

Bill No. 225  
2017

By-law No. A.-\_\_\_\_\_

A By-law to approve a Software and Services Agreement between The Corporation of the City of London and Sysco Canada, Inc., a Subscription Service Agreement with SureQuest Systems, Inc. and Sysco Canada, Inc., and a Business Associate Agreement with SureQuest Systems, Inc.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Software and Services Agreement to be entered into between The Corporation of the City of London and Sysco Canada, Inc. which includes:
  - Subscription Service Agreement with SureQuest Systems, Inc. and Sysco Canada, Inc.
  - Business Associate Agreement with SureQuest Systems, Inc. regarding dietary software services to aid the operational efficiency of the Dearness Home food services department, attached as Schedule "A" to this by-law, are approved.
2. The Mayor and the City Clerk are authorized to execute the agreements approved under section 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on May 30, 2017.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading – May 30, 2017  
Second Reading – May 30, 2017  
Third Reading – May 30, 2017



The Corporation of the City of London

&

Sysco Canada, Inc.

Software & Services Agreement

\_\_\_\_\_, 20\_\_\_\_

# The Corporation of the City of London and Sysco Canada, Inc. Software & Services Agreement

## 1. Software License and Services

This Software and Services Agreement (the "Agreement") is entered into and effective as of \_\_\_\_\_ (the "Effective Date") by and between Sysco Canada, Inc. ("Sysco") and The Corporation of the City of London ("Client").

Sysco has entered into an arrangement with SureQuest Systems ("SQ") to provide SQ software and services (the "Synergy On Demand® Service") to Sysco's customers. Accordingly, Sysco through such arrangement will provide Synergy On Demand® Service to Client under the terms and conditions of this Agreement and the Synergy On Demand® Subscription Service Agreement (the "Synergy Agreement"), attached at Schedule 1 and 2. The Synergy Agreement shall be entered into among Sysco, SQ, and Client and, upon agreement of the three parties, will be executed separately and delivered together with this Agreement, and shall have the same Effective Date as this Agreement. Sysco will provide the software identified below in Section 3 including all enhancements and upgrades made available by SQ.

In consideration of the mutual promises and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, Sysco and Client formally agree to a prime vendor partnership arrangement whereby Client shall obtain 80% of Client's food service purchase requirements for the Dearness Home from Sysco during the term of this Agreement.

Sysco and SQ contacts for this agreement are listed below.

### Sysco Contacts:

RVP Healthcare Business Development  
Business Development Manager  
Manager, Healthcare Systems

Wendy Brancato-Neuman, RD  
Marg Heath  
Karen Hurley, RD

### SQ Contacts:

Technical Support:

1-866-887-4977 option 2

## 2. Term

This Agreement constitutes an agreement for a term of not less than twelve (12) months, and shall be automatically renewable in twelve month increments. Either party may terminate this Agreement, after the initial term, by providing the other party with thirty (30) days prior written notice.



### 3. Pricing and Description of Services

#### 3.1 Summary of Costs

Client agrees to pay Sysco for the services provided at the applicable rates as follows:

Item Description	Previous Synergy Installed Monthly Costs*	New Synergy On Demand Monthly Costs*	Required Upfront Costs**
Synergy Max Support & Maintenance	\$130		
Synergy On Demand Financial Subscription		\$160	
People Data Transfer			\$600
Training (8 hrs)			\$1,120
Implementation Project Management(8 hr)			\$1,120
Total	\$130	\$160	\$2,840

\*Applicable taxes will be applied to all payments at the time of invoice

\*\* Additional charges may apply for onsite training for the Trainer's travel expenses

#### 3.2 Explanation of Systems

Synergy On Demand® Financial Edition is a dietary systems solution for your facility that fully integrates resident nutritional profiles, menu development, meal production, costing, and inventory. Forecast daily food production requirements, generate grocery lists, and purchase orders. Access to Sysco's On Demand database of ingredients, recipes, nutritional information, menus and pricing are all included.

- A minimum of 8 pre-paid conversion training hours are required
- A minimum of 8 pre-paid implementation project services hours are required
- People data load includes transfer of non-food related People information from Synergy Installed database to Synergy On Demand database
- Single language login (specify English or French)
- 3 logins are included for each Synergy On Demand® Financial Edition subscription
- If additional logins are required, they will be invoiced at \$85.00\* per login per month

While most Synergy enhancements are included in your ongoing support and maintenance fees, some system enhancements may include new modules or features that are not included in a standard upgrade. Client subscriptions can be upgraded at any time for the fee associated with that upgrade.



Client shall be responsible for payment of all commodity taxes associated with this Agreement, as invoiced.

The fees charged under this Agreement will not change in the first year of the Agreement. After the first year, as economic and market conditions dictate and at the discretion of Sysco, fees may be increased not more than once every calendar year by an amount not to exceed five (5) percent. However, if US Exchange rates increase greater than 10%, fees charged may change accordingly at Sysco's discretion. Sysco will notify Client in writing at least 60 days in advance of any such increase.

Unless otherwise agreed to, Client is expressly prohibited from using the Synergy On Demand® Service in connection with the provision of Service Bureau activities. If Client would like to upgrade their license to a Service Bureau license, please contact your Sysco Representative.

### **3.3 Sysco Database Services**

As long as Client remains a member of Silver Group Purchasing (SGP), Dearness Home will receive access to the Extencicare Entity data. In the event that Dearness Home, is no longer a member of SGP, Sysco can provide other data management options and a new pricing quote. [If customer is not requesting database services, this section can be removed]

### **3.4 Support & Maintenance**

All application and system database updates made available by SQ are included in Client's ongoing subscription fees. If SQ offers new upgrades, modules or interfaces, Client may elect to use these new modules and pay the fee associated with the upgrade of these new modules.

Subscription fees include technical and functional support. Technical Support is defined as the provision of corrections for any reproducible material error in the application and refers explicitly to maintaining or restoring the application to operation in accordance with system documentation. Functional Support is defined as assistance provided to answer questions and resolve issued related to the application functionality under normal use.

SureQuest provides a variety of methods for a User to contact Support. Users can use any of these methods:

Telephone Support – a dedicated toll free telephone number is provided to all Users. Support is provided in the English language. Telephone support is provided Monday to Friday, excluding US Holidays, during the hours of 8:30am to 6:30pm Eastern Time.

Emergency Telephone Support – Emergency Support is defined as being unable to open the program and/or the system is not working at all. If this occurs outside of regular Support hours, call the support number and request Emergency Support to leave a detailed message. SureQuest Support personnel are available to provide emergency support via pager with a response time of ninety (90) minutes or less.



Email Support – Support response to emails sent to [support@srequest.com](mailto:support@srequest.com) will be by the support method most suited to resolving the User's issue.

Fax Support – Users can fax their support questions and issues to 972-238-7733. Response to faxes will be by the support method most suited to resolving the User's issue.

SureQuest Customer Support Portal – Each User is issued a separate User Name and Password to SureQuest's Customer Support Portal. Users can log a support case, access user guides and How 2's, and access a variety of pre-recorded training videos.

