

GADCS REPORTING SERVICE AGREEMENT

This GADCS REPORTING SERVICE AGREEMENT, dated _____ (“Agreement”) between **DIGITECH COMPUTER LLC ("DIGITECH")** maintaining its principal place of business at 480 Bedford Road, Building 600, 2nd floor, Chappaqua, NY 10514 and **CITY OF NORTH PORT**, a municipal corporation of the State of Florida (“**CITY or CLIENT**”).

WITNESSETH:

The parties hereby agree as follows:

I. SERVICES

- A. DIGITECH will provide CLIENT the Medicare Ground Ambulance Data Collection System (“GADCS”) services (“Services”) specified in Rider A.

II. PAYMENT

- A. CLIENT agrees to compensate DIGITECH for the Services as described in Rider A, as applicable.
- B. DIGITECH shall invoice CLIENT based upon the fees described in Rider B and the invoicing information provided by CLIENT in Rider C.
- C. All payments will be due within thirty (30) days of receipt of DIGITECH’s invoice.
- D. In the event an invoice is disputed in good faith, CLIENT is entitled to withhold only that part of the invoice that is in dispute. If an invoice is in dispute, the parties agree to consult in good faith to resolve any disputes regarding the invoice.
- E. If the uncontested invoice or uncontested portion of an invoice remains unpaid sixty (60) days from the invoice date, DIGITECH, at its option, may elect to suspend its Services under this Agreement upon fifteen (15) days prior written notice to CLIENT or terminate this contract upon forty- five (45) days prior written notice to CLIENT.

III. CONFIDENTIALITY

- A. With regard to CLIENT’s Protected Health Information (“PHI”), DIGITECH will perform the Services hereunder in accordance with the HIPAA Business Associate Agreement set forth in Rider D and applicable law.
- B. DIGITECH acknowledges and agrees that any and all information and material supplied by CLIENT to DIGITECH hereunder shall remain the property of CLIENT. DIGITECH will not make copies of such information or material, except to the extent necessary to perform the Services under this Agreement. DIGITECH, its employees, agents, assigns, subcontractors and successors shall keep strictly confidential all

information designated by CLIENT as “confidential”.

- C. CLIENT acknowledges and agrees that the software, and all other systems and documentation, including training materials, related to the provision of Services hereunder, are DIGITECH's confidential proprietary information, and CLIENT agrees that it will disclose such material only to those of its employees and agents who have a need to know, that it will use such material only in connection with the Services hereunder, and that it will take all reasonable precautions to prevent the disclosure of such confidential information to, or use by, any other party. CLIENT acknowledges and agrees that all software and documentation developed by DIGITECH for CLIENT using CLIENT's specifications, or DIGITECH's specifications, or a combination of both, will remain DIGITECH's confidential proprietary property, unless the parties have otherwise agreed in writing.
- D. CLIENT will not be obligated to provide DIGITECH with any information, which by law or its own policy may not be provided to DIGITECH. Upon any termination of this Agreement, PHI will be treated as set forth in Rider D and applicable law.
- E. Each party agrees that during the term of this Agreement, and for a period of one year thereafter, it shall not hire or retain, as an employee or otherwise, any of the other party's employees, unless the parties have otherwise agreed in writing.

IV. TERM, TERMINATION AND RENEWAL

- A. The term of this Agreement shall be one (1) Medicare Ground Ambulance Data Collection system reporting period, defined as the continuous 12-month period selected by CLIENT to report to Centers for Medicare and Medicaid Services (“CMS”) the GADCS data, commencing on _____.
- B. Except as otherwise provided in the Business Associate Agreement regarding a basis for termination for violation of the obligations of the Business Associate Agreement, either party may, upon thirty (30) days written notice, via certified mail, identifying specifically the basis for such notice, terminate this agreement for breach of a material term or condition of this Agreement, provided that the party in breach shall not have cured such breach, or taken substantial steps toward curing such breach, within the thirty (30) day period of being notified in writing, via certified mail, of the breach. This paragraph does not apply to nonpayment, which is addressed in paragraph II (E) above.
- C. Notwithstanding anything to the contrary in this Agreement, either party may immediately terminate this Agreement upon five (5) days prior written notice in the event:

1. The other party becomes insolvent, bankrupt, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors, or consents to appointment of a trustee or receiver, or has an involuntary petition of bankruptcy filed against it: or
 2. The legal authority of the other party to operate its facility or provide services as required hereunder is suspended or terminated; or
 3. A party hereto is excluded from participation in any state and/or federal health care program; or
 4. The Business Associate Agreement between DIGITECH and CLIENT is terminated.
- D. Either party may terminate this Agreement, without cause, with 120 days prior written notice.
- E. Upon termination of this Agreement, DIGITECH will be entitled to receive compensation for the Services provided prior to the effective date of termination.
1. If CLIENT terminates this Agreement for convenience **prior to** the completion or submission of GADCS report, DIGITECH will invoice CLIENT at an hourly rate for the time spent to complete such report. DIGITECH will provide a detailed log of time spent on preparing such report at CLIENT's request.
 2. If CLIENT terminates this Agreement for convenience **after** the submission of GADCS report, but prior to payment being received by DIGITECH, the parties agree that the fees contemplated herein, and in Rider B shall survive termination of the Agreement.

V. INDEMNITY AND LIABILITY

- A. Each party to this Agreement shall indemnify and hold harmless the other party and its agents, employees and subcontractors ("Indemnified Party") from and against losses, liability, fines, suits, demands, arbitration fees, damages and expenses (including reasonable attorney's fees) due to claims made by third parties against an Indemnified Party arising from any act, omission, misrepresentation, fraud, violation of any law, breach of confidentiality, breach of the Business Associate Agreement, intellectual property violation, or any willful, wanton, reckless, or grossly negligent act committed by the defaulting party, or its agents, employees and subcontractors. Notwithstanding the foregoing, the defaulting party's liability shall be limited as set forth below in paragraphs V(B) through (D).
- B. To the extent permitted by law, DIGITECH's liability shall be limited to amounts paid

by DIGITECH's errors and omissions insurance policy, excluding any applicable deductible or retention under that policy, for which DIGITECH shall remain liable. DIGITECH agrees to maintain no less than \$3,000,000 in errors and omissions insurance covering the performance of its duties set forth herein for the duration of this Agreement. Except as covered by insurance, in no event shall either party be liable to the other for any loss in profits, or for any special, incidental, indirect, consequential or other similar damages (but excluding penalties and fines) suffered in whole, or in part, in connection with this Agreement, even if a party or its agents have been advised of the possibility of such damages. Except as covered by insurance, in no event shall either party be liable for any delay or failure of performance that is due to causes or conditions beyond that party's reasonable control (this clause does not apply to CLIENT's payment obligations).

- C. Both DIGITECH and CLIENT are independent contractors. Neither party, by virtue of this Agreement, assumes any liability for any debts or obligations of either a financial or legal nature incurred by the other party, except as set forth herein.
- D. The rights and remedies in this Section constitute the exclusive rights and remedies of the parties with respect to matters identified under this Section.

VI. EXCLUSIVITY

- A. CLIENT agrees that all Services outlined herein will be performed by DIGITECH exclusively during the term of this Agreement.

VII. COMPLIANCE

- A. DIGITECH warrants and represents that it maintains adherence to the Office of Inspector General of the Department of Health and Human Services Compliance Program Guidance for billing companies as published in the Federal Register, by the DHHS or OIG in other publications or by the Medicare Administrative Contractor for CLIENT's service area, including verification that no one on DIGITECH's staff is excluded from participation in any state and/or federal health care program.
- B. DIGITECH agrees to comply with all applicable federal and state laws, including "anti-kickback," "excessive charges," and other regulations relevant to this Agreement.
- C. CLIENT represents and warrants that it is not excluded from participation in any state and/or federal health care programs. CLIENT further agrees that it shall be responsible for verifying that none of CLIENT's employees are excluded from participation in any state and/or federal health care program and that every EMS crew member's license and certification are current and valid. CLIENT agrees to notify DIGITECH within five (5) business days of CLIENT's discovery that it is the subject of any actions, investigations or other proceedings that could lead to its

exclusion from any state and/or federal health care programs.

- G. CLIENT represents and warrants that it shall submit only truthful and accurate facts and documentation to DIGITECH for GADCS reporting purposes. CLIENT is hereby advised that DIGITECH shall rely upon the documentation and factual representations made to it by CLIENT.

