



## **Software as a Service Agreement**



## **Teller Software as a Service Agreement**

### **Between:**

**The City of Sunnyvale**, a city of the State of California, having its principal place of business at 456 W. Olive Ave. Sunnyvale, CA 94086 (hereinafter referred as "**Client**").

### **and**

**Can/Am Technologies, Inc.**, a company incorporated under the laws of Colorado, having its principal place of business 7114 W Jefferson Ave, Suite 200, Lakewood, CO 80235 (hereinafter referred as "**CanAm**").

### **RECITALS**

1. Pursuant to the terms of this Contract, CanAm will provide a web-based system to manage point of sale processes for Client.
2. This system is intended to provide Client with reporting and visibility into financial transactions, increasing the accountability and transparency of financial management for Client.

### **AGREEMENT**

Client and CanAm agree as follows:

#### **1. DEFINITIONS**

- 1.1. Agreement – this document and all schedules attached or incorporated by reference, and any subsequent addendums or amendments made in accordance with the provisions hereof.
- 1.2. Annual Software as a Service Fee – the annual fee payable by Client to CanAm for the use of Teller software, including Teller support services and Hosting Services provided by CanAm under this Agreement.
- 1.3. Configuration(s) – all work required to configure Teller to reflect the business rules, workflow, security and data requirements of Client, together with the resulting set of configured Teller business processes.
- 1.4. Defect - a program error that will cause Teller to crash, or program algorithms or logic that produce incorrect results. Defects pertain to the intended operation of Teller as delivered to Client, but do not pertain to subsequent errors brought about by Infrastructure changes made by Client or any other Third-Party. Defects do not include changing user preferences, report or screen aesthetics, presentation standards, or validity of converted data. Defects do not pertain to problems arising from Third-Party Software interfaced to Teller, or to problems arising from Teller Configurations not developed by CanAm.
- 1.5. Enhancement - any work requested by Client to alter existing Teller features, or to add any new features or functions to Teller software.
- 1.6. Hosting Services – the services described in Exhibit B of this Agreement that are provided by CanAm to Client.
- 1.7. Hosting Services Site – the third-party hosting facility, at a U.S. location of CanAm's choice, at which servers and related equipment are located.
- 1.8. Hosting SLA – the Hosting Service Level Agreement as provided in Exhibit B, and any subsequent addendums or amendments made in accordance with the provisions herein.
- 1.9. Client Infrastructure – the physical wiring, network, hardware and software necessary to deploy and operate Teller on Client premises.
- 1.10. Intellectual Property – property that derives from the work of the mind or intellect, specifically, an idea, invention, trade secret, process, program, data, formula, patent, copyright, or trademark or application, right, or registration. Intellectual Property includes: a) Teller pre-existing software, or pre-existing

software Configurations (including reports) of CanAm; b) CanAm methodologies, processes, tools, and general knowledge of the matters under consideration; and c) any pre-existing material provided by CanAm under separate license.

- 1.11. Named User - an individual internal to Client or representing Client who has access to the Teller Production Database. A Named User can access the Teller Production Database from any workstation on Client's network or intranet, or via the Internet.
- 1.12. Concurrent User License - permits installation and use of the Software on an unlimited number of workstations by an unlimited number of Client-authorized users but solely for concurrent use by the number of Concurrent User Licenses specified in Exhibit A. Concurrent User is measured by calculating the number of users with active Teller Logon Sessions (logged on but not expired or logged out) at any given point in time.
- 1.13. Plugin – additional functionality that extends core Teller features. Plugins may be added to Teller to permit additional functionality. Licensed Plugins are fully supported and may have their own release cycle separate from the Teller product release cycle.
- 1.14. Release – any version, point, maintenance or patch release to Teller issued by CanAm.
- 1.15. Service(s) - means the services to be provided pursuant to the Statement of Work (Exhibit C) or an amendment to this Agreement.
- 1.16. Site-Specific Configuration – any software deliverables developed solely and specifically for Client including configuration, custom reports, and data conversion scripts.
- 1.17. Source Code – any and all program code or database definitions developed by CanAm programmers using a formal programming language and used by Teller software.
- 1.18. Specifications - means the requirements of the Deliverables as set forth in the Statement of Work (Exhibit C) or an amendment to this Agreement.
- 1.19. Statement of Work (SOW) – a document that describes the implementation services, software products, and other deliverables to be provided by CanAm (including its subcontractors if applicable) to Client under this Agreement. The Statement of Work is attached to this Agreement as Exhibit C.
- 1.20. Teller – an enterprise point of sale system that manages revenue intake from cashiering to balancing and reconciliation workflows in a single integrated database. Teller includes the reports and documentation that come with the Teller software.
- 1.21. Teller Annual Software as a Service Agreement – the document (i.e., this Agreement) which provides the terms and conditions under which the right to use Teller is provided to Client.
- 1.22. Teller System - a pre-existing set of Configurations that extends Teller by providing functionality specific to a business area.
- 1.23. Third-Party – a person, corporation, organization or entity other than Client or CanAm.
- 1.24. Third-Party Software – any identifiable product embedded in and/or linked to Teller software, but to which the proprietary rights belong to an independent Third-Party.
- 1.25. Interface – Plugin that interacts with an external software application to transfer data between it and Teller. Interfaces either directly interact with the other software application, or export data in a specific format designed for use the external application. Licensed Interfaces are fully supported and may have their own release cycle separate from the Teller product release cycle.

