

Data Processing Services Agreement

THIS AGREEMENT is entered into and executed on the date set forth below, by and between Indigent Healthcare Solutions, Ltd. ("IHS"), having offices located at 2040 North Loop 336, Suite 304, Conroe, Texas 77304, and Webb County ("County") with administrative offices located at Webb County Courthouse, 1000 Houston Street, Laredo, Texas 78040:

Check one:	<input type="checkbox"/> Onsite Installation	<input checked="" type="checkbox"/> Hosted Installation
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WHEREAS, the Commissioners Court of the County has determined that a public necessity exists to preserve, store, process, retrieve and organize certain data and information of the County in order to prevent material losses to the County and to comply with the terms and conditions of the Texas Indigent Health Care and Treatment Act, Texas Health & Safety Code, Subtitle C, Chapter 61 (the "Act");

WHEREAS the Commissioners Court of the County has determined that it needs to contract for data processing services; and

WHEREAS, the Commissioners Court of the County has determined that such data processing services would be best provided by IHS; and

WHEREAS, IHS is willing to enter into this agreement upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises stated above and of the mutual covenants, agreements, and promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. AGREEMENT TO PROVIDE SERVICES

The County agrees to retain IHS as an independent contractor, and IHS agrees to provide service to the County upon the terms and conditions hereinafter stated.

2. TERM

This Agreement shall have an Initial Term of Five (5) years commencing on April 1, 2011, and continuing to and including April 1, 2016.

This Agreement shall automatically renew for successive Renewal Terms of term equal to the Initial Term unless either party notifies the other in writing no later than ninety (90) days before the end of the Initial Term or the then-current Renewal Term, as applicable, either (a) that the Agreement shall terminate at the end of the said applicable Term instead of being renewed; or (b) requesting a Renewal Term of lesser duration, which request shall be subject to the agreement of the other party; provided, however, that the total duration of this Agreement shall not exceed twenty-five (25) years as provided by Texas Local Government Code section 271.009, or such other total term as permitted from time to time under applicable law.

The License Agreement shall terminate, without necessity of notice to County, upon termination or expiration of this Agreement, unless otherwise expressly agreed in writing by IHS.

If this Agreement is terminated or invalidated pursuant to Section 6 (except as otherwise expressly provided in this Agreement for termination under such section) or by County's breach, including but not limited to breach of the terms of any software or other license applicable to equipment or software used or provided by IHS in providing the Service, or invalidated by operation of law or lawful order, IHS shall have no duty to assist County as described by Section 3.

In the event of termination for any reason prior to the Expiration Date of the term hereof or any renewals thereof, IHS shall have the right immediately to reclaim possession of any of its property in the possession or under the control of the County (or any of its employees, officers, elected officials, agents or other representatives), including IHS programs (including but not limited to the Programs specifically licensed in the Non-Exclusive License Agreement, **Attachment B** hereto ("License Agreement")), data, and related documentation or other support materials, and County shall have a duty to immediately return all such items and any and all copies of such items in its possession or under its control to IHS, and shall immediately refrain from using same; and in addition County promptly shall identify to IHS in writing any persons or entities, including County's employees, officers, elected officials, agents or representatives as well as third parties, that the County or any of its employees, officers, elected officials, agents or representatives know or reasonably suspect still possess or are using in whole or part any such IHS Property.

6. SUBJECT TO APPROPRIATION

This Agreement shall continue in force as set forth in Paragraph 2 above, subject only to the following limitation: The obligation of the County to make payments under this Agreement is subject to annual appropriation by the County in its budget of funds to make such payments.

In the event funds for this Agreement are or become unavailable due to non-appropriation, this Agreement will thereupon terminate without penalty to or further obligation hereunder of either party, as of the last date for which funds have been appropriated; provided, that the County will remain responsible for costs and fees accrued hereunder for periods prior to such non-appropriation termination; and provided, further, that any assistance provided to County by IHS in the transferal of County data, including but not limited to any conversion or formatting of data, shall be provided by IHS under the provisions of Section 3, and County's obligation there under to pay for such services shall not be excused by reason of the non-appropriation of funds for the Agreement as a whole.

