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MARGIE R IBARRA  
COUNTY CLERK  
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2023 JUN -1 PM 3: 31  
WEBB COUNTY, TEXAS  
all  
DEPUTY

## SOFTWARE LICENSE & SUPPORT AGREEMENT

This Agreement is made and entered into as of 1<sup>st</sup> day of May, 2023 (the "Effective Date") by and between Advanced Computer Technologies, LLC, with offices at 4450 Belden Village Street, Suite 305, Canton, Ohio 44718 ("ACT") and Webb County, a political subdivision of the State of Texas, for and on behalf of the Webb County Veterans Treatment Program, located at 4101 Juarez St., Laredo, TX 78040, herein referred to as "CUSTOMER" or "LICENSEE".

Pursuant to this Agreement, ACT is licensing its DCCM software (hereafter "Software") and providing related services to the CUSTOMER under the terms and conditions of this Agreement;

### 1. DEFINITIONS

- a. "Confidential Information" means this Agreement and all its exhibits, any amendment hereto signed by both parties, all software listings, Documentation, as defined herein below, information, data, drawings, benchmark tests, specifications, trade secrets, object code and machine-readable copies of the ACT Software, source code relating to the ACT Software, and any other proprietary information supplied to CUSTOMER by ACT, including all items defined as "confidential information" in any other agreement between CUSTOMER and ACT whether executed prior to or after the date of this Agreement.
- b. "Documentation" means any instructions manuals or other materials, and on-line support files regarding the Use of the ACT Software that is provided by ACT.
- c. "ACT Software" means the computer software programs specified in Exhibit A and licensed by ACT hereunder.
- d. "Software" means ACT Software and Third-Party Software provided by ACT.
- e. "Third Party Software" means software licensed by a third party, other than ACT, and is provided by ACT subject to such the license of such third party.
- f. "Update" means error corrections or fixes to the version of the ACT Software specified in Exhibit A.
- g. "Use" means utilization of the Software by CUSTOMER for its own internal information processing services and computing needs.

### 2. LICENSE AND USE

- 2.1 **License.** Subject to the terms and conditions of this Agreement, including without limitation the CUSTOMER's payment of all applicable annual License Fees (as defined below), ACT hereby grants to the CUSTOMER and the CUSTOMER hereby accepts from ACT a nonexclusive, nontransferable license, without the right to grant sublicenses, to use the Software, in executable code form only, for the number of users for which the CUSTOMER has paid the applicable annual License Fees, in accordance with this Agreement, the user manuals provided to the CUSTOMER with the Software in either



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electronic, online help files or hard copy format (“Documentation”) and with the limitations set forth in **Exhibit A**, if any, solely for the CUSTOMER’s internal business purposes.

2.2 **Restrictions.** The CUSTOMER acknowledges that the Software and the structure, organization, and source code thereof constitute valuable trade secrets of ACT. Accordingly, except as expressly permitted in Section 2.1 or as otherwise authorized by ACT in writing, the CUSTOMER will not, and will not permit any third party to (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) sublicense, lease, rent, loan, sell, distribute, make available or otherwise transfer the Software to any third party, (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; or (d) otherwise use or copy the Software except as expressly allowed under Section 2.1 above. The CUSTOMER may make one (1) copy of the Software solely as necessary for archival or backup purposes.

2.3 **Additional Materials.** Unless otherwise expressly agreed to by the parties, the CUSTOMER shall provide and obtain for itself all hardware, software, services and technology necessary to operate the Software not owned or provided by ACT.

### 3. SUPPORT SERVICES

3.1 **Support.** ACT will provide the CUSTOMER with those support services described on **Exhibit B** (“Support Services”).

3.2 **Additional Services.** ACT will provide the CUSTOMER with those services described on **Exhibit A**, if any. The CUSTOMER will pay ACT the fees set forth on **Exhibit A** for any such Services. Additional Services may be added by mutual agreement pursuant to an amendment or signed Statement of Work referencing this Agreement.

