

## CONTRACT

### HARDWARE & SOFTWARE MAINTENANCE AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

OPEX Corporation

THIS AGREEMENT (the "Contract") is made and entered into this 21<sup>st</sup> day of February 2012, by and between the County of Cuyahoga, Ohio ("the County"), and Opex Corporation, a Corporation with facilities at 305 Commerce Drive, Moorestown, New Jersey, 08057-4234

WHEREAS, the County has a present need for software support and hardware maintenance service of OPEX Corporation and

WHEREAS, OPEX Corporation services are available under existing sole source requirements and

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

#### ARTICLE I – AGREEMENT AND TERM

- 1.1 Scope of Agreement. During the term of this Contract, OPEX Corporation shall provide the County with all services necessary to maintain and support all OPEX hardware, software and licenses described and attached hereto as Schedule A and incorporated by reference herein.
- 1.2 Term. The term of this Contract shall commence as of April 6, 2012; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of twelve (12) months. (4/6/2012 – 4/5/2013). The cost of this Contract shall not exceed Eleven Thousand, Six Hundred and Five Dollars. (\$11,605.00).

## ARTICLE II – SCOPE OF WORK

- 2.1 Rendering of Services. Opex Corporation hereby agrees to render software and hardware support services at a total price of **Eleven Thousand, Six Hundred and Five Dollars. (\$11,605.00).**
- 2.2 Record Audit Retention. OPEX 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 OPEX 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 Payment. During the term of this contract, the County shall pay OPEX Corporation, for software support services as outlined in Schedule A attached hereto and incorporated by reference herein.
- 3.2 Invoicing. OPEX Corporation shall invoice the County for support services. OPEX Corporation 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 OPEX Corporation and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by OPEX 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. OPEX 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. OPEX Corporation agrees to release, and to hold harmless the County and any and all officers, agents, servants or employees thereof, from all responsibility or liability for the negligence of failure of OPEX Corporation to perform its duties and obligations under this contract.

#### 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. OPEX 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 OPEX Corporation:

Veronica Frantz  
OPEX Corporation  
305 Commerce Drive  
Moorestown, New Jersey, 08057-4234  
(856-727-1100, ext. #2136)

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. OPEX Corporation shall be and remain an independent OPEX 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 OPEX 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 OPEX Corporation also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.
- 7.8 Assignment. OPEX 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 OPEX Corporation prior to the execution of this agreement by the County, the same will be provided at OPEX 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,

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, OPEX 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 OPEX 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.

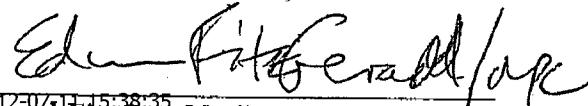
THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

IN WITNESS WHEREOF, the County and OPEX 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

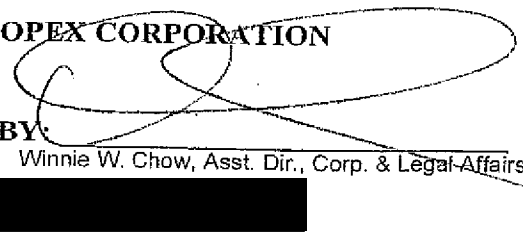
Edward Fitzgerald, County Executive

BY:

  
2012-07-11 15:38:35  
Edward Fitzgerald, County Executive

OPEX CORPORATION

BY:

  
Winnie W. Chow, Asst. Dir., Corp. & Legal Affairs

DATE: 2/21/2012

## Schedule A

### MASTER MAINTENANCE AGREEMENT ("Agreement")

By and between OPEX CORPORATION ("Vendor") and  
County of Cuyahoga, Ohio ("Customer")

04 / 06 / 2012 ("Effective Date")

#### 1. BASIC TERMS.

**1.1 Equipment Covered.** The machines specifically identified by serial number on Exhibit "A" shall be covered by this Agreement (collectively "Equipment"). Vendor shall furnish "Maintenance Service" (as defined in Paragraph 2.1 below) on Equipment at Customer's various Equipment "Sites" (as defined in Paragraph 2.2 below). Upon mutual agreement between the parties, and pursuant to the terms herein, Equipment may be added or deleted from the Exhibit "A" from time to time. All Maintenance Service shall be provided in consideration for the payment of Vendor's maintenance charges set forth herein, plus all sales and use taxes and such other governmental charges as may be imposed on the provision of goods and services hereunder. Service rates for the first year of this Agreement are detailed within Exhibit "B."

