

CONTRACT

HARDWARE & SOFTWARE MAINTENANCE AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

NORTHWOODS CONSULTING PARTNERS INC.

THIS AGREEMENT (the "Contract") is made and entered into this _____ day of _____, 2012, by and between the County of Cuyahoga, Ohio ("the County"), and Northwoods Consulting Partners Inc., a Corporation with a mailing address at 5815 Wall Street, Dublin, Ohio 43017 (Northwoods)

WHEREAS, the County has a present need for software support and maintenance service of Compass Appointments application software, and

WHEREAS, Northwoods' licensed Premier Appointment Manager products and software are available under existing State Term Schedule Number 533091-1; and

WHEREAS, the County desires to avail itself of such services located at the Virgil E. Brown Building, Cleveland, OH and Northwoods' 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, Northwoods Consulting Partners Inc. and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

- 1.1 Scope of Agreement. During the term of this Contract, Northwoods' shall provide the County with all services necessary to maintain and support all Northwoods' products described and attached hereto as Schedule A and incorporated by reference herein subject to terms and conditions set forth in this contract and that attached Schedules B-1 and B-2. Such schedules are deemed to be a part of this contract as fully set forth herein. Northwoods agrees to provide maintenance services to the agency.
- 1.2 Term. The term of this Contract shall commence as of **July 1, 2012**; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of twelve (12) months. (7/1/12 – 6/30/13). The cost of this Contract shall not exceed **Seventy Thousand, Six Hundred and 00/100 Dollars. (\$70,600.00).**

ARTICLE II – SCOPE OF WORK

- 2.1 Rendering of Services. Northwoods' hereby agrees to render software and support services at a total price of **Seventy Thousand, Six Hundred and 00/100 Dollars. (\$70,600.00)**
- 2.2 Record Audit Retention. Northwoods' 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 Northwoods' 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 Northwoods', for software support services as outlined in Schedule A attached hereto and incorporated by reference herein.
- 3.2 Invoicing. Northwoods' shall invoice the County for support services. Northwoods' 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 Northwoods' and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Northwoods' 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. Northwoods', 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. Northwoods' 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 Northwoods:

Sarah Bansal
Northwoods Consulting Partners Inc.
5815 Wall Street
Dublin, Ohio 43017
614-781-7800

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

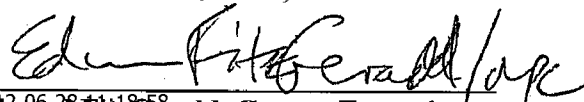
ARTICLE VIII – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

- 8.1. By entering into this Contract, Northwoods', 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 Northwoods' 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 Northwoods' 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: 
2012-06-28 11:18:58
Edward FitzGerald, County Executive

NORTHWOODS CONSULTING PARTNERS INC.


BY: _____

04-10-2012
DATE: _____





NORTHWOODS

5815 Wall Street
Dublin OH 43017

Schedule A - Budget Statement

Date	3/28/2012
Invoice #	NCP12-2501

Bill To:

Cuyahoga County Dept of E & F Services
Don Gotsch
VEB 1641 Payne Avenue, Room 570
Cleveland OH 44114

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
	CUYAHOGA EF		DELIVERY	Net 30	3/28/2012	57
Description				Quantity	Unit Price	Ext. Price
Compass Appointments Enterprise License Maintenance				1	\$32,500.00	\$32,500.00
Compass Appointments Kiosk Software Maintenance				7	\$400.00	\$2,800.00
Invoice 1 of 2, second to be sent in October						
Annual Renewal Maintenance - 07/01/2012-06/30/2013 - Total Due \$70,600 .						
Please note that to avoid interruption of your maintenance coverage, payment must be received by Northwoods prior to the expiration of your Annual Maintenance Renewal listed above.						
If there is any additional documentation needed to process this invoice, please contact Bill Gray at (614)781-7800 as soon as possible to avoid maintenance interruption						

Thank you for the opportunity to serve you!

Our Phone #	614.781.7800
Our Fax #	614.781.7801

Subtotal	\$35,300.00
Tax	\$0.00
Payments/Credits	\$0.00
Total	\$35,300.00

**IMPORTANT- READ CAREFULLY**

This Compass® Software End User License Agreement ("EULA") is made and entered into this ____ day of _____, 201____, by and between Northwoods Consulting Partners, Inc., an Ohio corporation with its principal offices at 5815 Wall Street, Dublin, Ohio 43017, USA, (the Licensor, hereinafter "Northwoods"), and the company, person or entity executing this Agreement as the "Licensee" in the space provided below (hereinafter "Licensee"):

Licensee's Name: **Cuyahoga County Health and Human Services
Employment and Family Services**
Licensee's Address: **Virgil E. Brown Center
1641 Payne Avenue, Room 520
Cleveland, Ohio 44114**

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the parties hereto agree as follows:

1. LICENSE.**a. Software licensed, not sold, for use pursuant to the EULA ("Software"):**

1) Compass-branded Software modules with respect to which Licensee properly submits a written purchase order to, and pays Software license fees to, Northwoods or its authorized solution provider. All such modules listed on Northwoods' invoices submitted to Licensee shall, upon payment in full of the Software license fees, automatically be deemed to be added to the Software described in this EULA, whether or not the parties actually amend this EULA.

