

AN ORDINANCE 2014 - 02 - 20 - 0109

AUTHORIZING AN AGREEMENT WITH DIGITAL HEALTH DEPARTMENT, INC., TO PROVIDE A SITE LICENSE AND IMPLEMENTATION AND MAINTENANCE SERVICES FOR THE DIGITAL HEALTH DEPARTMENT ENVIRONMENTAL HEALTH DATA MANAGEMENT SYSTEM FOR THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT IN AN AMOUNT NOT TO EXCEED \$54,895.00 FOR A ONE YEAR TERM ENDING DECEMBER 31, 2014.

* * * * *

WHEREAS, the Metro Health's Food and Environmental Health Services Program performs various inspections and licensing of food establishments, daycares, public swimming pools, mobile home parks and other areas frequented by the public using the Digital Health Management (DHD) System; and

WHEREAS, Metro Health's Food and Environmental Health Services Program needs to continue to use the DHD System to manage all inspection and licensing activities, **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. An agreement with the Digital Health Department, Inc., to provide a site license and implementation and maintenance services for the Digital Health Department Environmental Health Data Management System for the San Antonio Metropolitan Health District in an amount not to exceed \$54,895.00 for a one year, is hereby approved. A copy of the Agreement is attached hereto and is incorporated by reference as **Attachment 1**.

SECTION 2. Funding in the amount of \$54,985 00 for this ordinance is available for Fund 11001000, Cost Center 3619010002 and General Ledger 5201047, as part of the Fiscal Year 2014 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to Digital Health Department, Inc., and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP

JK
2/20/14
Agenda #23

Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof

PASSED and APPROVED this 20th day of February 2014.

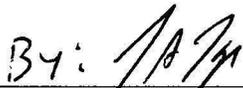

M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacck, City Clerk

APPROVED AS TO FORM:

By: 

Robert F. Greenblum, City Attorney

Agenda Item:	23 (in consent vote: 4, 5, 7, 8, 9, 11, 12, 12A, 12B, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26)
Date:	02/20/2014
Time:	09 23 29 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an agreement with Digital Health Department, Inc to provide a site license and implementation and maintenance services for the Digital Health Department Environmental Health Data Management System for the San Antonio Metropolitan Health District in an amount not to exceed \$54,895 00 for a one year term ending December 31, 2014 [Gloria Hurtado, Assistant City Manager, Dr Thomas L Schlenker, Director of Public Health]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Juhán Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R Taylor	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

AGREEMENT

THIS AGREEMENT (this "**Agreement**") is made this 28 day of Jan 2014 by and between the City of San Antonio, a Texas Home Rule Municipal Corporation ("**Client**") and Digital Health Department, Inc ("**DHDI**")

Background Statement

Client desires to obtain the services of DHDI to perform the scope of work set forth in the Maintenance and Hosting Statement of Work, attached hereto as Attachment A and made part of this Agreement (the "**Maintenance SOW**") The Maintenance SOW is referred to as "**SOW**" in this Agreement

Statement of Agreement

The parties, in consideration of the mutual obligations set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, agree as follows

I SCOPE OF SERVICES

- A Client retains DHDI to perform, and DHDI agrees to perform, the services set forth in the Maintenance SOW The services to be performed under the Maintenance SOW are referred to herein as the "**Services**" in this Agreement Client shall provide reasonable assistance to facilitate the performance of the Services In the event of a conflict between the terms of the Agreement and the terms of any SOW, the terms in this Agreement shall prevail unless expressly provided to the contrary in the SOW
- B DHDI shall provide a site license for the Digital Health Department Environmental Health Data Management System (the "**DHD System**") for Client In addition, DHDI will provide database and application server hardware, training of Client staff in the use of the DHD System, and other services specified in the SOW
- C The scope, timing, pricing and other terms of any Services may be changed only by a fully executed and revised SOW that replaces an existing SOW or by a fully executed change order that amends an existing SOW Notwithstanding the foregoing, to the extent a change is dictated by law, DHDI may implement such change immediately and provide reasonable notice to Client thereafter DHDI shall have no obligation to commence work in connection with any change until the fee and/or schedule impact of the change is agreed upon by the parties in writing

II TERM OF AGREEMENT

- A The term of this Agreement for Implementation Services will commence upon the execution of this Agreement
- B The term of this Agreement for Maintenance Services shall be for the period of one (1) commencing upon January 1, 2014
- C Maintenance Services during the first Maintenance Renewal Term shall be at the annual maintenance fee in effect at the end of the initial term plus up to five percent (5%) for each Renewal Term thereafter

III PAYMENT FOR SERVICES

- A In consideration of the Maintenance Services, Client agrees to pay DHDI, and DHDI agrees to accept, the fees and expense reimbursement (the "**Maintenance Fees**") in accordance with the fee schedule set forth in the Maintenance SOW (the "**Maintenance Fee Schedule**") The Implementation Fee Schedule and the Maintenance Fee Schedule are collectively referred to herein as the "**Fee Schedules**"
- B As more particularly described on the Maintenance Fee Schedule, the total anticipated Maintenance Fees during the initial term for Maintenance Services is \$54,895.00 Nothing in this Section III is

intended by the parties to create a cap on the fees and expenses that would otherwise be due under an SOW

- C DHDl shall invoice Client quarterly or at such other more frequent intervals as may be set forth in the applicable Fee Schedule and payment therefor shall be made in United States dollars within thirty (30) days of the invoice date Any retainer, deposit or other billing to be paid by Client prior to DHDl performing any Services shall be set forth on the applicable Fee Schedule Client is responsible for all Services ordered from DHDl by Client and agrees to pay for those Services in accordance with the terms set forth on the applicable Fee Schedule
- D Invoices submitted by DHDl shall be accompanied with reasonably detailed supporting information and documentation
- E To the extent that DHDl is delayed in performing Services as a result of Client's acts or omissions, DHDl reserves the right to invoice Client based on original timelines
- F Payments made by Client shall be governed by the Texas Prompt Payment Act
- G All fees are exclusive of all taxes, duties, and assessments, all of which will be paid by Client If Client is exempt from paying sales or use taxes, it shall provide DHDl a tax-exempt certificate

