

CONTRACT
by and between
Cuyahoga County, Ohio
and

Sadler-NeCamp Financial Services, Inc., (d.b.a. PROWARE)

THIS AGREEMENT ("Contract"), dated as of _____ is made and entered into by and between the Cuyahoga County, Ohio ("the County") on behalf of the Cuyahoga County Court of Common Pleas, Domestic Relations Division, and Sadler-NeCamp Financial Services, Inc., d.b.a. PROWARE, ("PROWARE"), an Ohio corporation with principal offices located at 7621 East Kemper Road, Cincinnati, Ohio 45249.

WITNESSETH:

WHEREAS, the Domestic Relations Division of the Cuyahoga County Court of Common Pleas (the "Court") operates and uses Court Case Management System ("CMS") pursuant to the software license granted by PROWARE (the "PROWARE License"). This system shall be referred to herein as the "Court System"; and,

WHEREAS, PROWARE has submitted a proposal to the County in response to inquiries by the Courts for management, systems analyst and program analyst services, and ongoing system management and support services for the Court System; and,

WHEREAS, PROWARE's proposal offered to provide the Court with management, systems analyst and program analyst, and ongoing system management and support services for the Court System; and,

WHEREAS, the County and the Court desire to retain PROWARE to provide such services, and PROWARE has certified itself to be the sole source for such services and is willing to provide such services for a fixed fee, on the terms and conditions set forth in this Contract; and,

WHEREAS, PROWARE has advised the Court and the County, and the Court and the County agree, that certain items for third party services such as IBM and Uniface third party services must be procured before the beginning of each service year to insure continuity of service.

NOW, THEREFORE, PROWARE and the County agree as follows:

ARTICLE 1 – AGREEMENT AND TERM

1.1 Term and Termination. The term of this Contract shall commence on January 1, 2013 at 12:00 AM (midnight) EST, and end on January 31, 2016 at 11:59 PM EST. Either party may terminate this Contract if the other party materially breaches this Contract by failure, neglect or refusal to comply with any of the terms and conditions of this Contract and the breaching party has failed to remedy that breach within thirty (30) days of the date of written notice from the non-defaulting party specifying the breach.

- (a) Cuyahoga County Termination; Default By PROWARE. Cuyahoga County may terminate this Agreement at any time upon thirty (30) days notice to PROWARE; however, if Cuyahoga terminates this Agreement for reasons other than a material default, or substantial noncompliance by PROWARE, PROWARE shall be compensated for PROWARE's services properly performed to date including restock fees assessed to PROWARE by its suppliers for products secured and

readied for delivery. If this Agreement is terminated for any reason, the parties shall promptly return their respective property.

- (b) PROWARE Termination; Default By Cuyahoga County. PROWARE may terminate this Agreement, at PROWARE's option, upon a material default by Cuyahoga County. Such remedies shall include, without limitation, the right to reimbursement for any actual or direct damages in addition to those damages set forth in this Agreement. If this Agreement is terminated for any reason, the parties shall promptly return their respective property.

1.2 Scope of Contract. During the term of this Contract, PROWARE agrees to provide, and the County agrees to purchase, the Maintenance and Support Services for and on behalf of the Court System identified in Schedules A and B to this Contract. The total amount payable directly to PROWARE for the services rendered under this Contract is set forth in Schedule A. The Maintenance and Support Services are more particularly described in PROWARE's Statement of Work, which is attached and incorporated herein as Schedule B.

1.3 PROWARE shall provide Maintenance and Support Services for the Court System during all days and hours that the Court is open according to the Statement of Work, as follows:

- (a) PROWARE shall provide ongoing routine and preventative maintenance services for the Court System as set forth in the Statement of Work.
- (b) PROWARE shall provide support for the Court System as needed in accordance with the Statement of Work. The Court, by an authorized person, may request such services by a submission in writing (including by e-mail) or by submission of a Software Action Request, and PROWARE shall provide such support as directed by the Court Project Manager, or such other individuals designated in writing by the Court. PROWARE will provide emergency support as requested by the Court Project Manager, or such other individuals designated in writing by the Court, to the best of PROWARE's ability in accordance with written direction.
- (c) In the event the Court requests support or other services that PROWARE in good faith believes are out-of-scope, PROWARE shall so indicate and, at the Court's request, provide a good-faith estimate of the time and resources required to implement the change, subject to the approval of the Court and the County.

1.4 PROWARE shall maintain reasonably accurate and up-to-date records identifying the completed Maintenance and Support Services provided under this Contract using the existing SAR system or its equivalent as may be implemented by PROWARE and the Court in the future. PROWARE shall provide periodic (i.e., monthly or otherwise) written reports of such records as requested by the Court in such format as the Court reasonably designates.

