# CONTRACT

## by and between

## CUYAHOGA COUNTY, OHIO

## and

## FLAIRSOFT LTD.

THIS AGREEMENT (the "Contract") is made and entered into this 29th day of January, 2013, by and between Cuyahoga County, Ohio ("the County") on behalf of the Cuyahoga County Department of Children and Family Services and Flairsoft LTD, ("Flairsoft"), an Ohio corporation with its principal place of business at, 7720 River Edge Dr, Suite 200, Columbus, Ohio 43235.

WHEREAS, the County has an emergency need for Professional Services – Oracle Data Base Administrator, at the Department of Children and Family Services, as outlined on the attached Proposal, attached hereto and incorporated by reference herein as Schedule A; and

WHEREAS, Flairsoft services was approved as an Emergency purchase approved by the CPB on January 22, 2013; and

WHEREAS, the County desires to avail Flairsoft services and Flairsoft is willing to provide such services 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, Flairsoft and the County agree as follows:

## ARTICLE I – AGREEMENT AND TERM

1.1     Scope of Agreement.  During the term of this Contract, Flairsoft shall provide to the County under this agreement with Professional Services – Oracle / DBA, as detailed in Flairsoft's Proposal, dated January 18, 2013, attached hereto and incorporated by reference herein as Schedule A, insofar as the terms of Schedule A concur with this agreement.  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 23, 2013; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for one month from the date of commencement, not to exceed 180 hours.  **(1/23/13 - 2/23/13)**, the cost of this contract shall be in an amount not to exceed Fourteen Thousand Seven Hundred Sixty Dollars and Zero Cents **($14,760.00).**

## ARTICLE II – ADDITIONAL SERVICES

2.1    At the request of the County, and with the consent of Flairsoft, Flairsoft may also provide further technical, operational or other assistance on a consulting basis to the County, but such services would require an amendment to this Agreement between the County and Flairsoft. Such request should be notified to Flairsoft at least 15 days in advance.

## ARTICLE III – PAYMENT AND INVOICING

3.1    Payment. During the term of this contract, the County shall pay, the costs associated with custom services upon completion of project and receipt of invoice from Flairsoft and after the initial contract approval of the County Executive.

3.2 Invoicing. Flairsoft shall invoice the County upon completion of services and upon execution of this agreement. Flairsoft shall submit original invoice(s) to the following address:

Cuyahoga County Department of Information Technology
Business Department
1255 Euclid Avenue, 4th floor
Cleveland, Ohio 44115

## ARTICLE IV - INDEMNITIES AND LIABILITIES

4.1 Subcontracting. This Contract was awarded to Flairsoft based upon Flairsoft's unique qualifications and skills, and no task required to be performed under this contract by Flairsoft shall be subcontracted to third parties without the express written consent of Cuyahoga County.

4.2 Indemnification. Flairsoft 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 Flairsoft 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 Flairsoft and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Flairsoft 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  <u>Termination for Default</u>.  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. Flairsoft, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.3  <u>Termination for Financial Instability</u>. In the event that Flairsoft 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 Flairsoft 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  <u>Termination for Convenience.</u>  The County may terminate this Contract or any order under this Contract for its convenience and without cause. Any notice of termination will be effective 30 days after the Contractor receives it.  If the termination is for the convenience of the County, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before termination.

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

6.1  By entering into this Contract, Flairsoft, 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  Flairsoft 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:

<div style="text-align:center">

Cuyahoga County Department of Information Technology
ATTN: Jeff Mowry, CIO
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

</div>

In the case of Flairsoft:

Dheeraj Kulshrestha, President & CEO
Flairsoft LTD
7720 River Edge Dr, Suite 200
Columbus, Ohio 43235

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     Record Audit Retention.   Flairsoft 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 two (2) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should Flairsoft 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.

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

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

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

7.9     Assignment.   Flairsoft 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 Executive.

7.10    Contract Processing.   Flairsoft shall submit one (1) original contractual agreement with original signatures to the following:

Cuyahoga County Department of Information Technology
ATTN: Business Department
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

7.11    Commencement of Contract Performance.  In order to protect the interest of Cuyahoga County this contract must be executed by the 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 Flairsoft prior to the execution of this agreement by the County Executive, the same will be provided at Flairsoft's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by 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.

7.12   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.

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

**FLAIRSOFT LTD**                                    **CUYAHOGA COUNTY, OHIO**

Edward FitzGerald, County Executive

BY: _____          BY: _____
**Nick Kulshrestha, VP Operation**          Edward FitzGerald, County Executive
2013-03-07 09:30:17

**January 18, 2013**

**Dottie Sievers**
Information Services Center
1255 Euclid Avenue
Cleveland, Ohio 44115

**Ref:** **Your e-mail and DBA job description**
**Subject: Oracle DBA Staff Augmentation for Division of Children and family services.**

Dear Dottie,
Thank you for giving us an opportunity to serve your agency for providing the services of **Oracle DBA** to engage through our State Term Schedule for the Cuyahoga County Information service center.