IV REGENERATION OF LOST OR DAMAGED DATA

- A With respect to any Client data that DHDl loses or damages, DHDl shall, at its own expense, promptly replace or regenerate such data from Client's machine-readable supporting material, or obtain, at DHDl's own expense, a new machine-readable copy of the lost or damaged data from Client's data sources

V CLIENT TRADEMARKS

- A During the Term, Client hereby grants DHDl a nonexclusive, paid-up, nontransferable right to use Client's trademarks, trade names, service marks, logos, trade dress, trade name, or other indicia of sources or origin of Client ("**Client Marks**") for purposes of providing the Services pursuant to the Agreement and to list Client as a DHDl customer in promotional materials distributed to third parties The Client Marks are and will remain the exclusive property of Client and this Agreement gives DHDl no rights therein except for a limited license to reproduce the Client Marks for the sole purpose of allowing DHDl to provide the Services pursuant to the terms of this Agreement and as otherwise contemplated by this Agreement All goodwill associated with the Client Marks will inure to the benefit of Client

VI RIGHTS IN DATA AND WORKS

A License

- 1 License Subject to the terms and conditions of this Agreement, DHDl grants Client a limited, nontransferable, nonexclusive license to use the SOW Deliverables (as hereinafter defined)
- 2 Password Access DHDl shall issue authorized employees and agents of Client a user authorization device ("**Password**") that will permit access to and use of certain SOW Deliverables Ownership of each Password shall remain with DHDl DHDl may terminate any and all Passwords upon the expiration or earlier termination of this Agreement or in the event of an uncured breach by Client of this Agreement DHDl may also immediately terminate a Password in the event that DHDl reasonably believes that such Password is being used other than in accordance with this Agreement Client agrees that all Passwords shall remain confidential and shall be used only by the employees or agents to whom they have been assigned Client shall notify DHDl immediately in the event Client has reason to believe that the confidentiality of any Password may have been compromised and shall take all action reasonably necessary to stop any unauthorized use of the Password or access to or use of the SOW Deliverable To be considered an authorized user ("Authorized User"), an individual must have been assigned a Password and must be using the SOW Deliverable in accordance

with this Agreement

- 3 Additional Restrictions In addition to the restrictions on use set forth in **Section VI.A.2**, Client agrees that it shall not (a) use any SOW Deliverables to provide services under any name other than that of Client, (b) use any SOW Deliverables to process the data of third parties without DHDl's prior written consent which consent may be withheld in DHDl's sole discretion, (c) use any SOW Deliverables in the operation of a service bureau, (d) modify or change any SOW Deliverables, or (e) decompile, disassemble or otherwise reverse engineer any SOW Deliverables Client further agrees that each SOW Deliverable is proprietary to DHDl and agrees to protect the confidentiality of such SOW Deliverable Client, its agents and its employees shall not use, disclose or otherwise communicate any information with respect to the SOW Deliverable, including but not limited to its functionality, which might enable the copying of all or any portion of the SOW Deliverable Client agrees to take all necessary action to protect the confidentiality of all Passwords and SOW Deliverables, including appropriate instructions to and agreements with its employees and agents

B Proprietary Rights

- 1 Exclusive of Client Content (as hereinafter defined), DHDl shall retain all right, title and interest (including copyright and other proprietary or intellectual property rights) in all work product produced by DHDl of any type whatsoever, whether tangible or intangible, which DHDl invents, creates, composes, authors, discovers or otherwise produces hereunder or under an SOW ("**SOW Deliverables**"), including, but not limited to, all software (including, but not limited to, software developed by DHDl using software owned by a third party), code (including, but not limited to, HTML computer programming/formatting code, any files necessary to make image maps function, and any server code) and documentation (including, but not limited to, tangible materials that related to the code, including materials useful for design such as logic manuals, flow charts and principles of operation), and including but not limited to all legally protectable elements, or derivative works thereto, whether or not paid for wholly or in part by Client, whether or not developed in conjunction with Client, and whether or not developed by DHDl, Client or any DHDl, subcontractor or agent for DHDl or Client The foregoing shall not be considered works made for hire and DHDl shall own all right, title and interest to each such SOW Deliverable To the extent that ownership of any of the foregoing does not automatically vest in DHDl by virtue of this Agreement or otherwise, Client agrees to transfer and assign to DHDl all rights, title and interest in the SOW Deliverables
- 2 Client Ownership Client shall retain all right, title and interest (including copyright and other proprietary or intellectual property rights) in all computer programs, files, documentation, media, related material and any other material and content that is owned by Client and provided to DHDl (the "**Client Content**")
- 3 Proprietary Notices DHDl may place copyright and/or proprietary notices, including hypertext links within SOW Deliverables Client may not alter or remove such notices without DHDl's written permission
- 4 Limitations Client shall not provide to DHDl any Client Content that may be defamatory, or that actually or potentially infringes or misappropriates the copyright, trademark, or proprietary or intellectual property right of any person
- 5 Data Within thirty (30) days after the expiration of this Agreement and payment in full by Client to DHDl of all sums due under this Agreement, DHDl will release to Client data contained in the DHD System to a third party format (i.e. Access, Excel, CSV, etc)

VII ACCEPTANCE OF SOFTWARE

- A All SOW Deliverables provided by DHDl pursuant to this Agreement must function to meet the requirements set forth in the SOW In connection therewith, DHDl shall provide Client with step-by-step procedures that verify functionality and reliability of all software furnished and installed by DHDl pursuant to this Agreement