## **2. SCOPE OF AGREEMENT**

- 2.1. By this Agreement, CanAm agrees to provide Client with a single Annual Subscription Software License to use the Teller System in Production at the edition specified in Exhibit A. This License includes the number of Interfaces, Concurrent Users and/or Named Users identified in Exhibit A.

**3. TERM OF AGREEMENT**

- 3.1. This Agreement will remain in effect for a period of one (1) year from signing and will be renewed annually thereafter upon payment by Client of the Annual Software as a Service Fee, unless otherwise revised or terminated under the provisions of this Agreement.

**4. GRANT OF LICENSE**

- 4.1. This Agreement provides Client with a non-exclusive and non-revocable license for Teller as identified in Exhibit A of this Agreement. This license will be effective for as long as this Agreement is in place and Client remains current with payment of their Annual Software as a Service Fee.
- 4.2. Client is licensed to use Teller in three (3) non-production environments and one (1) production environment at CanAm hosting site.
- 4.3. Client is licensed to use Teller only for processing transactions associated with Client's business or public purposes. Any other use of Teller by Client is not permitted under the Teller Annual Software as a Service Agreement.

**5. SOFTWARE AS A SERVICE LICENSE FEE**

- 5.1. Client agrees to pay CanAm an Annual Software as a Service Fee as specified in Exhibit A for license rights to Teller and for associated Teller support and Teller Hosting Services. The first year of the Teller Software as a Service Fee is billable upon execution of this agreement.
- 5.2. The Annual Software as a Service Fee includes all licensed Interfaces, but does not include Client Infrastructure or Teller Site-Specific Configuration. CanAm may provide these for additional cost under a SOW or Work Order.
- 5.3. Client agrees to remit payment annually to CanAm within 30 calendar days of receipt of the invoice.

**6. SUPPORT SERVICES**

- 6.1. CanAm agrees, during the term of this Agreement, to provide Teller support services in a timely and professional manner. CanAm will provide unlimited technical support for Client's Teller support personnel described in Section 7.2 of this Agreement. Support pertains to Teller, licensed Teller Plugins and Interfaces noted in Exhibit A.
- 6.2. The Teller Support Web site will be available 24 x 7 for submitting Client support requests. The Teller support desk will be staffed from 8:00 a.m. to 6:00 p.m. Mountain Time, Monday to Friday, excluding CanAm-observed statutory holidays. Extended hours of coverage or on-call coverage outside of these working hours can be provided at additional rates per Section 8.
- 6.3. When Client submits a support request through the Teller Support Web site during normal CanAm hours for support, as specified in Section 6.2 of this Agreement, CanAm and Client will categorize, and CanAm will escalate as appropriate, the support request according to the following criteria. To ensure the listed Response Time, Client must call the provided Teller Support toll-free number to report or confirm Critical priority issues.

Severity	Definition	Response Time	Resolution Time
<b>Critical</b>	Client site is down. Major impact to operations of Client site.	< 15 minutes	Immediate and ongoing effort, with daily reporting to Client as necessary until a work-around or fix has been provided.

