

CONTRACT
SOFTWARE MAINTENANCE AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

VERTIQ SOFTWARE, LLC

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 Cuyahoga County Medical Examiner and VertiQ Software, LLC ("Provider"), a California corporation with offices located at 135 E. Main Avenue, #150, Morgan Hill, CA 95037.

WHEREAS, the County has a present need for renewal of software maintenance service of Provider's Case Management System Software at the Cuyahoga County Medical Examiner; and

WHEREAS, Provider, as the Licensor of Case Management System Software, is the sole source that can provide maintenance service for the Case Management System Software; and

WHEREAS, the County desires to avail itself of software maintenance of Provider's Case Management System Software located at the Cuyahoga County Medical Examiner and Provider is willing to provide such service to the County all upon the terms and conditions set forth herein.

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

ARTICLE I – AGREEMENT AND TERM

- 1.1 **Scope of Agreement.** During the term of this Contract, Provider shall provide the County with all maintenance on the Case Management System Software as set forth in Schedule A – Invoice VQ081203 attached herein and incorporated by reference herein and the original VertiQ License and Maintenance Agreements that comprise the 2006 Contract encumbrance NO 0600636-01, 02 and incorporated by reference herein.
- 1.2 **Term.** The term of this Contract shall commence as of September 1, 2011; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of two years from commencement date. (9/1/12 – 8/31/14). The cost of this Contract shall not exceed **Eighteen-Thousand Dollars and Zero Cents (\$18,000.00).**

ARTICLE II – SCOPE OF WORK

- 2.1 Rendering of Services. Provider hereby agrees to render the services identified in Article 1.1 and Schedule A attached hereto and incorporated by reference herein at a total price which shall in no event exceed the amount of **Eighteen-Thousand Dollars and Zero Cents (\$18,000.00)**.

ARTICLE III – PAYMENT AND INVOICING

- 3.1 Payment. During the term of this contract, the County shall pay Provider for maintenance services upon receipt of said annual invoice. In no event shall total compensation under this Contract, including expenses, exceed **Eighteen-Thousand Dollars and Zero Cents (\$18,000.00)**.
- 3.2 Invoicing. Provider shall submit an original invoice(s), submitted annually to the County Medical Examiner's Office, at the address noted below, for all annual maintenance and software support to the following address:

Cuyahoga County Medical Examiner's Office
11001 Cedar Avenue
Cleveland, Ohio 44106

ARTICLE IV - INDEMNITIES AND LIABILITIES

- 4.1 Subcontracting. This Contract was awarded to Provider based upon Provider's unique qualifications and skills, and no task required to be performed under this contract by Provider shall be subcontracted to third parties without the express written consent of Cuyahoga County.
- 4.2 Indemnification. Provider shall agree to release, indemnify and to hold harmless Cuyahoga County, and any and all officers, agents, servants or employees thereof, from any and all responsibility or liability for Provider's gross negligence or willful misconduct under this contract. Provider acknowledges that as a political subdivision, the County is prohibited by law from entering into an indemnification agreement and that no provision of this Contract or any other contract or agreement between Provider and the County may be interpreted to obligate the County to indemnify Provider or any other party.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

- 5.1 Dispute Resolution.
- a) In the event of any dispute or disagreement between Provider and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Provider 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. Provider, 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 Provider 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 Provider of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE VI – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

6.1. By entering into this Contract, Provider, 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 Provider 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 – 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:

Cuyahoga County Medical Examiner's Office
11001 Cedar Avenue
Cleveland, Ohio 44106

In the case of the Provider:

VertiQ Software, LLC
135 E. Main Avenue, #150
Morgan Hill, California 95037

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. Provider 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 Provider 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 Provider also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

7.8 Assignment. Provider 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 Cuyahoga County by resolution.

7.9 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. Upon approval by the 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.

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.

7.11 Confidentiality. The parties acknowledge and agree that during the term of this Agreement, VertiQ Software, LLC shall act exclusively in the best interest of the Cuyahoga County Medical Examiner's Office. VertiQ Software, LLC acknowledges that they may have access to information which is confidential and proprietary in nature. VertiQ Software, LLC expressly agrees not to use or disclose such information in any manner or for any purpose at any time during or after the effective term of this Agreement except as required by law or as required during the course of VertiQ Software, LLC work for the Cuyahoga County Medical Examiner's Office, unless authorized in writing by the Medical Examiner.

7.12 Applicable County Ordinances. All County contracts, including this Contract, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

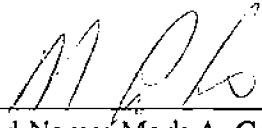
7.13 Public Records. All parties hereto acknowledge that County is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.

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 Provider have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

VertiQ Software, LLC

Cuyahoga County, Ohio

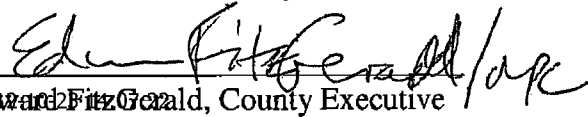
BY: 

Printed Name: Mark A. Conrado

Title: CFO



Edward FitzGerald, County Executive

BY: 

Edward FitzGerald, County Executive

**VERTIQ SOFTWARE LLC**

135 E. Main Avenue, #150
Morgan Hill, CA 95037
(408) 782-7470 Fax (408) 782-0850
[REDACTED]

*Schedule A***INVOICE****VQ081203**

To: Cuyahoga County Coroner
ATTN: TONI M. WLOSOWICZ
11001 Cedar Avenue
Cleveland, OH 44106

Customer	Invoice Date	Terms	PO #
CUYAHOGA	8/1/2012	Net 30	0600636-01,02

Description	TOTAL
CME Software System Annual Maintenance for the period of September 01, 2012 - August 31, 2013	9,000.00
CME Software System Annual Maintenance for the period of September 01, 2013 - August 31, 2014	9,000.00

****Per Toni, asked to be billed for 2 years maintenance****

Remit To: P.O. Box 787
Morgan Hill, CA 95038

INVOICE TOTAL \$18,000.00