

# PERCEPTIVE SOFTWARE STANDARD MASTER AGREEMENT

THIS AGREEMENT (the "Agreement") is made this \_\_\_\_ day of February 2013 ("Effective Date"), by and between Perceptive Software, LLC, a limited liability company, located at 22701 West 68th Terrace, Shawnee, Kansas 66226 ("Perceptive Software"), and Peralta Community College District with offices located at 900 Fallon Street, Oakland, California, 94607 ("Customer").

WHEREAS, Customer desires to acquire an enterprise content management system consisting of computer hardware, software, and services;

WHEREAS, Customer desires to acquire certain perpetual, non-exclusive and non-transferable licenses for the use of Perceptive Software's ImageNow® software and documentation (the "Software") on certain terms and conditions as set forth in the End-User License Agreement (the "End-User License Agreement" or the "EULA" as described in Section 1 below);

WHEREAS, Customer desires that Perceptive Software provide certain support services with respect to the Software and maintain the Software by providing Customer upgrades, enhancements and new releases of the Software, and Perceptive Software desires to provide such support services and maintenance on the terms and conditions set forth in this Agreement; and

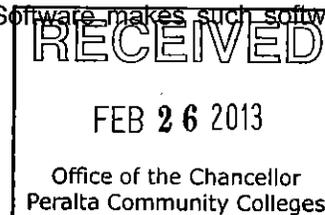
WHEREAS, Customer desires to purchase certain professional services from Perceptive Software on the terms and conditions of the Professional Services Agreement entered into by the parties concurrently herewith ("Professional Services Agreement"); and

WHEREAS, Customer may desire to purchase certain computer hardware from Perceptive Software on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants exchanged herein and for other valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereto agree as follows:

1. **License.** Perceptive Software, as licensor, hereby grants to Customer perpetual, non-exclusive and non-transferable licenses to use the Software described in Schedule A attached hereto (each a "License" and collectively, the "Licenses") upon the terms and conditions of the ImageNow Product Suite End-User License Agreement accompanying the Software (<https://www.perceptivesoftware.com/customer-portal/eula.psi>), and which is hereby incorporated into and made a part of this Agreement by this reference as if fully set forth herein; provided, however, that Perceptive Software's grant of the Licenses will be of no effect in the event Customer fails to timely pay the license fees for the Licenses. The license fee for each License of the Software, as set forth in the Pricing, Terms and Conditions attached to this Agreement as Schedule A, is a one-time fee and is due and payable as provided in Schedule A. In the event of any conflict between the terms of the Licenses and the provisions of this document, the provisions of this document will prevail to the extent of such conflict.

2. **Software Maintenance and Support.** Perceptive Software, upon Customer's payment of the annual Software Maintenance and Support fees provided in this Agreement, shall provide Customer with support services with respect to the Software and shall provide maintenance for the Software by providing Customer with upgrades, enhancements and new releases of the Software, for the term as provided in Section 11(a) below and upon the terms and conditions as set forth in the Software Maintenance and Support Agreement attached to this Agreement as Schedule B (the "Software Maintenance and Support"). The Software Maintenance and Support may not extend to any third party software licensed by Perceptive Software and sublicensed to Customer as part of the Software. The annual fee for the Software Maintenance and Support shall be determined and shall be due and payable as provided in Schedule A. The Software Maintenance and Support may not include software programs offered by Perceptive Software that offer functionality separate from and unique to the Software, or otherwise have a significant value and quality separate from the Software, any of which Perceptive Software may price, market and offer separately from the Software if Perceptive Software makes such software programs available generally to its licensee for a separate charge.



3. **Professional Services.** Perceptive Software shall provide Customer with professional services related to integration and use of the Software as agreed by the parties in a separate professional services agreement.

4. **Out-of-Scope Services.** Perceptive Software may provide additional out-of-scope services, as may be agreed to between Perceptive Software and Customer from time to time. Such agreement will be in writing and approved by signature prior to the commencement of any services being rendered. Out-of-scope services will include any services provided by Perceptive Software for product support to the extent required to remedy any Software support or performance issues caused by or resulting from Customer's failure to comply with Customer's responsibilities as described in Section 6(a) below and/or Section 3 of the Software Maintenance and Support Agreement attached to this Agreement as Schedule B. In each such event Perceptive Software shall invoice Customer for all agreed upon fees for services provided by Perceptive Software at the agreed upon rates for such services, together with any agreed upon reimbursable expenses incurred by Perceptive Software in providing such out-of-scope services, and Customer shall pay the invoiced amount within thirty (30) days following receipt of such invoice.