Severity	Definition	Response Time	Resolution Time
<b>High</b>	Major impairment of at least one important function at Client site. Operations at Client site are impacted. All important Client functions are working albeit with extra work.	< 1 hour	Proceed with fix as high priority work with reporting to Client as necessary until a work-around or fix has been provided.
<b>Medium</b>	Client Operations not significantly impacted. One or more minor Client functions not working. Major usability irritations impacting many staff at Client.	< 4 hours	Proceed with fix as medium priority work, according to schedule set by CanAm.
<b>Low</b>	Minor usability irritations. Work-around exists.	< 2 business days	Proceed with fix as low priority work, according to schedule set by CanAm

- 6.4. The Software as a Service Fee does NOT include technical support for Site-Specific Configurations and Third-Party Software not embedded within Teller, such as operating system software and Microsoft Office products. Technical support for Teller related Third-Party hardware that may be used by Client, including scanners, printers, credit terminals, and other hardware peripherals is not included.
- 6.5. In the event that CanAm has sold Third-Party licenses to the Client, CanAm will be responsible for researching and diagnosing the issue and, if proven to be a Teller product issue, for fixing it, or if proven to be a Third-Party product issue, for submitting the issue to the Third-Party.
- 6.6. CanAm will not begin charging Client for resolution of a non-Teller related problem until CanAm demonstrates to Client that the source of the problem is not related to a Teller Defect and Client has authorized work to resolve the issue. No time will be charged to Client for Teller Defects reported to CanAm.
- 6.7. CanAm will provide notice of all new Teller software Releases to Client. CanAm will retain full ownership rights to any Teller software Release delivered to Client.
- 6.8. Unless otherwise specified, Teller product warranty and support activities will be conducted at and deployed from CanAm offices. Travel and living expenses to provide on-site services deemed by CanAm as required to repair a Teller Defect will not be charged to Client.

## 7. **CLIENT OBLIGATIONS AND RESPONSIBILITIES**

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

- 7.1. Infrastructure Support –managing the local Internet Service Provider (ISP) providing Client its Internet connection and/or its wireless service; managing its own networks; managing all desktop and mobile hardware for Client staff and implementing its own security policies and procedures.
- 7.2. Teller Support – Client is responsible for providing first-line Teller support to Client staff. First-line Teller support is responsible for researching issues and assessing if they are the result of a Teller Defect. Client will identify a limited number of Client staff entitled to submit Teller support requests.
- 7.3. Future Releases – Client acknowledges that future Releases of Teller software may require different or additional Client equipment and/or software in order to function properly. CanAm is required to provide Client with sufficient notification of such requirements. Client will be responsible to fund, acquire, install, and maintain such different or additional equipment and/or software.

## **8. PROFESSIONAL SERVICES**

- 8.1. At the request of Client, CanAm may provide any or all of the following professional services: development of Site-Specific Configurations, report development, training, Site-Specific warranty, first line Teller support, and any other consulting activity. CanAm professional services may be purchased for an all-inclusive fixed-cost or on a time-and-materials basis. All terms, conditions and costs for CanAm professional services will be specified in a separate agreement (SOW or work order) between the Client and CanAm.
- 8.2. CanAm will perform the Services and provide the Deliverables that are described in each Statement of Work in accordance with the terms of this Agreement, for the price and in accordance with the delivery dates and Specifications described in the Statement of Work.
- 8.3. The Parties agree that CanAm personnel will not be considered employees of Client and will not be entitled to any of the rights, benefits or privileges arising from an employment relationship with Client. CanAm expressly acknowledges that it is an independent contractor of Client and no agency, partnership or employment relationship is intended or created by this Agreement between CanAm and Client.

## **9. PAYMENT FOR SERVICES**

- 9.1. Client will pay CanAm the fees set out in the Statement of Work, plus all applicable taxes, upon acceptance of deliverables specified in the Statement of Work, subject to receipt of invoices from CanAm.
- 9.2. CanAm will submit invoices and other supporting documentation which may be required by Client describing the Services and Deliverables for which payment is claimed.
- 9.3. Client will pay, without set-off or deduction, except in the case of rejected deliverables, each accurate invoice within thirty (30) days from the date of receipt of the invoice.

