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WEBB COUNTY, TEXAS

By *KC* DEPUTY

NON-EXCLUSIVE LICENSE AGREEMENT

This Non-Exclusive License Agreement (“Agreement”) is by and between Indigent Healthcare Solutions (IHS) with offices at 2040 N. Loop 336, Suite 304, Conroe, Texas (“Company”), and Webb County, Texas, with offices at 1000 Houston Street, Laredo, Texas 78040 (“Licensee”). The Parties enter into this Agreement for designated Licensee’s Departments’ access to and use of Company software programs and related materials (“Programs”) for a designated data processing system of the Licensee (“System”) by specified Users, and for designated services to be provided by Company, according to the terms and conditions specified in this Agreement. This Agreement has an effective date of April 1, 2021.

1.0 DEFINITIONS

- 1.01 “**Programs**” include each software program identified in **Exhibit 1** (“Departments, Programs, and Users”) to this Agreement and associated documents, including but not limited to executable modules and subroutines, and user manuals and related documentation, in machine readable or printed form; and any and all enhancements, modifications, patches, upgrades, releases, developments, adaptations, and derivative works related thereto, no matter by whom developed.
- 1.02 “**Licensee**” means the Licensee governmental entity, including but not limited to the individual Licensee Departments specifically identified in **Exhibit 1** (“Departments and Users”) that are authorized by this Agreement to use one or more of the Programs and receive Company services.
- 1.03 “**Department**” means a particular specifically identifiable sub-unit of the Licensee governmental entity, for example, a distinct department, division or physical office of the Licensee; or an independently elected official, or a distinct department, division or physical office operating under that elected official and subject to that elected official’s supervision or authority.
- 1.04 “**Department Program**” means the specific Program(s) that a particular Licensee Department is authorized to use or access under this Agreement. A Department may be authorized to use more than one Program, as specified in **Exhibit 1**.
- 1.05 “**User**” means a particular individual person that is authorized to use or access a particular Department Program under this Agreement. “**User Number**” shall mean, if specified in **Exhibit 1**, the total number of authorized Users for which Licensee has the right to permit access and use of a particular Department Program, not to exceed the permitted number of Concurrent Users authorized. Licensee shall assign a unique User Identification Number and User Password to each authorized User and provide a list of all authorized User Identification Numbers and User Passwords to Company, updated from time to time as necessary to keep Company advised of all authorized Users and their assigned User Identification Numbers and User Passwords.

- 1.06 **“Concurrent User”** means a User who is accessing and using a particular Department Program at the same time as one or more other Users authorized to access and use an authorized Department Program. **“Concurrent User Number”** means the maximum number of Users authorized to access and use a particular Department Program at any given time. The authorized Concurrent User Number for each Department Program is stated in **Exhibit 1**.
- 1.07 **“Public Records Law”** means any applicable public open records law, or, as applicable, the Federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Texas Public Information Act, chapter 552 of the Texas Government Code.
- 1.08 **“Services”** means those services provided by Company to Licensee hereunder, including, for example, the License for access to and use of the Programs and related materials; remote (cloud-based) hosting; data backup, if any; Special Services; maintenance, support, training, and orientation; and any other services provided by Company under this Agreement.

2.0 LICENSE

2.01 **Grant of license**

Company hereby grants Licensee a non-exclusive, non-transferable, limited, revocable license to use the Programs identified in **Exhibit 1**, subject to timely payment of all fees and charges specified. Each Licensee Department identified in **Exhibit 1** may use the Program modules authorized in **Exhibit 1** specifically for that Department, and none other; by no more than the number of Users authorized in **Exhibit 1** specifically for that Department for that Department Program; by no more at any given time than the number of Concurrent Users authorized in **Exhibit 1** specifically for that Program and that Department; and for the number of Access Points identified in **Exhibit 1** specific to that Department for that Department Program. Each Licensee Department must use its identified Department Program(s) and related materials only in the regular course of its lawful business, within its usual governmental capacity without abuse, only at the sites and only on the networks and workstations or other equipment authorized, and in the manner contemplated by, and under the terms and conditions of, this Agreement.

2.02 **Users, Concurrent Users**

Licensee has the right to permit access and use of the Program(s) by authorized Licensee Department employees who have been identified to Company as authorized Users, up to the User Number specified in **Exhibit 1** for the applicable Program; *provided*, that no more than the authorized Concurrent User Number of Users may access or use the particular Program(s) at any given time. Licensee shall assign a unique User Identification Number and User Password to each authorized User and shall provide to Company a list of authorized Users and their User Identification Numbers and User Passwords. Licensee has a continuing duty to update this information.

2.03 **Ownership of Programs and related materials**

All right, title, and interest in and to the Programs and related materials are and shall remain vested in, and shall vest solely with, Company. This Agreement does not create or transfer any right, title, or interest in or to the Programs or any related materials in favor of Licensee or any third party.

2.04 **No alterations or derivative works without consent of Company**

This Agreement does not grant Licensee the right to make derivative works or otherwise alter, modify, or adapt the Programs or related materials. Licensee may not itself, or by the actions of any third party, volunteer, or contractor (hereinafter referred to as Licensee's Designee), inspect, work on, improve, reverse engineer, enhance, adapt, develop, or otherwise use or exploit any of the Programs (collectively "Alterations") in any manner whatsoever not authorized expressly by this Agreement, without express written permission from Company. Licensee shall not make any replacements or substitutions to the Programs and related materials without the written consent of Company. Any such replacements or substitutions, or any derivative works, in whole (or part if incomplete), shall become the exclusive property of Company as of the time of their creation and be subject to this Agreement unless Company otherwise agrees in writing. If Licensee or anyone acting on Licensee's behalf, directly or indirectly, modifies the Programs or related materials without Company's written consent, Company's obligation to provide maintenance and provide support, at Company's option, will terminate; and any warranty of functionality will be voided.

2.05 **Ownership of alterations including derivative works**

If Company consents to Alterations to its intellectual property, including but not limited to Alterations that constitute copyrightable or patentable derivative works, by Licensee or any Licensee's Designee, Licensee agrees that all right, title, and interest in and to any and all Alterations developed by Licensee or by Licensee's Designee, whether such Alterations are completed or only partially completed, (i) shall be works made for hire for Company if they are of a character that may be recognized as such under applicable law; or (ii) if not of such character, that all right, title, and interest in and to such Alterations shall be and hereby are transferred and assigned by Licensee to Company; or (iii) if such present transfer and assignment is not recognized under applicable law, shall be transferred and assigned by Licensee to Company when applicable law recognizes the effectiveness of such transfer and assignment; and (iv) that Licensee shall execute suitable transfer and assignment documents upon request by Company, and (v) otherwise provide all reasonable assistance to Company or its designee in effecting the registration or recordation of such Alterations. Licensee shall ensure that Licensee's Designee performing such work shall transfer and assign all right, title, and interest in and to the Alterations to Company, including all proprietary and descriptive information related to the Programs and the Alterations that is developed by Licensee's Designee. Licensee agrees and warrants that it will be responsible

for ensuring that appropriate contractual, work made for hire, and transfer and assignment documents are executed by it and by Licensee's Designee.

