

Contract Review Sheet

Contract #: IT-4077-21

Person Sending: **Toby Giddings**

Department: **Information Technology**

Contact Phone #: **x5047**

Date Sent: **Friday, June 4, 2021**

☒ Contract ☐ Amendment# ☐ Lease ☐ IGA ☐ MOU ☐ Grant (attach approved grant award transmittal form)

Title: Intrado Interactive Services Patient Messaging System

Contractor's Name: **Intrado Interactive Services**

Term - Date From: **Jul 1, 2021**

Expires: **Jun 30, 2026**

Contract Total: \$150,000.00

Amendment Amount:

New Contract Total: \$150,000.00

Source Selection Method: Formal Bid (attach transmittal)

892

Additional Considerations (check all that apply)

☐ Board Order#☐ Incoming Funds

☐ Independent Contractor (LECS) approval date: _____

☐ Insurance Waiver (attach)☐ CIP# (required for all goods /software greater than \$5,000)☐ Feasibility Determination (attach approved form)☐ Federal Funds (attach sub-recipient / contractor analysis)☐ Reinstatement (attach written justification)☐ Retroactive (attach written justification)**Description of Services or Grant Award:**

Intrado Interactive Services Patient Messaging System is one of the interfaces to be used with the new Electronic Health Records system, DrCloud EHR, and will allow the Health and Human Services Department to send emails, text messages, phone calls and voice-mails directly to clients to remind them of upcoming appointments.

FOR FINANCE USE

Date Finance Received:

BOC Planning Date:

Date Legal Received:

Comments:

REQUIRED APPROVALS:

Finance - Contracts

Date _____

Risk Manager

Date

Legal Counsel

Date _____

Chief Administrative Officer

Date _____

Date ☐ To be filed ☐ Added to Finance Table

☐ Date _____ Returned to department for signature _____



MARION COUNTY BOARD OF COMMISSIONERS


Board Session Agenda Review Form

Meeting date: 6/16/21

Department: Finance Agenda Planning Date: 6/10/21 Time required: 5 min

☐ Audio/Visual aids

Contact: Ryan Matthews Phone: 503-361-2670

Department Head Signature: 

TITLE Consider approval of Intrado Interactive Services Patient Messaging System

Issue, Description & Background Intrado Interactive Services Patient Messaging System is one of the interfaces to be used with the new Electronic Health Records system, DrCloud EHR, and will allow the Health and Human Services Department to send emails, text messages, phone calls and voice-mails directly to clients to remind them of upcoming appointments. This is currently being done manually within HHS, and is both labor intensive and costly to perform.
To enable this service and interface, the County must create and maintain an active account with the reminder message vendor, as stated in the EnSoftek Contract.

Financial Impacts: \$2,500 per month or \$150,000 for the first five years

Impacts to Department & External Agencies

Options for Consideration: 1) Approve contract IT-4077-21 for Intrado Interactive Services Patient Messaging System
2) Deny
3) Take no action

Recommendation: Approve contract IT-4077-21 for Intrado Interactive Services Patient Messaging System

List of attachments:

Presenter: Ryan Matthews, HHS Director

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Ryan Matthews, rmatthews@co.marion.or.us
Toby Giddings, tgiddings@co.marion.or.us

Service Agreement

1. Introduction.

This Service Agreement (the “Agreement”), effective as of the last date signed below, governs the purchase and use of Intrado Interactive Services Corporation (“Provider”) services (as defined below) and purchase of On-Hold Messaging Solutions (as defined below) (the Provider Services and On-Hold Messaging Solutions shall be referred to collectively herein as the “Services”). Services may be purchased by: (a) executing an order form, work order or statement of work (for purposes of this Agreement each shall be referred to as an “Order Form”); or (b) using the Services. The individual or legal entity executing an Order Form or opening an account for Services under this Agreement shall be referred to as “you,” “your” or “Client” in this Agreement and the other party who executes the Order Form or provides the Services shall be referred to as “we,” “us” or “Provider” in this Agreement. Each Order Form shall govern and control in case of conflict with the Agreement, and in conjunction with this Agreement shall form a separate agreement between the parties that execute the applicable Order Form. Please read this Agreement carefully before executing an Order Form or installing, accessing, or otherwise using the Services. By executing an Order Form or installing, accessing, or otherwise using the Services you agree to be bound by this Agreement. Please maintain a copy for your records. If you do not agree with the terms of this Agreement, do not use the Services.