**1.2 Effective Date; Renewals.** Maintenance Service shall begin on the Effective Date listed above and shall continue for one year ("Initial Term"). This Agreement may be renewed from year-to-year upon the mutual agreement of both parties ("Renewal Term"). Payment by Customer of Vendor's invoicing for any Renewal Term shall be deemed as mutual agreement by the parties to renew this Agreement. Rates during any Renewal Term are subject to Vendors then current pricing.

**1.3 Equipment Not Previously Covered.** Any machine which Customer seeks to add to this Agreement that has not been continuously covered by a maintenance agreement with Vendor since the expiration of its warranty period, shall be subject to inspection by Vendor. After such inspection, if Vendor, in its sole discretion, determines that the machine is not operating in conformity with the "Published Specifications" (as defined in Paragraph 1.4 below), the machine shall be restored to good operating condition at Customer's expense, subject to Vendor's then current rates, as a condition of adding the machine to Exhibit "A."

**1.4 Routine Cleaning.** The day-to-day routine cleaning and minor adjustments on the Equipment, as described in both Vendor's equipment operating manuals and other supplementary material ("Published Specifications") which may be furnished by Vendor to Customer from time to time, shall be performed by Customer. Vendor will notify Customer in writing if the Customer fails to perform routine cleaning on the Equipment.

#### 2. MAINTENANCE SERVICE.

**2.1 Maintenance Service, Generally.** Maintenance Service is defined as all labor and replacement parts necessitated by normal wear and tear from operation of the Equipment in accordance with Vendor's Published Specifications, in order to maintain the Equipment in good operating condition ("Maintenance Service").

**2.2 Definition of Customer's Equipment Site(s).** "Site" is defined as the one (1) floor within Customer's premises specified in Exhibit "A." Equipment moved to a different Site is subject to the limitations described in Paragraph 7(j) below.

**2.3 Service Calls.** Preventive Maintenance Service calls are those periodic calls initiated by Vendor to keep the Equipment operating in accordance with Vendor's Published Specifications ("PM's"). Demand Maintenance Service calls are those calls initiated by Customer to request that Vendor repair Equipment that is malfunctioning or not operating in accordance with the Published Specifications ("Demand Calls"). (A PM may be performed in conjunction with a Demand Call placed by Customer, depending upon, and at the discretion of, Vendor's service technician.) The minimum number of PM's and maximum number of Demand Calls for each piece of Equipment are outlined in the chart below.

Machine Type	Model 72	AS7200I
Demand	unltd	unltd
Preventive Maintenance	12	6

Demand Calls in excess of the maximum may be billed at Vendor's then current rates. Additionally, if Vendor, in its sole discretion, determines that the number of "unlimited" calls becomes unreasonable, Vendor reserves the right to charge for excessive Demand Calls after providing written notice to Customer.

**2.4 Field Service Reports.** Vendor shall furnish a summary of the Maintenance Service provided to the Customer upon completion of each Maintenance Service call ("Field Service Report"). The Field Service Report shall contain the following information: (1) date and time of arrival; (2) specific identification of Equipment serviced; (3) time of Maintenance Service; (4) description of the malfunction (if any); and (5) list of parts replaced.

**2.5 Response Times.** For all Equipment, Vendor shall exert all reasonable efforts to respond to Demand Call requests within four (4) hours after such call is received by Vendor, during the designated Coverage Hours.

**2.6 Parts.** Only new standard parts or parts of equal quality shall be used in providing Maintenance Service. Title to all replacement parts provided during the course of providing Maintenance Service pursuant to this Agreement will pass to Customer upon installation.

### **3. GENERAL TERMS.**

**3.1 Standard Maintenance Charge.** Vendor's standard maintenance charge provides for Maintenance Service to Equipment covered during any mutually agreed upon Coverage Hours, subject to the terms and conditions set forth in Paragraph 4 below ("Standard Maintenance Charge").

**3.2 Equipment Usage Charge.** Actual Equipment usage shall be measured by Vendor every three (3) months or thirteen (13) weeks ("Quarterly Basis"). Any particular piece of Equipment which processes envelopes in excess of the volumes specified below shall be subject to an additional charge ("Additional Usage Charge"). Additional Usage Charges shall be calculated on half-shift increments; and shall be invoiced based upon 25% of Vendor's Standard Maintenance Charge.

To the extent that the number of envelopes processed by a particular piece of Equipment exceeds the numbers set forth below on a Quarterly Basis, an Additional Usage Charge shall apply:

<u>Equipment</u>	<u>Envelopes per quarter</u>
AS7200	N/A*
Model 72	N/A*

\*NOTE: In the event that Equipment usage is extraordinary, Vendor, in its sole discretion, reserves the right to establish an Additional Usage Charge for this Equipment after providing Customer written notice.

