

**CONTRACT**  
**APPLICATION & SOFTWARE MAINTENANCE AGREEMENT**

by and between

**CUYAHOGA COUNTY, OHIO**  
**and**  
**SWORD SOLUTIONS INC.**

THIS AGREEMENT (the "Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the County of Cuyahoga, Ohio ("the County") on behalf of Employment & Family Services (EFS) and Sword Solutions Inc, a corporation with offices located at 14783 Boichot Road, Lansing Michigan, 48906.

WHEREAS, the County has a present need for Fraud Recovery and Overpayment System Tracking software support and maintenance service, and

WHEREAS, Sword Solutions Inc. software support and maintenance services are available as a sole source provider, and

WHEREAS, the County desires to avail itself of such services located at the Virgil E. Brown Building, Cleveland, OH and Sword Solutions Inc. is willing to provide such service to the County all upon the terms and conditions set forth herein, and further supplemented herein.

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

ARTICLE I – AGREEMENT AND TERM

- 1.1 Scope of Agreement. During the term of this Contract, Sword Solutions Inc. shall provide the County with all services necessary to maintain and support all Fraud Recovery and Overpayment Systems Tracking application software described and attached hereto as Schedule A and incorporated by reference herein.
  - 1.2 Term. The term of this Contract shall commence as of December 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. (12/1/2012 – 11/30/2013). The cost of this Contract shall not exceed One thousand three hundred and five dollars (\$1,305.00).
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## ARTICLE II – SCOPE OF WORK

- 2.1 Rendering of Services. The Sword Solutions Inc. hereby agrees to render Fraud Recovery and Overpayment System Tracking software and support services at a total price of One thousand, three hundred and five dollars. (\$1,305.00).
- 2.2 Record Audit Retention. Sword Solutions Inc 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 Sword Solutions Inc. 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 Sword Solutions Inc, for software support services as outlined in Schedule A attached hereto and incorporated by reference herein.
- 3.2 Invoicing. Sword Solutions Inc. shall invoice the County for support services. Sword Solutions Inc. shall submit original invoice(s) to the following address:

Employment & Family Services  
Management Information Services Division  
Attn: Nada Moyak  
1641 Payne Ave., RM 570  
Cleveland, Ohio 44114  
(216) 987 - 8958

## ARTICLE IV - DISPUTE RESOLUTION AND TERMINATION

- 4.1 Dispute Resolution.
- a) In the event of any dispute or disagreement between Sword Solutions Inc. and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Sword Solutions Inc. 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. Sword Solutions Inc., 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. Sword Solutions Inc. agrees to release, and to hold harmless the County and any and all officers, agents, servants or employees thereof, from all responsibility or liability for the negligence of failure of Sword Solutions Inc. to perform its duties and obligations under this contract.

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

- 6.1 Change Order. Any change order or amendment requiring or permitting an increase beyond the not to exceed price limit in Section 2.1 of this contract, shall require an additional appropriation of funds; approval of the Technical Advisory Committee Board; and

- 6.1 approval of the County. Sword Solutions Inc. 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  
Nada Moyak  
1641 Payne Ave., RM 570  
Cleveland, Ohio 44114  
(216) 987-8958.

In the case of Sword Solutions Inc.:

Annette Alverson  
Sword Solutions Inc.  
14783 Boichot Road  
Lansing, Michigan, 48906  
(517-487--8943)

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. Sword Solutions Inc. shall be and remain an independent Sword Solutions Inc. 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 Sword Solutions Inc. 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 Sword Solutions Inc. also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.
- 7.8 Assignment. Sword Solutions Inc. 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 Sword Solutions Inc. prior to the execution of this agreement by the County, the same will be provided at Sword Solution's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the County. Upon approval by the County of this contract, however, any and all prior performance under this contract shall be deemed ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

- 7.10 Entire Agreement and Modification. This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, 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, Sword Solutions Inc., 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. Sword Solutions Inc. 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 Sword Solutions Inc. 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: 2012-12-03 14:50:23

Edward FitzGerald, County Executive

SWORD SOLUTIONS INC.

BY: 

DATE: 12/6/12

**P.O. Box 278  
DeWitt, MI 48820  
Ph: 517-487-8943**

**FRAUD RECOVERY AND OVERPAYMENT SYSTEM TRACKING  
END USER ANNUAL SUPPORT AND MAINTENANCE AGREEMENT**

**Licensee: Cuyahoga County Employment & Family Services**  
**Licensee Address: 1641 Payne Ave., Cleveland Ohio 44113 and**  
**includes all of the Cuyahoga County satellite offices**  
**License Number: CCJFS 0806**

This Fraud Recovery and Overpayment System Tracking END USER ANNUAL SUPPORT AND MAINTENANCE AGREEMENT is made between Cuyahoga County Employment & Family Services ("Licensee") and Sword Solutions, Inc. ("Sword").

