

INTERGOVERNMENTAL AGREEMENT (“Agreement”)

between

the City of Salem, Oregon, a municipal corporation, (“User”)

and

the State of Oregon, by and through its Department of State Police (“OSP”) for

the purpose of

providing User access to OSP’s Automated Biometric Identification System (“ABIS”)

and defining the terms and conditions of such access

1. RECITALS

- 1.1 WHEREAS, Western Identification Network, Inc. (“WIN”) is a non-profit corporation created by the member states to provide services related to the reading, digitizing, matching, storing, and retrieval of fingerprint and palm print images, data records, and respective minutiae data (“AFIS” services); and
- 1.2 WHEREAS, WIN services are provided through a multi-state funded system comprised of a host system located in Rancho Cordova, California, with remote input stations and local site workstations in member states as authorized by the WIN Board of Directors; and
- 1.3 WHEREAS, in addition to fingerprint and palm print services, WIN intends to broaden its services to include the reading, digitizing, matching, storing, and retrieval of other biometric data, including but not limited to retinal and facial minutiae data; and
- 1.4 WHEREAS, all of WIN’s services will now be called the Automated Biometric Identification System (“ABIS”); and
- 1.5 WHEREAS, OSP is required under ORS 181A.140 to install and maintain systems for filing and retrieving fingerprint data and supplemental information submitted by criminal justice agencies for the identification of criminal offenders as the Superintendent of State Police deems necessary; and
- 1.6 WHEREAS, OSP contracts with WIN for access to WIN ABIS for itself and for Oregon law enforcement agencies who meet WIN standards and agree to terms and conditions of access such as those set forth in this Agreement; and
- 1.7 WHEREAS, WIN has determined that all local law enforcement agency access should be authorized through a direct contract with the principal state law enforcement agency which, in Oregon, is OSP. OSP is authorized by WIN to subcontract WIN ABIS access through agreements such as this Agreement; and
- 1.8 WHEREAS, User and OSP have entered into intergovernmental agreements in the past whereby OSP would provide fingerprint and palm print image, data record, and respective minutiae data reading, digitizing, matching, storing, and retrieval services to User; and
- 1.9 WHEREAS, OSP and User’s current agreement for fingerprint and palm print image, data record, and respective minutiae data reading, digitizing, matching, storing, and retrieval services expired on June 30, 2016; and

- 1.10 WHEREAS, OSP desires to continue providing fingerprint and palm print image, data record, and respective minutiae data reading, digitizing, matching, storing, and retrieval services to User, as well as such other ABIS services that WIN is capable of providing in the future; and
- 1.11 WHEREAS, User desires to continue receiving fingerprint and palm print image, data record, and respective minutiae data reading, digitizing, matching, storing, and retrieval services; and
- 1.12 WHEREAS, OSP and User further acknowledge that in the event that OSP's participation in WIN terminates, for whatever reason, prior to the expiration date of this Agreement, OSP and User understand and agree that OSP and User will negotiate a new Agreement, prior to any OSP termination in WIN, so that User will continue to receive ABIS services from OSP.

NOW THEREFORE, in consideration of the mutual promises, terms, and conditions contained in this Agreement, the parties agree as follows:

2. SCOPE OF AGREEMENT

- 2.1 OSP and User understand and agree that this Agreement is limited only to WIN ABIS fingerprint and palm print image, data record, and respective minutiae data reading, digitizing, matching, storing, and retrieval services.
- 2.2 OSP and User understand and agree that in the future, as WIN becomes capable, WIN ABIS will include other types of biometric data reading, digitizing, matching, storing, and retrieval services, including but not limited to, facial recognition and retinal scanning. OSP and User further understand and agree that should User desire remote access to WIN ABIS services other than the reading, digitizing, matching, storing, and retrieval of fingerprint and palm print image, data record, and respective minutiae data, that OSP and User will amend this Agreement to reflect the additional WIN ABIS services provided, as well as any costs associated thereto.