2. Service Description.

This Agreement governs the purchase and use of Provider’s hosted or managed services, equipment, products, or maintenance (the “Provider Services”) and Client premise based hardware and software on-hold messaging solutions (the “On-Hold Messaging Solutions”) set forth in the applicable Order Form between you and Provider or by you and a Provider Affiliate (as defined in Rule 405 of the Securities Act of 1933) (the “Services”), or used by you if no such Order Form has been executed. We may alter, expand, or reduce the features of the Services from time to time without notice to you. Client agrees to provide information reasonably required by Provider to perform Services, including as applicable, but not limited to: hiring profiles; scripts; message content, recipient contacting information and lists, program content and materials; Client or third party databases; forecasts; current process performance statistics; Client or third party software, hardware, systems, routing and network addresses and configurations; and key contacts for problem escalation (collectively the “Client Materials”). You agree that our obligation to provide Services is conditioned upon you providing all information and assistance reasonably required to perform the Services and your compliance with standards set forth by Provider regarding hardware compatibility and installation requirements and you hereby agree to timely provide all such information, assistance and compliance.

3. Term.

This Agreement will continue so long as the Services are installed, accessed, or otherwise used. Each Order Form may specify its duration (each an “Order Form Term”) and/or each Order Form may further specify one or more subscriptions purchased under the Order Form (each a “Subscription”). Each Subscription will specify its duration (each a “Subscription Term”). All Subscriptions begin as set forth in the Order Form or if not addressed therein, the earlier of: (a) thirty (30) days from provisioning of Client’s system access; or (b) go live of the applicable

Subscription Service. For the avoidance of doubt, Client agrees to pre-pay for all usage of Services prior to the start of the Subscription.

4. Renewal.

All Order Forms and Subscriptions shall automatically renew for yearly periods unless either party terminates the specific Order Form or Subscription in writing ninety (90) days prior to the expiration of the applicable Order Form or Subscription, which termination will be effective at the expiration of the applicable Order Form or Subscription.

5. Termination of Order Form or Subscription for Cause.

Any Order Form or Subscription may be terminated immediately by the non breaching party upon a material breach by the other party of a material provision of this Agreement, the relevant Order Form or the relevant Subscription, and such breach is not cured within ten (10) days after written notice if the breach is a payment breach or sixty (60) days after written notice for any other material breach.

6. Effect of Termination.

The termination of any Order Form or any Subscription shall not otherwise affect the Term of this Agreement or any other Order Form or Subscription. If you terminate any Order Form or Subscription for cause: (a) you will pay for all Services rendered up to the date of termination; (b) Provider will reimburse you for any amounts prepaid by you for Services not rendered; and (c) you shall be relieved of any future payments due under such Order Form or Subscription. Otherwise, upon any termination of this Agreement, any Order Form or any Subscription, as applicable, you agree to pay for: (a) all Services rendered up to the date of termination; and (b) any future amounts due under this Agreement, the Order Form or the Subscription for the entire Order Form Term or Subscription Term, as applicable, including the current renewal thereof, if applicable. The parties agree and acknowledge that Provider has made pricing concessions based on the provisions agreed to herein and that any shortfall payments due are a fair approximation of the damages that would be caused to Provider and do not constitute a penalty.

7. Payments and Charges.

With respect to Provider Services, you agree to pay in advance for all Provider Services other than usage based Services which will be invoiced as incurred. With respect to On-Hold Messaging Solutions, payments are due in accordance with the Order Form and upon successful installation of the On-Hold Messaging Solution which shall be defined as the earlier of: (a) 30 days after delivery of the On-Hold Messaging Solution to you; (b) your successful or continued use of the On-Hold Messaging Solution; or (c) 3 months from the date of the Order Form if delivery/installation of the On-Hold Messaging Solution is delayed or prevented due to your failure to comply with your obligations set forth in this Agreement or the Order Form. Notwithstanding the foregoing, you may return the On-Hold Messaging Solution at your sole expense within 30 days of delivery without liability or payment obligation other than a restocking fee of 25% of the purchase price for the On-Hold Messaging Solution. Except as expressly provided herein, all prepaid amounts are non-refundable.

