

# PERCEPTIVE SOFTWARE MASTER AGREEMENT

THIS AGREEMENT (the "Agreement") is made this 4th day of April, 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 Kansas State University, with principle offices at 102 Anderson Hall, Manhattan, KS 66506 ("Customer").

WHEREAS, Customer has acquired and in the future may desire to acquire additional perpetual, non-exclusive and non-transferable licenses for the use of Perceptive Software's 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 2 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;

WHEREAS, Customer desires to purchase certain professional services from Perceptive Software on the terms and conditions as set forth in this 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. State of Kansas Contractual Provisions.** The provisions found in the Contractual Provisions Attachment (Attachment 1), which is attached to this Agreement, are hereby incorporated by reference and made a part hereof. To the extent that any of the provisions of Attachment 1 conflict with the terms of this Agreement or the EULA, the provisions of Attachment 1 will prevail.
- 2. License.** Customer, through its purchase of the Software whenever made, is granted perpetual, non-exclusive and non-transferable licenses to use the Software upon the terms and conditions of the ImageNow Product Suite End-User License Agreement as included with this Agreement as Attachment 2; 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.
- 3. 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 purchasing document. 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 has a value and quality separate from the Software, any of which Perceptive Software may price, market and offer separately from the Software.
- 4. Professional Services.** As used in this Agreement, "Professional Services" shall mean technical consulting services for project management, analysis, design, implementation and train-the-trainer services related to the Software. "Advanced Professional Services" shall mean efforts surrounding customization components to the Software such as iScripts, eForms and Data Capture and for Technical Architect services such as health checks and enterprise planning and design. Perceptive Software shall provide Customer the Professional Services and Advanced Professional Services subject to the terms and conditions of this Agreement. In consideration for Perceptive Software's provision of the Professional

Services, Customer shall pay to Perceptive Software the fees as described in the purchasing document, such fees which shall be payable according to the payment terms described in Schedule A. If Customer fails to timely pay any invoice for Professional Services, Perceptive Software shall have the right, in addition to any other remedies it may have under this Agreement or at law, to suspend its performance of any further Professional Services without any liability to Customer for any damages suffered by Customer arising from or related to such suspension of performance.

5. **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. 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 fees for services provided by Perceptive Software at Perceptive Software's then-current rates for such services, together with all 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.

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 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 Technical Specifications 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 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 this 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 Professional Services and the delivery of the Software Maintenance and Support as contemplated in this 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, including the Software, 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; provided, however, that upon implementation of the Software Customer shall be responsible for restricting access to the Software and maintaining the confidentiality of all information and data processed by or used in connection with the Software. 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 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 seek 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 and Professional Services to Customer and that the Software Maintenance and Support and the Professional Services 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 or Professional Services, Customer shall promptly (and in any event within thirty (30) days following the completion of the Software Maintenance and Support or Professional Services 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 or Professional Services to be raised to the warranted level, and for identifiable defects caused by prior substandard performance to be cured.

Perceptive Software further warrants that to its knowledge no information, products or services provided, disclosed or made available to Customer by Perceptive Software infringes any patent, copyright, trademark, trade secret, confidentiality or other proprietary rights of any third party.

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

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 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; provided, however, that the foregoing indemnification shall not extend to any such claims to the extent arising out of third party software licensed by Perceptive Software and sublicensed to Customer.
- (b) Indemnification by Customer. Subject to Perceptive Software's compliance with Section 9(c) below, Customer agrees to hold harmless, indemnify and, at Perceptive Software's request, defend Perceptive Software, its affiliates and their respective officers, directors, agents and employees (collectively, "Perceptive Software Parties") from and against any and all claims (including liabilities, damages, losses) to the extent arising out of any action or proceeding brought by a third party against any one or more of the Perceptive Software Parties related to any act or omission by Customer which is a breach by Customer of any of its agreements or obligations under this Agreement or the EULA.
- (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.** Any other terms of this Agreement or the EULA notwithstanding, 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 Perceptive Software's breach of any representations or warranties in this Agreement or the EULA concerning Perceptive Software's rights to use, possess or license the Software or concerning the non-infringement of the Software. 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; (b) Customer's combination, operation or use of the Software with any software, hardware, product, or apparatus installed in the Customer's application environment following the installation of the Software; or (c) Customer's use of any third party software other than in accordance with the license agreements for such software, whether or not such license agreements are provided to Perceptive Software. With the exception of Perceptive Software's and Customer's respective indemnification obligations under Section 9 above, 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.