2.06 No removal of proprietary legends or notices

Licensee agrees not to remove or destroy any proprietary or confidential legends or markings (including but not limited to copyright or trademark notices) placed upon or contained within the Programs and related materials.

2.07 Licensee data

Licensee retains all rights in and to its data. At the termination of this Agreement, or at any other time upon request by Licensee and as a Special Service, the data will be exported by Company to Licensee in a symbol-delimited ASCII format with an accompanying record layout, or in such other format appropriate for Licensee and which Company is practically capable of producing and to which Company agrees; provided, that use of such non-ASCII format does not infringe any rights of Company or any third party; and provided, further, that if programming or data conversion or reformatting by Company, or other data manipulation or processing, is required for production in such other format, Licensee agrees it will pay for such programming, conversion, reformatting, manipulation, or other processing at Company's then-prevailing time and materials rates, including reasonable travel costs and per diem expenses.

If requesting conversion of Licensee data to a non-ASCII format, Licensee must specify in writing to Company what data records Licensee desires to be converted, the format requested, and the media on which the converted data is requested to be written or recorded. This request is subject to Company's agreement. NOTE: A symbol- or tab-delimited ASCII file would be provided upon normal termination without charge, but there would be a charge for any other format, or if any reformatting, processing, or other manipulation of such a file were requested by Licensee or Licensee's new provider.

If this Agreement has been terminated under Section 8 ("Necessity of Funding Appropriation") on the basis that funds have not been appropriated, Company will have no obligation under this section or otherwise to provide any transferal or conversion assistance to Licensee unless and until Licensee (i) certifies in writing that funds are available for such services from current funding sources and (ii) Licensee commits in writing to pay Company for such services from such current funding sources.

Licensee will be solely responsible for obtaining, and for the costs of, any applicable third-party licenses or consents, or for the costs of any additional equipment or software required by Company, that may be needed to accomplish or permit the conversion to the agreed export format and using the agreed media.

2.08 **No access by unauthorized persons or entities**

Licensee will not permit, and warrants to Company it will not permit, the Programs or related materials to be used, accessed, inspected, reviewed, or viewed either directly or indirectly by any unauthorized person or entity. Licensee will not provide copies of any reports or other output by the Programs to any person or entity not authorized to receive them under this Agreement, or to which Licensee is not otherwise required by applicable law to provide. This is a material condition of this Agreement.

2.09 **No sublicenses or unauthorized extensions of license**

Licensee may not grant or extend, and warrants to Company it will not grant or extend, sublicenses or other rights in or to the Programs to others not authorized by this Agreement to receive them, including but not limited to Departments not expressly authorized in **Exhibit 1** to use the specific Program; or assign or transfer the License in whole or part, or any rights in or to the Programs, to any unauthorized third party or to unauthorized Licensee Department or person. This is a material condition of this Agreement.

2.10 **Confidentiality; protection and non-disclosure**

Licensee recognizes the Programs are protected in part by three United States patents (US 9,558,163 B1 - US 9,558,288 B1 - US 9,514,107. B1); and recognizes and agrees that the Programs and related materials and information related to them are: (i) considered by Company to be trade secrets, (ii) provided to Licensee in confidence; and (iii) the exclusive and proprietary property and information of Company. **Licensee represents and warrants** that it will not disclose Programs or any related materials or any other Company confidential or proprietary information to any unauthorized person or entity, including but not limited to third parties or Departments or Users not expressly authorized by this Agreement, directly or indirectly, without express written authorization from Company. In the event a request is made for Licensee to disclose Programs or any related materials or information to a third party, Licensee promptly shall give written notice to Company identifying the requesting persons or entities and, if known to Licensee, stating the reasons such requests have been made. Company will determine in its sole discretion whether the requested disclosures should be made, and if not, what action to take; provided, that requests made under an applicable Public Records Law are subject to the provisions of Section 6.04 of this Agreement.

2.11 **Company right to terminate**

Company shall have the right immediately to suspend or terminate this License and this Agreement at its sole discretion, without penalty, cost, or liability to Company, and without further obligation of Company to Licensee thereafter under this Agreement, should Licensee violate any of its provisions. Such suspension or termination shall be effective upon Company's giving notice to Licensee; such notice may be given orally if followed by a writing (including but not limited to fax or email).

3.0 LICENSEE FEES; INITIAL MIGRATION OF DATA

3.01 Fees.

The fees for this Agreement shall be the amounts specified in **Exhibit 1** (“Departments, Programs, and Users”), to be paid over the term of this Agreement or otherwise as specified in **Exhibit 1**. Addition of (i) Users or Concurrent Users within a Department, (ii) Departments, (iii) Department Programs, or (iv) increases in User Numbers or Concurrent User Numbers specific to a particular Department Program, must be agreed in writing by both Parties, and may result in additional fees, including fees for additional installations or authorizations, and increases in any annual or monthly fees, as specified by Company.

3.02 Services

Subject to payment of stated fees by Licensee as specified in **Exhibit 1**, Company will provide the Department Programs and other services specified in **Exhibit 1** and **Exhibit 2** (“Term and Scope of Services”), as those Exhibits may be amended in writing from time to time.

3.03 Initial migration of Licensee data to Company systems.

(a) Licensee is responsible, at its own cost, for providing Company with Licensee’s existing data and any other data for which Company services will be provided, in a format acceptable to Company and which Company is readily able to import into and use with Company Programs and databases (“Acceptable Data Migration Format”). An Acceptable Data Migration Format includes a corresponding record layout for the data.

(b) If Licensee’s data is in the possession of a third party (e.g., a prior service provider other than Company), Licensee is responsible for obtaining Licensee’s data from the third party in an Acceptable Data Migration Format. All costs of and charges by the third party to provide Licensee’s data in such a format will be borne fully by Licensee.

(c) Licensee’s tender of its data to Company for initial installation into Company Programs and databases (the initial migration of Licensee’s data), or other additional data tendered for input (including input by Licensee Users) (all being “Tendered Data”), will be Licensee’s representation to Company that the Tendered Data is validated by Licensee as being Licensee’s data and that it is accurate for the purposes of Company’s provision of services under this Agreement.

(d) Company will not be responsible in any way for any errors in the Tendered Data provided by Licensee for initial migration (including but not limited to inaccuracies in the data themselves and any errors arising from or traceable to formatting errors, failure to properly populate identified fields or to populate in formats other than those specified for the file, or other irregularities or inconsistencies) (“Initial Data Errors”), or in any later-tendered data (“Later Data Errors”), including any errors, inconsistencies, incompleteness,

or other deficiencies of data reasonably traceable to such Data Errors or other inadequacies of the Tendered Data or the format in which tendered.

