Injury and Property Damage Combined Single Limit

B. Coverages:

- Owned Automobile
- Non-owned Automobile
- Hired Automobile

Evidence of Subcontractor insurance shall be filed with CHT or as directed by the State.

3. General Liability or Garage Liability Insurance:

CHT, or their Subcontractor, shall maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract.

General Liability insurance is required for CHT, or their Subcontractor, performing warranty or service work on mobile equipment.

Garage Liability insurance is required for CHT, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State of Minnesota.

A. Minimum Limits of Liability:

\$2,000,000 - Per Occurrence

\$2,000,000 - Annual Aggregate

\$2,000,000 - Annual Aggregate applying to Products/Completed Operations

B. Coverages

Premises and Operations Bodily Injury and Property Damage

Personal & Advertising Injury

Blanket Contractual

- Products and Completed Operations
- State of Minnesota named as an Additional Insured

4. Network Security and Privacy Liability Insurance (or equivalent)

CHT shall maintain insurance to cover claims which may arise from failure of CHT's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of confidential or private information, transmission of a computer virus or denial of service.

CHT is required to carry the following minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

5. Professional/Technical, Errors and Omissions, including Network Security and Privacy Liability Insurance (or equivalent Network Security and Privacy Liability coverage endorsed on another form of liability coverage or written as a standalone policy):

This policy will provide coverage for all claims the CHT may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to CHT's professional services required under the contract.

CHT is required to carry the following minimum limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of CHT and may not exceed \$50,000 without the written approval of the State. If the CHT desires authority from the State to have a deductible in a higher amount, CHT shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the CHT to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and CHT shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by CHT to fulfill this requirement.

4. The term of the Support Services provided under this Agreement shall be one (1) year and, in consideration of these Support Services, the Licensee shall pay a Annual Support Fee of \$108,900, as listed in Schedule A of the Agreement.

5. Licensee shall have the option to purchase additional one-year terms of Support Services for up to four (4) additional years. To exercise the option to renew, the Licensee must pay the

Annual Support Fee listed in Schedule A of the Agreement for the level of support elected by Licensee and must execute the renewal by October 31 of each applicable year.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representative.

**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minnesota Statute §§ 16A.15 and 16C.05.*

Signed: Jennifer Hostetler  
Date: 11/2/12  
Contract No. PO # 2473

**2. CONTRACTOR**

The Contractor certifies that the appropriate person(s) have executed the contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**3. STATE AGENCY**

By: Shawn Johnson  
(with delegated authority)  
Title: Agency Commission  
Date: 11-2-12

*BB JV  
11/2/12*

**4. COMMISSIONER OF ADMINISTRATION**

As delegated to Materials Management Division

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Distribution  
Agency  
Contractor  
State's Authorized Representative - Photo Copy



Annual Support Fee listed in Schedule A of the Agreement for the level of support elected by Licensee and must execute the renewal by October 31 of each applicable year.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representative.

**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minnesota Statute §§ 16A.15 and 16C.05.*

Signed: Denis Hennin  
Date: 11/12/12  
Contract No. PO# 2473

**2. CONTRACTOR**

The Contractor certifies that the appropriate person(s) have executed the contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Predeep Gare  
Title: CEO  
Date: 11-06-12

**3. STATE AGENCY**

By: George Clark  
(with delegated authority)

Title: Supply Commission  
Date: 11-2-12

B  
10/30/12

**4. COMMISSIONER OF ADMINISTRATION**

As delegated to Materials Management Division

By: John  
Title: Negotiations Mgr  
Date: 11/15/12

Distribution  
Agency  
Contractor  
State's Authorized Representative - Photo Copy