- B The Client's Project Director shall provide DHDl with a written acceptance letter upon satisfactory completion of the test period for each application

VIII TERMINATION

- A Either party, upon giving written notice to the other party, may terminate this Agreement
 - 1 If, in the case of the failure by the other to pay any sums due under this Agreement, such sum is not paid within five (5) business days after delivery of notice thereof by the non-defaulting party to the other party, or
 - 2 If the other party or its employees, contractors, or other agents breaches any other provision of this Agreement and the breach is not remedied within thirty (30) business days of the non-defaulting party's delivery of written notice of the breach
- B Upon expiration or termination of this Agreement, DHDl shall promptly return to Client all Client Content
- C Upon expiration or termination of this Agreement for any reason Client will pay DHDl no later than thirty (30) days after the date of termination all fees accrued up until the termination date that have not been previously paid by Client Without limiting the generality of the foregoing, Client shall be responsible for paying to DHDl all fees associated with work in process that had not yet been delivered to Client
- D The provisions of **Sections III, VI, VII, IX, X, XV and XVIII** shall survive termination or expiration of this Agreement regardless of the reason for termination or expiration

IX CONFIDENTIAL INFORMATION

- A Each party acknowledges that by reason of its relationship to the other party under this Agreement it may have access to business plans and methods, financial information, pricing information, marketing plans and strategies, product development information and other information and materials of the other party that are not publicly known and that are kept confidential by the respective party (collectively, "**Confidential Information**") Each party agrees that, except as anticipated by the terms of this Agreement, neither it nor its employees and/or contractors will, during or after the term of this Agreement, disclose any Confidential Information of the other party to any third party Any disclosure of Confidential Information within Client or DHDl shall only be made to those employees and contractors with a reasonable need to know such Confidential Information in order to provide the Services or receive the benefit of the Services
- B Should either Client or DHDl need to disclose Confidential Information to any third party contractor for purposes of assisting in the provision of Services, such disclosure shall be made only after such third party contractor executes an agreement mutually satisfactory to Client and DHDl wherein the third party contractor acknowledges the confidentiality of Confidential Information and agrees to use it only for provision of Services.
- C The obligations set forth in this Section IX do not apply if and to the extent the party receiving Confidential Information ("**Receiving Party**") establishes that (i) the information disclosed to the Receiving Party was already known to the Receiving Party, without obligation to keep it confidential, at the time of its receipt, as evidenced by documents in the possession of the Receiving Party prepared or received prior to disclosure of such information, (ii) the Receiving Party received the information in good faith from a third party lawfully in possession thereof without obligation to keep such information confidential and without requiring the Receiving Party to keep information confidential, (iii) the information was publicly known at the time of its receipt by the Receiving Party or has become publicly known other than by a breach of this Agreement, (iv) the information is independently developed by the Receiving Party without use of the other Party's Proprietary Information, or (v) the information is required to be disclosed by applicable statute or regulation or by judicial or administrative process, provided that the Receiving Party will use reasonable efforts under the circumstances to notify the other party of such requirements so as to provide such party the opportunity to obtain such protective orders or other relief as the compelling court or other entity may grant

X DISCLAIMERS AND LIMITATION OF LIABILITY

- A DHDl cannot and does not control the flow of information to or from DHDl's network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Client's connections to the Internet or portions thereof. DHDl cannot guarantee that such events will not occur. Accordingly, DHDl disclaims any and all liability resulting from or related to such events.
- B Client acknowledges that it is not possible to guarantee against data loss or damage. DHDl accepts responsibility for any data loss or damage that occurs as a direct result of DHDl's negligence or failure to comply with any security procedures, guidelines or technology currently recognized as industry standard (defined as deploying standard critical OS or database patches and software upgrades). In addition to all other security measures on the DHD System network, 12-bit SSL encryption will be used on any sensitive data, such as usernames and passwords, personal Client data or any information that would not fall under public record laws.
- C EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, DHDl MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER, INCLUDING, WITHOUT LIMITATION, THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR RESULTS TO BE DERIVED FROM THE USE OF, ANY SERVICE, SOFTWARE, OR OTHER MATERIALS PROVIDED UNDER ANY SOW. DHDl DOES NOT REPRESENT OR WARRANT THAT THE OPERATION OF ANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. CLIENT ACKNOWLEDGES THAT IT IS A SOPHISTICATED PARTY TO THIS AGREEMENT AND RECOGNIZES AND AGREES THAT THIS PROVISION IS AN INTEGRAL PART OF DHDl'S PRICING AND AN IMPORTANT FACTOR IN ITS WILLINGNESS TO PERFORM SERVICES HEREUNDER.
- D DHDl SHALL NOT BE LIABLE TO CLIENT FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, WHETHER FORESEEABLE OR UNFORESEEABLE, INCLUDING WITHOUT LIMITATION LOST REVENUES, LOST PROFITS, LOSS OF SAVINGS, LOSS OF GOODWILL, LOSS OR TIME, LOSS OF BUSINESS, OR LOSS OF DATA ARISING OUT OF USE OF THE SERVICES OR THE SYSTEM (INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY BREACH OF ANY WARRANTY OR OTHER TERM OF THIS AGREEMENT) EVEN IF NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, REGARDLESS IF SUCH DAMAGES ARE BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE. UNDER NO CIRCUMSTANCES SHALL DHDl'S AGGREGATE CUMULATIVE LIABILITY HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID TO DHDl UNDER THE SOW FROM WHICH THE CLAIM ARISES. CLIENT ACKNOWLEDGES THAT THE FEES PAID BY IT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT DHDl WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON LIABILITY.