### **3.5 Implementation Project Services**

Client will agree to comply with and obtain the recommended number of implementation project services hours for each new subscription purchase. If additional project services hours are required to complete Client's software implementation, they may be purchased upon request.

Project Services is required in order for Client to be able to properly use the software. The purpose of Implementation Project Management is to oversee the process of integrating the software into Client's operation. Implementation provides a "roadmap" to transition from sales to effective software utilization. Implementation makes the process of change as easy as possible while minimizing complications to help achieve lasting benefits.

Implementation Milestones are designed to strategically plan, guide, coach, train, monitor and evaluate to ensure Client is able to use the system effectively to successfully accomplish the desired outcomes.

Client will identify an internal Project Manager to coordinate the Implementation Project. SQ will provide project management guidance throughout the implementation process.

### **3.6 Training**

Client will agree to comply with and obtain the recommended number of training hours for each new subscription purchase. Payment of training is required upfront prior to implementation of the Synergy On Demand Systems. Client agrees to be responsible for attendance at all training events (on-site or on-line) once scheduled. Cancellation without one (1) business day notice or failure to attend without notice will require payment of assigned fees (See Schedule 4).

Training levels are designed to train and evaluate each End User to ensure they are able to use their software system effectively.

Task Training – teaches a User how to perform a task (ie. How to enter a recipe or how to adjust portion sizes)



Application Training – teaches the User how their actions in data entry and software report selection options affect outcomes. Users also learn how to efficiently use the system to achieve their User's desired outcome(s) and develop their own Standards of Practice.

Competency Training – assesses the level at which the User has been able to retain and successfully use information provided during Task and Application Training. Note: User competency will allow the Trainer to determine the need for re-training and/or next training topics/agenda.

Training is conducted via the Internet or on-site. Additional charges will apply for on-site training to cover the costs of the Trainer's travel expenses. All required training must be obtained from SureQuest Certified Trainers.

Additional training hours are available, as needed, for a fee. Training charges will be reflective of current training fees at that time. If additional training hours are required due to staff turnover, the same fee will apply. The following are Sysco's current charges for Synergy training. Sysco will provide 60 days notice of pricing changes.

Cost:                    1) On-site Training → \$840.00 per day (+ travel expenses)

                              2) On-line Training → \$140.00 per hour via the Internet

Once User system logins have been issued, Client will receive invitations to additional training opportunities as they are made available. Majority of these training options will be offered at no charge. These training opportunities may include invitations to online webinar training sessions, online training videos and in-services (located on the Support Portal), emailed Synergy software updates (Synergy Insights eBlast), and attendance at the annual Synergy User Group Meeting.

### **3.7 Hardware**

Client will provide their own hardware following the minimum hardware and network requirements as outlined in Schedule 3.

## **4. Payment Terms**

Upfront payments must be made prior to software installation. Payment terms for all other On Demand invoices with Sysco are payable within 30 days of the date of the invoice. Payments must be sent directly to:

Sysco Southwestern Ontario  
Attn: Finance Department  
1515 Commerce Way  
Woodstock, ON  
N4V 0C3



Payments received after 30 days of the date of the invoice are subject to and may be assessed late fees equal to twelve (12.00%) percent annually compounded on a monthly basis.

## 5. Breach/Default

If Client materially defaults in its performance under this Agreement, and fails to cure such default within thirty (30) days after receiving written notice specifying the default, then Sysco, in its discretion, may immediately terminate this Agreement by providing Client with written notice of such termination.

Sysco shall be in default hereunder if it fails to make timely delivery of the software or services subscribed to under this Agreement. Should Sysco fail to remedy the default complained of within thirty (30) days after written notice or fails during those thirty (30) days to diligently pursue curing such default which is cured within a reasonable period thereafter, Client may terminate this Agreement. In the event Client opts to terminate this Agreement, it shall promptly send Sysco further written notice advising of the effective date of termination.

## 6. Indemnity

### 6.1 General Indemnity

Client shall defend, indemnify and hold harmless Sysco, their officers, directors, employees and agents from and against any and all claims, liabilities, damages, losses or expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with the Client's access to or use of the Synergy On Demand Service unless resulting from negligent acts or omission by SQ.

Sysco shall, at its own expense, indemnify and hold Client, their officers, directors, elected officials, Head of Council, employees and agents harmless and defend or settle any action brought against Client based on a claim that the Synergy On Demand Service infringed any United States or Canadian patent or copyright, or any other proprietary right, and will pay all costs and damages finally awarded against Client in any such action, provided Client promptly notifies Sysco when it receives any notice of such claim or allegation of infringement, and Sysco has the sole control of the defense of any such claim.

### 6.2 Confidential Indemnity

Each party shall indemnify and hold harmless the other party from and against any and all liability, actions, claims, losses, costs and damages which may be brought against or suffered by the indemnified party and which the indemnified parties may incur, sustain or pay arising out of or in connection with any breach by the indemnifying party of its obligations under Article 9. The limitations in Article 7 shall not apply to either party's obligations under this Section 6.2.





## 7. Limit of Liability

In no event shall Sysco be liable for any direct, indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or use, incurred by Client or any third party, whether in an action in contract or tort, arising from the Client's access to, or use of, the site or the online service unless resulting from negligent acts or omission by SQ. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations may not apply to the client. In no event shall Sysco's liability for damages exceed the amount paid by Client in the preceding 12 month period under this Agreement.

## 8. Warranty

Sysco warrants that Client shall have the right to utilize the Applications free and clear of all liens and encumbrances, subject to the terms hereof. Sysco warrants that the Applications shall function, as originally deployed and as modified by future releases, in accordance with its documentation, and that the Client shall have access to the Applications at the Data Center as described in the Synergy Agreement. EXCEPT AS SPECIFICALLY SET FORTH OR REFERENCED IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF EITHER PARTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS NOT SPECIFIED HEREIN ARE EXPRESSLY DISCLAIMED.

## 9. Confidentiality

### 9.1 Non-Disclosure

Without the other party's prior written consent (which shall not be unreasonably or unduly withheld), and then only to the extent reasonably necessary for each to perform its obligations under this Agreement, neither party shall, directly or indirectly, furnish or disclose to any person or entity or use in any way for its or any third party's benefit any proprietary or confidential information of the other, except information which may:

- a) become part of the public domain, except by an act or omission of the receiving party, or
- b) be received by either party from a third party having legal right, to transmit same to such recipient.

### 9.2 Restriction

Client shall not modify, copy, reverse engineer, decompile or disassemble the Synergy On Demand® Service, or copy or reproduce the licensed materials accompanying the Synergy On Demand® Service without SQ's written consent. Client agrees to take appropriate and reasonable actions to prevent the use of the Synergy On Demand® Service in a manner not permitted by this Agreement. Client shall not attempt in any manner to defeat, remove, or circumvent any security routines or devices designated to prevent unauthorized use of the Synergy On Demand® Service.



