CONTRACT

IBM TIVOLI STORAGE MANAGER EXTENDED EDITION
SOFTWARE SUBSCRIPTION AND SUPPORT SERVICE

by and between

CUYAHOGA COUNTY, OHIO
and
INTERNATIONAL BUSINESS MACHINES CORPORATION

THIS AGREEMENT (the "Contract") is made and entered into this _____ day of _____, 2011, by and between the County of Cuyahoga, Ohio ("the County"), and **International Business Machines Corporation**, a Corporation with a mailing address at **North Castle Drive, Armonk, NY 10504**.

WHEREAS, the County has a present need for software support and maintenance service of IBM Tivoli Storage Manager Extended Edition required software, and

WHEREAS, IBM Corporation's software maintenance and support services are available under existing State Term Schedule Number 033-534133; and

WHEREAS, the County desires to avail itself of such services located at the Virgil E. Brown Building, Cleveland, OH and IBM Corporation 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, IBM Corporation and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

1.1 Scope of Agreement. During the term of this Contract, IBM Corporation shall provide the County with all services necessary to maintain and support all IBM Tivoli Storage Manager software described and attached hereto as Schedule A-- Quote # 26048924 and incorporated by reference herein.

1.2 Term. The term of this Contract shall commence as of **January 1, 2011**; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of twelve (12) months. (1/1/11 – 12/31/11). The cost of this Contact shall not exceed **Five Thousand Five Hundred Thirteen Dollars and Ten Cents ($5,513.10)**.

ARTICLE II – SCOPE OF WORK

2.1   <u>Rendering of Services.</u> IBM Corporation hereby agrees to render software and support services at a total price of **Five Thousand Five Hundred Thirteen Dollars and Ten Cents ($5,513.10).**

2.2   <u>Record Audit Retention.</u> IBM 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 three (3) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should IBM Corporation 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   <u>Payment.</u> During the term of this contract, the County shall pay IBM Corporation, for software support services as outlined in Schedule A attached hereto and incorporated by reference herein.

3.2   <u>Invoicing.</u> IBM Corporation shall invoice the County for support services. IBM Corporation shall submit original invoice(s) to the following address:

<div align="center">

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

</div>

ARTICLE IV - DISPUTE RESOLUTION AND TERMINATION

4.1   <u>Dispute Resolution.</u>

      a)   In the event of any dispute or disagreement between IBM Corporation and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by IBM Corporation 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. IBM Corporation, 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. IBM Corporation 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 IBM Corporation:

> Rob Manias
> IBM Corporation
> PO Box 643600
> Pittsburgh, PA 15264-3600
> (888) 278-5586 x33436

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.

4

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. IBM Corporation shall be and remain an independent IBM Corporation 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 IBM Corporation 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 IBM Corporation also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

7.8   Assignment. IBM 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 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 IBM Corporation prior to the execution of this agreement by the County, the same will be provided at IBM Corporation'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, IBM Corporation, 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 IBM Corporation 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 IBM Corporation 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

BY: _____
Edward FitzGerald, County Executive

IBM CORPORATION

BY: _____   DATE: _November 10, 2010_

Fed. ID# ████

International Business Machines Corporation

International Business Machines Corporation, PO Box 643600, Pittsburgh, PA 15264-3600

Software Subscription and Support Renewal Detail Information Form - Quotation Number: 26048924

Passport Advantage Customer:
Employment & Family Services

Passport Advantage Agreement Number: 148048
IBM Customer Number: 8500122
Relationship SVP Level: GV

Passport Advantage Site Number: 7758909
Anniversary: 01-January
Quotation SVP Level: GV
Renewal Date: 01-January-2011

Item	Part Number	Quantity	Unit Points	Total Points	Software Subscription and Support Coverage Date	Months	Annual SVP Price	Pro-rated SVP Price	Extended SVP Amount	IBM Order Reference Number
IBM Corporation	**7758909**									
001	E029BLL	470	0.06	28.20	01-Jan-2011 - 31-Dec-2011	12	11.73		5,513.10	5291354

IBM Tivoli Storage Manager Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal

Total Points 28.20

Total In USD 5,513.10

All renewals are governed by and are subject to the terms of your Passport Advantage Agreement or the Passport Advantage Express Agreement, as applicable, against which this transaction will be placed.

Useful/Important Web resources:
Passport Advantage information, customer secure site access, training, etc.: ibm.com/software/passportadvantage
IBM's International Program License Agreement and product License Information documents: ibm.com/software/sla
IBM Software Support Web site: ibm.com/software/support

IBM Customer Number: 8500122