
TULSA COUNTY

PURCHASING
DEPARTMENT

APPROVED
10/21/2019

MEMO

DATE: October 16, 2019
FROM: Megan L. Blackford
Assistant Purchasing Director
TO: Board of County Commissioners
SUBJECT: Agreement – PowerDMS, Inc.



Submitted for your approval and execution is the attached Software as a Service Agreement between the Tulsa County Board of County Commissioners on behalf of the Tulsa County Sheriff's Office and PowerDMS, Inc. for an annual compliance and policy management software subscription as further described in Exhibit A of the attached.

Respectfully submitted for your approval and execution.

MLB

ORIGINAL: Michael Willis, County Clerk, for the October 21, 2019 agenda.

CMF# 20190878

PowerDMS, Inc.
Software as a Service Agreement

This Software as a Service Agreement (this “**Agreement**”) is entered into by and between The Board of County Commissioners on behalf of the Tulsa County Sheriff’s Office, Oklahoma (“**Customer**”) and PowerDMS, Inc. (“**PowerDMS**”), effective as of the latest date shown on the signature page of this Agreement (the “**Effective Date**”). In consideration of the parties’ mutual promises contained in this Agreement, the parties, intending to be legally bound, agree as follows:

1. **Definitions; Construction**

1.1. Definitions.

“**Agreement**” means this Software as a Service Agreement.

“**Customer Data**” means electronic data and information submitted by or for Customer to PowerDMS in connection with the Services.

“**Intellectual Property Rights**” means all trade secrets, United States patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the United States.

“**Malicious Code**” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“**PowerDMS**” means PowerDMS, Inc., a Delaware corporation.

“**PowerDMS Technology**” means the software applications, tools, application programming interfaces (APIs), connectors, programs, networks and equipment that PowerDMS uses to make its software as a service subscription products and related services available to its customers.

“**Service Order**” means an ordering document executed by Customer, whether or not designated a “Service Order”, specifying the Services the Customer is purchasing from PowerDMS, as such Service Order may be amended from time to time as mutually agreed by the Customer and PowerDMS. Service Orders shall not include Customer’s purchase order forms.

“**Services**” means the PowerDMS software as a service (SaaS) subscription products and/or professional services described in one or more Service Orders executed by the Customer.

“**Users**” means an individual who is an employee or independent contractor of Customer who has been authorized by Customer to use the Services, for whom Customer has purchased a subscription, and to whom Customer (or, when applicable, PowerDMS at Customer’s request) has supplied a user identification and password.

“**Volunteered Data**” shall include any and all suggestions, enhancement requests, recommendations, corrections or other feedback provided by Customer or its Users relating to the Services or the PowerDMS Technology as well as any portion of the Customer Data that the Customer submits into the PowerDMS Success Community or otherwise unambiguously identifies through the Services as being made freely available to PowerDMS or other PowerDMS customers. Volunteered Data shall not include Protected Health Information (PHI), data applicable to or regulated by the Payment Card Industry–Data Security Standards (PCI-DSS), Personally Identifiable Information (PII), or personal data of data subjects within the European Union (EU), European Economic Area (EEA), or Switzerland.

1.2. Construction. This Agreement applies to the provision of all Services. The parties will enter into one or more Service Orders that contain additional terms and conditions applicable to the provision of certain Services. Upon

execution by the Customer, each Service Order will be incorporated into this Agreement. In the event of any conflict between the provisions of this Agreement and any Service Order, the provisions of the Service Order will prevail, but only to the extent of such conflict.

2. **Services**

2.1. Services. PowerDMS will (a) make the Services available to Customer and Customer's Users pursuant to this Agreement, Service Order Q-72077 attached hereto as Exhibit A, and any applicable Service Orders, (b) provide applicable standard support for the Services at no additional charge (or such other level of support specified in a Service Order), (c) use commercially reasonable efforts, using applicable current industry practices, to ensure the Services do not contain or transmit any Malicious Code, and (d) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for planned downtime (of which PowerDMS will give advance notice).

