MARION COUNTY BOARD OF COMMISSIONERS

# Board Session Agenda Review Form

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| Meeting date: | August 10, 2016 |
| Department: | Information Technology |
| Agenda Planning Date: | August 4, 2016 |
| Time required: | 10 |
| ☐ Audio/Visual aids | |
| Contact: | Tom Frey |
| Phone: | (503) 584-7750 |

Department Head Signature: Tom Frey

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| **TITLE** | Shall the Board of Commissioners approve a contract with Can/Am Technologies, Inc. for an enterprise point of sale system? |
| Issue, Description & Background | In December of 2015, the Marion County Treasurer's Office and IT Department issued a request for proposals (RFP) for an enterprise point of sale system. Three proposals were received and as a result of a thorough evaluation, Can/Am Technologies, Inc. was determined to be the highest scored proposal.<br><br>The product offered by Can/Am Technologies is a browser-based point of sale cash accounting system. This product will allow the Treasurer's Office to accurately account for cash transaction in real time across multiple departments. |
| Financial Impacts: | The total contract value is $237,740.00 over five years. |
| Impacts to Department & External Agencies | The point of sale system will be deployed to the Marion County Information Technology Department and used by multiple departments, to include: Public Works, Community Services, Juvenile, Health, Clerk's Office, Assessor's Office, and Sheriff's Office. The Treasurer's Office will administer the system. |
| Options for Consideration: | 1) Approve the contract with Can/Am Technologies<br>2) Deny approval of the contract with Can/Am Technologies |
| Recommendation: | The Treasurer's Office and the IT Department staff recommend approval of the contract with Can/Am Technologies, Inc. |
| List of attachments: | Information Technology Products and Services Contract with Can/Am Technologies, Inc. |
| Presenter: | Tom Frey, Laurie Steele |

*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

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| Copies to: | Jacob Clotfelter - jclotfelter@co.marion.or.us |

**INFORMATION TECHNOLOGY PRODUCTS AND SERVICES CONTRACT**
**(Software and related Services)**

This Information Technology Products and Services Contract (this "Contract" or "Agreement") is entered into on the date of execution by and between the Marion County, a political subdivision of the state of Oregon, acting by and through its Information Technology Department ("County"), and Can/Am Technologies, Inc. a corporation ("Contractor").

**RECITALS**

A. Agency desires to engage a Contractor to provide enterprise point of sale Software and Services to enable County to achieve specific business and County mission objectives defined in this Contract. To that end, County issued RFP # C25102-TEPOS2-15 (defined below).

B. Contractor is the successful Proposer to the RFP #C25102-TEPOS2-15 and County desires to engage the Contractor to deliver the Software and perform the Services.

C. Contractor desires to deliver the Software to and perform the Services for the County.

**AGREEMENT**

In consideration of the foregoing recitals and the mutual terms and conditions set forth below, County and Contractor agree as follows:

1. DEFINITIONS.

"Acceptance" means written confirmation by County that Contractor has completed a Deliverable according to the Acceptance Criteria and accepted for purposes of interim payment. The term is distinct from "Final Acceptance".

"Acceptance Criteria" means the criteria for accepting Deliverables required by this Contract, including but not limited to all specifications and requirements in the Statement of Work, and the Performance Warranties set forth in Article 8.2

**"**Acceptance Tests" means those tests which are intended to determine compliance of Software and Services with the Acceptance Criteria of this Contract.

"County Intellectual Property" means any intellectual property that is owned by County. County Intellectual Property includes any derivative works and compilations of any County Intellectual Property.

"Authorized Representative" means a person representing a party to this Contract who is authorized to make commitments and decisions on behalf of the party regarding the performance of this Contract. Contractor's Authorized Representative is the person so identified in Exhibit C. County's Authorized Representative is the person so identified in Exhibit D.

"Confidential Information" is defined in Section 7.1.

"Contract" means all terms and conditions herein and all Exhibits attached hereto.

“Contractor Intellectual Property” means any intellectual property that is owned by Contractor and contained in or necessary for the use, or optimal use, of the Deliverables. Contractor Intellectual Property includes Documentation, Work Product, and derivative works and compilations of any Contractor Intellectual Property. Contractor Intellectual Property does not include COTS Software.

“COTS Software” means commercial off-the-shelf software that are ready made and available for sale to the general public.

“Deliverables” means the Services and all Software that Contractor is required to deliver to County under this Contract, including Work Product.

“Delivery Schedule” means that attribute of the Statement of Work setting forth the completion date of each Milestone and the delivery date for each Deliverable.

“Documentation” means all documents, including documents that are Deliverables described in the Statement of Work and includes, but is not limited to, any and all operator’s and user’s manuals, training materials, guides, commentary, listings, requirements traceability matrices and other materials for use in conjunction with and for the operation of Software and Services that are to be delivered by Contractor under this Contract.

“Effective Date” means the date on which this Contract is fully executed and approved in according to applicable laws, rules and regulations.

“Final Acceptance” is defined in Section 2.3.2.

”Software Retention Amount” is defined in Section 5.3.2.

“Intellectual Property Rights” is defined in Section 10.2.

“Key Persons” means Contractor’s Authorized Representative, the Project Manager and all other Contractor personnel designated as key persons in Exhibit D.

“Maximum Not-To-Exceed Compensation” is defined in Section 5.1.

“Milestone” means the completion date for a specific group of Tasks or Deliverables identified as a Milestone in the Statement of Work.

“Project Manager” means Contractor’s representative who manages the processes and coordinates the Services with County’s Authorized Representative to ensure delivery of the Product or Service. Contractor’s Project Manager is the person so identified in Exhibit C.

“Proposal” means Contractor’s proposal in response to the RFP.

“RFP” means the Request for Proposal #C25102-TEPOS2-15.

“Software” means the Software identified in Exhibit A, and all related Documentation, that the Contractor will deliver to County.

“Schedule of Deliverables” means that attribute of the statement of work that describes each Deliverable, measurable attributes of each Deliverable, Milestones with identification of the Services activities that are associated with them and a planned completion date for each Milestone and Deliverable.

"Services Retention Amount" is defined in Section 5.3.1.

“Services” means all effort to be expended by Contractor as set forth in the Statement of Work and the Maintenance and Support Agreement including but not limited to delivery, installation, configuration, implementation (collectively “installation”), warranty, maintenance and support of the Software.

“Software” means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Application Programming Interfaces.

“Statement of Work (SOW)” means the document that describes each Task, Deliverable and Milestone, the measurable attributes of each Deliverable, identification of the Deliverables and Services that are associated with each Task, and a completion date for each Milestone and Deliverable, the Payment Schedule for each Deliverable and Milestone, and any other items as agreed by the parties including Amendments pursuant to section 17.15, all attached hereto as Exhibit A.

“Task” means a segment of the Services to be provided by Contractor under this Contract.

“Third Party Intellectual Property” means any intellectual property owned by parties other than County or Contractor and contained in or necessary for the use of the Deliverables. Third Party Intellectual Property includes COTS Software owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.

"Third Party Software” includes Software not published by Contractor or County and which are supplied by Contractor to County under this Agreement.

“Warranty Period” means the period that begins on the date the Software is delivered, and ends 30 calendar days after date of Final Acceptance.

“Work Product” means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor’s subcontractors or agents (either alone or with others) pursuant to the Contract. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any County Intellectual Property, Contractor Intellectual Property or Third Party Intellectual Property.

2. SOFTWARE AND SERVICES.

2.1 PERFORMANCE AND DELIVERY.

2.1.1 Contractor shall perform the Services and deliver the Deliverables according to this Contract including the Acceptance Criteria and the Statement of Work.

2.1.2 All Software to be supplied by Contractor shall be the most recent commercially available version unless otherwise expressly authorized by County.

2.1.3 Contractor shall deliver the Software to the County F.O.B. to the destination specified in Exhibit A according to the Delivery Schedule set forth in Exhibit A.. During the period that Software is in transit, and until the time that the Software is tendered to enable the County to take delivery of the Software, Contractor and its insurers, if any, relieve the County and the State of Oregon of the responsibility for all risk of loss of, or damage to, the Software. Thereafter, all risk of loss of, or damage to, the Software shall be borne by the County.

2.1.4 Contractor shall have all publisher warranties covering the Software transferred to the County at time of delivery at no additional charge. Contractor shall also furnish to the County the details of the third party publisher warranties.

2.2 If this Contract requires County to provide any resources, and County fails to provide the requisite quality or quantity of such resources, or fails to provide such resources in a timely manner but for a period not to exceed 30 days, Contractor's sole remedy shall be an extension of the applicable delivery dates corresponding to the delay caused by County's failure. If County's failure to provide such resources exceeds thirty (30) days and Contractor can show to the reasonable satisfaction of County, which the County's failure has resulted in an unavoidable increase in the cost of the Services required for the Statement of Work then Contractor shall be entitled to recover from County the reasonable amount of such increased costs. Contractor's right to delay applicable delivery dates may be exercised only if Contractor provides County with reasonable notice of County's failure and Contractor uses Commercially Reasonable Efforts to perform notwithstanding County's failure to perform.

2.3 REVIEW OF SOFTWARE AND SERVICES / FINAL ACCEPTANCE

2.3.1 Contractor shall deliver Deliverables and complete Milestones as set forth in the Statement of Work by no later than the date or dates set for delivery in the Statement of Work. Delivery dates, both critical and non-critical, are set forth in the Statement of Work and are subject to County performing its responsibilities in a timely manner.

2.3.2 SOFTWARE INSPECTION. Contractor shall provide written notice to the County upon full and complete delivery, installation, configuration and implementation of the Software as required by the SOW. Within thirty (30) business days after receipt of such notice, County shall perform Acceptance Tests as set forth in the SOW to determine whether the Software and Services meet Acceptance Criteria. If the Acceptance Tests establish that the Software and Services conform to the Acceptance Criteria, then County shall issue written notice to Contractor of Final Acceptance of the Software and Services. Final Acceptance does not include Acceptance of ongoing maintenance and support. If County determines that the Software or Services do not materially meet the Acceptance Criteria, then the parties shall follow the process set forth in section 2.3.3 for nonconforming Deliverables.

2.3.3 If the County determines that a Deliverable does not meet in all material respects the Acceptance Criteria, the County shall notify Contractor in writing of County's rejection of the Software and Services, and describe in with reasonable detail the nonconformance that forms the County's basis for rejection of the Deliverable. Upon receipt of notice of nonacceptance, Contractor shall, within a 15-day period, modify or improve the Software and Services at Contractor’s sole expense so that the Deliverable meets, in all material respects the Acceptance Criteria, and notify the County in writing that it has completed such modifications or improvements and re-tender the Deliverable to the County. County shall thereafter review the modified or improved Software and Services within 15-days of receipt of the Contractor's re-delivery of the Deliverable. Failure of the Deliverable to meet in all material respects, the Acceptance Criteria after the second set of Acceptance Tests shall constitute a default by Contractor. In the event of such default, County may either (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverable as set forth in this section 2.3.3, or (ii) notify Contractor of such default and in which case Contractor shall comply with section 2.4.

2.4 REMOVAL/REIMBURSEMENT. If the Software or Services are rejected or acceptance is revoked, the Contractor shall refund any Contract payments that have been made with regard to the Software or Services, and shall (at Contractor's sole cost and expense) remove the Software within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.

2.5 REMEDIES NOT EXCLUSIVE. No provision of this Article 2 precludes County from other remedies to which it may be entitled upon rejection or revocation of acceptance.