(e) If any Tendered Data file provided by Licensee requires any Company conversion, manipulation, reformatting, verification, or other work or processing required for or convenient to installation of any Tendered Data and to use it in Company Programs, systems, or databases (“Data Conversion”), including but not limited to correcting Initial Data Errors or Later Data Errors, that Data Conversion shall be a Special Service (see **Exhibit 1**, Special Services), for which, in addition to any other fees specified or authorized under this Agreement, Licensee shall pay Company’s reasonable costs and expenses, on a time-and-materials basis at Company’s then-prevailing rates, including reasonable travel costs and per diem expenses. Company shall be entitled to fees for Data Conversion service provided whether or not Licensee re-tenders Licensee’s data before completion of Data Conversion by Company of previously tendered data.

(f) In practice, the process of successfully (and as accurately as possible) importing Licensee’s data into Company’s systems may take several iterations. E.g., the third party previously storing Licensee’s data (or Licensee, as the case may be) (“Prior Data Holder”) may provide a data output and associated record layout, but an initial data migration test (or full importation attempt) may show that adjustments or manipulations of the Prior Data Holder’s output data file are required for successful importation. The Prior Data Holder’s initial response to Company’s request for assistance, if provided, may or may not resolve the migration issues. If not, the process of attempting to obtain adjusted data files or other assistance from the Prior Data Holder may require multiple iterative attempts of this kind before a readable, usable, reliable import data file is obtained. Even then, Company may be required to perform data import tests, data manipulations, and accuracy testing. Licensee recognizes that such iterations may be required and agrees to bear all costs for obtaining the assistance of the Prior Data Holder. If the Prior Data Holder does not fully cooperate, Licensee will bear the costs incurred by Company to correct any data formatting errors, irregularities, or inaccuracies that must be made by Company to effect successful migration of Licensee’s data. Note that multiple iterations have a benefit, to provide Licensee the opportunity to validate Licensee data for Company.

4.0 TERM AND TERMINATION

4.01 Term

This Agreement shall come into and be in effect as of the Effective Date and shall have the Initial Term specified in **Exhibit 2** (“Term and Scope of Services”), to terminate at 11:59:59 p.m. on the last day of the specified Initial Term (“Initial Term Termination Date”).

Unless otherwise specified in **Exhibit 2**, this Agreement shall automatically renew for successive Renewal Terms of duration equal to the Initial Term (“Renewal Term”) unless either party notifies the other in writing not 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, not to be unreasonably withheld, conditioned, or delayed; provided, however, that the total duration of this Agreement shall not exceed twenty-five (25) years or such other total duration as permitted from time to time under applicable law.

4.02 Post-Expiration Assistance

Upon termination of this Agreement in part or in full by action of the terms herein, or upon action of the Parties as provided in this Agreement, unless otherwise provided in this Agreement, Company will assist in the transferal of the Licensee's data files in the possession of the Company according to the terms of this Agreement, as specified in Section 2.07 ("Licensee data").

Licensee will be responsible for reasonable Company fees, and for any costs or expenses incurred by Company for such assistance, including but not limited to transferal or reformatting of data, at Company's then-prevailing rates for time and materials, and including any costs and expenses of associated travel, including reasonable per diem expenses.

4.03 Obligations survive

Upon termination of this License Agreement, all rights and obligations of the Parties shall cease, except that Licensee's obligations regarding (i) confidentiality, including provisions regarding any Public Records Law; (ii) return, and warranty of complete return, of all copies of the Programs and related materials to Company; (iii) assisting Company in protecting its intellectual property and in defending against third party claims of infringement; (iv) venue, consent to suit, and choice of laws; (v) attorney's fees and costs; (vi) payment of license fees, costs, interest and taxes; (vii) limitations of liability; and (viii) indemnity shall survive termination of this License Agreement, as well as any obligations to pay accrued fees or to reimburse costs or expenses to Company.

4.04 Other bases for termination

Subject to Section 10.02 ("Default"), Company has the right to terminate this Agreement by giving written notice of termination to Licensee, in the event that Licensee (i) fails timely to pay Company any sums due hereunder when due, (ii) fails to observe any of Licensee's obligations hereunder with respect to proprietary information or confidentiality, (iii) fails to perform or observe any other material term or obligation set forth in this Agreement, or (iv) fails to strictly comply with all terms in Section 2 ("License") or Section 6 ("Confidentiality, Nondisclosure, Security").

4.05 **Company's right to terminate for infringement claims**

Company reserves the right immediately to terminate this License Agreement if any claims for copyright or patent infringement, or infringement or misappropriation of any intellectual property rights, or for unfair competition or trade practices or other misuse, relating to the Programs or related materials, or any parts thereof, are asserted against Company, any relevant Company licensor, or Licensee or any of Licensee's employees, officers, agents, representatives, or contractors. Such determination shall be in the sole discretion of Company. Termination on this basis shall be effective on notice in writing to Licensee by Company, stating the reason for such termination. This Section 4.05 is not subject to the notice and cure provisions of Section 10.02 ("Default"). Termination on this basis shall impose no penalty or cost on Company, shall release both Company and Licensee of further obligations of performance under this Agreement except as provided in Section 4.03 (Obligations Survive), and shall not constitute breach of this Agreement by Company.

4.06 **Termination cumulative with other rights**

The right of termination under this Section 4.0 shall be in addition to any other right or remedy Company may have at law or in equity.

4.07 **Termination is Licensee's sole remedy**

Licensee's termination of this License Agreement shall be the sole remedy for Licensee for any claim of breach of this License Agreement by Company asserted by Licensee, except as may be expressly provided elsewhere in this Agreement: provided, that Licensee shall first give Company written notice of such alleged breach, with sufficient particularity that Company may reasonably ascertain the nature of the default alleged, and Company shall have at least ten (10) business days to cure such alleged default, or such other longer time as is commercially reasonable or otherwise is specified elsewhere in this Agreement.

5.0 PAYMENTS

5.01 **Payment due upon invoice**

All sums due hereunder shall be payable upon receipt by Licensee of a Company invoice. Timely payment in full of fees and other costs when due is a material obligation of Licensee. Payments are due within thirty (30) days of the date of a Company invoice unless otherwise expressly provided in **Exhibit 1** ("Departments, Programs, and Users"). Payments are deemed made when received by Company. The terms of the Texas Prompt Payment Act shall apply to all invoices submitted.

5.02 **No right to withhold or offset**

Licensee shall make all payments when due and shall not be entitled to withhold any payments or portions thereof in the event of a dispute between Company and Licensee. Except as specifically provided in this Agreement, Licensee's obligation to make timely payments required under this Agreement is absolute and unconditional in all events and is not subject to any set-off, defense, counterclaim, or recoupment for any reason whatsoever including, without limitation, any failure of or alleged deficiencies in the Programs or related materials, or any defects, malfunctions, misfunctions, breakdowns or other infirmities of any kind in the Programs or related materials ("Program Nonperformance"), or relating to the Programs or related materials any defects, malfunctions, misfunctions, breakdowns or other infirmities of any kind in the Programs or related materials, or relating to the Programs or related materials; or any impairment of functionality of, or access to the Programs or Licensee's data caused in whole or part by the action of third parties, including but not limited to viruses, worms, Trojan horses, or other harmful components or agents, or other malware of any kind; or denial of service attacks or similar hacker attacks or other interferences of any kind by third parties. Licensee's sole remedy is to seek refund of fees paid for the period for which Licensee asserts Program Nonperformance.

