DEPT: Chief Executive Office **BOARD AGENDA #** *B-6

Urgent ☐   Routine ■   **AGENDA DATE** August 18, 2015

CEO Concurs with Recommendation YES ☒ NO ☐   4/5 Vote Required YES ☐   NO ■

(Information Attached)

SUBJECT:

Approval of the Software Licensing Agreement with Alfresco, Ltd for Electronic Content Management Support of the Integrated Criminal Justice Information System (ICJIS)

STAFF RECOMMENDATIONS:

1. Approve the Alfresco Electronic Content Management (ECM) Licensing Agreement with Alfresco Software, Ltd for the Provision of ECM Software.

2. Authorize the Chief Executive Officer, or his designee, to sign the Alfresco ECM Licensing Agreement.

FISCAL IMPACT:

The Integrated Criminal Justice System (ICJIS) is currently spending $16,520 annually for Alfresco ECM licenses at the District Attorney's office and Probation. An increase of $18,172 per year will provide ICJIS with renewed licensing for the District Attorney and Probation and additional licensing to support ECM servers for Sheriff and Public Defender.

BOARD ACTION AS FOLLOWS:

No. 2015-387

On motion of Supervisor Monteith , **Seconded by Supervisor** Chiesa
and approved by the following vote,
Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Withrow
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None

1) __X__   Approved as recommended
2) _____ Denied
3) _____ Approved as amended
4) _____ Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk   File No.

Approval of the Software Licensing Agreement with Alfresco, Ltd for Electronic
Content Management Support of the Integrated Crinal Justice Information
System (ICJIS)
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FISCAL IMPACT (Continued):

The Fiscal Year 2015-2016 Proposed Budget for ICJIS includes funding from the Sheriff's Department, District Attorney, Public Defender and Probation in the amount of $34,692 for the Alfresco ECM Licensing Agreement. As recommended for approval by the Board of Supervisors, the three-year (3) cumulative total for this license agreement from August 31, 2015 to August 30, 2018 is $104,076. There is no additional General Fund impact to fund the Alfresco Licensing Agreement.

DISCUSSION:

The ICJIS Proiect
Stanislaus County ICJIS which is an acronym for "Integrated Criminal Justice Information System" is a suite of integrated applications that were developed by the Sheriff, District Attorney, Public Defender and Probation departments. ICJIS plays a major role in the everyday business operations of each of the ICJIS departments. It is the core "line of business" application for each of the ICJIS departments and has replaced many labor intensive manual operations which resulted in productivity gains and other departmental efficiencies. In alignment with one of ICJIS's original goals, ICJIS has become a regional repository for criminal justice data and as such, shares this data with a number of partner agencies within the County.

Each of the ICJIS partners has achieved a broader level of communication with outside agencies through the implementation of ICJIS by providing interconnected interfaces. The increasingly "interconnected" ICJIS applications contribute to an overall safer community by providing local law enforcement, County Departments, and other agencies vital, real-time, criminal justice information

Alfresco Electronic Content Management Software
The ICJIS project continues to work towards ongoing process improvement, the enhancement of its features, infrastructure and integration between justice agencies. This license agreement will allow new and continued e-government service delivery as well as continued integration efforts between the respective ICJIS departments by enabling the sharing of electronic documents internally and with other necessary justice departments.

Alfresco ECM software will be replacing an existing older system at the Sheriff's Department and will provide the Public Defender with their first Electronic Content Management system. This expanded licensing agreement will enable both the Sheriff's office and Public Defender to install and run an ECM server to enable the scanning, searching and sharing of electronic documents. Both

District Attorney and Probation are currently using Alfresco and this agreement will keep their licensing current.

The yearly license fee will total $34,692 for a three-year cumulative total cost of $104,076. The Sales Form lists a total three-year cost of $708,000 with an 85.3% discount applied. This large discount was achieved through successful negotiation with Alfresco on a price that reflected our functional use of the product and was in alignment with our budgetary constraints.

POLICY ISSUE:

Approval of this Agenda item will support the Board priorities of Efficient Delivery of Public Services, Effective Partnerships and A Safe Community.

