

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

23-36

SAP Number

Innovation and Technology

Department Contract Representative Amanda Johnson
Telephone Number 388-0677

Contractor Dynamsoft Corporation
Contractor Representative Michael Daw
Telephone Number 604-605-5491
Contract Term 1/24/2023, renewing for additional three-year periods until terminated.

Original Contract Amount Non-financial
Amendment Amount _____
Total Contract Amount _____
Cost Center 1200104042

Briefly describe the general nature of the contract:

Non-financial Customer Sales License Agreement, including non-standard terms, with Dynamsoft Corporation for web-based document scanning software, in purchase amounts as authorized by County Policy for the period beginning January 24, 2023, and automatically renewing for additional three-year periods until terminated by either party.

OR COUNTY USE ONLY

Approved as to Legal Form

Bonnie Uphold
Bonnie Uphold, Supervising Deputy County Counsel

Date 1-13-2023

Reviewed for Contract Compliance

▶ _____

Date _____

Reviewed/Approved by Department

▶ _____

Date _____

**DYNAMSOFT CORPORATION
CUSTOMER SALES LICENSE AGREEMENT**

This CUSTOMER Sales License Agreement ("**Agreement**") is made as of this 24 day of January, 2023 (the "Effective Date") between Dynamsoft Corporation ("**Dynamsoft**"), a Canadian Corporation, located at #668 - 1771 Robson Street, Vancouver, B.C., V6G 1C9, Canada (Email: sales@dynamsoft.com), and San Bernardino County ("**CUSTOMER**"), a political subdivision organized and existing under the constitution and laws of the State of California, with an office at 670 E Gilbert St, San Bernardino, CA 92415.

1. DEFINITIONS

1.1 In addition to any terms defined elsewhere in this Agreement, capitalized terms used in this Agreement are defined in Exhibit A.

2. GRANT OF RIGHTS

2.1 **Grant of License.** Subject to the terms of this Agreement, Dynamsoft hereby grants CUSTOMER a non-exclusive, non-transferable, worldwide (except where prohibited by law), limited license to use the Dynamsoft Products only in combination with the CUSTOMER Products and only for CUSTOMER'S internal use for the Term (the "License").

2.2 **Bundled Products.** The scope of the License granted CUSTOMER hereunder strictly limits CUSTOMER's use of the Bundled Products to its own internal use and CUSTOMER may not sub-license, distribute, resell or otherwise commercialize the Bundled Products or the Dynamsoft Products as standalone products with any third parties whatsoever.

3. GENERAL OBLIGATIONS OF CUSTOMER

3.1 **Dynamsoft Trademarks.** Subject to the terms of this Agreement, Dynamsoft hereby grants CUSTOMER a non-exclusive, non-transferable, worldwide (except where prohibited by law), limited license to use Dynamsoft's trademarks (registered or unregistered), service marks, trade names, service names and other logos of Dynamsoft collectively (the "Marks") in CUSTOMER's marketing, advertising and collateral materials, and on screen shots and the "help-about" box for the Bundled Products for the Term. CUSTOMER may use the Marks solely to identify the Dynamsoft Products or identify itself as a customer of Dynamsoft Products. CUSTOMER shall not remove, delete or in any manner alter the Marks or other intellectual property rights notices of Dynamsoft and Dynamsoft's suppliers, if any, appearing on the Dynamsoft Products as delivered to CUSTOMER. As a condition of the License granted to CUSTOMER hereunder, CUSTOMER shall reproduce and display such Marks and notices on each copy of the Dynamsoft Products. CUSTOMER may not re-brand or private-label the Dynamsoft Products except that: (a) CUSTOMER may market the Bundled Products under its own marks, and (b) if CUSTOMER adopts and uses its own marks to identify the Bundled Products, it shall state in the documentation or "help-about" box (or other similar location where third-party technology is identified) that the Dynamsoft Products are the technology of Dynamsoft. All use of the Marks shall be subject to Dynamsoft's then-current Mark usage guidelines. Upon Dynamsoft's request, CUSTOMER's advertising, marketing or promotional materials in which a Mark is used shall be submitted to Dynamsoft for its prior written approval, which approval shall not be unreasonably withheld.

