

NetCentric Technologies Software License Agreement

IMPORTANT! PLEASE READ THIS SOFTWARE LICENSE AGREEMENT CAREFULLY BEFORE DOWNLOADING OR USING THE SOFTWARE.

US GOVERNMENT CUSTOMERS ONLY:

IF YOU ARE A US GOVERNMENT CUSTOMER THEN YOU MUST HAVE AN AUTHORIZED REPRESENTATIVE OF YOUR ORGANIZATION SIGN THIS AGREEMENT PRIOR TO DOWNLOADING, INSTALLING, USING OR COPYING THIS SOFTWARE.

NON-US GOVERNMENT CUSTOMERS ONLY:

IF YOU ARE NOT A US GOVERNMENT CUSTOMER THEN:

1. BY CLICKING ON THE "ACCEPT" BUTTON, INSTALLING OR USING ALL OR ANY PORTION OF THE SOFTWARE, OR DOWNLOADING THE SOFTWARE YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY THAT OBTAINED THE SOFTWARE AND ON WHOSE BEHALF IT IS USED.
2. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "DO NOT ACCEPT" BUTTON, AND DO NOT DOWNLOAD, INSTALL, USE OR COPY THIS SOFTWARE.

ALL CUSTOMERS:

THE SOFTWARE MAY INCLUDE PRODUCT ACTIVATION AND OTHER TECHNOLOGY DESIGNED TO PREVENT UNAUTHORIZED COPYING. THE ACTIVATION TECHNOLOGY MAY PREVENT YOUR USE OF THE SOFTWARE IF YOU DO NOT FOLLOW THE ACTIVATION PROCESS DESCRIBED IN THE SOFTWARE OR DOCUMENTATION.

NetCentric Technologies, Legal Department, 320 March Road, Suite 602, Kanata, Ontario, Canada K2K 2E3

1. GRANT OF SOFTWARE LICENSE

This License Agreement ("Agreement") is between San Bernardino County, a political subdivision organized and existing under the constitution and the laws of the State of California, ("County") and 1323826 Ontario Inc. O/A NetCentric Technologies ("NetCentric"), a company incorporated under the laws of the province of Ontario, Canada. This Agreement governs the computer software (including online and electronic documentation) and any associated media and printed materials (hereinafter collectively referred to as "Software"). This Agreement applies to updates, supplements, add-on components, and Internet-based services components of the Software that NetCentric may provide or make available to You unless NetCentric provides other terms with the update, supplement, add-on component, or Internet-based services component.

NetCentric grants to County a nonexclusive and nontransferable license

("License") to use the Software in object code form on a single central processing unit owned or leased by County solely for County's own internal use. County may not use the Software on behalf of any third party. Further County will not and will not allow a third party to: (i) decompile, reverse engineer, disassemble or otherwise attempt to derive, analyze or use any source code or underlying ideas or algorithms related to the Software by any means whatsoever, except and only to the minimal extent the provisions of this Section are expressly prohibited by applicable statutory law, (ii) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use the Software to or for the benefit of third parties or (iii) remove any product identification, copyright or other notices in the Software or on any Software.

Subject to the type of License purchased, the Software may be limited to processing a specified number of pages. If such limitation exists then the Software may cease operations after the specified number of pages have been processed.

Further, County's use of the Software is subject to any other restrictions and limitations set forth in NetCentric's then current Software description (as specified in NetCentric's then current price list). By way of example, if the Software description specifies that use of the Software is for a one (1) year subscription term then County may only use the Software for one (1) year following County's purchase. If the Software description specifies any limitations (for example, number of named users) then the Software may only be used in compliance with such restrictions.

County may make one (1) archival copy of the Software provided County affixes to such copy all copyright, confidentiality, and proprietary notices that appear on the original.

EXCEPT AS EXPRESSLY AUTHORIZED ABOVE, COUNTY SHALL NOT: COPY, IN WHOLE OR IN PART, SOFTWARE OR DOCUMENTATION; MODIFY THE SOFTWARE; REVERSE COMPILE OR REVERSE ASSEMBLE ALL OR ANY PORTION OF THE SOFTWARE; OR RENT, LEASE, DISTRIBUTE, SELL, OR CREATE DERIVATIVE WORKS OF THE SOFTWARE.

2. INTELLECTUAL PROPERTY OWNERSHIP

The Software and any authorized copies that County makes are the intellectual property of and are owned by NetCentric. County agrees that aspects of the licensed materials, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of NetCentric. County agrees not to disclose, provide, or otherwise make available such trade secrets or copyrighted material in any form to any third party without the prior written consent of NetCentric. County agrees to implement reasonable security measures to protect such trade secrets and copyrighted material. Title to Software shall remain solely with NetCentric.