1.5 PROWARE shall devote sufficient time and allocate sufficient personnel and resources as may be required for the performance of this Contract. All services provided by PROWARE shall be performed by personnel of at least the qualifications set forth in the Statement of Work. PROWARE shall submit to the Court the name and professional qualifications of each person providing such services and shall provide such additional information as may reasonably be requested by the Court for background screening, security or other lawful purposes. Notwithstanding anything to the contrary contained in this Contract, the Court shall have the right to approve all personnel selected by PROWARE to provide services under this Contract, and the Court may reasonably request the reassignment or replacement of any such personnel whose performance the Court reasonably deems to be unsatisfactory.

1.6 Any computer software programs, source code, object code, scripts, database schema, hypertext and programming elements, graphical user interface elements, specifications, and all other related materials, documentation, and information developed, created or provided by PROWARE pursuant to this Contract, excluding Third Party Software ("TPS"), shall be PROWARE "Work Product" and shall be subject to the terms and conditions of the PROWARE License.

1.7 PROWARE agrees and acknowledges that the information and data stored in, and created and maintained through the Court's use and operation of, the Court Systems ("Court Data") constitutes records of the Court and that the Court may access, extract, disclose and otherwise use such Court Data in any form or format without restriction by PROWARE. PROWARE agrees to provide and make available such technical information (e.g., database schema, data formats, screen layouts and the like) to enable the Court and its designees (as identified by the Court administrator) to access, extract, use and interface with the Court Data maintained in the Court System with the Court's express consent, provided that before receiving such technical information any designee that is not employed by the County must first deliver to PROWARE an executed copy of the PROWARE Confidentiality, Non-Disclosure and Temporary Limited License Agreement, a copy of which is attached hereto as Schedule E.

1.8 Subject to Section 1.7, PROWARE agrees to reasonably cooperate with and not hinder the Court and any future vendors who provide the Court with hardware or software services relating to the Court System, including the transfer or conversion of Court Data from the Court System to other systems or formats, provided that participation by PROWARE in supporting, helping and assisting any future projects or vendors shall be charged on a time-and-materials basis at the hourly rates set forth in Schedule E, hereto.

1.9 PROWARE agrees that it will not now or in the future directly, indirectly, remotely or otherwise terminate or disable access to, or any functionality of, the Court System for any reason. PROWARE agrees that it shall not use any mechanisms such as a disabling code, trap door, time bomb, logic bomb or any other software protection routine or other similar device, module or functionality that would enable PROWARE to terminate or disable access to, or any functionality of, the Court System for any reason. PROWARE acknowledges that the restrictions set forth in this Section are reasonable and necessary and that, in the event of a threatened or actual breach of this section, monetary damages may be difficult to ascertain such that the County shall be entitled to interim restraints and permanent injunctive and other equitable relief as non-exclusive remedies in the event of a threatened or actual breach of this Section, without alleging or proving the amount or inadequacy of monetary damages as a remedy or the exhaustion of other available remedies.

1.10 The County will provide PROWARE with reasonable access to the equipment, software systems, and the County facilities at agreed upon times for purposes of this Contract subject to the County security measures, which includes limited access to certain areas. The County also will provide adequate working space, including: air conditioning, heat, light, ventilation, electric power, phone service, broadband connection, and desks and chairs for the use by PROWARE staff members. The County is responsible for providing PROWARE with access to all other facilities necessary to the fulfillment of this Contract.

1.11 The County will provide adequate meeting facilities for project meetings and project team working and training sessions. The County is responsible for maintaining environmental conditions at the location of equipment installation throughout the terms of this Contract in accordance with specifications established by equipment manufacturers.

1.12 Risk of Loss. The County shall bear the risk of damage to all of the County's hardware and software unless damage is due to the fault or negligence of PROWARE. THE COUNTY AGREES THAT PROWARE SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF SOFTWARE OR DATA.

1.13 Licenses. Unless otherwise provided herein, the County shall timely maintain all hardware and software licenses necessary for PROWARE to perform hereunder.

1.14 IBM & Other Third Party Provider Agreements. The County shall timely enter execute and deliver to PROWARE the agreements necessary for PROWARE's performance under this Contract; said agreements are (a) the IBM "Statement of Work for Service Acquired from an IBM Business Partner" attached as Schedule C; and (b) the IBM "Agreement for Services Acquired from an IBM Business Partner", attached as Schedule D.