### **9.3 Reservation**

Nothing in this Agreement shall be construed to grant either party any rights with respect to the other's copyrights, trademarks, trade names, service marks, or other intellectual property except the narrowest such rights for each to perform its obligations hereunder or to accomplish the purposes of this Agreement.

### **9.4 Intellectual Property Notices**

Client will ensure that all copyright, patent, proprietary and trade secret notices of SQ will remain on the Synergy On Demand® Service in any form and on all licensed materials. The use of a copyright notice on the Synergy On Demand® Service and licensed materials shall not be taken to indicate that they have been published.

### **9.5 Remedy for Breach**

Each party acknowledges that any violation of the covenants contained in this section 9 may cause irreparable damage or injury, the exact amount of which may be impossible to ascertain. In the event a party breaches, threatens to breach or willfully violates any of the covenants contained in Section 9, the other party will be entitled to proceed immediately to court in order to seek injunctive relief, in addition to any other remedies available, and the breaching party will consent to, interim, interlocutory, and final injunctive relief restraining the breaching party from breaching, and requiring the breaching party to comply with, its obligations under this Section 9, without a requirement that a finding of irreparable harm or other criteria for the awarding of injunctive relief be made.

### **9.6 Legal Process**

If the receiving party becomes required by law or applicable legal process to disclose any confidential or proprietary information of the other party, the receiving party shall provide the disclosing party with prompt prior written notice of such requirement and the terms of and circumstances surrounding such requirement so that the disclosing party may seek an appropriate protective order or other remedy, or waive compliance with the terms of this Agreement, and the receiving party shall provide such cooperation with respect to obtaining a protective order or other remedy as the disclosing party shall reasonably request at the disclosing party's sole cost and expense. If such protective order or other remedy is not obtained, or if the disclosing party is required to waive compliance with the provisions hereof, the receiving party shall furnish only that portion of such confidential or proprietary information which, as it is advised in a written opinion by its counsel (the cost of such opinion being borne solely by the disclosing party), it is legally required to furnish.

### **9.7 MFIPPA and PHIPA**

Sysco acknowledges and agrees that the provisions of MFIPPA and PHIPA apply to this agreement. See attached Business Associate Agreement in Schedule 5.



## 10. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Each party hereby irrevocably and unconditionally submits and attorns to the jurisdiction of the courts of the Province of Ontario located in the City of Toronto in respect of any matter arising out of or in relation to this Agreement.

## 11. Notice

All notices, requests, demands or other communications (collectively, "Notices") by the terms hereof required or permitted to be given by one party to any other party, or to any other person shall be given in writing by personal delivery or by registered mail, postage prepaid, by facsimile transmission or email to such other party as follows:

To Sysco at:	To Client at:
Sysco Food Services of Canada, Inc. 21 Four Seasons Place, Suite 400 Toronto, Ontario M9B 6J8 Canada <a href="mailto:hurley.karen@corp.sysco.ca">hurley.karen@corp.sysco.ca</a> Fax: 905-696-4714	Contact information provided on the attached Order Form at Schedule 1

Or to such other address as may be given by such person to the other parties hereto in writing from time to time. All such Notices shall be deemed to have been received when delivered or transmitted, or, if mailed, 48 hours after 12:01 a.m. on the day following the day of the mailing thereof. If any Notice shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such Notice shall be deemed to have been received 5 days after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted all Notices shall be given by personal delivery or by facsimile transmission.

## 12. Assignment

The Agreement shall not be assigned by either party without the prior written consent of the other party, provided that either party may assign its rights and delegate its duties hereunder to a successor to all or a substantial portion of its business. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

## 13. Force Majeure

Neither Party to this Agreement shall be liable to the other for failure to perform its part of this Agreement, when such failure is due to a breakdown of transportation, explosion, storm, fire,



flood, war, riot, civil disorder, vandalism, sabotage, labour dispute, Act of God or any cause beyond the control of the Parties of this Agreement.

## 14. Entire Agreement

This Agreement and the Synergy Agreement constitutes the entire Agreement between the parties with respect to all of the matters herein and its execution has not been induced by, nor do any of the parties rely upon or regard as material, any representations or writings whatever not incorporated herein and made a part hereof and may not be amended or modified in any respect except by written instrument signed by the parties hereto. Any schedule referred to herein are incorporated herein by reference and form part of the Agreement.

## 15. General

### 15.1 Counterparts

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

### 15.2 Headings for Convenience Only

The division of this Agreement into sections is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

### 15.3 Severability

If any section or any portion of any section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid Section or portion thereof shall be severed from the remainder of this Agreement.

### 15.4 Transmission

The parties hereto agree that this Agreement may be transmitted by facsimile, email or such similar device and that the reproduction of signatures by facsimile or such similar device will be treated as binding as if originals and each party hereto undertakes to provide each and every other party hereto with a copy of the Agreement bearing original signatures forthwith upon demand.



16. Signature

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date and have the authority to bind the Corporations.

\_\_\_\_\_  
Matt Brown  
Mayor  
The Corporation of the City of London

\_\_\_\_\_  
Date

\_\_\_\_\_  
Catharine Saunders  
City Clerk  
The Corporation of the City of London

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karen Hurley, RD  
Manager, Healthcare Systems  
Sysco Canada, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Wendy Brancato-Neuman, RD  
Regional Vice President, Healthcare Sales & Marketing  
Sysco Canada, Inc.

\_\_\_\_\_  
Date





SCHEDULE 1

**SYNERGY ON DEMAND® SUBSCRIPTION SERVICE AGREEMENT**

**ORDER FORM**

Date:

All Information must be completed for each facility

<b>Dearness Home</b>	<b>Corporation Name: The Corporation of the City of London</b>
<b>Client Street Address: 710 Southdale Rd East</b>	<b>Client City: London</b>
<b>Province: ON</b>	<b>Postal Code: N6E 1R8</b>
<b>Client Phone: (519)661-0400</b>	<b>Contact Name: James Drummond</b>
<b>Contact Phone: (519)661-0400</b>	<b>Contact Email: jdrummon@london.ca</b>
<b>IT Contact Name:</b>	<b>IT Contact Email:</b>
<b>Sysco Acct Exec Name: Marg Heath</b>	<b>Sysco Acct Exec Email: Heath.marg@swont.sysco.ca</b>
<b>Sysco Primary Operating Company: Sysco Southwestern Ontario</b>	<b>Sysco Customer Number: 6000053560</b>

**User Name List**

A User Name and Password is required for each Physical Location using the application in order to insure security and data integrity. SureQuest will assign one User Name and Password for the above Client. If you have additional personnel that may be given access to the program, list them below. An email address is required for each User to be supported.