VIII. INSURANCE

- A. During the term of this Agreement, DIGITECH shall maintain the following insurance coverages/policies:
 - 1. General liability insurance coverage (which shall include Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage) with limits no less than \$1M per occurrence and \$2M in the aggregate;
 - 2. Errors and omissions insurance coverage with limits of no less than \$3,000,000 per occurrence and in the aggregate;
 - 3. Cybersecurity coverage with limits of no less than \$5,000,000 per occurrence and in the aggregate;
 - 4. Employee dishonesty and crime with limits of no less than \$1,000,000 per occurrence and in the aggregate; and
 - 5. Workers comp with limits of no less than the statutory limits.
- B. Upon request, DIGITECH shall provide a Certificate of Insurance evidencing such coverage(s) to CLIENT.

IX. NOTICES

- A. All notices or other communications required or contemplated herein shall be in writing, sent by certified mail return-receipt-requested, overnight delivery, or personal delivery, addressed to the party at the address indicated below, or as same may be changed from time to time by notice similarly given. Notices shall be deemed given three (3) business days after mailing, if by certified mail, the next business day, if by overnight delivery, or, if hand delivered, on the date of such delivery.

If to DIGITECH:

Mark Schiowitz
President & CEO
Digitech Computer LLC
480 Bedford Road, Bldg. 600, 2nd Floor
Chappaqua, NY 10514
Email: contracts@digitechcomputer.com

If to CLIENT:

For City of North Port, Florida:

City of North Port, Florida
Attn: City Manager
4970 City Hall Blvd.
North Port, Florida 34286

with a copy to:

City of North Port, Florida
Attn: City Attorney
4970 City Hall Blvd.
North Port, Florida 34286

X. MODIFICATION; GOVERNING LAW; ARBITRATION; ENTIRE AGREEMENT; FURTHER ASSURANCES; SEVERABILITY; WAIVER; AUTHORITY; SUCCESSORS AND ASSIGNS

- A. Amendment. No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. Any amendments changing the City's financial obligations under this Agreement shall require approval by the City Commission. The City Commission hereby authorizes the City Manager or City Manager's authorized designee to approve and execute all Agreement amendments on behalf of City that do not change the City's financial obligations under this Agreement.
- B. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the United States District Court for the Middle District of Florida.
- C. The parties agree that any claim or dispute between them, whether related to this Agreement or otherwise, including the validity of this arbitration clause, shall be resolved by binding arbitration by the American Arbitration Association ("AAA"), under the AAA arbitration rules then in effect, before one (1) arbitrator in Westchester County, New York State. Any award of the arbitrator may be entered as a judgment in any court of competent jurisdiction. Either party may commence such arbitration upon no less than thirty (30) days written notice to the other.

- D. This Agreement, including the attached rider(s) and exhibit(s), contains the entire agreement between the parties relating to this transaction and supersedes all previous understandings and agreements between the parties relating to this subject matter. Each party acknowledges that it has not relied on any representation, warranty, or other assurance made by, or on behalf of, the other party, except as expressly set forth herein.
- E. From time to time, each party will execute and deliver such further instruments, and will take such other action as the other party may reasonably request, in order to discharge and perform its respective obligations and agreements hereunder.
- F. Any provision of this Agreement prohibited by applicable law will be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.
- G. This Agreement may be the basis for an Interlocal or Cooperative Procurement Agreement.
- H. The failure of either party to require strict performance of any provision will not diminish that party's right thereafter to require strict performance of any provision.
- I. The signatories below have the authority to sign on behalf of the respective parties.
- J. This Agreement shall be binding on, and will inure to the benefit of, the parties hereto and their respective successors and assigns.
- K. This Agreement, and the duties and obligations placed on the parties, may not be assigned, except with the express written consent of the other party.
- L. Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. DIGITECH shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

[Signature page follows]

The parties hereto have executed this Agreement on the day and year first above written.

DIGITECH COMPUTER LLC

By: Mark Schiowitz
Mark Schiowitz (Jun 18, 2024 12:21 EDT)

Name: MARK SCHIOWITZ

Title: PRESIDENT AND CEO

Date: 06/18/2024

CITY OF NORTH PORT, FLORIDA

A. JEROME FLETCHER II, ICMA-CM, MPA
CITY MANAGER

ATTEST

HEATHER FAUST, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

AMBER L. SLAYTON, B.C.S.
CITY ATTORNEY

RIDER A
DESCRIPTION OF SERVICES

This Rider is a part of the Agreement between **DIGITECH COMPUTER LLC (“DIGITECH”)** and **CITY OF NORTH PORT (“CLIENT”)**.