3.2 **CUSTOMER's Business Practices.** CUSTOMER shall (a) comply with all applicable laws and regulations, including all import and export laws and all anti-bribery laws, (b) avoid deceptive, misleading or unethical practices, and (c) conduct business in a manner that reflects favorably at all times on the Dynamsoft Products and Dynamsoft's goodwill and reputation, and (d) promptly notify Dynamsoft of any complaint or adverse claim about the Dynamsoft Products of which CUSTOMER becomes aware.

4. PAYMENT

4.1 **Fees and Payment Terms.** CUSTOMER shall order the Dynamsoft Products according to Dynamsoft's standard procedures and shall pay Dynamsoft the fees set forth in Exhibit C. Any amounts payable under this Agreement and invoiced by Dynamsoft shall be due within thirty (30) days of the invoice date. Amounts shall be paid in U.S. dollars. Payments made under this Agreement after their due date will incur interest at a rate equal to one and one-half percent (1.5%) per month (i.e., 18% per annum) or the highest rate permitted by applicable law, whichever is less.

4.2 **Taxes.** All amounts payable hereunder are exclusive of all sales, use, value-added, withholding and other taxes and duties.

5. REPORTS AND AUDITS

5.1 **Reports.** If applicable, within twenty (20) days after the close of each quarter CUSTOMER will deliver to Dynamsoft a report which will provide all information reasonably required by Dynamsoft for computation and/or confirmation of the fees, if any, due or credited to Dynamsoft for such month, including without limitation: the number and type of licenses for each Dynamsoft Product.

5.2 **Audits.** During the Term and for three (3) years thereafter, CUSTOMER will maintain relevant records regarding its use of the Dynamsoft Products to each of its customers. Upon reasonable notice to CUSTOMER, Dynamsoft may audit, at Dynamsoft's expense, CUSTOMER's records to determine CUSTOMER's compliance hereunder. All such records will be deemed CUSTOMER's Confidential Information and subject to Section 8.5. In the event any such audit reveals that CUSTOMER has underpaid Dynamsoft by an amount greater than five percent (5%) of the amounts due Dynamsoft in the period being audited, then, in addition to such other remedies as Dynamsoft may have, CUSTOMER shall pay or reimburse to Dynamsoft the cost of the audit.

6. SUPPORT AND MAINTENANCE

6.1 **Support.** Dynamsoft will provide CUSTOMER with access to technical support services for the supported Dynamsoft Products as described in Exhibit C during the Term.

7. WARRANTIES AND DISCLAIMER

- 7.1 **Limited Warranties.** For thirty (30) days following the delivery of the production key code to CUSTOMER, (the "**Warranty Period**"), Dynamsoft warrants that the Dynamsoft Products, when used in the specified operating environment, will perform substantially in accordance with the associated documentation. In the event the Dynamsoft Products fail to conform to such warranty, as CUSTOMER's sole and exclusive remedy for such failure and Dynamsoft's sole and exclusive liability to CUSTOMER, Dynamsoft will, at its expense, either (a) repair or replace such Dynamsoft Products, or (b) refund the fees paid by CUSTOMER for the nonconforming item, provided in each case that CUSTOMER provides Dynamsoft with written notice of the non-conformity within the Warranty Period in sufficient detail that Dynamsoft can reproduce the defect and, if requested by Dynamsoft, the nonconforming item is destroyed.
- 7.2 **DISCLAIMER.** EXCEPT AS SET FORTH IN SECTION 7.1 ABOVE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DYNAMSOFT AND ITS SUPPLIERS MAKE NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, WITH RESPECT TO THE DYNAMSOFT PRODUCTS AND ANY OTHER MATERIALS OR SERVICES COVERED BY OR FURNISHED PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR CONDITION (A) OF MERCHANTABILITY, (B) OF MERCHANTABILITY OR SATISFACTORY QUALITY, (C) OF FITNESS FOR A PARTICULAR PURPOSE, (D) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, OR (E) OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS. DYNAMSOFT DOES NOT WARRANT THAT USE OF THE DYNAMSOFT PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS WILL BE CORRECTED.

8. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 8.1 **Ownership.** Except for the rights expressly granted CUSTOMER under Sections 2.1 and 2.2 under this Agreement, Dynamsoft and its licensors reserve all rights, title and interests in, and retain all ownership and intellectual property rights to, the Marks and the Dynamsoft Products and documentation.
- 8.2 **Trademarks.** Dynamsoft shall have the sole and exclusive right to enforce the Marks. CUSTOMER shall reasonably cooperate with Dynamsoft, at Dynamsoft's expense, in the enforcement of the Marks, and shall promptly advise Dynamsoft of the use of any mark infringing any of the Marks of which it becomes aware. Except as specifically provided in Section 9.2, Dynamsoft shall not be liable to CUSTOMER for any loss or damage suffered by CUSTOMER as a result of the use of the Marks, any litigation or proceeding involving the Marks, or any failure by Dynamsoft to protect or defend the Marks.
- 8.3 **Modifications.** CUSTOMER shall not copy the Dynamsoft Products except as expressly permitted in this Agreement. CUSTOMER shall not modify, adapt, enhance, localize, translate, or make derivative works of the Dynamsoft Products, except as necessary to configure and customize the Dynamsoft Products using the menus, options and tools provided for such purposes and contained in the Dynamsoft Products. Any and all copies, modifications, adaptations, enhancements, localizations, translations and derivative works of the Dynamsoft Products ("**Modifications**") are the sole property of Dynamsoft, and CUSTOMER agrees to and hereby does irrevocably assign all rights in any Modifications (and irrevocably waives all moral rights it may have therein) to Dynamsoft. The foregoing shall not be interpreted to grant Dynamsoft any rights in the CUSTOMER Products.
- 8.4 **Usage Restrictions.** CUSTOMER will not: (a) sell, resell, license, sublicense, distribute, make available, rent or lease access to or use of the Dynamsoft Products in a hosted service bureau environment or outsourcing offering; (b) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the Dynamsoft Products source code, in whole or in part; or (c) bypass or breach any security device or protection used by the Dynamsoft Products.
- 8.5 **Confidential Information.**
- (a) During the Term, the Receiving Party shall maintain the Confidential Information of the Disclosing Party in confidence using reasonable security measures, shall not disclose it to any third party other than the Receiving Party's employees and contractors who have a need to know such information in furtherance of the performance of the Receiving Party's obligations hereunder and shall use it only as necessary to perform hereunder. Notwithstanding the foregoing, with respect to that Confidential Information rising to the level of a trade secret as defined by applicable law, the Receiving Party's confidentiality obligations shall remain in effect for so long as such Confidential Information remains a trade secret. The Receiving Party shall cause each of its officers, directors, employees, and contractors to restrict disclosure and use of such Confidential Information in like fashion, and shall be responsible for any wrongful disclosure or use by any of them.
- (b) Dynamsoft acknowledges that this Agreement is subject to local and state open meetings and public records laws, including without limitation, the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250) (collectively, "Regulations"), and CUSTOMER'S obligations hereunder cannot conflict with its compliance with the Regulations, including publicly posting on the County's website. If the receiving Party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other Party, it will, to the extent legally permissible, promptly notify the other Party and if requested by the other Party, tender to the other Party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiving Party will then be entitled to comply with the request to the extent permitted by law. Upon termination of this Agreement, the Receiving Party shall promptly return all tangible embodiments of the Disclosing Party's Confidential Information to the Disclosing Party and destroy and render unrecoverable all digital embodiments thereof.
- 8.6 **Feedback.** Notwithstanding any provision to the contrary in this Agreement, Dynamsoft shall own all ideas, suggestions, concepts, know-how or techniques contained in information received from CUSTOMER, whether solicited or unsolicited, that directly relates to Dynamsoft's Products or business ("**Feedback**") including all intellectual property rights therein. For example, Dynamsoft (and its suppliers) shall be free to incorporate any suggested changes or modification to the Dynamsoft Products into products licensed to other customers without any compensation payable, or liability to CUSTOMER whatsoever. CUSTOMER irrevocably agrees to assign

and hereby assigns all intellectual property rights throughout the world and in perpetuity in and to the Feedback to Dynamsoft and CUSTOMER irrevocably waives all moral rights it may have therein.