STAFFING IMPACT:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Mike Baliel, ICJIS Project Manager. Telephone: 209-342-1737

Order Form

Company Information

Billing Details
Company Name: Stanislaus County

Address:
801 11th Street #4100
Modesto
California
United States 95354

Contact: Mike Baliel
Email: balielm@stancounty.com
Phone: (209) 525-4357

Shipping Details
Company Name: Stanislaus County

Address:
801 11th Street #4100
Modesto
California
United States 95354

Contact: Mike Baliel
Email: balielm@stancounty.com
Phone: (209) 525-4357

Order Issued Date:08 Jul 2015
Order Expiration Date:31 Aug 2015
Order Reference: Stanislaus County (ICJS) | DM | Renewal 2015
PO Required on Invoice: [X] Yes   [ ] No
PO Number:
PO Date:

Alfresco Sales Representative:
Name: Natalie Arkind
Email: natalie.arkind@alfresco.com
Telephone: +1 404 566 6474

End User Technical Support Contacts

Primary Contact
Name: Mike Baliel
Email: balielm@stancounty.com
Phone: (209) 525-4357

Secondary Contact
Name:
Email:
Phone:

Additional Information

This includes 8 Production and 8 Test CPUs
ELECTRONIC DELIVERY ONLY
Subscription Period 8/31/15 through 8/30/18

3 Annual Payments:

Payment 1:   08/31/2015   34,692.00 Net 30

Payment 2:   08/31/2016   34,692.00 Net 30

Payment 3:   08/31/2017   34,692.00 Net 30

All pricing in this Order Form is in USD and is exclusive of any applicable taxes.

Purchase Summary	
-Alfresco Enterprise Base License (2 Prod, 2 Test CPUs) x 4 - Enterprise - Term: 31 Aug 2015 -30 Aug 2018	USD 708,000.00
Subtotal	USD 708,000.00
Less End User Discount (85.30%)	(USD 603,924.00)
Total	USD 104,076.00

Alfresco Software Limited
The Place, Bridge Avenue
Maidenhead SL6 1AF UK
Reg No: 4429260
VAT No: GB 799115094
TIN USA: 980374177

This Order Form incorporates the Alfresco Master Agreement which can be found at http://www.alfresco.com/legal/agreements/ ("Agreement") or is attached.

To purchase, please sign below and fax or send a pdf file of this Order Form by e-mail to your Alfresco sales representative along with a purchase order (if required).

Payment
Company agrees to pay Alfresco the fees stated on this Order Form under the terms of the Agreement. Alfresco will invoice Company for these fees upon the execution of this Order Form or as otherwise agreed to in this Order Form or the Agreement.

Term and Renewal
The initial term of the items purchased under this Order Form is described in the Purchase Summary. After this initial term, the term for Subscription Services will renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the end of the then-current Subscription term. If the starting date of the Subscriptions is not written in the Purchase Summary, the term begins on the date this Order Form has been fully executed by both parties.

Each party has executed this Order Form by its duly authorized representative.

Stanislaus County   **Alfresco Software, Ltd.**

_____   _____
Signature   Signature

Stan Risen
_____   _____
Printed Name   Printed Name

Chief Executive Officer
_____   _____
Title   Title

August 18, 2015
_____   _____
Date   Date

* Notwithstanding any contrary term in the Alfresco Enterprise Agreement, licenses purchased before July 1, 2013 will remain perpetual upon renewal, subject to the other terms and conditions of the agreement.

	APPROVED AS TO FORM	APPROVED AS TO CONTENT
Signature:		
Printed Name:	John P. Doering	Mike Baliel
Title:	County Counsel	ICJIS Project Manager
Date:	7/23/15	7/21/15

![Alfresco logo] Alfresco

<div align="right">
Alfresco Software Limited
The Place, Bridge Avenue
Maidenhead SL6 1AF UK
Reg No: 4429260
VAT No: GB 799115094
TIN USA: 980374177
</div>

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Each party has executed this Order Form by its duly authorized representative.

Stanislaus County

Alfresco Software, Ltd.

James M.E. Pennington
62D118AF2C83475...

Signature	Signature
	James M.E. Pennington
Printed Name	Printed Name
	Global Financial Controller
Title	Title
	Aug-07-2015
Date	Date

* Notwithstanding any contrary term in the Alfresco Enterprise Agreement, licenses purchased before July 1, 2013 will remain perpetual upon renewal, subject to the other terms and conditions of the agreement.