**3.3 Maintenance Service Coverage Hours, Generally.** All Equipment located at a particular Site must be maintained during the same Maintenance Service schedule ("Coverage Hours"). Coverage Hours shall be governed by the terms and conditions set forth below.

**3.3.1 Coverage Hours for a Site with an Eagle or System 150.** For a Site, Coverage Hours shall be 7:00 am to 3:00 pm (Site local time), Monday through Friday, excluding Vendor Holidays.

**3.4 Altering Coverage Hours.** Customer shall be able to increase, decrease or shift, the Coverage Hours for a Site. However, in no event, may the Coverage Hours be decreased to less than forty (40) hours per week.

**3.4.1 Increasing Coverage Hours.** Upon thirty (30) days written notice, Customer may increase the Coverage Hours for a particular Site. Any increase in the Coverage Hours shall be subject to Vendor personnel availability and subject to Vendor's then current rates based upon half shift increments.

**3.4.2 Decreasing Coverage Hours.** Upon sixty (60) days written notice, Customer may decrease the Coverage Hours for a particular Site. This 60-day notice period applies to any decrease in Maintenance Service, including removing Equipment or Equipment options, reducing the number of covered shifts, or total termination of Maintenance Service for a Site. The notice period shall begin to run from the



date on which Vendor receives the written notification. Upon receipt of the 60-day notice, Customer will be provided a credit for any unused Maintenance Service towards future Equipment or Maintenance Service, calculated from the date of the expiration of the sixty (60) day period.

**3.4.3 Shifting Coverage Hours.** Upon thirty (30) days written notice, Customer may shift the Coverage Hours for a particular Site. Any shift in the Coverage Hours shall be subject to Vendor personnel availability and subject to Vendor's then current rates.

**3.5 Vendor Holidays.** Vendor observes the following holidays: New Year's Day; President's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; and Christmas Day. Upon thirty (30) days written notice, Customer may obtain Maintenance Service coverage on Vendor Holidays. Vendor Holiday coverage shall be subject to Vendor personnel availability and subject to Vendor's then current rates.

**3.6 "Weekend" Coverage.** Upon thirty (30) days written notice, Customer may obtain Maintenance Service coverage on the two days per week not covered pursuant to either Paragraph 3.3.1 or Paragraph 3.3.2 above, whichever is applicable ("Weekend Coverage"). Weekend coverage shall be subject to Vendor personnel availability and subject to Vendor's then current rates.

**3.7 Invoicing.** Vendor shall invoice Customer annually in advance for the Standard Maintenance Charge. Any additional service charges (eg machine restoration pursuant to Paragraph 1.3, Weekend Coverage, etc.) shall be invoiced quarterly in arrears. Terms of payment are net thirty (30) days from date the invoice is issued. Late payments shall bear interest at the lesser of (i) 2% per month or (ii) the highest permissible rate by law, payable monthly.

#### **4. PROPRIETARY TECHNOLOGY AND DIAGNOSTICS; CONFIDENTIALITY.**

**4.1 Technology.** Vendor holds intellectual property rights in the Equipment, which includes the Equipment's computer operating system, software components and mechanical components (collectively "Technology"). No licenses, either express or implied, under any patents are granted by Vendor to Customer hereunder, except as expressly stated herein. Customer agrees that it shall not copy, remove, use (except for operation of the Equipment in accordance with the Published Specifications), or disclose Technology to any third party.

**4.2 Diagnostics.** In providing Maintenance Service, Vendor utilizes certain software diagnostics ("Diagnostics"). Vendor holds intellectual property rights in the Diagnostics, and the Diagnostics are for Vendor's exclusive use. Except with the express written consent of Vendor, Customer shall not use, copy, remove, or alter the Diagnostics. It is understood and agreed by Customer that upon termination of this Agreement, Customer shall either: (i) Return the Diagnostics to Vendor at Vendor's expense; or (ii) Purchase, according to Vendor's then current rates, a non-exclusive, non-transferable and personal limited license to use the Diagnostics.