DIGITECH will commit to the following activities:

- 1) DIGITECH will work with CLIENT finance and operations teams to collect all data for the submission. During the project kickoff call, DIGITECH will walk through the data request and ensure that teams are equipped to provide source data needed for completion of the GADCS instrument.
- 2) DIGITECH will comb through expenditure data, including labor, facility, vehicle, and other cost information to establish classifications for the GADCS instrument.
- 3) DIGITECH will create working files, as necessary, to process expenditure data. Throughout the analysis of expenditures and other data elements, DIGITECH will incorporate automated checks as one of the first steps in the Quality Assurance (“QA”) process.
- 4) DIGITECH will collect and analyze computer-aided dispatch (“CAD”) data in order to develop appropriate cost allocation methodologies. DIGITECH will analyze the CLIENT’s data and determine the optimal approach to allocation of costs.
- 5) DIGITECH will prepare all working files and present a draft survey submission to CLIENT stakeholders.
- 6) Following the presentation of the working files and draft survey, DIGITECH will solicit feedback from the CLIENT and make revisions necessary to finalize the submission package.
- 7) DIGITECH will enter all data into the GADCS instrument, upload required supporting documentation (if applicable), and prepare the survey for certification from the CLIENT.
- 8) DIGITECH will promptly respond to audit requests from CMS.
- 9) In the unlikely event that the desk review or audit results require further action, DIGITECH will incorporate revisions as needed into the survey to certify and submit final information.
- 10) DIGITECH will present results of any CMS audits to CLIENT stakeholders. DIGITECH want to address any of the CLIENT’s questions or concerns prior to submission of the survey to CMS, but if there are any issues that arise during the audit process, DIGITECH will keep CLIENT appropriately engaged.

CLIENT will commit to the following activities:

- 1) CLIENT will identify and assemble the internal project team. The type of data requested may require participation from finance, operations, maintenance, human resources, and other business units in the CLIENT's parent agency. CLIENT will identify who needs to be involved in the GADCS data collection and in the review processes.
- 2) CLIENT will respond to DIGITECH data request for the GADCS project.
- 3) CLIENT will review and provide DIGITECH feedback of working files and GADCS portal inputs.
- 4) While DIGITECH staff will serve in the "Data Submitter" role for purposes of entering data into the CMS portal, the CLIENT will need to register for the portal and serve in the "Data Certifier" role.
- 5) CLIENT will communicate with DIGITECH regarding CMS inquiries. If CMS requests additional information regarding the CLIENT's GADCS submission, DIGITECH anticipates that the CLIENT will approve any communications or supporting documentation developed by DIGITECH in order to respond to CMS.

RIDER B

TERM AND COMPENSATION

DIGITECH will provide CLIENT with scope of services listed in **Rider A – Description of Services** for a period of one GADCS collection and reporting period as described in Agreement paragraph IV.A.

DIGITECH will invoice CLIENT for services performed a fee of **\$35,000**. DIGITECH will not invoice CLIENT for any portion of the fee until the GADCS report has been submitted to CMS.

RIDER C
CLIENT INVOICING INFORMATION

Mailing Address:	
Email Address (General):	
Email Address (Invoicing):	
A/P Contact Name:	
A/P Contact Phone Number:	
Tax ID:	

RIDER D
BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”), is made and entered into by and between _____ (“**Covered Entity**”) and **DIGITECH COMPUTER LLC** (“**Business Associate**”). This Agreement shall form a part of all agreements and other engagements as are currently in effect between the parties under which Protected Health Information (“PHI”) (as defined in Article 1 of this Agreement) is provided, created or received by Business Associate from or on behalf of Covered Entity, and shall supersede and replace any business associate agreement or amendment previously entered into between Covered Entity and Business Associate in accordance with the requirements of HIPAA (as defined below) and/or the HITECH Act (as defined below). This Agreement is effective as of the effective date of the GADCS Reporting Service Agreement (the “*Effective Date*”).