5. **Hardware.** Perceptive Software shall provide the hardware for the implementation and execution of the Software as specifically listed in Schedule A attached to this Agreement, if any. The prices for any such hardware provided by Perceptive Software are set forth in Schedule A and are due and payable as provided in Schedule A. The representations and warranties on any such hardware, if any, shall be limited to those made by the original manufacturer thereof, which Perceptive Software hereby assigns to Customer. Perceptive Software makes no warranties with respect to any such hardware, whether express or implied, including, but not limited to, those concerning merchantability or fitness for a particular purpose.

6. **Responsibilities of Customer.**

- (a) **Computing and Networking Resources.** Except with respect to any hardware described in Section 5 above, Customer shall be solely responsible, at Customer's expense, for causing Customer's application environment to meet and comply with the specifications and requirements set forth in Perceptive Software's ImageNow® Technical Specifications guide provided by Perceptive Software to Customer, and Customer shall be solely responsible, at Customer's expense, for operating and providing ongoing maintenance, service and administration for Customer's application environment, including all hardware and software specified in Perceptive Software's ImageNow® Technical Specifications [Please provider Peralta a copy] guide as necessary for implementation and execution of the Software. Any other terms of this Agreement or the EULA to the contrary notwithstanding, Perceptive Software's warranties concerning the Software (as provided in the EULA) and Perceptive Software's Software Maintenance and Support obligations will not extend to any interference with or failure or degradation of the performance of the Software caused by Customer's failure to meet and comply with the specifications and requirements set forth in Perceptive Software's ImageNow® Technical Specifications guide, or Customer's installation, without Perceptive Software's prior written approval, of any other software, whether proprietary or Customer's own, hardware, product or apparatus in the Customer's application environment following the installation of the Software.
- (b) **Data Backup.** Customer shall regularly make, validate and backup and keep safe copies of its information and other data processed by or used in connection with the Software, such backup copies suitable for restoring such information and data in the event of a data loss event.
- (c) **Access and Work Area.** Customer shall provide Perceptive Software with timely access to Customer's facilities and to an adequate work area to perform Software and hardware installation and configuration services as contemplated in the Professional Services Agreement.
- (d) **Customer Staff.** Customer, at Customer's expense, shall provide timely participation of Customer's necessary functional and/or information technology staff necessary for the

timely delivery of the Software Maintenance and Support as contemplated in this Agreement and in the Professional Services Agreement.

7. **Confidential and Proprietary Information.** Perceptive Software and Customer each acknowledge that all information concerning the other is "Confidential and Proprietary Information," whether furnished or obtained orally, visually or in written form and which includes, without limitation, technology, know-how, trade secrets, processes, ideas, improvements, inventions and other intangible or intellectual property rights, whether patentable or not, patents pending and other technical, business, commercial, financial and customer information. Perceptive Software and Customer (each a "Receiving Party," as the case may be) will hold the Confidential and Proprietary Information disclosed to it by the other party (the "Disclosing Party") in confidence and, except to the extent required by law or unless authorized in writing by the Disclosing Party, agree not to permit the duplication, use, publication, disclosure or display, in writing, electronically or otherwise, of any such Confidential and Proprietary Information or any information derived therefrom to any person or other entity. To the extent a Receiving Party discloses any Confidential and Proprietary Information to its employees and officers, such disclosure shall be on a limited need-to-know basis and the Receiving Party shall obligate all of its officers and employees to whom the Confidential and Proprietary Information is communicated to abide to the same conditions of confidence and non-use required by the Receiving Party under this Agreement. The Receiving Party shall not use any part of the Confidential and Proprietary Information for any purpose at any time other than for the purposes of performing its obligations under this Agreement and the EULA.

Confidential and Proprietary Information will not include information which (i) is now or hereafter becomes available to the public through no fault of the Receiving Party, (ii) was rightfully within the Receiving Party's possession without restriction on disclosure prior to the date of this Agreement, (iii) was independently developed by the Receiving Party without reference to any Confidential and Proprietary Information, or (iv) was rightfully disclosed to the Receiving Party by a third party without any violation of an obligation of confidentiality by the third party disclosing such information. If a Receiving Party becomes compelled by law to disclose Confidential and Proprietary Information, the Receiving Party will (i) promptly notify the Disclosing Party, and (ii) provide reasonable assistance to Disclosing Party in any efforts by Disclosing Party to obtain a protective order or other assurance that confidential treatment will be accorded to the Confidential and Proprietary Information. Any violation of this Section 7 shall be considered a material breach of this Agreement.

Each of the parties acknowledges that, as between Perceptive Software and Customer, each is the sole and exclusive owner of its own Confidential and Proprietary Information. Customer further acknowledges that, as between Perceptive Software and Customer, Perceptive Software is the sole and exclusive owner of the Software including all upgrades, enhancements and new releases of the Software which may be provided from time to time under this Agreement, subject only to the rights granted to Customer under the EULA, which Customer agrees shall govern each such upgrade, enhancement and new release of the Software provided to Customer by Perceptive Software.