## **10. SOURCE CODE**

- 10.1. This license will provide Client with run-time only capability for Teller as described in Section 2 of this Agreement.
- 10.2. A copy of Teller Source Code will be held in escrow for Client by InnovaSafe, Inc. at no cost to Client. The source code held in escrow will be updated in a timely manner upon issuance of any new Teller version or point Release.
- 10.3. Source code (metadata) to Site-Specific Configurations, reports, and specialized code developed specifically for Client will be provided to Client upon request.

## **11. WARRANTY**

- 11.1. CanAm will repair Teller Defects reported by Client while this Agreement is in effect at no additional cost to Client. CanAm will make all reasonable efforts to resolve Defects quickly, via a patch Release if necessary. Warranty applies to all licensed Interfaces as well as core Teller product functionality.
- 11.2. The warranty on all CanAm-developed Site-Specific Configuration is defined in the SOW.
- 11.3. CanAm does not provide warranty for any Site-Specific Configuration or custom code not developed by CanAm, or developed by CanAm and subsequently altered by Client or any other Third-Party.
- 11.4. CanAm warrants that it has full power and authority to grant this Teller license and that as of the effective date of this Agreement, the Teller software does not infringe on any existing Intellectual Property rights of any third party. If a claim of infringement is made by any third party, CanAm may, at its sole option either:
  - a) secure for CLIENT the right to continue using the Teller software; or
  - b) modify the Teller software so that it does not infringe.

- 11.5. CanAm has no obligation for any claim of infringement based on a modified version of the Teller software or based on the combination of the Teller software with any third party product not provided by CanAm. CanAm provides no warranty whatsoever for any third party software or hardware products.
- 11.6. Except as expressly set forth herein, CanAm disclaims any and all express and implied warranties, including but not necessarily limited to warranties of merchantability and fitness for a particular purpose.

## **12. OWNERSHIP OF SOFTWARE AND DATA**

- 12.1. CanAm has exclusive licensing and distribution rights for Teller software (Copyright © 2004 – 2019, all rights reserved), including Teller; licensed Teller Plugins, and licensed Teller Interfaces within the United States of America. Client will not remove any ownership or copyright notices from Teller software or documentation. Reproduction, disassembly, decompilation, transfer, reverse engineering, or disclosure to others, in whole or in part, of Teller is strictly prohibited.
- 12.2. CanAm is, and will remain, the exclusive owner, or is the authorized agent of the owner of Teller proprietary information, and all patent, copyright, trade secret, trademark, and other Intellectual Property rights remain solely with CanAm. No license or conveyance of any such rights to Client is granted or implied under this Agreement.
- 12.3. CanAm will retain ownership of the Intellectual Property associated with Enhancements or Interfaces developed by CanAm for Client.
- 12.4. Client is deemed to own any Site-Specific Configuration for their Teller installation. Client grants CanAm a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, sublicense, modify, and sell the Site-Specific Configuration developed pursuant to this Agreement without compensation to Client.
- 12.5. Client may not sell, rent, lease, give, distribute, assign, pledge, sublicense, loan, timeshare, or otherwise transfer Teller software to any other party. Client will not copy, resell or give Teller Configurations or documentation to any other party. Client agrees not to distribute Teller as part of any other software product, commercial or otherwise, without the prior written approval of CanAm.
- 12.6. Client will retain sole and complete ownership of its data at all times, regardless of the location of the data, and CanAm may not make any use of Client data other than for testing and service delivery purposes, without the prior written consent of Client.

## **13. CONFIDENTIAL AND PROPRIETARY INFORMATION**

- 13.1. Each party will hold in confidence, and will not disclose to any unauthorized personnel, any confidential or proprietary information of the other party. Each party will use such confidential or proprietary information only for the purpose for which it was disclosed.
- 13.2. As used in this Agreement, the term “confidential or proprietary information” means all trade secrets or proprietary information designated as such in writing by one party to the other. All software code in source or object format will be deemed to be proprietary information regardless of whether it is marked as such. Information which is orally or visually disclosed by one party to the other, or is disclosed in writing without an appropriate letter, proprietary stamp or legend, will constitute proprietary information of the releasing party if:
- a) The releasing party, within thirty (30) calendar days after such disclosure, delivers to the receiving party a written document describing such information and referencing the place and date of such oral, visual, or written disclosure, and the names of receiving party personnel to whom such disclosure was made.
- 13.3. Each party will only disclose confidential or proprietary information received by it under this Agreement to personnel who have a need to know such confidential or proprietary information for the performance of its duties and who are bound by an agreement to protect the confidentiality of such confidential or proprietary information.