9. INDEMNIFICATION

9.1 **CUSTOMER's Indemnity.** If any allegation, claim or action is brought against Dynamsoft by a third party arising from (a) CUSTOMER's actions under this Agreement, including but not limited to, CUSTOMER's breach or violation of applicable laws or regulations (including export laws or regulations), (b) CUSTOMER's combining (or its authorizing others to combine) the Dynamsoft Products with any hardware or software not provided by Dynamsoft, (c) the use of the Dynamsoft Products by a customer or authorized user of CUSTOMER, or (d) any allegation or claim that any CUSTOMER Product or Bundled Product infringes, misappropriates or violates any patent, copyright, trademark, or other intellectual property right of any third party, CUSTOMER shall defend, indemnify and hold harmless Dynamsoft, at CUSTOMER's expense, and shall pay any settlement amounts CUSTOMER authorizes and all damages, costs and legal fees and expenses finally awarded against Dynamsoft in the action. Notwithstanding the foregoing, CUSTOMER shall have no liability under this Section 9.1 for any claim alleging that the unaltered Dynamsoft Products, standing alone, infringe any third party's intellectual property rights.

9.2 Dynamsoft's Indemnity.

(a) Subject to Sections (b), (c) and 9.3 below, if a third party brings any claim or action against the CUSTOMER alleging that the CUSTOMER's use of the Dynamsoft Products infringes, misappropriates or violates any patent, copyright, trademark, or other intellectual property right of any third party in Canada or the United States, Dynamsoft shall defend, indemnify and hold harmless CUSTOMER, at Dynamsoft's expense, and shall pay any settlement amounts Dynamsoft authorizes and all damages, costs and legal fees and expenses finally awarded against CUSTOMER in the action.

(b) If a third party claim or action as set out at Section (a) is brought against the CUSTOMER, or in Dynamsoft's reasonable opinion, is likely to be brought, Dynamsoft may at its sole option and expense either:

(i) Procure for the CUSTOMER the right to continue using or receiving such Dynamsoft Products; or

(ii) Replace or modify such Dynamsoft Products so that it becomes non-infringing; or

(iii) if neither of the options at Section 9.2 (b)(i) and (b)(ii) above are possible or cannot be achieved without Dynamsoft incurring substantial costs, Dynamsoft may terminate the Agreement upon giving the CUSTOMER no less than fourteen (14) days written notice, and within thirty (30) days of termination, Dynamsoft shall refund to the CUSTOMER any fees already paid in advance by the CUSTOMER to Dynamsoft that relate to the period after termination.

(c) Dynamsoft shall have no liability for and Dynamsoft's obligations under this Section 9.2 shall not apply to any claim or action based on or relating to:

(i) Any breach of CUSTOMER's obligations under this Agreement;

(ii) Use by the CUSTOMER of the Dynamsoft Products in combination with other equipment, products, materials or services which have not been provided by Dynamsoft;

(iii) Use by the CUSTOMER of the Dynamsoft Products in a manner or for a purpose not consistent with the Agreement;

(iv) Use by the CUSTOMER of the Dynamsoft Products, when use of a Modification which Dynamsoft has supplied to the CUSTOMER would have avoided such infringement; or

(v) Any modification to the Dynamsoft Products not made by or for Dynamsoft, or any Modifications to the Dynamsoft Products made by Dynamsoft substantially pursuant to the CUSTOMER's specific instructions.

