

## CONTRACT

### HARDWARE & SOFTWARE MAINTENANCE AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO  
and  
TEC Communications Inc.

THIS AGREEMENT (the "Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the County of Cuyahoga, Ohio ("the County"), and **TEC Communications, Inc.**, a Corporation with offices located at **20234 Detroit Road, Rocky River, Ohio 44116.**

WHEREAS, the County has a present need for hardware and software support and maintenance service of Cisco MDS data switches, and

WHEREAS, TEC Communications, Inc. are available under existing State Term Schedule number 033-533110-3; and

WHEREAS, the County desires to avail itself of such services located at the Virgil E. Brown Building, Cleveland, OH and TEC Communications is willing to provide such service to the County all upon the terms and conditions set forth herein, the State Term Schedule, and further supplemented 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, TEC Communications and the County agree as follows:

#### ARTICLE I – AGREEMENT AND TERM

- 1.1 Scope of Agreement. During the term of this Contract, TEC Communications, Inc. shall provide the County with all services necessary to maintain and support all Cisco communication storage switches for the Direct Access Storage Devices described and attached hereto as Schedules A and B and incorporated by reference herein.
- 1.2 Term. The term of this Contract shall commence as of **January 1, 2012**; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of twelve (12) months. (1/1/12 – 12/31/12). The cost of this Contract shall not exceed **Four Thousand, Three Hundred Fifteen Dollars and Fifty Cents (\$4,315.50).**

## ARTICLE II – SCOPE OF WORK

- 2.1 Rendering of Services. TEC Communications Inc. hereby agrees to render software and support services at a total price of **Four Thousand, Three Hundred Fifteen Dollars and Fifty Cents (\$4,315.50).**
- 2.2 Record Audit Retention TEC Communications, Inc. 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 three (3) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should TEC Communications, Inc. 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.

## ARTICLE III – PAYMENT AND INVOICING

- 3.1 Payment. During the term of this contract, the County shall pay TEC Communications, Inc., for software support services as outlined in Schedule A attached hereto and incorporated by reference herein.
- 3.2 Invoicing. TEC Communications, Inc. shall invoice the County for support services. TEC Communications, Inc. shall submit original invoice(s) to the following address:

Employment & Family Services  
Management Information Services Division  
Attn: Don Gotsch  
1641 Payne Ave., RM 570  
Cleveland, Ohio 44114  
(216) 987 - 7896

## ARTICLE IV - DISPUTE RESOLUTION AND TERMINATION

- 4.1 Dispute Resolution.
- a) In the event of any dispute or disagreement between TEC Communications, Inc. and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by TEC Communications, Inc. or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in

connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

- (b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

- 4.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. TEC Communications, Inc., however, shall be paid for all services and/or materials provided on or prior to the date of termination.

#### ARTICLE V – INDEMNITIES AND WARRANTIES

- 5.1 Indemnities and Warranties. All provisions relating to indemnities and warranties contained in the State Term Schedule contract shall inure to the benefit of Cuyahoga County.

#### ARTICLE VI – CHANGE ORDERS AND APPROVAL PROCESS

- 6.1 Change Order. Any change order or amendment requiring or permitting an increase beyond the not to exceed price limit in Section 2.1 of this contract, shall require an additional appropriation of funds; approval of the Automatic Data Processing Board; and approval of the County. TEC Communications, Inc. will not perform tasks outside the scope of Schedule A unless it is with prior written approval of the County and in accordance with this clause.

## ARTICLE VII – MISCELLANEOUS

- 7.1 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:

Employment & Family Services  
Management Information Services Division  
Don Gotsch  
1641 Payne Ave., RM 570  
Cleveland, Ohio 44114  
(216) 987-7896

In the case of TEC Communications Inc.:

Melanie Schilling  
TEC Communications, Inc.  
20234 Detroit Road  
Rocky River, Ohio 44116  
(440-333-5903)

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.

- 7.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.
- 7.3 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

- 7.4 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.
- 7.5 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.
- 7.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.
- 7.7 Social Security Act. TEC Communications, Inc. shall be and remain an independent TEC Communications, Inc. 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 the TEC Communications, Inc. 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 TEC Communications, Inc. also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.
- 7.8 Assignment. TEC Communications, Inc. 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 approval of the County by resolution.
- 7.9 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 or products set forth in this contract can be provided. In the event that services are provided by TEC Communications, Inc. prior to the execution of this agreement by the County, the same will be provided at TEC Communication's risk, and payment therefore cannot, and will not, be made unless and until this agreement 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.
- 7.10 Entire Agreement and Modification. This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations,

understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

ARTICLE VIII - ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

- 8.1. By entering into this Contract, TEC Communications, Inc., agrees on behalf of its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.
- 8.2 TEC Communications, Inc. further agrees to be bound by the provisions of Chapter 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.

THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

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

**COUNTY OF CUYAHOGA, OHIO**

Edward FitzGerald, County Executive

BY:

Ed FitzGerald  
Edward FitzGerald, County Executive

**TEC COMMUNICATIONS INC.**

BY:

Melani M. [Signature]

DATE:

9/7/11



20234 Detroit Road, Rocky River, OH 44116

### PRICE QUOTATION

#### Account Information

Cuyahoga County  
c/o Employment and Family Services  
Virgil E. Brown Center 1641 Payne  
Cleveland, OH 44114  
Attn: Don Gotsch

Solutions for Data Communications Since 1979

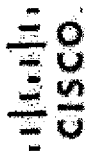
Date: 16-Nov-11

Quotation Number: 11-16-118MS

Item #	Product	Description	Quantity	Unit List	Discount	Unit Price	Extended Price
<b>SCHEDULE A</b>							
<b>Annual Maintenance</b>							
1	CON-SNT-9216I	MDS 9216i 14-port FC, 2-port GE Modular Switch, RESTRICTED; Serial Numbers: FOX111216FA, FOX1113169H, FOX1009006M	3	\$1,276.00	10% \$	1,148.40 \$	3,445.20
2	CON-SNT-9216K	MDS 9216 16-port 2Gbps FC + 1-slot Modular Switch, Dual P/S; Serial Number: FOX1122022W	1	\$967.00	10% \$	870.30 \$	870.30
<b>Grand Total Annual Maintenance</b>							<b>\$ 4,315.50</b>
Term: 1/1/2012 to 12/31/2012							
<b>State of OHIO Schedule # 533110-3</b>							
Index Number STS-033							
DEALER OAKS ID: 533110-3-18							
EDGE CERTIFIED							
FOB Point:	Destination	Payment Terms:					
Ship Date:	TBD	Installation					
Quote Valid Until:	30 Days	Warranty:					
		Signed:					
		From Manufacturer					
		Net 30					
		Available and Billable upon Request					
		Melanie Schilling					
		Melanie Schilling					

#### NOTES:

Normal Business Hours: Monday - Friday: 8:30am - 5pm



## Cisco SMARTnet Service

Award-Winning Service With Flexible Device-by-Device Coverage

ATA-Clan

SCHEDULE B

### What Is the Value of Cisco SMARTnet Service?

Cisco® SMARTnet® Service is an award-winning technical support service that gives your IT staff direct, anytime access to Cisco engineers and extensive Cisco.com resources.

Cisco SMARTnet is essential to keeping your business-critical functions available, secure, and operating at peak performance. Networks are the lifeline that connects your customers to goods and services, and the impact of network downtime can be significant, degrading productivity, eroding customer confidence, and costing as much as 3.6 percent of annual revenue, depending on the size of your company.<sup>1</sup>

Decreased network availability can also create a negative customer experience. Analysis shows that a good customer experience correlates highly to loyalty—especially when it comes to plans for making additional purchases. In fact, repurchase plans can swing 1.5%.<sup>2</sup> Additionally, it is estimated that a 5 percent increase in customer retention due to increased loyalty yields a staggering, 76 percent increase in the net present value of an existing customer.<sup>3</sup>

### What Problems Does Cisco SMARTnet Service Help You Solve?

As the network evolves and you add new business processes, systems, and services, the consequences and costs of downtime increase dramatically, and delays in resolving issues can bring your business operations to a standstill. Network-related issues create the following challenges:

- When a problem occurs that can disrupt business operations and communication, you must resolve the issue as quickly as possible, before it can significantly affect business continuity.

- Technology changes fast and keeping your IT staff up to date on the latest advances and security threats can be difficult.

- Bugs or security issues can affect the availability, performance, and reliability of your network if they are allowed to exist undetected.

Cisco SMARTnet Service facilitates rapid problem resolution, 24-hour business continuity and improved operational efficiency through a combination of expert technical assistance, online tools, and flexible device coverage options.

### Reliable Networks Depend on Cisco Support

Cisco SMARTnet Service helps maintain the operational health of your network through Cisco expertise and resources:

- Fast access to experts: Connect directly to the Cisco TAC, staffed by thousands of experienced, certified Cisco professionals with experience in diagnosing the toughest problems.

- Online troubleshooting tools: Extensive troubleshooting and support resources at [www.cisco.com/techsupport](http://www.cisco.com/techsupport) contribute to improved operational efficiency.

- Rapid access to critical parts: Flexible hardware replacement options let you select the coverage you need on a device-by-device basis to keep key business processes running smoothly.

- Anytime, online access to operating system updates: New OS features enable greater network capacity, advanced security, and improved regulatory compliance as well as better interoperability.
- Proactive problem diagnosis: The embedded Cisco Smart Call Home feature offers detailed diagnostics and real-time alerts on core network devices to help you identify and resolve issues. For more information on Smart Call Home, visit [www.cisco.com/go/smartcall](http://www.cisco.com/go/smartcall).

### Cisco SMARTnet Provides More Services and Support than Warranty

Service	Equipment Covered	Duration	Hardware Replacement	Cisco Operating System Updates	Cisco TAC Support	Registered Access to Cisco.com and Alerts	Smart Services
Cisco SMARTnet Onsite Services	All	Renewable contract 24x7/24 hour 24x7/24 hour 8x5x24 hour Other	Advance Replacement (10 days) <sup>1</sup>	Yes updates within the specified feature set.	Yes	Yes	Yes
Cisco Warranty	All	Standard Hardware: 90 days Specific products: 1 year/limited lifetime <sup>2</sup> Standard Software: 90 days <sup>3</sup>	Advance Replacement (10 days) <sup>1</sup>	No <sup>4</sup>	No	No	No

1. Some equipment manufacturers might apply their own service rates replacement for more details.

2. Return for repair of select products only.

3. Critical networking products of 5-year limited hardware warranty with 1-year limited software warranty. The warranty only applies to critical products.

4. Warranty requires only that software media are defect-free and the software substantially conforms to its published specifications.

1. The Costs of Downtime: North American Medium Businesses. Intellicast Research, 2006.  
2. The Business Impact of Customer Experience. Forrester Research, Inc., 2004.  
3. Loyalty Rules! Frederick Reichheld. Harvard Business School Press, 2001.