3.3 **Hosting.** ACT will provide the CUSTOMER with those hosting services described on **Exhibit C**, if any (“Hosted Services”). The CUSTOMER will pay ACT the fees set forth on **Exhibit A** for any such Hosted Services. Hosting fees are annual fees that are payable in advance for each contract year as described on **Exhibit A**.

### 4. FEES AND PAYMENT SCHEDULE

4.1 **Fees.** The CUSTOMER will pay ACT the fees set forth on **Exhibit A**. All Fees are non-refundable. Fees are due within thirty (30) calendar days of the Effective Date of this Agreement.

4.2 **Payment.** The CUSTOMER agrees to pay ACT within thirty (30) calendar days after the date of any invoice from ACT. Fees for any Services will be billed as set forth on **Exhibit A**. Fees exclude, and the CUSTOMER will make all payments of fees to ACT free and clear of, all applicable sales, use, and other taxes and all applicable export and import fees, customs duties and similar charges. ACT may charge interest on all late payments equal to one and one-half percent (1½%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

4.3 **Audit Rights.** Upon ten (10) days written prior notice, ACT will have the right to have an independent audit firm inspect the CUSTOMER’s records relating to the CUSTOMER’s

use of the Software, and access and query the CUSTOMER's equipment on which the Software is operating, in order to verify the CUSTOMER's compliance with the terms and conditions of this Agreement. The audit will be performed during the CUSTOMER's normal business hours. The costs of the audit will be paid by ACT, unless the audit reveals that the CUSTOMER has (i) failed to strictly comply with the restrictions set forth in Section 2 or (ii) underpaid the amounts owed to ACT by five percent (5%) or more, in which case the CUSTOMER will reimburse ACT for all reasonable costs and expenses incurred by ACT in connection with such audit. The CUSTOMER will promptly pay to ACT any amounts shown by any such audit to be owing plus interest as provided in Section 4.2. Such audits will be conducted no more than once in any period of six (6) consecutive months.

## 5. TERM AND TERMINATION

- 5.1 **Term.** The initial term of this Agreement is for twelve months ("Initial Term"). After the Initial term, this Agreement may renew for one-year periods by written mutual agreement unless terminated, in writing, in accordance with this Agreement. EITHER PARTY MAY CHOOSE TO TERMINATE THE AGREEMENT FOR ANY REASON AT THE END OF A CONTRACT YEAR BY GIVING THIRTY DAYS (30) PRIOR NOTICE OF SUCH INTENT. ACT shall provide CUSTOMER with sixty (60) day notice of renewal price, provided however that such renewal price for license and support, for the modules licensed in this agreement, shall not be increased by more than 10% over the prior year's price. Further, parties may mutually agree on Additional Services at the time of renewal, or such other times as mutually agreed.
- 5.2 **Termination.** Either party shall have the right to terminate this Agreement if the other party is in material default hereunder, which default cannot be cured, or which being capable of cure has not been cured within thirty (30) calendar days of the non-breaching party's written notice of such default or such additional cure period as the non-breaching party may authorize.
- 5.3 **Effects of Termination.** Upon termination or expiration of this Agreement for any reason, any amounts owed to ACT under this Agreement before such termination or expiration will be immediately due and payable, all licensed rights granted in this Agreement will immediately cease to exist, and the CUSTOMER must promptly discontinue all use of the Software, erase all copies of the Software from the CUSTOMER's computers, and return to ACT or destroy all copies of the Software, Documentation and other ACT Confidential Information in the CUSTOMER's possession or control. Sections 2.2, 3.2, 4.2, 5.2, 5.3, 6, 7.2, 8, 9, 10 and 11, together with any accrued payment obligations, will survive expiration or termination of this Agreement for any reason.