2.6 Warranty Period/Post Warranty Maintenance and Support.

2.6.1 Contractor shall, at no charge to County, furnish such materials and Services as shall be necessary to correct any defects in the Software and Services that prevent the Software and Services from meeting the Acceptance Criteria provided in the Contract. During the Warranty Period Contractor shall provide maintenance and support of the Software consistent with the Contractor’s obligations of Post Warranty Maintenance and Support as set forth in Exhibit F. Notwithstanding the expiration of the Warranty Period, Contractor shall be obligated to cure defects discovered during the Warranty Period that prevent the Software and Services from meeting the Acceptance Criteria of this Contract.

2.6.2 Post Warranty Maintenance and Support. Contractor shall provide post Warranty Maintenance and Support of the Software in accord with Maintenance and Support Agreement a copy of which is attached hereto Exhibit F.

3. CONTRACTOR’S PERSONNEL.

3.1 Project Manager. Contractor shall designate one of the Key Persons as Project Manager for the Services. The Project Manager shall be familiar with County’s business operations and objectives as necessary for the successful completion of this Contract. The Project Manager shall participate with County in periodic review sessions and shall provide at County’s request detailed progress reports that identify completed tasks and the status of the remaining Services as set forth in the Statement of Work.

3.2 Contractor’s Employees and Subcontractors. Contractor shall not use subcontractors to perform the Services unless specifically authorized to do so by County. Contractor represents that any employees assigned to perform the Services, and any authorized subcontractors performing the Services shall perform the Services according to the warranties set forth in Article 8 of this Contract.

3.3 Key Persons. Contractor acknowledges and agrees that County selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's Key Persons identified in Exhibit C. Contractor's Key Persons shall not delegate performance of their powers and responsibilities they are required to provide under this Contract to another Contractor employee(s) without first obtaining the written consent of the County. Further, Contractor shall not re-assign or transfer the Key Persons to other duties or positions such that the Key Persons are no longer available to provide the County with their expertise, experience, judgment, and personal attention, without first obtaining the County's prior written consent to such re-assignment or transfer, which County shall not unreasonably withhold or delayed. Notwithstanding the foregoing, Contractor may replace Key Persons without County's consent in the event any Key Persons are no longer available due to death, illness or termination of employment with Contractor. In the event Contractor requests that the County approve a re-assignment or transfer of the Key Persons, or if Contractor must replace Key Persons due to death, illness or termination of employment with the Contractor, the County shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Persons. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced Any replacement personnel approved by County shall thereafter be deemed a Key Person for purposes of this Contract and Exhibit C shall be deemed amended to include such Key Person.

4. TERM. This Contract shall be effective on the Effective Date. The term for implementation services shall expire on the expiration of any Warranty period. Notwithstanding the foregoing, the term for any License Agreement, Maintenance and Support Agreements attached hereto shall be as specified in those agreements, but shall not extend beyond a period of five years.

5. COMPENSATION.

5.1 Maximum Payment Amount. Notwithstanding any other provision of this Contract to the contrary, the maximum, not-to-exceed compensation that County will pay to Contractor is two hundred thirty-seven thousand seven hundred forty dollars ($237,740.00) (the “Maximum Not-To-Exceed Compensation”), which includes payment for any allowable expenses for which Contractor may request reimbursement under this Contract.

5.2 Payments.

5.2.1 Payment of Fixed Prices. Subject to the requirements of Sections 5.3 and 5.5, County shall pay to Contractor the fixed price for each Deliverable completed, delivered to and Accepted by County according to the Statement of Work.

5.2.2 Maintenance / Support Services. Subject to sections 5.5 and 5.6, No later than 30 days prior to the expiration of the Warranty Period, Contractor shall invoice County for the annual fees for Maintenance and Support. Thereafter, Contractor shall no later than 30 days from the expiration of any Maintenance or Support period invoice County for the next period of Maintenance and Support in accord with the pricing set forth in Exhibit A.

5.3 Retention Amount.

5.3.1 Retention Amount for Services. County shall in all events be permitted to hold back an amount (the "Services Retention Amount") of not more than ten percent (10%) of any amount that is payable by County to Contractor, other than amounts attributable to the purchase licenses of COTS Software, if any. County shall pay the then accrued Services Retention Amount to Contractor within thirty (30) days following Final Acceptance.

5.3.2 Retention Amount for Software. County shall in all events be permitted to hold back an amount (the "Software Retention Amount") of not more than ten percent (10%) of any amount payable to Contractor pursuant to Section 5.2 for Software. County shall pay the accrued Software Retention Amount for the applicable Product within 30 days of County's Final Acceptance of the Product according to Acceptance Criteria and processes set forth in this Contract.

5.4 Expenses. County will not pay or reimburse any expenses incurred by Contractor during the completion of the Service except as authorized in the SOW.

5.5 Invoices. County shall pay Contractor not more than once each month upon Contractor's submission of detailed invoices that set forth the Software and Services accepted by County. Such invoices shall comply with the requirements of Sections 5.2, 5.3, and 5.4 and shall identify the Software Delivered and the Services completed and Accepted by County for which Contractor seeks compensation and shall itemize and explain all authorized expenses for which reimbursement is claimed. Contractor shall request payment only for Deliverables accepted by County. The invoices also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor shall submit invoices to County's Authorized Representative. County will have the right to review each such invoice for compliance with the requirements of this Section 5.5 and any other relevant provisions of this Contract. All payments to Contractor are subject to ORS 293.462

5.6 Limit on Payments. Contractor shall not submit invoices for, and County shall not pay, any amount in excess of the Maximum Not-To-Exceed Compensation. If this maximum amount is increased by amendment of this Contract, pursuant to Section 17.15, the amendment must be fully effective before Contractor performs Services or delivers goods subject to the amendment. No payment will be made for any Services performed or Software delivered before the Effective Date or after termination of this Contract

6. OWNERSHIP AND LICENSE IN PRODUCT OR SERVICES.

6.1 Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to County pursuant to this Contract. Contractor grants County a license to Contractor Intellectual Property as set forth in Exhibit E.

6.2 Work Product. Contractor owns all Work Product. Contractor grants County a perpetual, non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Work Product, and to authorize others to do the same on County's behalf.

6.3 Third Party Intellectual Property. Unless otherwise specified in Exhibit A that County, on its own, will acquire and obtain a license to Third Party Intellectual Property, Contractor shall secure on County's behalf, in the name of County and subject to County's approval, a license to Third Party Intellectual Property sufficient to fulfill the business objectives, requirements and specifications identified in this Contract.

6.4 County Intellectual Property; Data and Background Information.  County owns all County Intellectual Property and County data and background information provided to Contractor pursuant to this Contract.  County grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of County Intellectual Property and County data and background information only to fulfill the purposes of this Contract.  County's license to Contractor is limited by the term of the Contract and the confidentiality obligations of this Contract.

6.5 No Rights. Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by County.  Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon County any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

6.6 Competing Services. Subject to the provisions of this Article 6, and Contractor's obligations with respect to Confidential Information, as defined in Article 7 nothing in this Contract shall preclude or limit in any way the right of Contractor to: (i) provide the services similar to those contemplated in this Contract, or, consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables  Each party shall be free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under this Contract free of any use restriction or payment obligation to the other.

6.7 Neither party grants the other the right to use its trademarks, trade names, servicemarks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract

7.   CONFIDENTIALITY AND NON-DISCLOSURE.

7.1 CONFIDENTIAL INFORMATION. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to County or County's clients. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by County to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than County without the obligation of confidentiality, (e) is disclosed with the written consent of County, or; (f) is independently developed by employees, agents or subcontractors  of Contractor who can be shown to have had no access to the Confidential Information.

7.2 NON-DISCLOSURE. Contractor agrees to hold Confidential Information in confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties (other than its subcontractors, or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except according to this Contract, and that upon termination of this Contract or at County's request, Contractor will turn over to County all documents, papers, and other matters in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

7.3 Identity Theft. In the performance of the Agreement or Purchase Order Contract, Contractor may have possession or access to documents, records or items that contain "Personal Information" as that term is used in ORS 646A.602(11), including Social Security numbers. Personal Information is a type of Confidential Information that is highly sensitive and subject to additional protection. Therefore, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, Contractor shall have in place, a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628.

7.3.1 Contractor shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control under this Contract. Contractor shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Contractor shall not use, distribute or dispose of any Personal Information other than expressly permitted by County, the Authorized Purchaser, required by applicable law, or required by an order of a tribunal having competent jurisdiction.

7.3.2 Contractor shall promptly report to the County, as promptly as possible, any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal Information to which the Contractor receives access, possession, custody or control in the performance of this Contract.

7.3.3 Contractor shall require the compliance of its employees and agents with this section

7.4 Security Policies/Non-Disclosure Agreement. Contractor at all times shall comply with County's security policies is attached as Exhibit G. Contractor shall upon County's request provide a written non-disclosure agreement and obtain such from Contractor's employees or subcontractors performing Services under this Contract including the Maintenance and Support Agreement included as Exhibit F.

7.5 Injunctive Relief. Contractor acknowledges that breach of this Article 7, including disclosure of any Confidential Information, will cause irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of County and are reasonable in scope and content.

7.6 Publicity. Contractor agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of County.

8. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES.

8.1 GENERAL REPRESENTATIONS AND WARRANTIES. In addition to all other Contractor representations and warranties in this Contractor also represents and warrants to County that:

8.1.1 Contractor has the power and authority to enter into and perform this Contract;

8.1.2 This Contract, when executed and delivered, will be a valid and binding obligation of Contractor enforceable according to its terms;

8.1.3 The Contractor warrants that the recommendations, guidance and performance of any person assigned under the AGREEMENT shall be in accordance with professional standards and the requirements of the AGREEMENT.

8.1.4 Contractor's performance under this Contract to the best of Contractor's knowledge creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under this Contract.

8.2 CONTRACTOR'S PERFORMANCE WARRANTIES. Contractor represents and warrants to County that:

8.2.1 Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors perform the Services described in this Contract according to the highest standards prevalent in the industry or business most closely involved in providing the Software or Services that Contractor is providing to County pursuant to this Contract

8.2.2 Through the expiration of the Warranty Period, all Product and Services delivered by Contractor to County shall materially conform to the Acceptance Criteria set forth in this Contract, including the Statement of Work and any Documentation provided by Contractor and shall be free from error or defect that materially impairs their use, and shall be free from defects in materials, workmanship and design.

8.2.3 Except as otherwise permitted or provided in this Contract including as provided in Article 6, all Software or Services supplied by Contractor to County shall be transferred to County free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind.

8.2.4 Except as otherwise set forth in this Contract, any subcontractors performing work for Contractor under this Contract have assigned all of their rights in the Product or Services to Contractor or County and no third party has any right, title or interest in any Product or Services supplied to County under this Contract.

8.2.5 Contractor represent and warrants that it will maintain, operate and enforce, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, an active and effective information security program to preserve the security and confidentiality of all Personal Information that is contained in any document, record, compilation of information or other item to which Contractor receives access, possession, custody or control.

8.2.6 The Contractor represents and warrants that, at the time of delivery and installation of the Software provided pursuant to this Contract and Statement of Work, those Products shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under the terms and conditions of this Contract. Notwithstanding the foregoing, this representation and warranty does not include a disabling device that limits, suspends or ends use of the Software expressly permitted by the terms and conditions by the license under which it was provided.

8.3 WARRANTIES EXCLUSIVE; DISCLAIMERS. THE WARRANTIES SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE COUNTY' S USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

8.4 The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, any use of the Software capacity or capability, other than that authorized by Contractor in writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by County or a third party, or failure or damage caused by a product for which Contractor is not responsible

9. LIMITATION OF LIABILITY.

9.1 EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 10.1, (ii) SECTION 10.2, (iii) ARTICLE 7 OR (iv) CLAIMS FOR PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY ARISING FROM THE NEGLIGENCE, RECKLESS CONDUCT OR INTENTIONAL ACTS OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS, NEITHER PARTY WILL BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOST DATA, PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES.

