

CONTRACT

THIS CONTRACT made and entered into this _____ day of _____, 2014 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 certain software related services.

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); and Services Supplement Number 2 (Attachment II).

II COMPENSATION –METHOD OF PAYMENT

The COUNTY shall pay the PROVIDER for the software license and related maintenance utilizing FY2012 State Homeland Security Grant Program-Law Enforcement funds. Payment shall be made within thirty (30) days following the receipt of a detailed, documented invoice from the PROVIDER. **Compensation shall not exceed Twenty-Nine Thousand Eight-Hundred Seventy-Eight Dollars and Five Cents (\$29,878.05).**

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 SUBCONTRACTING

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

IV TERM

This Contract will enter into effect as of January 1, 2014 and unless sooner terminated for cause, will terminate on **April 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. Notwithstanding the foregoing, the parties

acknowledge and agree that no Software will be licensed and no Services provided until both parties execute this Contract.

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 the software under the Master Perpetual License Agreement, or Software Supplement Number 1 (which was previously executed by the parties), 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 Services Supplement Number 2. 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 Services Supplement Number 2, 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 and Supplement No. 2 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) Services Supplement Number 2, 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 this Contract.

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.

Note: If the services required under this Contract include the repairing, servicing, parking or storing of vehicles, then the following insurance coverage shall also be required:

Garagekeepers Legal Liability Insurance with a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident.

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 AM. 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
Edward FitzGerald, County Executive

SAS Institute Inc.

BY: Victoria P. Clayton



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



ATTACHMENT I

Master License Agreement

ATTACHMENT II

Services Supplement No. 2



Master License Agreement No.: _____

Master Perpetual License Agreement

SAS Institute Inc. ("SAS")
World Headquarters
SAS Campus Drive
Cary, North Carolina
Tel.: (919) 677-8000 • Fax: (919) 677-4444
<http://www.sas.com>

Customer Name: **County of Cuyahoga, Ohio, Department of
Public Safety and Justice Services** ("Customer")

Street Address: **310 W. Lakeside Avenue, Suite 300**

City, County, State, Country, Zip Code: **Cleveland, Cuyahoga
County, Ohio, United States 44113**

Taxpayer ID Number:

SAS and Customer enter into this Master Perpetual License Agreement ("MLA") in North Carolina as of the last date of signing. Customer may license SAS® software ("Software") or may acquire professional services from SAS ("Services") by executing supplements to this MLA ("Supplements"). This MLA and its Supplements (collectively, "Agreement") govern Customer's license of the Software listed on the applicable Supplement and any related user documentation provided by SAS, or Customer's acquisition of Services listed on the applicable Supplement.

1. License Grant; Authorized Use. SAS grants Customer a nonexclusive, non-transferable and non-assignable license to use the Software with designated operating systems under the Agreement. Except as otherwise provided in the Agreement, the Software may be accessed only by Customer's employees and on site contractors ("Users") doing work in the Territory solely for Customer. The Software license term will be perpetual, provided that Customer's operating system allows the Software to continue operating. Customer may, in its discretion, choose to purchase the Maintenance Services described in Section 7 below on an annual basis by paying SAS' invoices therefor as further described in Section 8.

1.1 Territory; Report Access. Customer may install and use the Software within the territory listed on the applicable Supplement ("Territory").

1.2 Other Uses of the Software. This MLA describes standard rights of use. The Supplements may include special use rights and limits related to specific Software offerings. SAS grants no usage rights beyond those specifically listed in the MLA and Supplements. By way of example, the following uses are prohibited unless specifically set forth in a Supplement or written amendment to the Agreement: (a) installation or use outside the Territory; (b) use for the benefit of a third party in exchange for compensation; (c) use in application or data service provision, outsourcing, time-sharing, data or information technology management, or other similar arrangements; (d) use to process third party data; or (e) allowing any party (other than Users) to use, edit, modify, or otherwise access underlying Software, or to perform free form programming with the Software.

2. Authorized Hardware. Customer shall install the Software only on hardware authorized under the Agreement ("Authorized Hardware"). If the Software is licensed for use on mainframe or server hardware, Authorized Hardware is hardware located on Customer's premises that Customer identifies to SAS by type and CPU number. If the Software is licensed for use on personal computers, Authorized Hardware is hardware owned or leased by Customer or its employees.