5.03 **Manner and mode of payment**

All payments due hereunder shall be made in U.S. Dollars, and all payments shall be made to Company at its address stated herein, or at such other address as Company specifies in writing from time to time. Payment may be made by check drawn on a Licensee account, certified check, postal money order, or by wire transfer to an account of Company's designation.

5.04 **Taxes**

In addition to the fees or other amounts due and payable under this Agreement, Licensee is responsible for and shall fully pay any and all local, state or federal sales, use, excise, privilege taxes, or other taxes and duties, tariffs, assessments or levies of any kind, however designated, assessed or levied, resulting from or related to this License Agreement or any activities conducted hereunder, including attorney fees, and any interest, fines or penalties associated with or assessed for non-payment or late payment thereof (all collectively, "Taxes"). If such taxes are payable by or levied on Company, Licensee shall promptly pay such Taxes in full upon notice by Company or promptly reimburse Company in full for any such Taxes Company has paid, upon receipt of an invoice therefor; provided, however, that Licensee shall have no obligation to pay any taxes based on Company's net income or gross receipts.

If Licensee is tax exempt, a copy of the tax-exempt certificate must be provided to Company by Licensee.

6.0 CONFIDENTIALITY, NONDISCLOSURE, SECURITY

6.01 Duty of nondisclosure

Licensee must ensure that the Programs and related materials, or any portions thereof, whether written or recorded or stored on magnetic tape, disk, or electronic or magnetic memory, or in any other form or on any other media, are not disclosed or otherwise made available by Licensee or by any of its elected officials, employees, officers, agents, representatives or contractors, to any entities, organizations or individuals not authorized by this Agreement to use, possess, view, review, or otherwise access the Programs or related materials. This is a material provision of this Agreement.

6.02 Proprietary, trade secret character of Programs

Licensee hereby expressly recognizes the proprietary and trade secret nature of the Programs and related materials, and expressly agrees as follows:

- (a) To use the Programs and related materials solely at the place(s) of installation and Access Points specified in this Agreement, and solely for the lawful business of Licensee.
- (b) To ensure that specific Department Programs and related materials are used solely by the Department(s) expressly authorized to use them, and that no more than the authorized number of Department Users use or have access to the relevant Department Program(s) and, as applicable, that no more than the authorized Concurrent User Number of Users accesses or uses the Department Program(s) at any given time;
- (c) To make no unauthorized copies of the Programs or related materials, or any component or portion thereof, by any means for any purpose whatsoever (except as is required for reasonable archival or security storage purposes), without prior written consent of Company;
- (d) To make no unauthorized dissemination of the Programs and related materials or any parts thereof;
- (e) To instruct Licensee's elected officials employees, officers, agents or representatives, or any others, having access to the Programs or related materials that they may not copy or disseminate the Programs or related materials, in part or in whole, to unauthorized persons or entities, including to unauthorized Licensee Departments and personnel; that they may not provide access to the Programs or related materials to any unauthorized person or entity, including to unauthorized Licensee Departments and personnel; and to require compliance with these instructions as a condition of employment;

- (f) To effect security measures, including adoption of a written policy of confidentiality, adequate to safeguard the Programs and related materials from unauthorized use or access by persons other than Licensee's employees authorized to use the Programs for Licensee's own requirements; and
- (g) To reproduce Company's copyright, trademark, patent notices, or other marks, and any other embedded proprietary or confidentiality notices or marks, on all materials related to or part of the Programs and related materials on which Company displays, or in which are embedded or written, such notices or marks, including on any copies made pursuant to this Agreement.

6.03 No unauthorized copying, modification, dissemination

Licensee shall not copy, reproduce, reverse assemble, reverse compile, compare, modify, merge, transfer, or distribute the Programs or related materials, or allow any other person to do so in any way or manner, without the prior written authorization of Company.

6.04 Public Records Law

(a) Licensee and its Departments shall immediately inform Company in writing (which may include transmission by facsimile or electronic mail) of any request under a Public Records Law for inspection or copying of any of the Programs or related materials, in whole or part. Licensee must take all reasonable steps under the Public Records Act to preserve the right of Company to participate in any process permitted under the applicable Public Records Law for the Company to urge that some or all the requested Company materials or information should not be disclosed; and Licensee must not voluntarily disclose the requested information until compelled by that Law or a lawful order to do so.

(b) In the event that disclosure is ultimately required by a lawful order by a person or tribunal with applicable authority and jurisdiction, Licensee shall provide, along with the required access to or any copies of such disclosed materials, a written notice to the recipient that the materials are owned by Company, or by a third party and licensed from Company, and are protected by the federal Copyright Act and other laws; that recipient is not by virtue of disclosure under the Public Records Law thereby authorized to use, copy, or disseminate the Program or related materials, or develop or use derivative works, without the express written consent of Company; and that any unauthorized use, copying, dissemination or development or use of derivative works may constitute a violation of federal copyright or other laws, and could subject the recipient to civil or criminal penalties.

(c) These are material obligations of Licensee, and any failure of Licensee to comply, for whatever reason, is grounds for immediate termination by Company of this License Agreement. Termination under this Section 6.04 is not subject to the provisions of Section 10.02 ("Default") regarding notice and opportunity to cure.

6.05 Compliance with Privacy Laws including HIPAA

Licensee is responsible that its networks, databases and other records; its workstations or other computers or equipment of any kind used by Licensee staff or others to access, send, receive, print, write or record, manipulate, store, backup, restore, or otherwise use (collectively hereinafter "Access") individually identifiable personal information ("IPI"), or other protected private information no matter how denoted (e.g., personally identifiable information ("PII"), protected personal information ("PPI"), protected healthcare information records ("PHIR"), protected healthcare information ("PHI"), individually identifiable healthcare information ("IHI"), etc.); its security and security procedures and controls, and Access and authorization procedures and controls; and any other relevant Licensee functions or procedures concerning such data or Access thereto, are compliant with applicable federal, state and local law, regulatory rules and guidelines regarding the handling, confidentiality or privacy of such information, as those laws and regulations may be amended from time to time including any successor laws or regulations ("Privacy Laws"). This scope of this provision includes, but is not limited to, Licensee compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and all applicable regulatory rules or guidelines implementing HIPAA ("HIPAA Regulations") (both collectively "HIPAA" unless otherwise stated), as the statute or such regulatory rules or guidelines may be amended from time to time, and including any successor statutes or regulatory rules or guidelines, regarding Licensee's handling of protected health information ("PHI", also sometimes referred to as individually identifiable health information ("IHI")).