	APPROVED AS TO FORM	APPROVED AS TO CONTENT
Signature:		
Printed Name:	John P. Doering	Mike Baliel
Title:	County Counsel	ICJIS Project Manager
Date:	7/23/15	7/21/15

Alfresco Master Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING SOFTWARE OR SERVICES FROM ALFRESCO BY USING ALFRESCO SOFTWARE OR SERVICES, USER ACCEPTS THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF USER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE ALFRESCO SOFTWARE OR SERVICES.

This Alfresco Master Agreement (the "**Agreement**") is between Alfresco Software, Ltd., a United Kingdom limited company ("**Alfresco**"), and the purchaser of Alfresco software and services who accepts the terms of this Agreement ("**Company**") in an Order Form or other purchase document. The effective date of this Agreement ("**Effective Date**") is the earlier of the date that Company accepts this Agreement or first uses Alfresco's software or services.

1. SCOPE OF AGREEMENT AND DEFINITIONS

This Agreement sets forth the terms under which Alfresco will provide Software and Services to Company. Capitalized terms in this Agreement are defined in Appendix A. The pricing and itemized details of Company's purchase from Alfresco are set forth in the applicable Order Form.

2. LICENSE AND OWNERSHIP

2.1 Grant to Company. Subject to Company's compliance with this Agreement, Alfresco grants to Company, during the Subscription Period: (a) a non-exclusive, non-transferable, non-sublicensable license to use, copy, test, and modify the Software solely for Company's own internal use and limited to the number of Cores, Named Users, and/or Active Processes designated in the Order Form, as applicable; (b) the rights in the third-party open source software provided with the Software, which rights are set forth in the applicable third-party licenses; and (c) a non-exclusive, non-transferable, non-sublicensable license to use the Software on additional Cores for the purpose of backup and disaster-recovery purposes.

2.2 Restrictions. Company will not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to: (i) the Software, (ii) any modified version or derivative work of the Software created by the Company or for the Company, or (iii) Community Versions; (b) remove or alter any copyright, trademark or proprietary notice in the Software; (c) transfer, use or export the Software in violation of any laws or regulations of any government or governmental agency; (d) use any of the Services for Community Versions or for any unlicensed Cores or Named Users; or (e) reverse engineer, decompile or modify any encrypted or encoded portion of the Software.

2.3 Proprietary Rights. Alfresco and its licensors will own all right, title, and interest to the Software, Services, technology, information, code or software provided to Company, including all copies, or any modifications to the Software.

3. FEES, PAYMENT, AND ADDITIONAL PURCHASES

3.1 Fees and Expenses. Fees for the Software and Services will be identified in an Order Form and are (a) due upon Company's signing an Order Form or, for a renewal term, at the start of the renewal term, and (b) payable in accordance with Section 3.2. Fees are payable in USD unless otherwise stated in the applicable Order Form. Company will reimburse Alfresco for all reasonable and pre-agreed expenses Alfresco incurs in connection with the performance of professional services and/or training.

3.2 Invoices. Alfresco (or the applicable Business Partner) will invoice Company for fees upon Company's execution of each applicable Order Form, and up to thirty (30) days before the start of any renewal term. Company will pay fees and expenses, if any, no later than thirty (30) days from the date of each invoice. All payments are non-refundable except as otherwise provided in this Agreement. Alfresco reserves the right to suspend or cancel performance of all or part of the Services and/or suspend Company's license rights in the Software in the event Company is more than sixty (60) days past due on any undisputed invoice, and has failed to cure the payment deficiency within thirty (30) days of receiving written notice of the deficiency from Alfresco.

3.3 Taxes. All fees are exclusive of Taxes.

3.4 Additional Purchases. Alfresco and Company agree that Company and its Affiliates may acquire additional Software and Services from Alfresco by entering into an Order Form that incorporates the terms and conditions of this Agreement, subject to minor adjustments as needed in a particular Order Form for Affiliates (for example, to address disparate tax and/or legal regimes in other geographic regions).

4. REPORTING AND RECORDS

4.1 Reporting. Company will notify Alfresco promptly if it has exceeded the number of Cores and/or authorized Named Users licensed under this Agreement and the applicable Order Form. In its notice, Company will include the number of excess Cores, and/or Named Users and the date(s) on which the additional Cores were first used and/or the date Company exceeded its licensed Named Users. Alfresco will invoice Company for the applicable fees and Company will pay such fees in accordance with Section 3.2.

4.2 Records Retention. Company will maintain accurate records necessary to verify the number of Cores it uses and Named Users it authorizes. Upon Alfresco's written request, Company will provide Alfresco with such records within ten (10) business days.