**11. Term and Termination.**

- (a) Initial Term and Renewal Terms. The initial term of this Agreement shall be twelve (12) months from the Effective Date as first written above and shall automatically renew for one (1) additional term of twelve (12) months unless Customer notifies Perceptive Software in writing of its intent not to renew thirty (30) days prior to the expiration of the initial term. After the initial term and renewal term, this Agreement may renew by agreement of the parties.
- (b) Initial Term and Renewal Term – Software Maintenance and Support. 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 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 previous major version 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, with the exception of 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 Contractual Provisions in Attachment 1 and 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 construed and governed in accordance with the internal laws of the State of Kansas, without regard to its rules of conflict or choice of law provisions that would require the application of the laws of any other jurisdiction.

- (c) (intentionally blank)
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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 Perceptive Software, upon written notice to Customer, may assign this Agreement or any right or obligation hereunder to any person or entity acquiring all or substantially all of the assets of Perceptive Software and continuing the business of Perceptive Software. This Agreement shall inure to the benefit of and be binding upon any permitted successor or assign of the parties.
- (i) 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.
- (j) 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.
- (k) 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.



- (l) 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.

- (m) 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.
- (n) \_(intentionally blank)
- (o) 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.
- (p) 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.
- (q) 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

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

## KANSAS STATE UNIVERSITY

Signature Carla K Bishop  
Name CARLA K. BISHOP  
Title Dir of Purchasing  
Date 4 APRIL 2013

## PERCEPTIVE SOFTWARE, LLC

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Date \_\_\_\_\_

## CUSTOMER TECHNICAL CONTACT

Name RHIANNON ENGLERT  
Title SYSTEMS SPECIALIST  
Address INFORMATION SYSTEMS OFFICE  
City, ST 2323 ANDERSON AVE, STE 215  
ZIP MANHATTAN, KS 66502  
Telephone 785-532-4776  
E-mail renglert@k-state.edu

## PURCHASE ORDER NOTICE

dr YES, a PO is required by the Customer. \*  
(Initials)

Initial  
Purchase  
Order #: 40336

\_\_\_\_\_  
(Initials) NO, a PO is NOT required by the Customer.

\* 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:**

Schedule A: Pricing Terms and Conditions  
Schedule B: Software Maintenance and Support Agreement  
Attachment 1: DA-146a – Contractual Provisions Attachment  
Attachment 2: Perceptive Software End User License Agreement (EULA)

## SCHEDULE A: PRICING, TERMS AND CONDITIONS

All fees for Licenses, Professional Services, Advanced Professional Services, Software Maintenance and Support, out-of-scope services, training and hardware, if any, are payable within thirty (30) calendar days after invoice date, and interest shall accrue on invoiced amounts not paid within such thirty (30) calendar day period at the greater of the rate of 12% per annum or the highest annual rate permitted by applicable law.

### Software License

- Perceptive Software ECM functionality is licensed as provided in the purchasing document.
- ImageNow Product Suite End-User License Agreement terms and conditions are accepted upon Customer loading the Software, no signature required.
- Software License fees are 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.
- Customer's rights with respect to any third party software licenses sold by Perceptive Software to Customer shall be limited to those rights granted by the original manufacturer of such third party software under the license agreement for such third party software, and Perceptive Software makes no representations or warranties concerning such third party software, including any warranties of non-infringement. Copies of such third party licenses will be provided to Customer upon Customer's request.