2) All "Upgrades or Enhancements" to the Software described in paragraph (1) above that Licensee properly obtains pursuant to the terms of a Software Maintenance Agreement between Licensee and Northwoods or its authorized solution provider.

b. Subject to payment in full of the Software license fees, Northwoods grants to Licensee a perpetual (except as herein provided), non-exclusive, non-assignable (except as herein provided), limited license to the Software detailed in subsection (a) above, in machine-readable object code form only, solely for use by Licensee internally, and only for capturing, storing, processing and accessing Licensee's own data, and not for use for the processing of third-party data as a service bureau, application service provider or otherwise. Licensee shall not make any use of the Software in any manner not expressly permitted by this EULA.

c. Licensee acknowledges that each module of the Software is licensed for a specific type of use, such as concurrently or on a specified workstation or by a specified individual and that the Software controls such use. Use of software or hardware that reduces the number of clients directly accessing or utilizing the Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of Software licenses required. The required number of Software licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware. Licensee is prohibited from using any software other than the Software Client modules or Software API modules to access the Software or any data stored in the Software database for any purpose other than generating reports or statistics regarding system utilization, unless Northwoods has given its prior written consent to Licensee's use of such other software and Licensee has paid to Northwoods Software license fees with respect to such access to the Software or data stored in the Software database in accordance with Northwoods' licensing policies applicable to the Software modules that provide access to the Software application modules and data stored in the Software database.

d. Licensee shall be entitled to use one (1) production copy of each Software module licensed. In addition, Licensee shall be entitled to license: one (1) additional copy of each Software module licensed for customary remote disaster recovery purposes ("Disaster Recovery System"); and one (1) additional copy of each Software module licensed to be used exclusively in a non-production environment and solely for the purposes of experimenting, development, integrating and testing the Software and training Licensee's employees on the Software ("Test System"). Northwoods reserves the right to further define the permitted use(s) and/or restrict the use(s) of the Test System. NORTHWOODS MAKES NO WARRANTIES WITH RESPECT TO ANY SOFTWARE USED IN ANY NON-PRODUCTION SYSTEM AND PROVIDES THE SOFTWARE "AS IS." Licensee's sole recourse in the event of any dissatisfaction with any Software used in any non-production system is to stop using such Software and return it to Northwoods. Licensee shall not make additional copies of the Software.

e. Licensee agrees: (1) not to remove, obscure, make illegible, or alter any Northwoods, Compass or other proprietary notices, trademarks, logos, or copyrights in the Software from any packaging or documentation; (2) not to distribute, reproduce, sell, transfer, rent, lease or sub-license the Software or documentation to any third party; (3) not to alter or modify the Software; (4) not to reverse engineer, disassemble, decompile or attempt to derive source code from the Software, or prepare derivative works therefrom; and (5) not to publish to a third party any results of benchmark tests run on the Software without Northwoods' prior, written consent.

f. Licensee may not assign, transfer or sublicense all or part of this EULA without the prior written consent of Northwoods.

g. Licensee may not make any use of the Disaster Recovery System in a production environment concurrently with the operation of any other copy of the Software in a production environment.

h. From time to time Northwoods may make "beta" copies of prospective new versions of the Software or of potential new software modules ("Beta Software") available for Licensee's use in the Test System and Licensee may elect to license and use the Beta Software in the Test System. LICENSEE ACKNOWLEDGES AND UNDERSTANDS THAT ANY BETA SOFTWARE IS A PRE-RELEASE VERSION ONLY, IS STILL UNDERGOING TESTING AT NORTHWOODS AND IS NOT A NORTHWOODS COMMERCIAL RELEASED PRODUCT. Except for the provisions of Section 5(a), (b) and (c) and Section 7 of this EULA, which shall not apply with respect to any Beta Software, Licensee acknowledges and agrees that all Beta Software delivered in accordance with this paragraph shall be considered to be "Software" for all purposes of this EULA. Notwithstanding anything to the contrary, as to any Beta Software, this EULA and the limited license granted hereby will terminate on the earliest of: (a) ten (10) days after the date of delivery by either party to the other party of written notice of termination of the beta testing period for such Beta Software; or (b) the date of Northwoods' commercial release of the final version of such Beta Software for licensing to its end users generally. Upon expiration or other termination of such period, Licensee immediately shall discontinue any and all use of the Beta Software and related documentation and remove or permit Northwoods to deactivate the Beta Software. The termination of this EULA, as to any Beta Software, shall not affect the continuation of this EULA as to any other Software that has been licensed and is in use by Licensee in accordance with the terms of this EULA.

i. From time to time Licensee may elect to evaluate certain Compass Software® modules that it has not licensed and does not currently use in its production environment ("Evaluation Software"), for the purpose of determining whether or not to purchase a production license of such Software modules. Evaluation Software is licensed for Licensee's use in Licensee's Test System. Except for the provisions of Section 5(a), (b) and (c) and Section 7 of this EULA, which shall not apply with respect to any Evaluation Software, Licensee acknowledges and agrees that all Evaluation Software delivered in accordance with this paragraph shall be considered to be "Software" for all purposes of this EULA. Notwithstanding anything to the contrary, as to any Evaluation Software, this EULA and the limited license granted hereby will terminate on the earliest of: (a) thirty (30) days after the date such Software is activated for use in Licensee's Test System; or (b) immediately upon the delivery of written notice to such effect to Licensee. Upon expiration or other termination of such period, Licensee immediately shall either (v) discontinue any and all use of the Evaluation Software and related documentation and remove or permit Northwoods to deactivate the Evaluation Software; or (2) deliver payment in full of the license price that has been agreed upon for such Software to Northwoods (if Licensee purchases licenses for Software directly from Northwoods) or to Northwoods' authorized solution provider (if Licensee purchases licenses for Software through such authorized solution provider), and confirm in writing to Northwoods that such Evaluation Software is added as additional Software licensed for Licensee's use in its production environment and Licensee's Test System under this EULA. The termination of this EULA as to any Evaluation Software shall not affect the continuation of this EULA as to any other Software that has been licensed and is in use by Licensee in accordance with the terms of this EULA.

j. Upon expiration or other termination of any period of use of any Beta Software or of any Evaluation Software that Licensee elects not to purchase a license for use in Licensee's production environment under this EULA, Licensee agrees that it will provide to Northwoods remote access to Licensee's systems on which such Beta Software or such Evaluation Software is installed for the limited purpose of permitting Northwoods to deactivate such Software.