Each of the parties shall take all reasonable steps to safeguard the other party's Confidential and Proprietary Information so as to ensure that no unauthorized person shall have access to it, and that no persons authorized to have access shall make any unauthorized use or copies of the other party's Confidential and Proprietary Information. Each of the parties shall promptly report to the other party any unauthorized disclosure, use or copies of the other party's Confidential and Proprietary Information of which it becomes aware, and shall take such further steps as may reasonably be requested by such other party to prevent any unauthorized disclosure, use or copies of such Confidential and Proprietary Information.

Each of the parties acknowledges that the unauthorized use or transfer of the other party's Confidential and Proprietary Information, including the source code of the Software, may substantially diminish the value of such Confidential and Proprietary Information and irrevocably harm the owner of such Confidential and Proprietary Information. Each of the parties further agrees that if they breach the non-disclosure and security provisions of this Agreement, the other party shall be entitled to equitable relief including, but not limited to, preliminary and permanent, injunctive relief, an equitable accounting of all profits or benefits arising out of such breach, and any and all other remedies available at law or in equity.

8. **Representations, Warranties and Disclaimers.** Perceptive Software represents and warrants that it has the legal right to enter into this Agreement, to grant a license of the Software as provided in this Agreement and to provide the Software Maintenance and Support to Customer and that the Software Maintenance and Support will be performed in a workmanlike and professional manner, consistent with all applicable statutes, regulations or ordinances, and within applicable industry standards. If Customer is dissatisfied at any point with the performance of any Software Maintenance and Support Customer shall promptly (and in any event within thirty (30) days following the completion of the Software Maintenance and Support in question) notify Perceptive Software of such dissatisfaction in writing. Upon receipt of such notice, Perceptive Software shall meet with Customer to discuss the problem and, if applicable, will arrange for the performance of such Software Maintenance and Support to be raised to the warranted level, and for identifiable defects caused by prior substandard performance to be cured.

Perceptive Software further warrants that no information, products or services provided, disclosed or made available to Customer by Perceptive Software infringes any copyright, trademark, trade secret, or confidentiality rights of any third party nor, to its knowledge, infringes any patent rights. Further, Perceptive Software further warrants that it has at not time prior to the Effective Date received a written allegation or claim made by a third party that the Software licensed hereunder infringes any patent right.

Except as provided above, the representations and warranties made with respect to the Software, the Software Maintenance and Support shall be limited as otherwise provided in this Agreement..

THE FOREGOING REPRESENTATIONS AND WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THOSE CONCERNING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. **Indemnification.**

- (a) Indemnification by Perceptive Software. Subject to Customer's compliance with Section 9(c) below, Perceptive Software agrees to hold harmless, indemnify and, at Customer's request, defend Customer, its affiliates and their respective officers, directors, agents and employees (collectively, "Customer Parties") from and against any and all claims (including any and all liabilities, damages, losses, costs and expenses and reasonable attorneys' fees arising therefrom) to the extent arising out of (i) any action or proceeding brought by a third party against any one or more of the Customer Parties alleging that the Software, including any upgrades, enhancements and new releases of the Software, or any services provided under this Agreement or the EULA infringe a patent, copyright, trademark, trade secret, or other proprietary right of a third party or (ii) any action or proceeding brought by a third party against any one or more of the Customer Parties related to Perceptive Software's breach of any of its warranties, representations, agreements or obligations under this Agreement or the EULA.
- (b) Intentionally left blank.
- (c) Conditions. The foregoing indemnity obligations shall be contingent upon the party seeking indemnity (i) giving prompt written notice to the other party of any claim, demand, or action for which indemnity is sought, (ii) fully cooperating in the defense or settlement of any such claim, demand or action, and (iii) obtaining the prior written agreement of the indemnifying party to any settlement or proposal of settlement, which agreement shall not unreasonably be withheld.

10. **Limitation of Liability.** Except for liability resulting from Section 7 (Confidentiality) or from its intentional tortious acts, under no circumstances shall Perceptive Software or Customer be liable to the other or any person claiming through the other, whether in contract, tort or otherwise, for any loss of profits, loss of use of equipment, loss or corruption of data or indirect, incidental, special, exemplary or consequential damages, or for any payment related to or as a result of such losses or damages arising out of or otherwise related to this Agreement, the EULA, the Software or any hardware or services provided under this Agreement, whether or not advised of the possibility of such losses or damages and without regard to any determination that any remedy specified in this Agreement fails its essential purpose. Any other terms of this Agreement or the EULA notwithstanding, Perceptive Software and