8. Invoicing.

You agree to make payment of all invoices under this Agreement within thirty (30) days from the date of invoice. Unpaid invoices will be subject to a monthly service charge which is the lesser of one and one-half percent (1½%) per month, or the highest rate allowed by law. You must notify Provider of any disputed charges within thirty (30) days from the date of the invoice, otherwise you will be deemed to agree to such charges and waive all such claims and Provider will not be subject to making adjustments to charges or invoices. Rates for the Services are set forth in the Order Form or will be charged at Provider's standard rates which can be obtained through your sales or account representative. You agree that rates may be altered on thirty (30) days prior notice to you.

9. Unpaid Invoices.

In the event an invoice is not paid in full, for any reason, within thirty (30) days from the invoice date, Provider shall have the right to suspend all or any portion of the Services until such time as all invoices and applicable late fees have been paid. Following such payment, Provider may reinstate Services only upon satisfactory assurance of your ability to pay for Services, including modified payment terms such as prepayment. Such suspension shall not relieve you of any payment liability. You agree to reimburse Provider for any costs, expenses, or fees expended by Provider in connection with any collection efforts against you, including reasonable internal and outside attorneys' fees.

10. Taxes, Fees and Surcharges.

In addition to the rates for the Services, you shall pay all applicable fees, duties, tolls, administrative assessments, surcharges, or taxes now or hereafter attributable to the Services.

11. License.

Subject to your compliance with the terms and conditions of this Agreement, Provider hereby grants you a non-exclusive, non-transferable license during the applicable Subscription Term to use the Services ("Licensed Materials"). Subject to your compliance with the terms and conditions of this Agreement, Provider hereby grants you a perpetual, non-exclusive, non-transferable license to use one copy of the software included in any non-Subscription based On-Hold Messaging Solution. Except as specifically set forth herein, Provider or its suppliers retain all right, title, and interest, including all intellectual property rights, relating to or embodied in the Services, including without limitation all technology, telephone numbers, web addresses, software, or systems relating to the Services. You agree not to reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of any software related to the Services. Other than using the Services where you are an active participant, you may not resell the Services or otherwise generate income from the Services (from an ASP model or otherwise).

12. Equipment

Upon termination of the Subscription Term for On-Hold Messaging Solutions, you agree to return the equipment provided with On-Hold Messaging Solutions (the "Equipment") to Provider. If the Equipment is not returned, you will be billed for the cost of the Equipment plus applicable sales taxes. Failure to return the Equipment or remit purchase fees may result in collection efforts as provided herein. THE EQUIPMENT PURCHASED BY CLIENT FROM PROVIDER THAT ARE MANUFACTURED, PRODUCED OR PROVIDED BY THIRD PARTIES ("THIRD PARTY PRODUCTS") ARE SUBJECT ONLY TO THE WARRANTIES, TERMS AND

CONDITIONS OF THE THIRD PARTY SUPPLIER AND ARE PROVIDED BY PROVIDER ON AN “AS IS” BASIS; PROVIDED THAT WHERE POSSIBLE, PROVIDER WILL PASS THROUGH TO CLIENT THE THIRD PARTY SUPPLIER’S WARRANTIES.

13. Responsibility Messages and Accounts.

You are solely responsible for the information or content submitted, posted, transmitted or made available through your use of the Services. You may use the Services to transmit personalized wording, images and language (“Messages”) or direct Provider to make contacts via any channel to, or with, your customers, partners, or other recipients (the “Recipients”). You are responsible for maintaining the confidentiality of your accounts and owner numbers and necessary codes, passwords and personal identification numbers used in conjunction with the Services and for all uses of the Services in association with your accounts whether or not authorized by you including unintended usage due to holidays, daylight savings, computer clock errors or similar circumstances. You acknowledge and agree that Provider does not control nor monitor your Messages nor guarantee the accuracy, integrity, security or quality of such Messages. Use of recording or taping any use of the Services by you may subject you to laws or regulations and you are solely responsible for and obligated to provide any required notification to those being recorded or taped. You represent and warrant that: (a) You are solely responsible for Messages, including the need to include an interactive opt-out mechanism if required by law; (b) have the legal right to use and send all Messages to the Recipients; (c) the timing (including any limits on number of Messages) and purpose of all Messages, campaigns and programs are in compliance with all applicable laws, rules and regulations; (d) Provider’s use of the Messages as directed shall not violate the rights of any third party or any law, rules or regulation.

