

CONTRACT

THIS CONTRACT made and entered into this _____ day of _____, 2013 by and between the County of Cuyahoga, Ohio (the "County") on behalf of the Department of Public Safety and Justice Services and SAS Institute Inc., a Corporation with principle offices located at 820 Davis Street, Suite 408, Evanston, IL 60201 (the "Provider").

WITNESSETH THAT:

WHEREAS the COUNTY and Provider have entered into a contract in order to for the County to receive a software license and related maintenance for the Northeast Ohio Regional Fusion Center for the period commencing July 1, 2013 and ending June 30, 2014.

NOW THEREFORE, the parties hereby agree as follows:

I LICENSE OF SOFTWARE

The PROVIDER shall provide the software license and related maintenance of such license, to the extent set forth in the attached Master Perpetual License Agreement (Attachment I); Supplement Number 1 (Attachment II). Maintenance fees for the software licensed pursuant to Supplement Number 1 for the period July 1, 2011 through June 30, 2013 have been paid by the City of Cleveland pursuant to the Third Party Payer Acknowledgement (Attachment III).

II COMPENSATION –METHOD OF PAYMENT

The COUNTY shall pay the PROVIDER for the software license and related maintenance utilizing FY11 Urban Area Security Initiative funds. Payment shall be made within thirty (30) days following the receipt of detailed, documented invoice from the PROVIDER. **Compensation shall not exceed Twenty-Two Thousand Six-Hundred One Dollars and 0 Cents (\$22,601.00).**

The COUNTY may withhold payment if the PROVIDER is determined to be in non-compliance status with Federal, State and /or COUNTY requirements, regulations and conditions and written notification of this non-compliance is submitted to the PROVIDER.

III AVAILABILITY

None of the work or services (if any) covered by this contract shall be subcontracted without prior written approval of the COUNTY.

IV TERM

This Contract will enter into effect as of **July 1, 2013**, and unless sooner terminated for cause, will terminate on **June 30, 2014**, unless otherwise extended and approved in writing by the COUNTY, or by payment by COUNTY of an invoice for maintenance fees for a subsequent calendar year.

V TERMINATION

Terms relating to the termination of the software license are set forth in the Master Perpetual License Agreement (Attachment I).

VI MODIFICATIONS

By mutual written consent of the COUNTY and the PROVIDER, this contract may be modified whenever such modifications are deemed necessary. Any such modification to this Contract shall be reduced to writing and signed by both parties.

VII NOTICES

Any reports, notices, invoices or communications required in this Contract shall be sufficient if sent by the parties in the United States Mail, postage paid, to the addresses noted below:

COUNTY:

Jerry Mullins
Cuyahoga County Det. of Public Safety and Justice
Services
310 W. Lakeside Ave., Suite 300
Cleveland, Ohio 44113
Telephone: (216) 698-6462

Agency:

Office of General Counsel
SAS Institute Inc
100 SAS Campus Drive
Cary, NC 27513

Or at such other address as may be designated by written notice.

VIII NON-DISCRIMINATION

The PROVIDER agrees to provide the program services without discrimination on account of race, sex, color, religion, national origin, age, occupation, physical or mental disability or veteran status, the extent required by law. The parties agree that discrimination and affirmation action clauses contained in Executive Order 11246, as

amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of the Labor in Title 41, Part 60 of the Code of Federal regulations, are incorporated herein the extent binding upon the PROVIDER.

IX COUNTY OF CUYAHOGA, OHIO HELD HARMLESS

The scope of Provider's indemnification obligation with respect to the license of the software is set forth in the Master Perpetual License Agreement (Attachment I).

X COMPLIANCE WITH THE LAW

The PROVIDER agrees to provide the services (if any) in compliance with all applicable Federal, State and County laws, rules, regulations and ordinances ("Applicable Laws"); *provided, however*, any noncompliance with such applicable laws that does not materially affect the license of software under the Master Perpetual License Agreement or Supplement Number 1 or which does not result in any fine or other action against the County shall not be deemed a breach of this Contract or the Master Perpetual License Agreement or Supplement Number 1. In the event of any conflict between state or local Applicable Laws that conflicts with federal Applicable Laws, SAS shall comply with the federal Applicable Law. As the exclusive remedy for a breach of this section of the Contract, SAS, at its option, shall: (i) restructure or modify the Contract, Master Perpetual License Agreement, or Supplement Number 1, as applicable, to comply with the Applicable Laws; or (ii) terminate the software license and refund the then-current fees paid for the software at issue.

XI ENTIRE CONTRACT

This contract, together with the Master Perpetual License Agreement and Supplement No. 1 constitutes the full and complete expression of the parties and supersedes any prior contemporaneous oral or written Contracts. This Contract shall not be amended, except by a written instrument signed by both parties. The parties acknowledge and agree that the following order of precedence shall apply: (i) this Contract, (ii) Supplement Number 1, and (iii) Master Perpetual License Agreement.

XII ELECTRONIC CONTRACT

By entering into this Contract I agree on behalf of the contracting or submitting business entity, 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 signature affixed by the county to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. I also agree on behalf of the

aforementioned entities and persons, to be bounded 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.

XIII. INSURANCE REQUIREMENTS

The contractor shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with the Master Perpetual License Agreement and Supplement Number 1.

1. Mandatory Insurance Requirements

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

(a) **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For Contractors with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

(b) **Commercial General Liability Insurance** with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

(c) **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

2. Insurance Coverage Terms and Conditions

- (a) The insurance policies of the Contractor required for this contract shall each include the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain a waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
- (b) Contractor shall provide thirty (30) days prior notice of cancellation or material change.
- (c) The insurance required for this contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A- VII or above.
- (d) These insurance provisions shall not affect or limit the liability of the Contractor stated elsewhere in this Contract or as provided by law.
- (e) The Contractor shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.
- (f) The County reserves the right to increase, reduce, modify or waive insurance requirements solely in connection with the renewal of this contract.

XIV. NO INDEMNIFICATION BY COUNTY

Provider acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no provision of this Contract or any other contract or agreement between Provider and the County may be interpreted to obligate the County to indemnify or defend Provider or any other party.

IN WITNESS WHEREOF, the COUNTY and the PROVIDER have executed and delivered this Contract as of the date first written above.

COUNTY OF CUYAHOGA, OHIO

Edward FitzGerald, County Executive

BY: _____

Edward FitzGerald, County Executive
2013-10-31 13:36:00

SAS Institute Inc.



BY: _____

Victoria P. Clayton



Victoria P. Clayton
Senior Manager
Contracts Administration
SAS Institute Inc.

ATTACHMENT I

[SEE ATTACHED]

ATTACHMENT II

[SEE ATTACHED]

ATTACHMENT III

[SEE ATTACHED]