

## **CONTRACT**

**BY AND BETWEEN**

**CUYAHOGA COUNTY, OHIO**

**AND**

**PLANETHOSTING.COM, INC.**

THIS CONTRACT ("Contract") is made and entered into this 20 day of NOV, 2013 by and between Cuyahoga County, Ohio (the "County"), on behalf of the Cuyahoga County Job and Family Services, and Planethosting.com, Inc., a South Carolina corporation, having its principal place of business at 730 Main Street, Suite 338, North Myrtle Beach, South Carolina 29582.

WHEREAS, the Cuyahoga County Job and Family Services has a present need for web hosting on a managed dedicated server to provide access to the internet-based Work Activities Management ("IWAM") system; and

WHEREAS, Planethosting.com is a provider of these web hosting services, and

WHEREAS, the County desires to avail itself of web hosting services from Planethosting.com, and Planethosting.com is willing to provide such web hosting services to the County all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Planethosting.com and the County agree as follows:

### **ARTICLE I - AGREEMENT AND TERM**

1.1 **Scope of Agreement.** During the term of this Contract, Planethosting.com, shall provide web hosting services to the County as described on attached Schedule A ("Services"). In the event that a discrepancy exists between the terms of Schedule A and this Contract, the terms of this Contract will be controlling and binding.

1.2 **Term.** The term of this Contract shall commence as of OCT. 21, 2013 and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of one year from commencement date, terminating on October 20, 2014. The cost of this Contract shall not exceed Three Thousand Dollars and Zero Cents (\$3,000.00).

## ARTICLE II - SCOPE OF WORK

Rendering of Services. Planethosting.com hereby agrees to render the Services identified in Schedule A at a total price, not to exceed Three Thousand Dollars and Zero Cents (\$3,000.00).

## ARTICLE III – PAYMENT AND INVOICING

3.1 Payment. During the term of this Contract, the County shall pay Planethosting.com for the Services provided upon County's receipt and approval of invoices.

3.2 Invoicing. Planethosting.com shall invoice the County for the Services provided upon execution of this Contract. Planethosting.com shall submit original invoice(s) to the following address:

Cuyahoga County Department of Information Technology  
Business Department  
Attn: \_\_\_\_\_  
1255 Euclid Avenue, 4<sup>th</sup> floor  
Cleveland, Ohio 44115

## ARTICLE IV - INDEMNITIES

Indemnification. Planethosting.com hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) the negligent acts or omissions of Planethosting.com, including all of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by Planethosting.com under any terms or provisions of this Contract.

Planethosting.com acknowledges that, as a political subdivision of the State of Ohio, the County does not indemnify any person or entity. Planethosting.com agrees that no provision of this Contract or any other contract or agreement between Planethosting.com and the County may be interpreted to obligate the County to indemnify or defend Planethosting.com or any other party.

## ARTICLE V - TERMINATION

5.1 Termination for Convenience. Either party may terminate this Contract or any change order under this Contract for its convenience and without cause. Any notice of termination will be effective thirty (30) days after the non-terminating party receives it. If

the termination is for the convenience of the County, the Planethosting.com will be entitled to compensation for Services provided by Planethosting.com before termination.

5.2 Termination for Financial Instability. In the event that Planethosting.com becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against Planethosting.com of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, by giving written notice thereof.

#### ARTICLE VI – ELECTRONIC SIGNATURE POLICY OF COUNTY

PLANETHOSTING.COM AGREES ON BEHALF OF THE SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, THAT ALL CONTRACT DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. THE PLANETHOSTING.COM ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

#### ARTICLE VII - INTENTIONALLY DELETED

#### ARTICLE VIII -TRADE SECRETS; CONFIDENTIALITY

8.1 Trade Secrets. Planethosting.com shall take all steps necessary to protect the County's trade secrets. All data dictionaries, entity relationships, database configurations, encryption passwords, forms, automated reports, or other artifacts used to access the data shall belong to County and shall be treated as a trade secret of the County.

8.2 Confidential Information. Planethosting.com shall treat as proprietary and confidential any and all information belonging to the County, which is disclosed to Planethosting.com in the course of performance of Services under this Contract (the "Confidential Information"). Confidential Information shall include, but not limited to any device, data, database, files, data stores, process, method or technique originated by or peculiarly within the knowledge of the County and its representatives, employees, and those in privy with it, which is not available to the public and is subject to protection as property under recognized principles. All Confidential Information of the County

supplied to Planethosting.com by the County are and shall remain the sole property of County. Planethosting.com shall not, without the County's written consent, copy or use such records except to carry out the services, and will not transfer such records to any other party not involved in the performance of this Contract.

Planethosting.com shall only use Confidential Information for the purposes of this Contract. Planethosting.com agrees not to disclose or reveal to any outside party or use for its own benefit, either directly or indirectly, any information which it may acquire or develop or, has acquired or developed concerning the technical or business affairs or other private or confidential matters, information, or data of County without prior written permission of the County. Confidential Information shall not include information that is in the public domain. The County will abide by law in granting or denying any permission for disclosure.

If Planethosting.com fails to meet its obligations to protect the Confidential Information, the County may seek equitable relief.

8.3 Survival of this Article. This entire Article shall survive the completion of the Services hereunder and the termination of this Contract unless the County releases Planethosting.com of its obligations through a written signed communication from the County's Director of Law at an earlier date.