3. Fees. License fees for each Software product are based on the applicable pricing metric and the usage rights and limits set forth in the Agreement. License fees, any maintenance fees for the first annual period of the perpetual license term, pricing

metrics, and any special usage rights and limits are listed on the Supplement. If Customer elects to purchase Maintenance Services for any annual periods following the first annual period, annual maintenance fees therefor shall be listed on invoices and may vary each year. SAS may propose fee and pricing metric changes. Some pricing metrics are based on use of certain Software offerings as an integrated solution. Accordingly, the Software components in these offerings may be used only through the integrated solution under which they are bundled and Customer may not use or deploy any individual Software component.

4. Product Authorization Code. Customer may allow Users to access only Software licensed to Customer for which Customer receives a Product Authorization Code. SAS will provide Customer with annual Product Authorization Codes during the perpetual license period described in Section 1 above. Customer shall not allow Users to install or attempt to use other products contained on media received from SAS. The "Product Authorization Code" is a component of the Software that enables the Software to operate for the applicable license period. At each new license period, or if required as a result of changes in Authorized Hardware or Software, Customer must apply a new Product Authorization Code to keep the Software operating. SAS is not required to provide the Product Authorization Code if Customer is in breach of the Agreement or if all amounts due under the Agreement are not paid. SAS is not liable for damages caused by the resulting Software interruption. Customer may allow only Users to access the Product Authorization Code. Customer acknowledges and agrees that the Product Authorization Code is SAS' confidential and proprietary information.

5. Copying. Customer may copy the Software only for (a) disaster recovery and back-up purposes, and (b) installation of personal computer Software authorized hereunder. All copies remain the property of SAS. Customer may deliver a copy of the Software to a disaster recovery contractor to perform temporary disaster recovery work for Customer. Customer shall give SAS the name and address of the disaster recovery contractor before delivery. The identical copyright notices and any other proprietary rights notices found on the original Software media must be reproduced on all copies authorized under this Section.

6. Title; Source Code. Title to the Software and its documentation remains with SAS and its licensors at all times. Copyright notices and other proprietary rights notices in the Software shall not be deleted or modified. The Agreement does not transfer any ownership rights. Source code from which the Software object code is derived ("Source Code") is not being provided and is a trade secret of SAS and SAS' licensors to which access is not authorized. Neither Customer nor any other User shall reverse engineer, reverse assemble or decompile the Software or in any other way attempt to recreate the Source Code, except and only to the extent applicable laws specifically prohibit such restriction.

7. Maintenance Services; Reinstatement of Maintenance.

7.1 Maintenance Services. Customer may choose to purchase Maintenance Services for the Software installed at a specific SAS installation site, or it may choose to purchase Maintenance Services for the Software installed at all SAS installation sites; however, Customer may not choose to purchase Maintenance Services for only a portion of the Software installed at a particular SAS installation site. Customer's payment of an invoice for Maintenance Services in accordance with Section 8.1 below shall entitle Customer to avail itself of the following, all of which shall be referred to herein as "Maintenance Services": SAS will use reasonable efforts, either by telephone or in writing, to help Customer solve specific problems with installation or use of the Software within the Territory. It may not be possible for SAS to solve all problems or correct all errors in the Software. From time to time, SAS may make available, and Customer agrees to use reasonable efforts to install, new releases, updates and corrective code. During ongoing Software development, SAS may add, change or delete individual components or functionality in new releases. Such Software modifications shall be subject to the terms of the Agreement. If Customer chooses not to install the most current release of the Software, the level of technical support may diminish over time.

7.2 Nonpayment of Maintenance Services. For the avoidance of doubt, if Customer does not purchase Maintenance Services, SAS shall not be obligated to provide any of the following:

7.2.1 The technical support activities described in Section 7.1;

7.2.2 Technical support activities described on SAS' website;

7.2.3 Assistance with respect to Software incompatibility related to hardware upgrades or changes to operating systems or changes to hardware that affect operating system incompatibilities, regardless of whether a hardware upgrade has occurred; or

7.2.4 Any new releases of the software, either major or minor, that may be made generally available by SAS.

7.3 Reinstatement of Maintenance Services. If Customer does not purchase Maintenance Services for an applicable annual period, but later chooses to reinstate Maintenance Services, the following shall apply:

7.3.1 If Maintenance Services are reinstated up to twenty-four (24) months following cancellation, SAS shall invoice Customer and Customer shall pay maintenance fees for all cancelled annual periods, plus an additional reinstatement fee; or

7.3.2 If Maintenance Services are reinstated on or following the twenty-fourth (24th) month of cancellation, Customer shall pay to SAS the then-current initial license fee for the Software, plus any applicable maintenance fees.

