

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

by and between

**CUYAHOGA COUNTY, OHIO**

and

**INTERNATIONAL BUSINESS MACHINES CORPORATION**

THIS AGREEMENT (the "Contract") is made and entered into this 1<sup>st</sup> day of January 2013, by and between Cuyahoga County, Ohio ("the County"), on behalf of the Cuyahoga County Information Services Center and International Business Machine Corporation ("IBM"), a New York Corporation with offices located at, 30 S. 17<sup>th</sup> St., Philadelphia, PA 19103 (the Provider").

WHEREAS, the County has a present need for renewal of software maintenance service of IBM's Z/OS Software Products, at the Information Services Center; and

WHEREAS, IBM as an authorized service provider for maintenance and support service of IBM Software Products to the County as a State of Ohio DAS State Term Schedule Number 534133; and

WHEREAS, the County desires to avail itself of maintenance and support services of its IBM Software Products and IBM is willing to provide such maintenance and support 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, IBM and the County agree as follows:

**ARTICLE I – AGREEMENT AND TERM**

1.1 **Scope of Agreement.** During the term of this Contract, IBM shall provide maintenance and support of IBM Z/OS Software Products as listed on Schedule A attached, to be contracted under the State of Ohio – DAS State of Ohio Term Schedule Number 534133. In the event that a discrepancy exists between the terms of Schedule A and this agreement, the terms of this agreement will be controlling and binding.

1.2 **Term.** The term of this Contract shall commence as of January 1, 2013 and unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for one year from the date of commencement (1/1/13 – 12/31/13). This contract shall be in an amount not to exceed Four Hundred Ninety Seven Thousand One Hundred Twenty Eight Dollars and Zero Cents (\$497,128.00).

## ARTICLE II – SCOPE OF WORK

2.1 Rendering of Services. IBM hereby agrees to render the Maintenance and Support Services as outlined in Schedule A, at a total price which shall in no event exceed the amount of not to exceed Four Hundred Ninety Seven Thousand One Hundred Twenty Eight Dollars and Zero Cents (\$497,128.00).

## ARTICLE III – PAYMENT AND INVOICING

3.1 Payment. During the term of this contract, the County shall pay the costs associated with the Maintenance and Support Agreement quarterly upon receipt of said invoice from IBM and approval of the Cuyahoga County Chief Executive.

3.2 Invoicing. IBM shall invoice the County for the Maintenance and Support Agreement upon execution of this agreement. IBM 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 Indemnities and Warranties. All provisions relating to indemnities and warranties contained in the State Master Maintenance Agreement shall inure to the benefit of Cuyahoga County.

## ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

### 5.1 Dispute Resolution.

a) In the event of any dispute or disagreement between IBM and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by IBM 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. IBM, 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 IBM 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 IBM 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 – MISCELLANEOUS**

**6.1 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 Information Services Center  
ATTN: Michael Young  
1255 Euclid Avenue, 4th Floor  
Cleveland, Ohio 44115

In the case of IBM :

International Business Machine Corporation  
Atten: Matthew Rosseau  
30 S. 17<sup>th</sup> St.  
Philadelphia, PA 19103

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.

6.2 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.

6.3 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.

6.4 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.

6.5 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

6.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.

6.7 Social Security Act. IBM shall be and remain an independent IBM 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 IBM 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 IBM also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

6.8 Assignment. Neither party shall 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 other party.

6.9 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the Cuyahoga County Executive before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by IBM prior to the execution of this agreement by the Cuyahoga County, the same will be provided at IBM 's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the Cuyahoga County. Upon approval by the County Executive 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.

6.10 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.

6.11 Force Majeure IBM shall not be liable for any failure to perform, or delay in performing Service for County to the extent that such failure or delay results from causes beyond its reasonable control including, without any limitation, any act of God, war, revolution, riot, civil commotion, labor strike or any applicable governmental or judicial law or regulation, order or decree.

## ARTICLE VII – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

7.1. Electronic Signature. By entering into this Contract, IBM, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by means electronic 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 original document.

7.2 Compliance with O.R.C IBM 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.

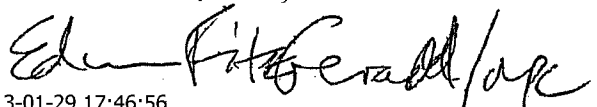
IN WITNESS WHEREOF, THE County and IBM have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

**International Business Machine, Corporation**

BY:  12/14/12  
Matt Rosseau  
Client Representative, IBM

**Cuyahoga County, Ohio**

Edward FitzGerald, County Executive

BY:   
2013-01-29 17:46:56  
Edward FitzGerald, County Executive

# IBM - Workload Pricer

## MLC with MSUs

Schedule A

This tool is for estimation only. These stated prices are for your information only and subject to change.  
Applicable taxes are not shown. Licensed Programs are available only under the IBM Customer Agreement, International Program License Agreement, or any equivalent agreement in effect between the customer and IBM.