2. OWNERSHIP. Northwoods owns the Software, including, without limitation, any and all worldwide intellectual property rights, copyrights, patents, trade secrets, trademarks and proprietary and confidential information rights in or associated with the Software. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Software are transferred to Licensee. Licensee agrees that nothing in this EULA or associated documents gives it any right, title or interest in the Software, except for the limited express rights granted in this EULA.

3. INSTALLATION. Licensee may retain Northwoods or the Northwoods authorized solution provider through which Licensee orders the Software to provide installation services. If Northwoods is retained, the parties will enter into a separate Purchase Agreement or other contract governing the procurement and performance of such services. Unless otherwise provided for in the Purchase Agreement or other contract, Licensee is responsible for hardware and non-licensed software for the installation, operation and support of the Software.

4. LICENSEE OBLIGATIONS. Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the Software, including but not limited to providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Licensee is solely responsible for its data, its database and for maintaining suitable backups of the data and database to prevent data loss in the event of any hardware or software malfunction.

5. LIMITED WARRANTY.

- a. For a period of sixty (60) days from the date of first installation of the Software at Licensee's site, Northwoods warrants to Licensee that the media on which the Software is distributed are free from defects in materials and in workmanship.
 - b. 1) For a period of sixty (60) days from the Maintenance Commencement Date (as defined below), Northwoods warrants to Licensee that the Software, when properly installed and properly used, will operate substantially in accordance with the user documentation published by Northwoods related to the Software that is included with the Software, including user manuals, and that relates to the functional, operational or performance characteristics of the Software ("Documentation"). The terms of this warranty shall not apply to, and Northwoods shall have no liability for, any non-conformity related to any Software that has been: (i) modified by Licensee or a third party; (ii) used in combination with equipment or software other than that which is consistent with the Documentation; or (iii) misused or abused. Northwoods does not warrant that the functions contained in the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error free.
 - 2) For purposes of this warranty, the term "Maintenance Commencement Date" as to any Software means the first date that: (i) a copy of the Software has been delivered to Licensee (either by shipment of media containing the Software, downloading of the Software onto Licensee's systems in connection with the installation of the Software, or the Software being made available for download by Licensee from a web site identified to Licensee); and (ii) license codes or a Software certificate necessary for Licensee to activate the Software for use have been delivered to Licensee or made available for download by Licensee.
 - c. Licensee's sole and exclusive remedy for a breach of the express limited warranties under paragraph (a) or (b) shall be as follows. Provided that, within the applicable 60-day period, Licensee notifies Northwoods in writing of the non-conformity, Northwoods will either: (1) repair or replace the non-conforming media or Software, which in the case of the Software may include the delivery of a commercially reasonable workaround for the non-conformity; or (2) if Northwoods determines that repair or replacement of the non-conforming media or Software is not commercially practicable, then terminate this EULA with respect to the Software associated with the non-conforming media or with respect to the non-conforming Software, in which event, upon compliance by Licensee with its obligations under Section 9, Northwoods will refund any portion of the Software license fees paid prior to the time of such termination with respect to such Software.
 - d. NORTHWOODS AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. LICENSEE SPECIFICALLY ASSUMES RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE ITS BUSINESS OBJECTIVES.
 - e. No oral or written information given by Northwoods, its agents, or employees shall create any additional warranty. No modification or addition to this warranty is authorized unless it is set forth in writing, references this EULA, and is signed on behalf of Northwoods by a corporate officer.
- ## 6. LIMITATION OF LIABILITY.
- IN NO CASE SHALL NORTHWOODS' LIABILITY EXCEED THE AMOUNT OF THE SOFTWARE LICENSE FEES ACTUALLY PAID BY LICENSEE. IN NO EVENT WILL NORTHWOODS OR ITS DIRECT OR INDIRECT SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR OTHER PECUNIARY LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY USE OR INABILITY TO USE THE SOFTWARE, EVEN IF NORTHWOODS OR SUCH SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES. NORTHWOODS AND ITS SUPPLIERS ARE NOT RESPONSIBLE FOR ANY COSTS INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR INFORMATION, THE COST OF RECOVERING SUCH DATA OR INFORMATION, THE COST OF SUBSTITUTE SOFTWARE, OR CLAIMS BY THIRD PARTIES.
- ## 7. MAINTENANCE.
- Licensee may purchase software maintenance and technical support services from Northwoods or the Northwoods authorized solution provider through which Licensee has ordered the Software pursuant to the terms of a separate Software Maintenance Agreement and a separate Onsite Maintenance Services Agreement.
- ## 8. INVOICES AND PAYMENTS.
- An invoice will be provided to the Licensee within ten (10) business days from the date the software is delivered to the Licensee and will be due payable within thirty (30) days after receipt of invoice. Failure to remit payment within thirty (30) days may result in the termination of this EULA.
- ## 9. AUDIT RIGHTS.
- Northwoods may audit the records of Licensee to ensure compliance with the terms of this EULA. Northwoods, or its authorized solution provider, will notify Licensee in writing at least ten (10) business days prior to any such audit. Licensee will cooperate by providing access to any books, computers, records, or other information that relate or may be related to use of the Licensed Software. Any such audit will be conducted during Licensee's regular business hours at Licensee's offices and will not interfere unreasonably with Licensee's business activities. If an audit reveals unauthorized use, reproduction, distribution or other exploitation of the Licensed Software, then Licensee will promptly reimburse Northwoods or its authorized solution provider for the cost of such audit, in addition to the underpaid license fees, any

associated fees for Maintenance and Support, and any other such rights and remedies as Northwoods may have.