3. OSP OBLIGATIONS

- 3.1 OSP will provide User, through its participation in WIN ABIS, remote access to fingerprint and palm print image, data record, and respective minutiae data reading, digitizing, matching, storing, and retrieval services.
- 3.2 In the event that User requires additional equipment for WIN ABIS services, OSP agrees to assist User in acquiring such equipment for additional costs as specified through contract between WIN and WIN's ABIS Vendor.
- 3.3 OSP agrees to coordinate the installation of remote site ABIS equipment, telecommunication lines, modems, and other transmission equipment necessary to connect User sites, via OSP's central site, to the WIN Central Site in Rancho Cordova, California. User remote site ABIS equipment and maintenance shall be provided in accordance with contractual agreement between WIN and WIN's ABIS Vendor (hereinafter referred to as "Vendor").

- 3.4 OSP agrees to provide appropriate facsimile or other electronic transmission service, as requested, to ensure all Oregon WIN member participants have the ability to exchange fingerprint images interactively. Cost of facsimile or other electronic transmission service will be mutually agreed upon between OSP and User.
- 3.5 OSP agrees to coordinate training for User, and between User and WIN to ensure effective ABIS use.
- 3.6 OSP agrees to provide management support and liaison between WIN, User, and Vendor for future upgrades and system enhancements.
- 3.7 OSP agrees to provide User input, through OSP, to WIN in development and management of mechanisms to ensure effective operation of the WIN ABIS. This will be carried out by recommendations to the WIN Policies and Procedures Committee, which committee makes recommendations to the WIN Board of Directors.
- 3.8 OSP agrees to provide optimum service levels as agreed upon between OSP and WIN, through WIN's monitoring of overall WIN ABIS system usage and throughput thresholds.
- 3.9 OSP agrees to continue research and development with WIN of identification services linked directly or indirectly to ABIS, which will improve services to User.

4. USER OBLIGATIONS

- 4.1 User agrees to operate WIN ABIS equipment and to otherwise conduct its activities in strict compliance with the WIN-OPS Policy and Procedure Manual. In the event of apparently conflicting requirements, User will seek and comply with any written instructions from OSP.
- 4.2 User agrees to assign an ABIS contact person to serve as ABIS liaison in WIN ABIS related issues. The ABIS contact person should, at a minimum, maintain a position of authority within the User agency that directs the daily operation of ABIS and related ABIS issues. The contact person shall be responsible for administering WIN ABIS issues with the designated OSP WIN ABIS Coordinator. The User also agrees to notify the OSP WIN ABIS Coordinator immediately, in writing, of any changes in this position.
- 4.3 The User understands and agrees that access to the central site databases will be provided within limitations established by the WIN Board of Directors.
- 4.4 User shall take necessary measures to make the WIN ABIS equipment secure and to prevent any unauthorized use in strict compliance with the WIN-OPS Policy and Procedure Manual. OSP reserves the right to object to ABIS equipment location, security, qualifications, and number of personnel who will be operating the WIN ABIS equipment and to suspend or withhold service until such matters are corrected to be within reasonable compliance with the WIN-OPS Policy and Procedure. All persons operating or managing WIN ABIS equipment, including

related network connectivity to the state's ABIS database, must pass a CJIS (Criminal Justice Information System) Security check conducted by the Oregon State Police. The CJIS Security Clearance process includes a fingerprint-based state and national criminal history record check, in accordance with OSP and FBI CJIS Security policies. OSP further reserves the right to conduct scheduled inspections with User personnel concerning the proper use and security of the WIN ABIS equipment.

- 4.5 Should User desire to relocate WIN ABIS equipment, User shall provide OSP with at least 60 days written notice in order to effect changes to communication circuits. User understands and agrees that WIN further requires the site to be inspected by OSP prior to the move for compliance with all site requirements. All costs of relocating the communication lines and equipment will be borne by the User.
- 4.6 User understands that all fingerprint and palm print minutiae data entered into the central data base shall become a permanent part of the WIN database unless purged under criteria established in the WIN-OPS Policy and Procedure Manual, or as ordered by a court holding jurisdiction, even though this Agreement may be terminated.

5. RESOLUTION OF INFORMATION TECHNOLOGY ISSUES

- 5.1 OSP and User understand and agree that on occasion there are instances where technical problems arise at the state or local level for which OSP and/or the remote agency must take full responsibility to resolve. While all parties, including WIN and the ABIS vendor, may assist in problem solving efforts resolution cannot be achieved without complete cooperation and acknowledgement by the state or remote agency that the problem may exist at the state or local level only. OSP and User agree to involve the appropriate agency IT resources to investigate and ultimately resolve connectivity or communications issues that affect the remotes ability to use ABIS services.