Company is providing the Programs on an "as is" basis with respect to the handling of such confidential Licensee data. If additional equipment, software or other programming beyond the Programs' "as is" status, or procedures are required so that the data processing services provided by Company hereunder for Licensee may achieve compliance with Privacy Laws, considering Licensee's network, operating systems, and equipment, and their configuration, deployment and other characteristics, Licensee's program, applications and data access practices and procedures, staffing, access, and other security rules and procedures, or other relevant factors, comply with applicable Privacy Laws, Licensee shall be responsible for the costs of achieving compliance by Company, on a time and materials basis at Company' then-prevailing rates, and costs and expenses of any associated Company travel, including reasonable per diem expenses.

Company compliance with written requests by Licensee for reports of any type covered by HIPAA or other Privacy Laws, including their implementing rules and regulations, whether through a Public Records Law or otherwise, shall be considered a Special Service and costs of compliance by Company will be charged to the County on a time and materials basis at Company' then-prevailing rates,

6.06 **CONSENT TO INJUNCTION AND WAIVER OF LEGAL RIGHTS.**

Licensee acknowledges that Company has gone to considerable time and expense to develop the Programs and related materials and that Company would suffer significant and irreparable harm and damage by unauthorized copying, reproduction or use of the Programs or related materials. Licensee further acknowledges that such unauthorized actions may and likely would cause significant commercial damages that would be difficult to quantify. Therefore, Licensee agrees that, in addition to any other legal or equitable remedy available, Company shall be entitled to equitable relief including but not limited to temporary restraining orders, and temporary and permanent injunctions, to protect the integrity of Company's intellectual property and other proprietary or confidential information and trade secrets, and to prevent disclosure (or continuing disclosure) thereof. Licensee also hereby expressly waives any right to require that Company provide proof of actual or impending actual damage as a prerequisite to Company obtaining equitable relief; and expressly waives any requirement that Company post any bond or other security as a prerequisite to obtaining or enforcing such relief.

7.0 LIMITED LIABILITY; DISCLAIMER OF WARRANTIES; FORCE MAJEURE; INDEMNITY

7.01 **LIMITATION OF LIABILITY**

COMPANY'S LIABILITY FOR DAMAGES TO LICENSEE FOR ANY CAUSE WHATSOEVER RELATED TO THIS AGREEMENT OR ANY ACTIVITIES ARISING IN OR RELATED TO ITS PERFORMANCE, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT INCLUDING NEGLIGENCE, SHALL BE STRICTLY AND UNCONDITIONALLY LIMITED TO, AND NOT TO EXCEED, THE FEES, COSTS, AND EXPENSES PAID OR REIMBURSED TO COMPANY BY LICENSEE UNDER THIS AGREEMENT. IN NO EVENT WILL COMPANY BE LIABLE TO LICENSEE FOR ANY LOST PROFITS OR REVENUES, LOST SAVINGS, OR OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION HEREBY, FOR LOSS OR INTERRUPTION OF USE, LOSS OF DATA, INTERRUPTION OF BUSINESS ACTIVITIES, OR FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS ANTICIPATED BASED ON USE OF THE PROGRAM(S), OR FOR PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF COMPANY HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM ASSERTED AGAINST OR BY ANY OTHER PARTY, IN CONNECTION WITH THE DELIVERY, INSTALLATION, ACCESS TO, TESTING, USE, PERFORMANCE OR NONPERFORMANCE OF THE PROGRAMS OR RELATED MATERIALS, OR THE ACT OR FAILURE TO ACT OF COMPANY, OR OTHERWISE ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT. THIS LIMITATION OF LIABILITY WILL NOT APPLY TO CLAIMS BY THIRD PARTIES AGAINST COMPANY, OR AGAINST LICENSEE FOR USE OF THE PROGRAMS AS PERMITTED BY THIS AGREEMENT, FOR INTELLECTUAL PROPERTY

INFRINGEMENT, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY.

7.02 **LIMITED WARRANTY**

COMPANY PROVIDES THE PROGRAMS, IMPROVEMENTS AND RELATED MATERIALS TO LICENSEE WITH ONLY A LIMITED WARRANTY, NAMELY, THAT THE PROGRAMS WILL HAVE THE FUNCTIONALITY DESCRIBED IN THIS AGREEMENT. BEYOND THAT LIMITED WARRANTY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, COMPANY MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE PROGRAMS, THEIR MERCHANTABILITY, OR THEIR FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, AND EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES. COMPANY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS OR IMPROVEMENTS WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS OR IMPROVEMENTS WILL ALWAYS BE ACCURATE, UNINTERRUPTED, OR ERROR FREE. NO ADVICE OR REPRESENTATIONS BY COMPANY OR COMPANY PERSONNEL SHALL CREATE ANY SUCH WARRANTY. COMPANY DOES NOT MAKE ANY WARRANTY THAT ANY INFORMATION, DATA, SOFTWARE, OR EQUIPMENT USED TO RUN OR ACCESS THE PROGRAMS OR IMPROVEMENTS, OR THE DATA THEY USE OR GENERATE, OR THE REPORTS THEY GENERATE, WILL BE AT ALL TIMES FREE OF VIRUSES, WORMS, TROJAN HORSES OR OTHER HARMFUL COMPONENTS. LICENSEE IS SOLELY RESPONSIBLE FOR THE ACCURACY OF ANY AND ALL DATA, AND COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT SUCH DATA OR ANY CALCULATIONS OR REPORTS THAT DEPEND ON OR UTILIZE SUCH DATA. PROVIDED HOWEVER, THAT COMPANY WILL USE ITS BEST EFFORTS TO EVALUATE ANY ISSUES WITH THE PROGRAMS BROUGHT TO ITS ATTENTION BY LICENSEE AND MAKE RECOMMENDATIONS TO LICENSEE WITH RESPECT TO THE RESOLUTION OF SUCH ISSUES.

If a Program does not provide the described functionality, Company will use commercially reasonable efforts to cure the deficiency. If Company is unable to do so, or to provide a replacement module or a satisfactory work-around, Licensee may request a refund of a portion of fees it has paid for the use of that Program module (or submodule, as applicable) corresponding to the period for which Licensee's business has been adversely affected by the defect; any such refund will be based on the relative proportion the defective module (or submodule) bears to the whole of the module or Program, as the case may be, for which the fee is attributed, as measured by comparing the number of lines of code of the applicable module or subroutine that are added, deleted, or changed to remedy the defect, to the total number of lines of code in the applicable module or subroutine before correction to remedy the defect.