9.3 **Indemnity Procedures.** The indemnity obligations in sections 9.1 and 9.2 apply only if (a) the indemnified party notifies the other party promptly upon learning that the claim or action might or has been asserted; (b) the indemnifying party has sole control over the defense of the claim or action and any negotiation for its settlement or compromise (provided that the other party may not settle any claim or action unless the settlement unconditionally releases the indemnified party of all liability and does not include a statement as to or admission of fault, culpability, or failure to act by or on behalf of the indemnified party); and (c) the indemnified party fully cooperates with the indemnifying party, at the indemnifying party's expense, in the defense or settlement of the claim or action.

9.4 **LIMITATION.** THIS SECTION 9 STATES THE ENTIRE LIABILITY AND OBLIGATION OF DYNAMSOFT AND CUSTOMER AND THE EXCLUSIVE REMEDY OF THE INDEMNIFIED PARTY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT, MISAPPROPRIATION OR OTHER VIOLATION BY THE DYNAMSOFT PRODUCTS OR THE BUNDLED PRODUCTS OF ANY THIRD PARTY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT.

10. LIMITATION OF LIABILITY

10.1 **CONSEQUENTIAL DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR ITS SUPPLIERS OR AFFILIATED ENTITIES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING BUT NOT LIMITED TO THE COSTS

OF PROCUREMENT OF SUBSTITUTE GOODS, FOR LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR LOSS OF DATA) WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 10.2 **LIMITATION.** IN NO EVENT SHALL DYNAMSOFT'S AGGREGATE LIABILITY TO CUSTOMER FOR ALL CLAIMS OF ANY KIND, INCLUDING ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BY STATUTE, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE FEES ACTUALLY RECEIVED BY DYNAMSOFT FOR THE DYNAMSOFT PRODUCTS SUBJECT TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO THE CLAIM AROSE.
- 10.3 **EXCLUSIONS.** NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS IN THIS SECTION 10 SHALL NOT APPLY TO LIABILITY RESULTING FROM A PARTY'S (A) INDEMNITY OBLIGATIONS HEREUNDER, (B) BREACH OF SECTION 8.5 (CONFIDENTIALITY), (C) ANY BREACH OR VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR (D) GROSS NEGLIGENCE OR WILFUL MISCONDUCT.
- 10.4 **FAILURE OF ESSENTIAL PURPOSE.** THE PARTIES AGREE THAT THE LIMITATIONS SET OUT IN THIS SECTION 10 SHALL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED, HAVE PROVEN INEFFECTIVE OR IF ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.
- 10.5 **CLAIMS.** NEITHER PARTY MAY BRING A CLAIM OR LEGAL ACTION UNDER OR IN CONNECTION WITH THIS AGREEMENT MORE THAN TWO YEARS AFTER THE EVENT GIVING RISE TO THE LIABILITY.

11. TERM AND TERMINATION

- 11.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for that period of time specified in Exhibit C (the "Initial Term"), unless terminated earlier as set forth herein. This Agreement will auto-renew for the same length as the Initial Term (a "Renewal Term") unless: (a) either party notifies the other party of non-renewal, in writing, at least thirty (30) days before the end of the Initial term or any Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Term; or (b) otherwise terminated in accordance with the provisions of this Agreement. The Initial term and each subsequent Renewal Term, if any, is collectively referred to hereinafter as the "Term".
- 11.2 **Termination.** Either party may terminate this Agreement upon delivery of notice of termination to the other party at any time if (a) a receiver is appointed for the other party or its property; (b) the other party makes an assignment for the benefit of its creditors; (c) proceedings are commenced by or for the other party under any bankruptcy, insolvency, or debtor's relief law; (d) the other party liquidates or dissolves or attempts to do so; (e) the other party assigns or purports to assign this Agreement in breach of its provisions; or (f) the other party commits any breach of a material obligation hereunder which it fails to cure within thirty (30) days of receiving written notice of the breach, or which is by its nature incurable. Dynamsoft may terminate this Agreement on ten (10) days written notice of CUSTOMER's failure to pay any amounts due hereunder if CUSTOMER fails to pay such outstanding amount before the expiry of the ten (10) day notice period.
- 11.3 **Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (a) CUSTOMER shall immediately cease using and shall destroy any: (i) sales literature and other written information and materials supplied by Dynamsoft pursuant to this Agreement, or which contain Dynamsoft's Marks; (b) CUSTOMER shall immediately cease to identify itself as an authorized user of or distributor for Dynamsoft products or otherwise affiliated in any manner with Dynamsoft. The expiration or termination of the Agreement shall not affect or prejudice any rights or obligations which have accrued or arisen under the Agreement prior to the date of expiration or termination.
- 11.4 **Survival of Terms.** Sections 4 (PAYMENT), 5 (REPORTS AND AUDITS), 7.2 (DISCLAIMER), 8 (INTELLECTUAL PROPERTY AND CONFIDENTIALITY), 9 (INDEMNIFICATION), 10 (LIMITATION OF LIABILITY), 11.3 (EFFECT OF TERMINATION), and 12 (MISCELLANEOUS) and this Section 11.4 of this Agreement together with any provisions necessary for the interpretation and construction of this Agreement, shall survive and continue notwithstanding any expiry or termination of this Agreement