If Customer notifies SAS that it wishes to terminate its Maintenance Services during an annual period for which it has paid maintenance fees, but then requests to reinstate Maintenance Services during that same annual period, no reinstatement fees shall apply, other than the applicable maintenance fees due and payable for the next annual period.

8. Payment.

8.1 Invoices. SAS will invoice Customer upon execution of a Supplement for the Software license fees and any applicable initial period maintenance fees due. Services will be invoiced as set forth in the applicable Services Supplement. SAS will invoice Customer prior to each subsequent annual period for maintenance fees. Payment by Customer of an invoice for maintenance fees shall constitute Customer's acceptance of Maintenance Services for that annual period. Payment terms for all invoices are net thirty (30) days. Services, License and maintenance fees do not include taxes. SAS will use reasonable efforts to include all taxes applicable to Customer on the relevant invoice and Customer agrees to pay such taxes to SAS;

however, Customer is responsible for taxes on its licensing of the Software and purchase of Services and Maintenance Services. Customer is not responsible for taxes based on SAS' income. Except as otherwise allowed in the Agreement, refunds are not available after the Product Authorization Code has been provided.

8.2 License Fee Calculations; Upgrades. Customer agrees to (a) keep records of where the Software is being used and the extent of usage of the Software relative to the pricing metric and the applicable usage rights and limits, and (b) provide a copy of such records to SAS upon reasonable request. Customer may call or write SAS to change operating systems, Authorized Hardware or any factor affecting the applicable pricing metric or any applicable usage rights. These changes may result in additional license fees regardless of whether Customer has paid for Maintenance Services. Such additional license fees shall be invoiced as of the date of the change.

8.3 Third Party Payments. Customer may, by written notice to SAS, designate a third party to pay license fees, Services fees or maintenance fees on Customer's behalf. Customer shall be responsible for any related charges assessed by such third party. When a third party is designated by Customer to pay fees under the Agreement, SAS will send its standard notices regarding fees only to such third party, and all payments due under the Agreement will remain Customer's ultimate responsibility.

9. Limited Warranties and Representations.

9.1 Warranties by SAS; Remedies.

9.1.1 SAS warrants that it has the right to license the Software to Customer. The exclusive remedy for breach of this warranty is set forth in Section 11 (Indemnification).

9.1.2 SAS warrants that during the first twelve (12) months of the perpetual license, and for each annual period during which Customer elects to purchase Maintenance Services, each production release of the Software shall substantially conform to its documentation including any documentation updates that have been provided to Customer, and the Software and the media on which it is installed shall be free of software viruses when received by Customer. As the exclusive remedy for breach of these warranties, SAS, at its option shall: (a) repair the Software; (b) replace the Software; or (c) terminate the Software license and refund (i) all current period license fees paid to SAS for the version of the Software that is nonconforming provided that the Software is returned during the first year of the perpetual license or (ii) the fees paid to SAS for Maintenance Services for the Software for the current period of annual Maintenance Services provided that the Software is returned after the first year of the license term. In no event shall any license or maintenance fees paid to SAS for prior years be returned by SAS. **FOR THE AVOIDANCE OF DOUBT, THE SOFTWARE SHALL BE PROVIDED "AS IS", WITH NO WARRANTIES, FOR ANY ANNUAL PERIODS DURING WHICH CUSTOMER DOES NOT PURCHASE MAINTENANCE SERVICES FROM SAS.**

9.2 Warranty Disclaimers. SAS AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING AS A RESULT OF CUSTOM, USAGE IN THE TRADE OR BY COURSE OF DEALING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SAS AND ITS LICENSORS DO NOT WARRANT OR REPRESENT THAT CUSTOMER'S USE OF THE SOFTWARE WILL RESULT IN COMPLIANCE, FULFILLMENT OR CONFORMITY WITH THE LAWS, RULES, REGULATIONS, REQUIREMENTS OF GUIDELINES OF ANY GOVERNMENTAL AGENCY. SAS LICENSORS PROVIDE THEIR SOFTWARE "AS IS." NOTHING IN THIS SUBSECTION NEGATES THE EXPRESS WARRANTIES SET FORTH IN THE AGREEMENT.