7.03 **Infringement Indemnification**

- (a) Company agrees to indemnify and to hold harmless Licensee from any damages finally awarded as a result of any third party claim of infringement of intellectual property asserted against Licensee by reason of Licensee's use of the Programs or related materials as delivered by Company or used by Licensee, where such use by Licensee has complied strictly with the terms and conditions of this Agreement regarding use, dissemination, and copying of the Programs and related materials, access to them, and protection and handling of them, and does not result from the development or use of any derivative work developed by or for County by other than Company or Company-designated contractors.
- (b) Licensee's obligation to indemnify and hold harmless will apply provided that Company is promptly given notice in writing by Licensee of any such claim and that Company has the right to elect to defend and settle, at its expense, any such claims; and further provided, that Licensee fully cooperates with Company in connection with any defense by Company of such claims or attempt to settle such claims.
- (c) Failure of Licensee to provide such notice or assistance shall be a material breach of this Agreement, for which Company shall have the right immediately to terminate this Agreement.
- (d) Company not obligated to defend such claims but may do so at its election. Licensee may elect to participate in any formal proceedings regarding such claims but shall bear its own costs of such participation and its costs to assist Company.
- (e) Company will have the sole right to determine the defenses of such claims concerning its intellectual property, and the sole right to determine whether to accept any settlement offer or other offer of compromises of such claims.
- (f) This obligation of Company to indemnify Licensee will not apply if the claim of infringement is based in whole or material part on: Licensee's use of a the Program(s) with devices or products not provided or approved by Company; use by a person or entity not authorized under this Agreement to use or access the Program(s); the event giving rise to the claim of infringement is based on use of a version of a Program modified without the consent of Company; Licensee's use constitutes willful infringement, including but not limited to Licensee's continued use of a Program after it has been notified or otherwise being aware there is or is likely to be a claim of infringement concerning that Program or its use by Licensee; Licensee's use of the Program after termination of this Agreement; Licensee uses or applies the Program in ways or for purposes for which it was not designed or for which its use was not contemplated by Company, and Licensee's use or application as intended would not have given rise to the third-party claim; the alleged infringing use was by persons or entities other than as expressly authorized under this Agreement; for onsite installations, Licensee was using a previous version of Company Program(s) and the third-party claim would have been avoided had Licensee been using a more recent version; or, for onsite installations, Licensee has combined use of a Program with devices or

products not provided or approved by Company and the claim would have been avoided but for such combined use.

(g) Company shall have no obligation to indemnify Licensee and hold it harmless as to any damages, costs, or expenses (including attorneys' fees) that are based in whole or part on actions by Licensee that do not strictly comply with the terms and conditions of this Agreement.

(h) To the extent permitted by law, Licensee shall indemnify and hold Company harmless from any damages finally awarded as a result of any third party claim of infringement of intellectual property asserted against Company by reason of Licensee's use or misuse of the Programs or related materials, where such use by Licensee has not complied strictly with the terms and conditions of this Agreement.

7.04 Force Majeure

Company shall not be responsible for performance hereunder, and its obligation to perform hereunder 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, earthquakes, floods or other natural catastrophes; cable or power outages, cable cuts or other loss of necessary Internet or other 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 malware or harmful agents, denial of service attacks, ransomware attacks, or interference with, alteration, or destruction of Licensee 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, which requires cessation, directly or indirectly, of such performance or any part thereof; war, national emergency or civil insurrection, riot or other civil disorder; strike, work stoppage or lockout; failure of Licensee systems, processes, equipment, facilities, funding, or personnel with the result that Company's performance hereunder is adversely affected in whole or part; or any other event outside the control of Company or its reasonable ability to have avoided or prevented; and such excuse by reason of force majeure shall last until Company by the exercise of reasonable diligence might remove, avoid, or otherwise cure such impediment if it is within Company's ability to cure.

8.0 NECESSITY OF FUNDING APPROPRIATION

8.01 Term subject to appropriation

Except as provided in this Agreement for earlier termination, this Agreement will continue in force for its stated Initial Term and any Renewal Term as set forth in Section 4.01 ("Term"), subject to the following limitation: The term of this Agreement is subject to

annual appropriation by the Licensee in its budget of sufficient funds to make the payments called for herein for the coming contract year, and failure of such appropriation will permit Licensee to terminate this Agreement at the end of the then-current Term or Licensee fiscal year, as applicable; provided, that the required notice of termination is timely given to Company; but provided further, however, that this “funding-out termination” provision shall not be available if Licensee appropriates monies for a substitute or replacement service from a third party that is, in whole or material part, like or similar to the Services provided by Company hereunder, but excludes such appropriation from funding this Agreement or otherwise conditions the use of such appropriation to exclude in whole or part application of such appropriation to this Agreement or to Company.

8.02 Termination for non-appropriation

In the event funds for this Agreement are or become unavailable due to non-appropriation, this Agreement will terminate without penalty to or further obligation hereunder of either Party as of the last date for which funds have been appropriated; provided, that Licensee will remain responsible for costs and fees accrued hereunder for periods prior to such termination for non-appropriation.

8.03 Licensee certification of funding; Licensee notice of non-appropriation

(a) By executing this Agreement, Licensee certifies that it has available funds for payment of all fees stated in this Agreement during the initial fiscal year of the Licensee in the Term of this Agreement.

(b) Upon request by Company, Licensee must certify to Company at least thirty (30) days in advance of the beginning of any Renewal Term that Licensee has appropriated and available sufficient funds for payment of all fees called for by this Agreement during the initial Licensee fiscal year of the Renewal Term.

(c) Upon request by Company, Licensee must certify to Company at least thirty (30) days in advance of the beginning of a new Licensee fiscal year during the Initial Term or a Renewal Terms that Licensee has appropriated and available sufficient funds to pay all fees stated in this Agreement during that new fiscal year.

(d) Failure of Licensee timely to give such notices or certifications upon request by Company is a basis for Company to consider that the Agreement will terminate as of the end of the current Licensee fiscal year or then-current Term, as applicable, and to begin any pre-termination winding up procedures or tasks. If, having failed timely to give a required or requested notice of non-renewal or of termination, or failing timely to request renewal, as the case may be, Licensee later provides such notice and wishes the Agreement to continue for the applicable Term or fiscal year, as the case may be, and if Company has begun any pre-termination winding up preparations, the Agreement may continue if Licensee agrees in writing that it will reimburse Company for the costs and expenses incurred by Company for such pre-termination preparation, and any costs and expenses

that will be incurred by Licensee to reverse such preparations and permit Services to continue uninterrupted, at Company's then-current rates for time and materials, including any associated travel, and, further, certifies in writing that there are current Licensee funds appropriated and available to reimburse Licensee.

(e) Licensee must notify Company in writing at least ninety (90) days prior to the end of any current Licensee fiscal year if Licensee does not intend to make such appropriation for its next-occurring fiscal year.

9.0 REPRESENTATIONS

9.01 Status of Licensee; authority to make agreement; compliance with state law

Licensee represents, covenants, and warrants to Company that Licensee is a County of the State of Texas; and that as a County of the State it is a public and local governmental body of the State, corporate and politic, and is authorized by the Constitution and other laws of the State to enter into the transactions contemplated by this Agreement and to carry out its obligation hereunder. Licensee further represents, covenants, and warrants that it has complied with all procedures required by local or state law so that this License Agreement is enforceable under the laws of the State, including that Licensee has complied with all applicable bidding or other procurement requirements or that this Agreement is within the scope of appropriate exceptions to the competitive or other procurement requirements applicable to Licensee.