You have prior express consent to contact each wireless phone number you have delivered to Provider in connection with the provision of any Services delivering a prerecorded or text message (“Notification Services”) and the intended contact Recipient is the current subscriber to, or the non-subscriber customary user of, the wireless phone number. Upon request, You shall provide reasonable proof of compliance with the provisions set forth in this section and Provider shall have no obligation to provide Services where Provider reasonably believes that You have not so complied.

If the Messages are initiated to induce the purchase of goods or services or to solicit a charitable contribution (“Solicitations”), you have incorporated an interactive opt-out mechanism as part of the program;

You have, unless an exemption applies, obtained from the Recipient of any Solicitation an express written agreement that meets the requirements set forth in Section 310.4(b)(1)(v)(A) of the FTC’s Telemarketing Sales Rule and Section 64.1200(f)(8) of the FCC’s Telephone Consumer Protection Act Rules; and

The Parties agree that, where Provider reasonably believes you may not have complied with the provisions of this Section or with all laws, rules and regulations, Provider may, at its option (i) scrub all numbers against any appropriate data base deemed necessary to remove all wireless phone numbers and promptly notify you of such action, (ii) insert an interactive opt-out mechanism and pass the resulting data to you, and/or (iii) temporarily suspend Services related to the compliance concern.

You shall indemnify, defend and hold Provider, its affiliates and their officers, directors, employees and agents harmless from and against any and all claims of loss, damages, liability, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from Provider following your instructions in sending the Messages or your breach of any representation and warranty set forth in this Section.

14. Privacy and Data Use.

The information we hold about you will be used to provide the Services requested and for identification, account administration, analysis and fraud/loss prevention purposes. More details about how that information is used are in our privacy policy which governs your visit to Provider's Website and use of the Services. Copies are also available from us by post, by contacting customer service. The parties acknowledge and agree that: (a) Provider may have access to personal data of Client under applicable personal data protection and privacy laws (the "Data Protection Laws") and will: (i) use it solely for the purpose of providing the Services; (ii) process it only in accordance with Client's instructions; and (iii) take appropriate technical and organizational measures to prevent unauthorized or unlawful processing, accidental loss, destruction or damage to it; (b) personal data may be processed by Provider and its affiliates throughout the world; and (c) Client is the data controller and retains full responsibility for the data processed on its behalf by Provider acting as data processor.

15. Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

If Client is a Covered Entity (as defined by HIPAA) and provides individually identifiable health information or PHI (each as defined by HIPAA) to Provider as a Business Associate (as defined by HIPAA), then the Business Associate Agreement set forth at <https://www.televox.com/legal/BAA> is incorporated by reference herein.

16. Governmental Agencies.

Use of the Services by the United States Government or other governmental agencies shall be as "restricted computer software" or "limited rights data" as set forth in 48 CFR 52.227-14, or as "commercial computer software" or "commercial computer software documentation" under DFARS 252.227-7202, or under such other similar applicable terms and conditions to prevent the transfer of rights in and to the technology to the government or such agency other than under normal commercial licensing terms and conditions. Contractor/manufacturer is Provider 11808 Miracle Hills Drive, Omaha, NE 68054

17. Export and Import Control Laws and Regulations.

You acknowledge that the laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin, including the Services and any related software. Without limiting the foregoing, you acknowledge that the Services and any related software are or may be an "encryption item" subject to controls under the Export Administration Regulations promulgated by the U.S. Department of Commerce. You agree not to export or re-export the Services or any related software in any form in violation of the export laws of the United States or any foreign jurisdiction.

18. Compliance.

Upon request, you agree to provide reasonable proof of compliance with the provisions set forth in this Agreement. You agree to immediately notify us of any actual or potential breach of this Agreement by you. You acknowledge and agree that: (a) Provider does not provide content and Client shall be solely responsible for all content and Messages and for providing any list of names, numbers or addresses for Client to utilize in sending Messages; and (b) Provider has not and is not expected to provide Client with any analysis, interpretation or advice regarding the compliance of any aspect of Client's Messages, Client's content, campaigns or programs with any third party rights or laws, rules, or regulations. Client agrees that Provider may in its sole discretion suspend or terminate provision of any or all of the Services without liability or penalty at any time in the event that: (a) Provider is obliged to comply with an order, instruction, directive or request of a governmental body or network operator which necessitates that it do so; (b) Provider discovers an actual or potential breach or where Provider believes that Client has not so complied with its obligations hereunder; or (c) one or more of the network operators upon which the provision of Services hereunder is dependent suspends its provision of those services to Provider. You agree that all use by you of the Services shall comply with applicable laws.