- ## 10. TERMINATION.
- Northwoods may terminate this EULA immediately and any license to use the Software will automatically terminate without notice if Licensee fails to comply with any provision of this EULA. Upon termination of this EULA for any reason, including, but not limited to, those specified in this Section 10 or in Sections 5 or 8, Licensee shall immediately: (a) discontinue any and all use of the Software and related documentation; (b) return the Software and any related documentation to Northwoods; and (c) certify in writing to Northwoods that Licensee has completed the preceding actions. The obligations of Licensee under the preceding sentence and all disclaimers of warranties and limitations of liability set forth in this EULA shall survive any termination.
- ## 11. DISCLAIMER OF AGENCY.
- This EULA does not constitute a partnership agreement, nor does it authorize Northwoods or the Licensee to serve as the legal representative or agent of the other. Neither party hereto will have any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other party.
- ## 12. SEVERABILITY.
- In the event that a court of competent jurisdiction determines that any portion of this EULA is unenforceable, it shall not affect any other provisions of this EULA.
- ## 13. NOTICE.
- All notices, requests or other communications required to be given pursuant to this EULA shall be in writing, shall be addressed to the recipient party at its principal place of business or to such other address as the recipient party may direct in writing, and shall be personally delivered or sent by certified or registered U.S. mail, return receipt requested, or by prepaid commercial overnight courier. All notices, requests or other communications delivered as specified herein shall be deemed to have been given and received on the date personally delivered or on the date deposited in the U.S. mail or with the commercial overnight courier.
- ## 14. GOVERNING LAW.
- The laws of the State of Ohio shall govern this EULA, without regard to the conflict of laws principles thereof. The parties mutually agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods, as amended, shall not be applicable with respect to this EULA. Licensee agrees that it will not export or re-export, directly or indirectly, the Software to destinations prohibited by the U.S. Department of Commerce in accordance with the U.S. Export Administration Regulations.
- ## 15. JURISDICTION.
- This Agreement and any claim, action, suit, proceeding, or dispute arising out of this Agreement shall in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of Ohio without regard to its conflicts of laws provisions. Venue and jurisdiction for any action, suit, or proceeding arising out of this Agreement shall vest exclusively in the federal or state courts of general jurisdiction in Cuyahoga County, Ohio.
- ## 16. ENTIRE AGREEMENT.
- This EULA (including the exhibits and schedules attached hereto) constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, documents and proposals, oral or written, between the parties with respect thereto. This EULA may be amended or modified only by an agreement in writing signed by each of the parties and may not be modified by course of conduct.
- ## 17. U.S., STATE AND LOCAL GOVERNMENT END USERS.
- The terms and conditions of this EULA shall pertain to the Government's use and/or disclosure of the Software, and shall supersede any conflicting contractual terms or conditions. By accepting the terms of this EULA and/or the delivery of the Software, the Government hereby agrees that the Software qualifies as "commercial" computer software within the meaning of ALL federal, state and local acquisition regulation(s) applicable to this procurement and that the Software is developed exclusively at private expense. If this license fails to meet the Government's needs or is inconsistent in any respect with federal, state or local law, the Government agrees to return this Software to Northwoods. In addition to the foregoing, where DFARS is applicable, use, modification, reproduction, release, display, or disclosure of the Software or documentation by the Government is subject solely to the terms of this EULA, as stated in DFARS 227.7202, and the terms of this EULA shall supersede any conflicting contractual term or conditions.



SCHEDULE B-2

COMPASS® SOFTWARE MAINTENANCE AGREEMENT

This Compass® Software Maintenance Agreement is made and entered into this 1st day of July, 2012, by and between Northwoods Consulting Partners, Inc., an Ohio corporation with its principal offices at 5815 Wall Street, Dublin, Ohio 43017, USA, (the Licensor, hereinafter "Northwoods"), and the company, person or entity executing this Agreement as the "Licensee" in the space provided below (hereinafter "Licensee"):

Licensee's Name: Cuyahoga County Health and Human Services
Employment and Family Services
Licensee's Address: Virgil E. Brown Center
1641 Payne Avenue, Room 520
Cleveland, Ohio 44114

RECITALS:

WHEREAS, Licensee has licensed the specified software from Northwoods pursuant to the terms of a Compass® Software End User License Agreement (as the same may be amended or modified from time to time, hereinafter referred to as the "EULA"); and WHEREAS, Licensee desires to obtain, and Northwoods is willing to provide, maintenance and technical support services for the specified software and the delivery of generally released upgrades and enhancements with respect to such software from Northwoods. NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the parties hereto agree as follows:

1. **DEFINED TERMS.** The following terms shall have the meanings set forth below for all purposes of this Agreement:
 - a. "**Documentation**" means electronic on-line material, including user manuals, provided by Northwoods for the Software and that relate to the functional, operational or performance characteristics of the Software.
 - b. "**Error**" means any defect or condition inherent in the Software that causes the Software to fail to perform in accordance with the current Documentation published by Northwoods.
 - c. "**EULA**" is defined in the recitals to this Agreement.
 - d. "**Maintenance and Support Services**" means all professional services provided under this Agreement by Northwoods.
 - e. "**Covered Software**" or "**Software**" means (1) the current released version of the Commercial Off-The-Shelf ("COTS") computer software licensed by Licensee from Northwoods under the EULA, as detailed on Northwoods invoices that the Licensee has properly paid, and (2) at any time after Northwoods has delivered to Licensee a new version of such computer software as an Upgrade and Enhancement under this Agreement, the released version of such computer software last released prior to the current released version; provided that the Covered Software will not include any prior released version of such computer software that has been superseded for more than two (2) years (as determined from the date that Northwoods first announced publicly, through its web site or otherwise, the general release of the next later version of such computer software) by any later released version of such computer software.
 - f. "**Upgrades and Enhancements**" means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software that Northwoods commercially releases to its end users generally during the term of this Agreement to correct deficiencies or enhance the capabilities of the Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate product offerings, new modules, re-platformed Software, new business process consulting, workflow changes or new functionality.
2. **MAINTENANCE AND SUPPORT SERVICES.**
 - a. **Generally.** Northwoods shall: (1) use its commercially reasonable efforts to correct any properly reported Error(s) in the Software that are confirmed by Northwoods, in the exercise of its commercially reasonable judgment; (2) use its commercially reasonable efforts to correct any properly reported Error(s) (non-conformity to functional specifications mutually agreed upon by Northwoods and Licensee) in any configurations of the Software that are created by Northwoods or any integrations of the Software with other applications, software or hardware that are configured or created by Northwoods, which are confirmed by Northwoods, in the exercise of its commercially reasonable judgment; and (3) upon the request of Licensee, provide technical support and assistance and advice related to the operation and use of the Software by Licensee, or any problems with any of the foregoing. Northwoods shall undertake to confirm any reported defect(s) described in clause 2 above promptly after receipt of proper notice from Licensee in accordance with Northwoods' current defect reporting procedures. Northwoods shall perform services in an effort to correct confirmed Errors in the Software or in configurations or integrations created by Northwoods promptly after making such confirmation. Maintenance and Support Services generally will be available during the hours of 8:00 a.m. to 8:00 p.m., Eastern Time, Monday through Friday, excluding holidays, or as otherwise provided by Northwoods to its end users purchasing continuing Maintenance and Support Services in the normal course of its business, either by telephone or through a remote control connection to the end-user client or server computer, or both. Licensee acknowledges and agrees that Northwoods requires on-line access to the Software installed on Licensee's systems in order for Northwoods to provide Maintenance and Support Services hereunder. Accordingly, Licensee shall install and maintain, at Licensee's sole cost and expense, properly functioning and appropriate industry standard communications software approved by Northwoods; and Licensee shall establish and maintain, at Licensee's sole cost and expense, an adequate

secure or dedicated connection with Northwoods to facilitate Northwoods' remote Maintenance and Support Services.

- b. **On-Site Services.** Upon the reasonable request of Licensee, and submission of a purchase order for such services agreeing to pay for such services on a time and materials basis or as covered by an onsite maintenance services agreement in accordance with Section 5(a)(4), Northwoods may provide on-site Maintenance and Support Services at Licensee's facilities in connection with the correction of any Error(s) involving the Software that is not functioning in a production environment.
- c. **Exclusions.** Northwoods is not responsible for providing, or obligated to provide, Maintenance and Support Services or Upgrades and Enhancements under this Agreement: (i) in connection with any Errors or problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the Software, including any configuration of the Software that was not undertaken by or authorized in writing in advance by Northwoods; (ii) in connection with any Error if Northwoods has previously provided corrections for such Error, which correction Licensee chose not to implement; (iii) in connection with any Errors or problems that have been caused by defects, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than third party software bundled with the Software by Northwoods), hardware or any system or networking utilized by Licensee; (iv) if the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; or (v) if any party other than Northwoods has provided any services in the nature of Maintenance and Support Services to Licensee with respect to the Software.
3. **UPGRADES AND ENHANCEMENTS.** Northwoods will provide to Licensee, according to Northwoods' then current policies, all Upgrades and Enhancements to the Software released by Northwoods during the term of this Agreement. Northwoods will use its best efforts to remotely install on behalf of Licensee any such Upgrades and Enhancements. Licensee acknowledges and agrees that Northwoods has the right, at any time, to change the specifications and operating characteristics of the Software, and Northwoods' policies respecting Upgrades and Enhancements and the release thereof to end users. Any Upgrades and Enhancements to the Software and Documentation shall remain proprietary to Northwoods and/or its suppliers, shall be the sole and exclusive property of Northwoods and/or its suppliers, and shall be subject to all of the restrictions, limitations and protections of the EULA. All applicable rights to patents, copyrights, trademarks, other intellectual property rights, applications for any of the foregoing, and/or trade secrets in the Software, Documentation, and any Upgrades and Enhancements are and shall remain the exclusive property of Northwoods and/or its suppliers.
4. **LICENSEE'S RESPONSIBILITIES.**
 - a. **Operation of the Software.** Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the Software, including but not limited to providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Licensee is solely responsible for its data, its database, and for maintaining suitable backups of the data and database to prevent data loss in the event of any hardware or software malfunction. Northwoods shall have no responsibility or liability for data loss regardless of the reasons for said loss. Northwoods shall have no responsibility or liability for Licensee's selection or use of the Software or any hardware, third party software or systems.
 - b. **Licensee's Implementation of Error Corrections and Upgrades and Enhancements.** In order to maintain the integrity and proper operation of the Software, Licensee agrees to implement, in the manner instructed by Northwoods, all Error corrections and Upgrades and Enhancements. Licensee's failure to implement any Error corrections or Upgrades and Enhancements of the Software as provided in this Section 4(b) shall relieve Northwoods of any responsibility or liability whatsoever for any failure or malfunction of the Software, as modified by a subsequent Error correction or Upgrade and Enhancement, but in no such event shall Licensee be relieved of the responsibility for the payment of fees and charges otherwise properly invoiced during the term hereof.
 - c. **Technical Point of Contact.** Licensee agrees to provide a "Technical Point of Contact" ("TPOC") responsible for the administration, supervision, management, and control of the Covered Software. Licensee also agrees that all Covered Software support incidents raised by Licensee's personnel will be reported to the TPOC, who will provide the initial research, investigation and troubleshooting into the support incident. In the event the support incident can be resolved without Northwoods, the TPOC will provide the support resolution to Licensee personnel. If, after initial research and investigation into a support question, the TPOC determines there is an Error or Problem with the Covered Software, the TPOC will report the Error or Problem to Northwoods. Licensee agrees that all communications regarding Covered Software Errors and Problems will be between the TPOC and Northwoods.
 - d. **Notice and Documentation of Errors.** Licensee shall give prompt notice of any Errors in the Software discovered by Licensee, or otherwise brought to the attention of Licensee, in accordance with Northwoods' then current defect reporting procedures. Proper notice may include, without limitation, prompt telephonic or written notice to Northwoods of any alleged Error. If Northwoods requests, Licensee agrees to provide written documentation of Errors to substantiate them and to assist Northwoods in the detection and correction of said Errors.
 - e. **Access to Premises and Systems.** Licensee shall provide reasonable access to and use of Licensee's premises, computer hardware, peripherals, Software and other software as