#### ARTICLE IX - PUBLIC RECORDS

Planethosting.com acknowledges and agrees that as a political subdivision, the County is subject to the requirements of the Ohio Public Records Law. When Planethosting.com submits documents and/or information that properly and legally qualifies as a trade secret under Ohio law, Planethosting.com must segregate all protected information and/or documents submitted to County and conspicuously mark each page as "CONFIDENTIAL - TRADE SECRET." Planethosting.com may not take advantage of this process to mark information/documents that it wishes to keep confidential, but doesn't qualify legally as a trade secret under Ohio law. By taking advantage of this process, Planethosting.com certifies that it only marked information/documents that legally qualify as a trade secret under Ohio law as "CONFIDENTIAL - TRADE SECRET."

#### ARTICLE X - MISCELLANEOUS

10.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:

Cuyahoga County Department of Information Technology  
Attn: Chief Information Officer  
1255 Euclid Avenue, 4<sup>th</sup> Floor  
Cleveland, Ohio 44115

In the case of Planethosting.com:

Planethosting.com, Inc.  
Attn: Paul Culbertson  
730 Main Street, Suite 338  
North Myrtle Beach, South Carolina 29582

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

10.2 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

10.3 Record Audit Retention. Planethosting.com agrees to make all pertinent contractual books and records and other documents pertaining to this Contract available to the County and its designated agents for purpose of audit and examination upon reasonable request during the term of this Contract and for a period of two (2) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should Planethosting.com be notified that an audit has been commenced pursuant to Ohio Revised Code Sec. 117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

10.4 Governing Law. This Contract shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Contract, and each party consents to the exclusive jurisdiction of such courts. Planethosting.com hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason.

10.5 Social Security Act. Planethosting.com shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or

annuities now or hereafter imposed under any local, state or federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by Planethosting.com for work performed under the terms of this Contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized state or federal officials; and said Planethosting.com also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

10.6 Assignment. Planethosting.com shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without prior written approval of the County .

10.7 Contract Processing. Planethosting.com shall submit one (1) original contractual agreement with original signature to the following:

Cuyahoga County Department of Information Technology  
ATTN: Business Department  
1255 Euclid Avenue, 4th Floor  
Cleveland, Ohio 44115

10.8 Commencement of Contract Performance. In order to protect the interest of the County this Contract must be executed by the County before compensation for the Services set forth in this Contract can be provided. In the event that Services are provided by Planethosting.com prior to the execution of this Contract by the County , the same will be provided at Planethosting.com's risk, and payment therefore cannot, and will not, be made unless and until this Contract is approved by the County . Upon approval by the County of this Contract, however, any and all prior performance under this Contract shall be deemed ratified and said performance shall be deemed to be included in this Contract. Payment(s) for said prior performance shall not increase the amount of the Contract limit.

10.9 Applicable County Ordinances. All contracts with the County, including this Contract, are subject to all applicable laws, ordinances, resolutions, regulations, rules and policies of the County, including but not limited to the Cuyahoga County Ethics Ordinance, the Cuyahoga County Inspector General Ordinance, the Cuyahoga County Contracting and Purchasing Procedures Ordinance, and the Cuyahoga County Debarment Law, Procedures and Review Board Ordinance. Copies of all County ordinances are available on the County Council website at <http://council.cuyahogacounty.us/>.

10.10 Ethics Requirements. Planethosting.com agrees to remain in compliance with all County Ethics requirements including, as applicable, Vendor Ethics Registration, Vendor Ethics Training, and Registration of all Lobbyists retained by the Planethosting.com. The Planethosting.com shall consult the Cuyahoga County Office of Inspector General to

ensure it is in full compliance with all County Ethics requirements. The Inspector General's website may be found at: <http://inspectorgeneral.cuyahogacounty.us/>.

10.11 Schedules Incorporated by Reference. The following Schedule is attached hereto and are incorporated herein: Schedule A.

10.12 Good Standing. Planethosting.com has been duly organized and is a validly existing corporation under the laws of the State of South Carolina, is in good standing and qualified to do business in the State of Ohio as a foreign corporation, has the full legal authority to enter into this Contract and perform its obligations hereunder, and has all requisite power, corporate or otherwise, to conduct its business, as presently conducted and will remain so qualified and in good standing during the term of this Contract.

IN WITNESS WHEREOF, the County and Planethosting.com have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

PLANETHOSTING.COM, INC.

BY:



PAUL CULBERTSON

CUYAHOGA COUNTY, OHIO

Edward FitzGerald, County Executive

BY:

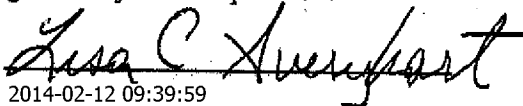


Edward FitzGerald, County Executive

The legal form and correctness of this Agreement is hereby approved.

Cuyahoga County Law Department DIRECTOR OF LAW

By:



2014-02-12 09:39:59

Date:

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## SCHEDULE A

PLANETHOSTING.COM, INC.  
730 Main Street  
Suite 338  
North Myrtle Beach, SC 29582

Id#	Service Description	Date Range	Unit Price	Term	Quantity	Automatic ally charge credit card	Amount Due
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### Current Items

3823	Dedicated9.planethosting.com / cuyahogacountyhhs.com; 12 month services: Dedicated9 managed server; backups; OS patches/security updates; firewall; IP; 24/7 L3 support; MS SQL; bandwidth/connectivity.(Sw)	10/21/2013- 10/21/2014	3000.00	12 mo.	1.00	No	3,000
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12 month services: Dedicated9.planethosting.com dedicated  
managed server; scheduled backups; operating system patches and  
security updates; firewall management; IP: 216.183.177.148; 24/7  
level 3 tech support.

12 month services: Microsoft SQL 2000 installed; including  
bandwidth/connectivity & 24/7 level 3 tech support.

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Paul Culbertson  
President