

**CONTRACT**  
**SOFTWARE MAINTENANCE AGREEMENT**

by and between

**CUYAHOGA COUNTY, OHIO**

and

**BLUE TECHNOLOGIES, INC.**

THIS AGREEMENT (the "Contract") is made and entered into this \_\_\_\_\_ day of 2012, 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.

WHEREAS, the County has a present need for renewal of software support maintenance 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 Compass 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, Blue Technologies 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 and support all OnBase Software products identified in Blue Technologies Pricing Summary 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, 2011; 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 (**7/1/11 through 6/30/13**). The cost of this Contract shall not exceed Twenty Three Thousand Three Hundred Eighty Six Dollars and Ninety Cents (**\$23,386.90**).

## ARTICLE II – SCOPE OF WORK

- 2.1 Rendering of Services. Blue Technologies hereby agrees to render maintenance and support 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 Twenty Three Thousand Three Hundred Eighty Six Dollars and Ninety Cents (**\$23,386.90**).

## ARTICLE III – PAYMENT AND INVOICING

- 3.1 Payment. During the term of this contract, the County shall pay Blue Technologies the costs associated with the maintenance and support agreement upon receipt of said invoice from Blue Technologies.
- 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 Children and Family Services  
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. Blue Technologies, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

#### ARTICLE V INDEMNITIES

- 5.1 Subcontracting. This Contract was awarded to Blue Technologies based upon the unique qualifications and skills of Blue Technologies and no task required to be performed under this contract by Blue Technologies shall be acceptable to the County, or subject to payment from the County, unless the same is personally performed by said company.
- 5.2 Indemnification. Blue Technologies shall agree to release, indemnify and to hold harmless the County, any and all officers, agents, servants or employees thereof, from any and all responsibility or liability for Blue Technologies' gross negligence or willful misconduct under this contract

#### ARTICLE VI - ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

- 6.1. Electronic Signature. By entering into this Contract, Blue Technologies, 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.

- 6.2 Compliance with O.R.C. Blue Technologies 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.

#### ARTICLE VII – CHANGE ORDERS AND APPROVAL PROCESS

- 7.1 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 the 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 VIII – MISCELLANEOUS

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

Schedule A-1: Blue Technologies Pricing Quote

- 8.2 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: Jeff Mowry, CIO  
1255 Euclid Avenue, 4th Floor  
Cleveland, Ohio 44115

In the case of Blue Technologies:

Nano Zegarra  
Blue Technologies, inc.  
5885 Grant Ave  
Cleveland, Ohio 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.

- 8.3 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.

- 8.4 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.
- 8.5 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.
- 8.6 Headings and Interpretation. The article and section headings used herein are for reference convenience only, and shall not enter into the interpretation hereof.
- 8.7 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.
- 8.8 Compliance with Digital Imaging and Electronic Standards. Blue Technologies is aware that the system designed and maintained under this Agreement is intended to replace an existing paper system with a digital records system; and Blue Technologies represents and warrants that the proposed system will comply with all digital imaging and electronic records standards so that the admissibility of such records in all judicial, administrative and auditing proceedings will be preserved. Blue Technologies further expressly warrants that the audit trails and security configuration of the databases and servers will be in compliance with all Federal and State laws and regulations, including but not limited to, the Health Insurance Portability and Accountability Act of 1996; the Electronic Signatures in Global and National Commerce Act of 2000 (S.761); the U.S. Department of Health and Human Services Regulations contained in 21 CFR Part 11; the Ohio Electronic Records and Signatures Act of 2000 (Sub. H.B. 488), O.R.C. Section 1306.01 et seq.; the final Ohio Department of Administrative Services "111" rules; and the Ohio Rules of Evidence.

8.9 Record Audit Retention. Blue Technologies 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 Blue Technologies 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.

8.10 Social Security Act. Blue Technologies 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 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 Blue Technologies also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

8.11 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 the County Executive.

8.12 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the Cuyahoga County 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 the 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 Cuyahoga County. Upon approval by 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.

8.12.1 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.

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.

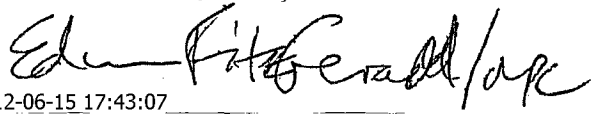
IN WITNESS WHEREOF, THE County and Blue Technologies have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

**Blue Technologies, Inc.**

BY:   
PAUL HANNA, PRESIDENT

**Cuyahoga County, Ohio**

Edward FitzGerald, County Executive

BY:   
2012-06-15 17:43:07  
Ed FitzGerald, County Executive





BLUE ORDER SUMMARY

PURCHASE ORDER:

DATE: 12/29/2012

VENDOR NAME: Blue Technologies

VENDOR ADDRESS: 5885 Grant Ave  
Cleveland, OH 44105

VENDOR CONTACT:

VENDOR PHONE: 216-271-4800

VENDOR EMAIL:

CUSTOMER NAME: Cuyahoga County Children and Family Services

CUSTOMER ADDRESS: 3955 Euclid Avenue  
Cleveland, Oh 44115

CUSTOMER CONTACT: Dorothy Sievers

CUSTOMER PHONE: 216-443-8144

CUSTOMER EMAIL: [dsievers@cccfs.org](mailto:dsievers@cccfs.org)

SOLUTION PRICING

Product License		Qty	Maintenance	Total
Product Name	Code Fee			
MULTI-USER SERVER	OBIPW1	1	\$ 725.40	\$ 725.40
CONCURRENT CLIENT	CTIPC1	40	\$ 6,963.84	\$ 6,963.84
WORKSTATION CLIENT	CTIPW1	6	\$ 522.29	\$ 522.29
PRODUCTION DOCUMENT IMAGING	DIIPW1	1	\$ 725.40	\$ 725.40
PRODUCTION DOCUMENT IMAGING	DIIPW2	2	\$ 580.32	\$ 580.32
DOCUMENT IMPORT PROCESSOR	DPIPW1	1	\$ 725.40	\$ 725.40
WEB SERVER	WTIPW1	1	\$ 1,450.80	\$ 1,450.80
ARCHIVAL API	ARIP11	1	\$ 725.40	\$ 725.40

TOTAL SOLUTION

7/1/11 – 6/30/12	Software	
	Maintenance	\$12,418.85
	Services	
	Total	\$12,418.85

*[Signature]*

NOTE: The prices represented in this quotation are valid as of the above date. Blue Technologies, Inc.. is not responsible for price, model or configuration changes, or product discontinuation at any time by the manufacturer or distributor. Blue Technologies, Inc. will attempt to find suitable replacements for products affected by manufacturers or distributors inability to provide any ordered product.

This order is firm and binding and may not be revoked by purchaser unless Blue Technologies, Inc. fails to accept within seven days of the date of the purchaser's signature.

Authorized Signature: \_\_\_\_\_

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