12. MISCELLANEOUS

- 12.1 **Assignment.** This Agreement may be assigned by Dynamsoft to any entity which assumes its obligations and acquires ownership of or the right to use and license the Dynamsoft Products. Neither this Agreement nor any right or obligation hereunder may be assigned, transferred, delegated or subcontracted, by operation of law or otherwise, in whole or in part, by CUSTOMER without Dynamsoft's prior written consent, such consent not to be unreasonably withheld. Subject to the foregoing, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties, and their permitted successors and assigns. Any attempted assignment or transfer in violation of this Section is void.
- 12.2 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties and supersedes any prior or contemporaneous oral or written understanding as to the subject matter. This Agreement will prevail over terms and conditions of any CUSTOMER-issued purchase order or other document, which will have no force and effect, even if Dynamsoft accepts or does not otherwise reject the purchase order or document.
- 12.3 **Amendments; Waivers.** This Agreement may not be modified or any term or condition waived except in a writing signed by a duly authorized representative of each party.
- 12.4 **Import and Export Controls.** CUSTOMER shall comply with all applicable import, export and re-export laws and regulations and foreign policy controls and restrictions. CUSTOMER shall take all necessary actions and precautions to ensure that its distributors, resellers and other customers do not contravene such laws, regulations, controls or restrictions.

