

SOFTWARE SUBSCRIPTION SERVICE AGREEMENT

STATE OF TEXAS *

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF WEBB *

This Software Subscription Service Agreement (this "Agreement") is made as of the Effective Date of June 9th, 2020 by and between CAPLUCK, Inc. ("COMPANY" or "LICENSOR") and WEBB COUNTY COMMUNITY ACTION AGENCY

("SUBSCRIBER" or "LICENSEE"). COMPANY and SUBSCRIBER hereby agree that the following terms and conditions will apply to the services and software provided (Data Management System) by COMPANY to SUBSCRIBER.

WHEREAS, COMPANY provides certain software services via a website ("Website") to Designated Log In page provided by Company (the "Services"); and

WHEREAS, SUBSCRIBER desires to use the Services upon the terms contained herein.

THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

- 1.1. "Authorized Platform" means the computer or operating system, or both, on which Licensee is authorized to use the Software pursuant to this Agreement. The Authorized Platform, Windows Operating System with Internet Explorer.
- 1.2. "Authorized Site" means a location at which Licensee is authorized to use the Software. The Authorized Site is Agency Locations.
- 1.3. "Documentation" means all user manuals and other written material created by Licensor to describe the functionality or assist in the use of the Software.
- 1.4. "Licensee" means Agency and includes any employee, consultant, or contractor of Licensee, provided that the employee, consultant, or contractor is using the Software **in** the performance of his or her duties as an employee, consultant, or contractor of Licensee.
- 1.5. "License Fee" means the fee to be paid by Licensee to Licensor as consideration for the license granted under this Agreement and the right to use the Software and the Documentation.
- 1.6. "Licensor" means CAPLUCK Solutions, Inc., a/k/a CAP 60
- 1.7. "Software" means the computer program or programs marketed as "Data Management System" in object code form only, and the any Product Documentation. Software includes any updates, modification, bug fixes, updates, enhancements, or other modifications. It does not include any version of the Software that constitutes a separate product because of differences in function or features.

2. THE SERVICE

Subject to all terms and conditions of this Agreement, COMPANY will provide the SUBSCRIBER with the use of the Data Management System requested from COMPANY and as described in **Exhibit A, Webb County Request for Proposals (R.F.P. 2020-007) Client Tracking Management Services**, and as per **COMPANY annual subscription fees and necessary equipment/hardware fees, cost proposal and scope of work/services, as described on Exhibit B**. Solution to include, Client in-take, case management, human resources, volunteer tracking, front desk, admin, reporting and other standard modules presented on SUBSCRIBER RFP.

3. TERM

The initial term of this Agreement shall be FOUR YEARS (4 YRS.) the Effective Date (the "Initial Term"). Thereafter, this Agreement shall automatically renew for additional one (1) year terms ("Renewal Terms") unless Subscriber notifies Company in writing no later than 90 days prior to the expiration of the then current Term that it desires to terminate the Agreement (collectively, the Initial Term and any Renewal Terms constitute the "Term").

4. MAINTENANCE FEE

The combined total amount due over the term of the entire agreement is \$34,600.00, including added equipment fees w/discount. The yearly Total Annual Usage Fee shall be in the amount of \$8,600 per year, for years 1-3, and \$4,800 per year for year 4, plus additional necessary hardware and related equipment fees, less discounts, as set forth in Cap 60 Cost Proposal attached hereto as Exhibit B, made in response to Webb County R.F.P. 2020-007, and the amount of \$_____ is due upon execution of this Agreement.

5. BILLING PERIOD AND PAYMENT METHOD

COMPANY shall charge and collect subscription fees on an annual basis. An invoice will automatically be issued to a SUBSCRIBER at the beginning of this Agreement for the initial Total Annual Usage Fee and any Setup Fees. Invoices are billed in U.S. Dollars and payable by check or money order in U.S. Dollars drawn on a U.S. Bank. The SUBSCRIBER agrees to pay the Total Annual Usage Fee annually, for its account in accordance with the usage fee and billing terms in effect at the time the fees are due and payable. Invoice amounts are exclusive of all taxes, levies, or duties that may be imposed by taxing authorities having jurisdiction over the SUBSCRIBER's access location.