### Professional Services

- Professional Services are provided on an hourly-price basis for the project scope as described in the purchasing document or statement of work.
- If: (a) the commencement of the Professional Services described above are delayed beyond twelve (12) months from the agreed upon start date because of Customer's request or Customer's failure to meet its responsibilities as provided in this Agreement, (b) following the commencement of the Professional Services described above Customer suspends implementation of the Software for six (6) consecutive months, or (c) the implementation of the Software is not completed within twenty-four (24) months of the agreed upon start date because of Customer's request or Customer's failure to meet its responsibilities as provided in this document, whether or not the Professional Services described above are commenced within such period; then the implementation of the Software will be closed and upon reactivation of such implementation, Perceptive Software may reset the rates for such Professional Services to Perceptive Software's then-current Professional Services rates on the date such implementation resumes.
- Professional Services are invoiced as incurred.
- Travel and living expenses are invoiced as incurred. Reimbursement for travel costs may not exceed those available to Kansas State University employees as set forth in the Reimbursable Travel Expenses and Forms Policy, Number 6410, available at: <http://www.k-state.edu/policies/ppm/6400/6410.html>.
- Professional Services outside the scope illustrated in the purchasing document or statement of work, including, without limitation, services for project management, analysis, design, implementation and train-the-trainer services, are provided at up to \$225 per hour such rate which Perceptive Software may increase from time to time. The Professional Services and rate shall be as provided in a project change request or quote signed by Perceptive Software and Customer prior to the commencement of such Professional Services.
- Advanced Professional Services outside the scope illustrated in the purchasing document or statement of work, including, without limitation, services for customization components to the Software, such as iScripts, eForms and Data Capture, and for Technical Architect services, such as health checks, enterprise planning and design, are provided at \$250 per hour, such rate which Perceptive Software may increase from time to time. The Advanced Professional Services and rate shall be as provided in a project change request or quote signed by Perceptive Software and Customer prior to the



commencement of such Advanced Professional Services.

- Customer's execution and delivery of the purchasing document or statement of work allows Perceptive Software to commit project resources.

### **Software Maintenance and Support**

- Software Maintenance and Support is provided as illustrated in the Perceptive Software Maintenance and Support Agreement Schedule B.
- First year of Software Maintenance and Support is activated and available immediately upon purchase and is invoiced along with software.
- Software Maintenance and Support renewals shall be 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 prior notice to Customer.
- Product support services outside the scope provided in the Software Maintenance and Support Agreement are provided at then-current price book hourly rate, such rate which Perceptive Software may increase from time to time.
- Software Maintenance and Support may not extend to any third party software licenses re-sold by Perceptive Software to Customer.

### **Hardware**

- The representations and warranties with respect to any hardware ("Hardware") 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, and Perceptive Software shall not have any support or maintenance obligations with respect to any such Hardware or any liability for any loss or damage arising from the failure of such Hardware.
- All rights as well as the risk of loss pertaining to the Hardware shall transfer to the Customer upon shipment of the hardware by Perceptive Software or any of its affiliates or agents, or upon pick-up of the Hardware by the Customer. If shipment or pick-up of the Hardware is delayed due to the fault of the Customer all rights and risks pertaining to the Hardware shall transfer to the Customer as of the beginning of such delay, however no later than the date on which the Customer defaults on acceptance.

## **SCHEDULE B: SOFTWARE MAINTENANCE AND SUPPORT**

### **1. Software Maintenance and Support**

Perceptive Software Maintenance and Support customers have access to:

- a) Support for published and released standard Software functionality as defined by Perceptive Software End of Life Policy.
- b) Access to Perceptive Software Product Support, twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, with engagement within two (2) hours.
- c) Perceptive Software Product Support available to any Customer allowed licensed user.
- d) Support for an unlimited number of incidents per year.
- e) Comprehensive online support, including product documentation, Knowledgebase Web incident submissions, product downloads, ability to interact with Perceptive Software Product Support via interactive channels including web chat and screen sharing, access to Perceptive Software User Community forum, ability to review and register for training courses and more, are available real-time through secure and customer-unique access. Customers require a valid user ID and password to access online support.
- f) Periodic standard version releases and Software patches of the Software providing corrections to defects, minor bugs, and, at the discretion of Perceptive Software, enhancements providing new functionality to the Software, as defined in Perceptive Software's End of Life Policy.
- g) Notification of any version releases and Software patches.