1.15 Definitions. Capitalized terms used will have the meanings given below or in the context in which the term is used, as the case may be:

- (a) Maintenance and Support Services – The management, systems analyst and program analyst, and ongoing system management and support services for the Court Systems set forth in the Statement of Work.
- (b) PROWARE – The trade name by which the business Sadler-NeCamp Financial Services, Inc. conducts business.
- (c) Software Action Request (or "SAR") – The written notice by which Cuyahoga County notifies PROWARE of a software change or investigation. A SAR may also be used to communicate any system problem, including hardware and third party software problems.
- (d) Statement of Work – The Statement of Work, which is attached and incorporated herein as Schedule B, along with the identification of Goods and Services, which is attached and incorporated herein as Schedule A.
- (e) Third Party Software (or "TPS") – The software components of the Court System developed by entities other than PROWARE or PROWARE's subcontractors (e.g., Microsoft Word).

ARTICLE II – PAYMENT AND INVOICING

2.1 Payment. During the term of this Contract, the total amount payable to PROWARE for the services rendered under this contract shall in no event exceed the amounts itemized and contained in the attached Schedule A. Payments made to PROWARE shall be for Maintenance and Support Services actually received and accepted by the Court at the amounts identified in the attached Schedule A.

2.2 Invoicing. PROWARE shall invoice the Court for Maintenance and Support Services, and each invoice shall be accompanied by a corresponding written report only to the extent that the Court request such report under Section 1.4 above. PROWARE shall submit original invoice(s) and report(s) to the following address:

Jim Viviani, or his successor
Court Administrator

ARTICLE III – INDEMNITIES AND LIABILITIES

3.1 Representations and Warranties. PROWARE represents and warrants that it has the authority to enter into this Contract and that all Maintenance and Support Services shall be performed in a workmanlike manner in accordance with industry-standard practices and procedures. PROWARE further represents and warrants that the Work Product and any other services or deliverables provided pursuant to this Contract, either when used alone or in combination with the Court System (including in combination with any TPS), does not infringe the rights of any third party, whether in patent, trademark, copyright, trade secret, or otherwise. The Court represents and warrants that all software and hardware provided by the Court to PROWARE pursuant to this Contract, either when used alone or in combination with the Court Systems (including in combination with any TPS), does not infringe the rights of any third party, whether in patent, trademark, copyright, trade secret, or otherwise.

3.2 Indemnification. PROWARE shall indemnify and save the County and the Court harmless from suits or actions of every nature and description brought against the County or the Court, for or on account of any injuries or damages received or sustained by a party (or parties) from (i) any negligent acts of PROWARE, its' servants or agents that arises out of the performance of the service contemplated by the Statement of Work, and (ii) any breach of the representations and warranties set forth in Section 3.1, above.

3.3 Harmonious Relationship. The parties shall be free to bring all differences of interpretation and disputes arising in connection with this Contract to the attention of the other at any time without prejudicing their harmonious relationship and operations hereunder, and the offices and facilities of either party shall be available at all times for prompt and effective adjustment of any and all such differences, either by mail, telephone, or personal meeting under friendly and courteous circumstances. This provision is without prejudice to the right of any party to assert this Contract or seek any remedy available with respect to this Contract.

ARTICLE IV – MISCELLANEOUS

4.1 Schedules Incorporated by Reference. The following Schedules are attached hereto and are incorporated herein:

- Schedule A-DR: Goods and Services (pricing & payment)
- Schedule B-DR: Statement of Work
- Schedule C-DR: IBM "Statement of Work for Service Acquired from an IBM Business Partner"
- Schedule D-DR: IBM "Agreement for Services Acquired from an IBM Business Partner"
- Schedule E: PROWARE Confidentiality, Non-Disclosure and Temporary Limited License Agreement

- Schedule F: Ohio Department of Public Safety Division of Homeland Security form HLS 0038

4.2 Relationship of Parties. PROWARE is performing pursuant to this Contract only as an independent contractor. PROWARE has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Contract, except as otherwise agreed upon by the parties. Nothing set forth in this Contract shall be construed to create the relationship of principal and agent between PROWARE the Court or the County. Neither party shall act or attempt to act or represent itself, directly or by implication, as an agent of the other party or its affiliates or in any manner assume or create any obligation on behalf of, or in the name of the other party or its affiliates.