- 13.4. Each party will adopt and maintain programs and procedures which are reasonably calculated to protect confidential or proprietary information, and will be responsible to the other party for any disclosure or misuse of confidential or proprietary information which results from a failure to comply with this provision. Each party will promptly report to the other party any actual or suspected violation of the terms of this Agreement and will take all reasonable further steps requested by the offended party to prevent, control, or remedy any such violation.
- 13.5. The obligations of each party specified above will not apply with respect to any confidential or proprietary information, if the receiving party can demonstrate, by reasonable evidence, that such confidential or proprietary information:
- a) was generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the receiving party;
  - b) was already in the possession of the receiving party at the time of disclosure;
  - c) becomes known to the receiving party through disclosure by sources having the legal right to disclose such confidential information;
  - d) was independently developed by the receiving party without reference to, or reliance upon, the confidential information; or
  - e) was required to be disclosed by the receiving party to comply with applicable laws or governmental regulations, provided that the receiving party provides prompt written notice of such disclosure to the offended party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.
- 13.6. If Client is subject to freedom of information legislation CanAm agrees to adhere to the standards outlined in such legislation regarding protection of privacy and disclosure of records with respect to all work done for Client pursuant to this Agreement.
- 13.7. Upon termination of this Agreement, each party will make all reasonable efforts to return to the other party all tangible manifestations, and all copies thereof, of confidential or proprietary information received by the other party under this Agreement, if requested to do so by the disclosing party.

#### **14. LIMITATIONS OF LIABILITY AND INDEMNITY**

- 14.1. The liability of CanAm to Client for any losses or damages arising from the use of Teller or from any other services covered under this Agreement will be limited to, at the discretion of CanAm, either the return of the current-year Annual Software as a Service Fee, or the repair of Teller so that it will perform without Defect.
- 14.2. CLIENT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THAT UNDER NO CIRCUMSTANCES WHATSOEVER WILL CANAM BE LIABLE FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE OR KIND, OR ANY LOSS RESULTING FROM BUSINESS DISRUPTION ARISING FROM THE USE OF TELLER, OR FROM ANY SERVICES COVERED UNDER THE TERMS OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IN THE EVENT THAT CANAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 14.3. Subject to the provisions of Section 14.1 and 14.2 above, CanAm agrees to indemnify and save Client harmless from any liability, damage, expense, or cost including, but not limited to, legal fees of a solicitor regarding any acts, duties, obligations, or omissions of the CanAm.
- 14.4. Subject to the provisions of Section 14.1 and 14.2 above, CanAm will, at the request of the Client, assume the defense and the cost of any demand, claim, action, suit or proceeding of any nature brought against Client by reason of the error, action, or omission of the CanAm. Further, CanAm will pay any damages, awards, judgments, costs, or other amounts assessed against, or otherwise payable by Client as the result of the disposition of any such demand, claim, action, suit, or proceeding. Notwithstanding the foregoing, Client is entitled to be represented in any such action, suit, or proceeding at its own expense and by counsel of its choice.



## **15. TERMINATION AND DEFAULT CONDITIONS**

- 15.1. CanAm may terminate this Agreement if: Client fails to make required payments within 90 days of due date, Client materially fails to fulfill its obligations and responsibilities or breaches any material term of this Agreement, Client becomes bankrupt or insolvent, or if a receiver is appointed to manage the property and assets of Client. If any of the above conditions are encountered, CanAm will provide written notice to Client and provide 30 calendar days for Client to remedy the default. If the default is not rectified within 30 calendar days, CanAm will have cause to terminate this Agreement.
- 15.2. Client may terminate this Agreement if: CanAm materially fails to fulfill its obligations and responsibilities or breaches any material term of this Agreement, CanAm becomes bankrupt or insolvent, or if a receiver is appointed to manage the property and assets of CanAm. If any of the above conditions are encountered, Client will provide written notice to CanAm and provide 30 calendar days for CanAm to remedy the default. If the default is not rectified within 30 calendar days, Client will have cause to terminate this Agreement.
- 15.3. At the time that the obligations of each of the parties have otherwise concluded, it is understood and agreed that the provisions of Section 12 and Section 13.1 will continue in full force and effect.
- 15.4. Client shall have the right to terminate this Agreement without cause by providing CanAm with thirty (30) calendar days' written notice.

