

AGREEMENT

This Agreement ("Agreement") is entered into by the _____ ("Public Entity"), and _____, a(n) _____ with its principal place of business at _____ ("Contractor"). [Public Entity] and Contractor are each "Party" and collectively "Parties."

RECITALS

- A. [Public Entity] issued a Request for Proposals (RFP) for the customer relationship management system, which closed on [Insert Date].
- B. Contractor submitted a proposal in response to the RFP, and after completing the evaluation of all proposals, [Public Entity] determined that Contractor was the successful proposer.
- C. [Public Entity] and Contractor desire to enter into an agreement whereby Contractor will provide a _____ as further described below.

AGREEMENT

In consideration of the above Recitals which are incorporated in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definitions & Other Agreements.

1.1 As used in this Agreement, "Work" will mean those services and deliverables to be provided by Contractor as more particularly described in Section 3 below and all attached exhibits. In the event of a conflict, the terms of **Exhibit A** will control over all terms.

1.2 Concurrently with the execution of this Agreement, the parties will execute the following additional agreements (the "Related Agreements"):

1.2.1 The [Insert Name] Hosting Agreement between [Public Entity] and Contractor for the hosting of the Licensed Programs ("Hosting Agreement").

1.2.2 The [Insert Name] Maintenance and Support Agreement between [Public Entity] and Contractor for the on-going service and maintenance of the Licensed Programs ("Service Agreement").

2. Term & Termination.

2.1 The term of this Agreement will be for three years from the date of later execution of this Agreement ("Initial Term"), with the option for [Public Entity] to renew for up to [Insert # of Additional Terms] terms. Notwithstanding the prior sentence, this Agreement will not be effective unless and until the parties have also fully executed the Related Agreements.

2.2 Notwithstanding Section 2.1 and any other provisions of this Agreement, at the end of Phase 1, the Parties will review the Business Requirements Review report and **Exhibit B** to determine what, if any, changes (e.g., changes in scope or assumptions used to develop Exhibit B) are needed to the Work under Phase 2 on **Exhibit B**. If changes are needed to the Work listed under Phase 2 on **Exhibit B**, then, provided the changes do not exceed the amount set forth in Section 6.1.2 by greater than [Insert Percent]% (the “Capped Amount”), the Parties agree to execute an amendment to this Agreement updating **Exhibit B**. If, however, the changes needed to the Work under Phase 2 on **Exhibit B** exceed the amount set forth in Section 6.1.2 by greater than [Insert Percent %], [Public Entity] reserves the right to terminate this Agreement upon prior 10 days written notice to Contractor. If [Public Entity] does not elect to terminate the Agreement, the Parties agree to execute an amendment to this Agreement updating **Exhibit B**.

2.3 This Agreement may be terminated by mutual written consent of both Parties. Either Party may terminate this Agreement in the event that the other Party materially breaches any of its obligations under this Agreement and fails to cure such breach within 30 days after receipt of written notice from the non-breaching Party. [Public Entity] may terminate this Agreement effective upon delivery of written notice to Contractor or at such later date as may be established by [Public Entity] under any of the following conditions: (a) federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that any Work or services to be provided by Contractor under this Agreement are no longer allowable or appropriate for purchase by [Public Entity] or are no longer eligible for the funding proposed for payment authorized by this Agreement; (b) any license or certificate required by law or regulation to be held by Contractor to provide services under this Agreement is denied, revoked, or not renewed for any reason; (c) If Contractor becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (d) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they not exist, or as they may be amended, is filed by Contractor; or (e) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably to Contractor within 90 calendar days. In the event of termination pursuant to this Section, [Public Entity] will pay Contractor for Work actually performed, provided to and accepted by [Public Entity] but [Public Entity] shall have no further payment obligation to Contractor under this Agreement.

2.4 If sufficient funds are not provided in future legislatively approved budgets of the [Public Entity] (or from applicable Federal, state, or other sources) to permit [Public Entity] in the exercise of its reasonable administrative discretion to continue this Agreement, or if the program for which this Agreement was executed is abolished, [Public Entity] may terminate this Agreement without further liability by giving Contractor not less than 30 days written notice.

3. Scope of Work.

3.1 As more particularly set forth in **Exhibits A and B**, Contractor’s Work will include delivery of a [_____] solution to _____, and deliver robust analytical tools and reports including ROI reporting (“Licensed Program”). The system must seamlessly import and export data to and from [Public Entity]’s _____ (“[Public Entity]System”).