5. OBLIGATIONS OF THE PARTIES

5.1 On-Site Obligations. If Alfresco personnel are working on Company's premises (a) Company will provide a reasonably safe and secure working environment for Alfresco personnel, and (b) Alfresco will comply with all reasonable workplace safety and security standards and policies, applicable to Company's

employees, of which Alfresco is notified in writing by Company in advance.

5.2 Changes to Work. All changes to the Services will be made through a written change order signed by both parties.

5.3 Assistance. Company will provide all reasonably necessary access, Company contacts, and other information and cooperation as necessary for Alfresco to effectively provide the Services.

5.4 Purchases from Alfresco Business Partners. If Company purchases Alfresco Software and/or Services through a Business Partner, Alfresco confirms that it is responsible for providing the Software and Services to Company under the terms of this Agreement. Alfresco is not otherwise responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Company, or (c) any non-Alfresco products or services that Business Partners supply to Company.

6. TERM AND TERMINATION

6.1 Term and Termination of Agreement. The term of this Agreement will begin on the Effective Date and remain in effect for the duration of any active Subscription Period, including any renewal terms, unless otherwise terminated in accordance with Section 6.2.2 below.

6.2 Term and Termination of Order Form

6.2.1 The term of an Order Form begins on the date the Order Form is executed by the parties ("**Order Form Effective Date**") and continues for the term stated in the Order Form. Thereafter, the term for Subscriptions will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term. Company must use the Services set forth in an Order Form during the term specified in the Order Form.

6.2.2 If either party materially breaches the terms this Agreement, and the breach is not cured (or curable) within thirty (30) days after written notice of the breach, then the other party may, by giving written notice of termination to the breaching party, terminate the applicable Order Form and/or this Agreement.

6.3 Survival. If this Agreement or an Order Form is terminated for any reason, Sections 2.2, 2.3, 3.2, 3.3, 4.2, 6.3, 7, 8.2, 9, 10, and 11 of this Agreement will survive termination.

7. CONFIDENTIALITY

7.1 Confidential Information.

(a)   Definition. In connection with this Agreement, either party (the "**Recipient**") may obtain confidential and proprietary information ("**Confidential Information**") from the other (the "**Discloser**").   Confidential Information may include, without limitation, the terms of this Agreement and any Order Forms, data and information about end users, Business Partners, systems designs, pricing, cost data, financial information, business, sales, and marketing plans, products, product roadmaps, service programs, trade secrets, know-how, inventions, techniques, processes, programs, schematics, software, and data.

Confidential Information includes information designated in writing as confidential, and any information a reasonable person would understand to be confidential or proprietary under the circumstances of its disclosure.

(b)   Exclusions. "Confidential Information" does not include information that: (i) has been independently developed by or for the Recipient without access or reference to, or use of, Confidential Information; (ii) is lawfully received free of restriction from another source having the right to furnish such information; (iii) is or becomes lawfully in the public domain other than through a breach of this Agreement; (iv) was lawfully known by the Recipient prior to disclosure; (v) Discloser agrees in writing is free of such restrictions; or (vi) is generally disclosed by the Discloser to third parties without a duty of confidentiality.

(c)   Duties With Respect To Confidential Information. At all times during and after the term of this Agreement, Recipient shall keep Discloser's Confidential Information confidential using the same degree of care that it uses to protect its own Confidential Information, but not less than a reasonable degree of care, and shall not disclose Discloser's Confidential Information to a third party without the Discloser's written consent, or use the Confidential Information for purposes other than the performance of this Agreement. Where disclosure is required by law, such disclosure shall not constitute a breach of this Agreement provided Recipient gives Discloser reasonable advance notice to enable Discloser to seek appropriate protection of the Confidential Information.

8. REPRESENTATIONS AND WARRANTIES

8.1 General Representations and Warranties. Alfresco represents and warrants that: (a) it will use reasonable skill and care in providing the Services; (b) the Services will be performed in a professional and workmanlike manner by qualified personnel; (c) it has the authority to enter into this Agreement with Company; and (d) Alfresco's has taken commercially reasonable measures to ensure the Software does not, at the time of delivery to Company, include malicious or hidden mechanisms or code designed to damage or corrupt the Software.