10. INDEMNITIES.

10.1 GENERAL INDEMNITY. The Contractor shall save harmless, indemnify, and defend the County for any and all claims, damages, losses and expenses including but not limited to reasonable attorney's fees arising out of or resulting from Contractor's performance of or failure to perform the obligations of this Contract to the extent same are caused by the negligence or misconduct of Contractor or its employees or agents.

10.2 IP INDEMNITY. In addition to and without limiting the generality of Section 10.1, Contractor expressly agrees to, indemnify, defend and hold the County and its directors, employees and agents harmless from any and all third party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Product or Services or use thereof infringe or violate any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, "Intellectual Property Rights") of any third party. If Contractor believes at any time that the Product or Services infringe a third party's Intellectual Property Rights, Contractor may upon receipt of County's prior written consent, which County shall not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for County the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the Software continue to function in conformance with the Acceptance Criteria set forth in this Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract, and County may pursue any rights and remedies available to it under this Contract, including termination. Contractor shall not be liable under this Article 10.2 for any claim for infringement based solely on the following:

- County's modification of the Software other than as contemplated by this Contract or the Software specifications; or as otherwise authorized by Contractor in writing.

- Use of the Software in a manner other than as contemplated by this Contract or the Software's specifications; or, as otherwise authorized in writing by Contractor

- Use of the Software in combination, operation, or use of with other software other than as contemplated by this Contract or the Software's Specifications; or, as otherwise authorized in writing by Contractor

10.3 CONTROL OF DEFENSE AND SETTLEMENT. Contractor's obligation to indemnify County as set forth in Sections 10.1 and 10.2 is conditioned on the County providing to Contractor prompt notification of any claim or potential claim of which County becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 10.1 or Section 10.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the County, nor purport to act as legal representative of the County, without the approval of the County, nor shall Contractor settle any claim on behalf of the County without the approval of the County. The County may, at its election and expense, assume its own defense and settlement in the event that the County determines that Contractor is prohibited from defending the County, is not adequately defending the County's interests, or that an important governmental principle is at issue and the County desires to assume its own defense.

10.4 DAMAGES TO COUNTY PROPERTY AND EMPLOYEES. Contractor shall be liable for all claims, suits, actions, losses, damages, liabilities, costs and expenses for personal injury, including death, damage to real property and damage to tangible personal property of the County or any of its employees resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract.

10.5 Insurance. Contractor shall provide and maintain insurance as required by Exhibit B.

11. EVENTS OF DEFAULT.

11.1 DEFAULT BY CONTRACTOR. Contractor shall be in default under this Contract if:

11.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within 60 days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

11.1.2 Contractor no longer holds a license or certificate that is required for Contractor to perform the Services and Contractor has not obtained such license or certificate within thirty (30) business days after delivery of County's notice or such longer period as County may specify in such notice; or

11.1.3 Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the specifications and warranties provided herein, or clearly manifests an intent not to perform future obligations under this Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) business days after delivery of County's notice or such longer period as County may specify in such notice.

11.2 DEFAULT BY COUNTY. County shall be in default under this Contract if:

11.2.1 County fails to pay Contractor any amount pursuant to the terms of this Contract, and County fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or

11.2.2 County commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and County fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

12. REMEDIES FOR DEFAULT.

12.1 County's Remedies. In the event Contractor is in default under Section 11.1, County may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, which include, without limitation:

12.1.1 termination of this Contract under Section 13.2;

12.1.2 withholding all monies due for Services that Contractor is obligated but has failed to perform within thirty (30) days after County has notified Contractor of the nature of Contractor's default;

12.1.3 with respect to Software and Services for which County has paid before Acceptance, returning the Software to Contractor for which County has paid in exchange for a return of all moneys previously paid for such Software and Services, and

12.1.4 initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;

12.1.5 exercise of its right of setoff.

12.2 REMEDIES CUMULATIVE. These County remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Section 11.1, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 13.1.

12.3 CONTRACTOR'S REMEDIES. In the event County terminates this Contract as set forth in Section 13.1, or in the event County is in default under Section 11.2 and whether or not Contractor elects to exercise its right to terminate the Contract under Section 13.3, Contractor's sole monetary remedy shall be a claim for (i) any unpaid invoices for Software delivered and Services completed and accepted; and, (ii) for incomplete Deliverables an amount calculated by determining the percentage of Services completed on each unpaid Deliverable and applying that percentage to the price for the Deliverable set forth in the SOW, not to exceed amount for the Deliverable set forth in the Statement of Work, and authorized expenses incurred. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 12.3, Contractor shall pay any excess to County upon written demand.

13. Termination. This Contract may be terminated under the following conditions:

13.1 By written mutual agreement of both parties. Termination under this provision may be immediate.

13.2 Upon thirty (30) calendar days written notice by either Party to the other of intent to terminate.

13.3 The COUNTY may terminate all or part of this agreement, at its sole discretion, for the following reasons:

13.3.1 If the Contractor fails to provide services, or fails to meet the performance standards as specified in this agreement (or subsequent modifications of this contract), within the time specified herein or any extension thereof. Termination under this provision may be immediate.

13.3.2 If the Contractor fails to start services on the date specified by the County in this contract or subsequent modifications to this contract. Termination under this provision may be immediate.

13.3.3 Failure of the Contractor to comply with the provisions of this Contract and all applicable federal, state, and local laws and rules may be cause for termination of this contract.

13.3.4 If County fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the Software or Services;

Such termination shall be without prejudice to any obligations or liabilities of either party accrued to such termination.

If this Contract is terminated by either party, for reasons other than breach of contract, the County agrees to pay to the Contractor all costs and expenses associated with services satisfactorily provided to the effective date of termination.

13.4 COUNTY'S RIGHT TO TERMINATE FOR CAUSE. In addition to any other rights and remedies County may have under this Contract, County may terminate this Contract, in whole or in part, immediately upon Contractor's default under Section 11.1.

13.5 CONTRACTOR'S RIGHT TO TERMINATE FOR CAUSE. Contractor may terminate this Contract upon County's default under Section 11.2.

13.6 RETURN OF PROPERTY. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to County all of County's property (including without limitation County's Confidential Information or any Product or Services for which County has made payment in whole or in part) that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such County property is expressed or embodied at that time. Any property or Product or Service returned or delivered to County pursuant to this Section shall be provided without the warranties set forth in Article 8.2, unless, with respect to Product or Services, County has accepted the Product or Service pursuant to Section 2.3.

14. INDEPENDENT CONTRACTOR; TAXES AND WITHHOLDING.

14.1 INDEPENDENT CONTRACTOR. The Contractor is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Contractor's activities and responsibilities for the purpose of implementing the provisions of this Contract, and maintains the appropriate license/certifications, if required under Oregon Law. Notwithstanding the preceding sentence, County reserves the right to determine schedule for the work to be performed and to evaluate the quality of the completed performance. This Contract shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other than that of independent parties. The Contractor is acting as an "independent contractor" and is not an employee of COUNTY, and accepts full responsibility for taxes or other obligations associated with payment for services under this Contract. As an "independent contractor", Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties for the duration of the Contract.

14.2 DECLARATION AND CERTIFICATION. Contractor by execution of this Contract declares and certifies that (i) its performance of the Services creates no potential or actual conflict of interest as defined by ORS Chapter 244, for Contractor or any Contractor personnel who will perform Services under this Contract, and (ii) in the event that Contractor or its personnel are either employed by or performing services for the federal government, that no rules or regulations of the County for which Contractor or its personnel work or are employed prohibit Contractor or its personnel from providing the Services under this Contract. Contractor also declares and certifies by execution of this Contract that it is not an “officer,” “employee,” or “agent” of County, as those terms are used in ORS 30.265.

14.3 RESPONSIBLE FOR TAXES. Contractor shall be responsible for all federal and state taxes applicable to compensation and other payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, County will not withhold from such compensation and payments any amount to cover Contractor’s federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers’ compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

15. COMPLIANCE APPLICABLE LAW. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

16. DISPUTE RESOLUTION.

16.1. Both parties further agree to exercise their best efforts in good faith to resolve all disputes.

16.2. VENUE. Any claim, action, suit, or proceeding (collectively, “Claim”) between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

16.3 GOVERNING LAW. This Contract shall be governed by the laws of the State of Oregon.

17. MISCELLANEOUS PROVISIONS.

17.1. ORDER OF PRECEDENCE. This Contract consists of the following documents that are listed in descending order of precedence: (a) the terms and conditions of this Contract, less its Exhibits; (b) the Statement of Work, Exhibit A; (c) the RFP, Attachment 1; (d) the Proposal, Attachment 2; and (e) Exhibits B - G. The aforementioned Exhibits are by this reference incorporated in the Contract.

17.2 Reserved.

17.3 SUBCONTRACTS AND ASSIGNMENT. Contractor shall not enter into any subcontracts for any of the Services required by this Contract or assign or transfer any of its interest in this Contract without County's prior written consent. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of County. County's consent to any subcontract or assignment shall be timely and not unreasonably withheld. County consent to a subcontract or assignment shall not relieve Contractor of any of its duties or obligations under this Contract. The assignment of this Contract, in whole or in part to a successor organization by merger or acquisition does not require the consent of the other. Contractor is also permitted to assign its rights to payments without obtaining County's consent

17.4 SUCCESSORS AND ASSIGNS. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

17.5 NO THIRD-PARTY BENEFICIARIES. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

17.6 FUNDS AVAILABLE AND AUTHORIZED. In the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the Contractor agrees to abide by any such decision including termination of service. Contractor understands and agrees that County's payment of amounts under this Contract is contingent on County receiving appropriations, limitations, or other expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

17.7. RECORDS MAINTENANCE; ACCESS. Contractor shall maintain all financial records and other records relating to its performance under this Contract according to generally accepted accounting principles and in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that County, the State of Oregon and the federal government and their duly authorized representatives shall have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records for a minimum of three (3) years, or such longer period as may be required by applicable law, following termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.

17.8. RESERVED.

17.9. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations and declarations set forth in Articles V, VI, VII, VIII, X, IX, XII, XV, XIV and XVI, and Sections 14.3, 17.1, 17.4, 17.5, 17.7, 17.9, 17.12, 17.13, 17.17, 17.18, 17.19, 17.20 and 17.21.

17.10. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract for critical path Deliverables or Milestones as set forth in the Statement of Work.

17.11. FORCE MAJEURE. Neither County nor Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, riots or strikes. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

17.12. NOTICES. Any notice of termination or other communication having a material effect on this AGREEMENT shall be served by U.S. Mail on the signatories listed.

17.13 SEVERABILITY. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.

17.14 COUNTERPARTS. This Contract may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

17.15. AMENDMENTS. Generally. This Contract may be amended, modified, or supplemented only by a written amendment signed by County and Contractor that has been approved by the Board of Commissioners. Any amendment that provides for additional Software or Services may only provide for Software or Services directly related to the scope of Software and Services described in the RFP, and no amendment shall be effective until all requisite signatures and approvals are obtained.