3.2 [Public Entity] considers the personnel listed in **Exhibit C** to be key personnel for the Work. Contractor will not replace such key personnel, for reasons other than attrition or internal change of position, without the prior mutual written consent of [Public Entity] and Contractor, which consent will not be unreasonably withheld, conditioned or delayed. [Public Entity] acknowledges that there may be events outside of Contractor's control, including but not limited to illness, injury or attrition of key personnel.

3.3 To ensure effective communication, Contractor will designate a Project Manager and Program Manager, both of whom will be Contractor's primary points of contact in connection with the Work, within 30 days after execution of this Agreement. [Public Entity] designates [Insert Name] as [Public Entity]'s Program Manager and [Insert Name] as [Public Entity]'s Project Manager, both of whom will be [Public Entity]'s primary points of contact in connection with the Work.

3.4 Contractor will begin performance of the Work upon notice to proceed from the [Public Entity] designated representative at the commencement of the Initial Term. Contractor will complete the Work in accordance with the timelines set forth in **Exhibit B**.

3.5 [Public Entity] may request modifications to the Scope of Work by providing a written request to Contractor. Contractor shall promptly respond to any proposed changes. If Contractor believes a modification requested by [Public Entity] will increase Contractor's costs under this Agreement or will result in a delay past the scheduled completion date(s) of the Work, Contractor, prior to performing the additional work, will promptly notify [Public Entity] of the proposed additional charge and any necessary modifications to the Work Schedule in **Exhibit B**. Contractor will use commercially reasonable efforts to accept all changes requested by [Public Entity] provided that such changes are within the general scope of the services contemplated by this Agreement. Contractor's proposed charge shall not exceed an amount reasonably calculated to compensate Contractor for any increase in Contractor's costs arising from the change. The Parties will negotiate the modification and any accompanying increase in cost. **NO MODIFICATIONS TO THE WORK WILL BE BINDING UPON [PUBLIC ENTITY] UNTIL A WRITTEN CHANGE ORDER AMENDING THIS AGREEMENT IS EXECUTED BY AUTHORIZED REPRESENTATIVES OF [PUBLIC ENTITY] AND CONTRACTOR. ORAL APPROVALS OR OTHER INSTRUCTIONS BY [PUBLIC ENTITY] PERSONNEL WILL NOT AMEND THIS AGREEMENT.**

3.6 [Public Entity] will respond promptly to reasonable requests from Contractor for information and approvals to the extent necessary to enable Contractor to perform the Work required under this Agreement.

3.7 [Public Entity] acknowledges that Contractor allocates its resources to provide Work to [Public Entity]. [Public Entity] will use its best efforts to notify Contractor with not less than 10 days prior notice if [Public Entity] cancels any scheduled Work ("Cancellation Notice"). [Public Entity] acknowledges and agrees that failure to provide Cancellation Notice may affect the timeline and/or costs to complete the Work.

4. Acceptance of Work.

4.1 User Acceptance Testing.

4.1.1 After installation of Licensed Program and training of [Public Entity] staff to use such Licensed Program, [Public Entity] will perform User Acceptance Testing (“UAT”) of the Licensed Program in accordance with the Acceptance Test Plan (“ATP”).

4.1.2 ATP will be created by [Public Entity] during Phase 2 in accordance with the requirements and specifications in **Exhibits A and B**. Contractor may provide feedback on the content of [Public Entity]’s ATP.

4.1.3 As part of UAT, [Public Entity] is responsible for the validation of the data conversion and Contractor will provide 5 days of validation support.

4.1.4 [Public Entity] is responsible for the creation of the test cases for UAT.

4.1.5 Contractor will provide [Public Entity] with 5 days of UAT support for one location, as part of Phase 2.

4.1.6 If a portion of the Work is subject to testing and acceptance under this Section 4.1 does not meet the requirements outlined, [Public Entity] will provide written notice of such non-conformity to Contractor within five business days after completion of the testing on that portion of the Work specifically identifying the deficiencies. Upon receipt of notice of non-conformity, Contractor will have five calendar days to revise, correct or otherwise modify the portion of Work to address the deficiencies noted in [Public Entity]’s non-conformance. If the Parties agree that this is insufficient time to address all deficiencies, [Public Entity] and Contractor will mutually agree upon a time period for Contractor to satisfactorily address the deficiencies.

4.2 Final Acceptance.

4.2.1 Contractor will provide Work in accordance with **Exhibits A and B**.

4.2.2 After receipt of all the Work, [Public Entity] will have a 30-calendar day evaluation period (“Evaluation Period”) to accept or reject the totality of the Work. At such time as [Public Entity] notifies Contractor under this Section 4.2 of its determination that the Work meets all the specification and requirements set out in this Agreement, the date of such notice shall be the date of Final Acceptance.