## 6. PROPRIETARY RIGHTS

- 6.1 **ACT's Rights.** The CUSTOMER acknowledges and agrees that the Software, Documentation and any Customization of the Software, and all worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights therein, are the exclusive property of ACT and its suppliers and that this Agreement grants the CUSTOMER no title or right of

ownership in the Software, Documentation and any Customization of the Software. All rights in and to the Software, Documentation and any Customization of the Software not expressly granted to the CUSTOMER in this Agreement are reserved by ACT and its suppliers. The CUSTOMER agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Software, Documentation, any Customization of the Software, or any related materials.

- 6.2 **CUSTOMER's Rights.** The CUSTOMER retains all right, title and interest in and to the CUSTOMER Data, and ACT acknowledges and agrees that it neither owns nor acquires any additional rights in and to the CUSTOMER Data not expressly granted by this Agreement. "CUSTOMER Data" means the data and content provided by the CUSTOMER in the course of the CUSTOMER's use of the Software in accordance with this Agreement.

## 7. WARRANTY

- 7.1 **Limited Warranty.** ACT warrants for a period of ninety (90) days following the date of delivery of the Software to CUSTOMER that the Software will substantially operate according to the specifications set forth in the User Guide Documentation. If it is determined by CUSTOMER that the Software does not substantially operate according to such specifications, ACT may, at its option and expense, apply commercially reasonable efforts to designing, coding and implementing programming changes to the source code to correct reproducible errors or correcting misstatements and omissions in the User Guide documentation. CUSTOMER shall report all errors or other defects in the Software to ACT immediately upon their discovery. It is acknowledged that the Software is inherently complex and may contain errors and ACT cannot and does not guarantee to correct all such errors. The remedies set forth in this Section 7 constitutes CUSTOMER's sole and exclusive remedy for breach of this Warranty. The Software contains third party assessments for use by the CUSTOMER. ACT has no proprietary claim on these assessments and therefore disclaims any and all liability, including any express or implied warranties, whether oral or written, for such third-party assessments. The customer acknowledges that no representations have been made.

- 7.2 **No other Warranties.** ACT makes no other warranties, whether express, implied, or statutory regarding or relating to the software or the documentation, or any materials or services furnished or provided to customer under this agreement, including support. ACT specifically disclaims all implied warranties of merchantability and fitness for a particular purpose with respect to the software, documentation and said other materials and services, and with respect to the use of any of the foregoing.

## 8. LIMITATION OF LIABILITY

IN NO EVENT WILL ACT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF ACT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



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ACT'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO ACT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. The CUSTOMER acknowledges that these limitations reflect the allocation of risk set forth in this Agreement and that ACT would not enter into this Agreement without these limitations on its liability, and the CUSTOMER agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. In addition, ACT disclaims all liability of any kind of ACT's licensors and suppliers.

## 9. INDEMNIFICATION

9.1 **Indemnity by ACT.** ACT will defend at its own expense any action against the CUSTOMER brought by a third party to the extent that the action is based upon a claim that the Software infringes any U.S. patents or any copyrights or misappropriates any trade secrets of a third party, and ACT will pay those costs and damages finally awarded against the CUSTOMER in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on the CUSTOMER (a) notifying ACT promptly in writing of such action, (b) giving ACT sole control of the defense thereof and any related settlement negotiations, and (c) cooperating and, at ACT's request and expense, assisting in such defense. If the Software becomes, or in ACT's opinion is likely to become, the subject of an infringement claim, ACT may, at its option and expense, either (i) procure for the CUSTOMER the right to continue using the Software, (ii) replace or modify the Software so that it becomes non-infringing, or (iii) accept return of the Software, terminate this Agreement upon written notice to the CUSTOMER. Notwithstanding the foregoing, ACT will have no obligation under this Section or otherwise with respect to any infringement claim based upon (a) any use of the Software not in accordance with this Agreement or for purposes not intended by ACT, (b) any use of the Software in combination with other products, equipment, software, or data not intended by ACT to be used with the Software (c) any use of any release of the Software other than the most current release made available to the CUSTOMER, or (d) any modification of the Software by any person other than ACT or its authorized agents or subcontractors. THIS SECTION STATES ACT'S ENTIRE LIABILITY AND THE CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

9.2 **Indemnity by the CUSTOMER.** The CUSTOMER agrees to indemnify, defend and hold harmless ACT and its employees, directors, stockholders, officers and other affiliates, agents, representatives, successors and assigns, from and against any and all liabilities, losses, damages, costs, and other expenses (including attorneys' fees) arising from the intentional misconduct or negligence of the CUSTOMER, its employees, officers, affiliates, agents, and representatives.