17.16. ORDER OF PRECEDENCE. In the event of an inconsistency or conflict between this Agreement and a Schedule or an attachment or exhibit thereto, the order of precedence shall be as follows and all documents are incorporated herein by this reference:

- This Agreement
- Exhibit A – Statement of Work
- Exhibit B – Insurance Requirements
- Exhibit C – Contractor Personnel
- Exhibit D – County Personnel
- Exhibit E – Contractor’s License Agreement
- Exhibit F – Maintenance and Support Agreement

- The RFP
- Contractor's Proposal

17.17. WAIVER. The failure of either party to enforce any provision of this Contract or the waiver of any violation or nonperformance of this Contract in one instance shall not constitute a waiver by the party of that or any other provision nor shall it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties and, with respect to County's waiver or consent all necessary Board of Commissioners approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

17.18. HEADINGS. The headings in this Contract are included only for convenience and shall not control or affect the meaning or construction of this Contract.

17.19. INTEGRATION. This Contract including attached Exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Contract.

17.20. NO PARTNERSHIP. This Contract is not intended, and shall not be construed, to create a partnership or joint venture between County and Contractor. Nothing in this Contract shall be construed to make County and Contractor partners or joint venture participants.

17.21. PUBLICITY. Contractor agrees that it will not disclose the form, content or existence of this Contract or any Product or Service in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with County or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by County or the State of Oregon of Contractor's services, without the prior written consent of County.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED BEFORE NECESSARY COUNTY APPROVALS.

**MARION COUNTY SIGNATURE**
**BOARD OF COMMISSIONERS:**

__________________________________________________
Chair Date

__________________________________________________
Commissioner Date

__________________________________________________
Commissioner Date

Authorized Signature:____________________________________________
Department Director or designee Date

Authorized Signature: ___________________________________________
Chief Administrative Officer  Date

Reviewed by Signature: ___________________________________________
Marion County Legal Counsel  Date

Reviewed by Signature: ___________________________________________
Marion County Contracts & Procurement  Date

**CAN/AM TECHNOLOGIES, INC.**

Authorized Signature: ____________ Date: July 27, 2016

Title: President

**EXHIBIT A**
**STATEMENT OF WORK**

1. **STATEMENT OF SERVICES**. Contractor shall perform Services as described below.

A. **GENERAL INFORMATION**. Marion County is Contracting with Contractor to provide a fully functional, enterprise level cash handling and receipting system. The system to be provided by Contractor is the core, supported Teller system, to include all optional items, configured based on County requirements. Contractor shall provide a fully functioning Teller point of sale (POS) system as described in Contractor's proposal in response to the RFP. The POS system shall be provided as software and metadata to be installed on County servers.

B. **REQUIRED SERVICES, DELIVERABLE AND DELIVERY SCHEDULE.** Specific services to be completed by Contractor in support of the implementation of Teller includes but is not limited to:

- Project planning for each phase of the project
- Business analysis necessary to understand County's workflows and processes
- Delivery of a Teller implementation plan for each phase of implementation
- Product configuration and environment set up
- Teller orientation and Train-the-Trainer type training
- Support for County acceptance testing
- Support for "Go-Live"
- Post Go-Live maintenance and support

Implementation of the Teller system will be completed in three Phases:

- Phase I – Public Works
- Phase II – Courthouse Square and the Marion County Sheriff's Office
- Phase III – Health and Juvenile

Prior to Phase I, Contractor shall provide an “Out of the Box” Teller instance to be loaded onto County’s server to be used as test instance. This instance will have no customization and is only intended to be used as a means of testing the system.

Contractor shall design and deliver a generic import interface. The intended purpose of this interface is to allow County to import information from existing systems into Teller.

Contractor shall enable the County to disallow tender types based on user, location, department, or any other criteria to be clarified during the Gap Analysis.

Contractor shall enable County to assign funds from a single transaction to be allocated to multiple accounts.

**Phase I – Public Works**

Phase I will involve the implementation of the Teller system at Marion County Public Works at multiple locations to include the Silverton Road Campus, two solid waste facilities, and two ferries.

**Planning**

Contractor will engage County staff to thoroughly understand the County’s business environment as it relates to Public Works. Contractor will gather and analyze how the County currently handles cashiering, including sample reports, user/role information, and user flows. The goal of this first stage of planning is to ensure that Contractor understands the needs of the County.

The second planning stage is to collaboratively determine how Teller will be implemented into County’s environment and what the impacts will be. The Contractor will facilitate sessions with County’s subject area experts and stakeholders to flesh out the details of the Teller implementation plan. The plan will include:

- Gap Analysis
- Teller configuration settings
- Process flows
- Plugin configurations and customizations
- Security configurations

Delivery Activities to be Coordinated and Completed by Contractor:

- Kick off meeting
- Gather and analyze current cashiering processes
- Analysis for required interfaces & optional items
- Analyze sample reports
- Analyze user/role information (Identify Business Rules)
- Analyze user flows
- Identify gaps
- Identify infrastructure requirements
- Understand Marion County infrastructure and advise necessary hardware and software requirements for test and production environments
- Future State Process Flows

- Define and plan for desired fields
- Define and plan for desired Teller features including optional items
- Plug in Configuration and customizations
- Security Configurations

County shall provide the following:

- Current cashiering process documentation, including copies of any forms or receipts used
- Mandatory cash management controls required
- List of items for sale, price, & account strings
- Business Requirements Document

Completion Criteria:

- Sign off on project management plan that includes:
    - Project Schedule
    - Issues Management Plan
    - Change Management Plan
    - Status Reporting Process
- Sign off on Implementation plan

**Implementation**

The Contractor will execute the configuration and any development work detailed in the Teller implementation plan. Iterations will be reviewed with the County as needed to gain greater clarity and agreement on any details not clear in the implementation plan. While most of the work at this stage is with Contractor, collaboration with County's subject area experts is normally frequent as the parties work together to ensure the best possible result.

Contractor will provide Teller orientation and "Train-the-Trainer" training to County personnel to enable County to efficiently test and validate the configured Teller system. Teller Usage Training will be provided onsite at County offices. Each session may be attended by up to eight (8) County staff.

Contractor will install Teller configurations into the County test environment. Contractor project team staff will support designated County staff in understanding and testing any County specific functionality, providing ad-hoc mentoring and guidance when required. If necessary, a final round of configuration updates and system modifications will then culminate in the final production release.

Delivery Activities to Be Completed by Contractor:

- Install and Setup Teller in County's test environment
- Configure Teller settings
- Develop & deliver generic interface to import transaction data from other existing POS software
- Develop & deliver optional items
- Implement Teller security configurations

- Implement user roles and business rules
- Train-the-Trainer mentoring (1 day)
  - Cash in to Teller
  - Perform payments in teller in a variety of configurations
  - Void payments and review entered payments
  - Cash out
  - Run reports
  - Research payment activity using the Payment Manager
  - Research session activity using the session manager
  - Adjust payment
  - Perform end-of-day balancing
  - Perform deposit reconciliation
  - Run management reports
- Administration Training (1/2 day)
  - Update teller G/L account mappings
  - Configure item types
  - Configure tender types
  - Update cash denominations
  - Configure printer layouts
  - Administer Teller security
  - Understand an overview of the Teller data model

County Shall:

- Identify and provide SME's to collaborate with contractor
- Provision of web server (test and production) as per requirement
- Provision of Oracle server (test and production) as per requirement
- Provide scheduled access to test environment (remote VPN)
- Provide test scripts for testing
- Provide training environment
- User acceptance testing scenarios and plans

Completion Criteria:

- System test against Teller to ensure system requirements are met
  - Basic Teller features
  - Optional items
  - Generic Interface
- Successful completion of user and administrator training
- Successful completion of user acceptance testing
- Working test environment
  - Cashiers can process a sale from workstation

**Go Live**

With the completion of the Orientation, Train-the-Trainer training, and the County's testing, the project moves into its final stage, in which County trainers train the end user community just prior to system implementation.

Prior to Go Live, Contractor will provision the production environment. The tested Teller setup will be installed into the production environment. Contractor will work with County staff to install hardware devices on all front counter and back-office cashier workstations; if required.

Phase I will conclude with a project review report and request for formal project acceptance.

Delivery Activities to be Completed by Contractor:
- Contractor provides an on-site resource to ensure smooth transition to go live
- Provide project review report

County Shall:
- Provision of production environment for web server & oracle server as per requirement
- Provide scheduled access to production environment
- SME trains the users prior to go live

Completion Criteria:
- Successful completion of Go Live Implementation
- Project sign off on project review report

**Phase II – Courthouse Square and the Marion County Sheriff's Office**

Phase II will involve the implementation of the Teller system at the Marion County Sheriff's Office and Courthouse Square. The Marion County Sheriff's Office is located in the Marion County Courthouse at 100 High Street, Salem, OR as well as multiple satellite offices located in the Salem area. Courthouse Square includes the following County Departments: Board of Commissioners, Legal, Finance, Treasurer, IT, District Attorney, Community Services, Business Services, Clerk, and Assessor.

**Phase II Approach**

The County will manage the planning, configuration, and implementation of Teller for Phase II, with assistance from Contractor. Contractor will provide 2 on-site trips to support the County as well as remote services by the hour, not to exceed 50 hours.

Acceptance of the trip and remote hourly services of Contractor will be based on successful demonstration of the effective provision of those services, in a professional manner, for the tasks requested by the County. These tasks are contemplated below and will be refined based on a review and assessment of County staff readiness upon successful completion of Phase I.

**Planning**

Contractor will engage County staff to thoroughly understand the County's business environment. Contractor will gather and analyze how the County currently handles cashiering, including sample reports, user/role information, and user flows. The goal of this first stage of planning is to ensure that Contractor understands the needs of the County.

The second planning stage is to collaboratively determine how Teller will be implemented into County's environment and what the impacts will be. The County, supported by Contractor, will facilitate sessions with County's subject area experts and stakeholders to flesh out the details of the Teller implementation plan. The plan will include:

- Teller configuration settings
- Process flows
- Plugin configurations and customizations
- Security configurations

Contractor to provide up to fifty (50) hours of professional services to configure Teller appropriately to accommodate County Needs.

Delivery Activities to be Completed by County, supported by Contractor:

- Identify future state process flows
- Define and plan for desired fields
- Define and plan for desired Teller features including optional items
- Define plug in configuration and customizations
- Define security configurations

County Shall:

- Cash management requirements & processes
- Spreadsheet showing items for sale, price, & account strings

Completion Criteria:

- Sign off on Project Management Plan
- Sign off on Implementation Plan

**Implementation**

Contractor will install Teller configurations into the County test environment. Contractor project team staff will support designated County staff in understanding and testing any County specific functionality, providing ad-hoc mentoring and guidance when required. If necessary, a final round of configuration updates and system modifications will then culminate in the final production release.

Delivery Activities to be Completed by Contractor:

- Configure Teller settings
- Implement Teller security configurations
- Implement user roles and business rules

County Shall:

- Provide scheduled access to test environment (remote VPN)
- Provide test scripts for testing
- Provide user acceptance testing scenarios and plans

Completion Criteria:

- System test against Teller to ensure system requirements are met
    - o Basic Teller features

- Successful completion of user acceptance testing
    - o Cashiers can process a sale from workstation

**Go Live**

County trainers train the end user community just prior to system implementation.

Prior to Go Live, Contractor will provision the production environment. The tested Teller setup will be installed into the production environment. Contractor will work with County staff to install hardware devices on all front counter and back-office cashier workstations; if required.

Phase II will conclude with a project review report and request for formal project acceptance.

Delivery Activities to be Completed by Contractor:
- Contractor provides an on-site resource to ensure smooth transition to go live
- Provide project review report

County Shall:
- Provision production environment
- SME trains the users prior to go live

Completion Criteria:
- Successful completion of Go Live Implementation
- Project sign off on project review report

**<u>Phase III – Health and Juvenile</u>**

Phase III will involve the implementation of the Teller system at Marion County Health and Juvenile Departments. The Health Department includes the main campus at 3180 Center Street NE in Salem, OR as well as multiple satellite offices throughout Marion County. The Juvenile Department is located at 3030 Center Street NE in Salem, OR.