4.2.3 If any of the Work does not meet the requirements outlined in **Exhibits A and B**, [Public Entity] will provide written notice of non-acceptance to Contractor within five business days after the end of the Evaluation Period, specifically identifying the deficiencies.

4.2.4 If [Public Entity] does not provide written notice of non-acceptance per Section 4.2.3 above, then the Work shall be deemed accepted. Upon receipt of notice of non-acceptance, Contractor will have 30 calendar days to revise, correct or otherwise modify the Work to address the deficiencies noted in [Public Entity]’s non-acceptance.

If the Parties agree that this is insufficient time to address all deficiencies, [Public Entity] and Contractor will mutually agree upon a time period for Contractor to satisfactorily address the deficiencies.

4.2.4 [Public Entity] and Contractor may also negotiate any other resolution mutually acceptable to the Parties.

4.2.5 Risk of loss and title will remain with Contractor until [Public Entity]'s Final Acceptance of the Work, including risk of loss in transit to [Public Entity]'s facilities.

5. License & License Fees. From the date of delivery of the Licensed Program to [Public Entity], Contractor grants to [Public Entity] a license to use the Licensed Program pursuant to the terms and conditions set forth **Exhibit D** for the purpose of evaluating and testing the Licensed Program and for use thereafter.

6. Invoicing and Payment.

6.1 Total amount payable under this Agreement for all of the Work, including license fees and reimbursable expenses is \$[Insert Amount]. The total payable under this Agreement for all Work under Phase 1 and 2 is \$[Insert Amount].

6.1.1 Phase 1 of the [_____] Implementation including the Business Requirements Review and Design as described in **Exhibit B** will not exceed \$[Insert Amount].

6.1.2 All Work under Phase 2 of the [_____] Implementation as described in **Exhibits A and B** will not exceed \$[Insert Amount].

6.1.3 Reimbursable Expenses. [Public Entity] will reimburse Contractor's expenses, including travel, up to the following not-to-exceed (NTE) amount of \$[Insert Amount] for all Work under this Agreement. Travel reimbursements shall be based upon the project plan agreed to by the Parties, all of which is subject to the limitations of [Public Entity]'s published reimbursement rates found at the following web address:
_____.

6.1.4 [Public Entity] agrees to pay Contractor the one-time non-refundable license fees as set forth in **Exhibit D**.

6.2 In connection with the Work, Contractor will invoice [Public Entity] as follows:

6.2.1 Contractor will be paid for all Work under Phase 1 in accordance with the labor rates set forth in **Exhibit B**. Notwithstanding the prior sentence, all Work under Phase 1 will not exceed \$[Insert Amount]. Contractor will invoice [Public Entity] for Phase 1 Work and for all Phase 1 reimbursable expenses, subject to the not-to-exceed amount, in two installments. The first installment of \$[Insert Amount] for the Phase 1 Work plus reimbursable expenses shall be invoiced upon Contractor's delivery of the Business Requirements Review report and the second installment of \$[Insert Amount] for the Phase 1 Work plus reimbursable expenses shall be invoiced upon Contractor's completion and [Public Entity]'s acceptance of all Phase 1 Work. Contractor's invoices

will provide detailed listing of all Work performed, including all personnel performing the Work, dates of performance, work elements/tasks performed and associated hours.

6.2.2 Contractor will be paid for all Work under Phase 2 in accordance with the labor rates set forth in **Exhibit B**. Notwithstanding the prior sentence, all Work under Phase 2 will not exceed \$[Insert Amount]. Contractor will invoice [Public Entity] monthly ("Invoice Period") for all Work performed under Phase 2 and for all Phase 2 reimbursable expenses incurred during the Invoice Period, subject to the not-to-exceed amounts set forth in this Section 6. Contractor's invoices will provide detailed listing of all Work performed, including all personnel performing the Work, dates of performance, work elements/tasks performed and associated hours. Contractor will include with its detailed invoice a progress report that documents in bulleted detail the Phase 2 Work completed and accepted during the Invoice Period, milestones reached or percent of milestones complete; cumulative number of hours completed for each milestone and number of estimated hours remaining to complete each milestone; schedule delays caused by [Public Entity], negotiated schedule adjustments, problems/issues/concerns/recommended adjustments; and work plan for the next Invoice Period. Contractor will provide [Public Entity] with such other information as [Public Entity] may reasonably request.

6.2.3 Notwithstanding anything in this Section 6, Contractor acknowledges and agrees that ten percent (10%) of each invoice payable for all Phase 2 Work will be retained by [Public Entity] and paid 30 days after completion of and [Public Entity]'s Final Acceptance of all Work.

