

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

This Information Technology Products and Services Contract (this "Contract") 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 _____ a _____ corporation ("Contractor").

RECITALS

- A. Agency desires to engage a Contractor to provide [INSERT SHORT PRODUCT AND SERVICES DESCRIPTION HERE] Software and Services to enable County to achieve specific business and County mission objectives defined in this Contract. To that end, County issued RFP # _____ (defined below).
- B. Contractor is the successful Proposer to the RFP # _____ 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 D. County's Authorized Representative is the person so identified in Exhibit E.

"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.

“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 D.

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

“RFP” means the Request for Proposal #_____.

“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 SOW 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" means the means a 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 _____ 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 non-acceptance, 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 I. 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 I.

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, and 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.

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 _____ Dollars (\$_____) (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 Statement Work.

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 matter 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 Authorized Purchaser, 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 G.

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 Statement of work, 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. RESERVED

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

[CONTRACTOR]

Authorized Signature: _____ Date: _____

Title: _____

**EXHIBIT A
STATEMENT OF WORK**

**Exhibit B
Insurance Requirements**

**EXHIBIT C
CONTRACTOR PERSONNEL**

Authorized Representative:

Project Manager:

Other Key Persons:

**EXHIBIT D
COUNTY PERSONNEL**

Authorized Representative:

Project Manager

**EXHIBIT E
CONTRACTOR'S LICENSE AGREEMENT**

**EXHIBIT F
MAINTENANCE AND SUPPORT AGREEMENT**