Customer each acknowledge that any amounts that either Perceptive Software or Customer are required to pay to a third party which are eligible for indemnification as provided in Section 9(a) or Section 9(b) above shall be deemed direct damages and shall not be limited by this Section 10, notwithstanding the characterization of such damages to such third party. In the event of a claim by a third party against Perceptive Software or Customer alleging that the Software infringes any proprietary right of such third party, Perceptive Software will, at its option, either procure a license to enable Customer to continue to use the Software, develop a non-infringing substitute to the Software reasonably acceptable to Customer, or terminate this Agreement and the EULA, and refund to Customer the license fees paid by Customer to Perceptive Software for the Licenses of the Software, together with the Software Maintenance and Support fees allocable to the remainder of the then-current Software Maintenance and Support term. The foregoing election by Perceptive Software, in addition to Perceptive Software's indemnification obligations provided above, shall be Customer's sole and exclusive remedy for claims of intellectual property infringement. Notwithstanding any other terms of this Agreement or the EULA to the contrary, Perceptive Software shall have no obligation to Customer with respect to any claim that arises from (a) Customer's modification of the Software or modification of the Software by any third party if such modification was not approved or directed by Perceptive Software; or (b) Customer's combination, operation or use of the Software with any software, hardware, product, or apparatus installed in the Customer's application environment and that is not combined, operated, or used within the normal parameters of use of the Software as indicated by its documentation. With the exception of Perceptive Software's indemnification obligations under Section 9, liability under Section 7, and liability for its intentional tortious acts, neither party's cumulative liability to the other party or to any person claiming through the other under this Agreement or the EULA shall exceed an amount equal to the license fees paid by Customer to Perceptive Software for the Software and Maintenance and Support.

**11. Term and Termination of Software Maintenance and Support.**

- (a) Initial Term and Renewal Terms. Perceptive Software's obligation to provide Software Maintenance and Support shall have an initial term commencing on the date of Perceptive Software's initial invoice to Customer for the Software and Software Maintenance and Support, and ending on the last day of the month of the one (1) year anniversary of the date of such initial invoice, and shall renew for additional terms of one (1) year upon Customer's timely payment of the annual fee for Software Maintenance and Support for the next successive renewal term. Not less than thirty (30) days prior to the expiration of the then-current term, Perceptive Software shall provide Customer, by e-mail or regular mail, a Software Maintenance and Support renewal notice and invoice for the annual fee for the Software Maintenance and Support for the next successive renewal term. Perceptive Software shall not have any liability to Customer for any damages suffered by Customer or any other person arising from or related to Perceptive Software's cessation of Customer's Software Maintenance and Support in the event of Customer's election or failure to renew the Software Maintenance and Support.

If the Software Maintenance and Support expires or for any reason is terminated, Customer shall not be entitled to later renew the Software Maintenance and Support absent Perceptive Software's agreement to such renewal. Furthermore, upon any such renewal Customer shall (i) pay to Perceptive Software, together with the annual fees for such renewal, an amount equal to the annual fees which Customer would have paid to Perceptive Software for Software Maintenance and Support during the period following such expiration or termination of Software Maintenance and Support had such expiration or termination not occurred, and (ii) promptly apply all upgrades, enhancements and new releases of the Software released by Perceptive Software and provided to its maintenance and support customers during the period following such expiration or termination as reasonably directed by Perceptive Software.

- (b) New Version Releases. Perceptive Software from time to time may release new major versions of the Software. Following the release of each such major version, Perceptive Software will continue to provide Software Maintenance and Support for the most two previous major versions of the Software, together with all minor, service pack and hotfix versions of such previous major version of the Software as provided in Perceptive

Software's End of Life (EOL) Policy provided at the product support page of Perceptive Software's Product Support Portal (described in Schedule B). Perceptive Software reserves the right to discontinue Software Maintenance and Support of previous major versions of the Software if a manufacturer or the industry in general identifies major flaws in the operating system or relational database management system (RDBMS) in current use by Customer.

- (c) Default. Notwithstanding the foregoing, each party shall have the right to terminate the Software Maintenance and Support (i) upon thirty (30) days prior written notice to the other party if such other party has materially breached the provisions of this Agreement and has not cured such breach within such thirty (30) day period, or (ii) immediately upon notice to the other party in the event the other party (A) files a voluntary petition in bankruptcy under the United States Bankruptcy Code, (B) is adjudicated bankrupt, (C) has filed against it a petition in bankruptcy which is not discharged within thirty (30) days from the date of such filing, (D) becomes insolvent or makes an assignment for the benefit of its creditors or any other arrangements pursuant to any bankruptcy law, (E) discontinues its business or is appointed a receiver for it or its business, or (F) takes steps to liquidate, reorganize or otherwise dissolves.
- (d) Termination of End-User License Agreement. Notwithstanding the foregoing, the Software Maintenance and Support shall terminate immediately upon termination of the EULA.
- (e) Rights and Obligations Upon Termination. Upon the termination of the Software Maintenance and Support, whether upon expiration of a term or the occurrence of an event as described above, each party shall return to the other all Confidential and Proprietary Information and all other data, materials and other properties of the other party then in its possession, not including the Software and any upgrades, enhancements or new releases for the Software, which Customer may retain pursuant to the terms of the EULA.