<b>Name: James Drummond</b>	
<b>Title: Dietary Manager</b>	<b>Email: jdrummon@london.ca</b>
<b>Name: Dale Kish</b>	
<b>Title: Food Service Supervisor</b>	<b>Email: dkish@london.ca</b>
<b>Name: Christine Smithrim</b>	
<b>Title: Food Service Supervisor</b>	<b>Email: csmithrim@london.ca</b>



Name:	
Title:	Email:
Name:	
Title:	Email:

For Internal Use only:

<b>Synergy On Demand Application: (check only those that are ordered)</b>		
<input type="checkbox"/> Recipes On Demand	<input type="checkbox"/> Synergy On Demand	<input type="checkbox"/> SureLink w/: <small>Click here to enter text.</small>
<input type="checkbox"/> Menus On Demand	<input type="checkbox"/> Plus Financial	<input type="checkbox"/> Multi-Lingual <b>English</b> French
<input checked="" type="checkbox"/> Other: Synergy On Demand Financial Conversion #Logins: 3		
Check Entity: <input type="checkbox"/> Healthcare <input type="checkbox"/> Hospitality <input checked="" type="checkbox"/> Other Extencicare/SGP		
Check Level: <input checked="" type="checkbox"/> Base Unit <input type="checkbox"/> Entity Admin		
Payment Frequency: Annual		<b>Monthly</b>
On-site Training: /days	Internet Training: 8 /hours	One-time Fees:
Implementation Product Services:	8 /Hours	One-time Fees:
Operating Company Code: 338	Store Number (Unit Code): 55222	
Sysco Operating Company special instructions:		

Date Order Accepted: \_\_\_\_\_

Accepted by: \_\_\_\_\_



## SCHEDULE 2

### **SYNERGY ON DEMAND® SUBSCRIPTION SERVICE AGREEMENT**

This agreement is made between SureQuest Systems, Inc. ("SQ"), 3330 Keller Springs, Ste 205, Carrollton, TX, Sysco Canada, Inc. ("Sysco"), 21 Four Seasons Place, Suite 400, Toronto, Ontario, Canada and The Corporation of the City of London ("Client")

#### **Preamble**

**WHEREAS SQ has developed an On Demand Software as a Service Application;**  
**AND WHEREAS SQ is the registered owner of the On Demand Application as a Service Application;**  
**AND WHEREAS SQ has licensed Sysco to market the On Demand Application as a Service Application generally described as Synergy On Demand® or specifically identified within this Agreement according to functionality delivered;**  
**AND WHEREAS SQ is prepared to grant a limited license for the use of the On Demand Application to the Client indicated in this Agreement;**

#### **On Demand Application**

**The Synergy On Demand® Application Licensed under this Service Agreement is identified as on the attached Order Form.**

##### **1. Description of Service**

1.1 Online Subscription Service. SQ grants to the Client, during the term of this Agreement, a limited license to use the On Demand Application identified herein. The active Records shall be provided to the Client via an online service ("Online Service") through a data center established and maintained by SQ.

1.2 Client Responsibilities. In order to use the Online Service, the Client must obtain access to the World Wide Web, either directly or through devices that access web-based content. The Client shall be responsible for any service fees associated with such access, including any carrier fees. In addition, the Client shall provide all equipment necessary to make such connection to the World Wide Web, including a computer and modem and/or a wireless access device.

1.3 Transfer of limited license to use the Online Service. The Client's usage rights to the On Demand Application may not be transferred to another entity or physical location without the prior written consent of SQ and Sysco.

1.4 Use of the Software. The Application shall be used only for the processing of Client's own business. Client shall not: (1) permit any third party to use the Application; (2) copy the Application for any purpose; . (3) use the Application in the operation of a service bureau unless specifically authorized by a Service Bureau Addendum to this Agreement.

##### **2. Eligibility**

The On Demand Application is only available to clients of Sysco that have the capacity to enter into legally binding contracts under applicable law for legitimate business purposes. Any entity failing to fit the preceding description will not be able to enter into this Agreement.

##### **3. Online Service Accessibility**

3.1 Database and Applications Accessibility. The Data Center shall operate 24 hours a day, 365 days per year, subject to scheduled maintenance as described below. The Client shall, subject to obtaining access to the World Wide Web, acquire access to the Client Database and acquire the ability to perform data processing with each Application, in accordance with the design of such Application, during not less than 99.6% of hours between 7 a.m. and 11 p.m., EST. Client's access and usability of the On Demand Application is highly dependent upon the IT infrastructure available to the Client at the point of service and the device used to access the On Demand Application. It is the Client's sole responsibility to provide the appropriate IT infrastructure and device(s)





according to the Specifications provided by SQ and attached as part of this Agreement. Failure to comply with these Specifications DOES NOT constitute grounds for cancellation of this Agreement by the Client but may constitute grounds for cancellation of this Agreement by either SQ or Sysco without refund of any payments made by Client.

**3.2 Server/Data Location.** All Data is stored on secure servers accessed via a secure URL with a unique end user account login(s) and password(s) required for access to the Application and related files. Server data center locations will be determined at the sole discretion of SQ. Currently SQ maintains a server data center in Canada where all Data resides. In the event that circumstances such as advances in technology, availability of suitable facilities or other conditions which require relocation of server data centers or if SQ otherwise wishes to relocate any Data containing Canadian End User information to a location outside of Canada, SQ will notify Sysco of such a move and (i) provide Sysco with a quote to provide a dedicated server data center located in Canada if Sysco so chooses; and (ii) permit any End User Account to terminate their SSLA with Sysco and SQ immediately prior to the movement of Data relevant to said End User Account without the End User Account incurring any termination costs or other liability in connection with such termination.

**3.3 Downtime Maintenance Periods.** SQ periodically adds, repairs, and upgrades the Data Center network, hardware and the Applications and shall use its best efforts to accomplish this without affecting the Client's access to the On Demand Application; however, repairs of an emergency or critical nature may result in the Online Service not being available for the Client's usage during the course of such repairs. In addition, SQ has established periodic system maintenance windows on Sunday Mornings between 12am and 5am (EST). During this time, SQ reserves the right to take down the server(s) at the Data Center hosting the Client Data in order to conduct routine maintenance to both software and hardware. SQ shall advise the Client prior to any scheduled downtime. SQ reserves the right to change its maintenance window upon prior notice to Client provided the maintenance occurs between the hours of 11 p.m. and 7 a.m. (EST).

**3.4 Database Back-up.** Tapes or other storage media or technology as applicable shall be used at the Data Center for daily back-up of data for disaster protection purposes.

#### **4. Subscription Fee**

**4.1 Subscription Charge.** The Client shall be responsible for a subscription fee. Client will be responsible for the Subscription Charge through its relationship with Sysco which will remain in good standing during the term of the Sysco Agreement.

#### **5. Non Subscription Services**

**5.1 Technical Support.** TECHNICAL SUPPORT IS INCLUDED IN THE SUBSCRIPTION CHARGE. Technical support is defined as the provision of corrections for any reproducible material error in the Application. Technical support included in the Subscription Charge refers explicitly to maintaining or restoring the Application to operation in accordance with the system documentation. Support issues that arise through user error and Application training issues shall be referred to the Help Desk.