6. FEES AND PAYMENTS

- 6.1 Determination of User Fee. User agrees to pay the amount listed in Attachment 1 of this Agreement, which is attached hereto and incorporated herein, as a User Fee to OSP for remote access to WIN ABIS fingerprint and palm print services.
 - 6.1.1 OSP and User understand and agree that the User Fee listed in Attachment 1 of this Agreement is based on current and existing WIN and WIN vendor maintenance costs. OSP and User further understand and agree that the User Fee listed in Attachment 1 may decrease upon WIN completing its competitive solicitation and procurement with third party vendors for the continuation and expansion of its WIN ABIS system.
 - 6.1.2 In the event that the User Fee listed in Attachment 1 of this Agreement decreases, OSP shall promptly notify User of the amount and effective date of the decrease. OSP and User shall execute, as soon as practicable, a

written amendment of this Agreement that reflect the decrease of User's User Fee.

- 6.1.3 OSP and User understand and agree the OSP may increase the User Fee listed in Attachment 1 of this Agreement if User adds additional equipment or desires additional WIN ABIS services. In the event that User adds additional equipment or desires additional WIN ABIS services, OSP and User shall execute, as soon as practicable, a written amendment of this Agreement that reflects any increase of User's User Fee.
- 6.2 User agrees to pay all ABIS communications costs between the User and the OSP ABIS Transaction Controller located in Salem, Oregon.
- 6.3 Payment of User Fee or ABIS-related User costs, as shown in Attachment 1, are due within 30 days from the date of the invoice from OSP.
- 6.4 Any prepayment of User Fee or ABIS-related User costs will be treated as prepaid revenues and will be held by OSP without interest accrual for User.
- 6.5 In the event that User fails to provide payment to OSP in accordance with agreed Service Levels and defined User Fee or ABIS-related User costs, notwithstanding non-appropriations, resulting in account delinquency of 45 days from the date of the invoice from OSP, OSP may commence delinquency notification.
 - 6.5.1 Delinquency Notification 1. Upon delinquency of 45 days, OSP shall provide written notification to User for prompt resolution of the delinquent account. Copies of all correspondence pertaining to the delinquent account will be provided to the WIN Executive Committee.
 - 6.5.2 Delinquency Notification 2. Upon delinquency of 60 days, with no resolution, OSP will issue written notification for prompt resolution of delinquent account status to the User agency director. Copies of all related correspondence will be provided to the WIN Executive Committee and WIN CEO.
 - 6.5.3 Delinquency Notification 3. Upon delinquency of 90 days, with no resolution, a meeting will be arranged between OSP management, User agency director, other User representatives responsible for fiscal policy and management, and WIN representatives as deemed appropriate. The purpose of such meeting shall be to determine feasibility of continued ABIS services under this Agreement.
- 6.6 User shall not receive services under this Agreement by any other agency or department of the State of Oregon. OSP certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the OSP's current biennial appropriation or limitation. User understands and agrees that OSP's delivery of services under this Agreement is contingent on OSP receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow OSP, in the exercise of its reasonable administrative discretion, to continue to provide services under this Agreement.

- 6.7 In the event that User terminates this Agreement, or is unable or unwilling to make current or future payments under this Agreement for any reason whatsoever, User shall be responsible to OSP for all User Fee amounts past due under this Agreement, and shall be responsible to OSP for any on-going or continuing ABIS-related User costs (aka equipment maintenance costs) until such time as either a new Agreement is negotiated between the parties or the WIN ABIS equipment is physically removed from User's premises.

7. OSP CONTACT PERSON

- 7.1 For information concerning this Agreement, contact Major Tom Worthy, Oregon State Police, 3565 Trelstad Ave. SE, Salem, OR 97317, (503) 934-0266, FAX (503) 378-8282, e-mail tom.worthy@state.or.us
- 7.2 For information concerning ABIS Coordination, contact Patricia Whitfield, Oregon State Police, 3565 Trelstad Ave. SE, Salem, OR 97317, (503) 934-2305, FAX (503) 378-2121, e-mail Patricia.Whitfield@state.or.us .