## 12. Miscellaneous.

- (a) Entire Agreement. This Agreement, including the recitals to this Agreement and the Schedules attached to this Agreement and any other documents referenced in this Agreement, including, without limitation, the EULA, each of which are incorporated herein by this reference, constitutes the entire agreement between Perceptive Software and Customer concerning the subject matter hereof and supersedes all proposals, agreements, undertakings and understandings, oral or written, between the parties on the subject matter of this Agreement; provided, however, that the EULA shall apply to and govern the Customer's Licenses of the Software. Except as Perceptive Software and Customer may otherwise specifically agree in writing, including, without limitation, any pricing and payment terms provided in any quotation, purchase order or commitment authorization, this Agreement and the EULA shall apply to and govern Customer's purchase from Perceptive Software of any and all additional licenses of Software, Software Maintenance and Support and Professional Services following the date of this Agreement.
- (b) Applicable Law. This Agreement shall be deemed to have been executed in the City of Oakland, Alameda County, California and shall be construed and governed in accordance with the internal laws of the State of California, without regard to its rules of conflict or choice of law provisions that would require the application of the laws of any other jurisdiction. The exclusive venue for all litigation arising from or relating to the Agreement shall be in Alameda County, California.

- (c) Mediation and Arbitration. If a dispute arises under this Agreement, the parties agree to first attempt in good faith to resolve the dispute with a mutually agreed-upon mediator in Alameda County, California. A party may initiate mediation by sending the other party a written demand for mediation, which demand shall describe with specificity the nature of the dispute. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. If the parties are unable to arrive at a mutually satisfactory solution through mediation, or if a mediator has not been chosen and a date set for mediation, within sixty (60) calendar days from the date of the demand for mediation, then the parties hereby agree to submit the dispute to a mutually agreed-upon arbitrator in Alameda County, California, pursuant to the terms below.

Any action to enforce or interpret this Agreement, or to resolve disputes with respect to this Agreement (other than claims for preliminary injunctive relief or other pre-judgment or equitable remedies), shall be settled by binding arbitration in Alameda County, California, in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association, if a mutually satisfactory resolution cannot be reached in mediation or if sufficient steps towards mediation have not been taken pursuant to the above. Arbitration shall be the exclusive dispute resolution process for all claims other than for preliminary injunctive relief or other pre-judgment or equitable remedies. Any party may commence arbitration by sending a written demand for arbitration to the other party and to the American Arbitration Association. Such demand shall set forth the nature of the matter to be resolved by arbitration.

A request for arbitration must be submitted within the same limitation periods that would be applicable in court and must be in writing. If either party fails to submit and serve a written request for arbitration within the applicable statute of limitations, that party agrees that it will have waived any right to raise said claim, in any forum, regarding the dispute. The arbitrator shall be one that is mutually agreeable to both parties. Both parties shall have the right to conduct normal civil discovery, including the taking of depositions, prior to the arbitration hearing, and specifically agree that the provisions of Section 1283.05 of the California Code of Civil Procedure are incorporated into and made applicable to any arbitration, provided however that the arbitrator will retain his or her statutory discretion under that section to limit the number, and scope of, the depositions. The substantive law of the State of California shall be applied by the arbitrator to the resolution of the dispute.

The arbitrator shall be empowered to award either party any remedy at law or in equity that the prevailing party would otherwise have been entitled to had the matter been litigated in court, including, but not limited to, injunctive relief or specific performance; provided however that the authority to award any remedy is subject to whatever limitations, if any, that exist in the applicable law on such remedies. The arbitrator shall issue a decision or award in writing, stating the essential findings of fact and conclusions of law. The arbitrator shall have no jurisdiction to issue any award contrary to or inconsistent with the law. Following the evidentiary portion of an arbitration hearing, both parties shall have the right to prepare and file with the arbitrator a post-hearing brief not to exceed twenty-five (25) pages in length. Any such brief shall be served on the arbitrator and the other party within thirty (30) days of the close of the evidentiary portion of the hearing, unless the parties agree to some other time period. Should any part of this arbitration provision be declared by a court of competent jurisdiction to be invalid, unlawful or otherwise unenforceable, the remaining part shall not be affected thereby and the parties shall arbitrate their dispute without reference to or reliance upon the invalid, unlawful or unenforceable part of the Agreement.

The parties shall share equally all initial costs of arbitration. However, the prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration and in association with the enforcement of said judgment. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in

any court having jurisdiction thereof. The arbitrator (if permitted under applicable law) or such court may issue a writ of execution to enforce the arbitrator's decision.