## **16. RIGHTS AND OBLIGATIONS**

- 16.1. If either CanAm or Client terminates this Agreement, CanAm will retain all fees for products or services delivered to Client up to the date of termination. CanAm will refund a pro-rated portion of the Annual Software as a Service Fee to Client, based on the number of full or partial calendar months of service provided under the Agreement since the last annual renewal date.
- 16.2. Any termination by CanAm as provided in this Agreement will not in any way operate to deny any right or remedy of CanAm, either at law or in equity, or to relieve Client of any obligation to pay the sums due under this Agreement, or of any other obligation accrued prior to the effective date of termination.
- 16.3. Any termination by Client as provided in this Agreement will not in any way operate to deny any right or remedy of Client, either at law or in equity, or to relieve CanAm of any obligation to pay the sums due under this Agreement, or of any other obligation accrued prior to the effective date of termination.
- 16.4. Upon termination of this Agreement, Client agrees to cease any and all operational use of Teller software and further agrees to delete all Teller software. CanAm agrees to make reasonable provision for an extract of Client's operational data from Client's production Teller database if requested by Client.
- 16.5. Teller is subject to the export control laws of the United States and other countries. Client may not export or re-export Teller software without the appropriate United States and foreign government licenses. Client must comply with all applicable export control laws and will defend, indemnify and hold CanAm harmless from any claims arising from Client's violation of such export control laws.

## **17. DISPUTES**

- 17.1. CanAm and Client will both separately and jointly use diligent efforts to establish positive and ongoing communications both within and between their respective organizations. Key personnel within CanAm and Client will communicate regularly in order to review the status and priorities for the provision of services by CanAm and Client.
- 17.2. In the event of any dispute arising between CanAm and Client with respect to their rights and obligations under this Agreement, the party feeling itself aggrieved will notify the other party of the substance in

writing of such grievance. Both parties agree to work in good faith and make all reasonable efforts to resolve the dispute, including, if necessary, escalating the dispute to:

- First level: the Project Manager of CanAm and the IT Applications and Analytics Manager for Client; and
- Second level: the President/CEO of CanAm and the City Manager for Client.

17.3. The validity, performance, and enforcement of this Agreement shall be governed by and be construed in accordance with the laws of the State of California, without regard to the conflicts of law rules thereof and the state courts or the federal courts of California shall have exclusive jurisdiction and venue over the Parties with respect to any dispute or Disputed Matter arising under this Agreement. By signing this Agreement, each Party consents to personal jurisdiction in state and federal courts located in California and venue shall be in the County of Santa Clara, and agrees to not raise any defense to same.

## **18. RELATIONSHIP OF PARTIES**

18.1. Each of the parties is an independent contractor. Nothing herein shall be construed to place the parties in a relationship of principal and agent, partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.

## **19. WAIVER**

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

## **20. SUCCESSION**

20.1. This Agreement will be binding on the legal successors or representatives of CanAm and Client. It will also be binding on any party that receives licensing and distribution rights to Teller from CanAm.

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

## **21. FORCE MAJEURE**

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

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

## **22. SEVERENCE**

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

## **23. CURRENCY**

23.1. Unless otherwise noted, all reference to payment amounts in this Agreement are in U.S. dollars.

## **24. GOVERNING LAW**

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

**25. COUNTERPARTS**

25.1. This Agreement may be executed in two or more counterparts, by facsimile or otherwise, each of which is an original, and all of which together constitute one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.

**26. ACCEPTANCE OF AGREEMENT**

26.1. This Agreement comprises the entire and sole Teller Software as a Service Agreement between CanAm and Client. No other understandings or agreements, verbal or otherwise, exist for the licensing of Teller. CanAm and Client agree not to change this Agreement except by written agreement.

