

**THIRD AMENDMENT TO THE  
PUBLIC SECTOR AGREEMENT BETWEEN VERINT  
AMERICAS INC. AND THE CITY OF SAN ANTONIO**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This AMENDMENT TO THE PUBLIC SECTOR AGREEMENT BETWEEN VERINT AMERICAS, INC. AND THE CITY OF SAN ANTONIO ("Amendment ") is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") and Verint Americas Inc., ("Verint"), both of which may be referred to herein collectively as the "Parties."

On April 1, 2010, the San Antonio City Council passed and approved Ordinance No. 2010-04-01-0273 ("Ordinance"), authorizing " AUTHORIZING A CONTRACT WITH LAGAN TECHNOLOGIES, INC., TO PROVIDE THE OFFICE OF CUSTOMER SERVICE/311 DEPARTMENT WITH CUSTOMER RELATIONSHIP MANAGEMENT (CRM) THAT WILL INCLUDE SOFTWARE MAINTENANCE AND SUPPORT, FOR AN INITIAL ESTIMATED COST OF \$893,053.00 AND UP TO \$200,000.00 ANNUALLY THEREAFTER FUNDED WITH THE FY 2010 CAPITAL IMPROVEMENT PROGRAM BUDGET," allowing the City to contract with Verint (as successor in interest to Lagan Technologies, Inc.) to provide for a Customer Relationship Management System, to include installation, implementation, configuration, software maintenance and support.

Subsequent to the passing of the Ordinance and previous amendments, it has become necessary to amend the contract authorized by the ordinance to upgrade the existing software and add new software. The Agreement is amended with the terms and conditions below, which shall govern any new Software, new Services, and Support, as of this Amendment Effective Date.

The following are hereby incorporated and made a part of this Third Amendment:

- Exhibit 1:     Order 426081-5
- Exhibit 2:     Statement of Work attached to Order 426081-5
- Exhibit 3:     SaaS Agreement
- Exhibit 4:     Global Maintenance and Support Plan

In case of conflict, the terms and conditions of this Third Amendment shall take precedence over the Exhibits. In case of conflict between this Third Amendment and the Agreement, this Third Amendment including its Exhibits shall control over the Agreement.

1. Section 2 is hereby amended as follows:

All references to Schedule 2 used in the terms are hereby replaced with 'Order'.

The following terms are hereby deleted:

Acceptance Date, Authorized User Parameters, Deliverables, Initial Term, License Fee, Services, Lagan Support Services, Software, Solution, Upgrade, and Warranty Period

The following terms are hereby amended or added and shall have the following meanings:

**Fees.** License Fees, Service Fees, Support Fees and/or other fees as specified in this Agreement.

**License Fee.** In US Dollars, the fees identified at the time of and on each Order for licensing Product as specified on that Order.

**Licensee Environment.** The computing environment (excluding any software expressly provided by Verint on an Order) separately procured, prepared and maintained by Licensee for the use and operation of the Product, which meets Verint's then-current minimum Product requirements.

**Order.** The details of an order by Licensee for Product, Support and/or Services provided by or through Verint **(i)** on an order form or schedule provided by Verint and signed by Licensee, or **(ii)** on Licensee's purchase order provided to and accepted by Verint.

**Product.** Collectively, the Software and Documentation licensed to Licensee as identified in an Order or Orders hereunder, and all permissible copies of the foregoing.

**Services.** Product installation, training, consulting and/or, except with respect to Support, other services provided to Licensee hereunder.

**Service Fee.** In US Dollars, the fees identified at the time of and on each Order on a fixed fee or time and material basis for Services to be performed.

**Software.** Computer application programs (including, if applicable, any Updates and other developments provided to Licensee hereunder) in object code form developed and owned by Verint or its licensor(s) and licensed hereunder.

**Support.** The maintenance and/or support provided for a Product(s) at a Site shall be at the support level specified on an Order ("Maintenance and Support Plan"), as further described in the document attached hereto as Exhibit 4.

**Support Term.** The initial one (1) year period commencing on the execution of each Order for Product, and each one (1) year renewal period thereafter for which Licensee subscribes to Support.

**Updates.** Periodic improvements or additions to the Software, including Error Corrections, Versions and other changes to the Software, that may be provided hereunder to the extent specified in Licensee's Maintenance and Support Plan, excluding any new Software feature or substantial additional functionality that is subject to additional fees.

**Warranty Period** means (i) for Services, thirty (30) days after performance of the Services, and (ii) for Software, ninety (90) days after the initial delivery of the Software.