**4.3 Confidential Information.** During the term of this Agreement, either party may have access to, or be given, certain technical information or data, customer information or data, manuals, drawings, sketches, models, samples, tools, or the like, of the other Party, which are of a confidential and/or proprietary nature (collectively "Information"). All Information furnished to the receiving party, whether written, oral or otherwise, shall remain the sole and exclusive property of the disclosing party. Upon request, all Information shall be returned to the disclosing party. Unless such Information: (i) was previously known to the receiving party free of any obligation to keep it confidential; (ii) is subsequently made public by the disclosing party or by a third party, other than by breach of agreement; or (iii) is required to be disclosed to any governmental agency or court of competent jurisdiction by written order or decree (in which case the disclosing party shall be given prompt notice by the receiving party of such order or decree, and shall be given an opportunity to contest or direct such disclosure); the Information shall be kept confidential by the Receiving Party and shall be used solely for the purposes of fulfilling the terms of this Agreement.

#### **5. WARRANTY; WARRANTY LIMITATIONS.**

Vendor warrants that all work required to be performed hereunder shall conform to the descriptions contained in this Agreement and will be performed in a professional manner according to generally accepted industry standards. THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND THERE ARE NO WARRANTIES WHICH ARE NOT CONTAINED IN THIS AGREEMENT.

## **6. INFRINGEMENT AND GENERAL INDEMNIFICATION.**

**6.1 Patent, Copyright and Trademark Infringement Indemnification.** Vendor will (i) indemnify, hold harmless and defend Customer, at Vendor's expense, from and against any claim brought against Customer alleging that any portion of the Equipment infringes a European Union, Canadian or United States patent, copyright, trademark, or other intellectual property right, of any third party; and (ii) hold Customer harmless from and against all costs and damages finally awarded, provided that Vendor is given prompt written notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim.

**6.1.1 Infringement Defense.** In the defense or settlement of a claim pursuant to Paragraph 6.1 above, Vendor may: (i) obtain for Customer the right to continue using the Equipment; (ii) replace or modify the Equipment so that it becomes non-infringing; or (iii) if remedies (i) and (ii) are not reasonably available, grant Customer a depreciated refund pro-rata based upon a sixty (60) month life, measured from the original installation date of the Equipment.

**6.1.2. Infringement Indemnification Limitations.** Vendor shall not have any liability if the alleged infringement is based upon the use or sale of the Equipment in combination with other products or devices not furnished or approved by Vendor. VENDOR DISCLAIMS ALL OTHER LIABILITY FOR PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, INCLUDING ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND THE RIGHTS STATED HEREIN ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY.

**6.2 General Indemnity.** Each Party shall indemnify and hold harmless the other party, its affiliates, and its and their directors, officers, employees and agents from and against all losses, liabilities, judgments, awards, settlements, damages, fines, injuries, penalties and costs (including legal fees and expenses) to or in favor of others, as well as all claims, causes of action and suits by others; including without limitation employees, subcontractors or agents of the indemnified party and its affiliates for personal injury (including death) or real and/or tangible property damage, arising out of acts or omission to act under this Agreement.

**6.3 Defense of Claim.** In the event of any such claim set forth in Paragraph 6.2 above, at the request of the indemnified party, the indemnifying party shall at its sole expense defend all claims, suits or proceedings arising out of the foregoing. The indemnifying party shall be notified promptly of any such claims, suits or proceedings in writing, and shall have full and complete authority, information and assistance for the defense of such claim; provided, however, the indemnifying Party shall have no authority to enter into any settlement or compromise on behalf of the indemnified Party without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld. In all events, the indemnified Party shall have the right to participate in the defense of any proceedings with counsel of its own choosing, at its expense.

## **7. LIMITATIONS.**

**7.1 Maintenance Service Limitations.** Notwithstanding anything herein to the contrary, Vendor shall have no obligation hereunder to provide Maintenance Service to Equipment which has deteriorated to such an extent that it cannot, in the reasonable discretion of Vendor, be maintained and needs to be replaced. Vendor shall provide written notice of any such deterioration. Vendor's obligations to provide Maintenance Service shall also terminate if Customer:

(a) fails to provide Vendor with sufficient access to the Equipment, subject to Customer's reasonable Site policies and procedures;

(b) negligently stores, handles operates or alters the Equipment, or uses the Equipment for purposes other than those set forth in the Published Specifications;

(c) continues to fail to provide routine cleaning after being provided notice by Vendor pursuant to Paragraph 1.3 above;

(d) fails to continually provide a suitable environment with all facilities and power as prescribed in the Published Specifications;

- (e) uses or operates the Equipment beyond its intended design parameters;
- (f) damages the Equipment through its use in conjunction with machinery or software not covered by this Agreement;
- (g) performs work, or allows a third party to work, on the Equipment, which is not authorized by Vendor;
- (h) alters or modifies in any way, the safety mechanisms, without the written consent of Vendor;
- (i) operates the Equipment with envelopes or enclosures other than those specified in the Published Specifications; or
- (j) Customer's relocating Equipment to a Site other than that defined in this Agreement; provided, however, that should Vendor and Customer agree to continue Maintenance Service on Equipment moved to another Site, Customer's Equipment shall be subject to inspection by Vendor, at Vendor's published rates and terms then in effect for such service, prior to Vendor resuming Maintenance Service on Customer's Equipment.