## 10. CONFIDENTIALITY

10.1 **Confidential Information.** Each party (the "Disclosing Party") may from time to time disclose to the other party (the "Receiving Party") certain information regarding the business of the Disclosing Party and its suppliers, including technical, marketing, financial, employee, planning, and other confidential or proprietary information

(“Confidential Information”). Any information that the Receiving Party knew or should have known, under the circumstances, was considered confidential or proprietary by the Disclosing Party will be considered Confidential Information of the Disclosing Party. The Software, including without limitation any routines, subroutines, directories, tools, programs, or any other technology included therein, shall be considered ACT’s Confidential Information.

**10.2 Protection of Confidential Information.** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**10.3 Exceptions.** The Receiving Party’s obligations under Section 10.3 with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party’s Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party’s request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**10.4 Return of Confidential Information.** The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party’s possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party upon the expiration or termination of this Agreement. Upon request from the Disclosing Party, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section 10.4.

**10.5 Confidentiality of Agreement.** Neither party will disclose any terms of this Agreement to anyone other than its attorneys, accountants, and other professional advisors except (a) as required by law or (b) pursuant to a mutually agreeable press release or (c) in connection with a contemplated transfer of such party’s business permitted by Section 10.2 (provided that any third party to whom the terms of this Agreement is to be disclosed signs a confidentiality agreement reasonably satisfactory to the other party).



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## 11. GENERAL PROVISIONS

11.1 **Notices.** All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when mailed by certified mail, return receipt requested, or delivered in person to whom it is to be given at the addresses set forth below or to such other addresses as a party may designate pursuant to this notice provision. Any notice given shall be deemed to have been received on the date on which it is delivered personally or if mailed, on the third business day following the mailing thereof.

**Customer**

Tano E. Tijerina  
4101 Juarez St., Laredo, TX 78040

**ACT**

General Manager  
1333 College Pkwy #111  
Gulf Breeze, FL 32563  
Email: jim.binion@equivant.com

**Copy to:**

Webb County Civil Legal Division  
Regarding: DCCM Veterans Program  
Agreement  
1000 Houston St. FL 2<sup>nd</sup>  
Laredo, Texas 78041

**Copy to:**

Contract Manager  
ACT  
4450 Belden Village Street  
Suite 305  
Canton, Ohio 44718  
Email: contractsmanager@equivant.com

11.2 **Assignment.** Neither the CUSTOMER nor ACT may assign or transfer, by operation of law or otherwise, any of its rights under this Agreement (including the license rights granted to the CUSTOMER to the Software), in whole or in part, to any third party, without prior written approval of the other party, which shall not unreasonably be withheld or delayed; except that ACT may assign this Agreement, without consent, to any successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any attempted assignment or transfer in violation of the foregoing will be null and void.

11.3 **Entire Agreement.** This Agreement and the exhibits and schedules attached hereto constitute the entire agreement of the parties with respect to the subject matter hereof, and this Agreement supersedes all previous agreements, whether written or oral and all negotiations as well as any previous agreements presently in effect between the Provider and the Agency relating to the subject matter hereof. There shall be no modification, rescission, waiver, release or amendment of any provision of this Agreement, except by an express written amendment to this Agreement signed by authorized representatives of each of the parties hereto, and for the CUSTOMER by same person or persons, or their successors and/or expressly authorized designee(s),



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who signs the original Agreement. The terms of any purchase order or similar document submitted by the CUSTOMER to ACT will have no effect.