8.2 Disclaimer of Warranty. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALFRESCO MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. ALFRESCO DOES NOT GUARANTEE THAT THE USE OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED, ERROR FREE, OR THAT ALFRESCO WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 8.1, COMPANY'S EXCLUSIVE REMEDY AND ALFRESCO'S ENTIRE LIABILITY FOR BREACH OF SECTION 8.1(a) OR (b) WILL BE THE REPERFORMANCE OF DEFICIENT SERVICES, OR IF ALFRESCO CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALLY REASONABLE MANNER, COMPANY MAY TERMINATE THE RELEVANT SERVICES AND RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SERVICES AS OF THE EFFECTIVE DATE OF TERMINATION. COMPANY'S EXCLUSIVE REMEDY AND ALFRESCO'S ENTIRE LIABILITY FOR BREACH OF SECTION 8.1(d) WILL BE TO UNDERTAKE COMMERCIALLY REASONABLE EFFORTS TO REMEDY OR SUPPLY A TEMPORARY FIX, OR MAKE AN EMERGENCY

BYPASS, IF ALFRESCO REPRODUCES THE PROBLEM IN A CURRENT, UNALTERED RELEASE OF THE SOFTWARE, OR IF ALFRESCO CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALLY REASONABLE MANNER, COMPANY MAY TERMINATE THE RELEVANT SUBSCRIPTION AND RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE REMAINING SUBSCRIPTION PERIOD AS OF THE EFFECTIVE DATE OF THE TERMINATION.

9. LIMITATION OF LIABILITY AND DISCLAIMER OF DAMAGES

9.1 **Disclaimer of Damages**. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

9.2 **Limitation of Liability.** FOR ALL EVENTS AND CIRCUMSTANCES, NEITHER PARTY'S (OR ITS AFFILIATES') AGGREGATE AND CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE WILL EXCEED THE AMOUNTS PAID OR OWED TO ALFRESCO BY COMPANY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE CAUSED BY NEGLIGENCE, OR FOR FRAUD. NOTHING IN THIS SECTION WILL LIMIT THE FEES OWED BY COMPANY UNDER THIS AGREEMENT FOR SOFTWARE OR SERVICES, OR FOR EXCEEDING THE SCOPE OF THE LICENSES GRANTED OR VIOLATING THE RESTRICTIONS IN SECTION 2.

10. INDEMNIFICATION

10.1 **Defense**. If a third party initiates or threatens a legal action alleging that Company's use of the Software directly infringes the third party's patent, copyright, trademark or misappropriates the third party's trade secret rights ("**Third Party Rights**") (such action, a "**Claim**"), then Alfresco will (a) promptly assume the defense of the Claim and (b) pay costs, damages and/or reasonable attorneys' fees that are included in a final judgment against Company (without right of appeal) or in a settlement approved by Alfresco that are attributable to Company's use of the Software; provided that Company (i) is current in the payment of all applicable fees, or becomes current, prior to requesting indemnification, (ii) notifies Alfresco in writing of the Claim promptly after receipt of the Claim, (iii) provides Alfresco with the right to control the defense of the Claim with counsel of its

choice, and to settle such Claim at Alfresco's sole discretion (unless the settlement requires payment by Company or requires Company to admit liability), and (iv) reasonably cooperates with Alfresco in the defense of the Claim.

10.2 **Injunctive Relief**. If the Software becomes the subject of any actual or anticipated third party infringement claim, Alfresco may, at its sole option and expense, (i) procure for Company the right to continue using the affected Software consistent with this Agreement, (ii) replace or modify the affected Software with functionally equivalent software that does not infringe, or, if either (i) or (ii) is not available on a basis that Alfresco finds commercially feasible, (iii) terminate the Agreement or applicable Order Form and refund any prepaid fees for all unused portions of the Subscription Period.

10.3 **Exclusions**. Alfresco will have no liability for any Claim based upon (a) use of non-current versions of the Software when Alfresco has made newer, non-infringing versions available Company; (b) altered versions of the Software (unless the specific alteration was made by or for Alfresco); (c) use, operation or combination of the applicable Software with non-Alfresco programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination; (d) Alfresco's compliance with designs, specifications or instructions provided by Company where those designs, specifications or instructions cause the infringement; (e) use by Company after notice by Alfresco to discontinue use of all or a portion of the Software; or (f) third party open source software. This section constitutes the entire liability of Alfresco, and Company's sole and exclusive remedy, with respect to any third party claims of infringement or misappropriation of intellectual property rights.

