



**ORANGE COUNTY**  
**AUDITOR-CONTROLLER**  
**CONTRACT WITH**  
**CGI TECHNOLOGIES AND SOLUTIONS INC.**  
**FOR**  
**CAPS+ FS, HR, & BRASS/PERFORMANCE BUDGETING (PB)**  
**TEN YEAR**  
**MAINTENANCE AND SUPPORT SERVICES**

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**CONTRACT #**  
**MA-003-11012413**  
**AMENDMENT THREE**

**AMENDMENT No. 3**  
**To**  
**CONTRACT NO. MA-003-11012413**  
**FOR CAPS+FS, HR, & BRASS/PERFORMANCE BUDGETING (PB)**  
**ANNUAL MAINTENANCE AND SUPPORT**  
**between**  
**Orange County Auditor-Controller**  
**and**  
**CGI Technologies and Solutions Inc.**

This Amendment (“Amendment”) to Contract MA-003-11012413 for CAPS+ FS, CAPS+ HR and BRASS/PERFORMANCE BUDGETING (PB) Maintenance and Support Services (hereinafter referred to as “Contract”) is made and entered into upon execution of all necessary signatures by and between Orange County Auditor-Controller, a political subdivision of the State of California (“County”) and CGI Technologies and Solutions Inc. (“Contractor”).

WHEREAS, County and Contractor executed the Contract, which is effective July 1, 2011 through June 30, 2021; and

WHEREAS, County and Contractor executed Contract number MA-003-13012150 for Professional services, Brass to Performance Budgeting Upgrade, effective June 25, 2013, to add additional Software, add additional Bundled Software Product and upgrade certain Bundled Software Product; and

WHEREAS, County and Contractor executed Amendment No. 1 to the Contract, effective June 4, 2014, to amend the services provided thereunder in light of upgrades to the software provided by the Contractor; and

WHEREAS, on October 6, 2015, through contract number MA-003-16010046, the parties amended and restated the County’s perpetual, non-exclusive license, which was included as Attachment D (the “Proprietary Software License Agreement”) to MA-003-16010046, to use the software (the “Software”) that was the subject of the prior agreements between the County and the Contractor and amendments thereto, including contract number N1000009062, contract number N1000010903, contract number MA-003-13012150, and Proprietary License Agreement, dated June 25, 2013; and

WHEREAS, on October 6, 2015, the County and Contractor entered into Amendment No. 2 to purchase additional maintenance and support services for new and upgraded Software that the County had acquired from the Contractor pursuant to contract number MA-003-16010046; and

WHEREAS, the Parties desire to amend the Contract through this Amendment No. 3 to amend and restate the Proprietary Software License Agreement for the purpose of exchanging licensing Convey 1099 Bundled Software Product for CGI Advantage 1099 software at no additional cost to County; and

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, receipt of which is hereby acknowledged, and the parties hereto agree as follows:

1. License:
  - a. The Proprietary Software License Agreement set forth in Attachment E shall amend and restate the County’s perpetual, non-exclusive license to use the Software that is the

subject of prior agreements between the County and Contractor and amendments thereto, including Attachment D to Contract No. MA-003-16010046, entered into on October 6, 2015. Attachment E shall not be construed to limit the scope of or reduce the County's license to use the Software that is the subject of the prior agreements. Notwithstanding anything to the contrary in this Contract, the County's right to access and use the Software and Documentation are governed by the terms and conditions of the Proprietary Software License Agreement set forth in Attachment E, which shall be considered and interpreted independently from terms of this Contract, and notwithstanding the termination or expiration of this Contract, since the license granted in Attachment E is perpetual, Attachment E will continue in full force and effect.

2. Attachment A, Scope of Work, to Amendment No. 2 of the Contract shall be replaced in its entirety with Attachment A to this Amendment.
3. Except as amended here, all other terms and conditions of the Contract shall remain unchanged, in full force and effect.

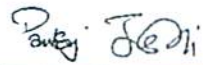
[signature page follows]

**SIGNATURES**

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

**Contractor\*: CGI TECHNOLOGIES AND SOLUTIONS INC.**

Pankaj Joshi  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Signature

VP, Consulting Services  
\_\_\_\_\_  
Title

9/25/2018  
\_\_\_\_\_  
Date

Dominic Boucher  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Signature

VP, Controller, United States Commercial and State Government  
\_\_\_\_\_  
Title

September 26, 2018  
\_\_\_\_\_  
Date

\* Unless otherwise demonstrated that the person(s) executing this Contract on behalf of Contractor has the requisite authority to legally obligate and bind Contractor, if the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President. The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.

\*\*\*\*\*

**COUNTY OF ORANGE, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA:**

Maribel Garcia  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Signature

Purchasing Manager  
\_\_\_\_\_  
Title


9-26-18  
\_\_\_\_\_  
Date

Approved by Board of Supervisors on:

Date \_\_\_\_\_

County of Orange, Office of the County Counsel

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy County Counsel

Date Oct. 2, 2018

## Attachment A

### Scope of Work

#### **Background History of Services:**

Maintenance is performed to support the software licensed to the County for CAPS. CAPS is used to support the County's Financial Purchasing, and Human Resources Information Systems. With this Maintenance Services Contract, Contractor will assist County in the use of the Software described in Section 4 below, and provide County with all Enhancements to the Advantage Software. This Contract is limited to the Software listed below for the period specified in Section 1, Maintenance Period.

1. **Maintenance Period.** The Maintenance period is the period beginning July 1, 2011 and ending on June 30, 2021.
2. **Maintenance Fee.** The total maintenance fee shall be **\$11,659,827.83** plus tax for the Advantage 3 Software for the period of July 1, 2011– June 30, 2021. The maintenance fee is payable annually as stated in Section 24, Payment – Invoicing instructions of the Contract as amended. This cost may be adjusted if software is added or deleted during the term through the amendment process.

County may purchase maintenance services for the Software for subsequent Maintenance periods in which CGI is offering maintenance services at Contractor's then current rates.

#### 3. **Maintenance**

- A. Contractor's Standard Support and Maintenance Services provide the County with the required ongoing enhancements to the Software to address functional and technical changes. Specifically, the Standard Support and Maintenance Services provide these major components:
  1. Internet access through our secure web site, **CGI Solutions Support Center** (**https://sc.cgi.com/solutionssupport/**), to a variety of 24x7 support materials.
  2. Help Desk Support with direct phone, email, and web support on the baseline products through the CGI County Support Center. Standard hours of operation are 8 am EST to 9 pm EST Monday-Friday. CGI can be reached at 800-321-0267 via phone and **https://sc.cgi.com/solutionssupport/**, via our online support website.
  3. Software incident corrections to the Software.
  4. Software releases are provided periodically to address technical and functional compatibility with system software and ongoing regulatory changes and changes to business practices. Documentation updates are provided as part of each release. Additional Software incident corrections will be included in releases, as dictated by testing requirements and the magnitude of the required change.
  5. Enhancements to the Software are provided in new releases of the CGI Advantage solution.
  6. Membership to the CGI Advantage User Group. Membership provides the option to participate in various user group activities such as the annual CGI Forum, regional

User Group meetings and voting for the User Group Steering Committee that works closely with CGI on a variety of County issues and concerns. Membership also provides each site the option of proposing a candidate for election to the User Group Steering Committee.

Contractor will support the following features of the CGI Advantage solution:

1. The system components that the County is currently contracted for and is paying maintenance on;
2. The third-party software component releases that are compatible with the currently supported version of the CGI Advantage solution;
3. The documented features of the CGI Advantage Software, as listed on the delivered on-line documentation and help files;
4. All standard baseline features of the system, including configuration tables (e.g. Required Elements) of the CGI Advantage Software, that DO NOT include infrastructure or other programming code changes. Any County-specific configuration tables will not be supported.
5. Prioritizations of all issues and software incidents according to the following schedule:

<b>Severity</b>	<b>Definition</b>
1 - Critical	A problem with CGI supported Software causing critical impact to the County's business operation. No workaround is immediately available and work using the Software can not continue.
2 - Serious	A problem with CGI supported Software causing significant impact to the County's business operation. A workaround is available but is unacceptable on a long term basis.
3 - Moderate	A problem with CGI supported Software that impairs some functionality, but a practical workaround exists.
4 - Minor	A problem that does not affect any functionality of the Software.

- B. At the expiration of the initial Maintenance Period stated in this Agreement, County may buy maintenance services for the Software for subsequent Maintenance Periods in which Contractor is offering maintenance services, at Contractor's then current prices. County may obtain such maintenance services only if (i) County has paid the maintenance fee for all prior Maintenance Periods; and (ii) County incorporates into the Software all releases, corrections, and Enhancements to the Software that Contractor has made available to County, no less than two minor software releases prior to current release.
- C. All Enhancements and corrections to the Software and Documentation provided by Contractor pursuant to this Contract will become a part of the Software and Documentation for the purposes of the License Agreement at the time they are provided to County and are hereby licensed to County as part of the Software and Documentation pursuant to all of the terms and conditions of the License Agreement.

4. **Software.** The maintenance services under this Contract are provided with respect to the software licensed pursuant to the Proprietary Software License Agreement attached as Attachment E. Maintenance services under this Contract will not be provided as of the effective date of Amendment No. 3 for the following software (“Excluded Software”):

- a. Adobe Central Pro – CPU & 10 Print locations – 2 - *Maintenance services cancelled as of July 1, 2016*
- b. Adobe Output Designer - 4 Named Users - *Maintenance services cancelled as of July 1, 2016*
- c. SAP Crystal Reports 2008 SP3 - 2 Licenses – *Maintenance cancelled June 2014*
- d. Convey 1099 - 5 Users, 20,000 Transactions – *Maintenance cancelled with this Amendment No. 3*

Therefore, the Excluded Software will not be eligible for standard maintenance, patches or upgrades.

5. **Proprietary Software License Agreement.** All updates, upgrades or enhancements provided to the Software that have been provided under this Contract shall be subject to the perpetual, non-exclusive license agreements related to the Software, including but not limited to the Proprietary Software License attached as Attachment E to this Contract.

## **Attachment E**

### **CGI Technologies and Solutions Inc. Proprietary Software License Agreement**

This is a Proprietary Software License Agreement (“Agreement”) amended and restated as of August \_\_, 2018 (the “Effective Date”) by and between the County of Orange, a political subdivision of the State of California by and through its County Executive Office/ Information Technology Department (“County”), and CGI Technologies and Solutions Inc. (“CGI”), a Delaware corporation having its principal place of business at 11325 Random Hills Road, Fairfax, Virginia 2203.

#### **1. LICENSE**

- A. CGI hereby grants to County a perpetual, nonexclusive, nontransferable license to use the computer software components (the “Software”) and documentation (the “Documentation”) listed in *Exhibit A of this Attachment* on the terms and conditions of this Agreement. The term “Software” as used in this Agreement includes any maintenance releases to the Software that may be provided to County from time to time under a separate maintenance agreement executed by the parties, if any, but specifically excludes any other modifications or customizations to the Software.
- B. County may use the Software only to process the work of the parties set forth in *Exhibit A of this Attachment* and only on the terms and conditions of this Agreement. County may not use the Software as part of a commercial time-sharing or service bureau operation or in any other resale capacity. County may use the Documentation solely in support of the Software.
- C. This Agreement does not convey to County title or ownership of the Software and documentation, but only a right of limited use in accordance with this Agreement. All terms and conditions of this Agreement are material terms of the license granted by this Agreement.
- D. The source code version of the CGI Software is installed during implementation; however, the County’s right to access and use such source code shall be pursuant to a source code license arrangement made available to the County as a maintenance customer under the separate maintenance agreement executed between CGI and County. County is otherwise prohibited from using the source code under this Agreement.

#### **2. LICENSE FEE**

As compensation for the license provided under this Agreement, the Parties agree the County has previously purchased a perpetual, nonexclusive nontransferable enterprise license to use the Software set forth in Exhibit A of this Attachment.

#### **3. NONDISCLOSURE**

- A. “Confidential Information” means any and all information which is identified as confidential or a trade secret and is furnished or disclosed to County under this Agreement. The Software and Documentation are Confidential Information of CGI. Confidential Information includes



any only information that is marked as “proprietary,” “confidential” or “trade secret”, or in some other manner to indicate it is confidential or a trade secret.

- B. Confidential Information will remain the property of CGI, and County will not be deemed by virtue of this Agreement or any access to CGI’s Confidential Information to have acquired any right, title or interest in or to the Confidential Information. County agrees: (i) to hold the Confidential Information in strict confidence; (ii) to limit disclosure of the Confidential Information to County’s own employees having a need to know the Confidential Information for the purposes of this Agreement; (iii) not to disclose any Confidential Information to any third party; (iv) to use the Confidential Information solely and exclusively in accordance with the terms of this Agreement in order to carry out its obligations and exercise its rights under this Agreement; and (v) to notify CGI promptly of any unauthorized use or disclosure of the Confidential Information and to cooperate with and assist CGI in every reasonable way to stop or minimize such unauthorized use or disclosure. CGI understands and agrees that the County is subject to the California Public Records Act. If a request for public records of CGI in the possession of the County and identified to the County as proprietary, confidential or trade secret, the County will notify both CGI and the requestor of the records that the County will provide CGI with 15 days upon which to obtain a court order restricting the disclosure of the records under the Public Records Act. The County is not able to claim that Confidential Information of CGI is exempt from disclosure under the Public Records Act.
- C. County agrees that if a court of competent jurisdiction determines that County has breached, or attempted or threatened to breach, its confidentiality obligations to CGI or CGI’s proprietary rights, money damages will not provide an adequate remedy. Accordingly, CGI will be entitled to seek appropriate injunctive relief and other measures restraining further attempted or threatened breaches of such obligations. Such relief or measures will be in addition to, and not in lieu of, any other rights and remedies available to CGI.

#### **4. PERMISSION TO COPY THE SOFTWARE**

- A. County may copy the Software for back-up and archival purposes. County may copy the Documentation to support County’s licensed use of the Software in accordance with this Agreement, subject to any restrictions specified in *Exhibit A of Attachment E*. Any copies County makes of the Software or Documentation, in whole or in part, are CGI’s property.
- B. County agrees not to reverse engineer, decompile, disassemble or extract, as applicable, any ideas, algorithms or procedures from the Software or Documentation for any reason.
- C. County agrees to reproduce and include CGI’s copyright, trademark, and other proprietary rights notices on any copies of the Software and Documentation, including partial copies and copied materials in derivative works.

#### **5. LIMITED WARRANTIES AND REMEDIES FOR BREACH OF WARRANTY**

- A. CGI warrants that, during the Warranty Period specified in *Exhibit A of this Attachment*, performance of the Software will not deviate materially from its specifications as identified in

*Exhibit A of this Attachment* (the “Specifications”). A material deviation of the Software from its Specifications is referred to in this Agreement as an “Error.” If County believes there has been a breach of this warranty it must notify CGI in writing within the Warranty Period describing the Error in sufficient detail to enable CGI to recreate it. If there has been a breach of this warranty, then CGI’s sole obligation, and County’s exclusive remedy, will be for CGI to correct or modify the Error at no charge. CGI may investigate and correct breaches of warranty at CGI’s offices to the extent possible. If a reported breach of warranty is attributable to a cause other than a breach of this warranty, then CGI will be entitled to payment for its investigation and correction efforts on a time and materials basis at CGI’s then-current rates.

- B. CGI warrants that the Software and Documentation do not infringe any third party copyrights, patents or trade secrets that exist on the Effective Date and that arise or are enforceable under the laws of the United States of America.
- (1) If a third party brings an action against County making allegations that, if true, would constitute a breach of this warranty, then CGI will, at its own expense and subject to the provisions of Section 7.B, defend, indemnify and hold County harmless in such proceeding, and CGI will pay all settlements, costs, damages and legal fees finally awarded.
  - (2) If such a proceeding is brought or appears to CGI to be likely to be brought, CGI may, at its sole option and expense, either obtain the right for County to continue using the allegedly infringing item(s) or replace or modify the item(s) to resolve such proceeding. If CGI finds that neither of these alternatives is available to it on commercially reasonable terms, CGI may require County to return the allegedly infringing item(s), in which case County will receive a refund of the amounts paid by it for the returned item(s), less a reasonable adjustment for depreciation of the returned item(s).

This Section 5.B states CGI’s entire obligation to County and County’s exclusive remedy with respect to any claim of infringement and is in lieu of any implied warranties of non-infringement or non-interference with use and enjoyment of information.

- C. CGI is not responsible for any claimed breaches of the foregoing warranties caused by: (i) modifications made to the Software or Documentation by anyone other than CGI and its subcontractors working at CGI’s direction; (ii) the combination, operation or use of the Software or Documentation with any items that CGI did not supply; (iii) County’s failure to use any new or corrected versions of the Software or Documentation made available by CGI; or (iv) CGI’s adherence to County’s specifications or instructions.
- D. CGI does not warrant that the Software will be error-free or that its operation will be uninterrupted. County acknowledges that it is responsible for the results obtained from use of the Software, including without limitation the completeness, accuracy and content of such results.

- E. The Warranty Period for the Software referred in this Agreement is a period of 3 months beginning on the date CGI has successfully completed CGI's standard installation test following delivery of the Software to the County.
- F. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, PERFORMANCE AND ACCURACY AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

## **6. LIMITATION OF LIABILITY**

- A. If County should become entitled to claim damages from CGI (including without limitation, for breach of contract, breach of warranty, negligence or other tort claim), CGI will be liable only for the amount of County's actual direct damages, not to exceed (in the aggregate for all claims) the amount of the license fees paid by County to CGI for the applicable Software and Documentation. This limit also applies to CGI's licensors. It is the maximum liability for which CGI and its licensors are collectively responsible to pay as damages to the County.
- B. In no event will CGI or any person or entity involved in the creation, manufacture or distribution of any software, services or other materials provided by CGI under this Agreement be liable for: (i) any damages arising out of or related to the failure of County or its affiliates or suppliers to perform their responsibilities; or (ii) any lost profits, loss of business, loss of data, loss of use, lost savings or other consequential, special, incidental, indirect, exemplary or punitive damages, even if CGI has been advised of the possibility of such damages.
- C. The foregoing limitations do not apply to the payment of settlements, costs, damages and legal fees referred to in Sections 5.B(1) or 7.A. The limitations of liability set forth in this Section 6 will survive and apply notwithstanding the failure of any limited or exclusive remedy for breach of warranty set forth in this Agreement.

## **7. INDEMNIFICATION**

- A. CGI will, at its own expense and subject to the provisions of Section 7.B, defend, indemnify and hold County harmless from and against all liabilities, claims, losses, damages, costs and expenses (including reasonable attorneys' fees) for personal injury and damage to tangible property to the extent arising out of CGI's negligence or intentional tortious conduct.
- B. CGI's indemnification obligations specified in this Agreement are conditioned upon the County promptly notifying CGI in writing of the proceeding, providing CGI a copy of all notices received by County with respect to the proceeding, cooperating with the CGI in defending or settling the proceeding, and allowing CGI to control the defense and settlement (subject to the County's right to consent to any settlement where the County has any financial obligation) of the proceeding, including the selection of attorneys. The County may observe the proceeding and confer with CGI at its own expense.

## **8. TERMINATION**

- A. If a party believes that the other party has materially failed to perform a fundamental obligation under this Agreement (a "Breach"), then that party may provide written notice directed to the breaching party describing the alleged Breach in reasonable detail and containing a reference to this Section 8.A. If the breaching party does not, within thirty (30) calendar days after receiving such written notice, either (i) cure the Breach or (ii) if the Breach is not one that can reasonably be cured within thirty (30) calendar days, develop a plan to cure the Breach and diligently proceed according to the plan until the Breach has been cured, then the non-breaching party may terminate this Agreement for cause by written notice to the breaching party.
- B. If County breaches the restrictions imposed under Section 1 or its nondisclosure obligations under Section 3 of this Agreement, CGI will have the right, without affecting any other rights and remedies CGI may have, to terminate this Agreement immediately upon written notice to County. Termination of this Agreement will be in addition to, and not in lieu of, other remedies available to the terminating party under this Agreement.
- C. Within thirty (30) calendar days after the termination of this Agreement pursuant to this Section 8.A, County must, at CGI's option, either deliver to CGI or destroy the original and all copies (including partial copies) of the Software, the Documentation, all CGI Confidential Information, and any other materials provided by CGI under this Agreement, including copied portions contained in derivative works, and certify in writing to CGI that County has fully performed its obligations under this paragraph.
- D. Any provision of this Agreement that imposes or contemplates continuing obligations on a party will survive the expiration or termination of this Agreement, including but not limited to Sections 3 and 6.

## **9. LAW AND DISPUTES**

- A. Governing Law and Venue shall be in accordance with Section A of Contract # MA-003-16010046.
- B. No proceeding, regardless of form, arising out of or related to this Agreement may be brought by either party more than two (2) years after the accrual of the cause of action, except that (i) proceedings related to violation of a party's proprietary rights or any duty to protect Confidential Information may be brought at any time within the applicable statute of limitations, and (ii) proceedings for non-payment may be brought up to two (2) years after the date the last payment was due.

## **10. GENERAL**

- A. Any legal notice or other communication required or permitted to be made or given by either party pursuant to this Agreement will be in writing, in English, and will be deemed to have been duly given: (i) five (5) business days after the date of mailing if sent by registered or

certified U.S. mail, postage prepaid, with return receipt requested; (ii) when transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine and a copy of the notice is promptly sent by another means specified in this section; or (iii) when delivered if delivered personally or sent by express courier service. All notices will be sent to the other party at its address as set forth below or at such other address as the party may specify in a notice given in accordance with this section.

In the case of County:	with a copy of legal notices to:
County of Orange Auditor-Controller/Administration 12 Civic Center Plaza, Room 200 Santa Ana, CA 92702 Attn: Alice Sinclair Fax: (714) 834-2569 Phone: (714) 796-8096 E-Mail: <a href="mailto:alice.sinclair@ac.ocgov.com">alice.sinclair@ac.ocgov.com</a>	County of Orange Auditor-Controller/IT Division 12 Civic Center Plaza, Room 358 Santa Ana, CA 92702 Attn: Phillip Daigneau Fax: (714) 834-5226 Phone: (714) 834-6277 E-Mail: <a href="mailto:phillip.daigneau@ac.ocgov.com">phillip.daigneau@ac.ocgov.com</a>
In the case of CGI:	with a copy of legal notices to:
CGI Technologies and solutions Inc. 350 South Grand Avenue, Suite 3800 Los Angeles, California 90071 Attn: Pankaj Joshi Fax: (213) 239-5301	CGI Technologies and solutions Inc. 11325 Random Hills Road, 8 <sup>th</sup> Floor Fairfax, Virginia 22030 Attn: Office of General Counsel Fax: 703.267.7288

- B. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond Contractor's reasonable control, provided Contractor gives prompt written notice of the cause of the delay to County and Contractor avails itself of available reasonable remedies.
- C. County may not assign or otherwise transfer this Agreement without CGI's prior written consent, which will not be unreasonably withheld. Any purported assignment in violation of the preceding sentence will be void. This Agreement will be binding upon the parties' respective successors and permitted assigns.
- D. The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this Agreement, for any reason, is declared to be unenforceable, the parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the parties.

No failure or delay by a party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If a party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the party may have under this Agreement.

- E. During the term of this Agreement and for twelve (12) months after its termination, neither party will, either directly or indirectly, solicit for employment or employ (except as permitted below) by itself (or any of its Affiliates) any employee of the other party (or any of its Affiliates) who was involved in the performance of the party's obligations under this Agreement, unless the hiring party obtains the written consent of the other party. For purposes of this Agreement, "Affiliates" means any other entity that directly or indirectly controls, or is under common control with, or is controlled by, the party. The foregoing provision will not (i) prohibit a general solicitation of employment in the ordinary course of business or prevent a party from employing any employee who contacts such party as a result of such a general solicitation; or (ii) be read so as to limit employment opportunities to an extent that would not be permitted under applicable law (e.g., California law).
  
- F. The Exhibits A, A.1, A.2, and A.3 referred to in and attached to this Agreement are made a part of it as if fully included in the text.

**Attachment E. Exhibit A**  
**CGI Technologies and Solutions Inc.**  
**Proprietary Software License Agreement**

1. **License Software.** CGI is licensing to County the following computer software components, comprising the Software:

CGI Advantage Financial Management Base System including:  
 Project and Grants Management  
 Treasury Accounting  
 Inventory Management  
 Asset Management  
 CGI Advantage 1099 *[Added with this Amendment No. 3]*

CGI Advantage Human Resources Management including:  
 Position Control  
 Benefits Administration  
 Payroll Administration & Payroll Accounting Management

CGI Advantage Procurement Professional

CGI Advantage Performance Budgeting System including:  
 Salary and Benefits Forecasting

CGI infoAdvantage Server Bundle

CGI OnBase Adapter *(for OnBase v15 and CGI Advantage Financial Management 3.10.0.1 and CGI Advantage Human Resources Management HRM 3.11 versions)*

County may use the source code for CGI Advantage components (exclusive of Bundled Software products) only to maintain and enhance the Software and for no other purpose. County may modify Software and Documentation and merge into other material to form derivative work for County's own use. Any portion of the Software or Documentation included in such a derivative work will continue to be subject to all terms of this Contract. Upon termination of the license for the Software, County will deliver to Contractor or destroy any portion of the Software or Documentation contained in any derivative works.

2. **Licensed Documentation.** The Specifications for the Software are as set forth in the documentation, which is available for download on the CGI website and which is collectively referred to in this Agreement as the "Documentation":

CGI will provide County access to its Documentation on the CGI website,  
<https://sc.cgi.com/solutionsupport/>.

Documentation 3<sup>rd</sup> third Party Software is available on the applicable website.

3. **License Type.** The Software is licensed to County on the following basis:

Site License. County is permitted to use the Software at the computer facility or facilities listed below with the exception of CGI infoAdvantage which is a named user license (or server license

if Server Bundle). In the event of the failure of the computers at the listed location(s), County may use the Software at a back-up computer facility in the same country until operations at the primary facility have been restored.

1400 S. Grand Ave Santa Ana, CA 92705

**Server License.** County is permitted to use the Software on 6 CPU server(s).

Should County desire to use the Software for additional named users or at additional facilities, as the case may be, County may purchase additional licenses at CGI's then-current prices.

4. **Work That May Be Processed.** County may only use the Software to process County's own work. COUNTY MAY ONLY USE THE CGI infoADVANTAGE SOFTWARE WITH CGI ADVANTAGE DATABASES.
5. **Bundled Software Products.** Included in the license fees paid by the County are the license fees for certain bundled software products (the "Bundled Software Products") required to be used in connection with Advantage Software. CGI is providing the following Bundled Software Products to County:

Adobe Central Pro – CPU & 10 Print locations – 2 *[Maintenance services cancelled as of July 1, 2016]*

Adobe Output Designer - 4 Named Users *[Maintenance services cancelled as of July 1, 2016]*

Adobe RoboHelp - 1 License

Versata Logic Studio - 6 Named user

Versata Logic Server License - 1 Site license

IBM WebSphere Application Server Network Deployment (ND) - 4100 Processor Value Units (PVUs)

IBM Portal Express Server - 200

IBM WebSphere Application Server Network Deployment Sub-Capacity - 420 PVU  
*[Governed by terms in Exhibit A.1]*

Action (previously Pervasive) Data Integrator Professional Engine, WIN Single-core - 1 license

Action Data Integrator Professional Engine, AIX 2-core - 4 licenses

Action Data Integrator Professional Engine AIX Single core - 3 licenses

Action Data Integrator Pro Developer – 9 User Licenses

*[Governed by Terms in Exhibit A.2]*

Business Objects Professional & WebIntelligence - 8 CPU restricted licenses

Business Objects Enterprise Premium & WebIntelligence - 8 CPU restricted licenses

Business Objects Desktop Intelligence (Thick Client) – 31 User license

SAP Crystal Reports 2008 SP3 - 16 Licenses

SAP Crystal Reports 2008 SP3 - 2 Licenses – *[Maintenance cancelled June 2014]*

Business Object Dashboard & Performance Manager - 25 NUL

Convey 1099 - 5 Users, 20,000 Transactions *[Cancelled with this Amendment No. 3]*



**Delta XML - 1 Site License**

**Micro Focus SVR for COBOL - <25,000 employees – 1 License**  
**Micro Focus SVR for COBOL Test - <25,000 employees – 1 License**  
**Micro Focus Net Express Developer - <25,000 employees 1 License**

**RedHat JBoss Enterprise Application Platform with Management Premium – Production – 2-core [see attached for End User License Agreement]**  
**RedHat JBoss Enterprise Application Platform with Management Premium – Non Production – 2-core [Governed by Terms in Exhibit A.3]**

**Eclipse BIRT Engine – Production – 2-Core**  
**Eclipse BIRT Engine – Non Production – 2-Core**  
*Unlimited copies of BIRT Designer are included with BIRT Modules*

All rights of County in and to the Bundled or Third Party Software Products referenced in this Section 5 of Exhibit A to this Attachment will be governed by the terms and conditions of this Agreement, unless otherwise specified above. In addition the Software may contain or require the use of open source products; any such products incorporated in, or used with, the Software are subject to the applicable open source license agreement. CGI does not itself give or make any warranty or indemnification of any kind with respect to the Bundled Software Products. Changes in the Software which CGI may make from time to time may make it necessary for County to acquire, at its own expense, updated versions of the Bundled Software Products or additional Bundled Software Products.

## Exhibit A.1 to Attachment E

### Terms for IBM Sub-Capacity License

#### 1. Definitions

**Audit Report Period** – The period that begins on the first day in a calendar quarter and ends on the last day in the calendar quarter. Alternatively, if your fiscal year is different from the calendar year, you may choose to begin the period on the first day in your fiscal quarter and end on the last day in your fiscal quarter. This period may also be monthly or weekly depending on your requirements.

**Audit Reports** – A set of reports available in the IBM License Metric Tool (“ILMT”), or by another method acceptable to IBM as specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>, These reports provide the Processor Value Unit (“PVU”) license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

**Eligible Sub-Capacity Product** – A Product for which Sub-Capacity Licensing is available. See listing at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

**Eligible Virtualization Environment** – A server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology;

- **Eligible Operating System Technology** – An operating system for which Sub-Capacity Licensing is available. See listing at: <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>
- **Eligible Processor Technology** – A processor technology for which Sub-Capacity Licensing is available. See listing at: <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.
- **Eligible Virtualization Technology** – A virtualization technology for which Sub-Capacity Licensing is available. An Eligible Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine. See listing at: <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>

**Full Capacity** – The total number of physical processor cores activated and available for use by the Eligible Sub-Capacity Product(s) on a server.

**Processor Chip** – Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

**Processor Core(s)** – A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be

active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

**Processor Socket** – Electronic circuitry that accepts a Processor Chip.

**Processor Value Unit(s)** – A metric used by IBM to assign a value to a Processor Core. The Processor Value Unit licensing model is described at: [http://www.ibm.com/software/lotus/passportadvantage/pvu\\_licensing\\_for\\_customers.html](http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html).

**Service Provider** – an entity that provides IT Services for end user customers, either directly or through a reseller.

**Sub-Capacity Licensing** – Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

**Virtualization Capacity** – the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment. Rules for calculating the Virtualization Capacity for each Eligible Virtualization Environment can be found at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

## 2. Authorizations

- a. A Proof of Entitlement (PoE) must be acquired by you for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.
- b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, you must first acquire additional authorizations, including Subscription and Support, if applicable.
- c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

## 3. IBM's Responsibilities

IBM will make available and authorize you to use:

- a. the ILMT at no charge, when ordered by you. IBM provides the ILMT to you for your compliance with these Sub-Capacity Licensing terms; and
- b. the Information Center included with the ILMT to aid in your compliance with these Sub-Capacity Licensing terms.

You may make copies of the ILMT and Information Center for your compliance with these Sub-Capacity Licensing terms.

## 4. Customer's Responsibilities under Sub-Capacity Licensing Terms.

While using Sub-Capacity licensing, you must agree to:

- a. install and configure the most current version of the IBM License Metric Tool ("ILMT") in accordance with the ILMT Information Center, within 90 days of your first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable the collection of Virtualization Capacity data by Eligible Sub-Capacity Products and generate Audit reports in accordance with the Sub-Capacity Licensing terms. Exceptions to this requirement are:
  - 1) when the ILTM does not yet provide support for your Eligible Virtualization Environment;
  - 2) if your enter Enterprise has fewer than 1000 employees and contractors, and you are not a Service Provider, nor have you contracted with a Service Provider to manage their Eligible Virtualization Environment;

- 3) if the total physical capacity of your Enterprise servers with an Eligible Virtualization Environment, measured on a Full capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.
- 4) when your servers with Eligible Sub-Capacity Products are licensed to the Full capacity of the servers.

For these exceptions, use of the IMLT, while recommended, is not required for Sub-Capacity Licensing. In lieu of the IMLT, you are required to manually manage and track your Eligibility Virtualization Environment, and manually prepare Audit reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for their Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit reports must contain the information listed in the example Audit Report available at <http://www.ibm.com/software/lotus/passportadvantage/sublicensing.html>. These Audit Reports must be prepared as frequently as is required to maintain a history of increase to CVirtualization Capacity, but no less often than once per quarter and must be maintained for at least two years to demonstrate your ongoing compliance with Sub-Capacity Licensing terms;

- b. promptly install new versions, releases, modification, or code corrections (“fixes”) of the IMLT that IBM makes available. You will need to subscribe to Tivoli Support notification via <http://www.ibm.com/support/mynotifications> in order to be notified when these become available;
- c. generate, using ILTM or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 2. Failure to generate Audit Reports or make Audit reports available to IBM will result in charging you for Eligible Sub-Capacity Products under Full Capacity terms;
- d. assign a person in your organization with authority to manage and promptly resolve any questions on Audit reports or inconsistencies between Audit Report contents, license entitlements, or ITLM configuration;
- e. notify CGI if Audit Reports reflect Eligible Sub-Capacity Product use in excess of their authorized level. You agree to promptly submit an order to IBM including Subscription and Support coverage based on the date you exceeded your authorized level.

#### 5. **Compliance Verification.**

Upon reasonable notice, IBM may verify your compliance with this Amendment and for all Eligible Virtualization Environments in which you uses or installs Eligible Sub-Capacity Products subject to the terms of this Amendment for any purpose. Such verification will be conducted in a manner that minimizes disruption to your business and may be conducted your premises, as IBM determines, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

The Customer will create, retain, and provide to IBM and its auditors written records, system tool outputs, evidence of the license entitlements provided to you, and other system information

sufficient to provide auditable verification to IBM that your installation and use of Eligible Sub-Capacity Products is in compliance with the terms of this Amendment, including, without limitation, all of IBM's applicable licensing and pricing qualification terms.

IBM will notify you in writing if any such verification indicates that you have used Eligible Sub-Capacity Products in excess of your authorized level of use or you are otherwise not in compliance with this Amendment. You agree to promptly pay directly to IBM i) the charges as IBM specifies in an invoice for any additional licenses equal to the quantity used in excess of authorized level of use and applicable Subscription and Support offerings, as applicable, for such licenses for the lesser of the time that such licenses have been used or two years, and ii) any additional charges and other liabilities determined as a result of such verification

The rights and obligations set forth in this section remain in effect during the period the Eligible Sub-Capacity Product is licensed to you, and for two years thereafter.

#### **6. Additional Terms**

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

IBM may change the terms of this Amendment by giving you written notice. These changes will be effective at the next 12 month anniversary of your TD containing "Eligible Sub-Capacity Products". Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any written communication from you are void.

**Exhibit A.2 to Attachment E**  
**Pervasive Software Inc. License Agreement**  
**READ CAREFULLY BEFORE INSTALLING**

READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE INSTALLING THIS SOFTWARE. INSTALLING THIS SOFTWARE INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THEM, YOU SHOULD PROMPTLY RETURN THE PACKAGE THAT WAS SENT TO YOU OR DELETE ANY DOWNLOADED FILES THAT CONTAIN THE SOFTWARE AND YOUR MONEY WILL BE REFUNDED (IF WITHIN 30 DAYS OF PURCHASE).

Pervasive Software Inc., a Delaware corporation, at 12365-B Riata Trace Parkway, Austin, Texas 78727, USA ("Pervasive"), hereby grants to you a non-exclusive, non-transferable license to use the software product that is contained on media supplied to you or that you have electronically downloaded (the "Software") and the accompanying printed materials or on-line documentation (the "Documentation") subject to the terms set forth below. The term "Software" also includes any upgrades, modified versions, copies, and trial versions licensed to you. Software may include design or development software, adaptors, connectors, agents, metadata and run-time software. The term "you" means the person or business entity that is licensing the Software pursuant to this Agreement.

**1. Use of Design or Development Software.**

If you have licensed Software that is identified in the Contract or on the install screen as design or development software, then –

- You may install the Software only in a single location on a hard disk or other storage device.
- You may install the Software on a network server used only to install or run the Software over an internal network; however, you must acquire and dedicate a license for each individual who will use the Software.
- You may install and use each licensed copy of the Software on one home or portable "Secondary" computer provided that each such installed copy is used exclusively by the same person.

**2. Use of Pervasive Deployment or Runtime Versions of the Software.**

If a product identified as being for deployment or runtime is part of the Software you have purchased, then –

- Each license of the deployment or runtime Software may be installed only on a single machine or network server.
- On multiple-CPU machines, the deployment or runtime Software may not be used concurrently on more CPUs than the number of CPUs specified in the Contract. In the event you use any number of physical CPUs acting as two or more logical or virtual CPUs, then the authorized number of CPUs under this Agreement will be determined based on the higher number of logical or virtual CPUs.

- Notwithstanding the foregoing, you may programmatically invoke the deployment or runtime Software from one or more other machines within your organization.
- If you intend to embed a runtime within any application for distribution to third parties, then you must (i) execute a distribution agreement with Pervasive; (ii) distribute the runtime Software only in conjunction with or as a part of your application; (iii) include an end-user license agreement with your application that grants a limited license to use the runtime Software and protects the intellectual property rights of Pervasive and its suppliers in the run-time Software; (iv) unless you or your sub- distributors have a separate written agreement with Pervasive to private-label the runtime portion of the application, include on the application's startup screen the copyright notice, "Pervasive Integration Runtime(TM) is Copyright Pervasive Software Inc. 2004. All rights reserved."; and (v) indemnify, hold harmless and defend Pervasive and its suppliers from and against any claims or lawsuits, including attorney's fees, that arise or result from the use or distribution of your application.

**3. Copyright.** Title, ownership rights, and intellectual property rights in and to the Software and Documentation will remain in Pervasive or its suppliers. Copyright laws of the United States and International Treaty provisions protect the Software and Documentation. Except as expressly authorized in this Agreement, you agree not to use, rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify, create derivative works of, time share or dispose of the Software or Documentation or any part thereof. Pervasive retains ownership of the Software and Documentation and reserves all rights not expressly granted to you.

**4. Backup and Copies.** You may make copies of the Software only for archival backup and security reasons in order to protect your investment from loss. You may not install copies of the software for fail-over or disaster recovery without purchasing additional licenses for such purposes. Unauthorized copying of either the Software or related printed materials is expressly forbidden. You may print one copy of the Documentation or any part thereof from the electronic Help included with your Software.

**5. Leasing/Rental Prohibited.** You may not directly or indirectly sublicense, lease or rent the Software for third party use without prior written approval of Pervasive. You may not charge a third party by data throughput, by transaction, by time- share or any other service bureau usage of the Software without prior written approval of Pervasive.

**6. Protection of Software.** You agree to take all reasonable steps to protect the Software and Documentation from unauthorized copying or use. The Software source code represents and embodies trade secrets of Pervasive or its licensors. The source code and embodied trade secrets are not licensed to you and any modification or addition thereto, or deletion therefrom is strictly prohibited. You agree not to disassemble, decompile, or otherwise reverse engineer the Software in order to discover the source code or the trade secrets contained in the source code.

**7. Assignment.** You may not assign or otherwise transfer in whole or in part or in any manner any rights, obligations, or any interest in or under this Agreement without Pervasive's prior written consent and any attempted assignment will be void. A merger or other acquisition by a third party will be treated as an assignment. Pervasive may at any time and without Your consent assign all or a portion of its rights and duties under this Agreement to a company or companies wholly owning, owned by, or in common ownership with Pervasive.

**8. Performance or Benchmark Testing.** You may not publish or otherwise disclose to any third party the results of any performance or benchmark tests of the Software without prior written approval of Pervasive.

**9. Limited Warranty.** To the original licensee only, Pervasive warrants the media on which the Software is recorded and its accompanying printed materials to be free of defects in materials and workmanship for a period of 90 days from the date of purchase as evidenced by a copy of the receipt. If the licensee notifies Pervasive of defects in material or workmanship within the warranty period, then, as licensee's sole remedy and Pervasive's sole obligation and liability, Pervasive will replace the defective item(s).

If you receive pre-release or beta Software under this Agreement, such pre-release or Beta Software is provided "As Is" without warranty of any kind. Pervasive and its suppliers will not be liable for any damages relating to your use of such pre-release or beta Software. If Pervasive updates or upgrades the pre-release or beta Software and makes it generally available, then: (i) provided you have paid any applicable maintenance fees, if any, Pervasive will provide you with the applicable update or upgrade to the generally available version of the Software, and (ii) the limited warranty set forth above in this Agreement will apply to such generally available Software version commencing upon receipt of such version.

DISCLAIMER OF WARRANTY. PERVASIVE LICENSES THE SOFTWARE AND DOCUMENTATION TO YOU UNDER THIS AGREEMENT SOLELY ON AN "AS IS" BASIS. EXCEPT AS PROVIDED IN THIS SECTION 9, PERVASIVE MAKES NO OTHER REPRESENTATIONS, CONDITIONS OR WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, REGARDING THE SOFTWARE AND DOCUMENTATION; PERVASIVE EXPRESSLY STATES AND YOU ACKNOWLEDGE THAT PERVASIVE DOES NOT MAKE ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES, INCLUDING, FOR EXAMPLE, WITH RESPECT TO MERCHANTABILITY, TITLE, NONINFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, AMONG OTHERS.

**10. High Risk Activities.** The Software is not fault-tolerant and is not designed, manufactured, or intended for use or resale as on-line control equipment in hazardous environments regarding fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Pervasive and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

**11. Limitation of Liability.** PERVASIVE'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR DOCUMENTATION IS LIMITED TO THE TOTAL OF ALL PAYMENTS MADE BY YOU FOR THE SOFTWARE UNDER THIS AGREEMENT. IN NO EVENT WILL PERVASIVE OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER UNDER THEORY OF WARRANTY, TORT, PRODUCTS LIABILITY OR OTHERWISE.



**12. Term, Termination.** This Agreement is effective from the date you open the Software envelope and will remain in force until terminated. You may terminate this Agreement at any time by destroying the Documentation and the Software together with all copies and adaptations thereof. This Agreement will automatically terminate if you breach any of the terms and conditions of this Agreement. You agree to destroy the original and all copies of the Software and Documentation, or to return them to Pervasive upon termination of this license. Sections 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of this Agreement will survive any termination hereof.

**13. Miscellaneous.**

**13.1 Complete Understanding.** This Agreement represents the complete agreement concerning the subject matter between you and Pervasive and supersedes all prior agreements and representations between you and Pervasive. This Agreement may be amended only in writing executed by both parties. Any purchase by you is accepted only upon your assent to the terms and conditions of this Agreement. NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION, OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THIS AGREEMENT ABOUT THE SOFTWARE.

**13.2 Governing Law.** This Agreement will be governed and interpreted by the laws of the State of Texas, USA, without regard to its rules governing conflicts of law. The parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement. Exclusive jurisdiction and venue for all disputes arising under this Agreement will be in the state and federal courts residing in Austin, Texas. Each party expressly consents to the exercise of jurisdiction over it in the above venue of any court of competent jurisdiction and waive any rights it may have to have the action tried or determined in a different venue.

**13.3 Waiver.** No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of Pervasive. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

**13.4 Audit.** You will keep accurate records and accounts related to use of the Software under this Agreement in accordance with generally accepted accounting principles and standard business practices in the computer industry. Such records will include, but are not limited to, your record of all copies of the Software made and the Pervasive provided serial number (if any) for each. Pervasive or its agents may inspect your records on fifteen (15) days notice to you. Such inspections are solely for the purpose of verifying your compliance with the provisions of this Agreement. In the event any such inspection reveals an underpayment by you, (i) you will promptly remit the amount of the underpayment for the period covered by the inspection, and (ii) if such underpayment exceeds five percent (5%) of the payment due for the period covered by the inspection, you will reimburse Pervasive for its reasonable expenses incurred in connection with the inspection. Pervasive's rights will remain in effect through the period ending one (1) year from the termination or expiration of this Agreement.

**13.5 Severability.** If any provision in this Agreement is held invalid or unenforceable, that provision will be construed, limited, modified, or, if necessary, severed, to the extent necessary, to

eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

**13.6 Export Controls.** None of the Software or underlying information or technology may be downloaded or otherwise exported or reexported (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; or (ii) to any person or entity on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders, or the U.S. Commerce Department's Entity List of Missile, Nuclear, and Chemical and Biological Weapons Proliferators, or the U.S. Department of State's Foreign Terrorist Organization List. You agree to the foregoing and you represent and warrant that you are not located in, under the control of, or a national or resident of such country or on any such list. The Software may also be subject to U.S. laws and export regulations of the U.S. Government that require an explicit export license prior to any export or reexport of the Software. You agree to obtain any such explicit export license that may be required.

**13.7 U.S. Government End Users.** The Software is a "commercial item", as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212, and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein. Contractor/Manufacturer is Pervasive Software Inc., 12365 Riata Trace Parkway, Building B, Austin, Texas 78727.

**13.8 Operating System.** It is your responsibility to fully comply with applicable license agreements for any operating systems you may use with the Software.

**13.9** English will be the controlling language of this Agreement

**(C) 2004 Pervasive Software Inc. (modified)**

## **Exhibit A.3**

### **END USER TERMS AND CONDITIONS**

### **JBOSS ® ENTERPRISE MIDDLEWARE**

These End User Terms and Conditions (“EULA”) are included as Attachment 3 to Exhibit A to the CGI Technologies and Solutions Inc. (“CGI”) Proprietary Software License Agreement (“License Agreement”) between CGI and Client, which commences on the Effective Date noted in the License Agreement, and govern Client’s use of the JBoss Enterprise Middleware and any related updates, source code, appearance, structure and organization (the “Programs”), regardless of the delivery mechanism. By entering into the License Agreement, the Client has agreed to comply with the terms and conditions of the EULA and acknowledges that CGI’s obligations to Client under the License Agreement with respect to the Programs are limited to the obligations of Red Hat, Inc. specified in the EULA. For purposes of EULA, the term “parties” refers to Client and Red Hat, Inc. and, to the extent applicable, CGI.

1. **License Grant.** Subject to the following terms, Red Hat, Inc. (“Red Hat”) grants to you a perpetual, worldwide license to the Programs (each of which may include multiple software components) pursuant to the GNU Lesser General Public License v. 2.1. With the exception of certain image files identified in Section 2 below, each software component is governed by a license that permits you to run, copy, modify, and redistribute (subject to certain obligations in some cases) the software component. This EULA pertains solely to the Programs and does not limit your rights under, or grant you rights that supersede, the license terms applicable to any particular component.
2. **Intellectual Property Rights.** The Programs and each of their components are owned by Red Hat and other licensors and are protected under copyright law and under other laws as applicable. Title to the Programs and any component, or to any copy, modification, or merged portion shall remain with Red Hat and other licensors, subject to the applicable license. The “JBoss” trademark, “Red Hat” trademark, the individual Program trademarks, and the “Shadowman” logo are registered trademarks of Red Hat and its affiliates in the U.S. and other countries. This EULA does not permit you to distribute the Programs using Red Hat's trademarks, regardless of whether they have been modified. You may make a commercial redistribution of the Programs only if (a) permitted under a separate written agreement with Red Hat authorizing such commercial redistribution or (b) you remove and replaced all occurrences of Red Hat trademarks and logos. Modifications to the software may corrupt the Programs. You should read the information found at <http://www.redhat.com/about/corporate/trademark/> before distributing a copy of the Programs.
3. **Limited Warranty.** Except as specifically stated in this Section 3, a separate agreement with Red Hat, or a license for a particular component, to the maximum extent permitted under applicable law, the Programs and the components are provided and licensed “as is” without warranty of any kind, expressed or implied, including the implied warranties of merchantability, non-infringement or fitness for a particular purpose. Red Hat warrants that the media on which the Programs and the components are provided will be free from defects in materials and manufacture under normal use for a period of 30 days from the date of delivery to you. Neither Red Hat nor its affiliates

warrant that the functions contained in the Programs will meet your requirements or that the operation of the Programs will be entirely error free, appear or perform precisely as described in the accompanying documentation, or comply with regulatory requirements. This warranty extends only to the party that purchases subscription services for the Programs from Red Hat and/or its affiliates or a Red Hat authorized distributor.

4. **Limitation of Remedies and Liability.** To the maximum extent permitted by applicable law, your exclusive remedy under this EULA is to return any defective media within 30 days of delivery along with a copy of your payment receipt and Red Hat, at its option, will replace it or refund the money you paid for the media. To the maximum extent permitted under applicable law, under no circumstances will Red Hat, its affiliates, any Red Hat authorized distributor, or the licensor of any component provided to you under this EULA be liable to you for any incidental or consequential damages, including lost profits or lost savings arising out of the use or inability to use the Programs or any component, even if Red Hat, its affiliates, an authorized distributor, and/or licensor has been advised of the possibility of such damages. In no event shall Red Hat's or its affiliates' liability, an authorized distributor's liability or the liability of the licensor of a component provided to you under this EULA exceed the amount that you paid to Red Hat for the media under this EULA.
5. **Export Control.** As required by the laws of the United States and other countries, you represent and warrant that you: (a) understand that the Programs and their components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) are not located in a prohibited destination country under the EAR or U.S. sanctions regulations (currently Cuba, Iran, Iraq, North Korea, Sudan and Syria, subject to change as posted by the United States government); (c) will not export, re-export, or transfer the Programs to any prohibited destination, persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use or transfer the Programs for use in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the relevant government agency by regulation or specific license; (e) understand and agree that if you are in the United States and export or transfer the Programs to eligible end users, you will, to the extent required by EAR Section 740.17(e), submit semi-annual reports to the Commerce Department's Bureau of Industry and Security, which include the name and address (including country) of each transferee; and (f) understand that countries including the United States may restrict the import, use, or export of encryption products (which may include the Programs and the components) and agree that you shall be solely responsible for compliance with any such import, use, or export restrictions.
6. **Third Party Programs.** Red Hat may distribute third party software programs with the Programs that are not part of the Programs. These third party software programs are not required to run the Programs, are provided as a convenience to you, and are subject to their own license terms. The license terms either accompany the third party software programs or can be viewed

at <http://www.redhat.com/licenses/thirdparty/eula.html>. If you do not agree to abide by the applicable license terms for the third party software programs, then you may not install them. If you wish to install the third party software programs on more than one system or transfer the third party software programs to another party, then you must contact the licensor of the applicable third party software programs.

7. **General.** If any provision of this EULA is held to be unenforceable, the enforceability of the remaining provisions shall not be affected. Any claim, controversy or dispute arising under or relating to this EULA shall be governed by the laws of the State of New York and of the United States, without regard to any conflict of laws provisions. The rights and obligations of the parties to this EULA shall not be governed by the United Nations Convention on the International Sale of Goods