XI AMENDMENTS

- A This Agreement may be modified or amended only in writing duly executed by both parties.

XII INSURANCE

- A DHDI will, at its own expense, procure and maintain the following policies of insurance during the term of this Agreement
- 1 Standard Worker's Compensation and Disability Insurance, if required by law,
 - 2 General liability insurance (including, without limitation, contractual liability) with single limits of liability in the amount of \$1,000,000 per occurrence, and \$1,000,000 aggregate coverage for professional liability insurance and \$1,000,000 per occurrence and \$3,000,000 aggregate coverage for general liability insurance, automobile liability insurance in the amount of \$1,000,000 with a minimum of \$1,000,000 each occurrence, bodily injury, and property damage,
 - 3 Automobile liability insurance in the amount of \$1,000,000 with a minimum of \$1,000,000 each occurrence, bodily injury, and property damage, and
 - 4 Protective Liability Insurance covering the liability for the acts or neglect of each of its subcontractors with respect to all work performed by said subcontractor under this Agreement
- B Original certificates evidencing such coverage and indicating that such coverage will not be cancelled without thirty (30) days prior written notice to the Client shall be delivered to the Client before final execution of this Agreement and original renewal certificates conforming to the requirements of this section shall be delivered to the Client at least sixty (60) days prior to the expiration of such policy or policies of insurance DHDI's general liability insurance shall provide for and name Client as an additional insured All policies shall insure the Client for all claims arising out of the Agreement All policies of insurance shall be issued by companies in good financial standing duly and fully qualified and licensed to do business in Client's State or otherwise reasonably acceptable to the Client

XIII FORCE MAJEURE

- A Neither party to this Agreement shall be held responsible or be deemed to be in default under this Agreement for any delay in performance or failure in performance of any of their respective obligations to be performed hereunder if such delay or failure is the result of causes beyond the control and without negligence of the party with respect to whose obligations such delay in performance or failure in performance has occurred Such causes shall include, without limitation, acts of God, strikes, lockouts, riots, insurrections, civil disturbances or uprising, sabotage, embargoes, blockades, acts of war, acts of terror, acts or failure to act of any governmental or regulatory body (whether civil or military, domestic or foreign), governmental regulations superimposed after the fact, communication line failures, power failures, fires, explosions, floods, accidents, epidemics, earthquakes or other natural or man-made disasters, and all occurrences similar to the foregoing (collectively referred to herein as "**Force Majeure**") The party affected by an event of Force Majeure, upon giving prompt notice to the other party, shall be excused from performance hereunder on a day-for-day basis to the extent of such prevention, restriction or interference (and the other party shall likewise be excused from performance of its obligations which relate to the performance so prevented, restricted or interfered with), provided that the party as affected shall use its best efforts to avoid or remove such causes of nonperformance and to minimize the consequences thereof and both parties shall continue performance hereunder with the utmost dispatch whenever such causes are removed Lack of funds shall not be a Force Majeure

XIV WARRANTY

- A Each party warrants to the other that it is a validly organized business or governmental entity with authority to enter into this Agreement Each party warrants to the other that it has the right to perform all its obligations and grant all the rights contained in this Agreement.
- B DHDI warrants that it is the owner of the software provided pursuant to this Agreement and that it has the clear title and the absolute right to license the software's use DHDI warrants that the services and products delivered or rendered hereunder do not violate any rights of any non-contracting party, including any patent, copyright, trade secret, trademark, or other proprietary rights

- C DHDl warrants that the Services shall be performed in a professional, good and workmanlike manner
- D DHDl warrants that the production software and any approved configurations, modifications, additions, or enhancements thereto, shall be reasonably free from program coding errors. In the event coding errors are discovered subsequent to delivery, DHDl will supply corrections in a reasonable time frame and according to the policies set forth in the Maintenance SOW. This warranty is void if Client makes any changes, modifications, additions, or enhancements to the software
- E Client warrants that Client Marks and Client Content furnished by Client to DHDl will not infringe or misappropriate any patent, copyright, trademark, or other proprietary right of any third party. To the extent necessary to provide the Services, Client represents and warrants that it will provide all access to and information about Client Marks and Client Content in a timely manner. Client represents and warrants that (a) it has all rights necessary and appropriate to allow DHDl and its contractors to access and use the Client Marks and Client Content, and (b) it will not take or allow to be taken any action that would result in any harmful code or materials to be provided or submitted to DHDl

XV INDEMNIFICATION

- A Notwithstanding the limits of any policy of insurance provided pursuant to this Agreement, DHDl agrees to indemnify and hold harmless Client and, at the request of Client, defend Client against any and all claims, judgments, costs, awards, liability, loss, damage, suit or expense of any kind, including reasonable attorney fees, which Client may incur, suffer or be required to pay by reason of or in consequence, directly or indirectly, of the fault, failure, omission or negligence of DHDl, its agents, officers, members, directors, DHDls or employees, including any misrepresentations contained in the Agreement or the breach of any warranty made herein or the failure of DHDl to carry out its duties under this Agreement or otherwise arising out of or in connection with, directly or indirectly, this Agreement
- B DHDl agrees to indemnify and hold Client harmless from any claim involving patent infringement, trademark, copyrights or any other intellectual property claims on goods and/or services.**

XVI INDEPENDENT CONTRACTOR

- A For the purpose of this Agreement, DHDl is and shall in all respects be considered an independent contractor. DHDl, its individual members, directors, officers, employees and agents are not and shall not hold themselves out nor claim to be an officer or an employee of Client, nor make claim to any rights accruing thereto, including, but not limited to, Worker's Compensation, unemployment benefits, Social Security or retirement plan membership or credit
- B DHDl shall have the direct and sole responsibility for the following: payment of wages and other compensation, reimbursement of DHDl's employees' expenses, compliance with federal, state and local tax withholding requirements pertaining to income taxes, Worker's Compensation, Social Security, unemployment and other insurance or other statutory withholding requirements, and all obligations imposed on the employer of personnel. Client shall have no responsibility for any of the incidences of employment