11.4 **Jurisdiction and Venue.** This Agreement shall be governed by the laws of Webb County, Texas, without regard to its principles of conflicts of law.

11.5 **Dispute Resolution.** The parties will seek a fair and prompt negotiated resolution within ten (10) days of the initial notice of the dispute ("Dispute"). If the Dispute has not been resolved after such time, the parties will escalate the issue to more senior levels. If the parties are unable to resolve any dispute at the senior management level, ACT and the Customer will seek to resolve such Disputes through good faith, amicable discussions, mediation and negotiations. Any Dispute, controversy, claim, question or difference arising out of or relating to the Agreement or any alleged breach hereof, which cannot be resolved by good faith negotiation shall be resolved through mediation with a mutually agreeable mediator (the "Mediator"), which may be initiated by either party upon written notice to the other party. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover relief, if ordered by a court of competent jurisdiction. Any request for mediation of a claim by either party against the other relating to this Agreement must be filed no later than six (6) months after the date on which ACT concludes performance under this Agreement.

Nothing herein shall prevent either party from seeking a preliminary or permanent injunction to preserve the status quo or prevent irreparable harm during the mediation process.

11.6 **Compliance with Laws.** The CUSTOMER shall comply with all applicable export and import control laws and regulations concerning its use of the Software and, in particular, the CUSTOMER will not export or re-export the Software without all required government licenses and the CUSTOMER agrees to comply with the export laws, restrictions, national security controls and regulations of all applicable foreign agencies or authorities. The CUSTOMER agrees to defend, indemnify, and hold harmless ACT from and against any violation of any applicable laws or regulations by the CUSTOMER or any of its agents, officers, directors, or employees.

11.7 **Force Majeure.** Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, epidemics, pandemics, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any



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part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages, or other loss caused by or resulting from a Force Majeure Occurrence.

- 11.8 **U.S. Government End Users.** If the CUSTOMER is a branch or agency of the United States Government, the following provision applies. The Software is comprised of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.
- 11.9 **Remedies.** Except as provided in Section 9.1, the parties’ rights and remedies under this Agreement are cumulative. The CUSTOMER acknowledges that the Software contains valuable trade secrets and proprietary information of ACT, that any actual or threatened breach of Section 2 will constitute immediate, irreparable harm to ACT for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought by ACT to enforce this Agreement, the prevailing party will be entitled to receive its attorneys’ fees, court costs, and other collection expenses, in addition to any other relief it may receive.
- 11.10 **Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.11 **Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.
- 11.12 **Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

**[Signatures Appear On Following Page]**



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IN WITNESS WHEREOF, the ACT designated agent whose signature appears below, hereby warrants that he has been authorized to execute this Agreement on behalf of ACT and hereby accepts and binds ACT to the terms and conditions as of the Effective Date.

Advanced Computer Technologies, LLC

Webb County

By: Jim Binion  
Name: Jim Binion  
Title: General Manager  
Date: 5/10/2023

By: [Signature]  
Name: Tano E. Tijerina  
Title: Webb County Judge  
Date: June 1, 2023

Please list the appropriate **Billing** contact information if different from above:

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Please list the correct **Project Lead** contact information if different from above:

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

ATTESTED:

*Margie Ramirez Ibarra* LS

Margie Ramirez-Ibarra  
Webb County Clerk

APPROVED AS TO FORM:

*Fortunato Paredes*

Fortunato Paredes  
Chief 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).\*

Passed and approved by the Webb County Commissioners Court  
On May 8, 2023.



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## EXHIBIT A Software and Hosting Fee Schedule

Software: The CUSTOMER shall be entitled to use the Software set forth below in accordance with the terms and conditions of the Agreement, including, without limitation, the restrictions indicated in this Exhibit.