3. LIMITED WARRANTY

NetCentric warrants that for a period of ninety (90) days from the date of shipment from NetCentric or Software download: (i) the media on which the Software is furnished, if any, will be free of defects in

materials and workmanship under normal use; and (ii) the Software substantially conforms to its published specifications. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to County as the original licensee. County's exclusive remedy and the entire liability of NetCentric and its suppliers under this limited warranty will be, at NetCentric's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to the party supplying the Software to County. In no event does NetCentric warrant that the Software is error free or that County will be able to operate the Software without problems or interruptions.

This warranty does not apply if the Software (a) has been altered, except by NetCentric, or (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by NetCentric.

The above warranty DOES NOT apply to any pre-release (beta) software, any software made available for testing or demonstration purposes, any temporary software modules or any software for which NetCentric does not receive a license fee. All such software products are provided AS IS without any warranty whatsoever.

4. DISCLAIMER

EXCEPT AS SPECIFIED IN THE FOREGOING LIMITED WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW IN COUNTY'S JURISDICTION.

5. LIMITATION OF LIABILITY

IN NO EVENT WILL NETCENTRIC OR ITS SUPPLIERS BE LIABLE TO COUNTY FOR ANY LOSS, DAMAGES, CLAIMS OR COSTS WHATSOEVER INCLUDING ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, ANY LOST PROFITS OR LOST SAVINGS, ANY DAMAGES RESULTING FROM BUSINESS INTERRUPTION, PERSONAL INJURY OR FAILURE TO MEET ANY DUTY OF CARE, OR CLAIMS BY A THIRD PARTY, EVEN IF A NETCENTRIC REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. EXCEPT FOR CLAIMS ARISING FROM NETCENTRIC'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, VIOLATION OF LAW OR INDEMNIFICATION OBLIGATIONS (COLLECTIVELY, THE "EXCLUDED CLAIMS"), NETCENTRIC'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE. NETCENTRIC'S TOTAL, CUMULATIVE LIABILITY HEREUNDER WITH RESPECT TO THE EXCLUDED CLAIMS (EXCEPT FOR ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT WHICH WILL NOT BE CAPPED) SHALL NOT EXCEED ONE MILLION DOLLARS (US\$1,000,000). THIS LIMITATION WILL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OR A BREACH OF THE FUNDAMENTAL OR MATERIAL TERMS OF THIS AGREEMENT.

NetCentric is acting on behalf of its affiliates and suppliers for the purpose of disclaiming, excluding and limiting obligations, warranties and liability, but in no other respects and for no other purpose.

6. EDUCATIONAL SOFTWARE PRODUCT

If the Software is Educational Software Product (Software manufactured and distributed for use by only Educational End Users), County are not entitled to use the Software unless County qualify in County's jurisdiction as an Educational End User.

7. PRE-RELEASE (BETA) SOFTWARE

If the Software is pre-commercial release software ("Beta Software"), then this Section applies. The Beta Software is a pre-release version, does not represent final product from NetCentric, and may contain bugs, errors and other problems that could cause system or other failures and data loss. NetCentric may never commercially release the Beta Software. County will return or destroy all copies of Beta Software upon request by NetCentric or upon NetCentric 's commercial release of such Software. COUNTY'S USE OF BETA SOFTWARE IS AT COUNTY'S OWN RISK. All such Software is provided AS IS without any warranty whatsoever.

8. EVALUATION, PRODUCT SAMPLER, OR NOT FOR RESALE SOFTWARE

If the Software is evaluation, starter, product sampler, or NOT FOR RESALE software ("Evaluation Software"), then the following Section applies. The Evaluation Software may contain limited functionality and is to be used for demonstration and evaluation purposes only and not for County's commercial purposes. Such software may cease operations after a designated period of time or number of launches following installation. The license hereunder will terminate after such period or number of launches unless extended by NetCentric upon County's acquisition of a full retail license. All such Software is provided AS IS without any warranty whatsoever.

9. ONLINE SERVICES

The Software may rely upon or facilitate County's access to websites maintained by NetCentric offering goods, information, software and services ("Online Services"). County's access to and use of any website is governed by the terms, conditions, disclaimers and notices found on such site. NetCentric may at any time, for any reason, modify or discontinue the availability of any website and Online Services.

10. GENERAL

This License is effective for a period of five (5) years from the date of execution unless terminated sooner by either party. County may terminate this License at any time by destroying all copies of Software including any documentation. This License will terminate immediately without notice from NetCentric if County fails to comply with any provision of this License. Upon termination, County must destroy all copies of the Software.