RECITALS

WHEREAS, in connection with the performance of their respective obligations under the terms of the GADCS Reporting Service Agreement, Covered Entity may disclose certain information to Business Associate, and Business Associate may use and/or disclose certain information, some of which may constitute PHI; and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to, or created, utilized or disclosed by, Business Associate pursuant to the GADCS Reporting Service Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations and guidance issued by the Secretary of the U.S. Department of Health and Human Services (the “Secretary”), all as amended from time to time (“HIPAA”), as well as the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations and guidance issued by the Secretary, all as amended from time to time (the “HITECH Act”), and other applicable laws;

The parties do hereby agree as follows:

Article 1: Definitions

1.1 Definitions. For the purposes of this Agreement, the following defined terms shall have the following definitions. All capitalized terms used in this Agreement but not otherwise defined herein shall have the meaning given in HIPAA or the HITECH Act, as applicable.

- (a) **“Breach”** has the meaning given to such term under HIPAA and the HITECH Act, including, but not limited to, at § 13400(1) of the HITECH Act and 45 CFR § 164.402.
- (b) **“Data Aggregation”** has the meaning given to such term under the Privacy Standards (as defined below), including, but not limited to, at 45 CFR § 164.501.
- (c) **“Designated Record Set”** has the meaning given to such term under the Privacy Standards, including, but not limited to, at 45 CFR § 164.501.
- (d) **“Health Care Operations”** has the meaning given to such term under the Privacy Standards, including, but not limited to, at 45 CFR § 164.501.
- (e) **“Limited Data Set”** has the meaning given to such term under the Privacy Standards, including, but not limited to, at 45 CFR § 164.514.
- (f) **“Privacy Standards”** means the HIPAA Privacy Rule and HIPAA Security Rule codified at 45 CFR Parts 160, 162 and 164.
- (g) **“Protected Health Information” or “PHI”** has the meaning given to such term under HIPAA, the HITECH Act, and the Privacy Standards, including, but not limited to, at 45 CFR § 160.103.
- (h) **“Unsecured Protected Health Information”** has the meaning given to such term under HIPAA and the HITECH Act, including, but not limited to, at § 13402(h) of the HITECH Act and 45 CFR §164.402.

Article 2: Duties of Business Associate

2.1 Compliance with Privacy Provisions. Business Associate shall only use and disclose PHI in performance of its obligations under the GADCS Reporting Service Agreement and as permitted or required by law. Business Associate agrees to be in compliance with each applicable requirement of 45 CFR § 164.504(e) and all requirements of the HITECH Act applicable to Business Associate.

2.2 Compliance with Security Provisions. Business Associate shall: (a) implement and maintain administrative safeguards as required by 45 CFR § 164.308, physical safeguards as required by 45 CFR § 164.310 and technical safeguards as required by 45 CFR § 164.312; (b) implement and document reasonable and appropriate policies and procedures as required by 45 CFR § 164.316; (c) use its best efforts to implement and maintain technologies and methodologies that render PHI unusable, unreadable or indecipherable to unauthorized individuals as specified in the HITECH Act; and (d)

be in compliance with all requirements of the HITECH Act related to security and applicable to Business Associate.

2.3 Breach of Unsecured PHI.

- (a) With respect to any suspected or actual unauthorized acquisition, access, use or disclosure (“Acquisition”) of Covered Entity’s PHI by Business Associate, its agents or subcontractors, and/or any Acquisition of data in violation of any applicable federal or state law, Business Associate shall (i) investigate such Acquisition; (ii) determine whether such Acquisition constitutes a reportable Breach under HIPAA, the HITECH Act, and/or applicable federal or state law ; (iii) document and retain its findings under clauses (i) and (ii); and (iv) take any action pertaining to such Acquisition required by applicable federal or state law.

- (b) If Business Associate discovers that a Breach has occurred, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than five (5) days after discovery of the Breach. Business Associate’s written notice shall include all available information required by 45 CFR § 164.410 and other applicable law. Business Associate’s written report shall be promptly supplemented with any new or additional information. Business Associate agrees to cooperate with Covered Entity in meeting Covered Entity’s obligations under the HITECH Act and other applicable law with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s) or others as required by the HITECH Act and other applicable law.