8. USER CONTACT PERSON

- 8.1 For information concerning User's ABIS Liaison and participation in this Agreement, contact Greg Ferguson, Salem Police Department, 5915 Windsor Island Rd N. Salem, OR 97303. (503) 540-2468, FAX (503) 588-6387, e-mail gferguson@cityofsalem.net

9. NOTICE

- 9.1 Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the individual specified in 7.1 or 8.1 for that person's respective agency, or deposited in the United States mail for first class delivery, postage fully prepaid, addressed to such person at the address set forth above in 7.1 or 8.1. Either party may, by written notice, change the person or address for purposes of this section. Upon such notice, the person and address so specified shall become, for all purposes, the address for future notice to such party. Any notice delivered by personal delivery shall be deemed to be given upon actual receipt. Any notice sent by United States mail shall be deemed to be given five (5) days after mailing.

10. AMENDMENTS

- 10.1 OSP and User may amend this Agreement at any time only by written amendment executed by duly authorized representatives of each party.

11. ASSIGNMENT

- 11.1 User shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without prior written approval of OSP.

12. CONTRIBUTION

- 12.1 IF ANY THIRD PARTY MAKES ANY CLAIM OR BRINGS ANY ACTION, SUIT OR PROCEEDING ALLEGING A TORT AS NOW OR HEREAFTER DEFINED IN ORS 30.260 - 30.300 ("THIRD PARTY CLAIM") AGAINST A PARTY (THE "NOTIFIED PARTY") WITH RESPECT TO WHICH THE OTHER PARTY ("OTHER PARTY") MAY HAVE LIABILITY, THE NOTIFIED PARTY MUST PROMPTLY NOTIFY THE OTHER PARTY IN WRITING OF THE THIRD PARTY CLAIM AND DELIVER TO THE OTHER PARTY A COPY OF THE CLAIM, PROCESS, AND ALL LEGAL PLEADINGS WITH RESPECT TO THE THIRD PARTY CLAIM. EITHER PARTY IS ENTITLED TO PARTICIPATE IN THE DEFENSE OF A THIRD PARTY CLAIM, AND TO DEFEND A THIRD PARTY CLAIM WITH COUNSEL OF ITS OWN CHOOSING. RECEIPT BY THE OTHER PARTY OF THE NOTICE AND COPIES REQUIRED IN THIS PARAGRAPH AND MEANINGFUL OPPORTUNITY FOR THE OTHER PARTY TO PARTICIPATE IN THE INVESTIGATION, DEFENSE AND SETTLEMENT OF THE THIRD PARTY CLAIM WITH COUNSEL OF ITS OWN CHOOSING ARE CONDITIONS PRECEDENT TO THE OTHER PARTY'S LIABILITY WITH RESPECT TO THE THIRD PARTY CLAIM.
- 12.2 WITH RESPECT TO A THIRD PARTY CLAIM FOR WHICH OSP IS JOINTLY LIABLE WITH THE USER (OR WOULD BE IF JOINED IN THE THIRD PARTY CLAIM), OSP SHALL CONTRIBUTE TO THE AMOUNT OF EXPENSES (INCLUDING ATTORNEYS' FEES), JUDGMENTS, FINES AND AMOUNTS PAID IN SETTLEMENT ACTUALLY AND REASONABLY INCURRED AND PAID OR PAYABLE BY THE USER IN SUCH PROPORTION AS IS APPROPRIATE TO REFLECT THE RELATIVE FAULT OF OSP ON THE ONE HAND AND OF THE USER ON THE OTHER HAND IN CONNECTION WITH THE EVENTS WHICH RESULTED IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS, AS WELL AS ANY OTHER RELEVANT EQUITABLE CONSIDERATIONS. THE RELATIVE FAULT OF OSP ON THE ONE HAND AND OF THE USER ON THE OTHER HAND SHALL BE DETERMINED BY REFERENCE TO, AMONG OTHER THINGS, THE PARTIES' RELATIVE INTENT, KNOWLEDGE, ACCESS TO INFORMATION AND OPPORTUNITY TO CORRECT OR PREVENT THE CIRCUMSTANCES RESULTING IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS. OSP'S CONTRIBUTION AMOUNT IN ANY INSTANCE IS CAPPED TO THE SAME EXTENT IT WOULD HAVE BEEN CAPPED UNDER OREGON LAW IF IT HAD SOLE LIABILITY IN THE PROCEEDING.
- 12.3. WITH RESPECT TO A THIRD PARTY CLAIM FOR WHICH THE USER IS JOINTLY LIABLE WITH OSP (OR WOULD BE IF JOINED IN THE THIRD PARTY CLAIM), THE USER SHALL CONTRIBUTE TO THE AMOUNT OF EXPENSES (INCLUDING ATTORNEYS' FEES), JUDGMENTS, FINES AND AMOUNTS PAID IN SETTLEMENT ACTUALLY AND REASONABLY INCURRED AND PAID OR PAYABLE BY OSP IN SUCH PROPORTION AS IS APPROPRIATE TO REFLECT THE RELATIVE FAULT OF THE USER ON