**5.2 Help Desk.** SQ agrees to provide Customer Support Services ("Help Desk") to answer questions and resolve issues related to the Application functionality under normal use. All such Support will be in the applicable language. SQ will provide first tier Support to the Client via telephone from Monday thru Friday, excluding U.S. holidays (New Years Day, Good Friday, Easter Sunday, Memorial Day, July 4th, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas Day and the day after Christmas), during the hours of 7:30 am and 5:30 pm Central. In addition, at all other days and times, SQ personnel will be available to provide emergency Support to the Client via pager with a pager response time of ninety (90) minutes or less. Payment to SQ of its Subscription Fee shall be a condition of access to Customer Support.

**5.3 Training and Professional Services.** SQSI shall provide training and professional services in the use of the Application to the Client. Client agrees that appropriate training in accordance with Schedule 1 and provided by SQSI is a condition of this Agreement. Training and Professional Service hours will be quoted on each OnDemand Agreement in accordance with the required training specified for the specific software configuration ordered by the Client. Additional hours may be deemed necessary by SureQuest to bring the Client to an appropriate level of adequacy in the operation of the application. Additional hours must be mutually agreed upon by SQSI, Client and Sysco and will be invoiced separately. Any unused pre-paid training hours will expire three (3) years from the date of purchase or upon termination of this Agreement. SQSI may, upon written request from the Customer, waive the expiration of unused training hours as long as this Agreement is in full effect. Cancellation



of any scheduled training event without 24 hours (one business day) notice to SQSI or failure to attend a scheduled training event will incur charges as if training services were delivered by SQSI. Repeated cancellations or failure to attend scheduled training events may delay implementation schedules and delivery of OnDemand Application logins without liability or breach on the part of SQSI or Sysco.

5.4 Data Conversion Services. Except as expressly provided by this Agreement or an exhibit hereto, the Client shall be responsible for entering all Client Data, including any data previously entered in a different software system or any other versions of SureQuest software. SQ may, at its option, offer limited data conversion services for an additional fee. The Client may elect the data conversion service from SQ for designated fees, as offered by SQ. If the Client elects any offered data conversion service, an item identifying the type of data conversion will be added to the Order Form.

## **6. Interface Services**

6.1 Interface Solution. In the event that the Order Form includes an interface (SureLink™) to a third party software system, it is the Client's responsibility to contact the third party vendor to acquire any product(s), service(s) or documentation of data fields necessary to ensure that data is available from that vendor to the SQ Interface Solution. Client understands that third party vendor fees may apply which will not be covered under this Agreement and are entirely the responsibility of the Client.

6.2 Available Data. Client is responsible for confirming with the third party vendor that desired data is available to the SQ Interface Solution in the format specified by SQ and reconciling this data when the interface is activated. In the event that any future upgrades or modifications made by the third party software vendor disables or interferes with the functionality of the interface between the two software systems, it will be the responsibility of the Client to reconcile the data mismatch problems with the third party vendor in advance of any planned version upgrade by the third party vendor software.

6.3 Interface Maintenance. The Client agrees to notify SQ in writing 30 days in advance of any planned version upgrade by the third party vendor software.

## **7. Use Practices**

7.1 Security. The Client shall receive one or more unique user identity and password combinations. In the event of turnover in the Client's staff or any other occurrence resulting in the Client's password(s) becoming known to any person not authorized to act for the Client, the Client shall immediately notify SQ. The Client shall be responsible for all security precautions at its site(s) and within its staff. For Security Purposes, a Client with multiple physical locations or entities will require a unique User Identity and Password combination for each entity and physical location using the Application.

7.2 Session Connection Limitations. A connection session is the continuous block of time from the time the Client logs in to the Data Center until the moment the Client disconnects. In the event that the Client, after using the Application, omits to disconnect and leaves the connection idle for 15 minutes, SQ shall automatically disconnect such connection. If disconnected, the Client is free to re-connect immediately to establish a new session.

7.3 Suspension. If the Client fails to make payment of any amount owing, including the Subscription Charge, under this Agreement within 45 days of such amount becoming due, the Client's right to utilize the Applications shall, at the discretion of SQ, be subject to suspension. During the period of suspension, any attempt to access the Data Center by the Client will be blocked. Suspension of a Client account does not relieve the Client of his obligation to pay the outstanding account balance.

7.4 Confidentiality. Each party shall treat as confidential the On Demand Application to include its design, function and operation, and take precaution to prevent its unauthorized copy or distribution in any form not pre-approved by SQ. Each party shall use reasonable precautions to prevent any confidential information from being acquired by an unauthorized person or used or accessed by anyone with the intent of developing a similar or competitive product either for their own use or for distribution.



## **8. Term and Termination**

**8.1 Term.** The Software Application shall be made available to the Client once all required documents are submitted. SQ will notify Client of the Effective Date with the delivery of the necessary User Name(s) and Password(s) to access the Application. This Agreement constitutes an agreement for a term of not less than twelve (12) months, and shall be automatically renewable in twelve month increments. Either party may terminate this Agreement, after the initial term, by providing the other party with thirty (30) days prior written notice.

**8.2 Termination.** Upon termination of the Online Service, the Client's right to use such Online Service immediately ceases and the Client shall have no access to or ownership of any data, other than Client Owned Data, that may have been stored by the Client during the term of the Subscription. Client Owned Data includes People data and any client developed recipes and menus. If Client wishes to retain for their records any Client Owned Data, Client must make arrangements to extract such data (ie. print out, save to PDF) prior to termination. SQ shall have no obligation to maintain any Data stored on behalf of the Client or to forward any Data to the Client or any third party. SQ will delete archived data, but will not do so until thirty (30) days following termination.

## **9. Additional Terms**

**9.1 Warranty.** SQ warrants that the Client shall have the right to utilize the Applications free and clear of all liens and encumbrances, subject to the terms hereof. SQ warrants that the Applications shall function, as originally deployed and as modified by future releases, in accordance with its documentation, and that the Client shall have access to the Applications at the Data Center as described in this Agreement. NO OTHER WARRANTIES APPLY, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

## **10. Limitation of Warranty**

IN NO EVENT SHALL SQ BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY THE CLIENT OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, ARISING FROM THE CLIENT'S ACCESS TO, OR USE OF, THE SITE OR THE ONLINE SERVICE UNLESS RESULTING FROM NEGLIGENT ACTS OR ADMISSION BY SQ. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO THE CLIENT.

## **11. Indemnity**

The Client shall defend, indemnify and hold harmless SQ and Sysco, their officers, directors, employees and agents from and against any and all claims, liabilities, damages, losses or expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with the Client's access to or use of the Online Service or the site or the Applications UNLESS RESULTING FROM NEGLIGENT ACTS OR OMISSION BY SQ.

SQ shall defend, indemnify and hold harmless the Client, their officers, directors, employees and agents from and against any and all claims, liabilities, damages, losses or expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with SQ's access to or use of the Online Service or the site or the Applications UNLESS RESULTING FROM NEGLIGENT ACTS OR OMISSION BY the Client.