- (d) Taxes. Customer shall be responsible for the payment of all applicable taxes in connection with the license of the Software and provision of other products and services as provided in this Agreement, except for any tax based on Perceptive Software's net income. (e) Severability. Any invalidity, in whole or in part, of any provision of this Agreement will not affect the validity of any other of its provisions.
- (f) Notices. Except as otherwise may be provided in this Agreement, any notices, demands or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given: (i) if delivered personally upon receipt thereof; (ii) if sent by U.S. certified mail, postage prepaid, return receipt requested, five (5) days after deposit in the mail; (iii) if delivered to a recognized overnight courier or delivery service which provides international service, fees prepaid, upon receipt; or (iv) if delivered by e-mail by any method that positively establishes receipt of the e-mail by the recipient, upon receipt; in each case, to the address of the parties first set forth above, or to such other address as a party may provide to the other in the manner provided herein.
- (g) Cumulation of Remedies. All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- (ih) Waiver. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented to such term or provision. A waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement, nor shall any waiver constitute a waiver of any default previously or later occurring.
- (i) Assignment. Each party represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party. Neither party shall assign or subcontract all or any part of this Agreement or any interest herein, including, without limitation, any assignment or transfer incident to a party's merger or consolidation with another entity or assignment or transfer by operation of law, without the other party's prior written consent; provided, however, that either party, upon written notice to the other party, may assign this Agreement or any right or obligation hereunder to any person or entity acquiring all or substantially all of its assets.. This Agreement shall inure to the benefit of and be binding upon any permitted successor or assign of the parties.
- (j) Continuing Obligations. The terms and conditions of the EULA and Sections 1, 7, 9, 11(e) and 12 of this Agreement shall survive any termination or expiration of this Agreement and shall be fully enforceable thereafter.
- (k) Relationship of the Parties. Nothing contained in this Agreement will be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. Neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied on behalf of the other party.
- (l) Force Majeure. The parties shall be excused from performing any obligation or undertaking provided in this Agreement in the event and/or so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, actions of the elements, war invasion, terrorism, insurrection, riot, mob violence, sabotage, inability to procure equipment, facilities, materials or supplies in the open market, failure of power, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of government or civil or military authorities, or any other cause, whether similar or dissimilar to the foregoing, which is not within the reasonable control of the parties; provided that the party failing to perform in any such event shall promptly resume or

remedy, as the case may be, the performance of its obligations hereunder as soon as practicable.

- (m) Source Code Escrow. Perceptive Software has established Software Escrow Agreements with NCC Group, Inc. and NCC Escrow International Limited (together the "Escrow Agreement"), and has deposited a copy of the Escrow Material (as described in the Escrow Agreement) with NCC Group, Inc. and NCC Escrow International Limited. Upon execution of this Agreement and Customer's payment of the annual fees for Software Maintenance and Support as provided in Section 11 of this Agreement, Customer may execute the Escrow Agreement directly with NCC Group, Inc. or NCC Escrow International Limited and thereby become a beneficiary thereof and thereunder. Customer shall be solely responsible for all fees and other costs associated with its execution of, becoming a party to and remaining a party to the Escrow Agreement.

Any other terms of the Escrow Agreement to the contrary notwithstanding, (i) Customer's right to become and/or remain a party to the Escrow Agreement shall terminate at any time Customer fails to timely pay the annual fee for any renewal term of the Software Maintenance and Support, and (ii) Customer's rights under this Section 12(l) shall terminate upon Customer's dissolution, liquidation or other cessation of business. Perceptive Software's consent to any assignment by Customer of this Agreement or any rights to the Software under the EULA shall not permit the assignee of such rights to become a party to the Escrow Agreement absent the separate express prior written consent of Perceptive Software to an assignment of the Customer's rights under the Escrow Agreement.

Any other terms of the Escrow Agreement to the contrary notwithstanding, Customer will hold and use any Escrow Material it may acquire under the Escrow Agreement subject to the terms and conditions of this Agreement and the EULA, and upon Customer's failure to timely pay the annual fee for any renewal term of the Software Maintenance and Support (or to Perceptive Software's successors in interest) or upon termination of this Agreement or the EULA, Customer's right to hold and use the Escrow Material will terminate and Customer shall immediately discontinue all use of the Escrow Material, return all originals and copies of the Escrow Material and media containing the Escrow Material to Perceptive Software (or to Perceptive Software's successors in interest), including any extracts there from, and permanently remove and render inaccessible the Escrow Material from Customer's system.