**Can/Am Technologies, Inc.**

**City of Sunnyvale, CA**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name

Kent Steffens  
Printed Signature

\_\_\_\_\_  
Title

City Manager  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Authorized Signature

David Carnahan  
Printed Signature

City Clerk  
Title

Approved as to Form:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Signature

City Attorney  
Title

## **Exhibit A**

### **Licensed Teller Interfaces and Users**

License prices are fixed for years 1 through 3, and subject to a 3% annual increase in years 4 through 10.

<b>License</b>	<b>Description</b>	<b>Quantity</b>	<b>Monthly Base Amount</b>
Teller Standard License @ \$1995/month	Teller Standard License Package: <ul style="list-style-type: none"> <li>• Production instance of Teller</li> <li>• Test instance of Teller</li> <li>• 2 Concurrent User Licenses</li> <li>• Credit Processing Interface</li> </ul> Hosting and Support Services	1	\$1995
Additional Concurrent Users @ \$150/month/user	Concurrent User Licenses (total: 7 user licenses)	5	\$750
* Real-time Business System Interfaces at \$250/month/interface	Oracle A/R Interface	1	\$250
* Batch Business System Interface @ \$150/month	Batch posting interfaces intended for: <ul style="list-style-type: none"> <li>• HDL</li> <li>• Naviline</li> </ul>	2	\$300
Image Cash Letter License @ \$300 / month	For deposit of scanned checks to Union Bank	1	\$300
<b>Monthly Total</b>			<b>\$3,595</b>

**\* 1 Real-time and 2 Batch interface fees will not be charged for first 4 months. This reduces the Year 1 fee from \$43,140 to \$40,940.**

### **Annual Software as a Service Fees**

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

License prices are fixed for years 1 through 3, and subject to a 3% annual increase in years 4 through 10.

<b>Time Period</b>	<b>Fee</b>
Year 1	\$40,940
Year 2	\$43,140
Year 3	\$43,140
Year 4	\$44,434
Year 5	\$45,767
Year 6	\$47,140
Year 7	\$48,554
Year 8	\$50,011
Year 9	\$51,511
Year 10	\$53,056

**Exhibit B**  
**Hosting Service Level Agreement**

**1. OWNERSHIP OF DATA**

- 1.1. Regardless of the location of the hosting facility, Client will retain sole and complete, legal and beneficial ownership of its data stored on the Hosting Services Site.
- 1.2. CanAm's responsibilities and rights regarding Client data are solely restricted to the provision of services described in this Hosting SLA. CanAm may not make any other uses of Client data for any reason whatsoever, without the express written consent of Client, unless ordered to release such data by a court of competent jurisdiction.
- 1.3. Client may request return of any or all of its data at any time, for any reason, and CanAm will provide such data within a reasonable period of time, in native format.

**2. OVERVIEW OF HOSTING SERVICES**

- 2.1. CanAm is committed to providing secure, reliable and dedicated Hosting Services to Client. For maximum protection and value to Client, CanAm will contract with Amazon AWS for provision of a hosting facility in the United States. The following Service Level Agreements apply to the Amazon Services being contracted:
  - <https://aws.amazon.com/s3/sla/>
  - <https://aws.amazon.com/ec2/sla/>
  - <https://aws.amazon.com/rds/sla/>
- 2.2. CanAm reserves the right to change hosting providers to an alternate service providing comparable functionality, and meeting the standards in this document.
- 2.3. All hosting services will be provisioned from data centers located within the United States.
- 2.4. In return for Annual Software as a Service Fee from Client, CanAm will provide the following services to Client:

Service	Description
Secure Hosting Site	A secure hosting facility with 24/7 security control.
Internet Service Providers	A facility with stable network connectivity across North America. Internet services will be routed through multiple independent carriers to eliminate single-carrier points of failure.
Data and Service Redundancy	Redundant storage across multiple zones providing failover in the event of a catastrophic failure at the primary hosting site.
Software	Operating System, Database and Virus Protection software as required to run the Teller environments.  CanAm will keep systems secure by keeping them up-to-date on security patches and security audits, and all Third-Party critical updates will be applied in a timely manner following Third-Party vendor notification.
Teller Software Updates	CanAm will test and install into the Teller system at the Hosting Services Site all updates to the Teller system and Teller Interfaces for Client-specific emergency bug fixes, as well as all Teller point,

	maintenance and patch Releases which are made available during the term of this Agreement.
Performance Monitoring	CanAm will monitor the performance of systems at the Hosting Services Site, to maintain system stability and performance.  CanAm will provide patch management, event log management and system tuning. CanAm will review system logs on a weekly or as-needed basis.
Data Backups	Securing Client data against loss is a key provision within the SLA. Full backups will be performed on a daily basis. All data will be stored redundantly in two databases continuously replicated across multiple availability zones.