11. GENERAL

11.1 **Notices.** Notices under this Agreement must be in writing and delivered to the receiving party's Chief Financial Officer, with a copy to its General Counsel, at the receiving party's address listed at the beginning of this Agreement. Notices will be deemed received when (1) delivered personally; or (2) upon confirmed delivery by a commercial express carrier.

11.2 **Assignment.** This Agreement is assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld or delayed; provided, however, either party may, upon written notice and without the prior approval of the other party, (a) assign this Agreement to an Affiliate so long as the Affiliate has sufficient credit to satisfy its obligations under this Agreement and the scope of Service is not affected; and (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such party's assets or stock.

11.3 **Independent Contractor.** Alfresco is an independent contractor and nothing in this Agreement or related to Alfresco's performance of any Order Form is intended to create an employment or agency relationship between Company (or any Company personnel) and Alfresco (or any Alfresco personnel). Each party will be solely responsible for supervision, direction, control and payment of its personnel, including applicable taxes, deductions, other payments and benefits. Alfresco may subcontract Services under an Order Form to third parties or Affiliates without the approval of Company; provided, however, that (a) subcontractors agree to protect Company Confidential Information, and (b) Alfresco remains responsible to Company for the performance and actions of its subcontractors to the same

extent as if it performed the services directly.

11.4 Compliance with Applicable Laws. Each party will comply with all applicable laws, including applicable export- control restrictions. In order for Alfresco to provide Services to Company, it may be necessary for Alfresco to share information with its Affiliates, Business Partners, and/or subcontractors, which may be located worldwide. In such event, Alfresco will comply with Section 7 of this Agreement and with applicable data privacy laws governing the transfer of that information.

11.5 Marketing. Upon Alfresco's acceptance of a signed Order Form, Alfresco may issue a press release announcing this Agreement, subject to Company's prior review and approval as to content, and list Company's name and logo in a list of customers to be used for marketing purposes.

11.6 Entire Agreement. Each Order Form (a) is deemed to incorporate this Agreement and all appendices and exhibits, unless otherwise expressly provided in that Order Form; (b) constitutes the exclusive terms and conditions with respect to the subject matter of that Order Form, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Company to place orders or otherwise effect transactions under this Agreement; and (c) represents the final, complete and exclusive statement of the agreement between the parties regarding that Order Form, and supersedes any prior or contemporaneous agreements (verbal or written) with respect to the subject matter of the Order Form. In the event of any conflict between this Agreement, any appendix, and any Order Form, this Agreement will take precedence unless otherwise expressly provided in the appendix or Order Form. The original and binding text of this Agreement is in English and the translation is for reference purposes only. In the event of any conflict between the English original and the translation, the English version shall control.

11.7 Force Majeure. Force majeure events shall excuse the affected party (the "Non-Performing Party") from its obligations under this Agreement so long as the event and its effects continue. Force majeure events include, without limitation, Acts of God, natural disasters, war, riot, network attacks, acts of terrorism, fire, explosion, accident, sabotage, strikes, inability to obtain power, fuel, material or labor, or acts of any government. As soon as feasible, the Non-Performing Party shall notify the other party of (a) its best reasonable assessment of the nature and duration of the force majeure event, and (b) the steps it is taking to mitigate its effects. If the force majeure event prevents performance for more than sixty (60) consecutive days, and the parties have not agreed upon a revised basis for performance, then either party may immediately terminate the Agreement upon written notice.

11.8 Severability. If any provision of this Agreement is ruled invalid or unenforceable, the provision shall be severable from this Agreement so that the remaining provisions are unaffected.

11.9 Waiver. No waiver of any rights under this Agreement will constitute a subsequent waiver unless otherwise stated in writing.

11.10 Dispute Resolution. California law shall govern all aspects of this Agreement, without regard to its conflict-of-law principles. Any dispute arising from this Agreement shall be subject to the exclusive jurisdiction of state and federal courts located in the Northern District of California. The prevailing party in any such dispute shall recover its reasonable attorneys' fees and costs from the losing party, including any fees or costs arising from an appeal.

11.11 Headings. All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.

11.12 Amendment. Neither this Agreement nor any Order Form may be amended or modified except in a writing signed by the parties, which writing makes specific reference to this Agreement or the applicable Order Form.