2.4 Permitted Uses of PHI. Satisfactory performance of its obligations under the GADCS Reporting Service Agreement by Business Associate may require Business Associate to receive or use PHI obtained from Covered Entity, or created or received by Business Associate on behalf of Covered Entity; provided, however, that Business Associate shall not use PHI other than for the purpose of performing Business Associate’s obligations under the GADCS Reporting Service Agreement (including this Agreement), as permitted or required under the GADCS Reporting Service Agreement (including this Agreement), or as required by law. Business Associate shall not use PHI in any manner that would constitute a violation of HIPAA if so used by Covered Entity.

2.5 Permitted Disclosures of PHI. Business Associate shall not disclose PHI other than for the purpose of performing Business Associate’s obligations under the GADCS Reporting Service Agreement (including this Agreement), as permitted or required under the GADCS Reporting Service Agreement (including this Agreement), or as required by law. Business Associate shall not disclose PHI in any manner that would constitute a violation of HIPAA if so disclosed by Covered Entity. To the extent that

Business Associate discloses PHI to a third party in carrying out its obligations under the GADCS Reporting Service Agreement, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the PHI, to the extent the third party has obtained knowledge of such breach.

- 2.6 Minimum Necessary.** Business Associate shall limit its use, disclosure or request of PHI to only the minimum necessary as required by law.
- 2.7 Retention of PHI.** Unless otherwise specified in the GADCS Reporting Service Agreement, Business Associate shall maintain and retain PHI for the term of the GADCS Reporting Service Agreement, and make such PHI available to Covered Entity as set forth in this Agreement.
- 2.8 Safeguarding PHI.** Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by the GADCS Reporting Service Agreement and this Agreement. Business Associate will appropriately safeguard electronic PHI in accordance with the standards specified at 45 CFR § 164.314(a). In particular, Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity.
- 2.9 Agents and Subcontractors.** Business Associate shall ensure that any agents (including subcontractors) of Business Associate to whom Business Associate provides PHI received from Covered Entity, or PHI created or received by Business Associate on behalf of Covered Entity, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI. Business Associate shall implement appropriate sanctions against agents and subcontractors that violate such restrictions and conditions, including termination of the agency or subcontractor relationship, if feasible, and shall mitigate the effects of any such violations.
- 2.10 Reporting Unauthorized Use or Disclosure.** Business Associate shall report in writing to Covered Entity any use or disclosure of PHI not provided for under the GADCS Reporting Service Agreement or this Agreement as soon as possible after Business Associate becomes aware of such an incident but in no case later than five (5) days

after the date on which Business Associate becomes aware of any such incident; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate shall take (i) prompt corrective action to cure any deficiencies that caused the unauthorized use or disclosure, and (ii) any corrective action required by applicable federal and state law.

2.11 Access to Information. Within five (5) days of Covered Entity's request, Business Associate shall provide Covered Entity with access to Covered Entity's PHI maintained by Business Associate or its agents or subcontractors to enable Covered Entity to fulfill its obligations under the Privacy Standards, including, but not limited to, 45 CFR § 164.524.

2.12 Availability of PHI for Amendment. The parties acknowledge that the Privacy Standards permit an individual who is the subject of PHI to request certain amendments of their records. Upon Covered Entity's request for an amendment of PHI or a record about an individual contained in a Designated Record Set, but not later than five (5) days after receipt of such request, Business Associate and its agents or subcontractors shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Standards, including, but not limited to, 45 CFR § 164.526. If any individual requests an amendment of PHI directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Covered Entity has the sole authority to deny a request for amendment of PHI received or created under the terms of the GADCS Reporting Service Agreement and maintained by Business Associate or its agents or subcontractors.

2.13 Accounting of Disclosures. Upon Covered Entity's request, Business Associate, its agents and subcontractors shall make available the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Standards, including, but not limited to, 45 CFR § 164.528. For this purpose, Business Associate shall retain a record of disclosure of PHI for at least six (6) years from the date of disclosure. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the effective date of the GADCS Reporting Service Agreement. At a minimum,

such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. Where a request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such reply to the requested accounting.

2.14 Agreement to Restriction on Disclosure. If Covered Entity is required to comply with a restriction on the disclosure of PHI pursuant to § 13405 of the HITECH Act, then Covered Entity shall provide written notice to Business Associate of the name of the individual requesting the restriction and the PHI affected thereby. Business Associate shall, upon receipt of such notification, not disclose the identified PHI to any health plan for the purposes of carrying out Payment or Health Care Operations, except as otherwise required by law.