9.3 Representations by Customer. Customer represents it shall (a) implement procedures to verify accuracy of data input and output while using the Software, (b) inform all parties authorized to use the

Software of the relevant terms of the Agreement and any related user documentation, and be responsible for their adherence to such terms, and (c) periodically back-up its data in accordance with industry standards. Customer agrees that use of the Software or the results of Services, in and of themselves, will not ensure compliance with laws.

10. Exclusions of Damages; Limitation of Liability.

10.1 Exclusions of Damages. NEITHER CUSTOMER, SAS, NOR SAS' LICENSORS ARE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR RELIANCE DAMAGES (ARISING IN TORT, CONTRACT OR OTHERWISE), INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, LOSS OF PROFITS AND LOSS OF DATA, EVEN IF THEY HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER SAS NOR SAS' LICENSORS ARE LIABLE FOR ANY CLAIM AGAINST THE CUSTOMER BY A THIRD PARTY RELATING TO USE OF THE SOFTWARE, EXCEPT AS SET FORTH IN SECTION 11 (INDEMNIFICATION). SAS' LICENSORS ARE NOT LIABLE FOR DIRECT DAMAGES (ARISING IN TORT, CONTRACT OR OTHERWISE) AND DISCLAIM ANY LIABILITY CONNECTED WITH USE OF THE SOFTWARE. THE PARTIES MAKE THESE EXCLUSIONS IN CONSIDERATION OF THE FEES PAID AND LICENSES GRANTED UNDER THE AGREEMENT.

10.2 Limitation of Liability. THE TOTAL AMOUNT CUSTOMER MAY RECOVER FOR ALL CLAIMS RELATING TO THE AGREEMENT IS LIMITED IN THE AGGREGATE TO (A) THE LICENSE FEES PAID TO SAS FOR THE SOFTWARE IF THE CLAIM IS MADE DURING THE FIRST YEAR OF THE TERM, (B) THE APPLICABLE ANNUAL MAINTENANCE FEES PAID TO SAS BY CUSTOMER, IF ANY, IF THE CLAIM IS MADE AFTER THE FIRST ANNUAL PERIOD, OR (C) THE SERVICES FEES PAID FOR THE SERVICES OR WORK PRODUCT AT ISSUE.

10.3 Applicability. This Section does not apply to SAS' indemnification obligations in Section 11 or to either party's violation of the other's intellectual property rights. The limitations in this Section shall apply even if any of the warranties provided in Section 9 fail of their essential purpose. Some jurisdictions do not allow limitations of liability or exclusions for incidental or consequential damages, so certain provisions of this Section may not apply to Customer; however, they apply to the greatest extent permitted by applicable law.

11. Indemnification. Customer agrees to promptly notify SAS in writing of any claim made against Customer for (a) copyright, patent, trade secret or other intellectual property rights violation relating to the Software; or (b) bodily injury, death or damage to tangible property, excluding damage to software or data, arising solely from actions for which SAS is legally responsible. Customer further agrees to allow SAS to control the litigation or settlement of any such claim and to cooperate with SAS in the investigation, defense and settlement thereof. Provided Customer complies with this Section, SAS shall indemnify Customer for such claim by paying for the litigation, costs and reasonable attorneys' fees Customer incurs at SAS' direction and any judgment finally awarded against Customer or settlement approved by SAS. Customer may participate at Customer's own expense. If such claim in (a) above is made or, in SAS' opinion, is likely to be made, then SAS, at its option, may: (1) modify the Software; (2) obtain rights for Customer to continue using the Software; or (3) terminate the license for the Software at issue and refund (i) the current license fees paid to SAS by Customer for such Software if the Software is returned during the first year of the license term or (ii) the fees paid to SAS for Maintenance Services for the Software for the current period of Maintenance Services if the Software is returned after the first year of the license term, provided, however, this sentence shall not excuse SAS from its indemnification obligation otherwise set forth herein. In no event shall any

license or maintenance fees paid to SAS for prior years be returned by SAS. Customer agrees to abide by SAS' decision, and install a different version of the Software or stop using the Software. This indemnification obligation does not apply to the extent: (i) a claim is based on Customer's combination of the Software with other software, or modification to the Software, if such claim would not have been made but for Customer's combination or modification; or (ii) as of the date the claim arose, Customer had not installed the latest version of, or update to, the Software as instructed by SAS prior to such date, if such claim would not have been made if the update or latest version had been installed.

