

**CUYAHOGA COUNTY DIVISION OF SENIOR & ADULT SERVICES
CONTRACTUAL AGREEMENT BETWEEN**

**COUNTY OF CUYAHOGA, OHIO
AND
COMPUWARE CORPORATION**

THIS AGREEMENT (the "Contract"), dated as of 5/23, 2012 is made and entered into by and between County of Cuyahoga, Ohio, hereinafter referred to as the ("County") on behalf of the Division of Senior and Adult Services, 1701 East 12th Street, Lower Level, Cleveland, Ohio 44114, hereinafter referred to as ("DSAS") and Compuware Corporation, a corporation, with principal offices at One Campus Martius, Detroit, Michigan 48226, (Vendor).

WITNESSETH:

WHEREAS, The County has a present need for computer software maintenance services;

WHEREAS, Compuware's Maintenance and Computer Software services are available under existing State Term Schedule number 534062; and, DSAS desires to avail itself of such services of Compuware Corporation, and Compuware Corporation is willing to provide such services to DSAS all upon the terms and conditions set forth in the State Term contract, as further supplemented herein.

WHEREAS, Compuware Corporation has unique training and/or experience in the field of computer software maintenance, which would uniquely fulfill the County's need for maintenance and troubleshooting in said field; and

WHEREAS, the County desires to avail itself of the advice and professional assistance of Compuware Corporation, and Compuware Corporation is willing to provide such assistance to the County all upon the terms;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Compuware Corporation and the County on behalf of DSAS agree as follows:

ARTICLE I – AGREEMENT AND TERM

1.1 Scope of Agreement. During the term of this Contract, Compuware Corporation shall provide the County with all the services necessary to provide on-going systems maintenance. Said services shall include the maintenance of the Home Health Aide Monitoring System application software (HHAMS), ActSoft Software, SQL Server and the Windows 2003 operating system on which HHAMS relies.

1.2 Term. The initial term of this Contract shall commence as of June 1, 2012; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of one year from the commencement date. The parties may mutually agree to extend the term of the Contract for thirty (30) day periods as they deem necessary. The term of the Contract will be deemed to include such renewal periods.

ARTICLE II - SCOPE OF WORK

2.1 Rendering of Services. Compuware Corporation hereby agrees to provide support and maintenance services for the duration of this contract at a total price which shall in no event exceed the amount of Twelve Thousand, Eight Hundred dollars (\$12,800.00).

2.2 Maintenance. Compuware will make available to DSAS all new software releases or modifications to the HHAMS software applications, along with any and all enhancements and/or changes the software has to offer. Compuware will:

- (a) provide current releases that improve software functionality with new features or enhancements.
- (b) provide any necessary updates to the HHAMS software applications resulting from changes in operating system upgrades within 30 days of being notified by DSAS.
- (c) make software enhancements available solely as new chargeable products wherein Compuware's reasonable opinion the existing software would require a substantial re-write and the company will offer the new chargeable product to the user, at announced standard price minus the current annual Maintenance Fee paid.
- (d) provide advice and guidance on the use of the software or for problem resolution where the problem has been caused by an error or defect in the software.

2.3 Problem Management. Compuware will respond to written, telephone, electronic or faxed problem reports on the supported HHAMS systems. Compuware will perform their own problem determination procedures and will provide DSAS a description of the detailed circumstances in which the problem occurred, a detailed description of the effects of the problem, a detailed description of their proposed solution to the problem and anticipated completion date.

To accomplish this Compuware will:

- (a) provide their response within 4 working hours of receipt of a problem report, and to provide a solution or work-around within 8 working hours.
- (b) provide corrections where the problem results from an error in the software and where a work around is not possible. "Error" means any reproducible failure of the supported software to substantially comply with its specifications as set forth in the applicable documentation. "Critical Error" means any error that is an emergency condition and that causes the Supported software to completely fail to function in accordance with its applicable documentation and where there is no work-around to temporarily resolve or lessen the problem. "Major Error" means any error that causes one or more material components of the Support software to fail to function as specified in its applicable documentation.
- (c) be responsible to make prudent provision for regular system house-keeping and file back-up and to set up reasonable contingency procedures to mitigate the effects of any error or defect.
- (d) maintain a written, auditable maintenance log and record each incident relating to the software, including the date, time and explanation.
- (e) provide updates to the software if and as required to cause it to operate under new versions or releases of the operating system approved by DSAS for use with the software, so long as such updates are commercially reasonable, and will provide other updates, modifications and corrections to the software as are approved for release to DSAS by Compuware.
- (f) permit DSAS to notify Compuware of software errors or defects it believes to exist, and, if Compuware is able to confirm that such error or defect exists through independent testing, Compuware will use commercially reasonable efforts to correct such error or defect.
- (g) provide telephone software support between the hours of 8 a.m. to 5 p.m. EST Monday to Friday, excluding holidays. In addition, for emergencies, support personnel shall be available via pager 24 hours per day 7 days per week.
- (h) provide all upgrades and planned maintenance to be conducted outside the aforementioned normal working hours to provide for uninterrupted services to DSAS personnel.