County certifies that it has available funds for payment of this Agreement during the initial fiscal year of the County in the Initial Term hereof. Further, County agrees that it will notify IHS at least ninety (90) days prior to the end of its fiscal year if it does not intend to make such appropriation for the coming fiscal year. If this Agreement is not terminated pursuant to this section, then on or before ten (10) days before the beginning of each County fiscal year during the applicable term hereof, the County shall provide written certification that adequate funds have been appropriated by the County for the payment in full required under this Agreement for such fiscal year.

7. SERVICES

During the Initial Term or any Renewal Term hereof, IHS shall provide data processing services to the County and its various specified departments, as described in **Attachment A** hereto ("Scope of Services and Schedule of Equipment") (the "Services"). IHS shall render the Services to the County as may be reasonably requested from time to time by the County. The Services will be provided either by utilizing equipment specified in **Attachment A** that is installed and operated by IHS on the premises of the County, as contemplated below in this Section 7 and in Section 16, or by Hosted Services based on servers located at an IHS site.

The County has the right to permit access and use of the Program(s) by authorized County employees, up to the User Number specified in **Attachment A** hereto; *provided*, that no more than the Concurrent User Number may access or use the Program(s) at any given time. The Client shall assign a unique User Identification Number to each

provider or method (such as a virtual private network), and for providing and maintaining suitable internal local area networks and other infrastructure suitable to achieve such Internet access from the workstations or other locations from which the County will access the Hosted Services.

The County is responsible for all costs related to achieving such Internet access to the Hosted Services server(s), including but not limited to any costs of equipment, equipment and software installation and maintenance required to achieve such Internet access, and the costs of service by its ISP or other means of Internet access. The ISP (or other method of Internet access) must provide reliable Internet access, with the minimum performance criteria identified in **Attachment A**. The County shall identify its proposed ISP (or other method of Internet access) and provide appropriate supporting detail and technical specifications about the ISP (or other method of access) service to IHS for approval, the giving or denying of which shall be based on IHS's best professional judgment. If, in IHS's sole judgment, the County's proposed ISP (or other method of Internet access) has capabilities inadequate to permit appropriately reliable, accurate and fast access to the Hosted Services, or if an ISP (or other method) used by the County, even if previously approved by IHS, has provided inadequate or unreliable access, on written request by IHS, the County agrees promptly to replace the ISP (or other method) with another having suitable capability and performance record, subject to IHS's approval.

If, having elected Hosted Services against IHS's advice to do so based on IHS's assessment that available ISPs (or other methods) will not provide the County with adequate access to Hosted Services, or if available ISPs (and other methods) lack or have shown by performance to lack ability to provide adequate and reliable access to Hosted Services, IHS may request in writing that the County convert to an Onsite Installation; if the County elects not to do so, IHS may at its sole discretion terminate this Agreement without penalty or further obligation to the County, other than the obligation to return the County's data to it and to assist the County with data conversion specified in Section 3. Conversion to an Onsite Installation, if elected by the County will be at the County's expense, with costs of IHS-provided equipment (including Onsite server(s)) and Onsite Initial Installation at County expense, at IHS's then-prevailing rates for labor and equipment, and including per diem and reasonable travel expenses for any IHS personnel visits to the new site.

8. SPECIAL SERVICES

IHS will from time to time provide the County with such special services or supplies outside the stated scope of the Services but related thereto as may reasonably be requested or approved by the County, and for which special services funds have been appropriated, including but not limited to: special data entry services, such as conversion, program and test data keypunching, and other data entry; computer runs; or industrial or systems engineering services; provided, that the County and IHS agree upon the fees and costs therefore, that the County approves, in writing, payment for such special services, and certifies in writing that appropriated funds are available to pay for such special services. Special services shall include conversion, formatting or other handling of data to be maintained or utilized by IHS under this Agreement, whether such data is provided to IHS by County or on County's behalf by a previous or existing third-party County service provider, as may be reasonable or necessary.

For any custom programming (*i.e.*, any programming or other services not identified in Attachment A) that is requested by County and which IHS agrees to provide, IHS shall provide County an estimate of the time and materials, and any other anticipated costs and expenses (such as travel), likely to be required to accomplish the requested custom programming, based on IHS' then-prevailing rates for such custom programming services. County shall have the option thereafter to have the custom programming performed. Upon County providing a written certification that appropriated funds are available from current sources to pay for such custom programming services, IHS shall perform such services. IHS shall bill County, and County agrees to pay, for the actual time, materials and other costs and expenses incurred in performing the custom programming, at IHS' then-prevailing rates.