## **12. General**

**12.1 Notices.** All notices, requests, demands or other communications (collectively, "Notices") by the terms hereof required or permitted to be given by one party to any other party, or to any other person shall be given in writing by personal delivery or by registered mail, postage prepaid, by facsimile transmission or email to such other party as follows:

To SQ at

To Sysco at:

To Client at:



SureQuest Systems, Inc.  
3330 Keller Springs, Ste 205  
Carrollton, TX 75006  
[sales@surequest.com](mailto:sales@surequest.com)  
Fax: 972-238-7733

Sysco Canada, Inc.  
21 Four Seasons Place, Suite 400  
Toronto, Ontario M9B 6J8 Canada  
[hurley.karen@corp.sysco.ca](mailto:hurley.karen@corp.sysco.ca)  
Fax: 905-696-4714

Contact information provided on  
the attached Order Form

Or to such other address as may be given by such person to the other parties hereto in writing from time to time. All such Notices shall be deemed to have been received when delivered or transmitted, or, if mailed, 48 hours after 12:01 a.m. on the day following the day of the mailing thereof. If any Notice shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such Notice shall be deemed to have been received 5 days after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted all Notices shall be given by personal delivery or by facsimile transmission.

12.2 This Agreement shall not be assigned by either party without the advance written consent of the other, provided that either party may assign its rights and delegate its duties hereunder to a successor to all or a substantial portion of its business. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

12.3 After expiration or termination of this Agreement, all provisions relating to any payments shall survive until completion of required payments. In addition to those provisions that specifically provide for survival beyond expiration or termination, all provisions regarding warranty, liability and limits thereon, and confidentiality and/or protection of proprietary rights and trade secrets shall survive.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the State laws of Delaware and the federal laws of the United States of America applicable therein and each of the parties hereto agrees irrevocably to conform to the non-exclusive jurisdiction of the Courts of such State.

12.5 Taxes. The Client shall be responsible for payment of all taxes associated with this Agreement including, but not limited to, personal property taxes, sales taxes, use taxes, import taxes, taxes on telecommunication services, information services, data processing services or similar governmental charges that may be assessed by any jurisdiction, whether based on gross revenue or delivery of products or services.

12.6 Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to all of the matters herein and its execution has not been induced by, nor do any of the parties rely upon or regard as material, any representations or writings whatever not incorporated herein and made a part hereof and may not be amended or modified in any respect except by written instrument signed by the parties hereto. Any Order Forms referred to herein are incorporated herein by reference and form part of the Agreement.

12.7 Additional Considerations. The parties shall sign such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

12.8 Counterparts. This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

12.9 Time of the Essence. Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

12.10 Headings for Convenience Only. The division of this Agreement into articles and sections is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

12.11 Severability. If any Article, Section or any portion of any Section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid Article, Section or portion thereof shall be severed from the remainder of this Agreement.



12.12 Transmission. The parties hereto agree that this Agreement may be transmitted by facsimile, email or such similar device and that the reproduction of signatures by facsimile or such similar device will be treated as binding as if originals and each party hereto undertakes to provide each and every other party hereto with a copy of the Agreement bearing original signatures forthwith upon demand.



**Signatures Page:**

<b>The Corporation of the City of London</b>
By:
Name: Matt Brown
Title: Mayor
Date:
I have authority to bind the corporation

<b>The Corporation of the City of London</b>
By:
Name: Catharine Saunders
Title: City Clerk
Date:
I have authority to bind the corporation

<b>SureQuest Systems, Inc.</b>
By:
Name: Richard Barnes
Title: General Manager
Date:
I have authority to bind the corporation

<b>Sysco Canada, Inc.</b>
By:
Name: Wendy Brancato-Neuman, RD
Title RVP Healthcare Sales & Marketing
Date:
I have authority to bind the corporation



## SCHEDULE 3

### Computer Environment Recommendations for SureQuest Software Solutions

Workstations for OnDemand browser 'cloud' based applications are similar to any other desktop PCs. Workstations must be compatible with standard 'Browser' applications. **Thin Client (Dumb Terminals) are NOT supported (installed software version).**

- **Internet Access:** In order to maintain optimal performance levels, we recommend the computer should have a high speed Internet connection of 5 Mbps download and 3 Mbps upload Internet Access. Minimum Internet connection requirements should be at least 3 Mbps download and .75 Mbps upload.

**Note:** As "OnDemand" applications proliferate, more and more PCs or Workstations are sharing the internet connection within facilities. As each workstation connects, the available shared bandwidth diminishes!

- **Browser:** Internet Explorer® 11 is the official supported internet browser for SureQuest software solution applications. *Other IE versions (10 or lower) and other browsers (as Chrome™, Safari®, etc.) may work successfully with our software and may even give 'better' performance in some functionality areas. However, if you cannot print, work is not saving, or the software is not functioning properly, it is likely a browser issue; please try IE 11.*
- **Must have a supported version of Windows® Operating Systems with all updates and patches applied (Window 7 or Windows 8).**
- **Processor:** Pentium (or equivalent) Processor with 2 GHz speed or faster. Celeron Processors are not recommended.
- **Zoom connectivity ability:** Installation of plug-in application to be installed for any training or support purposes.
- **RAM (Memory) 2 GB:** Minimum memory requirement to provide adequate screen response rates; increased memory will greatly improve the user experience.
- Should have an "Active Virus Protection" program installed and maintained.
- Must have a supported **PDF Reader** application installed. **Adobe® PDF Reader** version 11 or higher is the official supported product for SureQuest applications.
- **Printers:** The system is designed to produce printed output in both letter and legal size formats.  
A LaserJet with 8 to 16 MB of internal memory is recommended to handle the high volume printing required. InkJet, DeskJet or PhotoSmart printers are not supported and may not stand up to the workload. These printers, although inexpensive, are not as durable as a Laser printer and the cost of operation (Ink) is much more expensive in those models. Please call Support before making a purchase.
- Contact **MenuStream Solutions** at 866-559-5206 or [sales@menustreams.com](mailto:sales@menustreams.com) on your path to paperless digital touch screen display for hardware specifications.

*Maintaining state-of-the-art technology may require periodic changes in optimal specifications. As software is developed and maintained it **must remain** compatible with the current hardware and operating systems supported by the manufacturer(s). SureQuest recommends Windows® operating systems. Since hardware is expensive, we take a conservative approach towards adopting new operating systems as they come to market. We reserve the right and the time to test our software on newly released operating platforms before we offer to support them. As with any software product, check with the vendor for compatibility before upgrading hardware.*

*Last updated Aug2016.*

## SCHEDULE 4

### Training Policy and Procedure - Rescheduling & Cancellation of Internet Training

The SureQuest training policy:

1. Ensures that all parties maximize the use of valuable resources
2. Supports efforts to keep Training and Implementation values high and costs low
3. Keeps Implementation schedules on track
4. Ensures that the appropriate Training resource is available to maximize Customer results

#### **Online (Zoom) Training Session Rescheduling Procedure**

1. Rescheduling of a scheduled online Training session may be made with no penalty provided that SureQuest receives written notice of such change no less than twenty-four (24) business hours prior to the start of the scheduled Training. Notification should be sent via email to [training@surequest.com](mailto:training@surequest.com), include the contact information for the individual responsible for rescheduling, and be copied to all affected persons within the Customer's organization.
2. Failure to notify SureQuest of a cancellation or postponement of a scheduled online Training session twenty-four (24) business hours prior to the start time of the scheduled Training will be deemed a "no-show". No-shows for confirmed Training sessions will be assessed 100% of the price of the scheduled online Training session.
3. In the event that the Customer has not joined the training session within 15 minutes of the start time of the session, the training session will be ended, the training will be deemed a "no-show", & the training will need to be rescheduled. The Customer will be assessed 100% of the price of the scheduled online training session.
4. If SureQuest should have to cancel a Training session less than twenty-four (24) hours prior to the start time of the scheduled Training, the Customer will receive complimentary Training equal in time to the scheduled session.