**7.2 General Limitations.** In no event shall either party be liable to the other, whether in an action in negligence, contract or tort or based on a warranty or otherwise, for loss of profits, revenue, or loss or inaccuracy of data, or any indirect, incidental, punitive, special or consequential damages incurred by the other party or any third party, even if the party has been advised of the possibility of such damages. Further, except to the extent that liability arises from: (i) a breach by either party of its confidentiality obligations in Section 4.3; or (ii) instances of either Party's gross negligence or willful misconduct; each party's liability for damages under this Agreement, whether in an action in negligence, contract or tort or based on a warranty, shall not exceed the annual fees payable for the Maintenance Service.

## **8. GENERAL PROVISIONS.**

**8.1 Fees Due For Breach.** In the event that one of the parties hereto breaches or defaults on any of its obligations or responsibilities under this Agreement (the "Breaching Party"), then on behalf of the party not in default (the "Non-Breaching Party"), the Breaching Party shall indemnify, and be responsible for, the reasonable attorneys' fees, costs, and expenses incurred by the Non-Breaching Party in enforcing or remedying any breach hereunder by the Breaching Party.

**8.2 Rights Cumulative; Non-Waiver.** All rights and remedies conferred under this Agreement or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. Failure or delay by either party to enforce any contract term herein shall not be deemed a waiver of future enforcement of that or any other term.

**8.3 Order of Precedence.** Unless otherwise provided herein or agreed to in a signed writing, documents will apply in the following descending order of precedence: (i) main body of this Agreement; (ii) Exhibits "A" and "B;" and (iii) all other transaction documents.

**8.4 Entire Agreement.** This Agreement, the Exhibits and documents incorporated herein, are the final, full and exclusive expression of the understandings of the parties and supersedes all prior agreements, understandings, writings, proposals, representations and communications, oral and written, of either party.

By signing below, the Parties agree to be bound by the terms of this Agreement and any attached Exhibits.

OPEX CORPORATION ("Vendor")

County of Cuyahoga, Ohio ("Customer")

By: 

By: \_\_\_\_\_

Title: Asst. Dir., Corp. & Legal Affairs

Title: \_\_\_\_\_

Date: February 21, 2012

Date: \_\_\_\_\_

EXHIBIT "A" EQUIPMENT SCHEDULE

- 1) Customer's Name: County of Cuyahoga, Ohio
- 2) The Equipment covered by this Agreement is located at the following Site(s):

Cuyahoga County Employment & Family Services  
1641 Payne Avenue  
Cleveland, OH 44114

- 3) The Equipment covered by this Agreement includes the machines described below:

(a) Machine Description: Model 72  
Serial Number(s): 17135

(b) Machine Description: AS7200i  
Serial Number(s): A02109

By signing below, the Parties agree to be bound by the terms of the Agreement and this Exhibit "A."

OPEX CORPORATION ("Vendor")

County of Cuyahoga, Ohio ("Customer")

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Asst. Dir., Corp. & Legal Affairs

Title: \_\_\_\_\_

Date: February 21, 2012

Date: \_\_\_\_\_

### EXHIBIT "B" SERVICE PRICING

Pricing for the Initial Term of the Agreement is based on the current rates set forth herein, prepaid annually in advance, per shift, per site. Pricing for any Renewal Term is subject to change, based upon Vendor's published rates then in effect.

<u>Product Description</u>	<u>Price Each</u>	<u>QTY</u>	<u>Extended Price</u>
Model 72	2,420.00	1	2,420.00
AS7200i	8,265.00	1	8,265.00
1D Barcode Annual License Fee	185.00	1	185.00
Data Matrix Barcode Annual License Fee	210.00	1	210.00
Image Edge Annual License Fee	525.00	1	525.00
Total Service Costs (pre-tax)			<b>\$11,605.00</b>

NOTE: THIS AGREEMENT SPECIFICALLY EXCLUDES VENDOR'S NETWORKING SOLUTION PRODUCT AND ANY OPEN SCAN PRODUCT(S). Any Maintenance Service provided by Vendor to Customer on Vendor's Networking Solution Product will be provided on a time and materials basis only, according to Vendor's published terms and rates then in effect for such service.