2. Section 3.1.1 is hereby deleted in its entirety and replaced with the following:  
"3.1.1 license the Software to the Licensee pursuant to the terms and conditions set out in this Agreement and any additional licensing terms set out in an Order; and"
3. Section 4 is hereby deleted in its entirety.
4. Section 5 is hereby amended by changing all references from "Lagan Support Services" to "Support Services".
5. Section 6 is hereby amended by changing all references from "Upgrades" to "Updates".
6. Section 7 is hereby amended by changing the heading from "Project Manager" to "Project Manager and Services" and by adding the following new sections:

"7.4 Any Services provided hereunder are subject to Licensee's performance of its obligations herein, and in accordance with a mutually agreeable implementation plan. Licensee shall provide all necessary information, access, workspace, computing resources, and other services and support materials as reasonably required by Verint to perform its duties in a timely manner, including, without limitation, establishing the Licensee Environment as specified in Section 7.6. All Services provided on a time and material basis are per person unless otherwise specified, and charged hourly or daily as indicated for each person. Licensee shall reimburse Verint for employee meals and incidental expenses while on travel status for City projects which shall be in accordance with the federal per diem rates published by the General Services Administration (GSA). Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem).

7.5 Scheduling Services. Licensee shall request scheduling for services ordered hereunder with reasonable notice on a mutually agreed upon start date. Verint shall use reasonable efforts to meet the requested time schedule; provided, all scheduling is dependent upon the allocation and availability of resources.

7.6 Licensee Environment. Prior to the installation of a Product, Licensee shall ensure the establishment of a Licensee Environment at each Site for use and operation of the Product. Licensee acknowledges that, except as otherwise expressly specified on an Order, Verint is not responsible for obtaining, licensing or selling any hardware, peripherals or third-party software or interfaces needed to prepare or maintain the Licensee Environment. Licensee is responsible for backing up Licensee's systems and data prior to providing Verint with access to the Licensee Environment."

7. Section 8 is hereby amended as follows:

Section 8.1 is deleted in its entirety and replaced with the following:

"8.1 Fees and Expenses. Verint shall invoice Licensee one hundred percent (100%) of the License Fees, Support Fees for the initial Support Term, and any fixed fee Service Fees applicable to such Order (i) upon delivery for License Fees, and Support Fees for the initial Support Term, and an amount attributable to the portion of the fixed fee amount for each milestone upon completion of the confirmation of Services process set forth in the applicable statement of work milestone by milestone for fixed fee Service Fees, or (ii) if no delivery is necessary, upon Verint's receipt and acceptance of the Order. Verint may invoice Licensee for each renewal Support Term prior to such renewal, and all other fees, assessments and expenses provided for under this Agreement as performed and/or incurred. Licensee shall pay all Fees and other amounts due to Verint hereunder within thirty (30) days after the date of Verint's invoice and without deductions, except with respect to any amount disputed in good faith where prior notice is provided to Verint detailing the amount and reason for the dispute.

Section 8.3 is deleted in its entirety and replaced with the following:

"8.3 Taxes. Licensee represents that it is exempt from payment of federal excise taxes. Licensee will provide the City's exemption certificate and federal tax identification number to Verint if requested."

Section 8.4 is deleted in its entirety and replaced with the following:

"8.4 Accurate Records; Audit. Licensee shall keep complete and accurate records of all its obligations hereunder. Licensee shall allow Verint or its agent reasonable access to audit Licensee's records and systems solely to verify general compliance with the terms and conditions of this Agreement, including, without limitation, Licensee and/or Verint running Verint provided utilities to determine actual Product usage. Verint shall conduct such audits during Licensee's normal business hours with reasonable notice, or as otherwise reasonably requested by Licensee."

The following new sections are added to Section 8:

"8.10 Order Submittal. Licensee may submit Orders to Verint, which may be sent via mail, telefax, email attachment, electronic procurement systems, and other means as the parties may decide from time to time. Each Order will reference the name and

Effective Date of this Agreement, and contain information required by Verint, including, without limitation: (i) the Verint quote number, (ii) the Software to be licensed and quantity and types of licenses, (iii) the Services to be provided, (iv) the support level for the initial Support Term, (v) each Site address, (vi) the billing address, (vii) Licensee contact names and phone numbers for each Site, (viii) the License Fees, initial Support Term Support Fees, Services Fees, and meal/incidental expenses (incurred at GSA rates) (ix) requested delivery date, and (x) ExWorks delivery terms.

8.11 Services Order Acceptance. All Orders are subject to Verint's acceptance, and to the terms and conditions of this Agreement. For each Order in accordance with this Section, Verint shall acknowledge acceptance of the Order, and (if applicable) grant a license as designated in such Order, by issuing an invoice in accordance with Section 5. For each initial Order of Product, Verint shall deliver by making available for download a copy of the Product. Licensee shall, if applicable, be responsible for obtaining all licenses, permissions, or other governmental approvals necessary for the operation of the Product at each Site. Verint shall have no obligation to deliver any Product, additional licenses, Services or technical data, and shall otherwise have the right to withhold performance under this Agreement (i) to the extent it has actual knowledge any licenses, permissions, or other governmental approvals required under then-current applicable laws and/or regulations have not been properly obtained by the respective party(ies), (ii) if Licensee is in breach of this Agreement other than for failure to pay; or (iii) if Licensee is in arrears on any payments rightfully due to Verint (excluding any amounts that are disputed in good faith), however, Verint may only withhold performance of the applicable Service or Support or cease delivery of any Software to which the non-payment is tied."