2.2. Subscriptions. Unless otherwise provided in the applicable Service Order, Services are purchased as subscriptions. If Customer elects to increase the number of Users permitted to use the Services pursuant to a subscription, fees for the additional Users will be calculated at the same per User pricing as the underlying subscription and will be prorated for the portion of that subscription term remaining at the time the additional Users are added. Any such modification to a subscription will be confirmed in writing by Customer.

2.3. Customer Responsibilities. Customer will be responsible for (a) ensuring Customer and its Users comply with terms and conditions of this Agreement and each Service Order for all acts of its Users, (b) the accuracy, quality and legality of the Customer Data, the means by which the Customer obtained the Customer Data and Customer's use of the Customer Data in connection with the Services, (c) using reasonable efforts to prevent unauthorized access to or use of Services, and provide prompt notice to PowerDMS of any unauthorized access or use, (d) using the Services only in accordance with this Agreement, any applicable Service Orders and applicable laws and government regulations, and (e) allocating the necessary resources and personnel to cooperate with PowerDMS staff in a timely manner to allow the Services to perform.

2.4. Restrictions. Customer will not, and will ensure its Users do not (a) make any of the Services available to anyone other than Users or use any Services for the benefit of anyone other than Customer and its Users, unless otherwise agreed in writing by the parties, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any of the Services, or include any of the Services in a service bureau or outsourcing offering, unless otherwise agreed in writing by the parties, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy rights, publicity rights, copyright rights, or other rights of any person or entity, (d) use the Services to store or transmit Protected Health Information (PHI), unless otherwise agreed in writing by the parties, (e) use the Services to store, transmit or process the personal data of data subjects within the European Union (EU), European Economic Area (EEA), Switzerland or the United Kingdom unless otherwise agreed in writing by the parties, (f) use the Services to store or transmit data applicable to or regulated by the Payment Card Industry – Data Security Standards (PCI-DSS), (g) use the Services to store or transmit Malicious Code, (h) interfere with or disrupt the integrity or performance of the Services (including, without limitation, activities such as security penetration tests, stress tests, and spamming activity), (i) attempt to gain unauthorized access to the Services or its related systems or networks, (j) modify, copy, or create derivative works based on the Services or any part, feature, function or user interface thereof, (k) frame or mirror any part of the Services, other than framing on Customer's own intranets or otherwise for Customer's own internal purposes, (l) access the Services for the purpose of building, selling or marketing a competitive product or service or copying any PowerDMS Technology, (m) remove the copyright, trademark, or any other proprietary rights or notices included within PowerDMS Technology and on and in any documentation or training materials, (n) disassemble, reverse engineer, or decompile the Services, including PowerDMS Technology or otherwise attempt to obtain or perceive the source code of PowerDMS Technology, or (o) use the Services in a manner which violates any applicable laws.

2.5. Infringing Content. PowerDMS reserves the right to delete or disable content stored, transmitted or published by Customer using the Services upon receipt of a bona fide notification that such content infringes upon the intellectual property rights of others, or if PowerDMS otherwise reasonably believes any such content is in violation of Section 2.4(c).

2.6. Modifications to Services. The Services may be modified by PowerDMS from time to time as it deems necessary to address changes in technology and the needs of its customers, provided that any such modification will

not degrade the functionality of the Services in any material manner, unless required by applicable law. PowerDMS will notify Customer in advance of any material modifications.

2.7. Third Party Services. The Services may permit Customer and its Users to access services or content provided by third parties through the Services ("**Third Party Offerings**"). Customer agrees that PowerDMS is not the original source and shall not be liable for any inaccuracies contained in any content provided in a Third Party Offering. PowerDMS makes no representations, warranties or guarantees with respect to the Third Party Offerings or any content contained therein. PowerDMS may discontinue access to any Third Party Offering through the Services, with or without notice, if the relevant agreement with the applicable third party no longer permits PowerDMS to provide such access.