Northwoods deems necessary to diagnose and correct any Errors or to otherwise provide Maintenance and Support Services. In addition, Licensee acknowledges and agrees that a third party service provider may be retained by Northwoods to provide Error corrections or other Maintenance and Support Services directly to Licensee and, accordingly, Licensee shall provide the same access directly to such service provider. Such right of access and use shall be provided at no cost or charge to Northwoods or the third party service provider.

5. FEES, PAYMENTS, CURRENCY AND TAXES.

a. **Annual Maintenance Fees.** Licensee shall pay to Northwoods annual maintenance fees in the amounts invoiced by Northwoods.

1) **Initial Software.** The invoice that will be provided pursuant to this Agreement shall set forth the aggregate invoice amounts for initial annual maintenance fees for each Software module initially licensed, and for all Software modules initially licensed in the aggregate. Licensee shall be required to submit a purchase order for this Agreement, in the amount of the initial annual maintenance fees due hereunder, simultaneously with Licensee's submission of its purchase order for the license of the Software under the EULA.

2) **Additional Software.** Northwoods shall invoice Licensee for annual maintenance fees for all Software modules that Licensee additionally licenses under the EULA promptly upon acceptance of Licensee's purchase order for the purchase of Maintenance and Support Services for such Software.

3) **Renewal Periods.** Northwoods shall invoice Licensee for annual maintenance fees for renewal terms at least sixty (60) days prior to the end of the then-current term.

4) **Time and Materials Charges.** Notwithstanding anything to the contrary, if Licensee requests: (1) Maintenance and Support Services that Northwoods is not obligated to provide because of the provisions of Section 2(c), and Northwoods agrees to provide such requested Services notwithstanding the provisions of Section 2(c); (2) on-site Maintenance and Support Services in accordance with Section 2(b) (unless covered under an Onsite Maintenance Services Agreement); or (3) any other services in the nature of Maintenance and Support Services that Northwoods is not obligated to provide, or is not obligated to provide in the manner requested, and Northwoods agrees to provide the requested Maintenance and Support Services, then Licensee agrees that such Maintenance and Support Services shall not be covered by the annual maintenance fees under Section 5(a). Licensee agrees to pay for such Maintenance and Support Services at Northwoods' standard time and materials charges payable by end users who have not purchased a continuing Onsite Maintenance Services Agreement from Northwoods. Northwoods shall invoice Licensee for all time and materials charges hereunder.

b. **Incidental Costs and Expenses.** Licensee shall be responsible for all incidental costs and expenses incurred by Northwoods in connection with the performance of this Agreement. Examples of incidental costs and expenses include, without limitation, all costs and expenses for tools, supplies, accessories, media and other expendables purchased or otherwise used by Northwoods, on-line connection charges and out-of-pocket expenses incurred at Licensee's request, including but not limited to travel, meals and lodging expenses for on-site Maintenance and Support Services. Northwoods shall invoice Licensee for all incidental costs and expenses hereunder.

c. Payments; Remedies.

1) **Annual Maintenance Fees.** Licensee shall pay all invoices for annual maintenance fees in full net thirty (30) days from the date of invoice.

2) **Other Payments.** Licensee shall pay all other invoices hereunder in full net thirty (30) days from the date of invoice.

3) **Remedies.** All past due amounts shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum lawful rate) from the date due through the date that such past due amounts and such accrued interest are paid in full. In the event of any default by Licensee in the payment of any amounts due hereunder, which default continues un-remedied for at least ten (10) calendar days after the due date of such payment, Northwoods shall have the right to cease to provide any Maintenance and Support Services and Upgrades and Enhancements to Licensee unless and until such default, and any and all other defaults by Licensee hereunder, have been cured.

4) **U.S. Dollars.** All payments by Licensee to Northwoods shall be made in U.S. dollars.

d. **Taxes and Governmental Charges.** In addition to any and all other payments required to be made by Licensee hereunder, Licensee shall pay all taxes and governmental charges, foreign, federal, state, local or otherwise (other than income or franchise taxes of Northwoods), however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, including but not limited to sales and use taxes, excise taxes and customs duties or charges. Licensee agrees to make any and all required tax payments directly to the appropriate taxing authority.