The County is responsible that its networks, databases and other records; its workstations or other computers or equipment of any kind used by County staff or others to access, send, receive, print, write or record, manipulate, store, backup (see section 17.C), restore (see section 17.C), or otherwise use (collectively hereinafter "Access") individually identifiable health information ("IIHI"; also referred to as protected health information, "PHI"); its security and security procedures and controls, and Access and authorization procedures and controls; and any other

12. TERMINATION

Except as otherwise provided herein for immediate termination by IHS, if the County defaults in any required payments to IHS, or fails to perform any other material obligation hereunder, IHS shall notify the County in writing of such default, including a brief statement of the facts constituting the claimed default. If the County does not cause such default to be remedied within a reasonable amount of time after receipt of such written notice, IHS shall have the right to terminate this Agreement with no further written notice to County and without penalty to IHS. Such termination for default will not relieve the County of its obligation to pay all fees and costs accrued or otherwise due and payable under this Agreement as of the date of such termination; and shall not operate to waive or diminish any other rights of IHS hereunder, or to obtain such other relief at law or in equity to which it may be entitled.

If IHS defaults in its obligations hereunder, County shall notify IHS in writing of such claimed default, including a statement of the facts asserted as the basis for such claimed default. IHS shall have a reasonable time after receipt of such written notice to review the County's claim and respond to County with an estimate of the time required to cure the claimed default. IHS shall then cause such default to be remedied within the estimated time. If timely cure is not made by IHS, the County shall have the right by further written notice to IHS to terminate this Agreement; provided, that such termination shall not operate to excuse County of payment for all costs and fees accrued hereunder prior to such termination. This agreement may be cancelled anytime after the expiration of initial 2 year period described in paragraph two of this agreement with 90 day notice.

13. TIME REQUIREMENTS

IHS is not required to devote its efforts exclusively to the performance of this Agreement, and IHS shall not be prohibited from engaging in other employment or transacting other business related to its field of endeavor and expertise.

14. INDEPENDENT CONTRACTOR

The parties contemplate and intend that the relationship of IHS to County at all times during the term of this Agreement and any extensions thereof shall be that of an independent contractor and not an employee of the County; and nothing in this Agreement or any license, document or attachment made a part hereof, nor any oral agreement, discussion or representation between the parties, shall be construed or applied to create any relationship between the parties other than that of IHS as an independent contractor. IHS shall provide its own personnel for the completion of its services hereunder and agrees to properly insure them. Other than as may be expressly provided herein to the contrary, IHS is and shall be the sole and exclusive owner of any and all work product or intellectual property it may create or cause to be created for or in relation to its provision of the Services to the County.

15. NOTICE

Any notice required to be given hereunder shall be in writing, and shall be deemed delivered (i) three (3) business days after deposit in the U.S. Mail, postage prepaid, sent by registered mail, (ii) one (1) business day after being sent for overnight delivery by a reputable commercial courier, or (iii) upon hand delivery or receipt of facsimile transmission, to the address or facsimile number designated in this Agreement and to the attention of the person named herein as designated for receipt of notice by the receiving party, or to such other address, facsimile number or person as the receiving party may designate in writing to the sending party from time to time.

If to IHS:

INDIGENT HEALTHCARE SOLUTIONS
2040 Loop 336 - Suite 304
Conroe, Texas 77304

If to County:

Attn: Webb County Judge
Webb County Courthouse
PO Box 29
Laredo, TX 78042

properly stored and maintained; and that the rotation of weekly and monthly tapes occurs in proper order and that stored backup data is not inadvertently or prematurely over-written or erased. The County will be responsible for any costs associated with the acquisition, installation or operation of backup equipment or software, and for any costs of restoring data. *IHS will not be responsible or liable in any way for loss of data or compromise of data quality or accuracy caused in whole or part by the failure of the County properly to perform backup or for the failure of integrity of such backup data or tapes.*

For Hosted Services, IHS will be responsible to conduct daily and monthly backup of County data kept on the Hosted Services server(s), by means consistent with industry standards, or as may be otherwise specifically described in **Attachment A**.