4.3 Force Majeure. Neither party will be liable to the other party hereunder or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, acts of the government, or third parties (excluding subcontractors or agents or others acting for or on behalf of a party), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

4.4 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract (excluding Software Action Requests), such notice shall be deemed effective when received having delivered by hand, via certified mail with return receipt requested, or via overnight courier with signature required, and addressed as follows:

Jim Viviani, or his successor
Court Administrator
Domestic Relations Court
One Lakeside Avenue, Rom 135
Cleveland, Ohio 44113

and

Timothy J. McGinty, Esq.
Cuyahoga County Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113
ATTN: David Lambert, Esq.

In the case of PROWARE:

Sadler-NeCamp Financial Services, Inc.
ATTN: Randal R. Sadler, President
7621 East Kemper Road
Cincinnati, Ohio 45249

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.

4.5 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.

4.6 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.

4.7 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. Moreover, the termination or expiration of this Contract shall not release either party from any liabilities or obligations set forth in the PROWARE License.

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

4.9 Governing Law. This Contract 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.

4.10 Verbal Comments. Verbal comments, explanations, or instructions between the County and PROWARE will not be binding. Information and or instructions between the County and PROWARE must be in writing if it is to be relied upon. Written communications between PROWARE and the County will be binding.

4.11 Electronic Signature. By entering into this Agreement PROWARE's signator agrees on behalf of PROWARE, the contracting Ohio corporation, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring Cuyahoga 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. PROWARE signator also agrees 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.

4.12 Personal Property Taxes. The County of Cuyahoga shall not assume responsibility for the payment of any personal property taxes for any materials not owned by the County of Cuyahoga, nor shall the County of Cuyahoga pay any insurance premiums for any coverage of any property not owned by the County of Cuyahoga, Ohio. No conditions shall alter this statement.

4.13 Tax Exempt Status. The County of Cuyahoga is a tax-exempt No. 29 political subdivision of the State of Ohio ([REDACTED])

4.14 Labor and Material. PROWARE shall pay or satisfy the just and equitable claims of all persons who have performed labor or furnished materials or equipment for said PROWARE in the execution of this Contract, and all bills, costs or claims of whatever kind which might in law or equity become a lien upon said work.

4.15 Assignment. PROWARE 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 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 Court; provided, however, that upon notice to and approval of the Court, which shall not be unreasonably withheld, PROWARE may subcontract any work or obligations to be performed by it pursuant to this Contract. PROWARE warrants that all personnel assigned to perform any of its obligations hereunder shall be employees, independent contractors or other types of hire (as permitted by applicable laws) of PROWARE or PROWARE's subcontractor(s), shall be qualified to perform the tasks assigned them, shall be in compliance with all immigration laws, and shall be legally qualified to work and receive compensation in the country in which they are employed. PROWARE shall be solely responsible for ensuring payment of all wages, benefits, worker's compensation, disability benefits, unemployment insurance and for withholding any required taxes for all personnel of PROWARE (whether employees or independent contractors) in accordance with applicable laws. The County acknowledges that certain aspects of software and hardware support may be provided by or with PROWARE's business partners who are IBM, Compuware (Uniface), Microsoft and Oracle.

4.16 Certification of Personal Property Tax. A Certificate of Compliance with Section 5719.042 of the Ohio Revised Code, which requires a certification of delinquent personal property tax by any successful vendor prior to the execution of the contract of a political subdivision, shall be submitted to the County Treasurer within thirty (30) days in the event there are any due and unpaid delinquent taxes.

4.17 Certification of Compliance with ORC § 2909.33. Upon execution of this Agreement, PROWARE shall complete and execute Ohio Department of Public Safety Division of Homeland Security form HLS 0038, a copy of which is attached hereto as Schedule F.

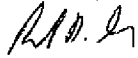
4.18 Contract Processing. PROWARE shall submit four (4) original contractual agreements with original signatures, to the following:

Jim Viviani, or his successor
Court Administrator
Domestic Relations Court
One Lakeside Avenue, Rom 135
Cleveland, Ohio 44113

4.19 Entire Agreement and Modification. This Contract, including any Schedules referred to in this Contract, 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

IN WITNESS WHEREOF, each of the parties, for themselves, their heirs, beneficiaries, survivors, administrators, executors, personal representatives, successors and assigns hereto have caused this Contract to be signed on its behalf by a duly authorized individual, partner, director or officer, and has caused its seal to be affixed, this ____ day of _____, 20____.

Sadler-NeCamp Financial Services, Inc., d.b.a. PROWARE

By 
Randal R. Sadler, CEO

Cuyahoga County Domestic Relations Court

By 
Judge Diane M. Palos, Administrative Judge

Cuyahoga County

Edward FitzGerald, County Executive

By 
Edward FitzGerald, County Executive