The Software, including technical data, is subject to U.S. and Canadian export control laws and may be subject to export or import regulations in other countries. County agrees to comply strictly with all such regulations and acknowledge that County has the

responsibility to obtain licenses to export, re-export, or import Software.

If any portion this Agreement is found to be void or unenforceable, the remaining provisions shall remain in full force and effect. This is the entire agreement between NetCentric and County relating to the Software and it supersedes any prior representations, discussions, undertakings, communications or advertising relating to the Software.

Without the County's prior written consent, this Agreement is not assignable by NetCentric either in whole or in part except NetCentric may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets.

The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under indemnification and insurance requirements in the Agreement.

NetCentric will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by the Software. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify NetCentric promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve NetCentric of its obligations only if and to the extent that such delay or failure materially prejudices NetCentric's ability to defend such lawsuit or claim. County will give NetCentric sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that NetCentric may not settle the claim or suit absent the written consent of County unless such settlement: (a) includes a

release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the Software. In the event that NetCentric fails to or elects not to defend County against any claim for which County is entitled to indemnity by NetCentric, then NetCentric shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to NetCentric. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit NetCentric's account at any time; and County, at its sole discretion, may settle the claim or suit. Notwithstanding the foregoing, NetCentric shall have no obligation to indemnify the County for any claims to the extent arising from (a) use of the Software in violation of this Agreement, (b) use of the Software after NetCentric notifies County to discontinue use because of an infringement claim, (c) modifications to the Software made other than by NetCentric (where the claim would not have arisen but for such modification) or (d) the combination, operation, or use of the Software with materials, software or equipment which were not provided by NetCentric, to the extent that liability for such claim would have been avoided in the absence of such combination, operation, or use.

Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights

NetCentric shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit NetCentric and NetCentric's employees or agents from waiving the right of subrogation prior to a loss or claim. NetCentric hereby waives all rights of subrogation against the County.

Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

Severability of Interests

NetCentric agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between NetCentric and the County or between the County and any other insured or additional insured under the policy.

Proof of Coverage

NetCentric shall furnish Certificates of Insurance to the County Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and NetCentric shall maintain such insurance from the time NetCentric commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, NetCentric shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

Failure to Procure Coverage

In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by NetCentric or County payments to NetCentric will be reduced to pay for County purchased insurance.

Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance

coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. NetCentric agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

Types and Limits

NetCentric agrees to provide insurance set forth in accordance with the requirements herein. If NetCentric uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, NetCentric agrees to amend, supplement or endorse the existing coverage to do so. Without in anyway affecting the indemnity herein provided and in addition thereto, NetCentric shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

- Workers' Compensation/Employer's Liability - A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of NetCentric and all risks to such persons under this Agreement. If NetCentric has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
- Commercial/General Liability Insurance - NetCentric shall carry General Liability Insurance covering all operations performed by or on behalf of NetCentric providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - a. Premises operations and mobile equipment.
 - b. Products and completed operations.
 - c. Broad form property damage (including completed operations).
 - d. Explosion, collapse and underground hazards.
 - e. Personal injury.
 - f. Contractual liability.
 - g. \$2,000,000 general aggregate limit.

- Automobile Liability Insurance - Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If NetCentric is transporting one or more non-employee passengers in performance of Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If NetCentric owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
- Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.
- Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

US GOVERNMENT CUSTOMERS ONLY:

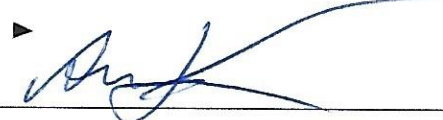
IN WITNESS WHEREOF, the County of San Bernardino and NetCentric have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

1323826 ONTARIO INC. O/A NETCENTRIC
TECHNOLOGIES

►

By

► 

Curt Hagman, Chairman, Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS

DOCUMENT HAS BEEN DELIVERED TO THE

CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____

Deputy

Name

Ariel Kunar

Title

Chief Executive Officer

Dated:

June 3rd, 2022

Address

1600 Wilson Blvd., Suite 1010

Arlington, VA 22209

(Authorized signature - sign in blue ink)

(Print or type name of person signing contract)

(Print or Type)

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
<p>►</p> <p>_____ County Counsel</p>	<p>►</p> <p>_____</p>	<p>►</p> <p>_____</p>
<p>Date</p> <p>_____</p>	<p>Date</p> <p>_____</p>	<p>Date</p> <p>_____</p>