- D. County shall cooperate fully with IHS in efforts by IHS to maintain any copyrights, trademarks or service marks, patents, trade secrets or other intellectual property or proprietary information in the Programs or other materials, equipment, software, or data provided or utilized by IHS in provision of the Services hereunder, including but not limited to directly assisting IHS as IHS may reasonably request, and in taking all actions and executing all documents necessary to the reasonable efforts of IHS to maintain and protect such intellectual property. Failure of County to provide such assistance shall constitute a material breach of this Agreement.
- E. Initial Installation of the Programs shall occur after an initial orientation of appropriate County personnel by IHS. IHS offers an initial orientation to County at its offices in Conroe, Texas, without additional charge. If County chooses to have the initial orientation at another location, it shall cooperate with IHS to schedule the orientation at a mutually convenient time and location, and County shall reimburse IHS for costs and expenses incurred by IHS personnel in travel to and from such other location, including without limitation, travel costs and expenses and reasonable per diem expenses, and shall pay IHS a reasonable fee, at IHS' then-prevailing rates for time (including travel) and materials, for such orientation services.
- F. IHS access to Onsite Installations. In order that IHS may provide remote support and maintenance for Onsite Installations, County shall be responsible for providing, at County's expense, suitable remote electronic access for IHS to the Programs, the server on which they are installed, and the applicable County network, including providing suitable access equipment as may be necessary, and any assistance that may be required from time to time to accomplish such access. For the purposes of this provision, unless otherwise expressly agreed by IHS in writing, "suitable remote electronic access" shall mean remote access using "suitable access equipment." and with the cooperation and assistance of County. The parties agree that a virtual private network ("VPN"), if available, would be the preferred method for such IHS remote electronic maintenance access because it would provide the currently most assured secure access considering HIPAA requirements and the confidential nature of health care data, including PHI. Thus, for the purposes of this provision, "suitable access equipment" shall mean, at a minimum, provision by County of a Web port, an FTP port, and a Telnet port, for the use of IHS, and, if practicable for County to provide, also a virtual private network accessible by IHS. If County fails or refuses for any reason to provide suitable remote electronic access to IHS including suitable access equipment, County agrees that it shall be responsible for paying, and shall pay, service fees and costs for any services provided by IHS that require on-site access by IHS, at IHS then-prevailing rates for time (including travel time) and materials, and including costs and expenses of travel for IHS personnel providing such services.
- G. Each year, IHS holds an annual Customer Advisory Committee meeting. All customers of record are invited and are strongly encouraged to attend. (Attendance is at the client's expense.) Software performance is discussed, new software features and/or enhancements are demonstrated, and clients are asked to identify any improvements, modifications, or enhancements they may desire. Based on the clients' interests and priorities of those in attendance, IHS identifies improvements, modifications and/or enhancements it will seek to make to the IHS Programs over the next year. Such improvements, modifications and/or enhancements will be provided in new software releases.

SOFTWARE OR OTHER INTELLECTUAL PROPERTY OR MATERIALS OF IHS OR ANY OF ITS SUPPLIERS BEING USED IN THE PROVISION OF THE SERVICE OR OTHERWISE LICENSED TO COUNTY BY IHS, AND SHALL TIMELY INITIATE THE REVIEW PROCESS OF THE TEXAS ATTORNEY GENERAL UNLESS EXPRESSLY RELEASED IN WRITING BY IHS FROM THIS OBLIGATION. In the event that disclosure is ultimately required, licensee shall provide, along with access to or any copies of such disclosed materials, a written notice to the recipient that the materials are owned by or licensed to IHS, and are protected by the federal Copyright Act; that recipient is not by virtue of disclosure under the TPIA thereby authorized to use, copy, or disseminate the materials without the express written consent of IHS; and that any unauthorized use, copying or dissemination may constitute a violation of federal copyright or other laws, and could therefore subject the recipient to civil or criminal penalties. THIS IS A MATERIAL OBLIGATION OF THE COUNTY, AND ANY FAILURE OF THE COUNTY TO COMPLY, FOR WHATEVER REASON, IS GROUNDS FOR IMMEDIATE TERMINATION BY IHS OF THIS AGREEMENT AND ANY ASSOCIATED LICENSES.