12. Termination; Expiration. Customer may provide notice of termination of maintenance for all the Software licensed at a particular SAS installation site at any time. SAS may terminate the Agreement immediately for any violation by Customer of SAS' intellectual property rights. For any other breaches, SAS may terminate the Software license for a breach of the Agreement if not cured within thirty (30) days of SAS' written notice. Obligations in the Agreement that by their nature are continuing will survive termination or expiration. Upon termination or expiration of each Software license hereunder, or when a User, or disaster recovery contractor is no longer authorized to access the Software, Customer agrees to reclaim, delete, and destroy the Software at issue and any copies thereof, along with any related user documentation.

13. Governing Law; Export and Import Restrictions. The laws of Ohio, excluding choice of law provisions, govern the Agreement. The parties agree that the state and federal courts of Cuyahoga County, Ohio will have exclusive jurisdiction over any claim arising out of the Agreement and each party consents to the exclusive jurisdiction of such courts. SAS hereby notifies Customer that United States export laws and regulations apply to the Software. Both parties agree to comply with these and other applicable export and import laws and regulations. The parties expressly agree to exclude from the Agreement the United Nations Convention on Contracts for the International Sale of Goods.

14. General.

14.1 Severability. If a court of competent jurisdiction finds any part unenforceable, that part is excluded, but the remainder of the Agreement stays in full force and effect.

14.2 No Waiver. Failure to require compliance with a part of the Agreement is not a waiver of that part. Nothing in this Subsection waives any remedy SAS may have under the Agreement at law, in equity, or otherwise.

14.3 Non-assignment. Customer may not assign the Agreement or any of its rights and obligations hereunder without SAS' written permission, which permission will not be unreasonably withheld.

14.4 Audit. Upon fifteen (15) business days' notice to Customer SAS and/or an agent appointed by SAS will have the right to conduct an on-site audit during Customer's normal business hours to verify compliance with the terms and conditions of the Agreement. Customer shall cooperate with SAS and/or such agent by: (a) making applicable records available; (b) providing copies of the records requested; and (c) directing all Customer's agents to cooperate with SAS and/or its agent. If the audit reveals that Customer owes additional license fees, Customer shall pay the amounts owed and SAS' reasonable expenses in conducting the audit.

14.5 Injunctive Relief. Breach of SAS' or SAS' licensors intellectual property rights will lead to damages not adequately remedied by an award of money; therefore, SAS may protect those intellectual property rights through temporary restraining orders or injunctions, without the obligation of posting bond.

15. Complete Agreement; Modifications. The Agreement and invoices arising under it are the parties' complete and exclusive statement relating to their subject matter. Modifications must be in writing, signed by both parties, and specifically reference the Agreement. Additional or different terms on current or future

Customer or third party purchasing documents are expressly objected to and rejected, even if SAS does not explicitly object to or reject such terms individually.

The individuals signing below represent that they have authority to bind the named parties to this MLA.

Accepted by:

County of Cuyahoga, Ohio, Department
of Public Safety and Justice Services

Customer:

Edward FitzGerald, County Executive

By

Authorized signature

2013-10-31 13:35:56

Name (type or print)

Title

On

Date

SAS Institute Inc.

By



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

Title

On

September 30, 2013

Date

100.50.AEW004/28JAN12// REV.100.50.LBF135/27AUG13

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Master License Agreement Number: _____

**Services Supplement Number 2 ("Supplement")
Time and Materials To Master License Agreement ("MLA")**

SAS Institute Inc. ("SAS") World Headquarters SAS Campus Drive • Cary, North Carolina 27513 Tel: (919) 677 8000 • Fax: (919) 677 4444 http://www.sas.com	Customer Name: Cuyahoga County Emergency Management ("Customer")
	Street Address: 310 W Lakeside Ave, Suite 330
	City, State, Country, Zip Code: Cleveland, OH 44113-1021
	Taxpayer ID Number:

1. **Effective Date.** This Supplement is effective upon the last dated signature below ("Effective Date") but governs Services prior to the Effective Date.