**Phase III Approach**

Similar to Phase II, the County will manage the planning, configuration, and implementation of Teller for Phase III, with assistance from Contractor. Contractor will provide 1 on-site trip to support the County as well as remote services by the hour, not to exceed 50 hours.

Acceptance of the trip and remote hourly services of Contractor will be based on successful demonstration of the effective provision of those services, in a professional manner, for the tasks requested by the County. These tasks are contemplated below and will be refined based on a review and assessment of County staff readiness upon successful completion of Phase II.

**Set Up**

Contractor to provide up to fifty (50) hours of professional services to configure Teller appropriately to accommodate County Needs. The Contractor will execute the configuration and any development work detailed in the Teller implementation plan. Iterations will be reviewed with the County as needed to gain greater clarity and agreement on any details not clear in the implementation plan.

County, supported by Contractor, will configure Teller in the County test environment. Contractor project team staff will support designated County staff in understanding and testing any County specific functionality, providing ad-hoc mentoring and guidance when required. If necessary, a final round of configuration updates and system modifications will then culminate in the final production release.

Delivery Activities to be Completed by County, supported by Contractor:
- Configure Teller settings
- Implement Teller security configurations
- Implement user roles and business rules

County Shall:
- Provide scheduled access to test environment (remote VPN)
- Test Scripts for testing
- User acceptance testing scenarios and plans

Completion Criteria:
- System test against Teller to ensure system requirements are met
    - Basic Teller features
- Successful completion of user acceptance testing
    - Cashiers can process a sale from workstation

**Go Live**

County trainers train the end user community just prior to system implementation.

Prior to Go Live, Contractor will provision the production environment. The tested Teller setup will be installed into the production environment. Contractor will work with County staff to install hardware devices on all front counter and back-office cashier workstations; if required.

Phase III will conclude with a project review report and request for formal project acceptance.

Delivery Activities to be Completed by Contractor:
- Contractor provides an on-site resource to ensure smooth transition to go live
- Provide project review report

County Shall:
- Provision production environment
- SME trains the users prior to go live

Completion Criteria:
- Successful completion of Go Live Implementation

- Project sign off on project review report

C. **SPECIAL REQUIREMENTS.** Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.

Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession.

**2. COMPENSATION.** The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is $237,740.00.

**A. METHOD OF PAYMENT FOR SERVICES.** County shall pay Contractor the amounts specified for each of the following deliverables and Goods that County has accepted:

| **Category** | **Initial Install** | **On-Site Trips** | **Qty** | **Price** |
|---|---|---|---|---|
| Software Licenses | Teller server license | | 1 | $ 25,000.00 |
| | Teller user license | | 75 @ $600 each | $ 45,000.00 |
| Optional Items | Disallow tender types | | 1 | $ 5,850.00 |
| | Percentage split | | 1 | $ 4,500.00 |
| | Generic Import Interface | | 1 | $ 4,800.00 |
| Phase I: Public Works *Estimated Timeline: 4 months* | Planning | 1 | 1 | $ 13,570.00 |
| | Implementation (remote) | | 1 | $ 12,420.00 |
| | Initial Set up (remote) | | 1 | $ 3,600.00 |
| | Usage Training & Setup | 1 | 1 | $ 12,040.00 |
| | Go-Live Support | 1 | 1 | $ 4,640.00 |
| Phase II: Sheriff's Office & Court Street *Estimated Timeline: 3 months* | Planning | 1 | 1 | $ 9,280.00 |
| | Professional Services (50 hrs) | | Up to 50 hours @ $150 per hour | $ 7,500.00 |
| | Training/Setup/Go-Live Support | 1 | 1 | $ 6,020.00 |
| Phase III: Health & Juvenile | Training/Setup/Go-Live Support | 1 | 1 | $ 6,020.00 |

| | | | | | |
|---|---|---|---|---|---|
| *Estimated Timeline: 3 months* | Professional Services (50 hrs) | | Up to 50 hours @ $150 per hour | $ | 7,500.00 |
| Software Maintenance Support | Maintenance & Support of software license | | $14,000 per year for five years | $ | 70,000.00 |
| | | | **Set Up Cost** | **$** | **181,740.00** |
| | | | **Support and Maintenance** | **$** | **56,000.00** |
| | | | **Total Contract Value** | **$** | **237,740.00** |

**B. BASIS OF PAYMENT FOR SERVICE.** Monthly progress payments for completed Services. County shall pay Contractor monthly progress payments upon County's approval of Contractor's invoice submitted to County for completed Services and delivered Goods, but only after County has determined that Contractor has completed, and County has accepted the completed Services and County has accepted the delivered goods.

**C. EXPENSE REIMBURSEMENT.** County will not reimburse Contractor for any expenses under this Contract.

**D. GENERAL PAYMENT PROVISIONS**. Notwithstanding any other payment provision of this contract, failure of the Contractor to submit required reports when due, or failure to perform or document the performance of contracted services, may result in withholding of payments under this contract. Such withholding of payment for cause shall begin thirty (30) days after written notice is given by the County to the Contractor, and shall continue until the Contractor submits required reports, performs required services or establishes, to the County's satisfaction, that such failure arose out of causes beyond the control, and without the fault or negligence of the Contractor.

**E. INVOICES.** Contractor shall send all invoices to County's Contract Administrator at the address specified below or to any other address as County may indicate in writing to Contractor.

**Marion County**
**Attn: IT Department, Ilango Periathambi**
**PO Box 14500**
**Salem, OR 97309**

**Or by email to: iperiathambi@co.marion.or.us**

## Exhibit B
## Insurance Requirements

A. REQUIRED INSURANCE. Contractor shall obtain at Contractor's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:

i. WORKERS COMPENSATION. All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. PROFESSIONAL LIABILITY. Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

☐ **Required by County** ☒ **Not required by County.**

☐ $*1,000,000* Per occurrence limit for any single claimant; and
☐ $*2,000,000* Per occurrence limit for multiple claimants
☐ Exclusion Approved by Risk Manager

iii. COMMERCIAL GENERAL LIABILITY. Covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

☒ **Required by County** ☐ **Not required by County.**

**Bodily Injury/Death:**

☒ $*1,000,000* Per occurrence limit for any single claimant; and
☒ $*2,000,000* Per occurrence limit for multiple claimants
☐ Exclusion Approved by Risk Manager
☐ $500,000 Per occurrence limit for any single claimant
☐ $1,000,000 Per occurrence limit for multiple claimant

iv. AUTOMOBILE LIABILITY INSURANCE. Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

☐ **Required by County** ☒ **Not required by County.**

**Bodily Injury/Death:**

☐ Oregon Financial Responsibility Law, ORS 806.060 (*$25,000 property damage/$50,000 bodily injury $5,000 personal injury).*
☐ $500,000 Per occurrence limit for any single claimant; and
☐ $1,000,000 Per occurrence limit for multiple claimants
☐ Exclusion Approved by Risk Manager

B. ADDITIONAL INSURED. The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Contractor or its insurer(s) to County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by County.

D. CERTIFICATE(S) OF INSURANCE. Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

## EXHIBIT C
## CONTRACTOR PERSONNEL

Contractor and County agree that each individual specified below is an individual whose special qualifications and involvement in Contractor's performance of Services form part of the basis of agreement between the parties for this Contract and is an individual through whom Contractor shall provide to County the expertise, experience, judgment, and personal attention required to perform Services ("Key Person"). Each of the following is a Key Person under this Contract:

Authorized Representative: Josh Langemann, President

3900 S. Wadsworth Blvd. Suite 510
Lakewood, CO 80235
Joshua@canamtechnologies.com

(303) 847-4684

Project Manager: William Langemann, Project Manager

3900 S. Wadsworth Blvd. Suite 510
Lakewood, CO 80235
william@canamtechnologies.com

(303) 960-3507

Neither Contractor nor any Key Person of Contractor shall delegate performance of Services that any Key Person is required to perform under this Contract to others without first obtaining County's written consent. Further, Contractor shall not, without first obtaining County's prior written consent, re-assign or transfer any Key Person to other duties or positions so that the Key Person is no longer available to provide County with that Key Person's expertise, experience, judgment, and personal attention. If Contractor requests County to approve a re-assignment or transfer of a Key Person, County shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any individual County approves as a replacement for a Key Person is deemed a Key Person under this Contract.

**EXHIBIT D**
**COUNTY PERSONNEL**

Authorized Representative: Laurie Steele, Marion County Treasurer

PO Box 14500
Salem, OR 97309
lsteele@co.marion.or.us

(503) 584-7750

Project Manager: Ilango Periathambi, IT Project Manager

PO Box 14500
Salem, OR 97309
iperiathambi@co.marion.or.us

(503) 584-4709

# Teller

# One-Time Perpetual Software License Agreement

Made in duplicate on July 26, 2016

Between:

**Marion County, Oregon ("CLIENT")**

and

**Can/Am Technologies, Inc. ("VENDOR")**

**Teller One-Time Perpetual Software License Agreement**

## 1. DEFINITIONS

**1.1** Plugin – additional functionality that extends core Teller features. Plugins may be added to Teller to permit additional functionality. Licensed Plugins are fully supported and may have their own release cycle separate from the Teller product release cycle.

**1.2** Agreement – this document and all schedules attached or incorporated by reference, and any subsequent addendums or amendments made in accordance with the provisions hereof.

**1.3** Teller System - a pre-existing set of Configurations that extends Teller by providing functionality specific to a business area.

**1.4** Configuration(s) – all work required to configure Teller to reflect the business rules, workflow, security and data requirements of CLIENT, together with the resulting set of configured Teller business processes.

**1.5** Defect - a program error that will cause Teller to crash, or program algorithms or logic that produce incorrect results. Defects pertain to the intended operation of Teller as delivered to CLIENT, but do not pertain to subsequent errors brought about by infrastructure changes made by CLIENT. Defects do not include changing user preferences, report or screen aesthetics, presentation standards, or validity of converted data. Defects do not pertain to problems arising from third-party software interfaced to Teller, or to problems arising from Teller Configurations not developed by VENDOR.

**1.6** Enhancement - any work requested by CLIENT to alter existing Teller features, or to add any new features or functions to Teller software.

**1.7** Intellectual Property – property that derives from the work of the mind or intellect, specifically, an idea, invention, trade secret, process, program, data, formula, patent, copyright, or trademark or application, right, or registration. Intellectual Property includes: a) Teller pre-existing software, , or pre-existing software Configurations (including reports) of VENDOR; b) VENDOR methodologies, processes, tools, and general knowledge of the matters under consideration; and c) any pre-existing material provided by VENDOR under separate license.

**1.8** Named User - an individual internal to CLIENT or representing CLIENT or an Agent who has access to the Teller Production Database. A Named User can access the Teller Production Database from any workstation on CLIENT's network or intranet, or via the Internet.

**1.9** Teller – refers to an enterprise Point of Sale system that manages revenue intake from cashiering to balancing and reconciliation workflows in a single integrated database. Teller includes the reports and documentation that come with the Teller software.

**1.10** Release – any version, point or patch release to Teller issued by VENDOR.

**1.11** Site-Specific Configuration – any software deliverables, including but not limited to Configuration, reports, interfaces, data conversion scripts, and custom code, developed solely and specifically for CLIENT.

**1.12** Source Code – Any and all program code or database definitions developed by VENDOR using a formal programming language and used by Teller software.



Exhibit E - License Agreement

**Teller One-Time Perpetual Software License Agreement**

## 2. SCOPE OF AGREEMENT

**2.1** This Agreement provides CLIENT with a non-exclusive and non-revocable license for Teller including the Teller modules and the number of Teller Named Users as identified in Exhibit A of this Agreement.