23. DISCLAIMER OF WARRANTIES; NO IMPLIED WARRANTIES

IHS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES NOT EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR WARRANTIES OF FITNESS OF USE FOR A PARTICULAR PURPOSE. IHS MAKES NO REPRESENTATIONS REGARDING THE PERFORMANCE OF OR FITNESS FOR USE FOR ANY PURPOSE OF ANY EQUIPMENT OR SOFTWARE EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT. NO ADVICE OR REPRESENTATIONS BY IHS OR IHS PERSONNEL SHALL CREATE ANY SUCH WARRANTY. IHS DOES NOT MAKE ANY WARRANTY THAT THE SERVICE WILL BE ACCURATE, UNINTERRUPTED OR ERROR-FREE; AND IN PARTICULAR DOES NOT WARRANT THAT ANY INFORMATION, DATA, SOFTWARE OR EQUIPMENT USED TO PROVIDE OR ACCESSIBLE THROUGH THE SERVICE WILL BE AT ALL TIMES FREE OF VIRUSES, WORMS, TROJAN HORSES OR OTHER HARMFUL COMPONENTS. COUNTY IS SOLELY RESPONSIBLE FOR THE ACCURACY OF ANY AND ALL DATA THAT IS THE SUBJECT MATTER OF THE SERVICES, AND IHS MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT SUCH DATA.

24. DISCLAIMER AND LIMITATION OF LIABILITY

NEITHER IHS NOR ANY OF ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES THAT RESULT OR ARISE FROM COUNTY'S USE OF THE SERVICE. THE COUNTY'S SOLE REMEDY FOR BREACH OF THIS AGREEMENT BY IHS SHALL BE TERMINATION AS PROVIDED IN SECTION 12 HEREOF.

25. FORCE MAJEURE

IHS shall not be responsible for performance hereunder, and its obligation to perform the Services shall be suspended, for the duration of any events of force majeure, including but not limited to: Acts of God including fire, explosion, storm and other weather events; cable or power outages, cable cuts or other loss of necessary connectivity, including failure of networks; failure or loss of any third party supplies, or termination or rescission of any third party licenses necessary for the provision of the Services; terrorism, vandalism, sabotage, theft of components, hacking or other interference with software or operating system or network operations, including worms, viruses, Trojan horses or other harmful agents, or interference with, alteration or destruction of County data; any action, law, order regulation, directive, or request of the United States government or of any state or local government, or of any agency, commission, court, regulatory body or other instrumentality of such government, or of any civil or military authority; war, national emergency or civil insurrection, riot or other civil disorder; strike, work stoppage or lockout; or any other event outside the control of IHS or its reasonable ability to have avoided or prevented; and such excuse by reason of force majeure shall last until IHS by the exercise of reasonable diligence might remove, avoid or otherwise cure such impediment.

26. NO WAIVER OF RIGHTS

No term or provision of this Agreement shall be deemed to be waived and no consent to any breach or default shall be deemed unless such waiver or consent be in writing signed by the party against which such waiver or consent is asserted; the terms of this Agreement shall not be deemed to be amended by any such waiver or consent unless in a

Memorandum Of Understanding

This Memorandum of Understanding (MOU) is by and between Indigent Healthcare Solutions, hereinafter called "IHS" and Webb County, hereinafter called "Client".

This MOU is intended to document that both parties intend to extend for an equal period of time and for equal cost considerations the following documents which are effective until April 1, 2016.

- Data Processing Services Agreement
- Attachment A To The Data Processing Services Agreement
- Attachment B Non Exclusive License Agreement
- Schedule A To Non Exclusive License Agreement
- Business Associate Agreement
- Addendum To The Data Processing Services Agreement For Red Book Codes
- CPT Addendum To The Data Processing Services Agreement
- Addendum A To The Data Processing Services Agreement
- Amendment To The Data Processing Services Agreement For Power Search Services

Such an extension is provided for in Section 2 "TERM" of the Data Processing Services Agreement. Upon execution of this MOU by both parties, the aforementioned documents shall be extended for a period of five (5) years beginning April 1, 2016 until April 1, 2021.


This MOU shall become effective when executed and except as modified herein, all of the Terms and Conditions of the listed agreements shall remain in full force and affect.

Client

Hon. Tano E. Tijerina
County Judge

_____, 2016

IHS



Robert Baird
President

2/12, 2016