

**CONTRACT**  
**MAINTENANCE and SUPPORT AGREEMENT**

by and between

**CUYAHOGA COUNTY, OHIO**

and

**SIRIUS COMPUTER SOLUTIONS, INC**

THIS AGREEMENT (the "Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_, 20\_\_, by and between Cuyahoga County, Ohio ("the County") on behalf of the Cuyahoga County Information Services Center and **Sirius Computer Solutions, Inc.** ("Sirius"), a Texas corporation, having principal place of business at 613 NW Loop 410, Suite 1000, San Antonio, TX 78216 (the "Provider").

WHEREAS, the County has a present need for maintenance and support service renewal of its IBM Enterprise System hardware located at the Cuyahoga County Information Services Center; and

WHEREAS, Sirius is an authorized service provider for maintenance and support service of IBM Enterprise System Hardware Products to the County under State of Ohio DAS State Term Schedule Number 534055; and

WHEREAS, the County desires to avail itself of maintenance and support services of its IBM Enterprise System Hardware Products and Sirius is willing to provide such maintenance and support service 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, Sirius and the County agree as follows:

**ARTICLE I – AGREEMENT AND TERM**

**1.1 Scope of Agreement.** During the term of this Contract, Sirius, as an authorized support service and maintenance provider of IBM Enterprise System Hardware Products under State of Ohio – DAS State of Ohio Term Schedule Number 534055, shall provide service to the County as listed on the Sirius Service Agreement attached hereto as Schedule A. 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 January 1, 2011 and unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for one year from the date of commencement (1/1/11 – 12/31/11). This Contract shall be in an

amount not to exceed One Hundred Forty Six Thousand Nine Hundred Fifteen Dollars and Zero Cents (\$146,915.00).

#### ARTICLE II – SCOPE OF WORK

2.1 Rendering of Services. Sirius hereby agrees to render the Maintenance and Support Services as outlined in Schedule A, at a total price which shall in no event exceed the amount of One Hundred Forty Six Thousand Nine Hundred Fifteen Dollars and Zero Cents (\$146,915.00).

#### 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 Sirius.

3.2 Invoicing. Sirius shall invoice the County for the maintenance and support service upon execution of this Contract. Sirius shall submit original invoice(s) to the following address:

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

#### ARTICLE IV - INDEMNITIES AND LIABILITIES

4.1 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 V - DISPUTE RESOLUTION AND TERMINATION

##### 5.1 Dispute Resolution.

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

5.2 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. Sirius, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.3 Termination for Financial Instability. In the event that Sirius 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 Sirius 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, the "Termination for Default" clause, by giving written notice thereof.

#### ARTICLE VI – MISCELLANEOUS

6.1 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 Information Services Center  
ATTN: John Hunter  
1255 Euclid Avenue, 4th Floor  
Cleveland, Ohio 44115

In the case of Sirius:

Sirius Computer Solutions, Inc  
Attn: Contracts Department  
6130 NW Loop 410, Suite 1000  
San Antonio, TX 78216

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.

6.2 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.

6.3 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.

6.4 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.

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

6.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.

6.7 Social Security Act. Sirius 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 Sirius 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 Sirius also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

6.8 Assignment. Neither party shall 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 other party.

6.9 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 Sirius prior to the execution of this Contract by the Cuyahoga County, the same will be provided at Sirius 's risk, and payment therefore cannot, and will not, be made unless and until this Contract is approved by the Cuyahoga County. Upon approval by the 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.

6.10 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.

6.11 Force Majeure Sirius shall not be liable for any failure to perform, or delay in performing Service for County to the extent that such failure or delay results from causes beyond its reasonable control including, without any limitation, any act of God, war, revolution, riot, civil commotion, labor strike or any applicable governmental or judicial law or regulation, order or decree.

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

7.1. Electronic Signature. By entering into this Contract, Sirius, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by means electronic 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 original document.

7.2 Compliance with O.R.C Sirius 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 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.

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

SIRIUS COMPUTER SOLUTIONS, INC

BY: Bonnie M. Cerrito  
Bonnie M. Cerrito, Senior VP, Sales Operations  
Fed. TIN: [REDACTED]

CUYAHOGA COUNTY, OHIO

BY: Edward FitzGerald  
Edward FitzGerald, County Executive