6.2.4 Contractor has arrived at the amounts in this Section 6 based upon the following pricing assumptions:

6.2.4.1 The pricing does not include services for development of Licensed Program enhancements not expressly included in **Exhibit B**. As required, requests for Licensed Program enhancements not expressly included in **Exhibit B** will be managed via separate written amendment.

6.2.4.2 The Business Requirements analysis will commence 45-60 days after the execution of this Agreement.

6.2.4.3 Except as expressly provided in **Exhibit B**, the pricing does not include services for development of custom integrations to third party solutions and/or existing legacy source systems. As required, requests for custom integrations will be managed via separate written amendment.

6.2.4.4 Other direct costs (i.e., licensing for third party products used by [Public Entity] in conjunction with the Licensed Program, but not licensed or provided by Contractor as part of the Licensed Program) are not included.

6.2.4.5 Work will be provided in a combination of onsite and remote delivery.

6.2.4.6 Contractor's ability to deliver the services depends upon [Public Entity]'s full and timely cooperation, dedication of skilled resources, as well as the accuracy and completeness of any information [Public Entity] provides.

6.2.5 [Public Entity] agrees to pay the license fee set forth in **Exhibit D** in twelve monthly installments of \$[Insert Amount] commencing on July 1, 2012.

6.3 [Public Entity] will pay invoices within forty-five (45) days of receipt of a detailed invoice pursuant to the terms of this Section 6. All payments are subject to the limitations and conditions of ORS 293.462.

7. Representations and Warranties of Contractor.

7.1 Contractor represents and warrants that (1) Contractor has the power and authority to enter into and perform this Agreement; (2) The individual signing for Contractor is authorized to execute this Agreement on behalf of Contractor; (3) This Agreement, when executed and delivered, will be a valid and binding obligation of Contractor, enforceable in accordance with its terms; and (4) Contractor's name, as it appears in this Agreement, is Contractor's legal name, as it will appear in the Contractor's W-9, and if Contractor is an entity rather than an individual that the entity named in this Agreement is validly existing and in good standing.

7.2 Contractor represents and warrants that the Work under this Agreement will be performed in a good and workmanlike manner and in accordance with applicable industry standards. Contractor further represents and warrants that all Work will conform to the specifications set forth in **Exhibits A and B**.

7.3 Contractor will, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the work.

7.4 The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided in this Agreement.

7.5 From the date of delivery of the Licensed Program and continuing for a period of one year from the date of go-live, such Licensed Program will perform in all material respects in substantial conformance with the requirements and specifications contained in this Agreement and Contractor's published documentation.

8. Representations and Warranties of [Public Entity]. [Public Entity] represents and warrants that (1) [Public Entity] has the power and authority to enter into and perform this Agreement; (2) The individual signing for [Public Entity] is authorized to execute this Agreement on behalf of [Public Entity]; (3) This Agreement, when executed and delivered, will be valid and binding obligation of [Public Entity], enforceable in accordance with its terms.

9. Confidentiality.

9.1 [Public Entity]'s Confidential Information.

9.1.1 As used in this Section, the term "[Public Entity]'s Confidential Information" means proprietary or other nonpublic information or any information intended by [Public Entity] to be kept confidential which is disclosed by [Public Entity] to Contractor in the course of Contractor's performance of its obligations under this Agreement.

9.1.2 Contractor agrees that it will not disclose [Public Entity]'s Confidential Information at any time without [Public Entity]'s written consent. However, Contractor may disclose [Public Entity]'s Confidential Information to its employees, independent contractors and advisors that have a need to know in the course of their assigned duties and responsibilities in connection with this Agreement, provided such parties are bound by legally binding obligations to protect such [Public Entity] Confidential Information in a manner consistent with this Agreement.

9.1.3 Contractor agrees that it will use [Public Entity]'s Confidential Information only in performing services for [Public Entity] under this Agreement.

9.1.4 The confidentiality obligations imposed by this Section will not apply to: (a) information that now is or hereafter becomes part of the public domain through lawful means; (b) information developed by Contractor outside the scope of this Agreement; and (c) information subsequently and rightfully received by Contractor from third parties that does not relate to Contractor's performance under this Agreement.

9.2 Contractor's Confidential Information.

9.2.1 As used in this Section, the term "Contractor's Confidential Information" means Contractor Proprietary Materials (defined in **Exhibit D**), other information which Contractor has labeled as confidential which is disclosed by Contractor to [Public Entity] in the course of Contractor's performance of its obligations under this Agreement, or any information Contractor orally discloses to [Public Entity], if at the time of such oral disclosure, Contractor identifies such information as confidential.