Flairsoft is Columbus Ohio based LLC specializing in project management, mentoring, IT and staffing solutions for public sector and private clients. Flairsoft's clients include *Office of Information Technology, Job and Family Services, The Ohio State University, eTech commission of Ohio, Department of Health, OPERS, Lockheed Martin Mission Systems, AEP, Nationwide, EDS, Deloitte, Mettler Toledo etc.* We are certified by DAS as an MBE company.

***Flairsoft brings a team of experienced resources, who have proven track record and work experience which is a distinctive advantages to State for day-to-day project management, continuity and knowledge transfer for this engagement.***

Our consultants have added tremendous value to some of the major State initiative like MMIS OIT, OAKS, MITS ODJFS, and ATPS in addition to continued support to Ohio Department of Insurance, Health & Education.

Flairsoft has a proven history of defining and producing innovative and cost effective IT solutions in Health Care, Education & Public Safety domain. We have a unique ability to attract and retain high-caliber IT professionals and, as a small business with low overhead, we are consistently able to provide talented professionals (both individuals and teams) at very competitive prices. ***Flairsoft is currently managing a number of Staff augmentation and fixed cost projects for public agencies and State of Ohio.***

We are submitting one best qualified resource **Mr. SRI HARSHA** who is a local Cleveland candidate and has reviewed the job description for the DBA position (**Resume enclosed at Appendix - A**). The rate quoted assumes minimum engagement of approximately **180** hours projected for **FY13**.

**Below is the pertinent information regarding our proposal:**

| | |
|---|---|
| POSITION | Oracle DBA |
| **State Term Schedule #:** | **534289, Valid through 6/30/2013** |
| OAKS ID | 74523 |
| **Cuyahoga County Vendor #:** | **014065** |
| NIGP Code: | 964-00-99-033-1 |
| | Professional IT Services Data Processing Related |
| MBE Certification: | 31-1794085 by DAS, OHIO |
| STS Positions | Database Eng./Admin I |
| STS Hourly Rate: | **$127.0** |
| Discounted Hourly Rate: | **$82.0** |
| **Project Start date:** | **1/23/13** |
| **PROFESSIONAL FEE** | |

| STS Category | Minimum Hours | STS Approved Rates | Discounted Hourly Rate | Total Cost |
|---|---|---|---|---|
| Database Eng./Admin I | 180 | $127.00 | $82.00 | $14,760 |

## PAYMENT TERMS

1. Consulting fee will be billed on semi-monthly basis, by the end of every two weeks, based on the number of hours worked by the consultant, as per the time sheet, based on the above hourly rate.
2. Flairsoft will be paid semi-monthly for the consulting services following the receipt of the invoice, status report and approved consultant's time sheet.
3. Flairsoft is already set up for a direct deposit payment (EFT) with State of Ohio. We would request to pay us through EFT for this engagement also.
4. The payment terms are net 15. We will appreciate an early payment, if possible.

## COMMITMENT FOR CONTRACTUAL OBLIGATION

Flairsoft consultant shall use all reasonable efforts to deliver the scope of work including deliverables as directed by the project manager on time & material basis to comply with contractual obligation set forth by Cuyahoga County and their staff from time to time. Flairsoft consultant will provide weekly status or printed documentation to the Project Manager. The consultant will be responsible to participate in meeting with personnel or groups recommended by the project manager. Weekly printed timesheets and status reports will be reviewed and signed by the project manager and will accompany invoices submitted to PMO for payment.

Flairsoft has been providing similar engagements services to the state and has been fulfilling contractual obligations with other local agencies, like ODJFS, OIT ODE, ODH,

OBM, ODPS, OPERS and eTech commission of Ohio for **similar engagements since 2004.**
Flairsoft has been requested and awarded additional projects for similar engagements.

Should you require any clarification, please do not hesitate to contact **Nick at (614) 519 8734** or **Courtney at (614)-406-0026**

Sincerely,

**Dheeraj Kulshrestha**
**Managing Partner**

Schedule A

**Below is the pertinent information regarding our proposal:**

POSITION                              Oracle DBA
**State Term Schedule #:**            **534289, Valid through 6/30/2013**
OAKS ID                               74523
**Cuyahoga County Vendor #:**         **014065**
NIGP Code:                            964-00-99-033-1
                                      Professional IT Services Data Processing Related
MBE Certification:                    31-1794085 by DAS, OHIO
STS Positions                         Database Eng./Admin I
STS Hourly Rate:                      **$127.0**
Discounted Hourly Rate:               **$82.0**
**Project Start date:**               **1/23/13**
PROFESSIONAL FEE

| STS Category | Minimum Hours | STS Approved Rates | Discounted Hourly Rate | Total Cost |
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**Dheeraj Kulshrestha**
**Managing Partner**