6. INVOICE ERRORS

The SUBSCRIBER must contact COMPANY in writing within 45 days of the date of an invoice claimed to reflect a billing error to be eligible to receive a credit or adjustment.

7. NON-PAYMENT

In the event the SUBSCRIBER account becomes more than 30 days overdue, COMPANY reserves the right to suspend the Service provided to the SUBSCRIBER and terminate this Agreement without any obligation and liability to SUBSCRIBER.

8. SERVICE ACCESS AND AVAILABILITY

The SUBSCRIBER shall be solely responsible for obtaining and maintaining all Users computer hardware, and communications equipment needed at the agency to access the Service.

9. SECURITY

SUBSCRIBER shall notify Company immediately of any unauthorized use of its account (including, if applicable, the passwords and accounts of each user accessing the Service by means of an account established by SUBSCRIBER, or any other breach of security, COMPANY will not be liable for any loss or damage arising from SUBSCRIBER'S failure to comply with these requirements.

10. PROPRIETARY SOFTWARE AND LICENSE

The COMPANY CAP60 Software is the valuable, confidential, and proprietary property of COMPANY. COMPANY shall retain exclusive title to this property, and all modifications, implementations, derivative works, upgrades, productization and subsequent releases, both during the term and after the termination of this Agreement. To the extent that SUBSCRIBER in any way contributes to the further development of the CAP60 Software, SUBSCRIBER hereby irrevocably assigns and/or agrees to assign all rights in any such contributions or further developments to COMPANY. Without limitation, SUBSCRIBER acknowledges and agrees that all patent rights, copyrights and trade secret rights in and to the CAP60 Software shall remain the exclusive property of COMPANY at all times, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SUBSCRIBER SHALL NOT, IN WHOLE OR IN PART, AT ANY TIME DURING THE TERM OF OR AFTER THE TERMINATION OF THIS AGREEMENT: (i) SELL, ASSIGN, LEASE, DISTRIBUTE, OR OTHER WISE TRANSFER THE CAP60 SOFTWARE TO ANY THIRD PARTY; (ii) COPY OR REPRODUCE THE CAP60 SOFTWARE IN ANY MANNER; (iii) DISCLOSE THE CAP60 SOFTWARE TO ANY PARTY, EXCEPT TO SUBSCRIBER'S EMPLOYEES AND CONTRACTORS WHO REQUIRE ACCESS TO THE CAP60 SOFTWARE FOR THE PURPOSES OF THIS AGREEMENT; (iv) ALLOW ANY CONTRACTOR TO ACCESS THE CAP60 SOFTWARE OTHER THAN WITHIN SUBSCRIBER'S LOCATION; (v) MODIFY, DISASSEMBLE, DECOMPILE, REVERSE ENGINEER OR ATTEMPT TO DISCOVER THE SOURCE CODE OR UNDERLYING ALGORITHMS OR TECHNOLOGY OF THE SOFTWARE OR TRANSLATE THE CAP60 SOFTWARE; (vi) USE THE SOFTWARE IN ANY SERVICE BUREAU OR TIMESHARE CAPACITY; OR (vii) ALLOW ANY PERSON OR ENTITY TO COMMIT ANY OF THE ACTIONS DESCRIBED IN (i) THROUGH (vi) ABOVE. SUBSCRIBER shall take appropriate action, by instruction, agreement, or otherwise, with respect to its employees and contractors permitted under this Agreement to have access to the CAP60 Software, to ensure that all of SUBSCRIBER's obligations under this Section shall be satisfied.

11. USE RESTRICTIONS

SUBSCRIBER may not use the Service for spamming, chain letters, junk mail or distribution lists to contact any person who has not given specific permission to be included in such list. SUBSCRIBER agree not to transmit, or permit SUBSCRIBER's employees to transmit, through the Service any unlawful, harassing, libelous, abusive, threatening, vulgar, obscene or otherwise objectionable material of any kind. SUBSCRIBER agree to only use the Service for purposes authorized herein, in compliance with all applicable laws including, without limitations, copyright, trademark, obscenity and defamation laws. Unlawful activities may include (without limit) storing, distributing, or transmitting any unlawful material, attempting to compromise the security of any networked account or site, or making direct threats or physical harm.