2.15 Accounting of Disclosures of Electronic Health Records ("EHR"). If Business Associate is deemed to use or maintain an EHR on behalf of Covered Entity, then Business Associate shall maintain an accounting of any disclosures made through an EHR for Treatment, Payment and Health Care Operations, as required by law. Upon request by Covered Entity, Business Associate shall provide such accounting to Covered Entity in the time and manner specified by law. Alternatively, if Covered Entity responds to an individual's request for an accounting of disclosures made through an EHR by providing the requesting individual with a list of all business associates acting on behalf of Covered Entity, then Business Associate shall provide such accounting directly to the requesting individual in the time and manner specified by the HITECH Act.

2.16 Access to Electronic Health Records. If Business Associate is deemed to use or maintain an EHR on behalf of Covered Entity with respect to PHI, then, to the extent an individual has the right to request a copy of the PHI maintained in such EHR pursuant to 45 CFR § 164.524 and makes such a request to Business Associate, Business Associate shall provide such individual with a copy of the PHI in the EHR in an electronic format and, if the individual so chooses, transmit such copy directly to an entity or person designated by the individual. Business Associate may charge a fee, not to exceed Contractor's labor costs to respond, to the individual for providing the copy of the PHI. The provisions of 45 CFR § 164.524, including the exceptions to the requirement to provide a copy of PHI, shall otherwise apply and Business Associate shall comply therewith as if Business Associate were Covered Entity. At Covered Entity's request, Business Associate shall provide Covered Entity with a copy of an

individual's PHI maintained in an EHR in an electronic format and in a time and manner designated by Covered Entity in order for Covered Entity to comply with 45 CFR § 164.524, as amended by the HITECH Act.

- 2.17 Remuneration for PHI.** Business Associate agrees that it shall not, directly or indirectly, receive remuneration in exchange for any PHI of Covered Entity except as otherwise permitted by law.
- 2.18 Governmental Access to Books and Records.** For purposes of determining Covered Entity's compliance with the HIPAA, Business Associate agrees to make available to the Secretary its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity.
- 2.19 Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- 2.20 Insurance.** Business Associate shall maintain commercial general liability insurance, with commercially reasonable liability limits, that includes coverage for damage to persons or property arising from any breach of the terms of this Agreement.
- 2.21 Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. Covered Entity and its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act or this Agreement, to the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA or the HITECH Act relating to certification of its security practices. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its

responsibility to comply with this Agreement, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practices or a waiver of Covered Entity's enforcement rights under the GADCS Reporting Service Agreement or this Agreement.

- 2.22 Return of PHI at Termination.** Upon termination of the GADCS Reporting Service Agreement, Business Associate shall, where feasible, destroy or return to Covered Entity all PHI received from Covered Entity, or created or received by Business Associate or its agents or subcontractors on behalf of Covered Entity. Where return or destruction is not feasible, the duties of Business Associate under this Agreement shall be extended to protect the PHI retained by Business Associate. Business Associate agrees not to further use or disclose information for which the return or destruction is infeasible. Business Associate shall certify in writing the destruction of the PHI and to the continued protection of PHI that is not feasible to destroy.
- 2.23 Retention of PHI.** Business Associate and its contractors or agents shall retain only those communications and documents required to be maintained by HIPAA for six (6) years after termination of the GADCS Reporting Service Agreement.
- 2.24 Business Associate's Performance of Obligations of Covered Entity.** To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity when it carries out such obligation(s).

Article 3: Duties of Covered Entity

- 3.1 Using Appropriate Safeguards.** Covered Entity shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to the GADCS Reporting Service Agreement, in accordance with the standards and requirements of HIPAA.

Article 4: Term and Termination

- 4.1 Term.** The provisions of this Agreement shall become effective on the Effective Date and shall continue in effect until all of the PHI 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 the PHI, protections are extended to such information in accordance with the termination provisions in Section 4.2 of this Agreement.

4.2 Termination by Covered Entity.

- (a) A breach by Business Associate of any material provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of the GADCS Reporting Service Agreement and shall provide grounds for immediate termination of the GADCS Reporting Service Agreement by Covered Entity.
- (b) If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under the provisions of this Agreement or another arrangement and does not terminate the GADCS Reporting Service Agreement pursuant to Section 4.2(a) of this Agreement, then Business Associate shall take reasonable steps to cure such breach or end such violation, as applicable. If Business Associate's efforts to cure such breach or end such violation are unsuccessful, Covered Entity shall either (i) terminate the GADCS Reporting Service Agreement, if feasible or (ii) if termination of the GADCS Reporting Service Agreement is not feasible, Covered Entity shall report Business Associate's breach or violation to the Secretary.