**2.2** CLIENT is permitted to establish any number of development, testing or training Teller databases, plus one (1) Teller production Teller database at CLIENT site or at VENDOR approved hosting site. CLIENT is also entitled to make back-up copies of Teller for use in accordance with the provisions of this Agreement.

**2.3** CLIENT is permitted to use Teller only for processing transactions in relation to services provided by CLIENT within its legal jurisdictional boundaries. CLIENT may not use Teller to process transactions for another jurisdiction.

**2.4** The current Release of Teller software will be provided to CLIENT. This Release will only be provided in compiled form and consists of executable code, database schemas, and online documentation.

## 3. LICENSE FEES

**3.1** For the one-time perpetual license, CLIENT agrees to pay VENDOR a one-time license fee as identified in Exhibit A of this Agreement. All Teller license fees are payable upon signing of this Agreement.

**3.2** CLIENT agrees to remit payment to VENDOR within 30 calendar days of receipt of the invoice.

## 4. SOURCE CODE

**4.1** This license will provide CLIENT with run-time (compiled code) only capability for Teller as described in Section 2 of this Agreement.

**4.2** A copy of Teller Source Code will be held in escrow for CLIENT by InnovaSafe, Inc. at no cost to CLIENT. The source code held in escrow will be updated in a timely manner upon issuance of any new Teller version or point Release.

**4.3** Source code (metadata) to Site-Specific Configurations, reports, and specialized code developed specifically for CLIENT will be installed at CLIENT site.

## 5. WARRANTIES

**5.1** VENDOR warrants that it has full power and authority to grant this Teller license and that as of the effective date of this Agreement, the Teller software does not infringe on any existing Intellectual Property rights of any third party. If a claim of infringement is made by any third party, VENDOR may, at its sole option either:

a) secure for CLIENT the right to continue using the Teller software; or

b) modify the Teller software so that it does not infringe.

**5.2** VENDOR has no obligation for any claim of infringement based on a modified version of the Teller software, or based on the combination of the Teller software with any third party product not provided by VENDOR. VENDOR provides no warranty whatsoever for any third party software or hardware products.

**5.3** Except as expressly set forth herein, VENDOR disclaims any and all express and implied warranties, including but not necessarily limited to warranties of merchantability and fitness for a particular purpose.

## 6. OWNERSHIP OF SOFTWARE AND DATA

**6.1** VENDOR has exclusive licensing and distribution rights for Teller software (Copyright © 2006 – 2016, all rights reserved), within Canada / the United States of America. CLIENT will not remove any ownership or copyright notices from Teller software or documentation. Reproduction, disassembly, decompilation, transfer, reverse engineering, or disclosure to others, in whole or in part, of Teller is strictly prohibited.

**6.2** VENDOR is, and will remain, the exclusive owner, or is the authorized agent of the owner of Teller proprietary information, and all patent, copyright, trade secret, trademark, and other Intellectual Property rights remain solely with VENDOR. No license or conveyance of any such rights to CLIENT is granted or implied under this Agreement.

**6.3** VENDOR will retain ownership of the Intellectual Property associated with Enhancements and Plugins developed by VENDOR for CLIENT.



Exhibit E - License Agreement

**Teller One-Time Perpetual Software License Agreement**

**6.4** CLIENT is deemed to own any Site-Specific Configuration for their Teller installation. CLIENT grants VENDOR a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, sublicense, modify, and sell the Site-Specific Configuration developed pursuant to this Agreement without compensation to CLIENT.

**6.5** CLIENT may not sell, rent, lease, give, distribute, assign, pledge, sublicense, loan, timeshare, or otherwise transfer Teller software to any other party. CLIENT will not copy, resell or give Teller Configurations or documentation to any other party. CLIENT agrees not to distribute Teller as part of any other software product, commercial or otherwise, without the prior written approval of VENDOR.

**6.6** CLIENT will retain sole and complete ownership of its data at all times, regardless of the location of the data, and VENDOR may not make any use of CLIENT data other than for testing purposes, without the prior written consent of CLIENT.

## 7. CONFIDENTIAL AND PROPRIETARY INFORMATION

**7.1** Each party will hold in confidence, and will not disclose to any unauthorized personnel, any confidential or proprietary information of the other party. Each party will use such confidential or proprietary information only for the purpose for which it was disclosed.

**7.2** As used in this Agreement, the term "confidential or proprietary information" means all trade secrets or proprietary information designated as such in writing by one party to the other. All software code in source of object format shall be deemed to be proprietary information whether it is marked as such or not. Information which is orally or visually disclosed by one party to the other, or is disclosed in writing without an appropriate letter, proprietary stamp or legend, will constitute proprietary information of the releasing party if:

c) it would be apparent to a reasonable person, familiar with the business of the releasing party and the industry in which it operates, that such information is of a confidential or proprietary nature; or

d) The releasing party, within thirty (30) calendar days after such disclosure, delivers to the receiving party a written document describing such information and referencing the place and date of such oral, visual, or written disclosure, and the names of receiving party personnel to whom such disclosure was made.

**7.3** Each party will only disclose confidential or proprietary information received by it under this Agreement to personnel who have a need to know such confidential or proprietary information for the performance of its duties and who are bound by an agreement to protect the confidentiality of such confidential or proprietary information.

**7.4** Each party will adopt and maintain programs and procedures which are reasonably calculated to protect confidential or proprietary information, and will be responsible to the other party for any disclosure or misuse of confidential or proprietary information which results from a failure to comply with this provision. Each party will promptly report to the other party any actual or suspected violation of the terms of this Agreement and will take all reasonable further steps requested by the offended party to prevent, control, or remedy any such violation.

**7.5** The obligations of each party specified above will not apply with respect to any confidential or proprietary information, if the receiving party can demonstrate, by reasonable evidence, that such confidential or proprietary information:

a) was generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the receiving party;

b) was already in the possession of the receiving party at the time of disclosure;

c) becomes known to the receiving party through disclosure by sources having the legal right to disclose such confidential information;

d) was independently developed by the receiving party without reference to, or reliance upon, the confidential information; or

e) was required to be disclosed by the receiving party to comply with applicable laws or governmental regulations, provided that the receiving party provides prompt written notice of such disclosure to the offended party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

**7.6** If CLIENT is subject to freedom of information legislation VENDOR agrees to adhere to the standards outlined



Exhibit E - License Agreement

in such legislation regarding protection of privacy and disclosure of records with respect to all work done for CLIENT pursuant to this Agreement.

**7.7** Upon termination of this Agreement, each party will make all reasonable efforts to return to the other party all tangible manifestations, and all copies thereof, of confidential or proprietary information received by the other party under this Agreement, if requested to do so by the disclosing party.

## 8. LIMITATIONS OF LIABILITY AND INDEMNITY

**8.1** The liability of VENDOR to CLIENT for any losses or damages arising from the use of Teller or from any other services covered under this Agreement will be limited to, at the discretion of VENDOR, either the return of the Teller license fee paid, or the repair of Teller so that it will perform without Defect.

**8.2** SUBJECT TO THE OREGON TORT CLAIMS ACT, CLIENT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THAT UNDER NO CIRCUMSTANCES WHATSOEVER WILL VENDOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE OR KIND, OR ANY LOSS RESULTING FROM BUSINESS DISRUPTION ARISING FROM THE USE OF TELLER, OR FROM ANY SERVICES COVERED UNDER THE TERMS OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IN THE EVENT THAT VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 9. TERMINATION AND DEFAULT CONDITIONS

**9.1** VENDOR may terminate this Agreement if: CLIENT fails to make required payments, CLIENT materially fails to fulfill its obligations and responsibilities or breaches any material term of this Agreement, CLIENT becomes bankrupt or insolvent, or if a receiver is appointed to manage the property and assets of CLIENT. If any of the above conditions are encountered, VENDOR will provide written notice to CLIENT and provide 30 calendar days for CLIENT to remedy the default. If the default is not rectified within 30 calendar days, VENDOR will have cause to terminate this Agreement.

**9.2** CLIENT may terminate this Agreement if: VENDOR materially fails to fulfill its obligations and responsibilities or breaches any material term of this Agreement, VENDOR becomes bankrupt or insolvent, or if a receiver is appointed to manage the property and assets of VENDOR. If any of the above conditions are encountered, CLIENT will provide written notice to VENDOR and provide 30 calendar days for VENDOR to remedy the default. If the default is not rectified within 30 calendar days, CLIENT will have cause to terminate this Agreement.

**9.3** At the time that the obligations of each of the parties have otherwise concluded, it is understood and agreed that the provisions of Section 6 (OWNERSHIP OF SOFTWARE AND DATA) and Section 7 (CONFIDENTIAL AND PROPRIETARY INFORMATION) will continue in full force and effect.

## 10. RIGHTS AND OBLIGATIONS

**10.1** If either VENDOR or CLIENT terminates this Agreement, VENDOR will retain all fees for products delivered to CLIENT up to the date of termination.

**10.2** Any termination by VENDOR as provided in this Agreement will not in any way operate to deny any right or remedy of VENDOR, either at law or in equity, or to relieve CLIENT of any obligation to pay the sums due under this Agreement, or of any other obligation accrued prior to the effective date of termination.

**10.3** Any termination by CLIENT as provided in this Agreement will not in any way operate to deny any right or remedy of CLIENT, either at law or in equity, or to relieve VENDOR of any obligation to pay the sums due under this Agreement, or of any other obligation accrued prior to the effective date of termination.

**10.4** Teller is subject to the export control laws of the United States and other countries. CLIENT may not export or re-export Teller software without the appropriate United States and foreign government licenses. CLIENT must comply with all applicable export control laws and will defend, indemnify and hold VENDOR harmless from any claims arising from CLIENT’s violation of such export control laws.

## 11. DISPUTES

**11.1** VENDOR and CLIENT will both separately and jointly use diligent efforts to establish positive and ongoing communications both within and between their respective organizations. Key personnel within VENDOR and CLIENT will communicate regularly in order to review the status and priorities for the provision of services by VENDOR and CLIENT.

**11.2** In the event of any dispute arising between VENDOR and CLIENT with respect to their rights and obligations under this Agreement, the party feeling itself aggrieved will notify the other party of the substance in writing of such grievance. Both parties agree to work in good faith and make all reasonable efforts to resolve the dispute, including, if necessary, escalating the dispute to:

a) First level: the Operations Manager of VENDOR and the Project Sponsor for CLIENT; and

b) Second level: the President/CEO of VENDOR and the Chief Executive for CLIENT.

**11.3** In the event the grievance cannot be resolved to the mutual satisfaction of the parties within 30 calendar days, the party feeling itself aggrieved may request mediation, based on the then-current commercial mediation rules of the American Arbitration Association. The award of the mediation body will be non-binding upon VENDOR and CLIENT.

## 12. WAIVER

**12.1** No failure or delay on the part of either party to exercise any right or remedy hereunder will operate as a waiver of such right or remedy.

## 13. SUCCESSION

**13.1** This Agreement will be binding on the legal successors or representatives of VENDOR and CLIENT. It will also be binding on any party that receives licensing and distribution rights to Teller from VENDOR.

**13.2** Any rights granted to either party under this Agreement may not be assigned by that party, or the successor to that party, without the prior written approval of the other party, which will not be unreasonably withheld.

## 14. SEVERENCE

**14.1** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision can be severed from this Agreement and all other provisions will remain in full force and effect.

## 15. GOVERNING LAW

**15.1** This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of Oregon. The parties irrevocably attorn to the jurisdiction of the courts of the State of Oregon.