19. Investigation and Enforcement of the Agreement.

All users of the Services must adhere to the terms of this Agreement. We have the right, but are not obligated, to strictly enforce this Agreement through self-help, active investigation, litigation and prosecution. We may also access and disclose any information (including transactional information) related to your access and use of our Website or Network for any lawful reason, including but not limited to: (1) responding to emergencies; (2) complying with law, rule or regulation (e.g., a lawful subpoena); (3) protecting our rights or property and those of our customers; or (4) protecting users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

20. Limited Warranty.

ALL SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WITHOUT ANY WARRANTY. YOU UNDERSTAND AND AGREE THAT PROVIDER'S SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE". PROVIDER AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. PROVIDER MAKES NO WARRANTY OR REPRESENTATION REGARDING ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH PROVIDER OR THE SERVICES, OR THAT THE SERVICES WILL MEET ANY OF YOUR REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF PROVIDER'S SERVICES ARE AT YOUR SOLE RISK. PROVIDER IS NOT LIABLE FOR ACTS OR OMISSIONS OF OTHER SERVICE PROVIDERS, FOR INFORMATION OR CONTENT OF COMMUNICATIONS, THIRD PARTY SERVICES, EQUIPMENT FAILURE OR MODIFICATION, OR CAUSES BEYOND PROVIDER'S REASONABLE CONTROL.

21. Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PROVIDER, OR ITS SUPPLIERS OR AFFILIATES, BE LIABLE FOR INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES

WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGE FOR LOSS OF PROFITS OR DATA, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, COST OF COVER OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF, OR RESULTING FROM THE SERVICES OR THIS AGREEMENT WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY), CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR DAMAGES THAT MAY NOT BE EXCLUDED BY LAW, YOU AGREE THAT ALL DAMAGES ARE EXCLUDED EXCEPT FOR THE DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY YOU IN REASONABLE RELIANCE, UP TO THE GREATER OF THE AMOUNT OF A REFUND OF THE PRICE THAT YOU ACTUALLY PAID FOR THE SERVICES DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM REGARDLESS OF THE FORM OF ACTION OR CLAIM (E.G., CONTRACT, WARRANTY, TORT, STRICT LIABILITY, NEGLIGENCE, FRAUD, OR OTHER LEGAL THEORY) OR ONE THOUSAND DOLLARS (US\$1,000).

22. Indemnification.

You shall indemnify, defend and hold Provider and its Affiliates and their officers, directors and employees harmless from any and all third-party claims, actions, suits, proceedings, costs, expenses, liabilities, and damages (including punitive, treble and enhanced damages and reasonable attorneys' fees) arising out of, connected with or resulting from: (i) a breach by you of any term of this Agreement; (ii) the Client Materials; (iii) a claim by any customer of yours or any party called on your or your customer's behalf relating to any service offered by you or any of its clients, (iv) any actual or alleged infringement or violation by you (including without limitation, any person accessing the Services using your accounts) of any intellectual property, privacy or other right of any person or entity or (v) information or content that you submit, post, transmit or make available through the Services.

Subject to the requirements of Section 11, License, above, Provider will defend, at its expense, a third-party action, suit, or proceeding against you ("Claim") to the extent such Claim is based upon an allegation that the Licensed Materials, as of their delivery date under this Agreement, infringe a valid United States patent. Provider makes no representations, provides no warranties, and assumes no responsibilities for the use, sale, placement, or other disposition by you of products incorporating the Licensed Materials under this Agreement. Provider's liability to you will not extend to infringement caused by use of the Licensed Materials as an element of a patented product or process. You will hold Provider, its affiliates and their officers, directors, employees, and agents harmless against all liabilities, demands, damages, expenses, or losses arising out of or resulting from any misuse by you of the Licensed Materials.

The party claiming indemnification shall: (i) provide prompt written notice to the indemnifying party of any claim in respect of which the indemnity may apply; (ii) relinquish control of the defense of the claim to the indemnifying party; and (iii) provide the indemnifying party with all assistance reasonably requested in defense of the claim. The indemnifying party shall be entitled to settle any claim without the written consent of the indemnified party so long as such settlement only involves the payment of money by the indemnifying party and in no way affects any rights of the indemnified party.