#### **Computer Environment**

1. SureQuest utilizes Zoom for remote support & training. It is the User's responsibility to ensure your computer is able to connect via Zoom. To check if you are able to connect with Zoom you may call Support to complete a test session.

You can contact SureQuest Support at: [support@surequest.com](mailto:support@surequest.com)

Canada: Call 1.866.887.4977 Option 2

US: Call 1.800.383.1999 Option 2

2. Training sessions that are unable to proceed due to the above-mentioned Computer Environment issues not being completed will be assessed 100% of the price of the scheduled online training session.

Thank you,  
SureQuest Training Services



## SCHEDULE 5

### **BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”)** is entered into as of \_\_\_\_\_ (Date) by and between SureQuest Systems Inc., a Texas corporation (“**SureQuest**”) and The Corporation of the City of London, (**Client**);

WHEREAS, the provisions of the 1996 Health Insurance Portability and Accountability Act as set forth at 42 U.S.C. Section 1320d (“HIPAA”, the HIPAA privacy regulations promulgated there under at 45 CFR Part 160 et seq. and the HIPAA security regulations promulgated there under at 45 CFR Part 160 et seq. require “covered entities” to take certain steps to protect patient privacy and patient health information; and

WHEREAS, one of the steps mandated by HIPAA and its implementing regulations requires certain parties who exchange or share Protected Health Information (as hereinafter defined) to enter into written agreements regarding the procedures to be used to safeguard such Protected Health Information; and

WHEREAS, the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005, provides that certain requirements of the HITECH Act shall be applicable to business associates and shall be incorporated into the business associate agreement between covered entities and business associates;

WHEREAS, the client is a Health Information Custodian as defined by the Personal Health Information Protection Act of 2004, (PHIPA) and is required to protect Personal Health Information as defined; and

WHEREAS, The Freedom of Information and Protection of Privacy Act (FIPPA), more commonly known as “Freedom of Information” (FOI) as amended on January 1, 2012. Business Associate will be bound by the Freedom of Information and Protection of Privacy Act (Ontario) (“FIPPA”); and

WHEREAS, The Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), as amended on January 1, 2012. Business Associate will be bound by the Municipal Freedom of Information and Protection of Privacy Act (Ontario) (“MFIPPA”).

As a result, records in the custody or control of the Client including records related to activity in relation to the Business Associate will be subject to disclosure obligations in accordance with that Act.



MFIPPA provides individuals with a right of access to information under the control of an institution (**freedom of information**) that is limited by exclusions (records that are not covered by the Act) and certain mandatory or discretionary exemptions (the content of some records must or may be withheld from the requestor. The Client agrees to maintain confidentiality except as otherwise required by law or by order of a court or tribunal.

THEREFORE, the parties hereby agree as follows:

## RECITALS

Client and SureQuest have entered into an agreement ("**Agreement**") through which SureQuest provides on behalf of Client the services described in the Agreement ("**Services**") and, in the course of providing the Services, SureQuest may obtain and/or maintain, use or disclose Protected Health Information (as defined below) provided to it by Client; and

The parties desire to enter into this Agreement in compliance with the business associate agreement requirements of HIPAA and the requirements of PHIPA and MFIPPA;

**NOW, THEREFORE**, the parties do hereby agree as follows:

**1. Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning of those terms in the Privacy Rule and HITECH Act and PHIPA and MFIPPA.

**a. "HIPAA"** shall mean the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations as defined and identified above. SureQuest Systems Inc. Business Associate Agreement 2

**b. "PHIPA"** shall mean the Personal Health Information Protection Act of 2004, SO 2004, c3, Sch A, as amended, a statute of the Province of Ontario.

**c. "Patient"** shall mean an individual who is participating in, has participated in, or has been the recipient of, any program or service of Client, including, without limitation, its clinical and health educational programs and services.

**d. "Patient Information"** shall mean (a) PHI and (b) information relating to an individual who is or has been a Patient of Client that Client has determined contains no information that identifies, or can reasonably be linked to the identity of, individuals who are or have been Patients of Client, including, without limitation, information in raw, aggregated, stripped or masked form.



e. **“Breach”** shall have the same meaning as the term ‘breach’ in 45 CFR § 164.402 and Section 13400 (1)(a) of the HITECH Act.

f. **“Data Aggregation”** shall have the same meaning as the term ‘data aggregation’ in 45 CFR § 164.501

g. **“Designated Record Set”** shall have the same meaning as the term ‘designated record set’ in 45 CFR § 164.501.

h. **“Electronic Protected Health Information”** shall have the same meaning as the term ‘electronic protected health information in 45 CFR § 164.103 and shall include, without limitation, any Electronic Protected Health Information provided by Client or received by SureQuest on behalf of Client.

i. **“Individual”** shall have the same meaning as the term ‘individual’ in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

j. **“MFIPPA”** shall mean the Municipal Freedom of Information and Protection of Privacy Act, RSO 1990, cM-56, as amended, a statute of the Province of Ontario.

k. **“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.

l. **“Protected Health Information (PHI)”** shall have the same meaning as the term ‘protected health information in 45 CFR § 164.501 and as defined in Section 4 of PHIPA and Section 2 of MFIPPA, limited to the information created or received by Client or SureQuest.

m. **“Required by Law”** shall have the same meaning as the term ‘required by law’ in the Privacy Rule, including but not limited to 45 CFR § 164.501, and any additional requirements created under the HITECH Act, PHIPA or MFIPPA.

n. **“Security Incident”** shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system as provided in 45 CFR § 164.304.SureQuest Systems Inc. Business Associate Agreement 3

o. **“Security Rule”** shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 et seq.

p. **“Underlying Agreement”** shall mean all of the written or oral agreements by and between Client and SureQuest whether now existing or hereafter entered into, for the purpose of providing software and services.

q. **“Unsecured Protected Health Information”** shall have the same definition that the Secretary of the Department of Health and Human Services gives them in guidance issued pursuant to Section 13402 of the HITECH Act.

## 2. Confidentiality Obligations.

r. **Obligations of Client.** Client agrees that it:

(a) Has included, and will include, in its Notice of Privacy Practices required by HIPAA statements sufficient to inform Patients that it may disclose PHI for health care operations and treatment purposes.