9.2.2 [Public Entity] may disclose Contractor's Confidential Information to its employees, independent contractors and advisors that have a need to know in the course of their assigned duties and responsibilities in connection with this Agreement, provided such parties are bound by legally binding obligations to protect such Confidential Information in a manner consistent with this Agreement.

9.2.3 [Public Entity] agrees that it will use Contractor's Confidential Information only in connection with allowed uses under this Agreement.

9.2.4 The confidentiality obligations imposed by this Section will not apply to: (a) information that now is or hereafter becomes part of the public domain through lawful means; (b) information developed by the recipient outside the scope of this Agreement, as evidenced by records; and (c) information subsequently and rightfully received by the recipient from third parties that does not relate to discloser's performance under this Agreement.

9.2.5 Contractor acknowledges that any records it discloses to [Public Entity] are subject to the provisions of the Oregon Public Records laws. To the extent permitted

by applicable law, [Public Entity] will provide Contractor an opportunity to review and object to disclosure (including obtaining a protective order).

10. **DISCLAIMER OF WARRANTIES.** EACH PARTY HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE LICENSED PROGRAM, WORK AND DELIVERABLES WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTION.

11. **Non-Solicitation.** For any of Contractor’s Key Personnel listed in Exhibit C, or as such Key Personnel may be replaced by the Parties, [Divisions of Public Entity] shall not directly or indirectly, hire or solicit, the services of Contractor’s Key Personnel during the applicable term of any agreement for Work hereunder, and for a period of one (1) year thereafter, without the prior written consent of Contractor. In the event of a violation of this provision, Contractor may seek preliminary and permanent injunctive relief, without posting bond. The foregoing shall not prohibit solicitation and hiring through general advertising, provided such advertising is not targeted to Contractor’s Key Personnel.

12. Miscellaneous Terms and Conditions.

12.1 Notices. All notices or other communications required or permitted by this Agreement must be in writing to the addresses listed below or such other addresses or numbers as the Parties may from time to time direct in writing. Any communications or notices will be considered delivered: upon actual receipt if delivered personally or an overnight delivery service or at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

[Public Entity]:

_____[Name]_____
_____[Title]_____
_____[Adress Line 1]_____
_____[Adress Line 2]_____
_____[Adress Line 3]_____
_____[Adress Line 14]_____

With a copy to:

_____[Name]_____
_____[Title]_____
_____[Adress Line 1]_____
_____[Adress Line 2]_____
_____[Adress Line 3]_____
_____[Adress Line 14]_____

Contractor:

_____[Name]_____
_____[Title]_____
_____[Address Line 1]_____
_____[Address Line 2]_____
_____[Address Line 3]_____
_____[Address Line 14]_____

12.2 Non-Use of Names and Trademarks. No Party will, without express written consent in each case, use any name, trade name, trademark, or other designation of any other Party (including contraction, abbreviation or simulation) in advertising, publicity, promotional, or any other activities or context.

12.3 No Third Party Beneficiaries. [Public Entity] and Contractor are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described in this Agreement as intended beneficiaries.

12.4 Indemnity. Contractor will be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from any claims based on the Licensed Program or services provided by Contractor, its subcontractors, agents, or employees. Contractor will indemnify and hold harmless [Public Entity] and its governing board and their directors, officers, agents, employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the acts or omissions of Contractor or its subcontractors, officers, agents, or employees.

12.5 Indemnity for Infringement Claims. EXCEPT TO THE EXTENT ARISING FROM MATERIALS PROVIDED TO CONTRACTOR BY [PUBLIC ENTITY], WHICH MATERIALS ARE UTILIZED BY CONTRACTOR IN THEIR UNALTERED FORM AND WITHOUT LIMITING THE GENERALITY OF THE INDEMNIFICATION CLAUSE REFERENCED IN SECTION 12.4, CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS [PUBLIC ENTITY] AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY The indemnity under this Section 12.5 will not apply to the extent such alleged or actual infringement arises as a result of (i) modifications of such Work made by [Public Entity] or any party (other than Contractor) which were not approved by Contractor, (ii) Contractor's compliance with any of [Public Entity]'s designs, specifications or instructions; (iii) [Public Entity]'s use of the Licensed Program in a manner in violation of this Agreement; or (iv) use of other than the most current, unaltered patch, update or upgrade to the Licensed Program provided to [Public Entity] without additional charge under the [Insert Name] maintenance and support agreement, if such claim would have been avoided by [Public Entity]'s use of such free patch, update or upgrade. In the event that a court of competent jurisdiction determines in a final, nonappealable order that the Work is infringing in a manner for which Contractor is obligated to indemnify [Public Entity]

pursuant to this Section, Contractor will, at its option, either (1) procure for [Public Entity] the right to continue using such infringing Work; (2) replace the infringing Work with a non-infringing item of like form, fit or function; (3) modify the Work so that it no longer infringes; or if Contractor determines that none of the foregoing can reasonably be accomplished (4) terminate the applicable license(s) and issue a pro-rata refund of the fees paid for the license(s) and/or deliverables for the unused portion of the Licensed Program and/or deliverables based on a ten-year straight line amortization schedule.