THE ONE HAND AND OF OSP ON THE OTHER HAND IN CONNECTION WITH THE EVENTS WHICH RESULTED IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS, AS WELL AS ANY OTHER RELEVANT EQUITABLE CONSIDERATIONS. THE RELATIVE FAULT OF THE USER ON THE ONE HAND AND OSP ON THE OTHER HAND SHALL BE DETERMINED BY REFERENCE TO, AMONG OTHER THINGS, THE PARTIES' RELATIVE INTENT, KNOWLEDGE, ACCESS TO INFORMATION AND OPPORTUNITY TO CORRECT OR PREVENT THE CIRCUMSTANCES RESULTING IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS. THE USER'S CONTRIBUTION AMOUNT IN ANY INSTANCE IS CAPPED TO THE SAME EXTENT IT WOULD HAVE BEEN CAPPED UNDER OREGON LAW IF IT HAD SOLE LIABILITY IN THE PROCEEDING.

13. COMPLIANCE WITH LAWS

- 13.1 User shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, User expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (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 Agreement and required by law to be so incorporated. OSP's performance under the Agreement is conditioned upon User's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Where applicable, User shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

14. GOVERNING LAW

- 14.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OSP (and/or any other agency or department of the State of Oregon) and User that arises from or relates

to this Agreement 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. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. **USER, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

15. EFFECTIVE DATE; TERMINATION

- 15.1 This Agreement is effective as of July 1, 2016 (the "Effective Date"), and shall expire on June 30, 2018. This Agreement may be terminated prior to June 30, 2018, by either party upon not less than 30 days' prior written notice of such termination to the other party.
- 15.2 The provisions of sections 4.6, 6.7, and 12 are permanent with respect to acts, circumstances and conditions arising during the effective term of this Agreement and thereby governed by such sections. Sections 4.6, 6.7, and 12 shall, to the extent described in this section, survive the termination or expiration of this Agreement.
- 15.3 The maximum, not-to-exceed compensation payable to OSP by User under this Agreement, which includes any allowable expenses, is \$21,500.00. User will not pay OSP, and OSP will not provide ABIS services, for any amount in excess of the not-to-exceed compensation of this Agreement, except as agreed to in writing by amendment to this Agreement.

16. COMPLETE AGREEMENT

- 16.1 This Agreement represents the complete understanding of the parties with respect to all matters relating to the subject matter hereof. No evidence of modification, amendment, prior agreement, representation, declaration, clarification or negotiation shall be considered unless the same is in the form of an amendment pursuant to section 10.1 hereof.
- 16.2 As of the Effective Date of this Agreement, any and all prior agreements between the parties related to fingerprint and palm print image, data record, and respective minutiae data reading, digitizing, matching, storing, and retrieval services are terminated.

17. SURVIVAL.

- 17.1 All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 15.2.

18. COUNTERPARTS.

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

19. SIGNATURES.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed in their Respective names by their duly authorized representatives as of the dates set forth below.

STATE OF OREGON, BY AND
THROUGH ITS DEPARTMENT
OF STATE POLICE

CITY OF SALEM, OREGON

By: _____
Authorized Signature

By: _____
Authorized Signature

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED FOR LEGAL SUFFICIENCY:

By: _____
Senior Assistant Attorney General

Date: _____