ARTICLE III - PAYMENT AND INVOICING

3.1 Payment. During the term of this Contract, the County shall pay to Compuware Corporation an amount up-to and not-to-exceed \$12,800.00 for the annual maintenance and support services rendered hereunder to Cuyahoga County on a time and material basis at an hourly rate between Eighty and Eight-five dollars per hour (\$80.00/hr. - \$85.00/hr.) billable in incremental units of one-tenth (1/10th) of an hour.

Hourly Billable	Rate
Routine Maintenance	\$ 80
Break/Fix Work	\$ 85

3.2 Invoicing. Compuware Corporation shall invoice the County for services rendered hereunder on a monthly basis following the rendering of such services. Said invoicing shall include a summary page and a detailed page describing on a line item basis, the services rendered, the date rendered, and the amount of time expended on the rendering of the services in units of time accurate to 1/10th of an hour, and copies of all DSAS sign-off sheets, along with any other information as may be reasonably requested by the County. Compuware Corporation shall submit original invoice(s) to the following address:

Division of Senior & Adult Services
Attn: Financial Services
1701 E. 12th Street, Lower Level
Cleveland, Ohio 44114

3.3 Record Audit Retention. Compuware Corporation 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 Compuware Corporation be notified that an audit has been commenced pursuant to Ohio Revised Code §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 IV - INDEMNITIES AND LIABILITIES

4.1 Indemnification. Compuware Corporation agrees that it will, at all times during the existence of this maintenance contract indemnify and save the County of Cuyahoga, all of its departments, agents and employees harmless from suits or actions of every nature and description, brought against the County, any and all of its officers, agents, servants or employees, thereof, for or on account of any injuries or damages received or sustained by a party or parties from any act of Compuware Corporation, its servants or agents that arise out of the injuries or damages sustained during performance of services against this contract.

4.2 Indemnification for Infringement. Compuware Corporation warrants that the County will have the full right to use the work product delivered to County and that it will not infringe upon the rights of any third party. In the event a claim is made against County for infringement, Compuware Corporation will defend the claim on County's behalf and indemnify and hold County harmless.

4.3 Warranties.

- (a) All of Compuware Corporation's services will be performed by qualified personnel and will be of a professional quality conforming to best practices of the industry.

If any services do not meet this warranty, Compuware Corporation will do everything necessary, without charge, to bring its services to the specified level. In order to obtain warranty service, the problem must be reported to Compuware Corporation within 90 days of delivery of the system in question.

- (b) Compuware warrants that the software provided shall function substantially as described in the applicable user manual, as modified from time to time. During such period the above warranty shall apply to enhancements, updates, and other items provided. Compuware will use all reasonable commercial efforts to protect all software (and the media in which the software is embedded) from computer viruses or other contaminants.

- (c) Compuware's sole obligation under this agreement shall be to remedy or repair, as soon as reasonably practicable, all substantial and demonstrable errors and malfunctions in the Software. Compuware, may, in its sole discretion, provide either an update of the affected item, or an alternative method which has substantially the same functionality. For purposes of the Agreement, errors and malfunctions shall be considered to be "substantial" when they result in the impairment of one or more essential functions, features, or capabilities of the Software

ARTICLE V - SOFTWARE AND OWNERSHIP RIGHTS

5.1 Title to Software. All source code, documentation, and other software artifacts developed by Compuware Corporation pursuant to this Contract, shall be considered as a work made for hire, and is and shall remain the property of the County. The County hereby grants Compuware Corporation a royalty free perpetual license to copy, use, sub-license and modify the Software. A copy of all software developed shall be provided in a decrypted, open and modifiable format, together with any proprietary compiler used to translate the source code to machine code if the County does not already have the compiler.