### 3. AVAILABILITY COMMITMENT, ISSUE TRACKING, AND REMEDIES

- 3.1. While the Hosting Services Site availability will generally be expected to be 24 x 7 (except for scheduled or critical outages), the commitment of CanAm is to provide Hosting Services site availability during CanAm business hours (8:00 am – 6:00 pm Monday through Friday Mountain Time) for 99% uptime or better in a calendar month. Credits may be claimed only against loss of Hosting Services during CanAm business hours.
- 3.2. If CanAm during regular Client business hours fails to provide Hosting Services availability, as defined below, in any given calendar month, CanAm will issue a credit towards future Hosting Service Fees in accordance with the following schedule:

Hosting Services Site Availability	Credit Percentage (of monthly fee)
99.0% to 100%	0%
98.0% to 98.9%	2.5%
97.0% to 97.9%	5%
95.0% to 96.9%	7.5%
90.0% to 95.0%	25%
Below 90.0%	100%

- 3.3. CanAm will provide a monthly report identifying any downtime in the previous month. Downtime will be calculated to the minute from the time it is first detected (by our monitoring or by Client report) until service is restored, during the guaranteed availability time period defined in 3.1. Downtime percentage is calculated as:  $\text{Minutes of Downtime} / (\text{Daily Guaranteed Availability Minutes} \times \text{Number of Business Days in Month} - \text{Emergency Outage Minutes})$ . Credits will be applied to the next billing cycle.
- 3.4. The total amount credited to Client for any given month under this Hosting SLA will not exceed the total Annual Software as a Service fee paid by Client for such month for the affected service. Except in cases of gross negligence, client specifically acknowledges and confirms that under no circumstances whatsoever will CanAm be liable for any incidental, indirect, exemplary, special or consequential damages of any nature or kind, or any loss resulting from business disruption arising from any services covered under the terms of this agreement, regardless of the form of action, whether in contract, tort (including negligence), strict product liability or otherwise, even in the event that CanAm has been advised of the possibility of such damages.
- 3.5. Client will not receive any credits under this Agreement in connection with any failure or deficiency of CanAm Hosting Services caused by:

- **Scheduled Maintenance** – Time allocated for scheduled monthly maintenance or critical updates of servers and other CanAm equipment will not be considered “down time” as used in the calculation of Hosting Services availability described in Section 3.2 of this Hosting SLA. Maintenance will be scheduled for outside of Client Business hours specified in Section 3.1 of this Hosting SLA. The schedule for regular monthly maintenance windows will be provided to the Client at least 4 weeks prior. Except for emergencies, maintenance outages will be communicated via e-mail to the Client at least 2 business days in advance of any such outage.
- **Client Equipment** – Client is solely responsible for maintaining all Client equipment not at the Hosting Services Site and for ensuring that such equipment is in proper working order, has the correct software installed, and has the ability to connect to the CanAm Hosting Services for the exchange of data.
- **Client ISP Provider** – Client is solely responsible for maintaining all Client connections with local Internet Service Providers (ISPs) and for resolving any problems that might arise with local ISP connections.
- **Internet Outages** – CanAm is not responsible for Internet outages (including ISP peering) that may make CanAm Hosting Services appear inaccessible when others can still access it.
- **Client Acts or Omissions** – including acts or omissions of others engaged or authorized by Client, including, without limitation, any negligence, willful misconduct, or use of the Hosting Services in breach of the terms and conditions of this Hosting SLA.
- **Force Majeure** – Circumstances beyond CanAm’s reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, unavailability or interruption in telecommunications or Third-Party services, virus attacks or hackers, failure of Third-Party software, or inability to obtain power used in or equipment needed for provision of this Hosting SLA.