2. **Services, Deliverables, Work Product and Fees.**

2.1 Work Product. In exchange for Customer paying the fees and any applicable taxes arising under this Supplement, SAS agrees to provide (a) the services described in Section 2.2 below ("Services") related to Customer's use of software licensed under the MLA ("Software") and (b) a limited license as described in Section 3.1 below in relation to any documentation, computer code or other materials delivered by SAS in connection with the Services (collectively, "Work Product"). As used herein, the term "Time and Materials" means a consultative model where SAS provides Services at the hourly rates identified below. SAS' time and a limited license to any Work Product resulting from performance of the Services are the only deliverables to be provided to Customer.

2.2 Description of the Services.

SAS shall provide Services directed toward upgrading Customer from Patriarch version 2.10 to version 2.13. For the avoidance of doubt, such Services shall not include the transfer of AutoWeb, which is no longer supported by SAS.

2.3 Hourly Rates; Customer Funds; Travel and Living Expenses; Invoicing.

2.3.1 Hourly Rates. The hourly rate(s) for the Services shall be as follows:

Resource	Hourly Rate
Sr Consultant	\$214.95/Hour

2.3.2 Customer Funds. Customer has made available funds in the amount of Twenty Nine Thousand Eight Hundred Seventy Eight Dollars (\$29,878.05) (U.S.) for Services performed under this Supplement ("Customer Funds"), which is based on the estimated budget for labor for the Services determined by SAS. Travel and living expenses and applicable taxes are additional and are not reflected in the Customer Funds. Neither party shall have any obligation with respect to the performance of, or payment for, Services beyond the depletion of the Customer Funds. Customer may make additional Customer Funds available for the performance of the Services by amendment to this Supplement.

2.3.3 Travel and Living Expenses. Travel and living expenses, and any applicable taxes, are additional and are not reflected in the rates above.

2.3.4 Invoicing. SAS will invoice Customer monthly for any Services fees due. Payment terms shall be net thirty (30) days.

2.3.5 Commencement of Services. The parties acknowledge and agree that SAS shall not deliver any Services hereunder until SAS' records indicate that Customer is current with respect to its maintenance of the Software licensed pursuant to that certain Supplement No. 1, dated as of October 31, 2013.

3. TERMS AND CONDITIONS.

3.1 Ownership of Work Product. SAS grants Customer a nonexclusive, nontransferable, non-assignable, royalty-free license to use the Work Product only with the Software with which the Work Product operates and only for as long as Customer maintains a license for such Software. Notwithstanding the foregoing, in the event SAS is performing the Services as a subcontractor to Customer for the benefit of the third party identified below ("Client"), Customer may assign its License to such Client. Nothing herein shall be construed as granting Customer a license to any SAS Software, which shall be licensed separately pursuant to a license agreement between SAS and Customer. SAS has no obligation to provide continued support or maintenance for any Work Product. Ownership of the Work Product, including any intellectual property embodied therein, and any techniques, skills, concepts or know-how that are utilized or developed while performing the Services remains with SAS. Prototype systems and sample programs furnished by SAS are designed to help Customer learn to use the Software and for demonstration purposes; they are not intended to be used for production purposes without appropriate Customer testing.

Customer's Client, if applicable, for whose benefit the Services are being performed is N/A.

3.2 Confidential Information. SAS agrees to use reasonable efforts to prevent any Confidential Information from being revealed to third parties for a period of three (3) years from the date of disclosure. As used herein, the term "Confidential Information" shall mean only that information of Customer provided to SAS in connection with and related to the Services. This restriction does not apply to information which is: (1) generally available to the public; (2) released by Customer without restriction; (3) independently developed or acquired by SAS; or (4) known to SAS prior to receipt from Customer. In the event the Confidential Information must be disclosed pursuant to judicial order or requirement of law, SAS shall make reasonable efforts to notify Customer of such order or requirement. For the purposes of this Section, SAS' subsidiaries and subcontractors performing Services shall not be deemed "third parties." No proprietary source code or individually identifiable information will be disclosed under this Supplement.

3.3 Change Management. "Change Management" refers to a process for the parties to agree on a change or modification to the scope of Services, and "Change Order" refers to the document reflecting the change or modification. Requests by Customer or SAS for such changes will be made in writing to the other party. SAS will prepare the Change Order, which will contain the following information:

- a. A description of any additional work to be performed and/or any changes to the performance required of either party.
- b. A statement of the impact of the work or changes on the Services and the project schedule.
- c. The estimated timetable to complete the work specified in the Change Order.
- d. The estimated time and cost of any additional work associated with the Change Order.