- (n) Publicity. Neither party, without the other party's prior written consent, will make any news release, public announcement, denial or confirmation of this Agreement or its terms or conditions. The parties further agree not to make any statements or take or participate in any other action which will or may slander, defame, or disparage the other or the other's trademarks and/or service marks.
- (o) Costs of Litigation. If any action is brought by either party to this Agreement against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees and costs and expenses of investigation, arbitration and/or litigation.
- (p) Amendments. No amendment, modification or waiver of this Agreement or any provision hereof shall be effective unless it is in writing and signed by a duly authorized representative of each party.
- (q) Headings. The headings and captions of the sections and paragraphs of this Agreement are for convenience of reference only, and are not to be used to modify or interpret this Agreement.
- (r) Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one single agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

**PERCEPTIVE SOFTWARE, LLC**

**PERALTA COMMUNITY COLLEGE DISTRICT**

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Name Jose M. Ortiz

Title \_\_\_\_\_

Title Chancellor

Date \_\_\_\_\_

Date \_\_\_\_\_

**PERCEPTIVE SOFTWARE, LLC**

**CUSTOMER TECHNICAL CONTACT**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Address \_\_\_\_\_

City, ST  
ZIP \_\_\_\_\_

Telephone \_\_\_\_\_

E-mail \_\_\_\_\_

Approved as to Form:

By: [Signature]

Date: 2/27/13

Office of the General Counsel  
Peralta Community College District

**PURCHASE ORDER NOTICE**

RPG **YES**, a PO is required by the Customer. \*

(Initials)

Initial  
Purchase  
Order #: \_\_\_\_\_

**NO**, a PO is NOT required by the Customer.

(Initials)

*\* If a PO is required for each purchase hereunder the **PO Number for the initial purchase** must be inserted upon Customer's execution of this instrument. Subsequent purchases made by Customer shall also be accompanied by a PO Number at the time of contract. Any terms and conditions appearing in any Customer Purchase Order shall have no effect unless agreed to in writing by both parties hereof.*

**Attachments:**

Master Agreement Schedule A: Pricing Terms and Conditions

Master Agreement Schedule B: Software Maintenance and Support Agreement

**MASTER AGREEMENT SCHEDULE A: PRICING, TERMS AND CONDITIONS****PRICING**

Qty	Product Description	Unit Price	Extended Price
60	ImageNow Client / WebNow Combo	\$2,700.00	\$162,000.00
1	ImageNow Conversion Module	\$3,000.00	\$3,000.00
1	ImageNow Enterprise Server	\$15,500.00	\$15,500.00
1	ImageNow Mail Agent	\$2,000.00	\$2,000.00
1	Brainware Distiller OCR	\$80,740.00	\$80,740.00
1	Content Server	\$8,000.00	\$8,000.00
1	Recognition Agent	\$10,000.00	\$10,000.00
1	Business Insight Server Bundle	\$6,500.00	\$6,500.00
4	CaptureNow Adrenaline	\$5,980.00	\$5,980.00
1	Retention Policy Manager	\$27,000.00	\$27,000.00
1	eForms Package – Web Services	\$27,500.00	\$27,500.00
60	ImageNow Client / WebNow Combo Quantity Discount	(\$540.00)	(\$32,400.00)
<b>SUBTOTAL OF LICENSE FEES:</b>			<b>\$315,820.00</b>
ImageNow Client / WebNow Combo Special Additional Discount			(\$32,400.00)
<b>ADDITIONAL DISCOUNT APPLIED:</b>			<b>(\$50,740.00)</b>
<b>SUBTOTAL OF LICENSE FEES:</b>			<b>\$232,680.00</b>
<i>*Software is invoiced upon delivery</i>			
<i>*SMSA is 20% of published licenses (will be co-terminus with existing annual agreement)</i>			

Annual Support and Maintenance: \$53,016.00 annual.

[Please remove professional services pricing; it's addressed in the PSA.]

## PERCEPTIVE SOFTWARE TERMS AND CONDITIONS

All amounts payable within 60 days after invoice date; interest shall accrue on undisputed invoiced amounts not paid within such period at the rate of 12% per annum.

### Software License

- Perceptive Software ECM functionality is licensed as provided in this document.
- ImageNow Product Suite End-User License Agreement ([https://www.perceptivesoftware.com/customer-portal/eula\\_psi](https://www.perceptivesoftware.com/customer-portal/eula_psi)) terms and conditions are accepted upon Customer loading the Software, no signature required.
- No down payment is required.
- Software license fees invoiced upon execution of this Agreement, and Software and license keys are available for download upon such invoicing.
- Additional Software licenses purchased by Customer following the Effective Date will be priced as listed in Perceptive Software's then-current, published Price Book, unless otherwise agreed to in writing by the parties.
- Terms are net 30.

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### Software Maintenance & Support

- Software Maintenance & Support are provided as illustrated in the Perceptive Software Maintenance & Support Agreement.
- Software Maintenance & Support are activated and available immediately upon purchase and are invoiced along with software.
- Terms are net 60.
- Software Maintenance & Support may be renewed annually by Customer for an annual fee equal to 20% of the price of the Software as provided in Perceptive Software's then-current, published Price Book; provided, however, that Perceptive Software may increase such renewal percentage rate from time to time upon notice to Customer in the Software Maintenance & Support renewal and invoice for the annual fee. [HB Note: The District should understand this renewal pricing.]
- Out-of-Scope product support services are provided at \$200 per hour.