**I. DEFINITIONS**

"Host Computer" refers to a computer controlled by Licensee at a particular Site Location with the capability of loading media containing Software. Licensee and Sword agree that Licensee's Host Computer is located at 1641 Payne Ave., Cleveland Ohio 44113.

"Annual Support and Maintenance Fees" refers to the sum of all fees payable by Licensee to Sword under Section 6 ("Annual Support and Maintenance Fees") of this Agreement.

"Site Location" refers to a physical location, usually associated with a single address, and includes the floors of a single building or adjoining buildings when linked together by a non-telephonic networking system. The Site Location of this Agreement is currently located at 1641 Payne Ave., Cleveland Ohio 44113 and includes all of the Cuyahoga County satellite offices.

"Software" refers to Sword's "Fraud Recovery and Overpayment System Tracking" software for the purpose of maintaining overpayments, fraudulent and non-fraudulent, related to this License and/or which Sword provides for use with Licensee's Host Computer(s) as well as any updates of the Licensed Software provided to Licensee by Sword.

## **II. CONTRACT PERIOD**

This Agreement will be effective from December 1, 2012, through November 30, 2013, unless otherwise terminated or extended by formal amendment.

## **III. CONTRACT SERVICES**

The total amount of this Agreement is One Thousand Three Hundred Five and No/100 Dollars (\$1,305.00).

In consideration of the price listed above and subject to the terms and conditions set forth in this Agreement, Sword agrees to perform the following Statement of Work described below:

- Provide phone and email support and any upgrades made to the system during the support period to Cuyahoga County. Enhancements are not included in the annual support and maintenance fee. Enhancements will be billed at Sword's current hourly rate.

## **IV. DELIVERY AND ACCEPTANCE**

Sword shall provide Licensee phone and email support and any required upgrades to its Fraud Recovery and Overpayment System Tracking software during the contract period. Licensee shall bear the agreed cost of installing Upgrades on its Host Computer(s). Licensee shall be deemed to have accepted an Upgrades thirty (30) days after the date of delivery unless Licensee, within such thirty (30) day period, both (i) provides Sword with a written notice of rejection of the Upgrade Software and (ii) returns all copies, including the original and all backup copies, to Sword.

## **V. BILLING AND PAYMENT**

Sword will invoice Licensee semi-annually for Annual Support and Maintenance fees thirty (30) days prior to the first annual anniversary date of its End User License and Services Agreement and each subsequent six (6) month period thereafter. The first End User Support and Maintenance Agreement period will be invoiced November 1, 2011, and will cover the period December 1, 2011 thru May 31, 2012. Annual Support and Maintenance invoices will be considered due and payable thirty (30) days from the invoice date.

## **VI. LICENSE ANNUAL SUPPORT AND MAINTENANCE FEES**

Licensee hereby agrees to pay Sword a total of One Thousand Three Hundred Five and No/100 Dollars (\$1,305.00) for annual support and maintenance in two equal amount payments of Six Hundred Fifty Two and 50/100 Dollars (\$652.50).

## **VII. TITLE**

Title to and ownership of the Licensed Software, and all copies thereof, shall at all times reside with Sword and its licensors.



## **VIII. GRANT OF LICENSE**

Sword granted to Licensee a perpetual, non-exclusive, and non-transferable right to the Licensed Software on Licensee's Host Computer(s) at the Site Locations(s) specified in Section I. Definition, of this Agreement. Licensee agreed to limit use of the Licensed Software to that number of Host Computer(s) for which Licensee has paid the License Fee. It is agreed by Sword that Licensee may use the F.R.O.S.T. software at satellite offices within the Agency for investigative purposes only.

## **IX. SCOPE OF LICENSE**

Licensee may make additional copies of the Software only in support of the use of the Licensed Software on Host Computer(s) at the Site Locations(s) identified in this Agreement. Such copies shall not be distributed to Host Computer(s) at other Site Locations without the prior written consent of Sword. Licensee must reproduce and include the copyright and proprietary notices of Sword on all copies of Licensed Software in its possession. Licensee may not modify or create derivative works based upon the Licensed Software.

In the event that Sword provides Licensee with a new version of the Licensed Software or authorizes Licensee to make additional copies of new versions of the Licensed Software to replace the Licensed Software hereunder, then such replacement Licensed Software and all copies thereof shall be covered by and subject to the terms and conditions of this Agreement. Copies of old versions of the Licensed Software shall continue to be subject to this Agreement until destroyed by Licensee or returned to Sword.

## **X. CONTINUING SUPPORT**

Sword provided continuing support for the Licensed Software to Licensee at no additional charge during the first year (12 months) of the End User License and Services Agreement (December 1, 2006 thru November 30, 2007). Licensee may elect to acquire continuing support on each anniversary date of the Agreement. Sword support is provided Monday through Friday, between the hours of 8:00 AM and 5:00 PM, ET except for Federal holidays. Sword's support number is 517.487.8943 and e-mail address is support@swordsolutions.com.

