

K22-1264

AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
ADVANCED DATA PROCESSING, INC., A SUBSIDIARY OF DIGITECH
COMPUTER LLC

THIS THIRD AMENDMENT (the "Amendment") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "City"), and Advanced Data Processing, Inc., a subsidiary of Digitech Computer LLC, represented by Mark Schiowitz, President, and CEO (the "Contractor"). The City and the Contractor are sometimes each referred to as a "Party," and collectively, as the "Parties." The Amendment is effective as of October 28, 2022 (the "Effective Date").

RECITALS

WHEREAS, on October 28, 2013, the City and the Contractor entered into a professional services agreement for the provision of electronic patient care reporting, billing, and collections services for utilization by New Orleans Emergency Medical Services (the "Agreement"); and

WHEREAS, on October 28, 2016, the Parties entered into the Agreement's first amendment to increase compensation, to extend the Agreement's term for an additional one year, and to modify certain terms and conditions; and

WHEREAS, on October 28, 2017, the Parties entered into the Agreement's second amendment to increase compensation, to extend the term of the Agreement for five years, and to modify certain terms and conditions; and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this third Amendment to ensure continuity of services by renewing the Agreement for an additional one year and modifying certain terms and conditions; and

NOW THEREFORE, for good and valuable consideration, the City and the Contractor amend the Agreement as follows:

1. **Extension.** In accordance with Article V, Section (B) of the Agreement, the term is extended for an additional one year from the Effective date through October 27, 2023.

2. **Price.** In accordance with Article IV, Section (A) of the Agreement, the City and the Contractor reaffirm the amended pricing structure set forth in the Agreement's second amendment:

- a. A monthly payment of 1.15% of all monies collected per month by the Contractor for EMS provided by City less refunds ("Net Collections"), upon the execution of Amendment No.2 and until the monthly Net Collections total \$81,772,991.00 (threshold collections measurement starts as of the first month the 1.1% fee is invoiced).

- b. A monthly payment of 7.65% of all monies collected per month by Contractor for EMS provided by City less refunds ("Net Collections"), during the full term of the Agreement plus any subsequent renewal periods.
3. **Additional Miscellaneous Provisions.** The following terms and conditions are added to the Agreement:

FORCE MAJEURE

A. **Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by the City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of the City, provided such event was not caused by the negligence nor misconduct of the City, by the failure of the City to comply with applicable laws, or by the breach of this Agreement.

B. **Notice.** To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended.

C. **Effect.**

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

- a. Suspend this Agreement for a duration to be set by the City, not to exceed ninety (90) days. During such time of suspension, the Parties will not be liable nor responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
- b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to the Contractor and without any further compensation due.

2. Notwithstanding Section (C)(1) above, the obligations relating to making payments when due (for services or materials already provided) and those

obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

COMPLIANCE WITH CITY'S HIRING REQUIREMENTS — BAN THE BOX.

1. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.
2. Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of such breach, the City will provide the Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.
3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable, and the remaining provisions of the Agreement will remain in full force and effect.
4. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

4. **Cost Recovery.** In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

5. **Convicted Felon Statement.** The Contractor swears that it complies with City Code § 2-8(c). No Contractor principal, member, or officer has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

6. **Non-Solicitation Statement.** The Contractor swears that it has not employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Contractor has not paid nor agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.

7. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

8. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Amendment, but all of which, when taken together, shall constitute one and the same agreement.

9. **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Amendment.

10. **Employees.** The Contractor may hire employees to work in any location, and notwithstanding any provisions in the Agreement and/or Amendments to the contrary, such employees shall only be subject to the laws, rules and regulations of such jurisdiction(s).

11. **Notices.** . Article IX, Item (2) of the Agreement, shall be amended such that all notices to Contractor shall be sent to:

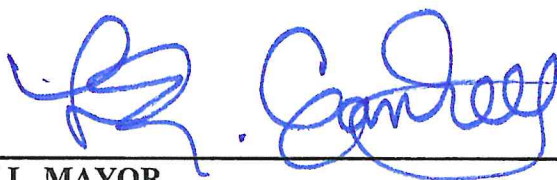
Mark D. Schiowitz
President & CEO
Digitech Computer LLC
480 Bedford Road, Bldg. 600, 2nd floor
Chappaqua, NY 10514

[SIGNATURES CONTAINED ON NEXT PAGE]

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

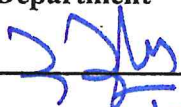
CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 31st of January, 2023

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

ADVANCED DATA PROCESSING, INC., A SUBSIDIARY OF
DIGITECH COMPUTER LLC

BY: 
MARK SCHIOWITZ, PRESIDENT, AND CEO


FEDERAL TAX I.D.