Software License, Maintenance and Support Fees: The Software License, Maintenance and Support Fees are annual fees that are payable in advance for each contract year in which the Software License, Maintenance and Support Services are to be provided. The fees will be negotiated each year based on the number of users and the package of product modules provided.

Additional Services: Additional Services are billed as delivered unless otherwise agreed. Expenses are billed at actual cost as incurred.

Hosting: The minimum term for the provision of any Hosting Services provided under this Agreement shall for a period of twelve (12) months. If ACT is to provide Hosting Services, Exhibit C will contain the terms and scope for delivery of Hosting Services.

**CONTRACT TERM: May 31, 2022 through May 30, 2023**

<b>Product</b>	<b>Description</b>	<b>Fee</b>	<b>Invoiced</b>
DCCM	Annual license, support and hosting	\$7,000.00	Annually

**EXHIBIT B**  
**Support Services**

- 1.1 ACT, or its agents, shall provide support services as described in this **Exhibit B** ("Support Services") for the Software. The CUSTOMER will have access to ACT's support services during normal business hours (8:00 A.M. - 5:00 P.M., E.S.T.), Monday through Friday, excluding published holidays ("Support Hours"). The initial term for the provision of Support Services will be concurrent with the term of the ACT license as set forth on **Exhibit A**, unless the Agreement is terminated in accordance with Section 5.1 of this Agreement.
- 1.2 ACT will provide the following Support Services to the CUSTOMER:
- 1.2.1 Correction of confirmed defects in the Software, based upon deviations from documented software functionality;
  - 1.2.2 Documentation updates via published Release Notes;
  - 1.2.3 Assistance in resolving issues with Software.
- 1.3 Response Times and Availability.

The Customer Care Department is the primary means of communication between the CUSTOMER and ACT regarding all ACT software issues. Customer Care provides the most efficient means to track, manage, and resolve all ACT software issues. The following table provides information on ACT's categorization of issues.

Priority	Criteria
<p><b><u>Urgent</u></b> Extremely Severe Business Impact</p>	<p>Issue results in broad disruption or degradation of production environment services (not caused by the Customer's hardware or environment) causing a severe business impact to the Customer, and for which no acceptable workaround exists, including where:</p> <ul style="list-style-type: none"> <li>· A core business function is prevented from being carried out; or</li> <li>· An issue results in a disruption or degradation for multiple core business functions that affect one or more of the Customer's business groups.</li> </ul>
<p><b><u>High</u></b> Serious Business Impact</p>	<p>An error or Software issue related to a core system or business function that causes a serious business impact to the Customer by impeding the normal intended use of the software but allowing processing to continue in a restricted manner, and for which there is no known system workaround.</p>
<p><b><u>Normal</u></b> Moderate Business Impact</p>	<p>A software operational error related to a core system or business function that causes a moderate to low business impact to the Customer but does not cause a serious impediment to the normal intended use of the software, and for which a system workaround may exist; or questions about how to use the application.</p>

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Priority	Criteria
<u>Low</u> Little or No Business Impact	System functionality is largely correct except for minor, display or cosmetic errors with non-core functions of the software that causes little or no business impact to the Customer. Includes requests for documentation changes or corrections.

- 1.3.1 Response Time. ACT will respond as quickly as possible to each request, but uses the response time targets for Average First Reply Time, during the defined hours of operation, provided in the table below. First Reply Time is defined as the time it takes an ACT Customer Care Agent to respond to CUSTOMER's request for assistance.

	Average First Reply Time Target	Average Resolution Time Target
Urgent	1 hour	As soon as possible, but no more than 24 hours
High	8 business hours	48 hours (not including development or release time)
Normal	2 business days	5 business days (not including development or release time)
Low	2 business days	Mutually agreed time or Scheduled for future release

- 1.3.2 Resolution Time. Resolution time will vary depending on the severity and complexity of the reported problem. Resolution time is defined as the time it takes ACT to sufficiently remedy the problem or return the system to operational status. Resolution may mean that a temporary fix has been provided to correct a problem until a permanent solution can be delivered. Average Resolution Time targets are provided in the table above. Elapsed time for development effort is not included in Resolution time.