6. LIMITED WARRANTY.

a. **Limited Warranty of Services.** Northwoods warrants that the Maintenance and Support Services shall be performed in a good and workmanlike manner and substantially according to industry standards. In order to assert any claim that any Maintenance and Support Services fail to conform to this limited warranty, Licensee must notify Northwoods in writing of such claim within thirty (30) days after the date the alleged non-conforming Services are completed. If, after such timely notice from Licensee, the Maintenance and Support Services in question are determined not to conform to this limited warranty, Northwoods' sole obligation, and Licensee's sole remedy, shall be for

Northwoods to use commercially reasonable efforts to re-perform the nonconforming Services in an attempt to correct the nonconformity. If Northwoods is unable to correct such nonconformity after a reasonable period of time, Licensee's sole and exclusive remedy shall be termination of this Agreement in accordance with Section 8(b)(3)(B). This warranty specifically excludes non-performance issues caused as a result of any circumstances described in Section 2(c) or (d), incorrect data or incorrect procedures used or provided by Licensee or a third party or failure of Licensee to perform and fulfill its obligations under this Agreement or the EULA.

b. **No Warranty of Upgrades and Enhancements.** The EULA shall govern any limited warranty or disclaimer relating to Upgrades and Enhancements of the Software provided to Licensee under this Agreement, and no warranty is given under this Agreement with respect to Upgrades and Enhancements.

c. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6(a), NORTHWOODS MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY MAINTENANCE AND SUPPORT SERVICES, ANY SOFTWARE OR ANY UPGRADES AND ENHANCEMENTS PROVIDED UNDER THIS AGREEMENT. NORTHWOODS DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. NORTHWOODS DOES NOT WARRANT THAT ANY MAINTENANCE AND SUPPORT SERVICES, SOFTWARE OR UPGRADES AND ENHANCEMENTS PROVIDED WILL SATISFY LICENSEE'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE OR UPGRADES AND ENHANCEMENTS WILL BE UNINTERRUPTED. NORTHWOODS DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.

7. **LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL NORTHWOODS' AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNTS PAID BY LICENSEE TO NORTHWOODS UNDER THIS AGREEMENT DURING THE CURRENT TERM OF THIS AGREEMENT. IN NO EVENT SHALL NORTHWOODS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION DAMAGES OR EXPENSES, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES RESULTING FROM ERASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF NORTHWOODS HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES.

8. TERM, RENEWAL AND TERMINATION.

a. **Term.** Subject to the early termination provisions of Section 8(b), the initial term of this Agreement (the "Initial Term") shall commence on the day that Northwoods issues to Licensee license codes for the Software modules licensed by Licensee under the EULA and shall expire on the first anniversary of such date. Except as otherwise provided in Section 8(c)(3) below, the Agreement will automatically renew for consecutive one (1) year terms upon the payment by Licensee of the next year's Software Maintenance fee.

b. Early Termination.

1) **Automatic.** This Agreement shall terminate automatically, without any other or further action on the part of either of the parties, immediately upon any termination of the EULA.

2) **By Northwoods for Cause.** Northwoods shall be entitled to give written notice to Licensee of any breach by Licensee or other failure by Licensee to comply with any material term or condition of the EULA or this Agreement, specifying the nature of such breach or non-compliance and requiring Licensee to cure the breach or non-compliance. If Licensee has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the breach or non-compliance within (A) in the case of non-payment, any breach of Section 1 of the EULA, or any breach of Section 4 of this Agreement, ten (10) calendar days after receipt of such written notice, or (B) in the case of any other breach or non-compliance, twenty (20) business days after receipt of such written notice, Northwoods shall be entitled, in addition to any other rights it may have hereunder, or otherwise at law or in equity, to immediately terminate this Agreement.

3) By Licensee.

A) **For Convenience.** Licensee may terminate this Agreement at any time, for any reason, upon not less than sixty (60) days advance written notice to Northwoods.

B) **For Cause.** Licensee shall be entitled to give written notice to Northwoods of any breach by Northwoods or other failure by Northwoods to comply with any material term or condition of this Agreement, specifying the nature of such breach or non-compliance and requiring Northwoods to cure the breach or non-compliance. If Northwoods has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the breach or non-compliance within twenty (20) business days after receipt of written notice, Licensee shall be entitled, in addition to any other rights it may have under this Agreement, or otherwise at law or in equity, to immediately terminate this Agreement; and thereafter, so long as Licensee has complied in all material respects with its obligations under the EULA and this Agreement, and is current on all payment obligations under the EULA and this Agreement, Licensee shall be entitled to a refund from Northwoods of the "unused portion of the annual

maintenance fees" for the then-current term of this Agreement. For these purposes, the "unused portion of the annual maintenance fees" shall mean that portion of the annual maintenance fees paid by Licensee with respect to the term of this Agreement during which such termination of this Agreement is effective, equal to the total of such annual maintenance fees multiplied by a fraction, the numerator of which shall be the number of calendar months during the then-current term of this Agreement that remain until the end of such then-current term, commencing with the calendar month after the calendar month in which such termination is effective, and the denominator of which shall be the total number of calendar months in such then-current term determined without regard to such termination.

C) **Non-Renewal.** Licensee may elect not to renew this Agreement at the end of the then-current term of this Agreement by written notice to Northwoods on or prior to the date payment is due under Section 5(c)(1) of Northwoods' invoice for annual maintenance fees for the next succeeding renewal term of this Agreement.

4) **By Either Party in Accordance with Section 9.** Either party may terminate this Agreement in accordance with the procedures set forth in Section 9.

c. **Effect of Termination.**

1) **Payments.** Notwithstanding any termination of this Agreement, Licensee shall be obligated to pay Northwoods for (A) all Maintenance and Support Services provided on a time and materials basis in accordance with this Agreement at any time on or prior to the effective date of termination; (B) all annual maintenance fees due with respect to any period commencing prior to the effective date of termination; and (C) all incidental costs and expenses incurred by Northwoods at any time on or prior to the effective date of termination. All such payments shall be made in accordance with Section 5, which shall survive any such termination for these purposes.

2) **Survival of Obligations.** The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either party existing under the Agreement at the time of termination. The provisions of this Agreement which by their nature extend beyond the termination of the Agreement will survive and remain in effect until all obligations are satisfied, including, but not limited to, Section 3 (as it relates to title and ownership), Section 5(d), Section 6(c), Section 7, Section 8, Section 10 and Section 11. No action arising out of this Agreement, regardless of the form of action, may be brought by Licensee more than one (1) year after the date the action accrued.