## 16. ACCEPTANCE OF AGREEMENT

**16.1** This Agreement comprises the entire and sole Teller Software License Agreement between VENDOR and CLIENT. No other understandings or agreements, verbal or otherwise, exist for the licensing of Teller. VENDOR and CLIENT agree not to change this Agreement except by written agreement.

**Teller One-Time Perpetual Software License Agreement**

**Exhibit A – Licensed Software and Fees**

License and all other fees quoted in this Agreement are in US dollars and exclude any applicable taxes.

| Software License | Quantity | Unit Price | Total Price |
|---|---|---|---|
| Teller Server License | 1 | $25,000 | $25,000 |
| Teller User License | 75 | $600 | $45,000 |
| | | | |
| | | | |
| | | | |
| | | | |
| | | **Total Fees** | $70,000 |

# Annual Product Support Agreement for Teller Clients

Made in duplicate on July 26, 2016

Between:

**Marion County, Oregon ("CLIENT")**

and

**Can/Am Technologies, Inc. ("VENDOR")**

**Annual Product Support Agreement for Teller Clients**

## 1. DEFINITIONS

**1.1** Plugin – additional functionality that extends core Teller features. Plugins may be added to Teller to permit additional functionality. Licensed Plugins are fully supported and may have their own release cycle separate from the Teller product release cycle.

**1.2** Agreement – this document and all schedules attached or incorporated by reference, and any subsequent addendums or amendments made in accordance with the provisions hereof.

**1.3** Annual Support Services Fee – the annual fee payable by CLIENT to VENDOR for the support services provided by the VENDOR under Section 3 of this Agreement.

**1.4** Teller System - a pre-existing set of Configurations that extends Teller by providing functionality specific to a business area.

**1.5** Configuration(s) – all work required to configure Teller to reflect the business rules, workflow, security and data requirements of CLIENT, together with the resulting set of configured Teller business processes.

**1.6** Defect - a program error that will cause Teller to crash, or program algorithms or logic that produce incorrect results. Defects pertain to the intended operation of Teller as delivered to CLIENT, but do not pertain to subsequent errors brought about by Infrastructure changes made by CLIENT or any other Third-Party. Defects do not include changing user preferences, report or screen aesthetics, presentation standards, or validity of converted data. Defects do not pertain to problems arising from Third-Party Software interfaced to Teller, or to problems arising from Teller Configurations not developed by VENDOR.

**1.7** Infrastructure – the physical wiring, network, hardware and software necessary to deploy and operate Teller. Infrastructure also includes any workstation/notebook/tablet hardware and software, web or applications servers, wireless service providers, and other peripheral hardware or software used by Teller, including Third-Party Software.

**1.8** Intellectual Property – property that derives from the work of the mind or intellect, specifically, an idea, invention, trade secret, process, program, data, formula, patent, copyright, or trademark or application, right, or registration. Intellectual Property includes: a) Teller pre-existing software, or pre-existing software Configurations (including reports) of VENDOR; b) VENDOR methodologies, processes, tools, and general knowledge of the matters under consideration; and c) any pre-existing material provided by VENDOR under separate license.

**1.9** Teller – refers to an enterprise Point of Sale system that manages revenue intake from cashiering to balancing and reconciliation workflows in a single integrated database. Teller includes the reports and documentation that come with the Teller software.

**1.10** Release – any version, point, or maintenance release to Teller issued by VENDOR.

**1.11** Site-Specific Configuration – any software deliverables, including but not limited to Configuration, reports, interfaces, data conversion scripts, and custom code, developed solely and specifically for CLIENT.

**1.12** Statement of Work (SOW) – a document that describes the implementation services, software products, and other deliverables to be provided by VENDOR (including its subcontractors if applicable) to CLIENT.

**1.13** Third-Party – a person, corporation, organization or entity other than CLIENT or VENDOR.

**1.14** Third-Party Software – any identifiable product embedded in and/or linked to Teller software at CLIENT's site, but to which the proprietary rights belong to a Third-Party.



Exhibit F - Support Agreement

**Annual Product Support Agreement for Teller Clients**

## 2. TERM OF AGREEMENT

**2.1** This Agreement is effective upon signing, and will remain in effect for an initial period of one (1) year. This Agreement will be renewed annually thereafter upon payment by CLIENT of the Annual Support Services Fee, unless otherwise revised or terminated under the provisions of this Agreement.

**2.2** CLIENT may elect to terminate annual support services described in this Agreement at any time, at its sole discretion, by providing 180 calendar days advance written notice to VENDOR. In the event that CLIENT terminates annual support services and wishes to reactivate annual support services at a future date, all Annual Support Services Fees back to the date of termination will be payable before annual support services are reactivated.

## 3. SERVICE AND SUPPORT FEES

**3.1** The Annual Support Services Fee for the services specified in Section 4 of this Agreement is identified in Exhibit A. The Annual Support Services Fee for the initial term is due and payable upon signing of this agreement. Support service fees are payable for each full or partial calendar month in which support services are provided to CLIENT. VENDOR will invoice CLIENT approximately one month prior to the expiration of this Agreement and CLIENT agrees to pay VENDOR in advance for the Annual Support Services Fee.

**3.2** CLIENT agrees to remit payment to VENDOR within 30 calendar days of receipt of the invoice.

## 4. VENDOR SUPPORT SERVICES

**4.1** VENDOR agrees, during the term of this Agreement, to provide Teller support services in a timely and professional manner. VENDOR will provide unlimited technical support for CLIENT's Teller support personnel described in Section 5.2 of this Agreement. Support pertains to Teller and licensed Teller Plugins.

**4.2** The Teller Support Web site will be available 24 x 7 for submitting CLIENT support requests. The Teller support desk will be staffed from 8:00 a.m. to 6:00 p.m. Mountain Time, Monday to Friday, excluding Colorado statutory holidays. Extended hours of coverage or on-call coverage outside of these working hours can be provided at additional rates as listed in Section 6.

**4.3** When CLIENT submits a support request through the Teller Support Web site during normal VENDOR hours for support, as specified in Section 4.2 of this Agreement, VENDOR and CLIENT will categorize, and VENDOR will escalate as appropriate, the support request according to the following criteria. To ensure the listed Response Time, CLIENT must call the provided Teller Support toll-free number to report or confirm Critical and High priority issues.

| Severity | Definition | Response Time | Response Process |
|---|---|---|---|
| **Critical** | CLIENT site is down.<br>Major impact to operations of CLIENT site. | < 15 min | Immediate and ongoing effort, with continuous reporting to CLIENT until a work-around or fix has been provided. |
| **High** | Major impairment of at least one important function at CLIENT site.<br>Operations at CLIENT site are impacted.<br>All important CLIENT functions are working albeit with extra work. | < 1 hour | Proceed with fix as high priority work with reporting to CLIENT as necessary until a work-around or fix has been provided. |



Exhibit F - Support Agreement

| | | | |
|---|---|---|---|
| **Medium** | CLIENT Operations not significantly impacted.<br>One or more minor CLIENT functions not working.<br>Major usability irritations impacting many staff at CLIENT. | < 4 hours | Proceed with fix as medium priority work, according to schedule set by VENDOR. |
| **Low** | Minor usability irritations.<br>Work-around exists. | < 2 working days | Proceed with fix as low priority work, according to schedule set by VENDOR. |

**4.4** The Annual Support Services Fee does NOT include technical support for Site-Specific Configurations and Third-Party Software not embedded within Teller, such as operating system software and Microsoft Office products. Technical support for Teller related Third-Party hardware that may be used by CLIENT, including scanners, printers, credit terminals, and other hardware peripherals is not included.

**4.5** In the event that VENDOR has sold Third-Party licenses to the CLIENT, VENDOR will be responsible for researching and diagnosing the issue and, if proven to be a Teller product issue, for fixing it, or if proven to be a Third-Party product issue, for submitting the issue to the Third-Party.

**4.6** VENDOR will not begin charging CLIENT for resolution of a non-Teller related problem until VENDOR demonstrates to CLIENT that the source of the problem is not related to a Teller Defect and CLIENT has authorized work to resolve the issue. No time will be charged to CLIENT for Teller Defects reported to VENDOR.

**4.7** VENDOR will provide notice of all new Teller software Releases to CLIENT. A new Release may include Teller executable code, Release notes, updated documentation and/or online help, and database conversion routines, as needed. VENDOR will retain full ownership rights to any Teller software Release delivered to CLIENT. If requested by CLIENT, VENDOR may provide services to implement a new Teller Release or Add-on Module release under the terms and conditions contained in Section 5 AVAILABLE VENDOR PROFESSIONAL SERVICES.

**4.8** Unless otherwise specified, Teller product warranty and support activities will be conducted at and deployed from VENDOR offices. Travel and living expenses to provide on-site services deemed by VENDOR as required to repair a Teller Defect will not be charged to CLIENT.

## 5. CLIENT OBLIGATIONS AND RESPONSIBILITIES

Unless otherwise stated in a separate agreement between the parties or in a Schedule of this Agreement, the following tasks will be the sole responsibility of CLIENT:

**5.1** Infrastructure Support – CLIENT is responsible for installing, testing, and supporting its Infrastructure, and for ensuring a stable operating environment documented as compatible with Teller software. CLIENT is responsible to ensure that maintenance and support is contracted with applicable Third-Party hardware and software vendors. Responsibilities include: maintaining current virus protection software and installing all "critical" operating system upgrades; managing Third-Party Software products on infrastructure not related to Teller that may interfere with the operation of Teller; managing the local Internet Service Provider (ISP) providing CLIENT its Internet connection and/or its wireless service; managing its own networks; and implementing its own security policies and procedures.

**5.2** Teller Support – CLIENT is responsible for providing first-line Teller support to CLIENT staff. First-line Teller support is responsible for researching issues and assessing if they are the result of a Teller Defect. CLIENT will identify a limited number of CLIENT staff entitled to submit Teller support requests.

**5.3** Installation and Deployment – CLIENT is responsible for installing and testing new Teller Releases at



Exhibit F - Support Agreement

CLIENT's site, for communicating Teller changes to CLIENT staff, and for providing required training and support to CLIENT staff.

**5.4** Database Operations – CLIENT is responsible for on-site operational support of the Teller database server(s) and for providing Teller database administration. Tasks include performing Teller system backups, system restarts, and providing on-site troubleshooting assistance for VENDOR staff.

**5.5** Third-Party Software Licenses – CLIENT is responsible for acquiring software licenses and upgrades for any Third-Party Software required by VENDOR to complete its responsibilities under this Agreement. CLIENT will be responsible to ensure that software maintenance and support is contracted with the respective Third-Party vendors.

**5.6** Future Releases – CLIENT acknowledges that future Releases of Teller software may require different or additional equipment and/or software in order to function properly. VENDOR is required to provide CLIENT with sufficient notification of such requirements. CLIENT will be responsible to fund, acquire, install, and maintain such different or additional equipment and/or software.

**5.7** Remote Access – CLIENT will provide VENDOR with the means to electronically connect to the CLIENT's Teller environment, including production, test and development databases, to enable software transfers and remote troubleshooting. At a minimum, remote access provided by the CLIENT shall support web conferences hosted by Can/Am Technologies. Remote VPN access should be available to VENDOR at the time of the initial Teller installation at CLIENT site.

## 6. AVAILABLE VENDOR PROFESSIONAL SERVICES

**6.1** At the request of CLIENT, VENDOR may provide any or all of the following professional services: installation of new Teller Releases, development of Site-Specific Configuration, report development, infrastructure support, training, Site-Specific warranty, first line Teller support, database monitoring and management, and any other consulting activity. VENDOR professional services may be purchased for an all-inclusive fixed-cost or on a time-and-materials basis. All terms, conditions and costs for VENDOR professional services will be specified in a separate agreement (SOW or work order) between the CLIENT and VENDOR.