#### 1.4 Exceptions.

- 1.4.1 Inquiries related to interpretation of results or configuration decisions based on CUSTOMER policies and/or procedures are NOT included in the Support Services.

- 1.4.2 ACT will provide the Support Services only for the most current release and the immediately preceding major release of the Software. ACT may elect to cease supporting a platform upon twelve (12) months' notice to the CUSTOMER. ACT shall have no responsibility under this Agreement to fix any errors in the Software arising out of or related to the following causes: (a) the CUSTOMER's modification or combination of the Software (in whole or in part), (b) use of the Software in an environment other than any hardware and operating system platform which ACT supports for use with the Software ("Supported Environment"); or (c) hardware problems.



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- 1.5 ACT will provide updates for the Software as and when developed for general release at ACT's sole discretion.
  - 1.5.1 ACT hosted CUSTOMER's will request the software update to be performed, and will approve the modifications necessary to the active Test/Production environments when an update is required. ACT will perform the software update within its hosted environment upon approval. Documentation (DCCM Release Notes) will be made available to inform the CUSTOMER of software modifications.
- 1.6 The CUSTOMER is responsible for undertaking the proper supervision, control and management of its use of the Software, including, but not limited to: (a) assuring proper Supported Environment configuration, Software installation and operating methods; and (b) following industry standard procedures for the security of data, accuracy of data inputs and outputs, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction.



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## EXHIBIT C

### ACT Hosting Services

ACT utilizes the AWS GovCloud platform for all hosted services. The general scope of services addressed by this Agreement includes the operation, maintenance, and support of the:

- Application and Database hosted under this agreement
- Database security
- Database Backup services, with retention
- Data Center server operation.

#### **Amazon Web Services Service Level Agreement**

Amazon Web Services (AWS) is the hosting provider for ACT's hosting services. AWS provides secured data centers within the United States, server hardware, scheduled maintenance services, replication options, back-up utilities and service utilities needed for monitoring and penetration testing.

AWS will use commercially reasonable efforts to make the services each available for each AWS region with a Monthly Uptime Percentage of at least 99.99%. This Service Commitment stipulates that major routing devices within the AWS operated data center and internal network are reachable from the United States internet 99.99% of the time. AWS's hosting SLA includes exclusions for scheduled maintenance, malicious attacks, and legal actions that may impact network uptime.

#### **Amazon SLA Exclusions**

The Service Commitment does not apply to any unavailability, suspension or termination an included service, or any other service performance issues: (i) caused by factors outside of Amazon's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of the applicable Included service; (ii) that result from any actions or inactions of CUSTOMER or any third party, including failure to acknowledge a recovery volume; (iii) that result from CUSTOMER'S equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Amazon's direct control); or (iv) arising from our suspension or termination of CUSTOMER'S right to use the applicable service in accordance with this Agreement. If availability is impacted by factors other than those used in Amazon's Monthly Uptime Percentage calculation, then Amazon may issue a service credit considering such factors at their discretion.

#### **ACT Scope of Services**

All of the services, functions, processes, and activities described below will be collectively described as the "Hosting Services" for purposes of this Agreement.

##### **I. Application**

Application refers to the CUSTOMER'S software licensed from ACT pursuant to the Software License Agreement. The Application is hosted by ACT pursuant to this Agreement.



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## II. Support Software

Support Software includes the operating system, utilities, database software, monitoring services and necessary licenses required to operate the Application and is provided by ACT as part of the scope.

- Monitoring includes Maintenance and Performance monitors on bandwidth access (connectivity), server up time and processing stability, unauthorized access, and back door attacks.