12. PROPRIETARY SOFTWARE AND LICENSE

The COMPANY CAP60 Software is the valuable, confidential, and proprietary property of COMPANY. COMPANY shall retain exclusive title to this property, and all modifications, implementations, derivative works, upgrades, productizations and subsequent releases, both during the term and after the termination of this Agreement. To the extent that SUBSCRIBER in any way contributes to the further development of the CAP60 Software, SUBSCRIBER hereby irrevocably assigns and/or agrees to assign all rights in any such contributions or further developments to COMPANY. Without limitation, SUBSCRIBER acknowledges and agrees that all patent rights, copyrights and trade secret rights in and to the CAP60 Software shall remain the exclusive property of COMPANY at all times, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SUBSCRIBER SHALL NOT, IN WHOLE OR IN PART, AT ANY TIME DURING THE TERM OF OR AFTER THE TERMINATION OF THIS AGREEMENT: (i) SELL, ASSIGN, LEASE, DISTRIBUTE, OR OTHER WISE TRANSFER THE CAP60 SOFTWARE TO ANY THIRD PARTY; (ii) COPY OR REPRODUCE THE CAP60 SOFTWARE IN ANY MANNER; (iii) DISCLOSE THE CAP60 SOFTWARE TO ANY PARTY, EXCEPT TO SUBSCRIBER'S EMPLOYEES AND CONTRACTORS WHO REQUIRE ACCESS TO THE CAP60 SOFTWARE FOR THE PURPOSES OF THIS AGREEMENT; (iv) ALLOW ANY CONTRACTOR TO ACCESS THE CAP60 SOFTWARE OTHER THAN WITHIN SUBSCRIBER'S LOCATION; (v) MODIFY, DISASSEMBLE, DECOMPILE, REVERSE ENGINEER, ATTEMPT TO DISCOVER THE SOURCE CODE OR UNDERLYING ALGORITHMS OR TECHNOLOGY OF THE SOFTWARE OR TRANSLATE THE CAP60 SOFTWARE; (vi) USE THE SOFTWARE IN ANY SERVICE BUREAU OR TIMESHARE CAPACITY; OR (vii) ALLOW ANY PERSON OR ENTITY TO COMMIT ANY OF THE ACTIONS DESCRIBED IN (i) THROUGH (vi) ABOVE. SUBSCRIBER shall take appropriate action, by instruction, agreement, or otherwise, with respect to its employees and contractors permitted under this Agreement to have access to the CAP60 Software, to ensure that all of SUBSCRIBER's obligations under this Section shall be satisfied.

12. TERMINATION OF SERVICE AGREEMENT

The SUBSCRIBER or COMPANY may terminate this Service Agreement by notifying the other party with a 90 day written notice before the beginning of the next annual

billing period. Upon termination of the Service Agreement for any reason, the SUBSCRIBER, and all users accessing the Service using the SUBSCRIBER account, will immediately be denied access to the Service. After termination, COMPANY will remove all data in the SUBSCRIBER account.

13. RIGHTS ON TERMINATION

Licensor has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Software. On termination all rights granted to Licensee under this Agreement cease and Licensee will promptly cease all use and reproduction of the Software and Documentation, and Licensee will promptly return all copies of the Software to Licensor or destroy all of Licensee's copies of the Software and so certify to Licensor in writing within fourteen (14) days of termination. All indemnity provisions set forth herein shall survive any termination of this Agreement, as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default. All client data can be available to client after the contact is terminated with no outstanding invoices. Data will be exported from CAP60 Data Base and transferred to client.

14. SUBSCRIBER SUPPORT

COMPANY, or its designee(s), shall provide Email or Telephone support during normal business hours (9:00am to 5:00pm Pacific Standard Time Zone) Monday-Friday, except on holidays.