## **XI. RESTRICTIONS**

The Licensed Software, and its structure, sequence and organization are valuable proprietary assets of Sword and its licensors. Licensee hereby agrees:

- (a) to assure that anyone who is permitted access to the Licensed Software is made aware of and agrees to abide by the obligations imposed on Licensee under this License;
- (b) to not alter or remove any proprietary and/or copyright notices on or in the Software;
- (c) to not disassemble, decompile, reverse engineer or otherwise reduce the digitally encoded Licensed Software to a human readable form;
- (d) to not make unauthorized copies of all or any portions of the Software ; and,
- (e) to not, rent, sublicense, give or otherwise disclose, distribute or transfer to any third party any portion of the Licensed Software or copies thereof.

## **XII. LIMITED LIABILITY**

UNDER NO CIRCUMSTANCES SHALL SWORD BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE SOFTWARE OR THE USE OF OR INABILITY TO USE THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, LOST GOODWILL, LOST PROFITS, LOSS OF DATA OR SOFTWARE, WORK STOPPAGE OR IMPAIRMENT OF OTHER GOODS, AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED HEREIN, EXCEPT FOR LOSS OR DAMAGE CAUSED BY CRIMINAL ACTS, INTENTIONAL TORTS OR ACTS OR OMISSIONS WHICH BY FEDERAL OR STATE STATUTES RESULTS IN STRICT LIABILITY.

## **XIII. CONFIDENTIALITY**

Licensee will have access to certain information which Sword regards as confidential, including but not limited to: new product plans, marketing and development plans, customer pricing and financial information. Confidential information excludes any information which Licensee can document to Sword's reasonable satisfaction, (i) was independently developed by Licensee or a third party without breach of this Agreement, (ii) was in the public domain, or known to Licensee at the time Licensee had access to it, or (iii) becomes known to Licensee, without restriction, from a third party who has not violated similar non-disclosure obligations.

If Confidential Information is disclosed pursuant to the order of a governmental body, agency, or court, Licensee agrees to provide notice of such order and use reasonable best efforts to obtain a protective order or otherwise prevent public disclosure of such information. Licensee agrees that during and after the term of this Agreement, Licensee will not disclose to any third party any of Sword's confidential information without the prior written consent of Sword. Licensee agrees to disclose confidential information to Licensee's employees only as is reasonably necessary to permit Licensee to exercise its rights and satisfy obligations under this Agreement, and that Licensee will require employees to whom confidential information is disclosed to abide by the terms of this Section 13 ("Confidentiality").

## **XIV. LIABILITY**

A. All liability to third parties, for loss or damage as a result of claims, demands, costs, or judgments arising out of activities, to be carried out by the Licensee in the performance of this Agreement shall be the responsibility of Licensee, and not the responsibility of Sword, if the liability, loss, or damage is caused, by, or arises out of, the actions or failure to act on the part of the Licensee, or any elected or appointed officer, employee or agent of the Licensee, provided that nothing herein shall be construed as a waiver of any governmental immunity that has been provided to the Licensee or its officials, employees and agents by statute or court decisions.

B. All liability to third parties, for loss, or damage as a result of claims, demands, costs, or judgments arising out of activities, to be carried out by Sword in the performance of this Agreement, shall be the responsibility of Sword and not the responsibility of the Licensee if the liability, loss, or damage is

caused by, or arises out of, the action or failure to act on the part of Sword, or any Sword appointed officer, employee, or agent.

C. In the event that liability to third parties for loss or damage arises as a result of activities conducted jointly by the Licensee and Sword in fulfillment of their responsibilities under this Agreement, such liability, loss, or damage shall be borne by the Licensee and Sword in relation to each Party's responsibilities under these joint activities, provided that nothing herein shall be construed as a waiver of any governmental immunity by the Licensee or Sword or their officials, employees, students, volunteers, and agents, respectively, as provided by statute or court decision.

#### **XV. ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties.

#### **XVI. GOVERNING LAW AND SEVERABILITY**

This Agreement shall be governed by the laws of the State of Ohio, except for its conflicts of law rules. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed written, construed and enforced as so limited.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date shown below:

**Party Receiving Services:**

**Cuyahoga County Employment & Family Services**

By \_\_\_\_\_

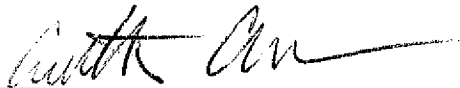
Printed Name: \_\_\_\_\_

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

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

**Party Contracting Services:**

**Sword Solutions, Inc.**

By  \_\_\_\_\_

Printed Name: Annette Alverson

Title: President

Date: 10/10/2012