Alfresco

Appendix 1
(Definitions)

"**Active Process,**" as used with purchases of Alfresco Activiti BPM software, means a process instance within the Software that has not been completed, cancelled, or formally suspended. Processes that have been initiated—but which have not been completed, cancelled, or formally suspended, or which are in a "wait" state—shall constitute Active Processes regardless of the level of user or machine activity associated with those processes over time.

"**Affiliate**" means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party.

"**Business Partners**" means other organizations with which Alfresco has entered into reseller agreements to sell, and support certain Software and Services.

"**Community Versions**" means the free, unsupported, open source software that Alfresco makes available for download on its Alfresco and Activiti web sites.

"**Cores**" means physical computer processing cores or virtual Central Processing Units (vCPUs), sold by Alfresco in groups of four Cores. As licensed by Alfresco, an initial set of four Cores allows Company to deploy the Software on up to four physical cores, *or* up to four vCPUs, *on a single server instance*. If Company purchases eight or more Cores, Company may deploy the Software on physical cores or vCPUs equal to the number of Cores it has purchased, without limitation as to the number of server instances upon which they can run. For example, if Company purchases Alfresco One Enterprise (with eight Cores), Company may deploy the Software on up to eight physical cores, *or* up to eight vCPUs, on any number of server instances.

"**Named User**" means an individual who is authorized by Company to access the Software and who has been given a unique user name or identifier (regardless of whether the user has actually used those credentials to access the Software). No more than one individual may use an issued user name or identifier, and the sharing of such credentials is expressly prohibited.

"**Order Form**" means a document or set of documents that describes Software and/or Services that Alfresco will provide to Company, and may consist of (a) one or more signed order forms, statements of work, or similar transaction documents, or (b) an order placed by Company with a Business Partner.

"**Services**" means maintenance and support, training and professional services.

"**Software**" means Alfresco software and other software programs branded by Alfresco; provided, Software does not include third party open source software which may be provided therewith or Community Versions.

"**Subscription**" means access to the Software and certain support services during the Subscription Period.

"**Subscription Period**" means the defined period of time of the Subscription as set forth in an Order Form.

"**Taxes**" means any form of sales, use, value-added or other form of taxation, but excluding any taxes based on the net income of Alfresco.

Alfresco

Appendix 2
(Alfresco Support)

1. Alfresco Support Programs. Alfresco's support offerings, service levels, and guidelines are set forth at **http://www.alfresco.com/support/guidelines.** Company's applicable support program(s) will be set forth in the Order Form.

Alfresco support may be used only for Company's internal purposes. Use of Alfresco support on behalf of a third party that is not a party to the Agreement, or for Community Versions, is a material breach of the Agreement.

2.1 Scope of Support. In using Alfresco support, Company agrees it will: (a) provide Alfresco with sufficient information and resources to correct the applicable support issue; (b) install and operate the Software on an Alfresco-supported stack, as identified at http://www.alfresco.com/services/support/stacks/; (c) promptly install all service packs provided by Alfresco; and (d) procure, install and maintain all equipment, telephone lines, communication interfaces and other hardware necessary to operate the Software.

Company is responsible for reading the release notes and any other available documentation before installing or upgrading the Software, and for testing the Software before deploying it in a production environment. Company should also backup its production systems on a regular basis and have those backups available if needed for support purposes. Alfresco is not obligated to provide for the following: (a) Software that has been modified or damaged by customer or a third party (unless at Alfresco's direction); (b) issues caused by Company's negligence, hardware malfunction or other causes beyond the reasonable control of Alfresco; (c) issues caused by third party software not licensed through Alfresco or provided by Alfresco.

2.2 Technical Support Contacts. Alfresco customer support will provide Support to the designated contacts, as identified in an Order Form ("**Technical Support Contacts**"). The Technical Support Contacts should have "read, write and execute" access to the necessary files, English language communication skills, and relevant technical knowledge. Company may modify its designated Technical Support Contacts at any time during the term of a Subscription by notifying Alfresco in writing and giving Alfresco five (5) business days to process the change. Technical Support Contacts will be the only interface to the Alfresco customer support center. Alfresco recommends that the Technical Support Contacts be Alfresco certified by attending Alfresco training courses. In an emergency, an Alfresco customer support engineer will respond to an issue for an unauthorized contact on an exception basis, subject to later verification and involvement of a named Technical Support Contact.