**6.2** At the request of CLIENT, VENDOR may assist CLIENT in its fulfillment of the obligations and responsibilities specified in Section 5 of this Agreement. All terms, conditions and costs for these services will be specified in a separate agreement (SOW or work order) between the CLIENT and VENDOR.

**6.3** Reasonable travel and living expenses incurred by VENDOR in the delivery of on-site VENDOR professional services will be billed at cost to CLIENT or at a rate to be negotiated between VENDOR and CLIENT. When traveling to CLIENT, VENDOR one-way travel time will be charged to the CLIENT.

**6.4** On call or after-hours services can be requested in advance. On call availability is subject to 1 hour of professional services time at the Professional Services rate identified in Exhibit A, per 4 hours of availability. The minimum billing for an after-hours services call is one hour of time.

## 7. WARRANTY

**7.1** All Teller Releases delivered to CLIENT have an 18 month warranty from the general availability date of the Release. CLIENT will have 18 months from the date of general availability of a Release to install an upgrade. If CLIENT elects not to upgrade to the newer Release within 18 months, support services described in Section 4 of this Agreement may be provided at additional cost.

**7.2** Unless otherwise specified in VENDOR's Statement of Work, the warranty on all VENDOR-developed Site-Specific Configuration is 30 calendar days from the date of implementation.

**7.3** VENDOR will repair Teller Defects reported by CLIENT while this Agreement is in effect at no additional cost to CLIENT. VENDOR will make all reasonable efforts to resolve Defects quickly, via a patch Release if necessary. CLIENT will have to upgrade to the current Release of Teller, as corrections are only applied to the current production Release of Teller.

**7.4** VENDOR does not provide warranty for any Site-Specific Configuration, or custom code not developed by

VENDOR, or developed by VENDOR and subsequently altered by CLIENT or any other Third-Party.

## 8. LIMITATIONS OF LIABILITY

**8.1** The liability of VENDOR to CLIENT for any losses or damages arising from the use of Teller or from any other services covered under this Agreement will be limited to, at the discretion of VENDOR, either the return of the current-year Annual Support Services Fee, or the repair of Teller so that it will perform without Defect.

**8.2** CLIENT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THAT UNDER NO CIRCUMSTANCES WHATSOEVER WILL VENDOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE OR KIND, OR ANY LOSS RESULTING FROM BUSINESS DISRUPTION ARISING FROM THE USE OF TELLER, OR FROM ANY SERVICES COVERED UNDER THE TERMS OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IN THE EVENT THAT VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 9. TERMINATION AND DEFAULT CONDITIONS

**9.1** VENDOR may terminate this Agreement if: CLIENT fails to make required payments, CLIENT materially fails to fulfill its obligations and responsibilities or breaches any material term of this Agreement, CLIENT becomes bankrupt or insolvent, or if a receiver is appointed to manage the property and assets of CLIENT. If any of the above conditions are encountered, VENDOR will provide written notice to CLIENT and provide 30 calendar days for CLIENT to remedy the default. If the default is not rectified within 30 calendar days, VENDOR will have cause to terminate this Agreement.

**9.2** CLIENT may terminate this Agreement if: VENDOR materially fails to fulfill its obligations and responsibilities or breaches any material term of this Agreement, VENDOR becomes bankrupt or insolvent, or if a receiver is appointed to manage the property and assets of VENDOR. If any of the above conditions are encountered, CLIENT will provide written notice to VENDOR and provide 30 calendar days for VENDOR to remedy the default. If the default is not rectified within 30 calendar days, CLIENT will have cause to terminate this Agreement.

## 10. RIGHTS AND OBLIGATIONS

**10.1** If either VENDOR or CLIENT terminates this Agreement, VENDOR will retain all fees for products or services delivered to CLIENT up to the date of termination. VENDOR will refund a pro-rated portion of the Annual Support Services Fee to CLIENT, based on the number of full or partial calendar months of service provided under the Agreement since the last annual renewal date.

**10.2** Any termination by VENDOR as provided in this Agreement will not in any way operate to deny any right or remedy of VENDOR, either at law or in equity, or to relieve CLIENT of any obligation to pay the sums due under this Agreement, or of any other obligation accrued prior to the effective date of termination.

**10.3** Any termination by CLIENT as provided in this Agreement will not in any way operate to deny any right or remedy of CLIENT, either at law or in equity, or to relieve VENDOR of any obligation to pay the sum due under this Agreement, or of any other obligation accrued prior to the effective date of termination.

## 11. DISPUTES

**11.1** VENDOR and CLIENT will both separately and jointly use diligent efforts to establish positive and ongoing communications both within and between their respective organizations. Key personnel within VENDOR and CLIENT will communicate regularly in order to review the status and priorities for the provision of services by VENDOR and CLIENT.

**11.2** In the event of any dispute arising between VENDOR and CLIENT with respect to their rights and obligations under this Agreement, the party feeling itself aggrieved will notify the other party of the substance in writing of such grievance. Both parties agree to work in good faith and make all reasonable efforts to resolve the dispute, including, if necessary, escalating the dispute to:

a) First level: the Operations Manager of VENDOR and the Project Sponsor for CLIENT; and



Exhibit F - Support Agreement

b) Second level: the President/CEO of VENDOR and the Chief Executive for CLIENT.

**11.3** In the event the grievance cannot be resolved to the mutual satisfaction of the parties within 30 calendar days, the party feeling itself aggrieved may request mediation, based on the then-current commercial mediation rules of the American Arbitration Association. The award of the mediation body will be non-binding upon VENDOR and CLIENT.

## 12. WAIVER

**12.1** No failure or delay on the part of either party to exercise any right or remedy hereunder will operate as a waiver of such right or remedy.

## 13. SUCCESSION

**13.1** This Agreement will be binding on the legal successors or representatives of VENDOR and CLIENT. It will also be binding on any party that receives licensing and distribution rights to Teller from VENDOR.

**13.2** Any rights granted to either party under this Agreement may not be assigned by that party or the successor to that party, without the prior written approval of the other party, which will not be unreasonably withheld.

## 14. FORCE MAJEURE

**14.1** A delay in, or total or partial failure of, performance of either party in this Agreement will not constitute a default or termination or give rise to any claim for damages if such delay or failure is caused by any force majeure occurrence demonstrably beyond the reasonable control of the party.

**14.2** Force majeure categories include acts of God; acts or inaction on the part of governmental authority; acts of war or the public enemy; or any other acts beyond the reasonable control of either party that result in either party being unable to carry on normal business operations for a period of one week or longer.

## 15. SEVERANCE

**15.1** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision can be severed from this Agreement and all other provisions will remain in full force and effect.

## 16. GOVERNING LAW

**16.1** This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of Oregon. The parties irrevocably attorn to the jurisdiction of the courts of the State of Oregon.

## 17. ACCEPTANCE OF AGREEMENT

**17.1** This Agreement comprises the entire and sole Teller Annual Support Agreement between VENDOR and CLIENT. No other understandings or agreements, verbal or otherwise, exist for the support of Teller. VENDOR and CLIENT agree not to change this Agreement except by written agreement.




Exhibit F - Support Agreement

**Exhibit A – Annual Support Services Fees**

All fees referred to in this Agreement are in US dollars, and exclude any applicable taxes. The Annual Support Fee is subject to change based on changes to the Teller One-Time Perpetual Software License Agreement.

| Time Period | Fee | Professional Services Rate |
|---|---|---|
| Year 1 | $14,000 | $150/hr |
| Year 2 | $14,000 | $150/hr |
| Year 3 | $14,000 | $150/hr |
| Year 4 | $14,000 | $150/hr |
| Year 5 | $14,000 | $150/hr |



Exhibit F - Support Agreement

CANAM-1 OP ID: CC

ACORD

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 04/04/16

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

| | |
|---|---|
| PRODUCER<br>Colling Insurance Services Inc<br>777 S. Wadsworth Blvd., #1-100<br>Lakewood, CO 80226<br>Brad Colling<br>303-987-3331<br>303-987-2881 | CONTACT NAME:<br>PHONE (A/C, No, Ext): FAX (A/C, No):<br>E-MAIL ADDRESS: |
| INSURED<br>Can/Am Technologies, Inc.<br>3900 S. Wadsworth Blvd,Ste 510<br>Lakewood, CO 80235 | |

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A : Owner's Insurance Co. | 32700 |
| INSURER B : Auto Owners Insurance Co. | 18988 |
| INSURER C : | |
| INSURER D : | |
| INSURER E : | |
| INSURER F : | |

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | **GENERAL LIABILITY**<br>X COMMERCIAL GENERAL LIABILITY<br>CLAIMS-MADE X OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>X POLICY PRO-JECT LOC | | | 74004597 | 03/07/16 | 03/07/17 | EACH OCCURRENCE | $ 1,000,000 |
| | | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ 300,000 |
| | | | | | | | MED EXP (Any one person) | $ 10,000 |
| | | | | | | | PERSONAL & ADV INJURY | $ Excluded |
| | | | | | | | GENERAL AGGREGATE | $ 2,000,000 |
| | | | | | | | PRODUCTS - COMP/OP AGG | $ 2,000,000 |
| | | | | | | | | $ |
| | **AUTOMOBILE LIABILITY**<br>ANY AUTO<br>ALL OWNED AUTOS SCHEDULED AUTOS<br>HIRED AUTOS NON-OWNED AUTOS | | | | | | COMBINED SINGLE LIMIT (Ea accident) | $ |
| | | | | | | | BODILY INJURY (Per person) | $ |
| | | | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| | **UMBRELLA LIAB** OCCUR<br>**EXCESS LIAB** CLAIMS-MADE<br>DED RETENTION $ | | | | | | EACH OCCURRENCE | $ |
| | | | | | | | AGGREGATE | $ |
| | | | | | | | | $ |
| B | **WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y<br>**(Mandatory in NH)**<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N / A | | 74004596 | 03/07/16 | 03/07/17 | X WC STATU-TORY LIMITS OTH-ER | |
| | | | | | | | E.L. EACH ACCIDENT | $ 100,000 |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE | $ 100,000 |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $ 500,000 |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**

Certificate Holder is included as an Additional Insured per form 55202 attached.

| CERTIFICATE HOLDER | CANCELLATION |
|---|---|
| Marion County<br>jclotfelter@co.marion.or.us<br>555 Court Street<br>Salem, OR 97301 | **SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**<br><br>AUTHORIZED REPRESENTATIVE<br>Cynthia J. Cole |



 

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

# ADDITIONAL INSURED EXCLUSION - PRODUCTS-COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

**SCHEDULE**

**Name of Person or Organization (Additional Insured):**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**A.** Under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**, the following exclusion is added:

**2. Exclusions**

This insurance does not apply to:

The Additional Insured for the "products-completed operations hazard".

**B.** Under **SECTION II - WHO IS AN INSURED**, the following is added:

The person or organization shown in the above Schedule is an Additional Insured, but only with respect to liability arising out of "your work" for that insured by or for you.

**C.** Under **SECTION III - LIMITS OF INSURANCE**, the following is added:

The limits of liability for the Additional Insured are those specified in the written contract or agreement between the insured and the owner, lessee or contractor, not to exceed the limits provided in this policy. These limits are inclusive of and not in addition to the limits of insurance shown in the Declarations.

**D.** Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance**, the following is added:

This insurance is primary for the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that person or organization by or for you. Other insurance available to the person or organization shown in the Schedule will apply as excess insurance and not contribute as primary insurance to the insurance provided by this endorsement.