(b) Has obtained, and will obtain, from individuals such consents, authorizations and other permissions as are necessary or required by applicable laws (including without limitation, HIPAA).

(c) Will promptly notify SureQuest in writing of any restrictions on the use and disclosure of PHI about individuals that the Client has agreed to that may affect SureQuest’s ability to provide the Services or to perform its obligations under this Agreement.

(d) Will promptly notify SureQuest in writing of any change in, or revocation of, permission by an individual to use or disclose PHI, if such change or revocation may affect SureQuest’s ability to provide the Services or to perform its obligations under this Agreement.

s. **Obligations of SureQuest.** SureQuest acknowledges and agrees that it is considered a “Business Associate” as defined by HIPAA. As a Business Associate of Client, SureQuest shall, in addition to complying with the other terms and conditions of this Agreement, comply with the HIPAA-required provisions set forth in this Section and any provisions of applicable state law that are more restrictive. SureQuest further acknowledges and agrees that it is a “Health Information Custodian” as defined in Section 3 of PHIPA with respect to any PHI received from the Client.

(a) **Disclosure.** SureQuest shall not use or further disclose PHI other than as permitted or required by this Agreement, or as required by law.

(b) **Safeguards.** SureQuest shall use safeguards that are appropriate and sufficient to prevent use or disclosure of PHI other than uses and disclosures permitted or required by this Agreement and to protect the confidentiality, integrity and availability of electronic PHI.

(c) **Reporting.** SureQuest shall report to Client any attempted or successful access, use, disclosure, modification or destruction of PHI not permitted or required by this Agreement of which it becomes aware.



(d) Mitigation. SureQuest shall, to the extent practicable, mitigate any harmful effect that is known to SureQuest of a use or disclosure of PHI by SureQuest in violation of this Agreement.

(e) Agents and Subcontractors. SureQuest shall ensure that any agents and subcontractors to whom it provides PHI as permitted or required under this Agreement agree, in writing, prior to the disclosure of such PHI, to the same restrictions and conditions that apply to SureQuest with respect to such PHI, including without limitation the provisions of this Section 2.

(f) Designated Record Set. SureQuest hereby represents that it does not create, collect, compile or maintain Protected Health Information in any form in connection with the Services provided pursuant to this Agreement, except that SureQuest may, at Client's request, obtain an exact duplicate of the Protected Health Information maintained by Client for the time required to perform the Services. If SureQuest obtains an exact duplicate of the Protected Health Information, SureQuest represents that SureQuest will not amend, supplement, delete any part of, revise or otherwise alter the Protected Health Information except as requested by Client to the extent necessary to perform the Services and conform to the designated record set maintained by Client. Any Designated Record Set containing PHI shall be destroyed by SureQuest upon completion of performing the Services required under the Agreement.

(g) Inquiries. If any Patient submits to SureQuest an oral or written request to access or copy his or her PHI, to amend his or her PHI, or to receive an accounting of the uses and disclosures of his or her PHI, SureQuest shall, within ten business days, notify Client of the details of such request. Following receipt of such notice, Client shall be responsible for responding to such request. To assist Client in handling such requests, SureQuest shall at all times make any and all PHI in its possession available to Client within ten business days of Client's request. If SureQuest receives any requests from anyone other than a Patient with respect to Patient Information, SureQuest will forward such request to Client, and Client shall be responsible for responding to such request.

(h) Audit. SureQuest shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by SureQuest on behalf of, Client available to the Secretary of Health and Human Services or to Client, upon request, for purposes of determining and facilitating Client's compliance with HIPAA, PHIPA and MFIPPA.

(i) Termination for Failure to Comply. Client may terminate this Agreement if Client determines that SureQuest has materially breached this Section 2. Client shall provide SureQuest with written notice of the existence of an alleged breach. Client, at Client's option, shall then elect either to (i) take steps to cure the alleged breach; or (ii) afford SureQuest at least 30 days in which to cure the alleged breach. Client shall advise SureQuest in its notice of alleged breach whether it selects option (i) or (ii). If Client selects option (ii) and SureQuest cures the alleged breach within 30 days of its receipt of such notice, this Agreement shall remain in force. SureQuest Systems Inc. If Client selects option (ii) and SureQuest fails to cure the alleged breach within such 30-



day period, this Agreement shall terminate at the end of that 30-day period. If Client selects option (i) and cures the alleged breach, Client may elect, but is not required, to keep this Agreement in force. If Client selects option (i) and is unable to cure the alleged breach within the 30-day period following the date of notice, this Agreement shall terminate at the end of that 30-day period.

(j) Automatic Termination. This Agreement will terminate automatically upon the termination of the Agreement.

(k) Termination for Change of Status. SureQuest may terminate this Agreement if facts, circumstances or law change in such a way as to cause SureQuest no longer to be a business associate of Client. If SureQuest terminates this Agreement pursuant to this subsection, it shall give Client written notice of termination that includes the reasons why SureQuest is no longer the Client's business associate.

(l) Duties upon Termination. SureQuest agrees that it shall either destroy all Client PHI and maintain proof of such destruction or, if feasible, return the PHI to Client.

(m) Record Keeping. SureQuest agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section 2.

(n) Notification. SureQuest agrees to notify Client immediately if it becomes aware of any unauthorized disclosure or use of the Patient Information.

**t. Survival**. The terms of Section 2 shall survive the termination or expiration of this Agreement.

**2. Required Disclosure**. If SureQuest is confronted with legal action to disclose any portion of the Patient Information, SureQuest shall promptly notify and assist Client (at Client's expense) in obtaining a protective order or other similar order, and shall thereafter disclose only the minimum amount of the Patient Information that is required to be disclosed in order to comply with the legal action, whether or not a protective order or other order has been obtained.

**3. Amendment**. The parties shall amend this Agreement from time to time by mutual written agreement in order to keep this Agreement consistent with any changes made to the HIPAA, PHIPA or MFIPPA laws or regulations in effect as of the date of this Agreement and with any new regulations promulgated under HIPAA, PHIPA or MFIPPA. Either party may terminate the Agreement in whole or in part if the parties are unable to agree to such changes by the compliance date for such new or revised HIPAA, PHIPA or MFIPPA laws or regulations.

**4. No Third Party Benefit**. This Agreement is for the sole benefit of the Parties hereto and shall not confer or be deemed to confer any rights, benefits or claims upon any person or entity not a Party to this Agreement.



**5. Entire Agreement; Controlling Language.** This Agreement, including any appendices, schedules or other exhibits now or subsequently attached hereto, and the Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof. To the extent that the terms of this Agreement conflict with the provisions of the Agreement, the terms of this Agreement shall control.

**6. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

**SureQuest Systems, Inc.**

**The Corporation of the City of London**

By:

By:

\_\_\_\_\_  
Richard Barnes, General Manager

\_\_\_\_\_  
Matt Brown, Mayor

\_\_\_\_\_  
Date

By:

\_\_\_\_\_  
Catharine Saunders, City Clerk

\_\_\_\_\_  
Date