### **2. Customer Responsibilities**

In addition to the Customer's responsibilities as set forth in the Agreement between Perceptive Software and Customer for the license of the Software, 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) Be familiar with and leverage the use of Perceptive Software online support.
- d) Apply all new version releases and Software patches in a timely manner to ensure conformance with Perceptive Software's End of Life Policy.
- 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, with which the Software interfaces, and/or upon which the Software relies, 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's 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, with which the Software interfaces, and/or upon which the Software relies, 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 in proper working condition.
- iii. Maintain a virus free network, computer, server and workstation environment in which the Software runs, interfaces with, and/or relies upon.
- iv. A database with which the Software interfaces, updated per manufacturer's recommendations and properly tuned and maintained for acceptable performance.
- v. A firewall appropriately configured to allow all Software related communications to traverse the network per the functional specifications required for operation of the Software.
- vi. A web application server in proper working condition, in the event that Customer purchases web client Licenses or "combo" full/web client Licenses.
- vii. A messaging server and software in proper working condition, such as Microsoft Exchange.

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 the Agreement between Perceptive Software and Customer for the license of the Software, then in each such event Perceptive Software shall invoice Customer for all fees at Perceptive Software's then-current hourly rate 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 per the payment terms provided in the agreement between Perceptive Software and Customer for the licenses of the Software.

### **3. 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 per the payment terms provided in the agreement between Perceptive Software and customer for the license of the Software.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 4 day of April, 2013.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
  
The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.



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**(a) Per-seat Client Licensing.** If you purchase client seat licenses of the Software, the client component of the Software may be used only on computers that you own, lease or otherwise control (or in the event of the inoperability of a computer, on your backup computer only until such operability is restored) equal to the number of client seat licenses of the Software that you have purchased. The licensed client component of the Software may be used only with the licensed server component of the Software. You may not use the Software on any additional computers or in a local area network (LAN) or other network, either in a multi-launch or remote sharing environment, without purchasing additional license rights.

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**(f) Subscription Licensing.** If you purchase a subscription license, your rights to install and use the Software shall not be perpetual as otherwise provided in Section 1 of this License Agreement, but rather shall be limited to the term of your subscription and shall be subject to the terms of any other agreement between you and Licensor concerning the Software. Your rights shall also depend upon your timely payment to Licensor of all subscription fees due for each subscription license. If you fail to timely pay your subscription fees, this failure will constitute a breach of a material term of this License Agreement and will permit Licensor to terminate your rights and this License Agreement. If Licensor also provides you with the central Software application environment and associated infrastructure for your use of the Software, you shall be entitled to possession only of the licensed client component of the Software. This License Agreement and your limited license to use the Software will expire at the end of your subscription term, unless this License Agreement is (a) renewed or (b) terminated prior to the end of the subscription term.

**(g) Server Licensing.** Use of the server component of the Software, including all data structures, data elements, and other data types, is restricted to a single computer that you own, lease, or otherwise control (or in the event of the inoperability of a computer, on your backup computer only until such operability is restored), unless you purchase additional server licenses. In addition, any such licensed server components of the Software may be used only with the licensed client components of the Software.

**(h) Agent Licensing.** The licensed agent components of the Software may be used only on computers you own, lease, or otherwise control (or in the event of the inoperability of a computer, on your backup computer only until such operability is restored) and shall not exceed the number of agent licenses of the Software that you have purchased. In addition, the licensed agent components of the Software may be used only with the licensed server component of the Software. You may not use the licensed agent components of the Software on any additional computers or in a LAN or other network, either in a multi-launch or remote sharing environment, without purchasing additional license rights.

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