9.02 Disclaimer of reliance on other understandings or practices

Each Party represents and warrants to the other Party that, in entering into and performing its obligations under this Agreement, it does not and will not rely on any promise, inducement, or representation allegedly made by or on behalf of the other Party with respect to the subject matter hereof, nor on any prior or current course of dealing or of performance between the Parties concerning or related to other agreements or undertakings, nor on any custom and usage in the trade, except as such promise, inducement, representation, or custom or usage may be expressly set forth herein.

10.0 REMEDIES

10.1 Equitable Relief

Licensee agrees that because of the unique nature of the Programs and related materials, irreparable harm will be caused by a breach by Licensee of its obligations of confidentiality and protection of Company's intellectual property under this Agreement, that monetary damages will be inadequate to compensate Company for such harm, and that injunctive relief is an appropriate remedy to enforce the provisions of the Agreement, including but not limited to as provided in Section 6.06 ("Consent to Injunction").

10.2 **Default**

Without limitation hereby, the following shall constitute a default by Licensee (“Default”):

- (a) Failure timely to pay when due any payment under this License Agreement or timely to perform any Licensee obligation thereunder;
- (b) Failure by Licensee to comply with or perform any provision of this License Agreement;
- (c) False or misleading representations or warranties as to Licensee’s status and the current or next-occurring fiscal year’s appropriations of funds for this Agreement made or given by Licensee; or
- (d) Any reduction in the value of the Programs and related materials caused by any act of Licensee in violation of its obligations under this Agreement, or that materially diminishes the prospect of full performance or satisfaction of Licensee’s obligations herein.

Except as otherwise specified elsewhere in this Agreement, Company has the right immediately to terminate this License Agreement upon the occurrence of any event of Default as specified above; and upon Licensee’s failure to remedy such Default within a period of thirty (30) days after notice of such Default by Company to Licensee, Company shall have the right to pursue any one or more of the following remedies without any further demand or notice to Licensee:

- (i) Terminate this Agreement, and enter the premises of Licensee and take possession of any copies of Programs and related materials in the possession of Licensee, and/or destroy or cause to be destroyed all copies thereof on such premises or other Licensee computers or other equipment, no matter where located;
- (ii) Take whatever action at law or in equity Company in its sole judgment may consider to be necessary or desirable to collect the payments then due from Licensee, and/or to enforce performance and observance for any obligation, agreement or covenant of Licensee under this Agreement and to recover Company’s reasonable attorneys’ fees and costs associated therewith; and
- (iii) Seek any other relief to which Company may be entitled at law or in equity.

11.0 MISCELLANEOUS

11.01 **Assignment**

None of Licensee’s rights regarding the Programs and related materials may be assigned, sublicensed, or transferred voluntarily, by operation of law or otherwise, without

Company's prior written consent and the execution of a new Agreement. If Company agrees to such assignment, sublicense, or transfer, unless otherwise agreed in writing by Company, Licensee will remain fully responsible for all Licensee obligations hereunder.

11.02 Notices

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 capable of tracking shipment and delivery; 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 Company:

Indigent Healthcare Solutions
2040 North Loop 336, Suite 304
Conroe, Texas 77304

If to Licensee:

Webb County Judge
1000 Houston Street
Laredo, Texas 78040

11.03 Severability

In the event that any provision of this Agreement is determined by a court or other tribunal with appropriate authority and jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the maximum extent permitted by applicable law, to the extent such enforcement still gives effect to the meaning and intent of the Parties as inferred from all the terms of this Agreement.

11.04 Entire agreement; modification

This Agreement is the entire agreement between the Parties concerning the licensing and use of the Programs and related materials, and supersedes all oral or written proposals or understandings concerning such licensing. This Agreement may be modified only by a writing duly executed by both Parties. Should Licensee issue a purchase order or any similar document for its own internal purposes, any conflict between the terms and conditions of the purchase order for other document and this Agreement shall be controlled by this Agreement. No purchase order or other document of Licensee or any Licensee Department unilaterally issued or presented without the written agreement of Company to all its terms and conditions shall have the effect of creating a conflict with or a variance of the terms of this Agreement, or of augmenting, modifying, limiting, expanding, or qualifying the terms of this Agreement.

11.05 **Actions**

In the event of litigation or other dispute proceedings arising under, concerning, or related to this Agreement, each party will bear its own costs and expenses, including attorneys' fees, regardless of the outcome.

11.06 **Governing law**

This Agreement shall be governed by and enforced in accordance with the laws of the State of Texas [without giving effect to its choices of law principles,] and federal law, as applicable.

11.07 **Confidentiality**

Each Party shall keep strictly confidential the terms of this Agreement and the proprietary or other confidential information of the other Party that may be acquired or provided in the course of performance of this Agreement, to the full extent permitted by applicable law. Each Party shall promptly notify the other in writing of any discovered or required compromise of such confidentiality. Licensee shall use utmost care to ensure that no unauthorized copies of or access to software and other intellectual property provided by Company is accessed, obtained, copied, provided to, or inspected by persons or entities not authorized by this Agreement.

11.08 **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 is 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 writing expressly stating such amendment; and any waiver by either Party, whether express or implied, shall not imply a consent or waiver of any term or provision on any other occasion, or any consent to any different breach or default or future or past similar breach or default.

11.09 **Responsibility for cyber attacks**

(a) Company shall have no liability to Licensee for any kind or form of cyber damage caused by third parties to Licensee's data, systems, networks, property, or other facilities, including from, without limitation hereby, Cyberattacks

(i) that are directed against Licensee's facilities (including equipment, networks, software, operating systems, security methods or mechanisms, or other instrumentalities);

(ii) where the attack has gained access to Licensee's facilities as a result of acts or omissions of Licensee or its Users; or

(iii) against Company facilities which have been enabled or permitted in whole or substantial part by acts of omissions of Licensee or its Users and the resulting malware or other harmful agent or action also migrates to or affects Company's systems or facilities.

(iv) Such acts or omissions of Licensee or its Users may include, without limitation hereby: (A) where Licensee employee, agent, guest, or other person using Licensee equipment clicks on a link, or opens an email or other document, or imports documents or data from a thumb drive or other source, including third party sources, that introduces a virus or other malicious agent that in turn infects Licensee systems and/or data, and/or migrates to Company's systems; or (B) where a third-party gains unauthorized access to Licensee's systems by other means, such as but not limited to hacking into Licensee equipment, by accessing Licensee equipment that has inadequate security, or by otherwise penetrating Licensee's security systems.

Licensee will be responsible for payment of any costs to cure or correct the effects of such events, including, without limitation hereby, costs of experts including for forensics, and payments made in response to demands for cyber ransom or other payments to malicious third-party actors.