- 12.5 **Notices.** All notices and other communications hereunder shall be given in writing or by email and delivered electronically, by personal delivery or by prepaid overnight or courier service to the addresses set forth on the first page of this Agreement or such other address as may be set forth herein or provided in writing by a Party. A notice will be deemed to have been given on the date on which it was delivered or transmitted, if delivered or transmitted on a business day during the regular business hours of the recipient. If a notice is delivered or transmitted on a day that is not a business day or outside the regular business hours of the recipient, the notice shall be deemed to have been delivered or transmitted on the following business day. A notice given by email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.
- 12.6 **Governing Law.** This Agreement shall be construed, and the legal relations between the parties hereto shall be determined as follows:
- (a) If CUSTOMER's head office is located in the United States, in accordance with the laws of the State of California, and the federal laws of the United States; or
 - (b) If CUSTOMER's head office is located anywhere in the world except the United States, in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein; and
 - (c) The *United Nations Convention on Contracts for the International Sale of Goods* and any conflicts of law principles and the *Uniform Computer Information Transactions Act* (where enacted) shall not apply to the Agreement.
- 12.7 **Jurisdiction and Mandatory Venue.** The parties waive any objections to the venue or jurisdictions identified in this provision. The mandatory, sole and exclusive venue, place or forum for any disputes arising from the Agreement (including any dispute regarding the existence, validity or termination of the Agreement) shall be the courts in the city of Vancouver, British Columbia, Canada.
- 12.8 **Publicity.** CUSTOMER agrees, upon Dynamsoft's request, to cooperate in the marketing activities identified in Exhibit D. Except for the foregoing, no press release or other like publicity regarding this Agreement may be made without the other Party's approval. Approval for such publicity may not be unreasonably withheld.
- 12.9 **Severability.** If any term hereof is held invalid, illegal, or unenforceable for any reason whatsoever, such term shall be enforced to the fullest extent permitted by applicable law, and the validity, legality, and enforceability of the remaining terms shall not in any way be affected or impaired thereby.
- 12.10 **Independent Contractors.** The relationship of the parties established by this Agreement is that of independent contractors. This Agreement does not give either party the power to direct and control the day-to-day activities of the other, constitute the parties as partners, joint venturers, co-owners, principal-agent, or otherwise participants in a joint or common undertaking, or allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever
- 12.11 **Force Majeure.** Neither party hereto shall be in default of its obligations hereunder to the extent its performance is delayed or prevented by Force Majeure. The term "Force Majeure" as used in this Agreement means any act, occurrence, condition or event beyond the control of a party that materially affects the performance of that party's obligations hereunder that could not reasonably have been foreseen or provided against and is without such party's fault or negligence, including but not limited to acts of God or the public, civil disturbances, arrests and restraints by rulers and people; acts of the public enemy, wars, riots, insurrections, sabotage, terrorism; acts, requests or interruptions of the federal, provincial, state or local government or any agency thereof; court orders, present and future valid orders of any governmental authority, or any officer, agency or any instrumentality thereof; floods, fires, named storms, epidemics other than COVID-19, landslides, earthquakes, washouts, explosions, pandemics other than COVID-19; strikes, lockouts, or industrial disturbances; freight embargoes; inability to secure right of way, or any other cause, whether of the kind herein enumerated or otherwise. Nothing contained in this section 12.10 however, shall be construed to require either party to settle a labor dispute against its will. Force Majeure shall not include lack of favorable market conditions for labor or materials, or economic hardship. If as a result of Force Majeure either party is unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation to make payment of money due, then, upon that party's giving notice and a description of the cause in writing to the other party as soon as possible after the occurrence of the cause, the obligation of the party giving such notice, so far as it is affected by the cause specified in such notice, shall be suspended for the duration of the cause. The cause shall, as far as possible, be remedied with all reasonable dispatch.
- 12.12 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one instrument. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

Dynamicsoft and CUSTOMER have read, understand and agree to the terms of this Agreement and the undersigned represents that he or she is duly authorized to sign this Agreement.

DYNAMSOFT:
DYNAMSOFT CORPORATION

CUSTOMER:
San Bernardino County

DocuSigned by:
Karen Budimcic
By: _____
538FDAC863A9438...
Printed Name: Karen Budimcic
Title: Operations Manager
Date: 1/13/2023

By: *Dawn Rowe*

Printed Name: Dawn Rowe
Title: Chair, Board of Supervisors
Date: JAN 24 2023

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNN MONELL
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy



**EXHIBIT A
DEFINITIONS**

- (a) **"Bundled Products"** means the Dynamsoft Products in combination with the CUSTOMER Products.
- (b) **"Confidential Information"** means all non-public information that a Party to this Agreement ("Disclosing Party") designates in writing as being confidential to the Party that receives such information ("Receiving Party") and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250). "Confidential Information" includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased Disclosing Party software or hardware products, Disclosing Party's marketing plans, business policies or practices, financial information, sales information, or customer information, and information received from others that Disclosing Party is obligated to treat as confidential. The term "Disclosing Party" also includes all Affiliates of Disclosing Party and the term "Receiving Party" also includes all Affiliates of Receiving Party. An "Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with a Party. Confidential Information shall not include any information (i) which is in the public domain through no breach of this Agreement; (ii) which the Receiving Party can show it knew prior to the Disclosing Party's disclosure hereunder; (iii) which was independently developed by the Receiving Party; or (iv) which is rightfully received by the Receiving Party from a third party without restriction.
- (c) **"Dynamsoft Products"** means, collectively, the object code versions of the software programs identified in Exhibit A attached hereto, along with the Documentation, if applicable, as well as any Updates as may be provided by Dynamsoft under the terms of this Agreement.
- (d) **"CUSTOMER Products"** means the computer hardware and/or software products which are identified in Exhibit B attached hereto.
- (e) **"Updates"** means any and all updates, upgrades, enhancements, improvements, releases, corrections, bug fixes, patches, and modifications to the Dynamsoft Products.