15. SUBSCRIBER DATA

COMPANY warrants that all data inputted into the Service by the SUBSCRIBER (SUBSCRIBER Data), or its agents, is and shall remain the exclusive property of the SUBSCRIBER. The SUBSCRIBER acknowledges, and agrees, that SUBSCRIBER shall remain solely responsible for the accuracy, integrity, reliability, quality, and legality, of SUBSCRIBER Data, and COMPANY shall not be held accountable or liable for any correction, deletion, loss, destruction, or failure to store any such SUBSCRIBER Data. All SUBSCRIBER Data is considered confidential. COMPANY will not share, rent, sell, trade or otherwise disclose any personally identifiable information or SUBSCRIBER identifiable information.

16. SUBSCRIBER'S REPRESENTATIONS AND WARRANTIES

SUBSCRIBER represent and warrant to us that (a) SUBSCRIBER are at least 18 years old; (b) SUBSCRIBER have the right, power and authorization necessary to enter into and perform this Agreement; and (c) that SUBSCRIBER will obtain all necessary consents from the parents or guardians of children that may be required to comply with applicable law, rule or authority for use, collection, transmission and storage of SUBSCRIBER Data on the Internet.

17. RELATIONSHIP OF PARTIES

COMPANY, in providing the Services, is acting as an independent contractor and does not undertake by this Agreement or otherwise to perform any regulatory or contractual obligation of the SUBSCRIBER. COMPANY has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be performed by COMPANY under this Agreement.

18. DISCLAIMER OF WARRANTIES

SUBSCRIBER ACKNOWLEDGE AND AGREE THAT NONE OF COMPANY, ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (COLLECTIVELY, THE "COMPANY PARTIES") GUARANTEES THE TIMELINESS, ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY THE PRODUCTS OR SERVICES, OR THAT USE OF THE WEBSITE WILL BE UNINTERRUPTED, ERROR FREE OR VIRUS FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THIS WEBSITE AND THE TIMELINESS, USEFULNESS, ACCURACY OR COMPLETENESS OF THE PRODUCTS AND SERVICES IS ASSUMED SOLELY BY SUBSCRIBER. ALL OF THE COMPANY PARTIES IT HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, ENDORSEMENTS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS OR SERVICES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT or THIRD-PARTY RIGHTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL OF THE COMPANY PARTIES DISCLAIM ANY WARRANTIES WITH RESPECT TO ANY RESULTS THAT MAY BE OBTAINED FROM THE USE OF THIS WEBSITE, THE PRODUCTS OR SERVICES.

19. OWNERSHIP

COMPANY is the sole and exclusive owner of, the Software and Documentation and all Intellectual Property Rights therein. Except for the limited license granted herein the SUBSCRIBER acquires no rights therein.

20. LIMITATION OF LIABILITY

In the event of any Software is defective, Licensee's exclusive remedy shall be for Licensor to replace defective Software media; if Licensor is unable to replace the media within thirty (30) days of notification by Licensee of a defect, Licensee's sole remedy is to terminate this Agreement, at which time Licensor will refund any and all license or other fees paid by Licensee pursuant to this Agreement.

IN NO EVENT SHALL COMPANY TOTAL LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY THE SUBSCRIBER TO COMPANY. FOR THE SERVICE UNDER TEIIS SERVICE AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACT OF INJURY THAT GAVE RISE TO THE LIABILITY. NEITHER COMPANY NOR ITS LICENSORS SHALL BE LIABLE TO ANYONE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES OF ANY TYPE OR KIND

(INCLUDING LOSS OR INACCURACY OF DATA, REVENUE, OR PROFITS) ARISING OUT OF, OR IN CONNECTION WITH, THIS SERVICE OR THE INABILITY TO USE THE SERVICE, EVEN IF COMPANY, LLC HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