8. Section 9.3 is hereby deleted in its entirety and replaced with the following:

"9.3 If Verint believes that the Software may have violated the Intellectual Property Rights of any third party, Verint may choose to either modify the Software so that it ceases to be infringing, replace the Software with non-infringing Software or obtain a license to allow for the continued use of the Software, or if these alternatives are not commercially reasonable, Verint may terminate the license for the applicable Software and grant Licensee an amortized credit for the License Fee the Licensee has paid hereunder for the infringing Software based on a five (5) year straight-line depreciation. Verint shall not indemnify the Licensee if the Licensee uses a superseded or altered release of the Software and the Infringement Claim could have been avoided by using the current unaltered release of the Software. This Section 9 provides the Licensee with its exclusive remedy for any infringement claims or damages."

9. Section 11.1.2 is hereby deleted in its entirety and replaced with the following:

"11.1.2 During the Warranty Period, the Services shall be performed with reasonable skill, care and diligence by appropriately experienced, qualified and trained personnel."

10. Section 13.1 is hereby deleted in its entirety and replaced with the following:

“13.1 This Agreement shall come into effect on the date of this Agreement and shall continue in force indefinitely unless earlier terminated as provided in Section 9.3 and Section 13.

11. The following new section is added to section 13.

“13.5 Non-Appropriation. If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods.”

11. The following new section 15.2 is added to Section 15.

“Notwithstanding any other provision of this agreement, the parties understand that the City is Chapter 552 of the Texas Government Code) ("TPIA" or the "Act") when responding to records requests made under the Act. Pursuant to the requirements of TPIA, if the City receives a request for information which Verint has marked or identified as being confidential, trade secret, commercial, financial or proprietary information, the City will respond to the request in accordance with the procedures set forth in Section 552.305 of the Act. Specifically, the City will notify Verint of its receipt of the request and request an attorney general decision identifying the exception(s) to disclosure believed to apply. The Parties acknowledge that TPIA requires a brief to be submitted to the attorney general explaining why the claimed exceptions apply to the information in issue. The City shall not be obligated to submit the brief supporting those claimed exceptions. Verint shall be solely responsible for submitting the brief and the documents in a governmental entity required to comply with the Texas Public Information Act (issue to the attorney general).

Should the attorney general render a decision indicating that all or a part of the information must be disclosed, the City shall be permitted to disclose the information unless Verint successfully contests the attorney general decision in accordance with the requirements of TPIA. Nothing in this agreement shall require the City to institute or participate in any litigation relating to an open records request for information that Verint considers to be confidential.”

12. Section 15.5 is hereby deleted in its entirety and replaced with the following:

“15.5 Force Majeure. Except for obligations of confidentiality and payment, neither party shall be liable for any delay or failure in performing hereunder if caused by any factor beyond the reasonable control of the party, including force of nature, war, riot, civil action, terrorism, labor dispute, or failure of telecommunication systems or utilities. Performance shall be deferred until such cause of delay is removed, provided that the delayed party shall promptly notify the other party of such occurrence. If the event of force majeure 1) continues for a period exceeding 3 months; or 2) there is reasonable probability that it will continue for a period exceeding 3 months, then either party may terminate on 10 days written notice to other party.”

13. Section 15.9 is hereby deleted in its entirety and replaced with the following:  
 “15.9 Survival. The terms of Sections 2, 3, 8, 9, 11, 12, 14, and 15 shall survive expiry, variation or termination of this Agreement. Such other terms in this Agreement which, from their nature or context, it is contemplated that they are to survive expiry, variation or termination, shall remain in full force and effect notwithstanding expiry, variation or termination of this Agreement. Notwithstanding the above, City shall not be required to pay unappropriated obligations.”
  
14. Schedule 1 is hereby deleted in its entirety.
  
15. **Compliance with Agreement for Amendment.** The parties further agree that this Amendment complies with the requirements for contract amendment as contained within the Agreement and that the Agreement is now amended to include the terms of this Amendment.
  
16. **No Further Changes.** In all other respects, the terms and conditions of the Agreement remain unchanged and are hereby ratified by the parties and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the Amendment Effective Date.

EXECUTED and AGREED to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**VERINT AMERICAS INC.**

\_\_\_\_\_  
 Erik Walsh  
 Deputy City Manager

\_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
 Assistant City Attorney

**EXHIBIT 1**  
Order 426081-5  
[See Attached]



**EXHIBIT 2**

Statement of Work Attached to Order 426081-5  
[See Attached]

**EXHIBIT 3**  
SaaS Agreement  
[See Attached]

**EXHIBIT 4**  
Global Maintenance and Support Plan  
[See Attached]