## III. Backups

The Production Database will be backed up as outlined here:

- Full back-up of Production and Test database files executed each Sunday: 10:00 PM EST
- Differential back-up of Production and Test database files executed nightly at 10:00PM EST
- Transaction log back-up of Production database files executed every 5 minutes. (Test databases are not configured for full transaction logs.)
- Backups are physically stored in the assigned AWS data center.
- Backup files are retained for 14 calendar days.
- An image of all data and backup drives are securely transferred daily at 6:00AM EST to an encrypted storage volume located in a second storage location within the assigned data center.
- All backup files are stored electronically, on approved servers. No other media is used to backup, store, or secure offsite backups.

## IV. Maintenance Schedule

Maintenance is scheduled and delivered by ACT technical engineers. Maintenance refers to the maintaining all ACT host servers that house application software and databases. Hosted servers may not be available to the CUSTOMER during regularly scheduled maintenance windows; maintenance activities are mandatory. The ACT maintenance schedule is set as follows:

- The first Sunday of every month from 9PM to 12PM EST (*Windows and Security Updates*).

## Hours of System Operations

The Application will be accessible and available to the CUSTOMER and capable of normal operating functions 24 hours a day, seven days a week, except for periods of Scheduled Maintenance and previously approved outages communicated by the hosting provider. ACT will not be responsible for inaccessibility arising from communications problems occurring anywhere beyond the ACT production server side of the router resident at the AWS Data Center.

## Compliance Status

AWS GovCloud (US) allows customers at the state, local and federal level to adhere to ITAR, FedRamp/FISMA High and DoD SRG impact levels 2, 4 and 5. All AWS published compliancy certifications can be referenced directly at:

<https://aws.amazon.com/compliance/programs/>



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### **Customer Responsibilities**

The CUSTOMER is responsible for

- Assigning a primary and alternate CUSTOMER representative to coordinate all communications and activities related to ACT hosting services. These representatives should be authorized decision-makers with appropriate technical capabilities.
- Providing user identification data and determining the appropriate security profile for each user account within the software application. CUSTOMER will control security at the Application level within all hosted environments.
- All printing activities. No print job will print at the Data Center and all physical printing requirements will be handled by the CUSTOMER. This includes the purchase and installation of printers at CUSTOMER'S sites for the Application being utilized as defined in the Scope of Services.
- Installing, operating and maintaining all workstation software (and CUSTOMER'S LAN, existing data communications configuration, hardware, or software required at the CUSTOMER'S site) except as otherwise stipulated in the Scope of Services. ACT network and network responsibility includes the data center hardware configuration (servers, routers) to the boundary of the CUSTOMER network. Internet bandwidth and uptime from the CUSTOMER'S entry point (physical location/s) is the responsibility of the CUSTOMER.
- Requesting and scheduling all software release upgrades with ACT technical staff. This must be performed a minimum of once per contract year in order to maintain compliance with ACT's End of Life Software Policy.
- Testing application upgrades and/or application fixes applied by ACT to Applications used by CUSTOMER. CUSTOMER will test all software release updates and fixes prior to their introduction to the CUSTOMER's Production environment within a mutually agreed upon time frame. Approval to alter the hosted test and production environments is required by the CUSTOMER.

The following pertains to all CUSTOMER systems hosted by ACT:

#### **1. Confidentiality, Integrity, Availability (CIA)**

- ACT shall protect the Confidentiality, Integrity, and Availability (CIA) of all CUSTOMER Data ensuring extra levels of security. All CUSTOMER information must remain private and permit redaction of protected information before publication. Audit trails cannot be altered.

#### **2. Breach Notification**

- ACT agrees that upon discovery of unauthorized access to CUSTOMER Data, ACT shall notify CUSTOMER both orally and in writing. In no event shall the notification be made more than forty-eight (48) hours after ACT knows or reasonably suspects unauthorized access has or may have occurred. In the event of a suspected unauthorized access, ACT agrees to reasonably coordinate with CUSTOMER to investigate the occurrence.

#### **3. Data**

- All CUSTOMER data will remain in the 48 contiguous states at all times.