21. CONFIDENTIALITY

- 21.1 Licensee acknowledges that the Software and Documentation, and all information relating to the business and operations of the Licensor that Licensee learns or has learned during or prior to the term of this Agreement, are the valuable, confidential, and proprietary information of the Licensor. During the period this Agreement is in effect, and at all times afterwards, Licensee, and its employees, contractors, consultants, and agents, will: (a) safeguard the confidential information with the same degree of care that it uses to protect its own confidential information;
- (b) maintain the confidentiality of this information; (c) not use the information except as permitted under this Agreement; and (d) not disseminate, disclose, sell, publish, or otherwise make available the information to any third party without the prior written consent of Licensor.
- 21.2. Limitations on Confidentiality Restrictions. Section 22.1 does not apply to any information that: (a) is already lawfully in the receiving party's possession (unless received pursuant to a nondisclosure agreement); (b) is or becomes generally available to the public through no fault of the receiving party; (c) is disclosed to the receiving party by a third party who may transfer or disclose such information without restriction; (d) is required to be disclosed by the receiving party as a matter of law (provided that the receiving party will use all reasonable efforts to provide the disclosing party with prior notice of such disclosure and to obtain a protective order therefore); (e) is disclosed by the receiving party with the disclosing party's approval; and (f) is independently developed by the receiving party without any use of confidential information. In all cases, the receiving party will use all reasonable efforts to give the disclosing party ten (10) days' prior written notice of any disclosure of information under this agreement.

22. TEXAS ADMINISTRATIVE CODE

Chapter 5- Conflict-of-interest:

SUBSCRIBER Employees, executive directors, officers, and /or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from COMPANY. Any alterations, additions, or deletions to the terms of the contract which are required by changes in federal law and regulations or state statute are automatically incorporated into the contract without written amendment, and shall become effective on the date designated by such law and or regulation; and any other alterations, additions, or deletions to the terms of the contract shall be amended hereto in writing and executed by both parties to the contract.

23. GOVERNING LAW

This Agreement will be governed and construed in accordance with the laws of the State of Texas, and exclusive jurisdiction for any and all lawsuits regarding this agreement shall be held in Webb County, Texas, without giving effect to principles of conflict of

laws. Any dispute arising under this Agreement shall be resolved by mediation and litigation in the event that mediation is not agreed to.

24. SEVERABILITY; WAIVER

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

25. HEADINGS

Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.

27. NOTICE

Any notices provided pursuant to this Agreement shall be in writing.

28. ENTIRE AGREEMENT

This Agreement, including the Exhibits attached hereto, sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. It may be changed only by a writing signed by both parties. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless signed by both parties and attached hereto and/or embodied herein.

29. SURVIVAL

All provisions of this Agreement relating to proprietary rights, confidentiality and non-disclosure, indemnification and limitation of liability shall survive the completion of the Services or any termination of this Agreement.

30. NO PUBLICITY

SUBSCRIBER may not use COMPANY's name, or any trademark, service mark, trade name or logo of COMPANY without the prior written consent of COMPANY in each instance.

31. ADDITIONAL PROVISIONS:

Inconsistencies Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.

Confidentiality Any confidential information provided to or developed by Consultant in the performance of this Agreement shall be kept confidential, unless otherwise provided by law,

and shall not be made available to any individual or organization without the prior approval of **WEBB COUNTY**.

Headings The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.

Waiver The failure on the part of any party to exercise or to delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

Consequential Damages Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, will-full misconduct, negligent act or omission, or other wrongful act of either of them.

Counterparts This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.

Terminology and Definitions All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

Rule of Construction The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

IN WITNESS WHEREOF, the parties aforesaid have duly executed the foregoing instrument, or caused the same to be executed in duplicate originals on this ____ day of June, 2020.

**CAPLUCK, INC.,
D/B/A CAP 60**

By: _____
HAMID KOHAN, PRESIDENT

Date: June ____, 2020

WEBB COUNTY, TEXAS

TANO E. TIJERINA
WEBB COUNTY JUDGE

Date: June ____, 2020

ATTESTED:

MARGIE RAMIREZ-IBARRA
WEBB COUNTY CLERK

APPROVED AS TO FORM:

Ray Rodriguez, Asst. General Counsel
Webb County Civil Legal Division

**By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).*

*Passed and approved by the Webb County Commissioners Court on
April 14th, 2020; Item No. 19 (c)/Award of RFP 2020-007/Capluck Inc./Client Tracking/CAA.*

*Passed and approved by the Webb County Commissioners Court on
June 8th, 2020; Item No. () Approval of Capluck Inc./Software Subscription Agreement (RFP 2020-007.*