4.3 Termination by Business Associate. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the GADCS Reporting Service Agreement or this Agreement, then Business Associate shall immediately notify Covered Entity. With respect to such breach or violation, Business Associate shall (i) take reasonable steps to cure such breach or end such violation, if possible; or (ii) if such steps are either not possible or are unsuccessful, upon written notice to Covered Entity, terminate the GADCS Reporting Service Agreement; or (iii) if such termination is not feasible, report Covered Entity's breach or violation to the Secretary.

4.4 Termination by Either Party. Either party may terminate the GADCS Reporting Service Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act or other security or privacy laws, or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HITECH Act or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

Article 5: Miscellaneous

5.1 Acknowledgment. Business Associate recognizes and agrees that it is obligated by law to comply with the applicable provisions of the HITECH Act.

- 5.2 Change in Law.** The parties agree to promptly enter into negotiations concerning the terms of the GADCS Reporting Service Agreement (including this Agreement), and to negotiate in good faith, if, in either party's business judgment, modification of the GADCS Reporting Service Agreement (including this Agreement) becomes necessary due to legislative, regulatory, or judicial developments regarding HIPAA or the HITECH Act. Covered Entity may terminate the GADCS Reporting Service Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the GADCS Reporting Service Agreement when requested by Covered Entity pursuant to this § 5.2, or (ii) Business Associate does not enter into an amendment to the GADCS Reporting Service Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HITECH Act.
- 5.3 Disclaimer.** Covered Entity makes no warranty or representation that compliance by Business Associate with HIPAA, the HITECH Act or this Agreement will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- 5.4 Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the GADCS Reporting Service Agreement or this Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witness, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its members/shareholders, managers/directors, officers or employees based upon a claimed violation of HIPAA or the HITECH Act or other laws relating to security and privacy, except where Business Associate, or its subcontractor, employee or agent is a named adverse party.
- 5.5 No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- 5.6 Interpretation.** Section titles in this Agreement are for convenience only, and shall not be used in interpreting this Agreement. Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the requirements of HIPAA and the HITECH Act. In the event of conflict between the GADCS Reporting Service Agreement and this Agreement, the provisions of this Agreement shall prevail. Any reference in this Agreement to a section in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E, the Security

Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, subpart C, or the HITECH Act means the section as in effect or as amended.

[Signature page follows]

The parties hereto have executed this Rider on the day and year first above written on the GADCS Reporting Service Agreement.

DIGITECH COMPUTER LLC

By: Mark Schiowitz
Mark Schiowitz (Jun 18, 2024 12:21 EDT)

Name: MARK SCHIOWITZ

Title: PRESIDENT AND CEO

Date: 06/18/2024

CITY OF NORTH PORT, FLORIDA

A. JEROME FLETCHER II, ICMA-CM, MPA
CITY MANAGER

ATTEST

HEATHER FAUST, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

AMBER L. SLAYTON, B.C.S.
CITY ATTORNEY






North Port_GADCS Agreement4862-3918-9447 6.18.24

Final Audit Report

2024-06-18

Created:	2024-06-18
By:	Matt Mandell (matt@mandellmandell.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAmG1OtCk-TOHNFQYPTqxGxASIIZw6s4NE

"North Port_GADCS Agreement4862-3918-9447 6.18.24" History

-  Document created by Matt Mandell (matt@mandellmandell.com)
2024-06-18 - 3:25:07 PM GMT- IP address: 96.246.169.167
-  Document emailed to Mark Schiowitz (mschiowitz@digitechcomputer.com) for signature
2024-06-18 - 3:25:13 PM GMT
-  Email viewed by Mark Schiowitz (mschiowitz@digitechcomputer.com)
2024-06-18 - 4:20:32 PM GMT- IP address: 104.47.55.254
-  Document e-signed by Mark Schiowitz (mschiowitz@digitechcomputer.com)
Signature Date: 2024-06-18 - 4:21:05 PM GMT - Time Source: server- IP address: 167.206.146.22
-  Agreement completed.
2024-06-18 - 4:21:05 PM GMT