3) **Reinstatement of Agreement.** In the event of the termination of this Agreement by Licensee under Section 8(b)(3)(C) (Non-Renewal), Licensee may at any time after the effective date of such termination elect to reinstate this Agreement in accordance with this Section 8(c)(3). To obtain reinstatement, Licensee shall deliver written notice to such effect to Northwoods, together with payment in full of: (A) annual maintenance fees, based upon Northwoods' Annual Maintenance Fee Schedule in effect as of the time of such reinstatement, for all periods (as determined under Section 8(a) as if the Agreement had not been terminated under Section 8(b)(3)(C)) that have elapsed from the effective date of such termination through the effective date of such reinstatement; and (B) an amount equal to one hundred ten percent (110%) of the annual maintenance fee, based upon Northwoods' Annual Maintenance Fee Schedule in effect as of the time of such reinstatement, for the renewal term of this Agreement commencing on the effective date of such reinstatement. Any reinstatement under this Section 8(c)(3) shall be effective as of the first business day after Northwoods has received the notice of reinstatement and all payments required to be made hereunder in connection with such reinstatement. The renewal term commencing with the effective date of this Agreement shall be for a period ending on the first annual anniversary of such effective date; and thereafter the term of this Agreement shall be renewed: (i) at the end of such first renewal term, for a period of one year; and (ii) thereafter, annually on a year by year basis. EXCEPT AS EXPRESSLY PROVIDED BY THIS SECTION 8(c)(3), LICENSEE SHALL HAVE NO RIGHT TO REINSTATE THIS AGREEMENT FOLLOWING THE TERMINATION THEREOF FOR ANY REASON.

9. **FORCE MAJEURE.** No failure, delay or default in performance of any obligation of a party to this Agreement (except the payment of money) shall constitute a default or breach to the extent that such failure to perform, delay or default arises out of a cause, existing or future, beyond the control (including, but not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; or the act, negligence or default of the other party) and without negligence or willful misconduct of the party otherwise chargeable with failure, delay or default. Either party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other party prompt notice in writing of the facts which constitute such cause; and, when the cause ceases to exist, give prompt notice of that fact to the other party. This Section 9 shall in no way limit the right of either party to make any claim against third parties for any damages suffered due to said causes. If any performance date by a party under this Agreement is postponed or extended pursuant to this Section 9 for longer than ninety (90) calendar days, the other party, by written notice given during the postponement or extension, and at least thirty (30) days prior to the effective date of termination, may terminate this Agreement.

10. **NOTICES.** Unless otherwise agreed to by the parties in a writing signed by both parties, all notices required under this Agreement shall be deemed effective: (a) when sent and made in writing by either (1)(A) registered mail, (B) certified mail, return receipt requested, or (C) overnight courier, in any such case addressed and sent to the address set forth herein and to the attention of the person executing this Agreement on behalf of that party or that person's successor, or to such other address or such other person as the party entitled to receive such notice shall have notified the party sending such notice of; or (2) facsimile transmission appropriately directed to the attention of the person identified as the appropriate recipient and at the appropriate address under (a)(1) above, with a copy following by one of the other methods of notice under (a)(1) above; or (b) when personally delivered and made in writing to the person and address identified as appropriate under (a)(1) above.

11. **GENERAL PROVISIONS.**

a. **Jurisdiction.** This Agreement and any claim, action, suit, proceeding, or dispute arising out of this Agreement shall in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of Ohio without regard to its conflicts of laws provisions. Venue and jurisdiction for any action, suit, or proceeding arising out of this Agreement shall vest exclusively in the federal or state courts of general jurisdiction in Cuyahoga County, Ohio.

b. **Interpretation.** Headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. All defined terms in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of "hereunder," "herein," "hereby" and similar terms refer to this Agreement.

c. **Waiver.** No waiver of any right or remedy on one occasion by either party shall be deemed a waiver of such right or remedy on any other occasion.

d. **Integration.** This Agreement, including any and all exhibits and schedules referred to herein or therein set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior discussions between them on the same subject matter. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter other than as expressly provided in this Agreement. This Agreement may only be modified by a written document signed by duly authorized representatives of the parties. This Agreement shall not be supplemented or modified by any course of performance, course of dealing or trade usage. Variance from or addition to the terms and conditions of this Agreement in any purchase order or other written notification or documentation, from Licensee or otherwise, will be of no effect unless expressly agreed to in writing by both parties. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document.

e. **Binding Agreement and Assignment.** This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns. Northwoods may assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity. Licensee may not assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity without the prior written consent of Northwoods. Any change in control of Licensee resulting from an acquisition, merger or otherwise shall constitute an assignment under the terms of this provision. Any assignment made without compliance with the provisions of this Section 11(e) shall be null and void and of no force or effect.

f. **Severability.** In the event that any term or provision of this Agreement is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, the court considering the same will have the power and is hereby authorized and directed to limit such scope, duration or area of applicability, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited. Subject to the foregoing sentence, in the event any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this Agreement.

g. **Independent Contractor.** The parties acknowledge that Northwoods is an independent contractor and that it will be responsible for its obligations as employer for those individuals providing the Maintenance and Support Services.

h. **Export.** Licensee agrees to comply fully with all relevant regulations of the U.S. Department of Commerce and all U.S. export control laws, including but not limited to the U.S. Export Administration Act, to assure that the Upgrades and Enhancements are not exported in violation of United States law.

i. **Injunctive Relief.** The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to confidential information and intellectual property rights will not be adequate for Northwoods' protection and, accordingly, Northwoods shall have the right to obtain, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement.