

**CONTRACT**  
**SOFTWARE MAINTENANCE & UPGRADE AGREEMENT**

by and between

**CUYAHOGA COUNTY, OHIO**

and

**BLUE TECHNOLOGIES, INC.**

THIS AGREEMENT (the "Contract") is made and entered into this 10/28 day of 2013, by and between Cuyahoga County, Ohio ("the County"), on behalf of the Department of Children and Family Services and, **Blue Technologies, Inc.**, ("Blue Technologies"), an Ohio Corporation with offices located at 5885 Grant Ave, Cleveland, OH 44105. ("Provider")

WHEREAS, the County has a present need for renewal of software support maintenance and upgrade of OnBase Software products, at the Department of Children and Family Services; and

WHEREAS, Blue Technologies is a State of Ohio STS Vendor # 533272-3-2 and was also the lowest bidder of OnBase software maintenance and support services; and

WHEREAS, the County desires to avail itself of such services located at the Cuyahoga County Department of Children and Family Services and Blue Technologies is willing to provide such service to the County all upon the terms and conditions set forth herein 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 and the County agree as follows:

**ARTICLE I – AGREEMENT AND TERM**

- 1.1 **Scope of Agreement.** During the term of this Contract, Blue Technologies shall provide the County with all services necessary to maintain, support and upgrade all OnBase Software products, at the Department of Children and Family Services, identified in Blue Technologies quote, attached hereto as Schedule A and incorporated by reference herein. In the event that a discrepancy exists between the terms of Schedule A and this agreement, the terms of this agreement will be controlling and binding.
- 1.2 **Term.** The term of this Contract shall commence as of July 1, 2013; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of two (2) years from commencement date (**7/1/13 through 6/30/15**). The cost of this

Contact shall not exceed Thirty Four Thousand Nine Hundred Fifty Dollars and Fifty Eight Cents (\$34,950.58).

## ARTICLE II – SCOPE OF WORK

- 2.1 Rendering of Services. Blue Technologies hereby agrees to render maintenance, support and upgrade on the Compass Software Products identified in Article 1.1, Schedule A, and the State Term Schedule, at a total price which in no event shall exceed Thirty Four Thousand Nine Hundred Fifty Dollars and Fifty Eight Cents (\$34,950.58).

## ARTICLE III – PAYMENT AND INVOICING

- 3.1 Payment. During the term of this contract, the County shall pay the costs associated with the maintenance and support agreement yearly, upon receipt of said invoice from and contract approval by the County Executive.
- 3.2 Invoicing. Blue Technologies shall invoice the County for services rendered hereunder annually. Blue Technologies shall submit original invoice(s) to the following address:

Cuyahoga County Department of Information Technologies  
Business Department  
1255 Euclid Avenue, 4<sup>th</sup> floor  
Cleveland, Ohio 44115

## ARTICLE IV - DISPUTE RESOLUTION AND TERMINATION

### 4.1 Dispute Resolution.

a) In the event of any dispute or disagreement between Blue Technologies and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Blue Technologies 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. , however, shall be paid for all services and/or materials provided on or prior to the date of termination.

## ARTICLE V – INDEMNITIES

- 5.1 Indemnification. Blue Technologies 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 Blue Technologies, including all of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by Blue Technologies under any terms or provisions of this Contract.

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

## 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 Technical Advisory Committee; and approval of Cuyahoga County. Blue Technologies will not perform tasks outside the scope of Schedule A unless it is with prior written approval of Cuyahoga 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:

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

In the case of Blue Technologies:

Robert Reid  
Blue Technologies, Inc.  
5885 Grant Ave.  
Cleveland, OH 44105

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.
- 7.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.
- 7.7 Social Security Act. Blue Technologies shall be and remain an independent Blue Technologies 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 Blue Technologies 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 Blue Technologies also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.
- 7.8 Assignment. Blue Technologies 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 Cuyahoga County.
- 7.9 Contract Processing. Blue Technologies shall submit one (1) original contractual agreement with original signatures to the following:  
Cuyahoga County Department of Information Technology  
Business Department  
1255 Euclid Avenue, 4th Floor  
Cleveland, Ohio 44115
- 7.10 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the 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 Blue Technologies prior to the execution of this agreement by Cuyahoga County, the same will be provided at Blue Technologies risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the County Executive. Upon approval by the Cuyahoga 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.

- 7.11 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.
- 7.12 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/>.
- 7.13 Ethics Requirements. The Provider 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 Contractor. The Contractor 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/>.
- 7.14 Insurance. The Provider shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with this Contract.

**A. Mandatory Insurance Requirements**

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

(a) **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For Contractors with employees working outside of Ohio, Worker's Compensation

Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;  
\$1,000,000 each employee for bodily injury by disease;  
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

**(b) Commercial General Liability Insurance** with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;  
\$1,000,000 personal & advertising injury;  
\$2,000,000 general aggregate;  
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

**(c) Business Automobile Liability Insurance** covering all owned non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

**(d) Professional Liability Insurance/Errors & Omissions Liability Insurance** providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$1,000,000 per claim;  
\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis.

However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.

## **B. Insurance Coverage Terms and Conditions**

1. The insurance policies of the Provider required for this contract, with the exception of the Professional Liability/Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

- (i) Thirty (30) days prior notice of cancellation or material change;
  - (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
2. The insurance required for this contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
3. These insurance provisions shall not affect or limit the liability of the Provider stated elsewhere in this Contract or as provided by law.
4. The Provider shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverage's and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.
5. The County reserves the right to require insurance coverage's in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.
6. The Provider shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverage's required herein is in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

#### ARTICLE VIII – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

- 8.1. Blue Technologies 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 signature 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.
- 8.2. Blue Technologies also agrees on behalf of the aforementioned entity and persons, 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.

#### ARTICLE IX – SCHEDULES

- 9.1 Schedules Incorporated by Reference. The following Schedules are attached hereto and are incorporated by reference herein as if fully rewritten herein:

Schedule A-1: Pricing Quote



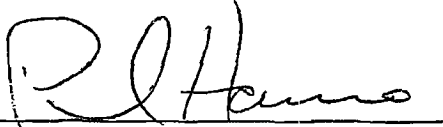
THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio and subject to the review of the County Law Department as to legal form and correctness.

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

**Blue Technologies, Inc.**

**Cuyahoga County, Ohio**

**BY:**



Edward FitzGerald, County Executive

**BY:**

  
Edward FitzGerald, County Executive  
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