SAS will provide the proposed Change Order to Customer's project manager for review, and if additional fees will be charged, SAS will provide the proposed amendment to this Supplement. Customer's project manager will respond in writing to the proposed Change Order within five (5) business days. Each party must agree in writing to the Change Order. Pending such written agreement (and if additional fees will be charged, execution of the associated amendment), SAS will continue to perform as if such Change Order had not been requested or recommended. If Customer provides its acceptance of the proposed Change Order in writing and, if applicable, executes the proposed amendment, SAS' project manager will update the project plan to reflect the change(s).

3.4 Warranties; Disclaimers; Limitation of Liability. SAS warrants that the Services will be performed by qualified personnel in a workmanlike manner and in accordance with the requirements set forth in the Agreement. The exclusive remedy for breach of this warranty is refund of fees paid for the Services at issue. SAS warrants that it has the right to license the Work Product to Customer. The exclusive remedy for breach of this warranty is provided in the section of the MLA addressing SAS' indemnification obligations for intellectual property infringement claims. SAS' indemnification obligations and the disclaimers of warranty and exclusions of consequential damages and limitations of liability contained in the MLA also apply to any Work Product and Services under this Supplement. For purposes of this Supplement only, with respect to SAS' indemnification obligations and the limitations of liability contained in the MLA, the term "Work Product" shall replace "Software," "IPPs," "Micro-IPPs" or any other defined term for the SAS software products licensed under the MLA. The parties acknowledge and agree that Customer may use the Work Product in connection with its work for the Client, or other third parties whom SAS has no contractual relationship. Accordingly, except for claims for which Customer is entitled to reimbursement pursuant to the MLA or this Supplement, Customer shall defend, indemnify, and hold SAS harmless from and against any liability for claims by Client or any other third party arising from use of the Work Product.

3.5 Insurance. During the term of this Supplement, SAS will keep the following insurance policies in force:

- 3.5.1 Workers Compensation -- Statutory (in the amounts required by applicable state statutes);
- 3.5.2 Employer's Liability -- \$1,000,000 per occurrence; bodily injury by accident or disease, including death;
- 3.5.3 Commercial General Liability -- \$1,000,000 combined limit per occurrence, bodily injury, personal injury and property damage, including blanket contractual liability; and
- 3.5.4 Automobile Liability (if vehicles are brought on Customer's premises or used in performance of the Services) -- \$1,000,000 combined limit per occurrence; bodily injury and property damage covering owned, non-owned and hired vehicles.

SAS will provide a Memorandum of Insurance upon request as evidence of this coverage.

3.6 Customer Responsibilities; Equipment; Personnel. Customer is responsible for furnishing facilities, equipment, information and access to Customer personnel required to perform the Services. SAS may subcontract all or portions of the Services. Customer agrees not to solicit for hire any individual who provides the Services to Customer within six (6) months after the Services are performed. Notwithstanding the foregoing, responses to general advertisements in the media or on the Internet or Customer's intranet shall not be deemed to be a solicitation for hire within the context of this Section 3.6.

3.7 General. This Supplement constitutes a separate agreement between Customer and SAS incorporating the terms of the MLA. This Supplement, the MLA and invoices arising under them are the parties' complete and exclusive statement relating to their subject matter. Modifications must be in writing, signed by both parties, and specifically reference the MLA. Obligations in the MLA or this Supplement that by their nature are continuing survive termination or expiration. Additional or different terms on current or future Customer or third party purchasing documents are expressly objected to and rejected. With respect to the Services provided hereunder, the terms of this Supplement add to the MLA and supersede any conflicting or inconsistent terms in the MLA. This Supplement shall terminate on April 30, 2014.

The individuals signing below represent they have authority to bind the named parties to this Supplement.

Accepted by:

Cuyahoga County Emergency Management
Customer: Management
Edward FitzGerald, County Executive
By 
Authorized signature
2014-02-27 17:00:48

Name (type or print)

Title
On _____
Date (DJLJ-04NOV2013-S6424)

SAS Institute Inc.

By 
Authorize

Na  Margaret Gill
Manager
Contracts Administration
SAS Institute Inc.

Title
On 11-25-2013
Date