**Customer:** Cuyahoga County

### Standalone System

Machine Name	Machine No	System Serial	MSUs
IBM zSeries 890	2086-210	38E0B	8
<b>Totals</b>			<b>8</b>

### Software

Product ID	Entitlement Description	MSUs	Monthly
5625DB2	DB2 UDB for z/OS	8	5,629.00
5625DB2	QMF Classic Edition	8	2,015.00
5648A25	COBOL for OS/390 & VM V2	8	936.00
5655J38	IMS V9 Database Manager	8	5,335.00
5655J38	IMS V9 Extended Terminal Opt	8	395.00
5655J38	IMS V9 Transaction Manager	8	6,316.00
5655M32	Compatibility Fonts		0.00
5655M32	PSF V4 for z/OS		2,013.00
5655N60	Transforms to AFP		250.00
5655P20	AFP2PDF		575.00
5655103	DITTO/ESA for MVS	0	290.00
5668958	VS COBOL II Comp Lib and Debug	0	875.00
5688190	PPFA/370		260.00
5688191	OGL/370		370.00
5694A01	z/OS V1 Base	8	5,671.00
5694A01	z/OS V1 DFSMS dss	8	242.00
5694A01	z/OS V1 DFSORT	8	324.00
5694A01	z/OS V1 GDDM-PGF	8	248.00
5694A01	z/OS V1 RMF	8	224.00
5694A01	z/OS V1 SDSF	8	324.00
5694A01	z/OS V1 Security Server	8	352.00
5695013	IBM Compiler for REXX/370	0	530.00
5695014	IBM Library for REXX/370	0	263.00
5697E93	CICS TS for z/OS V2	8	5,078.00
5740CB1	COBOL Compiler/Library V1	0	593.00
<b>Total Price</b>			<b>39,108.00</b>

WLPricer File:	Cuyahoga County Apr12.wlp
Prices Date:	10/30/2012
Location:	United States-Future
Currency:	USD
Report Date:	11/6/2012

STS#534133

X 12  
\$ 469,296.00  
+ 27,832.00 NRC  
\$ 497,128.00 Total Contract

# Workload Pricer - Value Unit Price Report

This tool is for estimation only. These stated prices are for your information only and subject to change. Applicable taxes are not shown. Licensed Programs are available only under the IBM Customer Agreement, International Program License Agreement, or any equivalent agreement in effect between the customer and IBM.

Name: Cuyahoga Only CN 2316510 SW inventory  
 Customer Location:  
 Number: 2316510  
 Location: USA GSA-Future  
 Printed on: 11/8/2012  
 Notes:

PRICING SUMMARY		Prices (in USD) effective 10/30/2012
Total License Charge		0.00
Total S & S Charge		0.00
<b>TOTAL CHARGE FOR THIS ORDER</b>		<b>0.00</b>

## SUBSCRIPTION AND SUPPORT:

S & S Product ID	Title	License Product ID	Currently Entitled Value Units	Newly Entitled Value Units	Value Units to Order	Annual Price Per Value Unit	Annual Charge for Added Value Units	Months Until Renewal	S & S Charge Until Renewal	GSA or Comm(C)	Annual Charge for Total Entitlement
5608S68	IBM Tiv OMEGAMON XE DB2 z/	5655CXE	6	6	0	529.00	0.00	12	0.00	GSA	3174.00
5655E93	IMS Database Repair S&S	5655E03	7	7	0	27.00	0.00	12	0.00	GSA	189.00
5655E27	IMS HP Load V2	5655M26	7	7	0	117.00	0.00	12	0.00	GSA	819.00
5655E23	IMS Index Builder S&S	5655R01	7	7	0	109.00	0.00	12	0.00	GSA	763.00
5655E29	IMS HP Pointer Checker S&S	5655U09	7	7	0	135.00	0.00	12	0.00	GSA	945.00
5648D68	DB2 Utilities Suite S&S	5697E98	20	20	0	132.00	0.00	12	0.00	GSA	2640.00
5608S81	IBM Tivoli OMEGAMON XE z/OS	5698A33	6	6	0	605.00	0.00	12	0.00	GSA	3630.00
5608S75	IBM Tivoli OMEGAMON XE IMS	5698A34	6	6	0	529.00	0.00	12	0.00	GSA	3174.00
5608S76	IBM Tiv OMEGAMON XE MFVW	5698A35	6	6	0	284.00	0.00	12	0.00	GSA	1704.00
5608S77	IBM Tiv OMEGAMON XE Storage	5698A37	6	6	0	250.00	0.00	12	0.00	GSA	1500.00
5608S72	IBM Tivoli OMEGAMON DE z/OS	5698B40	6	6	0	302.00	0.00	12	0.00	GSA	1812.00
5608S74	IBM Tivoli OMEGAMON XE CIC	5698B49	6	6	0	302.00	0.00	12	0.00	GSA	1812.00
5741SNS	z/VM Subscription & Support	5741A05	10	10	0	567.00	0.00	12	0.00	GSA	5670.00
<b>TOTALS:</b>							<b>0.00</b>		<b>0.00</b>		<b>27832.00</b>