(b) Upon request in writing by Licensee, Company will assist Licensee to remedy or work around any adverse effects of the Cyberattack on Licensee's ability to conduct business. Such assistance by Company will be a Special Service, the costs and expenses of which will be borne by Licensee, including not only for Company's time, costs and expenses, but also for the costs and expenses of any third parties from which Company obtains assistance to address the attack, and for any ransom or other amounts Company may pay on Licensee's behalf. If the attack creates any kind of operational or other emergency, unless the requirement of Company's giving of an estimate for the Special Service is waived in writing by Licensee (email will suffice), Company will follow the Special Services estimate-and-approval procedure (see Section 11.10 ("Special Services")), notwithstanding any need for immediate responsive diagnosis and action to cure or work around the Cyberattack effects. If Licensee opts to permit Company to begin diagnosis, including forensics if needed, and to address the problem before the estimate-and-approval procedure is completed, Company will present an estimate as soon as practical, for discussion and approval or rejection in whole or part by Licensee; but Licensee agrees that its waiver or postponement of the estimate-and-approval procedure will not relieve Licensee of its obligation to pay Company its costs and expenses reasonably incurred prior to conduct and conclusion of the estimate-and-approval procedure.

(c) Company will work at Company's cost to remedy or work around any effects of any Cyberattack directed against Company's systems, networks, property, or other facilities that adversely affect the provision of Services to Licensee, and to ensure

continuation or restoration of services as soon as possible. Licensee will provide full assistance to Company in this effort.

(d) For the purposes of this section 11.09, "Licensee" includes Licensee and Licensee's elected officials, officers, employees, agents, representatives, and contractors.

(e) Without limitation hereby, "Cyberattacks" include, but not limited to: denial of service attacks, theft or corruption of data, operation of ransom ware or other data denials, hacking, operation of malware or other harmful agents, and any other electronic interference with equipment, databases, software, operating systems, networks, or other facilities, adversely affecting or with the potential to adversely affect Licensee's data or normal Service under this Agreement, caused in whole or part by third parties.

(f) Although scope of coverages available are limited, insurance is available commercially, including from the Texas Association of Counties, that can provide some protection against adverse effects of Cyberattacks and other harmful events. Licensee is encouraged to obtain and maintain cyber insurance coverage to protect its systems, data, and facilities from harmful third-party actions.

11.10 **Special Services**

(a) Licensee may from time-to-time request that Company provide Special Services, which are services outside the stated scope of the Agreement, but which are related thereto. All requests for Special Services must be made in writing. Special Services include, but are not limited to, special data entry services, including program and test data keypunching, and other data entry; computer runs; industrial or system engineering services; data modeling; or other handling of data to be maintained or utilized by Company under this Agreement, whether such data is provided to Company by Licensee, or on Licensee's behalf by a previous or other third party provider; training by Company after Licensee's go-live date or otherwise in excess of that provided for as part of the relevant license fee(s); unusual or special maintenance tasks, other than as necessary to provide and maintain the functionality and performance of the Program(s); and any other services not explicitly described in this Agreement as included with the stated Program fees.

(b) For custom programming (i.e., any programming not identified in **Exhibit 1**) or any other Special Service requested by Licensee that Company agrees to provide, Company will give Licensee a written estimate of the time and materials, and any other anticipated costs and expenses (such as travel), likely to be required to accomplish the Special Service, based on Company's then-current prevailing rates for work and materials. If Licensee provides a written authorization to proceed with the Special Service, including a certification that adequate current fiscal year funds are available to pay for the Special Service, Company will perform the Special Service. Company will have no obligation to provide, or to begin to provide, any Special Services until such authorization and certification are provided.

(c) Requests for work by Company or products outside the stated functionality of the Programs or services to be provided hereunder by Company (e.g., responding to requests by regulatory or administrative agencies for data or reports not capable of generation by Licensee using the existing functionality of the Programs, or for litigation or other purposes; or responding to open records requests) will constitute a Special Service. Such requests from such third parties must be directed to Licensee, not the Company, which will not respond directly to the third party. Upon written agreement by Licensee that it will compensate Company for the Special Service required to assist Licensee to respond, and will reimburse Company for incurred costs and expenses, and certification that funds exist to pay Company's compensation, costs, and expenses, Company will undertake the Special Service; provided, further, that if the response is to be provided in a short period of time, Company's compensation may include a component reflecting that Company personnel will be required to work more than their ordinary number of hours per day, or to work on weekends or holidays, and be compensated accordingly.

11.11 Mediation

Before either Party may seek judicial relief regarding any claim or dispute arising under, related to, or concerning this Agreement, except for Company's seeking equitable relief for Licensee's breach (or alleged breach) of its obligations regarding confidentiality and security of the Programs and related materials, the Parties agree to engage in non-binding mediation in a place and with a mediator acceptable to both Parties; provided, that if the Parties cannot agree on location or mediator, they agree to use the Dispute Resolution Center in Austin, Texas, to provide mediation services. The Parties will share equally the costs and expenses of mediation, except that each Party will bear its own costs of participation and any legal or other representation.

11.12 No arbitration

Neither Party may be compelled to arbitrate any claim or dispute arising under, related to, or concerning this Agreement without its express written consent.

11.13 Headings and Captions

Descriptive headings and captions are for convenience only and shall not affect the construction or application of this Agreement. Words having established technical or trade meanings shall be so construed. Words of any gender are deemed to include any other genders; and use of the singular or plural shall include the other, unless otherwise required or apparent by context. This Agreement shall be construed according to fair meaning and not for or against either Party.

11.14 Designation of materiality not exclusive

Some provisions of this Agreement bear the explicit designation of being material obligations. Materiality of a provision in this Agreement is not exclusive to such explicitly designated provisions; those designations are made to ensure Licensee is aware that the

IN WITNESS WHEREOF, the parties hereto hereby set their hands and seals as of the 1st day of April 2021. IN PRESENCE OF: Business Associate

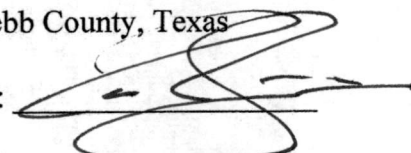
Indigent Healthcare Solutions (IHS)

By: 

Robert Baird
President

Date: 2-10-21

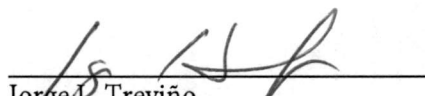
Webb County, Texas

By: 

Honorable Tano Tijerina
County Judge

Date: 5-11-2021

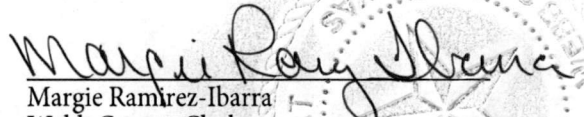
APPROVED AS TO FORM:



Jorge L. Treviño
Assistant General Counsel
Civil Legal Division

The General Counsel, Civil Legal Division's 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).

ATTESTED:



Margie Ramirez-Ibarra
Webb County Clerk