12.6 Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor will promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this Agreement. Contractor will demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Agreement.

12.7 Headings. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

12.8 Approvals. The approval of the [Public Entity]'s General Counsel is required before any Work may begin under this Agreement.

12.9 Independent Contractor Status. The service(s) to be rendered under this Agreement are those of an independent contractor. Each Party is not to be considered an agent or employee of the other Party for any purpose, and neither Party nor any of its agents or employees are entitled to any of the benefits that the other Party provides for its employees. Each Party will be solely and entirely responsible for its acts and for the acts of its agents, employees and subcontractors during the performance of this Agreement.

12.10 Successors in Interest. The provisions of this Agreement will be binding upon and will inure to the benefit of the Parties to this Agreement, and their respective successors and assigns.

12.11 Dual Payment. Contractor will not be compensated for Work performed under this Agreement from any other department of [Public Entity] or other any other [public agency].

12.12 Insurance. Contractor will secure at Contractor's expense and keep in effect during the term of this Agreement comprehensive general liability insurance with a broad form CGL endorsement or broad form commercial general liability insurance, covering bodily injury and property damage, with a minimum limit of \$[Insert Amount] per occurrence with an aggregate amount of \$[Insert Amount], which will include personal and advertising injury liability and products. Insurance policies are to be issued by an insurance company authorized to do business in the State of Oregon with a minimum financial rating of an AM Best rating of A- or higher. All liability insurance will be arranged on an "occurrence" basis. No insurance will be allowed on a "claims made" basis. Self-insured retentions may be acceptable in lieu of the above requirements. Any self-insured retentions must be declared to and approved by the [Public Entity]. [Public Entity] may require Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Before the Agreement is executed by [Public Entity], Contractor must provide to [Public Entity] a Certificate of Insurance from the insuring company evidencing insurance coverages required

by this Agreement. The “Description of Operations” must include (using the following exact language) the “[**Public Entity**], **its officers and employees**” as additional insured. The certificate will provide that the insurance company will give a 30-day written notice to [Public Entity] if the insurance is cancelled or materially changed.

Upon request by [Public Entity], Contractor will provide to [Public Entity] an endorsement from the insuring company, naming (using the following exact language) “the [**Public Entity**], **its officers and employees**” as additional insured.

12.13 Default. [Public Entity] may terminate by written notice of default (including breach of contract) to Contractor the whole or any part of this Agreement if: (a) Contractor fails to provide services called for by this Agreement within the time specified in this Agreement or any extension of this Agreement; or (b) Contractor fails to perform any of the other provisions of this Agreement, or fails to pursue the Work so as to endanger performance of this Agreement in accordance with its term and, after receipt of written notice from [Public Entity], fails to correct such failures within 30 days or such longer period as [Public Entity] may determine at [Public Entity]’s sole discretion.

12.14 Compliance with Applicable Law. Contractor agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to Work to be done under this Agreement. Contractor agrees to comply with all federal and state laws prohibiting discrimination on the basis of race, sex, national origin, religion, age, sexual orientation, status as a veteran, or handicap, including the provisions of the American Disabilities Act, 42 US Code 12100 et seq. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules, and regulations will not relieve Contractor of these obligations nor of the requirements of this Agreement. Notwithstanding this Section 12.14, [Public Entity] is responsible for its own compliance with all applicable laws.

12.15 Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between [Public Entity] and Contractor will be brought and conducted solely and exclusively within a Circuit Court for the State of Oregon. However, if any claim, action, or suit must be brought in a federal forum, it will be brought and conducted exclusively in the United States District Court for the District of Oregon. In no event will any part of this Agreement be construed as a waiver by [Public Entity] of its sovereign and governmental immunities. BY EXECUTION OF THIS CONTRACT, CONTRACTOR CONSENTS TO IN PERSONAM JURISDICTION OF SUCH COURTS.