**EXHIBIT B
PRODUCTS**

DYNAMSOFT PRODUCTS

1. Programs:

English language only build of:

Qty	Description
2	Dynamic Web TWAIN Desktop Service Edition Core Module All Browsers on Windows (annual license, per server deployment) License Valid for 1095 days
3	Dynamic Web TWAIN Desktop Service Edition Core Module All Browsers on Windows (annual license, per server deployment for non production or failover) License Valid for 1095 days
2	Dynamic Web TWAIN Desktop Service Barcode Reader Module 1D barcodes (annual license, per server) License Valid for 1095 days
3	Dynamic Web TWAIN Desktop Service Barcode Reader Module 1D barcodes (annual license, per server deployment for non-production or failover) License Valid for 1095 days
2	Dynamic Web TWAIN Desktop Service Edition PDF Rasterizer Module (annual license, per server) License Valid for 1095 days
3	Dynamic Web TWAIN Desktop Service Edition PDF Rasterizer Module (annual license, per server deployment for non-production) License Valid for 1095 days

2. Documentation:

English language versions of all documentation are provided as electronic help files from the SDK installation directory for each Dynamsoft Product. This documentation is specific to a particular product release version and describes the functionality of the Dynamsoft Product.

CUSTOMER PRODUCTS

1. CUSTOMER Products:

2. Description of CUSTOMER Product(s):

EXHIBIT C PAYMENT TERMS

1. TERM: Three years.
2. FEES: CUSTOMER agrees to purchase licenses, with royalty fees payable according to the terms set forth in this Exhibit during the Term of this Agreement.
3. CUSTOMER SUPPORT:
Subscription licenses include maintenance and premium support.

Services Entitlements	Premium Support
One-on-One Product Training	Up to 3 hours per year
Access to Non-Published Demos and Examples	✓
Access to Non-Published Patches and Fixes	✓
Target Response Time to Email Requests	< 1 Business Day
Technical Support via Live Chat	Up to 20 times per Year
Technical Support via Telephone (Toll-free)	✓
Technical Support via Web Meeting	Up to 5 times per Year

**EXHIBIT D
MARKETING ACTIVITIES**

Upon Dynamsoft's request, CUSTOMER agrees to reasonably cooperate with Dynamsoft in the activities listed below. Whether to pursue such activities is within Dynamsoft's discretion, and Dynamsoft is not obligated to pursue any of the activities listed below.

1. **Listing as customer.** CUSTOMER agrees that Dynamsoft names CUSTOMER as a customer and uses CUSTOMER's name and trademarks on the Dynamsoft website after the Effective Date.
2. **Press Release.** Within sixty (60) days after the Effective Date and upon Dynamsoft's request, CUSTOMER agrees to review the content of one press release ('Release') to be distributed in North America via the PR Newswire, and possibly worldwide by some Dynamsoft regional offices. The Release will be posted on the Dynamsoft website. Dynamsoft agrees that CUSTOMER shall have final editorial control of the content of this Release.
3. **Partner and Analyst Reference.** CUSTOMER agrees that for a period of one-year following the Effective Date that it shall designate one or two individuals familiar with the Dynamsoft Products who may be contacted once per quarter for a discussion of not more than one hour in duration by industry analysts or other companies considering entering into a CUSTOMER relationship with Dynamsoft.
4. **Case Study.** Within sixty (60) days after the Effective Date and upon Dynamsoft's request, CUSTOMER agrees to designate one individual to work with a Dynamsoft writer to create an approximate 1200 word case study ("Study") documenting CUSTOMER's implementation of the Dynamsoft Products and the support received from Dynamsoft personnel. The Study will include the CUSTOMER's company logo. Dynamsoft will agree to CUSTOMER's corporate logo guidelines. The Study will be available in PDF format or potentially video avi format on the Dynamsoft website. Dynamsoft agrees that CUSTOMER shall have final editorial control of the content of this Study.