In order to be indemnified to the extent stated, you must operate within the instructions and technical limits provided or approved by Provider. Provider shall have no indemnity obligation for (1) Provider-furnished licensed materials that have been used with or in combination with hardware or software not furnished by Provider; and (2) any claim or any portion of any claim that arises from your reckless, wanton, wrongful, or otherwise negligent acts.

23. Confidentiality.

We agree to hold all Confidential Information of the other party in strict confidence. Confidential Information shall mean information that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and marked as Confidential ("Confidential Information"). The parties agree that all Confidential Information shall be disclosed only to those employees or representatives on a need-to-know basis and who agree to be bound by these confidentiality restrictions. This confidentiality obligation shall not apply to any information (i) independently developed by a party, (ii) generally available to the public other than by a party's breach of this Agreement, (iii) already known by a party at time of disclosure to that party, or (iv) rightfully received from a third party without restriction on disclosure or an obligation of confidentiality running directly or indirectly to the other party. Nothing shall prevent or prohibit the receiving party from providing access to Confidential Information as may be required by law, rule or regulation, provided that the receiving party gives as much notice as is reasonably practical and provides reasonable assistance to the disclosing party in challenging or modifying the disclosure so required. Neither party shall have any rights in the other party's Confidential Information and shall return or destroy all such Confidential Information upon the termination of the applicable Order Form or the request of the discloser. Notwithstanding the foregoing, the parties acknowledge that recipient shall not be required to return to discloser or destroy those copies of Information residing on recipient's backup, disaster recovery or business continuity systems and the obligations hereunder with respect to such Confidential Information shall survive until such Information is destroyed.

24. Third Party Services.

All access and use of any third party Services is governed by the terms and conditions set forth from time to time by such third party provider and such terms and conditions are incorporated herein by reference.

25. Enforceability/Waiver.

If any part of this Agreement is determined to be invalid or unenforceable, then such invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risks, and the remainder of the Agreement will continue in effect. If any provision(s) is found to be contrary to law, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. Provider's failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision unless agreed to by Provider in a non-electronic writing manually signed by a duly authorized representative of Provider.

26. Miscellaneous.

Except as otherwise expressly provided herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise. You and Provider are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this Agreement. The parties confirm that they wish to have this Agreement written in English only. Les Parties aux présentes confirment leur volonté que cette Convention soit rédigée en langue anglaise seulement. You authorize Provider's monitoring including recording of calls for the purposes of quality assurance and you further consent to Provider's use of automatic dialing equipment to contact you. Provider's performance of the Services is subject to existing laws and legal process, and nothing contained in this Agreement is in derogation of Provider's right to comply with governmental, court and law enforcement requests or requirements relating to your use of Provider's Website, the Services or information provided to or gathered by Provider with respect to such use. You may not assign this Agreement to any other person or entity without Provider's prior written approval, but nothing restricts Provider's ability to assign this Agreement or subcontract the Services hereunder.

27. Identification, Advertising & Publicity.

Client agrees that it will not identify Provider as the provider of the Services to the media or any governmental, regulatory, or other official without prior notice to Provider and Provider's prior consent, unless required by legal process, law, rule or regulation, in which case Client shall still notify Provider of such requirement. Except for materials already made public, neither party will distribute any news releases, articles, brochures, speeches, or advertisements concerning this Agreement or Order Forms, nor use the other party's name or trademarks (or any variation thereof), without the other party's prior written consent.

Customer agrees that after execution of this Agreement, subject to Customer's review and written consent, such consent not to be unreasonably withheld, conditioned or delayed, Provider shall have the right to place advertisements in financial and other newspapers and journals and in marketing materials at its own expense describing its services to Customer hereunder. Notwithstanding the foregoing, upon such public announcement, Provider shall, without the Customer's further consent, have the right to include a "tombstone" with respect to such transaction on its Web site or in any "pitch-book" or similar marketing materials to the extent such tombstone does not include any information not previously publicly disclosed by Customer (or by Provider pursuant to this provision).

28. Governing Law; Exclusive Forum; Jurisdiction.

If you reside in Europe, the Middle East or Africa, you consent to the exclusive jurisdiction and venue of the courts sitting in London, England with respect to any dispute, controversy or claim arising out of or relating to this Agreement or any services provided by Provider. If you reside in Asia, Australia, New Zealand or the Indo – Pacific region, you irrevocably agree and consent that any dispute, controversy or claim arising out of or relating to this Agreement or any services provided by Provider shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules provided that the appointing authority shall be the Hong Kong International Arbitration Centre, the place of arbitration shall be in Hong Kong at the HKIAC, there shall be only one arbitrator and the language to be used in the arbitral proceedings shall be English. If you reside in a location other than as listed above, you consent to the exclusive jurisdiction and venue of the courts sitting in Oregon, USA with respect to any dispute, controversy or claim arising out of or

relating to this Agreement or any services provided by Provider. You agree to service of process by mail directed to your billing address. You waive all defenses including but not limited to sovereign immunity, lack of personal jurisdiction and forum non conveniens and expressly waive any right to bring suit or have any action heard in your local courts. You agree that any claim or cause of action arising out of or related to this Agreement must be commenced by you within one (1) year after the cause of action arose.

29. Force Majeure.

Provider will not be responsible or liable for delays and/or defaults in its performance due to causes beyond its reasonable control, including, but without limiting the generality of the foregoing: acts of god or of the public enemy; fire or explosion; flood; stability or availability of the Internet; the elements; telecommunication system failure; war; technology attacks, epidemic; acts of terrorism; riots; embargoes; quarantine; viruses; strikes; lockouts; disputes with workmen or their labor disturbances; total or partial failure of transportation, utilities, delivery facilities, or supplies; acts or requests of any governmental authority; or any other cause beyond its reasonable control, whether or not similar to the foregoing.

30. Entire Agreement.

This Agreement, in conjunction with the applicable Order Form constitutes the entire agreement between the parties to such Order Form with respect to the subject matter of this Agreement and the applicable Order Form and supersede all prior agreements, discussions, proposals, representations or warranties, whether written or oral. You agree that any terms or conditions contained in any document, including but not limited to a purchase order, acknowledgement, email, or other document that you may now or later provide to Provider, will have no effect and that this Agreement is the only contract between Provider and you regarding the Services and may only be amended as set forth herein. The application of the United Nations Convention on the International Sale of Goods is hereby expressly excluded. A printed version of this Agreement and of any notice given to you in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Order Forms may be executed by fax, and/or in any number of counterparts, all of which shall together be considered an original and may be evidenced by a fax or scanned electronic (e.g. .pdf, .tif) copy.

31. Modification.

Provider may, at any time, amend the provisions of this Agreement. Any amendment proposed by you may only be accepted by Provider in a non-electronic writing manually signed by authorized representatives of the parties. Notwithstanding anything in this Section to the contrary, if Provider posts amended terms on its Website, such terms will automatically become effective ten (10) days after they are posted on the Website. By using the Services after such revised terms are posted, you agree to be bound by any such amended provisions. Therefore, you agree to periodically visit the Website to examine the then-current Agreement.

32. Qliqsoft Services.

If your Order Form specifies you are purchasing from Intrado telehealth services ("Services," as defined in Section 1 above) such as virtual visits, secure messaging and artificial intelligence

chatbots, which are products hosted by a third party named Qliqsoft, Inc. (“Qliqsoft”), Provider reserves the right to cease providing telehealth Services at any time with 10 days’ notice to you if Qliqsoft no longer makes the telehealth Services available to Provider.


IN WITNESS WHEREOF, each party hereby executes this Agreement by its duly authorized representative.

**MARION COUNTY SIGNATURE
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature:  6/4/2021
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

INTRADO INTERACTIVE SERVICES CORPORATION SIGNATURE

Authorized Signature: _____
Date

Title: _____

Business Associate Agreement

This Business Associate Agreement (the “BAA”), effective as of the last date signed below, is between Intrado Interactive Services Corporation (“Intrado”) and the Client who purchases Services (each as defined in the agreement(s) (the “Agreement”) between Intrado and Client) from Intrado. This BAA is incorporated herein by reference into the Agreement.

1. Definitions.

1.1 Catch-All Definition. Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the Privacy Rule (as defined below).

1.2 Specific Definitions.

- a. “Business Associate” shall mean Intrado.
- b. “Covered Entity” shall mean Client.
- c. “Individual” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- d. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- e. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- f. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.
- g. “Security Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subpart C.
- h. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate.

2.1 Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement, the BAA or as Required By Law.

2.2 Business Associate agrees to use appropriate safeguards and comply, where applicable, with the Security Rule with respect to electronic Protected Health Information, to prevent use or disclosure of the Protected Health Information other than as provided for by this BAA.

2.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BAA.

2.4 Business Associate agrees to promptly, but in no case later than fifteen (15) business days, report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this BAA of which it becomes aware.

2.5 Business Associate agrees to ensure that any agent, including a subcontractor, that creates, maintains, or transmits Protected Health Information on behalf of Business Associate, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information.

2.6 Business Associate agrees it is not in compliance with the Privacy Rule and this BAA if it knows of a material breach or violation of a subcontractor's obligation to the Business Associate and under the Privacy Rule unless the Business Associate takes reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminates the contract or arrangement with the subcontractor, if feasible.

2.7 If applicable, Business Associate agrees to, at the written request of Covered Entity and in no case later than seven (7) business days, provide access to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.

2.8 If applicable, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the written request of Covered Entity or an Individual, but in no case later than seven (7) business days.

2.9 Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, as agreed upon by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

2.10 Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

2.11 If applicable, Business Associate agrees to provide to Covered Entity or an Individual, in no case later than fifteen (15) business days, information collected in accordance with the above Sections of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

3. Permitted Uses and Disclosures by Business Associate.

3.1 Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2 Except as otherwise limited in this BAA, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

3.3 Except as otherwise limited in this BAA, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law.

3.4 Except as otherwise limited in this BAA, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

3.5 Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.

4.1 Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

4.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

4.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

5. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6. Use of General Communication Channels. If Covered Entity elects to purchase patient notification services that will be sent via non-encrypted communication channels (e.g., SMS, live chat and email) (collectively, "General Channels"), Covered Entity will, prior to communicating with a patient via General Channels: (i) notify the patient of alternative, secured means for disclosing his or her Protected Health Information and (ii) obtain the patient's acknowledgement that General Channels are not HIPAA-recommended communication channels for making disclosures of Protected Health Information.

7. Term and Termination.

7.1 The term of this BAA shall be effective upon first disclosure of Protected Health Information to BAA by Covered Entity, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to

return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

7.2 Upon Covered Entity's knowledge of a material breach or violation of the Business Associate's obligation under this BAA, Covered Entity shall either:

- (i) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BAA if Business Associate does not cure the breach or end the violation within thirty (30) days of written notice; or
- (ii) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible.

8. Effect of Termination.

8.1 Except as provided in this BAA, upon termination of this BAA, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Except as provided in this BAA, Business Associate shall retain no copies of the Protected Health Information.

8.2 In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. In such case, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

9. Miscellaneous.

9.1 A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

9.2 The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the Privacy Rule, Security Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as applicable.

9.3 The respective rights and obligations of Business Associate under the "Effect of Termination" Section of this BAA shall survive the termination of this BAA.

9.4 Interpretation. Any ambiguity in this BAA shall be resolved to permit Covered Entity and Business Associate to comply with the Privacy Rule and Security Rule, as applicable.

9.5 The parties acknowledge that Protected Health Information is unique and valuable, and that disclosure in breach of this BAA will result in irreparable injury to the parties for which monetary damages alone would not be an adequate remedy. Therefore, the parties agree that in the event of a breach or threatened breach of confidentiality, the parties shall be entitled to seek specific

performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages. No forbearance, failure or delay in exercising any right, power or privilege is waiver thereof, nor does any single or partial exercise thereof preclude any other or future exercise thereof, or the exercise of any other right, power or privilege.

9.6 Pursuant to the limitations of liability set forth in the Agreement, Business Associate shall indemnify and hold harmless Covered Entity from and against any and all third party claims, losses, liabilities, reasonable costs and other expenses resulting from, or relating to, the acts and omissions of Business Associate in performance of its obligations hereunder. The foregoing limitations of liability shall not be applicable to claims arising out of intellectual property rights, gross negligence, willful misconduct, or fraud.


9.7 IN WITNESS WHEREOF, each party hereby executes this BAA by its duly authorized representative.

**MARION COUNTY SIGNATURE
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature:  6/4/2021
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

INTRADO INTERACTIVE SERVICES CORPORATION SIGNATURE

Authorized Signature: _____
Date

Title: _____