

**Software License Agreement**Effective Date: 09/30/2013

This SOFTWARE LICENSE AGREEMENT (together with all referenced attachments, the "Agreement") is entered into on the Effective Date by and between the following parties:

Software AG USA, Inc. (a Delaware corporation) 11700 Plaza America Drive, Suite 700 Reston, VA 20190 USA Referred to as "Software AG" or "Contractor"	County of San Mateo, California 455 County Center, 3 rd Floor Redwood City, CA 94063 Referred to as "County" or "Licensee"
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This Agreement is comprised of these Cover Page(s) and the following documents:

- Software License Agreement Terms and Conditions
- Exhibit A – Product Schedule

Fees. Licensee shall pay Software AG the following amounts in accordance with the payment terms set forth below, if applicable, and in the *Software License Agreement Terms and Conditions* (all amounts shown are in U.S. dollars):

License Fee	see Product Schedule (Exhibit A)
Support and Maintenance Fee	see Product Schedule (Exhibit A)

Software Support and Maintenance. Provided Licensee has paid the license fees, any service fees, and the applicable support and maintenance fee for an annual term commencing on the Effective Date or for a term otherwise set forth herein, Licensee shall receive (i) reasonable technical consultation with Software AG's technical support staff on the use of the Software, and (ii) all updates and new version releases to the Software, provided such updates and releases are generally made available to licensees of the Software. If Licensee discontinues support and maintenance, then subsequently elects to renew support and maintenance, Licensee shall pay the support and maintenance fees that would have been due for the period during which support and maintenance was not provided.

Authority. Licensee warrants that it is authorized to enter into this Agreement and that it shall be bound thereby.

Execution. To facilitate execution, this Agreement may be executed in two identical counterparts and both counterparts shall together constitute an original, binding Agreement. In no event shall Software AG be bound to perform until the Agreement is executed by a duly authorized Software AG representative. Presentation of the Agreement to Licensee for signature shall not oblige Software AG to execute the Agreement.

IN WITNESS WHEREOF, the undersigned do hereby execute this Agreement by duly authorized representatives of the Effective Date:

SOFTWARE AG USA, INC.W. Stanford Smith
By: W. Stanford Smith (Sep 30, 2013)Name: W. Stanford SmithTitle: Senior Vice PresidentDate: Sep 30, 2013**COUNTY OF SAN MATEO**

By: _____

Name: Don HorsleyTitle: President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:By: _____
Clerk of Said Board

SOFTWARE LICENSE AGREEMENT TERMS AND CONDITIONS

1. LICENSE GRANT

- 1.1. Subject to the terms and conditions set forth in this Agreement and in consideration of Licensee's strict compliance with the terms of this Agreement (including, without limitation, its payment obligations), Software AG hereby grants to Licensee a nontransferable, non-sublicensable, nonexclusive, limited, internal use license during the License Term to use the Software AG computer software product(s) identified in the Product Schedule attached hereto as Exhibit A (the "Software"), together with all Documentation delivered with the Software. For purposes of this Agreement, "Documentation" shall mean the user manuals delivered to Licensee pursuant to Section 3 of this Agreement.
- 1.2. Neither this Agreement nor the Software may be sold, leased, assigned (except as otherwise set forth in Section 11.2), sublicensed, or otherwise transferred by Licensee, in whole or in part.

2. SCOPE OF USE

- 2.1. Licensee may reproduce the number of copies of the Software specified in the Product Schedule for use at Licensee's facility identified in the Product Schedule and may reproduce the Documentation as reasonably necessary for Licensee's use of the Software. In addition, Licensee may make an archival copy of the Software. This archival copy may be used at other than the designated location (so long as the other location is in the USA and is owned or controlled by Licensee or a third party with whom Licensee has contracted to provide disaster recovery services) and may be used solely for disaster recovery testing (not to exceed one week in any three month period) and operation (for a period not to exceed thirty days) subsequent to an actual disaster during which the primary system fails to operate. At no time will Licensee permit the Software, including the archival copy, to be used in excess of the usage specified in this Agreement, including, without limitation, the quantities specified in the Product Schedule. Licensee will keep records of each copy reproduced, where located, and the identity of the authorized user of each authorized copy. Such records will be available for inspection at any reasonable time by Software AG upon ten (10) days' notice.
- 2.2. Licensee may not: (a) permit any third party, other than its Service Providers, to use the Software; (b) use the Software to process or cause or permit third parties to process the data of any other party, except for data being processed for the operation of the County's internal business purposes; or (c) operate as a service bureau, ASP, or hosting service for the Software. The foregoing does not prohibit County from using the Software in connection with County's applications that are made available to County's end-users as a hosted solution, provided that any and all access and use of the Software by County's end-users is limited to the use of County's applications. Licensee may allow third party contractors providing IT staff augmentation services to Licensee ("Services Providers") to use the Software for the benefit of Licensee provided that Licensee makes the necessary arrangements with the Service Providers to ensure that the use and disclosure of the Software conforms to the terms and conditions of this Agreement and that Licensee remains fully liable to Software AG for any breach of the terms of this Agreement by the Service Providers. However, Licensee may not outsource any of its operations utilizing any Software to any third party. "Outsource" in this context shall mean any arrangement by which a third party performs any of Licensee's internal business processes on Licensee's behalf (which includes, without limitation, the operation or maintenance of the systems on which the Software is installed).
- 2.3. Licensee may use the Software, on a physical machine(s) using virtual technology to run the Software in a virtual environment(s), provided that the virtual technology used by Licensee is capable of restricting the total number of Processor Cores assigned to the virtual operating system(s) on which the Software is installed and the total number of Processor Cores so assigned does not exceed the total number of Processor Cores licensed. Under no circumstances shall the Software be used (in a virtual environment or otherwise) in excess of the total number of Processor Cores licensed. Licensee agrees that it will provide Software AG with annual reports based on self-audits documenting the number of Processor Cores to which the Software is assigned by physical server and virtual machine.
- 2.4. Licensee has the right to independently develop interfaces to the Software strictly for its use in conjunction with its licensed use of the Software; provided, however, that Licensee shall perform all such development without misappropriating, infringing, or otherwise violating any patent, copyright, trade secret, or other United States or international intellectual property right of Software AG and without using, examining, or otherwise referencing any Software AG source code. Such Licensee-developed software interfaces shall be the property of Licensee. For the avoidance of doubt, the parties acknowledge and agree that this Section 2.4 shall in no way be construed as granting Licensee any rights in or to Software AG's source code or as otherwise expanding the specific license rights granted to Licensee in Section 1 of this Agreement.
- 2.5. With thirty days' notice and not more frequently than once per calendar year (unless deficiencies are found, in which case as frequently as is required to ensure that deficiencies are eliminated), Software AG may periodically carry out an audit of Licensee's facilities and systems to ensure Licensee's compliance with the terms of the Agreement. Licensee will reasonably cooperate with Software AG in such an exercise and provide Software AG with reasonable access to its facilities and systems to enable Software AG's audit. Software AG shall reasonably endeavour not to disrupt Licensee's normal business activities and shall perform the audit in a professional

manner. Any discrepancies shall be promptly disclosed to and remedied by Licensee. Software AG shall bear the cost of the audit except where a material discrepancy with a value of more than \$10,000 is discovered, whereupon Licensee shall bear the cost of the audit.

3. DELIVERY; INSTALLATION

Neither the Software nor any related media, label or packaging shall be subject to inspection prior to delivery of the Software. The Software and Documentation will be distributed electronically over the Internet through a password-protected web page and Software AG will deliver a software activation password key and software download instructions to Licensee via an e-mail message sent to Licensee's designated contact person. Licensee agrees that acceptance of the Software will occur upon delivery of the software activation key and download instructions, and that such acceptance shall not be revoked. If delivery is by CD, then Software AG will deliver the CD to Licensee's designated contract person F.O.B. point of shipment and acceptance of the Software will occur upon shipment of the CD, and such acceptance shall not be revoked. Licensee is solely responsible for installation of the Software on computers as permitted under this Agreement.

4. TERM

Unless expressly set forth otherwise in the Product Schedule, the licenses granted hereunder shall endure for a perpetual license term (the "License Term"), subject to Licensee's payment of the fees set forth herein and Licensee's strict compliance with the terms of this Agreement.

5. PAYMENT

- 5.1. Licensee will pay to Software AG the total fees specified on the Product Schedule not later than thirty (30) days from the date the software activation key or Software CD, as applicable, is delivered to Licensee. All other payments shall be due and payable within thirty (30) days of the date of invoice. Any payment due or portion thereof not received by Software AG within thirty (30) days after the date of invoice shall bear an additional charge of 1½ percent (1.5%) per month from the date due until actually received, less the sum, if any, in excess of applicable state law.
- 5.2. All payments under this Agreement shall be made without recoupment or set-off and are exclusive of taxes and duties, and Licensee agrees to bear and be responsible for the payment of all taxes and duties including, but not limited to, all sales, use, rental, receipt, personal property and other taxes (but excluding taxes based upon Software AG's income), which may be levied or assessed in connection with this Agreement.

6. PROPRIETARY INFORMATION

- 6.1. Licensee understands and agrees that the Software, Documentation, and all other related materials provided to Licensee, and all intellectual property rights therein, are the exclusive property of Software AG and its suppliers. Licensee further understands and agrees that the Software, Documentation, the pricing and any negotiated terms of this Agreement, and the correspondence and discussions relating thereto ("Information") are the proprietary and confidential information of Software AG and/or a third party that has granted marketing and licensing rights to Software AG (a "Tech Partner"). Licensee agrees to maintain the Information in strict confidence and, except for the right of Licensee to make copies of the Software and Documentation pursuant to Section 2.1, Licensee agrees not to disclose, duplicate, or otherwise reproduce, directly or indirectly, the Information in whole or in part. Licensee further agrees to use such Information solely for purposes of exercising its license rights under Section 1 or other rights that are expressly set forth in this Agreement.
- 6.2. Licensee acknowledges that the Software and its structure, underlying concepts, organization, architecture, and source code constitute valuable trade secrets of Software AG and its suppliers. Accordingly, Licensee agrees not to (a) disassemble, reverse engineer, or reverse compile the Software in whole or in part; (b) modify, adapt, alter, translate, or create derivative works from the Software; (c) merge the Software with other software; (d) sublicense, lease, rent, loan, or otherwise transfer (except as otherwise expressly set forth herein) the Software to any third party; or (e) otherwise use, provide access to, or copy the Software or Documentation except as expressly allowed under Section 1. Licensee agrees to take all reasonable steps to ensure that no unauthorized persons shall have access to the Information and that all authorized persons having access to the Information shall refrain from any disclosure, use, duplication or reproduction prohibited by this Section 6. Licensee agrees not to remove any copyright notice or other proprietary markings from the Information, and any copy thereof made by Licensee for backup purposes shall contain the same copyright notice and proprietary markings contained on the copy of the Information furnished by Software AG to Licensee pursuant to this Agreement.
- 6.3. Licensee acknowledges that Licensee's failure to comply with the provisions of this Section shall result in irreparable harm to Software AG and/or its Tech Partners for which a remedy at law would be inadequate, and therefore, in the event of the breach or threatened breach by Licensee of its obligations under this Section, Software AG shall be entitled to seek equitable relief in the form of specific performance and/or an injunction for any such actual or threatened breach, in addition to the exercise of any other remedies at law and in equity.

- 6.4. Licensee shall have no obligation to preserve the proprietary nature of only that portion of Software AG's information that: (i) Licensee establishes was previously known to Licensee free of any obligation to keep it confidential; (ii) is or becomes generally available to the public by other than unauthorized disclosure; (iii) is developed by or on behalf of Licensee independent of any information furnished under this Agreement; or (iv) is received from a third party lawfully in possession thereof whose disclosure does not violate any confidentiality obligation. In addition, Licensee may disclose Information only to the extent that such information is required to be disclosed by law or by any governmental agency having jurisdiction pursuant to an order to produce or in the course of a legal proceeding pursuant to a lawful request for discovery; provided, however, that if Licensee is so required to disclose the Information for such purpose, Licensee shall not disclose the applicable Information for any other purpose and Licensee shall promptly notify Software AG of the order or request in discovery and reasonably cooperate with Software AG if Software AG elects (at Software AG expense) to seek to limit or avoid such disclosure by any lawful means.
- 6.5. Licensee agrees not to challenge, directly or indirectly, the right, title, and interest of Software AG in and to the Software or Documentation. Licensee agrees not to directly or indirectly, register, apply for registration, or attempt to acquire any legal protection for any of the Software, Documentation, or any proprietary rights therein.
- 6.6. Licensee agrees to notify Software AG immediately and in writing of all circumstances surrounding the unauthorized possession or use of the Software or Documentation by any person or entity. Licensee agrees to cooperate fully with Software AG in any litigation relating to or arising from such unauthorized possession or use.
- 6.7. Software AG reserves all proprietary and commercial rights regarding the Software, Documentation, and Information owned or licensed by Software AG to the extent such rights are not expressly granted to Licensee in this Agreement.
- 6.8. Notwithstanding any other provision of this Agreement, the obligations set forth in this Section shall continue perpetually and irrevocably.

7. WARRANTIES

- 7.1. Software AG warrants that for a period of one hundred eighty (180) days from the date of delivery (the "Warranty Period"), the Software, when properly used, will operate substantially in accordance with the specifications contained in the Documentation.
- 7.2. Software AG shall, without charge, revise or replace such nonconforming Software provided that within the applicable Warranty Period, notice of the claimed defect is given to Software AG in writing by County with reasonable promptness but, in any event, not later than ten (10) days after observing the defect or failure. If requested, County shall provide Contractor with warranty claim and failure information on the nature and conditions of the failure in a format and in a level of detail recommended by Contractor and approved by County.
- 7.3. Immediately upon receipt of said written notice from County, Software AG shall provide an acknowledgement of receipt of notice to Licensee. Within five (5) business days after notification of the defect or failure, Software AG shall respond with a written plan to remedy the error specified in County's written notification. It is agreed and understood that time is of the essence with respect to all corrective work to be undertaken pursuant to the warranty herein contained, and Contractor shall promptly commence corrective work upon receipt of written notice from County. Contractor shall diligently pursue such corrective work to completion and bear all associated costs.
- 7.4. The warranty set forth in Section 7.1 above shall not apply to the degree that the reproducible error occurs because (a) the affected Software has not been used in accordance with the Documentation; (b) the affected Software has been altered, modified, merged, or converted by Licensee; (c) of the malfunctioning of Licensee's hardware or software; or (d) the affected Software, or a portion thereof, has become inoperative due to any other causes beyond the control of Software AG. The warranty set forth in Section 7.1 above shall not apply if Licensee has not timely paid amounts due and owing to Software AG under this Agreement.
- 7.5. Software AG warrants that it will use commercially reasonable efforts to ensure the Software delivered to Licensee does not contain viruses, worms, Trojan horses, or other unintended malicious or destructive code ("Malicious Code"). If Malicious Code is discovered in Software delivered to Licensee, Software AG shall provide Licensee with a clean copy that does not contain such Malicious Code following Licensee's notice to Software AG of the presence of such Malicious Code. However, Licensee is hereby notified that the Software may contain time-out devices, counter devices, and/or other devices intended to ensure the limits of a particular license will not be exceeded ("Limiting Devices"). If the Software does contain Limiting Devices, Software AG shall ensure that Licensee receives any codes or other materials necessary to use the Software to the limits of Licensee's license.
- 7.6. EXCEPT AS SET FORTH ABOVE IN THIS SECTION 7, SOFTWARE AG DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT THE SOFTWARE, DOCUMENTATION, OR OTHER MATERIALS AND SERVICES PROVIDED HEREUNDER WILL FULFILL ANY OF LICENSEE'S PARTICULAR PURPOSES OR NEEDS.
- 7.7. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, STATUTORY, AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES

OF ACCURACY, QUIET ENJOYMENT, NON-INFRINGEMENT AND MERCHANTABILITY. The remedies of County under this section 7 are not intended to be exclusive and shall not preclude the exercise of any other remedies provided for in the Agreement, or by law or otherwise.

8. SOFTWARE AG INDEMNIFICATION

- 8.1. Software AG shall indemnify, defend, and hold Licensee harmless from any action brought by a third-party against Licensee to the extent that it is proximately caused by an allegation that the Software licensed under this Agreement has infringed a United States intellectual property right or trade secret, and pay those damages or costs related to the settlement of such action or finally awarded against Licensee in such action, including but not limited to attorneys' fees, provided that Licensee (a) promptly notifies Software AG of any such action, (b) gives Software AG full authority, information, and assistance to defend such claim, and (c) gives Software AG sole control of the defense of such claim and all negotiations for the compromise or settlement of such claim.
- 8.2. Software AG shall have no liability under this Agreement with respect to any claim based upon (a) Software that has been modified by anyone other than Software AG; (b) use of other than the then-current release of the Software, if infringement could have been avoided by use of the then-current release and such current release has been made available to Licensee; (c) use of the Software in conjunction with Licensee data where use with such data gave rise to the infringement claim; (d) use of the Software with other software or hardware, where use with such other software or hardware gave rise to the infringement claim; (e) use of any Software in a manner inconsistent with its documentation, (f) open source software or technology included within the Software and/or (g) use of any Software which use breaches this Agreement.
- 8.3. If Software AG determines that the Software is or is likely to be the subject of a claim of infringement, Software AG shall have the right (a) to replace Licensee's copy of the Software with non-infringing software that has substantially equivalent functionality; (b) to modify the Software so as to cause the Software to be free of infringement; (c) to procure, at no additional cost to Licensee, the right to continue to use the Software; or (d) to terminate the license to use the Software and Documentation, and refund to Licensee the applicable license fee (depreciated on a straight-line basis over a five (5) year period for a perpetual license term or pro-rated over the applicable renewable license term).
- 8.4. THE PROVISIONS OF THIS SECTION STATE THE EXCLUSIVE LIABILITY OF SOFTWARE AG AND THE EXCLUSIVE REMEDY OF LICENSEE WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY OR TRADE SECRET MISAPPROPRIATION OR INFRINGEMENT BY THE SOFTWARE, ANY PART THEREOF, AND ANY MATERIAL OR SERVICES PROVIDED HEREUNDER, AND ARE IN LIEU OF ALL OTHER REMEDIES, LIABILITIES, AND OBLIGATIONS.

9. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER SOFTWARE AG OR COUNTY BE LIABLE TO EACH OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ANY CLAIM THAT ARISES FROM OR RELATES IN ANY WAY TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION ALLEGED, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY OF ANY KIND. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 9 ARE INDEPENDENT OF EACH EXCLUSIVE OR LIMITED REMEDY SET FORTH IN THIS AGREEMENT. EXCEPT WITH RESPECT TO THE DEFENSE OF INFRINGEMENT CLAIMS UNDER SECTION 8, IN NO EVENT SHALL LICENSEE BE ENTITLED TO ANY MONETARY DAMAGES AGAINST SOFTWARE AG, REGARDLESS OF THE FORM OF ACTION ALLEGED, IN EXCESS OF THE LICENSE FEES PAID TO SOFTWARE AG BY LICENSEE HEREUNDER FOR THE PRODUCT TO WHICH LICENSEE'S CLAIM RELATES. LICENSEE ACKNOWLEDGES THAT THE LICENSE FEES AND OTHER FEES SET FORTH HEREIN REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SOFTWARE AG WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.

10. TERMINATION

- 10.1. Termination for Convenience. The County may, at any time from execution of Agreement, terminate this Agreement, or a portion of the support and maintenance to be provided hereunder, for the convenience of the County, by giving written notice specifying the effective date and scope of such termination. Termination shall be effective on a date not less than thirty (30) days from notice.
- 10.2. Termination for Breach. If either party (a) fails to comply in material respects with any or all covenants, agreements, or conditions herein and such failure continues for thirty (30) days after written notification from the other party or (b) files a petition in bankruptcy, or has a petition in bankruptcy filed against it if not dismissed within sixty (60) days, the non-breaching party may then, at its sole discretion, and regardless of

any cure, notice of intent to cure, or attempted cure beyond the time limits set forth in this Section 10.2; upon twenty-four (24) hours' notice to the breaching party, terminate this Agreement.

- 10.3. Effect of Termination. In the event of any termination under this Agreement, any amounts owed to Software AG under this Agreement before such termination will be immediately due and payable, all license rights granted in this Agreement shall immediately cease to exist, and Licensee shall discontinue all use of the Software and Documentation and shall, within ten (10) days after the effective date of any such termination, certify in writing to Software AG that such Software, Documentation, and all copies and materials relating thereto in the possession of Licensee have been removed from its system and destroyed. At the time of termination, Software AG agrees to refund any pre-paid support and maintenance fees representing periods after such termination.

11. GENERAL

- 11.1. No Waiver. No waiver or retraction of a waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the party against whom such waiver is sought. The failure of either party to exercise any right granted herein, or to require the performance by the other party hereto of any provision of this Agreement, or the waiver by either party of any breach of this Agreement, will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of the same or any other provision of this Agreement.
- 11.2. Assignment. Unless Software AG provides its prior written consent, which Software AG may withhold in its sole discretion, Licensee shall not assign or otherwise transfer this Agreement to any third party (including, without limitation, any parent, subsidiary or affiliated entity) whether as part of the sale of all or any portion of its business, or pursuant to any merger, consolidation or reorganization or otherwise. Any assignment or attempted assignment in violation of this Section shall be null and void.
- 11.3. Benefit. Subject to provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
- 11.4. Force Majeure. If the performance of this Agreement or any obligation under this Agreement, except for the making of payments, is prevented, restricted or interfered with by reason of fire, flood, earthquake, explosion or other Act of God or casualty or accident, or strikes or labor disputes affecting third-party vendors, inability to procure or obtain delivery of parts, supplies or power, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirements of any governmental agency, or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected will take all reasonable steps to avoid or remove such cause of nonperformance and will resume performance hereunder with dispatch whenever such causes are removed.
- 11.5. Export. Licensee shall not export, re-export or transfer, whether directly or indirectly, the Software and material delivered pursuant to this Agreement, or any system containing the Software outside the United States of America without first complying with the applicable export laws of the United States of America and the import laws of the country in which the Software is to be used.
- 11.6. Priority. In the event of any conflict or inconsistency in the definition or interpretation of any term or provision set forth in the body of this Agreement and Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Agreement, and then to the Exhibits, with the Product Schedule in Exhibit A having the highest priority among the Exhibits. Any contrary or additional terms and conditions attached to or part of any purchase order or similar document related to this Agreement shall be invalid and non-binding on the parties.
- 11.7. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be or becomes unenforceable or illegal, such provision shall be adjusted to the minimum extent necessary to cure such unenforceability or illegality and the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such adjustment.
- 11.8. Modifications In Writing. Any modification or amendment of any provision of this Agreement must be in writing and bear the signature of the duly authorized representative of each party.
- 11.9. Jurisdiction. This Agreement is made and will be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts-of-laws provisions, and in the event of a lawsuit concerning this Agreement shall be venued in either the County of San Mateo or in the United States District Court for the Northern District of California.
- 11.10. Integration. This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior and all contemporaneous agreements, understandings, marketing materials, and communications, whether written or oral.
- 11.11. Notice. All notices or demands required or permitted to be given or made hereunder by a party shall be in writing and, except as otherwise expressly provided herein, shall be deemed to have been given if made by hand delivery with signed receipt, or three (3) days after mailing by first class mail, postage prepaid, receipt requested, addressed to the other party at its address designated on the cover page of this Agreement, or at such other address as such other party shall have furnished in writing to the notifying party in accordance with this Section.

12. OTHER

- 12.1. **Availability of Funds.** County may terminate this Agreement, or a portion of the support and maintenance to be provided hereunder, based upon unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

12.2. **Non-Discrimination.**

No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and subcontractors under this Agreement. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Agreement or any other contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

Section 504 applies only to contractors who are providing services to member of the public. Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

- 12.3. **Equal Benefits.** With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- 12.4. **Compliance with Contractor Employee Jury Service Ordinance.** Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees' deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees regular pay the fees received for jury service.
- 12.5. **Retention of Records.** Contractor shall maintain all records related to this Agreement for no less than three years after the County makes final payment for the Software or support and maintenance services for which the payment relates. All records shall be subject to the examination and/or audit by agents of the County, the State of California and/or Federal grantor agencies.
- 12.6. **Compliance with State, Federal, and Local Laws, Regulations, and Ordinances.** Contractor and all subcontractors shall ensure compliance with all state, federal and local laws or rules applicable to performance of the work required under this Agreement, and shall execute all necessary certifications of compliance therewith. Contractor certifies that the Contractor and all of its subcontractors will adhere to and certify compliance with all applicable provisions of San Mateo County Ordinance Code, including without limitation, Chapter 4.106, which regulates the use of disposable food service ware, and Chapter 2.84, which addresses equal benefits.
- 12.7. **Workers' Compensation Insurance.** The Contractor shall have in effect, during the entire life of this Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor certifies awareness of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and certifies compliance with such provisions

before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.

- 12.8. **Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect Contractor while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by Contractor or by any of its subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate.



EXHIBIT A
PRODUCT SCHEDULE

License Term: Perpetual

Software:

Product	Code	Usage	Operating System	License Metric	Quantity
ApplinX SOA Edition	APXSO	Production	Windows Server	Connection	100
ApplinX SOA Edition	APXSO	Development	Windows Server	Connection	10
ApplinX SOA Edition	APXSO	Test	Windows Server	Connection	50
webMethods BPMS Bundle Includes:	WMPRC	Production			
Fair Isaac Blaze Advisor	BZA		Windows Server	Processor Core Class B	7
CentraSite Community Edition	INN		Windows Server	Processor Core Class B	7
webMethods Optimize KPI Instance	KPI		Diverse	KPI	2000
My webMethods Server	MWS		Windows Server	Processor Core Class B	7
webMethods Optimize Base Engine	OBE		Windows Server	Each (unlimited use)	1
webMethods Integration Server	PIE		Windows Server	Processor Core Class B	7
webMethods Broker	PIF		Windows Server	Processor Core Class B	7
Software AG Designer	SDF		Windows Server	Processor Core Class B	7
webMethods CAF UI Development	WMC		Windows Server	Processor Core Class B	7
webMethods Optimize for Process	WMO		Windows Server	Each (unlimited use)	1
webMethods BPMS User	WMPNU		Windows Server	Named User	175
webMethods Business Rules	WOK		Windows Server	Processor Core Class B	7
webMethods Process Engine	WPE		Windows Server	Processor Core Class B	7
webMethods Task Engine	WTN		Windows Server	Processor Core Class B	7
webMethods BPMS Bundle Includes:	WMPRC	Development			
Fair Isaac Blaze Advisor	BZA		Windows Server	Processor Core Class B	2
CentraSite Community Edition	INN		Windows Server	Processor Core Class B	2
webMethods Optimize KPI Instance	KPI		Diverse	KPI	2000
My webMethods Server	MWS		Windows Server	Processor Core Class B	2
webMethods Optimize Base Engine	OBE		Windows Server	Each (unlimited use)	1
webMethods Integration Server	PIE		Windows Server	Processor Core Class B	2
webMethods Broker	PIF		Windows Server	Processor Core Class B	2
Software AG Designer	SDF		Windows Server	Processor Core Class B	2
webMethods CAF UI Development	WMC		Windows Server	Processor Core Class B	2
webMethods Optimize for Process	WMO		Windows Server	Each (unlimited use)	1
webMethods BPMS User	WMPNU		Windows Server	Named User	50
webMethods Business Rules	WOK		Windows Server	Processor Core Class B	2
webMethods Process Engine	WPE		Windows Server	Processor Core Class B	2
webMethods Task Engine	WTN		Windows Server	Processor Core Class B	2

webMethods BPMS Bundle Includes:	WMPRC	Test			
Fair Isaac Blaze Advisor	BZA		Windows Server	Processor Core Class B	5
CentraSite Community Edition	INN		Windows Server	Processor Core Class B	5
webMethods Optimize KPI Instance	KPI		Diverse	KPI	2000
My webMethods Server	MWS		Windows Server	Processor Core Class B	5
webMethods Optimize Base Engine	OBE		Windows Server	Each (unlimited use)	1
webMethods Integration Server	PIE		Windows Server	Processor Core Class B	5
webMethods Broker	PIF		Windows Server	Processor Core Class B	5
Software AG Designer	SDF		Windows Server	Processor Core Class B	5
webMethods CAF UI Development	WMC		Windows Server	Processor Core Class B	5
webMethods Optimize for Process	WMO		Windows Server	Each (unlimited use)	1
webMethods BPMS User	WMPNU		Windows Server	Named User	125
webMethods Business Rules	WOK		Windows Server	Processor Core Class B	5
webMethods Process Engine	WPE		Windows Server	Processor Core Class B	5
webMethods Task Engine	WTN		Windows Server	Processor Core Class B	5
webMethods JDBC Adapter	JDB	Production	Windows Server	Processor Core Class B	4
webMethods JDBC Adapter	JDB	Development	Windows Server	Processor Core Class B	2
webMethods JDBC Adapter	JDB	Test	Windows Server	Processor Core Class B	2

Installation Site:

County of San Mateo, California
455 County Center, 3rd Floor
Redwood City, CA 94063

Support and Maintenance:

Product

Extended (24x7) Support

Includes:

- * Telephone, email, and web-based support on all issues during business hours (8 am – 5 pm MT), excluding weekends and holidays
- * 24x7 telephone support for Crisis production-down, mission-critical issues
- * 24 hour access to Software AG's Empower support website
- * Seven (7) Authorized Technical Contacts (ATCs)
- * Software maintenance and new version updates

Quantity

12 Months from Effective Date

Fees:

TOTAL FEES (USD): \$900,000 (if Licensee executes and returns this Agreement to Software AG by **November 15, 2013** (along with a purchase order or letter of encumbrance))

The annual fee to renew Extended Support for the Software licensed herein for the twelve month term commencing one year after the Effective Date is **\$150,000** (if the Agreement is signed and returned to Software AG by November 15th). Thereafter, the annual fees to renew Extended Support for the next four (4) annual terms shall not increase over the previous year's fee by more than the increase in the U.S. CPI over the previous twelve month period.

Education Services:

Contractor is providing Licensee with a Training Credit allowance of 15.625 Learning Credits (each Learning Credit is valued at \$640 for a total value of US\$10,000). These Learning Credits may be used for any Software AG Education Services offering in the United States. All education services will be scheduled based on Licensee's request as well as course/instructor availability. All Learning Credits are valid for the first twelve (12) months after the Effective Date and any Learning Credits not utilized by the end of this period shall expire (with no refund or exchange). All education services shall be provided subject to the Software AG USA, Inc. Training Terms and Conditions, which can be downloaded from <http://www.softwareag.com/Corporate/tc/training/default.asp> or can be sent to Licensee upon request.

Education Services Offering		Learning Credits
ETS / ARIS	Public Course	1.0 per student per day
	Onsite Course	5.0 per day plus 0.5 per student per day for each student over 5 students*
	eLearning Course	based on number of students and duration
webMethods	Public Course	1.25 per student per day
	Onsite Course	6.25 per day plus 0.625 per student per day for each student over 5 students*
	eLearning Course	based on number of students and duration
other offerings (e.g., education mentoring, customized training, certifications, software environment fee (for onsite training), and instructor travel & expenses (for onsite training))		based on offering

* Exclusive of the software environment fee and the instructor travel & expenses (see "other offerings" above).

Expiration:

The pricing and other terms offered herein by Software AG are valid through **November 15, 2013** and if Licensee does not execute and return this Agreement to Software AG by such date (along with a purchase order or letter of encumbrance), the offer contained herein expires.

Additional Terms:

Connection. A connection is any human or non-human operated device that simultaneously accesses the Software at any given time.

Operating System. The products identified above are restricted to use on the designated operating system(s) specified above. Provided Licensee is current on support and maintenance and is not in default under the Agreement, Licensee may change the designated operating system(s) for such products to any other supported non-mainframe operating system(s), at no additional charge, upon request to Software AG.

Processor Core. A core is a collection of one or more processor threads and a set of shared execution resources that is housed on a processor.

Processor Core Class. Processor Core Classes are used to differentiate processor technologies with regard to their performance. With regard to the Software licensed per Processor Core, the Software may be used only on licensed Processors Cores in the designated Processor Core Class (or a lesser Processor Core Class). The Processor Core Class tables are posted on Empower, Software AG's customer extranet, at <https://empower.softwareag.com/sl24sec/SecuredServices/Announcement/Processor/table.htm> and are subject to change at Software AG's sole discretion; provided, however, that no change that reclassifies a processor that was included in the licensed Processor Core Class (or a lesser Processor Core Class) to a higher Processor Core Class than that licensed will impact Licensee and Licensee shall continue to be deemed properly licensed with respect to such processor notwithstanding such reclassification. For convenience's sake, the current Processor Core Class table is set forth below.

Processor Core Class	Vendor	Processor
A (minimum of 2 cores)	IBM	PowerPC 970
	IBM	PowerXCell, Cell/B.E.Bi
	Sun / Fujitsu	UltraSparc T1, T2
	Intel	Xeon (Pre-Nehalem)
	AMD	Athlon, Opteron, Sempron
B	IBM	System z9, z990 & earlier; Power 5
	HP / Intel	Itanium (1) Series 93xx or earlier; Itanium (2) Series 95xx; HP PA-RISC
	Intel	Xeon (Nehalem EX & Nehalem EP), Xeon (Sandy Bridge EP / Ivy Bridge)
	Sun / Fujitsu	Sparc 64 VI, VII+, X; UltraSparc IV; Sparc 65 V; Sparc T3
	Any	any other single or multi core generally available on or before 01-Aug-13
C	IBM	Power 6
	IBM	System z10, z114
	Sun	Sparc T4, Spark T5, Spark M5
D	IBM	Power 7, Power P7+
	IBM	System z196
E	IBM	EC12, BC12

Fair Isaac Blaze Advisor (BZA). Use of Fair Isaac Blaze Advisor is strictly limited as follows: each step of a business process may invoke only a single rule service; a rule service may be comprised of no more than two hundred fifty (250) rules; and a rule services may not invoke another rule service.

webMethods BPMS User (WMPNU). A webMethods BPMS Named User is a unique login ID and password in My webMethods Server for a specific individual using webMethods BPMS, regardless of whether the individual is actively using webMethods BPMS at any given time. This definition specifically excludes administrative users. Administrative users are users whose primary job responsibility is deployment, maintenance, and configuration of the servers, processes, services and process participants. Their responsibilities include server control, user management, process deployment, and configuration.

webMethods Optimize KPI Instance (KPI). "KPI" stands for Key Performance Indicator. A KPI instance is a measurement of one slice of business or system data. (As an example: (i) Total Order Revenue KPI, which is not sliced by dimensions, has one KPI instance. (ii) Revenue by Customer KPI, which slices revenue by the customer dimension, has multiple KPI instances with each KPI instance measuring revenue for an individual customer. (iii) Revenue by Region and Sales Person KPI, which slices revenue by a sales hierarchy with two dimensions (region and sales person), has multiple KPI instances with each KPI instance measuring revenue for an individual sales person within a specified region.) From an infrastructure or system perspective, the KPI would be memory used and the dimension would be the host/port.

webMethods Integration Server (PIE) & webMethods Broker (PIF). webMethods Integration Server and webMethods Broker are not restricted to webMethods BPMS uses only.

Contact Information:

Licensee Shipping Address

Company: County of San Mateo
Name: Gloria Kanu
Title:
Address: 455 County Center, 3rd Floor
Redwood City, CA 94063
Email: GKanu@smcgov.org
Phone:

Licensee Billing Address

Company: County of San Mateo
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Patricia Gonzales
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Redwood City, CA 94063
Email:
Phone:

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