

**Contract**  
**Maintenance and Support Agreement**

**By and Between**

**Cuyahoga County, Ohio**

**and**

**Allen Systems Group, Inc.**

THIS AGREEMENT (the "Contract") is made and entered into this 11<sup>th</sup> day of July, 2012, by and between Cuyahoga County, Ohio (the "County"), on behalf of the Cuyahoga County Information Services Center and **Allen Systems Group, Inc.**, ("ASG"), a Florida corporation having principal place of business at, 1333 third Avenue South, Naples, FL 34102. (the "Provider")

WHEREAS, the County has a present need for support and maintenance of PRO / JCL Software; and

WHEREAS, ASG, is a sole supplier and thus sole source of support services for PRO / JCL Software; and

WHEREAS, the County desires to avail itself of the support services for PRO / JCL Software and ASG is willing to provide such support to the County all upon the terms and conditions set forth herein.

NOW, THEREFORE, in the consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ASG and the County agree as follows:

**ARTICLE I- AGREEMENT AND TERM**

- 1.1 **Scope of Agreement.** During the term of this Contract, ASG shall provide the County with annual maintenance for ASG-PRO/JCL under this agreement as listed on Schedule A – Invoice #A1 54711. In the event that the terms and conditions of Schedule A and this Contract are not in agreement, the County and ASG hereby expressly agree that the terms and conditions of this Contract will be controlling and will take precedence over Schedule A.
- 1.2 **Term.** The term of this Contract shall commence as of February 11, 2012; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for three years from the date of commencement. (2/11/12 – 2/10/15)

- 1.3 Cost. This contract shall be in an amount not to exceed Twenty Five Thousand Three Hundred Nine Dollars and Forty Six Cents. **(\$25,309.46)**

## ARTICLE II – ADDITIONAL MAINTENANCE SERVICE

- 2.1 At the request of the County, and with the consent of ASG, ASG may also provide technical, operational or other assistance on a consulting basis to the County in excess of the scope of service included but such services would require an amendment to the annual Support Services Agreement between the County and ASG under a separate and existing contract.

## ARTICLE III – PAYMENT AND INVOICING

- 3.1 Payment. During the term of this contract, the County shall pay yearly upon receipt of said invoice from ASG and approval of the County Chief Executive.
- 3.2 Invoicing. ASG shall invoice the County for the maintenance and support agreement upon execution of this agreement. ASG shall submit original invoice(s) to the following address:

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

## ARTICLE IV – INDEMNITIES AND LIABILITIES

- 4.1 Subcontracting. This Contract was awarded to ASG based upon ASG's unique license products, and no task required to be performed under this contract by ASG shall be subcontracted to third parties without the express written consent of Cuyahoga County.
- 4.2 Indemnification. ASG agrees to release, indemnify, and to hold harmless the County, and any and all officers, agents, servants, or employees thereof, from any and all responsibility or liability for its gross negligence or willful misconduct under this contract.

## ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

- 5.1 Dispute Resolution.
- a) In the event of any dispute or disagreement between ASG and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by ASG or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the

purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

5.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. ASG, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.3 Termination for Financial Instability. In the event that ASG becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against ASG of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

5.4 Appropriation of Funds: Notwithstanding anything in the Contract to the contrary, the County's obligation for payment of the annual payments under this Contract shall be contingent upon the availability of appropriated funds from which payment for contract purposes can be made. In the event sufficient funding is not appropriated, this Contract shall be terminated as of the anniversary date of the applicable annual term. The County agrees to use its best efforts to obtain sufficient funds to satisfy the payment obligations set forth herein by taking all necessary action to effect the appropriation of such funds.

#### ARTICLE V – MISCELLANEOUS

6.1 By entering into this Contract I agree on behalf of the ASG, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring County signature may be executed by electronic means, and that the electronic signatures affixed by the county to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the Document. I also agree on behalf of the aforementioned entities and persons, to be bound by the provisions of Chapters 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 for and correctness.

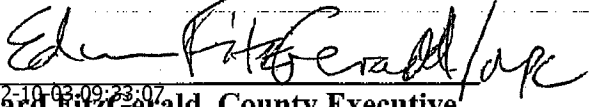
IN WITNESS WHEREOF, THE County and ASG have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

**ALLEN SYSTEMS GROUP, INC.**

**CUYAHOGA COUNTY, OHIO**

Edward FitzGerald, County Executive

BY:   
Linda J. Stephenson, Senior Director  
of Contracting

BY:   
Edward FitzGerald, County Executive

2012-10-03 09:23:07



## SCHEDULE A

May 31, 2012

Dear ASG Customer,

Enclosed you will find an invoice for the annual renewal of maintenance and support services related to your ASG software. If you do not wish to take advantage of the Special Pricing Options below, please pay this invoice and no further action is needed. Hereafter, you will continue to be invoiced according to the terms of your existing Software License Agreement ("Agreement").

### **Special Pricing Options Related to Future Maintenance and Support Services**

For a limited time, ASG is offering the following Special Pricing Options related to future maintenance and support services fees:

Option 1. Commit to maintenance and support services for an additional two (2) years and future price increases will be limited to no more than three percent (3%) annually over the next two (2) years, or (2/11/2013-2/10/2014 = \$8,434.03, 2/11/2014-2/10/2015 = \$8,687.05)

Option 2. Pay for an additional two (2) years of maintenance and support services now and lock in your current annual maintenance fee. (\$8,434.03)

*3 years = \$25,309.46.*

To take advantage of this special offer, simply choose your preferred option, sign in the space provided below, and return this letter to ASG within 30 days of the due date of the attached invoice. This letter will form a part of the Agreement and in the event of a conflict between the terms of this letter and the terms of your existing Agreement, the terms of this letter will prevail for the duration of this special offer. All other terms of your Agreement will remain unchanged.

This offer does not apply to increases in CPU or MIPS capacity and only the products referenced on the enclosed invoice are eligible. The fee for maintenance and support services subsequent to the termination of this offer will be calculated in accordance with the terms and conditions of your Agreement.

Should you have any questions, please do not hesitate to call us at the number indicated below.

Regards,

Sarah Perdomo  
Customer Financial Service Representative  
Telephone: (239) 435-3616  
Fax: (239) 213-3734  
E-mail: sarah.perdomo@asg.com

Customer Name: \_\_\_\_\_

ASG Invoice #: \_\_\_\_\_

Products Covered: \_\_\_\_\_

Please circle

Option:

One

or

Two

The undersigned understands and agrees that a legal, valid and binding obligation is created as of the Effective Date by signing below. Accepted and agreed to:

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

Printed Name: \_\_\_\_\_

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

accepting three year pricing  
2/11/12 - 2/10/15 in the amount of  
\$ 25,309,46 pending contract  
approval of the Cuyahoga County  
Chief Executive. (See contract for  
ASC signing attached)