## MASTER AGREEMENT SCHEDULE B: SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

### 1. Software Maintenance and Support

Perceptive Software Maintenance and Support customers have access to:

- a) Support for published and released standard solution functionality.
- b) Toll-free access to Perceptive Software Product Support, 24 hours a day, 7 days a week, 365 days a year, excluding U.S. federal holidays, with response to calls within two (2) hours.
- c) Comprehensive support ticket documentation, including the Customer's point of contact, time of incident, detailed issue description, priority, product version confirmation, name of the Product Support engineer, all communication (including calls, e-mail and web chats), resolution date and a complete resolution description available real-time through secure and customer-unique access on the Perceptive Software Customer Portal (<http://support.perceptivesoftware.com>).
- d) FAQ and Knowledgebase facilities available via the Perceptive Software Customer Portal for self-directed support.
- e) Periodic upgrades, enhancements, updates and standard version releases of the Software providing corrections to defects, minor bugs, and, at the discretion of Perceptive Software, enhancements providing new functionality to the Software available for download from the downloads area of the Perceptive Software Customer Portal.
- f) Notification of any new upgrades, enhancements, updates and releases.

### 2. Perceptive Software Customer Portal

The Perceptive Software Customer Portal permits Customers to:

- a) Interact with Perceptive Software Product Support engineers via multiple, interactive channels including chat and screen sharing.
- b) Download software.
- c) Access product documentation.
- d) Search technical knowledgebase.
- e) Review training course schedules.
- f) Review course outlines and exercise guides.
- g) Participate in the Perceptive Software User Community forum.
- h) Subscribe to the Perceptive Software newsletter and product notifications.

Customers require a valid user ID and password to access the Perceptive Software Customer Portal. E-mail Product Support at [support@perceptivesoftware.com](mailto:support@perceptivesoftware.com), or reach Product Support by telephone at (800) 941-7460, option 2.

### 3. Customer Responsibilities

In addition to the Customer's responsibilities as set forth in the Master Agreement, the Customer shall be solely responsible, at the Customer's expense, to:

- a) Notify Perceptive Software immediately of any support or maintenance issues.
- b) Train users on use of the Software.
- c) Familiarize itself with and leverage the use of the Perceptive Software Customer Portal.
- d) Apply all upgrades, enhancements and new releases provided through support program in a timely manner.
- e) Designate a key contact for maintenance and support communications.
- f) Provide Perceptive Software with timely access, remote and/or on site, to Customer's facilities, including Customer's servers upon which the Software runs, interfaces with, and/or relies upon, including but not limited to the database server with which the Software interfaces.
- g) Provide Perceptive Software timely return of requested troubleshooting data in order to perform root cause analysis for support issues being experienced with the Software.

- h) Cause Customer's application environment to meet and comply with the specifications and requirements set forth in Perceptive Software technical specifications, and otherwise assume responsibility for all standard IT/IS infrastructure requirements, including the purchase, maintenance, administration and service of hardware and software upon which the Software runs, interfaces with, and/or relies upon, up to and including as appropriate:
- i. An efficient and functioning computer network which meets or exceeds the functional specifications required for operation of the Software.
  - ii. Appropriate computer equipment, Server and workstations, upon which the Software runs, interfaces with, and/or relies upon in proper working condition.
  - iii. A database with which the Software interfaces, updated per manufacturer's recommendations and properly tuned and maintained for acceptable performance.
  - iv. A firewall appropriately configured to allow all Software related communications to traverse the network per the functional specifications required for operation of the Software.
  - v. A web application server upon which the Software runs, interfaces with, and/or relies upon in proper working condition in the event that Customer purchases web client Licenses or "combo" full/web client Licenses.
  - vi. A messaging server and software such as Microsoft Exchange, upon which the Software interfaces with, and/or relies upon in proper working condition.

If Perceptive Software is required to provide services to Customer to remedy any Software support or performance issues caused by or resulting from Customer's failure to comply with Customer's responsibilities as provided above or in Section 6 of this Agreement, then in each such event Perceptive Software shall invoice Customer for all fees at Perceptive Software's then-current hourly rate for Professional Services for the services provided by Perceptive Software and for all reimbursable expenses incurred by Perceptive Software in providing such services, and Customer shall pay the invoiced amount within thirty (30) days following receipt of such invoice.

#### **4. Onsite Support.**

If Perceptive Software and Customer agree that onsite services are necessary to remedy any Software support or performance issue, then in each such event Perceptive Software shall invoice Customer for reimbursable expenses incurred by Perceptive Software in providing such services and Customer shall pay the invoiced amount within thirty (30) days following receipt of such invoice.