XVII AUDIT

- A DHDl shall, upon request and expense of the Client, provide Client such documentation, records, information and data and response to such inquiries and shall fully cooperate with internal and/or independent auditors designated by Client and permit such auditors to have access to, examine and copy all records, documents, reports and financial statements to assure or monitor payments to DHDl under this Agreement. Client's right of inspection and audit pursuant to this Agreement shall remain in full force and effect for a period of three (3) years after the close of DHDl's fiscal year in which any funds or payment was received from Client under this Agreement

XVIII MISCELLANEOUS

- A **DISPUTES** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be commenced in the State of Texas and each party hereto irrevocably submits to the non-exclusive jurisdiction and venue of any such court in any such suit, action or proceeding.
- B **CHOICE OF LAW** The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Texas, as if performed wholly within the state and without giving effect to the principles of conflict of law.
- C **NON-DISCRIMINATION** DHDl agrees that in carrying out its activities under the terms of the Agreement that it shall not discriminate against any person due to such person's age, marital status, disability, genetic predisposition or carrier status, race, color, creed, sexual orientation, sex or national origin.
- D **ENTIRE AGREEMENT** This Agreement constitutes the entire Agreement between the Client and DHDl and supersedes any and all prior Agreements between the parties hereto for the services herein to be provided.
- E **FEDERAL, STATE AND LOCAL LAW AND REGULATIONS COMPLIANCE** Notwithstanding any other provision in this Agreement, DHDl remains responsible for ensuring that any service(s) provided pursuant to this Agreement complies with all pertinent provisions of Federal, State and local statutes, rules and regulations. DHDl agrees to abide by and comply with all applicable federal, state and local laws, rules, regulations and orders, including but not limited to those provisions relating to confidentiality, fraud, abuse, and anti-kickback laws, and to fully cooperate with the Client in this regard, and to execute any amendments necessary for Client and/or DHDl to comply with such laws, rules, regulations, orders and programs.
- F **CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND RESPONSIBILITY** The undersigned certifies, to the best of his/her knowledge and belief, that DHDl and its principals
- 1 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency,
 - 2 Have not within a three-year period preceding this transaction/application/proposal/contract/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, and
 - 3 Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification.
- G **ASSIGNMENT** Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, DHDl may assign this Agreement, without the necessity of obtaining Client's consent, to an unaffiliated entity that acquires substantially all of the ownership interests or assets of DHDl. All terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors and assigns.
- H **WAIVER.** Any delay by a party in exercising its rights hereunder will not constitute a waiver of its rights or its entitlement to enforce any provision of this Agreement.

- I SEVERABILITY. If any provision of this Agreement is for any reason held unenforceable or invalid, then this Agreement will be construed as if such provision were not contained herein
- J REMEDIES. The parties acknowledge and agree that the remedies at law for breach of any term in this Agreement may be inadequate and that either party, in addition to any other remedies at law, will be entitled to seek injunctive relief for any breach of this Agreement. The prevailing party in a dispute between the parties shall be entitled to recover its costs (incurred in arbitration and/or court) and reasonable attorneys' fees
- K NON-EXCLUSIVE AGREEMENT. This Agreement is not an exclusive services agreement and nothing contained herein will be construed to prohibit (i) Client from acquiring services from or entering into any agreements with any other party, or (ii) DHDI from providing services to or entering into any agreements with any other party
- L COUNTERPARTS, FACSIMILE SIGNATURES. This Agreement and all SOWs may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. This Agreement and all SOWs may be executed by the Parties delivering facsimile copies of executed signature pages and same shall be fully effective to cause this Agreement to be fully binding and enforceable in accordance with its terms. Without limiting the effectiveness of this Agreement or any SOW upon its execution by facsimile signature pages, each Party agrees to deliver to each other executed originals of this Agreement or any SOW, as the case may be, within ten (10) days after transmission of such facsimile signature pages
- M NOTICE. All notices, demands, and other communications required hereunder, unless otherwise provided herein, must be in writing and delivered by hand, by certified mail return receipt requested or by overnight courier addressed as follows

If to DHDI

Digital Health Department, Inc
 7506 East Independence Boulevard
 Suite 105
 Charlotte, North Carolina 28227
 Attention: Contract Administration

If to Client

[The remainder of this page is left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above

CLIENT

Name of Client _____

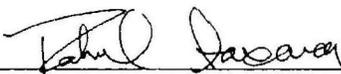
Signature _____

Name of Signer (printed) _____

Title _____

Date Signed _____

DIGITAL HEALTH DEPARTMENT INC

Signature _____ 

Name of Signer (printed) _____ **Rahul Saxena**

President

Title _____ **January 28, 2014**

Date Signed _____

DHDI's Federal ID Number. 46-2147749

Attachment A
Maintenance and Hosting Statement of Work

I Introduction

This Statement of Work between Digital Health Department Inc ("DHD") and the CLIENT ("Client") defines the Digital Health Department ("DHD" or "System") System maintenance, System Hosting, Customer Support, and related services that DHD will provide under the terms and conditions of the Agreement between Client and DHD dated January 28, 2014 (the "Agreement") and the terms and conditions contained herein

In the event of a conflict between the terms of this Statement of Work and the Agreement, the terms and conditions of this Statement of Work shall prevail. This Statement of Work and the Agreement represents the complete agreement regarding the subject matter and replaces any oral or written communications between the Client and DHD.

As more particularly described in the Agreement, the DHD System Maintenance includes a non-transferrable, limited, nonexclusive user license for all Client staff. This license includes:

- The use of the Client Production System in the offices,
- The use of the offline version of the System ("Field Client"),
- Software support, i.e. correction of System-generated errors and identified bugs in the approved and implemented System functionality, and work stoppage issues created by these errors,
- Hosting of Client data and complete System application,
- Technical support to Client staff handled through Client and DHD Maintenance Support team for modules on the current production System
- The use of a Disaster Recovery (DR) solution specifically implemented for Client in the sole event that DHD or any assigned or designated vendor is not able to provide hosting services and support to the company

II Software Support

A Software Version Releases

1 Although there are no formal software version releases, the DHD system is periodically updated to include system-wide improvements and features. As these updates are completed, they are implemented to the live system at no additional charge to the Client.

2 DHD will notify the Client of any software modifications and revisions. The notification shall include, but may not be limited to, a statement describing the effect of including the software change on the system, application programs, data files, workstation functions and services, and personnel training recommendations.

3 DHD will provide instructions and files to the client to update the software code for the DR solution on a quarterly basis.

4 DHD will provide a weekly backup of the data specifically for the Client in order to update the DR solution as outlined in the instructions/documentation that has been provided to the client.

B Client Issue Tracker

1 The System includes the Client Issue Tracker module. The Client System Administrators (CSAs) are able to enter issues, open tickets, and enter requests. CSAs can also monitor the progress of the ticket as it moves through the system and are alerted when the issue is resolved. Each issue is assigned a priority level and a status, so pending issues can be addressed in order from highest priority to lowest as defined by Client and specified to DHD staff.

C Bug/Error/Break Fixes

1 Bugs, errors, and breaks are defects in the product, that is, a deviation between the functionality of the product and its actual performance. A bug fix is required to change the code to repair the bug. Bug fixes could be associated with a single line of code or large portions of code thus requiring more development time.

2 Critical Bugs are defined as problems that create a Client work stoppage, problems that affect the Client's ability to use the System as it was designed, problems that prevent the Client from doing business, or problems that prevent the Client from submitting data to the System

a) If the Client reports an issue as a Critical Bug, DHDl staff will review and verify the status. If the issue does not qualify as a Critical Bug as defined above, DHDl staff will update the issue status, assign it to a Work Order, and notify Client

3 Escalated Issues are defined as those issues that do not meet the qualifications of a Critical System Bug but still need to be addressed and corrected as soon as possible, e.g. before all other issues in Issue Tracker except Critical Bugs. Only DHDl staff is able to Escalate Issues. The types of issues that can be elevated to an Escalated Issues status are

a) Time-sensitive or urgent report requests that have a hard date and/or time deadline, such as media requests or legislative reports,

b) Time-sensitive or urgent change requests that have a hard date and/or time deadline, such as state-mandated changes regarding permit renewals, licensing, or billing. Additional charges may apply to escalated change requests that fall outside the original Scope of Work

4 Critical Bugs and Escalated Issues receive top priority in the maintenance schedule

a) When Critical Bugs and Escalated Issues are reported, they are verified by DHDl, acknowledged, and typically resolved within twenty-four (24) hours

b) If a Critical Bug will take longer than twenty-four (24) hours to correct, the Client will be notified of the proposed correction within twenty-four (24) hours

c) If there are more than three (3) Escalated Issues in the Client System at one time, a Work Order will be created containing only the Escalated Issues, and will be moved into the development schedule as soon as possible. The estimated turnaround for Escalated Issues is seven (7) business days

5 A Work Order is defined as a list of issues, grouped by issue priority and system module, created by DHDl staff and approved by the Client. Work Orders may contain up to twenty (20) issues and must be approved by Client signature before being added to the maintenance schedule. Once a Work Order is complete, the Client will have 30 calendar days to review, test, and accept the Work Order by Client signature, or reject the changes in writing, with detailed documentation of the reasons for rejection. Once the Client accepts the Work Order, the changes will be pushed to the Client Production System within two (2) business days. All items within a Work Order will be pushed to production at one time, not piecemeal. The estimated turnaround time for Work Orders is sixty (60) to ninety (90) business days

a) Once a Work Order is pushed to the production system and verified by Client, the Client will sign a completion form, indicating acceptance of all the issues within the Work Order. No additional Work Orders will be moved into development until the completion form is signed

D State-Mandated Changes

1 During the course of this contract, the federal, state, or county laws, ordinances, policies, or procedures may be changed or updated, and require the addition of fields to system screens and/or format changes to printable forms, or a change in the format in which the data is collected or output on a standard form directly relating to a module included in the Client Production System. DHDl will accommodate up to one (1) form change and ten (10) field changes per module annually. Further changes will be quoted on a case-by-case basis at the standard rate of \$125 per hour

2 In the event that major functionality or report changes are required as the result of a law or ordinance change, the upgrade may require additional funding and will be quoted on a case-by-case basis at the standard rate of \$125 per hour

E System Enhancements

1 System Enhancements are defined as change requests and feature requests, which affect System appearance and/or functionality not included in the existing System functionality or that fall outside the system Scope of Work and/or approved system documentation

2 The DHDl Project Team on a case-by-case basis evaluates change requests Each change request will be reviewed against the original System scope of work and approved specifications, and will be quoted to the Client at the standard per-hour development rate

3 Feature requests are evaluated by the DHDl Project Team on a case-by-case basis Each request will be reviewed against the original scope of work and approved system specifications, and will be quoted to the Client at the standard per-hour development rate

4 All changes and enhancements to the system will be quoted to the client on a case-by-case basis No billable work will be performed until both parties sign a written agreement that includes scope of work, project timeline, and approved payment milestones

5 Changes and features are first implemented and tested on DHDl's Development server After the change is approved internally, it is pushed to the Testing server This server is the Client's testing environment, which is an exact replica of the production system This testing environment is standard in the system, and there is no extra fee for this feature Once the enhancements have been fully tested and approved by the Client, they are pushed to the production system where they are immediately available to all users There is no downtime for any user, and no extra software installations are necessary

6 Change and feature requests will be addressed in ninety (90) to one hundred, twenty (120) working days, depending on type of request, complexity, and current development schedule

F Priorities

The Priority field helps define an issue's importance to the Client and is used to determine delivery dates The options are Very High, High, Medium, Low, and Very Low

1 The "Very High" status is reserved for Work Stoppage bugs only The status of a Work Stoppage is strictly reserved for bugs that are preventing use of the system Work Stoppage Bugs are corrected within 24 hours unless otherwise notified by the DHDl Maintenance Team

2 In the event of a major issue that impacts production, procedures are in place to allow immediate attention to focus on that item whether it requires programming resources or other DHDl staff participation

3 All escalation is handled through DHDl technical support Depending on the type of issue, the system may escalate an item to one department or another (for example, Database Administration, Project Management, or Development). Any time an issue is escalated to senior technical staff the Client will receive an estimated correction time and a reason for the escalation to senior tech staff

G Project Procedures

Each deliverable document or Work Order will be approved in accordance with the following procedure

1 One printed draft of the deliverable document is submitted to the Client Project Manager, with a deliverable acceptance document including an approval signature page. It is the Client Project Manager's responsibility to make and distribute additional copies to the other reviewers

2 Within five (5) business days the Client Project Manager will either approve the deliverable or provide the DHDl Project Team written documentation of the discrepancies

3 The DHD Project Manager will resubmit, in electronic form, the final version of the deliverable document to the Client Project Manager for approval. The Client Project Manager will provide final written approval within five (5) working days.

4 Reasonable delays in this approval process will be considered and allowed if agreed by the DHD and the Client Project Manager.

H Escalation Procedure

When a conflict arises between Client and DHD, the project team member(s) will first strive to resolve the problem internally. The following procedure will be followed if resolution is required to a conflict arising during the performance of this SOW.

1 Level 1 If the project team cannot resolve the conflict within five (5) working days, the Client Project Manager and DHD Project Manager will meet to resolve the issue.

2 Level 2 If the conflict is not resolved within five (5) working days after being escalated to Level 1, the Client Project Sponsor will meet with the DHD Project Executive and Project Manager to resolve the issue.

3 Level 3 If the conflict remains unresolved after Level 2 intervention, resolution will be addressed in accordance with the Project Change Control Procedures or termination of this SOW, the Hosting SOW, and contract under the terms of the Agreement.

4 During any conflict resolution, DHD agrees to provide services relating to items not in dispute, to the extent practicable pending resolution of the conflict.

I Rate for Additional Work

1 Changes to the system appearance and functionality will be quoted on a case-by-case basis at a rate of \$125 per hour. This price covers all project management and development staff time. Travel and other expenses are not included in the per-hour price and may be quoted separately as necessary. No billable work or travel will be performed until both parties sign a written agreement that includes scope of work, project timeline, and approved payment milestones.

III System Hosting

System Hosting includes hardware support and maintenance for all DHD-controlled equipment involved in hosting the clients system, data and application storage, data and application backups, and disaster recovery.

A Connectivity

The DHD system is accessed through an Internet browser and an Internet connection. No additional Client connectivity is required to access the full functionality of the production DHD system.

B Data Storage

The data storage subsystem is configured with 9 terabytes of storage and can be expanded at any time if necessary for the term of the contract.

C Backups

The System is 100% web-browser based and is hosted on servers that DHD maintains. DHD is responsible for backups, security administrations, and problem resolutions. DHD will run nightly backups of all data. The following backups are performed:

1 120 minute incremental,

- 2 Nightly differentials,
- 3 Daily full,
- 4 Weekly move backup,
- 5 Monthly backup rotation

D Disaster Recovery

In the event that data recovery is necessary following a disaster that would render data in the primary database unrecoverable, DHDI would look first to the most recent incremental backup of data and attempt to restore. In the event that both the primary database and the incremental backup experienced a catastrophic failure, DHDI would restore from the nightly incremental backup. In the event that all three of these data sources were unavailable or had catastrophic failures, DHDI would retrieve the most recent daily or weekly backup from the long-term backup storage and restore. An exception to this process would be if data were available from another backup source maintained at the Client site – at that point, if the client felt their copy was the most up-to-date, DHDI would restore data from the copy the Client deemed appropriate.

E Hardware Support

Hardware is defined as the processor(s), RAM, hard disk(s), motherboard, NIC card, and other related components included in the DHDI server assigned to the Client System. All hardware components directly relating to the Client System will function properly and any failed component will be replaced immediately at no additional Client cost. The replacement process will begin when the cause of the problem has been determined. Hardware replacement is guaranteed to take no more than four (4) hours.

F Network Availability

Network uptime occurs when the functionality of all DHDI network infrastructure including cabling, switches, and routers, is operating as designed. Network downtime occurs if the DHDI servers are unable to transmit and/or receive data, and if the Client opens a service ticket for the incident in the System ticket-tracking module. Network downtime is measured from the time the Client ticket is opened to the time the issue is resolved and the DHDI network comes back online. The DHDI network will be available 99.9% of the time, excluding scheduled maintenance or upgrades approved by both Client and DHDI.

G Infrastructure Guarantee

Critical systems include all power and HVAC infrastructure, UPS equipment, and cabling. Power supplies of individual servers are not included (see below for Hardware Guarantee). Critical systems downtime occurs when a DHDI server assigned to Client System is shut down because of power or heat problems, and if the Client opens a service ticket for the incident in the Client System ticket tracking module. Critical system downtime is measured from the time the Client ticket is opened to the time the issue is resolved and the DHDI server comes back online. DHDI critical systems, including power and HVAC, are available 99.9% of the time, excluding scheduled maintenance periods.