12.16 Recycled Products. Contractor will use recyclable products, as defined in ORS 279A.010(1)(ii) to the maximum extent economically feasible in the performance of the Work set forth in this Agreement. .

12.17 Economic Opportunities. Contractor will, when applicable, have made good faith efforts to subcontract or establish joint ventures with or obtain materials to be used in performing the Agreement from minority, women, or emerging small business enterprises.

12.18 Subcontracts and Assignments. Contractor will not subcontract, assign, or transfer any of its interest in this Agreement without obtaining prior written approval from [Public Entity], which consent will not be unreasonably withheld by [Public Entity]. As a condition to requesting

prior written approval, Contractor must provide a written copy of any such proposed assignment or subcontract to [Public Entity]. [Public Entity]'s consent to any assignment or subcontract will not relieve Contractor of any of its duties or obligations under this Agreement. Any assignment or subcontract in contravention of this Section will be null and void. Provided, however, Contractor may assign this Agreement in connection with a sale of all or substantially all of its assets, merger or change in control, where the successor in interest to Contractor agrees in writing to be bound to all of the terms and conditions of this Agreement.

12.19 [_____]

12.20 Conflict of Interest. Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Work under this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest will be employed.

12.21 Access to Records. Contractor will maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs (of whatever nature) claimed to have been incurred and anticipated to be incurred for the performance of this Agreement. [Public Entity], Secretary of State of the State of Oregon, Federal Government, and their duly authorized representatives will have access, during normal business hours and upon reasonable notice, to the books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. Such books and records will be maintained by Contractor for six years from the date of Agreement expiration unless a shorter period is authorized in writing. Contractor is responsible for any audit discrepancies involving deviation from the terms of this Agreement and for any commitments or expenditures in excess of amounts authorized by [Public Entity].

10.22 Force Majeure. Neither Party shall be liable for any delay in performing its obligations under the Agreement, if such delay is caused by unforeseen circumstances beyond the Party's reasonable control, including without limitation, any acts of God, war, terrorism, labor disputes, or public health epidemics. In the event a non-performance or a delay in performance of obligations under the Agreement is due to a force majeure event, the period of performance shall be extended by the delay due to such event and any additional time that the Parties may mutually agree is necessary for the remobilization of personnel and resources. However, the Party not affected by the force majeure shall have the right to terminate the Agreement without penalty if the Party affected by the force majeure event is unable to resume full performance within 30 days of occurrence of the event.

12.23 Ownership of Work Product. Solely deliverables which are expressly identified as "Owned Deliverables" in this Agreement, shall be the property of [Public Entity] ("[Public Entity] Owned Deliverables"); provided that [Public Entity] Owned Deliverables will not include Contractor's Proprietary Materials. To the extent that [Public Entity] Owned Deliverables contain Contractor's Proprietary Materials, then [Public Entity] will receive and Contractor hereby grants a perpetual, non-exclusive, royalty free, worldwide license to use Contractor's Proprietary Materials solely for its internal business purposes subject to and in accordance with the terms and conditions of this Agreement. Contractor and its affiliates own all right, title and interest in and to the Licensed Program and Documentation, including, without limitation, any and all related source code, object code, materials, designs, plans, techniques, methods,

inventions, forms, formulas, components, compilations, and other works of authorship, and any extracts, derivatives, modifications or enhancements to the foregoing. Contractor acknowledges [Public Entity]'s confidential and proprietary rights in and to [Public Entity]'s records and data.

The Parties acknowledge and agree that (a) customized reports containing data and business process analysis and (b) custom integration code developed under this Agreement shall be the property of [Public Entity] for use solely in connection with its internal business operations and not for resale or license. Except for such custom integration code, no rights are transferred with respect to Contractor's packaged integration services, frameworks, and application programming interfaces. For clarification, subject to obligations regarding [Public Entity]'s Confidential Information, nothing shall restrict Contractor from using substantially similar code when performing integration services for other customers.

12.24 Severability. The Parties agree that if any term or provision of this Agreement 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 will not be affected, and the Parties agree to attempt to substitute for any illegal, invalid, or unenforceable provision a valid or enforceable one, which achieves the economic, legal and commercial objectives of the invalid or unenforceable provision to the greatest extent possible.

12.25 Waiver. No waiver, consent, modification, or change of any term of this Agreement will bind either Party unless the same is in writing and signed by both Parties and all necessary approvals have been obtained. Such express waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose set forth in such signed writing. Failure of either Party to enforce any provision of this Agreement will not constitute a waiver of the right to future enforcement of that or any other provision.

12.26 Time is of the Essence. In all instances where Contractor is required by the terms and provisions of this Agreement to do any act at a particular time or within an indicated period, it is understood and agreed that time is of the essence.