5.2 Ownership and Confidentiality of Data.

(a) All data and other records, including data and records of the State of Ohio ("State") clients entered into any database, files, and data stores of the County or other agencies of the State or supplied to Compuware Corporation by the County or the State are and shall remain the sole property of the County and the State. Compuware Corporation shall not, without the County's written consent, copy or use such records except to carry out contracted work, and will not transfer such records to any other party not involved in the performance of this Contract.

(b) Compuware Corporation agrees to keep all client information it is exposed to in the course of performing the Services hereunder confidential and to comply with all federal and state laws relating to the confidentiality of such information.

ARTICLE VI - CHANGE ORDERS AND APPROVAL PROCESS

6.1 Change Order. Any change order or amendment requiring, or necessitating, an increase beyond the not to exceed price limit listed in section 2.1 of this contract, or the per item charges shall require the approval of the Cuyahoga County Executive. Compuware Corporation will not perform tasks outside the Scope of Work listed in section 2.2 and 2.3 of this contract, unless it is with prior written approval of Cuyahoga County and in accordance with this clause.

ARTICLE VII - DISPUTE RESOLUTION AND TERMINATION

7.1 Dispute Resolution.

(a) In the event of any dispute or disagreement between Compuware and DSAS, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Compuware 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.

7.2 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. Upon termination the County will be reimbursed a pro-rated portion of the unused mainframe fee.

ARTICLE VIII - MISCELLANEOUS

8.1 Relationship of Parties. Compuware Corporation is performing pursuant to this Contract only as an independent contractor. Compuware Corporation has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Contract, except as otherwise agreed upon by the parties. Nothing set forth in this Contract shall be construed to create the relationship of principal and agent between Compuware Corporation and the County. Neither party shall act or attempt to act or represent itself, directly or by implication, as an agent of the other party or its affiliates or in any manner assume or create any obligation on behalf of, or in the name of the other party or its affiliates.

8.2 Force Majeure. Neither party will be liable to the other party hereunder or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, acts of the government, the other party hereto, or third parties (excluding subcontractors or agents), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

8.3 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 Division of Senior & Adult Services
Attn: BJ Brown
1701 E. 12th Street, Reserve Square – Lower Level
Cleveland, Ohio 44114

In the case of Compuware Corporation: Compuware Corporation
Attn: Michelle Messina
6480 Rockside Woods Blvd., Suite 200
Independence, Ohio 44131

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.

8.4 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.

8.5 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.

8.6 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.

8.7 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

8.8 Governing Law. This Contract 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.

8.9 Security Standards. Compuware Corporation must agree to maintain security standards consistent with the security of the Cuyahoga County Information Services Center. These include strict control of access to data and maintaining confidentiality gained while carrying out its duties. Compuware Corporation agrees to consider all knowledge gained from access to Information Services Center applications, systems and programs as proprietary information supplied in the strictest confidence and shall release it only to authorized employees/agents requiring such information, shall not release or disclose it to any other party or use it for manufacture or any other purposes except as required under this contract, without the expressed written approval of the Cuyahoga County Executive. The term "confidential information" shall mean any device, process, method or technique originated by or peculiarly within the knowledge of Cuyahoga 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.

8.10 Assignment. Compuware Corporation 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 Cuyahoga County Executive by resolution; provided, however, that Compuware Corporation may subcontract any work or obligations to be performed by it pursuant to this Contract.

8.11 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the Cuyahoga County Executive before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by Compuware Corporation prior to the execution of this agreement by the Cuyahoga County Executive, the same will be provided at Compuware Corporation's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the Cuyahoga County Executive. Upon approval by the Cuyahoga County Executive 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.

Compuware Corporation Maintenance Agreement
June 1, 2012 thru May 31, 2013

8.12 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.

8.13 Electronic Transactions.

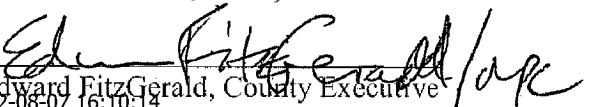
By entering into this contract , I agree on behalf of the contracting or submitting business entity, its officers, employees, subcontractors, subgrantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by 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. I also agree on behalf of the aforementioned entities 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.

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

COMPUWARE CORPORATION

By: 

CUYAHOGA COUNTY, OHIO
Edward FitzGerald, County Executive

By: 
Edward FitzGerald, County Executive
2012-08-07 16:10:14