H Maintenance and escalation (scheduled and unscheduled)

1 DHDI will notify Client at least 48 hours in advance of any scheduled network downtime for System maintenance and service.

2 In the event of an unscheduled outage, DHDI will immediately notify the Client contact, informing them of the outage and its estimated length. Should the outage last more than four hours, DHDI will provide an update to Client every four hours as to the system status.

3 For outages lasting one hour or longer, both the DHDI Operations Manager and Director of Programming Services will have the outage assigned as their top priority for immediate resolution. Should an additional hour pass, the matter shall be brought to the attention of the DHDI Vice

President, with all outages of four hours or more being immediately escalated to the DHDl CEO or President's office

- 4 All updates and notifications will be delivered via email to the Client contact
 - a) Fourteen (14) days notice will be given on routine hardware maintenance scheduled for the live production servers that may impact the live system
 - b) Fourteen (14) days notice will be given for any scheduled maintenance that involves reinstallation of software

5 It is the responsibility of the Client to conduct and maintain all hardware and software for the DR solution. It is the responsibility of the Client to periodically test the DHD software on the DR solution to ensure it functions according to its specifications

I Remedies

1 Should a DHDl outage occur that results in Client system unavailability in excess of the guaranteed uptimes, DHDl will credit Client 5% of the monthly license and maintenance fee for every additional one (1) hour of downtime, up to but not exceeding 100% of one monthly payment. Credits will be applied toward future license and maintenance payments

J Exceptions

1 Delinquent customers may not take advantage of our uptime guarantee. Client must request all credits in writing within three (3) calendar days of the reported downtime, and the downtime must be from a single occurrence

IV Customer Support

A On-line Support System includes online text based help down to the field level. Users can hover the mouse over a field and popup text help for that field will appear

B Telephone Support Telephone support for Client System Administrators between the hours of 8:00 AM and 6:00 PM EST. There is a 24-hour emergency support line available for Client System Administrators, but not general staff. General staff issues should be first directed to the Client System Administrator to determine that the issue does not pertain to Client policy. If the issue is a legitimate system use issue and the Client System Administrator is unable to assist the user, the Client System Administrator may call the Support line to receive additional assistance from a DHDl staff member

C Virtual Support DHDl technical staff can remote in to the application so that they can see the exact screen that an employee is on at any time. This allows them the ability to assist as if they were sitting next to the employee. The Client has to allow access to the system through the Client firewall

D User Manual. Electronic user manual documentation is configured to reflect the custom features of Client's specific version on the application

V Roles and Responsibilities

Role	Responsibilities
Application Support (Table Maintenance)	The Client will be responsible for making some table changes to the system using DHDl-developed tools through the DHD system. The Client will also be responsible for using Issue Tracker to request changes to the system that are not available to them through the system. DHDl is responsible for fully supporting the application
Communication	The Client is responsible for appointing a Client System Administrator who can verify and enter Issue Tracker items, set up users, etc. This position requires no special software or hardware knowledge, and does not require a major time investment. DHDl is responsible for notifying the client of scheduled outages, updates on system changes, etc. Both the

Role	Responsibilities
	Client and DHDl are responsible for communication about the DHD system
Connection	The Client is responsible for monitoring and ensuring that the internet connection is working properly
Hardware Maintenance	The Client is responsible for all hardware purchased, installed, and used by the Client DHDl is responsible for application and server hardware and peripheral equipment pertaining to those servers
Information Services Technical	The Client is responsible for maintaining Client's own technical staff as it relates to the Client's existing infrastructure DHDl will be responsible for everything that applies to the production system, data storage, and application and server hardware
Network Support	The Client is responsible for maintaining their own network system so that users are able to access the Internet and a web browser DHDl is responsible for all network support to application and data servers
Security Monitoring	The Client is responsible for monitoring Internet security and any other security measures already in place Additionally, the Client will be responsible for maintaining the integrity of the internal user security (permissions, passwords, etc) DHDl is responsible for monitoring security at the data and application server level
Software Updates	DHDl is responsible for all software updates on the application The Client is responsible for other applicable software updates on the Client's hardware (operating systems, Internet browser, etc)
Disaster Recovery	The Client is responsible for all maintenance, testing, and updating of the DR solution's hardware and software, including the DHD software

VI Payment Terms

System maintenance is due on the first day of each quarter, and will be invoiced at least thirty (30) calendar days prior to the due date DHDl payment terms are Net 30 Days Clients with delinquent accounts may not take advantage of the uptime and hardware guarantee credits, and severe delinquencies may result in a temporary suspension of maintenance services, up to and including access to the system

A Maintenance Year 1 (01/01/2014 – 12/31/2014) \$54,895 00

- 1 Payment 1 DHD Annual License, Maintenance, and Support, due 01/01/2014 \$52,395 00
- 2 Payment 2 DHD annual support of DHD-Client DR Solution, due 01/01/2014 \$2,500 00

B The Client retains the option to purchase subsequent maintenance periods from the Contractor at a cost not to exceed the previous annual maintenance fee plus 5%

Signature Page

Both DHDI and Client agree that this complete agreement between will consist of

The Contract for Services Agreement (or any equivalent agreement signed by both parties) and,

This Statement of Work – Maintenance and Hosting

CLIENT

Name of Client _____

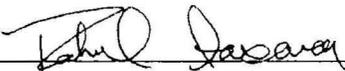
Signature _____

Name of Signer (printed) _____

Title _____

Date Signed _____

DIGITAL HEALTH DEPARTMENT INC

Signature _____ 

Name of Signer (printed) Rahul Saxena

President

Title 01/28/2014

Date Signed _____

DHDI's Federal ID Number 46-2147749