12.27 LIMITATION OF LIABILITIES. EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO A WILLFUL BREACH OF SECTION 7, OR ANY BREACH OF SECTION 9 OR INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES UNDER THIS AGREEMENT, OR (ii) ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS. IN ADDITION, EXCEPT WITH RESPECT TO A WILLFUL BREACH, A BREACH OF THE CONFIDENTIALITY OR INTELLECTUAL PROPERTY PROVISIONS, THE FOLLOWING SHALL APPLY:

FOR LICENSED PROGRAM. NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE FOR DAMAGES IN EXCESS OF THE TOTAL LICENSE FEES PAID FOR THE UNUSED PORTION OF THE RELEVANT LICENSE PROGRAM BASED ON A TEN YEAR STRAIGHT LINE AMORTIZATION SCHEDULE.

FOR WORK. NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY FOR DAMAGES IN EXCESS OF THE TOTAL AMOUNT PAYABLE UNDER THIS AGREEMENT FOR SUCH WORK.

The foregoing limitation of liability shall not be construed as an express or implied waiver by [Public Entity] of its governmental immunity or as an express or implied acceptance by [Public Entity] of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowed under applicable state law.

12.28 Survival. All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.

12.29 Hazard Communication. Contractor will notify [Public Entity] prior to using products containing hazardous chemicals to which [Public Entity] employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon [Public Entity]'s request, Contractor will immediately provide Material Safety Data Sheets, as required by OAR Chapter 437, for the products subject to this provision.

12.30 [_____]

12.31 OMB Circular A-110. If this Agreement is federally funded in whole or in part, Contractor must comply with all applicable provisions of OMB Circular A-110.

12.32 Termination of License Grant. A termination of this Agreement or the license grant in this Agreement shall also terminate the Related Agreements.

12.33 Counterparts. This Agreement may be executed in counterparts, and via facsimile or electronically transmitted signature (i.e. emailed scanned true and correct copy of the signed Agreement), each of which will be considered an original and all of which together will constitute one and the same agreement. At the request of a Party, the other Party will confirm facsimile or electronically transmitted signature page by delivering an original signature page to the requesting Party.

12.34 Entire Agreement. This Agreement, together with all incorporated documents and exhibits attached to this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and merges all prior and contemporaneous communications with respect to such subject matter. This Agreement will not be modified except by a signed writing dated subsequent to the date of this Agreement and signed on behalf of Contractor and [Public Entity] by their respective duly authorized representatives. The Parties acknowledge and agree that this Agreement has been negotiated by the Parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.

[NEXT PAGE IS THE SIGNATURE PAGE]

[PUBLIC ENTITY]:

By: _____

Name: (Print) _____

Title _____

Date: _____

CONTRACTOR:

By (Sign) _____

Name (Print) _____

Title _____

Date _____

EXHIBIT A

SPECIFICATIONS FOR WORK

Scope of Services

1.1 Project Overview

1.2 Business Functional Requirements

1.3 Back Office Functional Requirements.

1.4 Current Technology Environment.

1.5 Security Requirements.

1.6 Training and Documentation

EXHIBIT B

WORK TASKS, DELIVERABLES AND SCHEDULE

Project Scope, Schedule, and Pricing

1.
2.
3. The Project is defined in two (2) phases.
 - a. **Phase 1** encompasses the Analysis and Assessment Phase to include:
 - i. Infrastructure Analysis;
 - ii. Business Requirement Review;
 - iii. Data Integration Analysis;
 - iv. Solution Design based on mutually agreed Business Requirements
 - b. **Phase 2** addresses the product deployments of the Licensed Program. Task work includes:
 - i. Configuration Training;
 - ii. Configuration and Testing;
 - iii. Data Integration and Data Validation;
 - iv. User Acceptance Testing Assistance;
 - v. Train-the-trainer Training;
 - vi. Deployment Preparations;
 - vii. Batch integration_____;
 - viii. _____Data migration; and
 - ix. Deployment of the Production environment and batch integration_____as well as post deployment (i.e., go-live assistance).

Phase 1: Analysis and Assessment

Infrastructure Analysis

Business Requirements Review

Data Analysis

Reporting Analysis

Solution Design

Phase 2: System Configuration, Data Conversion and Validation, Training and Rollout

Configuration

Data Integration and Data Validation:

Testing and Training

Deployment

Work Schedule

Cost	Level	Task Name	Work	Duration	Start	Finish

EXHIBIT C
KEY PERSONNEL

Exhibit D
Software License for Licensed Program