3. **Proprietary Rights and Licenses**

3.1. Limited License to Use Services. Subject to the terms and conditions of this Agreement, PowerDMS hereby grants to Customer a non-exclusive, non-transferable, limited, royalty-free license, without right to sub-license, for the term of each Service Order, to access and use, and to permit its Users to access and use, the Services, solely for Customer's operations in its ordinary course of business.

3.2. Limited License to Use Customer Data. Customer hereby grants to PowerDMS a non-exclusive, non-transferable, limited, royalty-free license, without right to sub-license (except to its sub-processors, as required for the provision of the Services), to aggregate, compile, and otherwise use the Customer Data, as necessary to perform the Services, to create Statistical Data and Anonymized Data for the purposes described in 3.3 below and as otherwise may be agreed in writing by Customer.

3.3. Statistical Data and Anonymized Data. PowerDMS tracks and collects certain information about how Users use the Services and uses the information collected to obtain general statistics regarding the use of the Services and to evaluate how Users use and navigate the Services (collectively, "**Statistical Data**"). PowerDMS may use Statistical Data for PowerDMS's internal analytical purposes, including the improvement and enhancement of the Services and PowerDMS's other offerings. At times, PowerDMS may review the Statistical Data of multiple customers and may combine, in a non-personally-identifiable format, the Statistical Data with Statistical Data derived from other customers and users to create aggregate, anonymized data regarding usage history and statistics (collectively, "**Anonymized Data**"). Anonymized Data will not contain information that identifies or could be used to identify Customer or its Users. Customer agrees that Anonymized Data is not Confidential Information of Customer. PowerDMS may use Anonymized Data to create reports that it may use and disclose for PowerDMS's commercial or other purposes.

3.4. Reservation of Rights. No rights or licenses are granted except as expressly set forth herein. Without limited the foregoing, subject to the limited rights expressly granted in this Section 3, all right, title and interest (including all related Intellectual Property Rights) in and to (a) the Services and the PowerDMS Technology is retained by PowerDMS, and (b) the Customer Data is retained by Customer.

3.5. Feedback and Volunteered Data. Customer grants PowerDMS a worldwide, perpetual, irrevocable, royalty-free license to use, disclose, reproduce, license or otherwise distribute and incorporate into the Services and the PowerDMS Technology any "**Volunteered Data**".

3.6. Federal Government Use. If the Services or the PowerDMS Technology are made available to a federal government end user, for ultimate federal government end use, technical data and software rights related to the Services include only those rights customarily provided to the public as specified in this Agreement.

4. **Fees**

4.1. Fees. Customer will pay PowerDMS all fees specified in a Service Order. Except as otherwise specified in this Agreement or in a Service Order Form, payment obligations are non-cancelable, and fees paid are non-refundable, and quantities purchased cannot be decreased during the relevant subscription term.

4.2. Payment Terms. Fees set forth in each Service Order are due on the date set forth on the invoice referencing such Service Order.

4.3. Customer Purchase Orders. Except as otherwise specified in a Service Order, Customer will not require any purchase order to pay fees due or otherwise to perform its obligations with respect to any Service Order. Any reference to a purchase order in a Service Order or any associated invoice is solely for Customer's convenience in record keeping, and no such reference or any delivery of services to Customer following receipt of any purchase order shall be deemed an acknowledgement of or an agreement to any terms or conditions referenced or included

in any such purchase order or in any way be deemed to modify, alter, supersede or supplement any Service Order or this Agreement.

4.4. Taxes. The fees set forth in each Service Order do not reflect any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “**Taxes**”). Customer is responsible for paying all Taxes associated with Customer's purchase and use of Services, excluding any taxes based upon PowerDMS's personal property ownership or net income. If PowerDMS has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 4.4, PowerDMS will invoice Customer for, and Customer will promptly pay, the amount of such Taxes unless Customer provides PowerDMS with a valid tax exemption certificate authorized by the appropriate taxing authority.

4.5. Overdue Charges. [intentionally omitted]

4.6. Suspension of Services. If any amount owing by Customer is more than 30 days overdue, PowerDMS may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full.

4.7. Payment Disputes. PowerDMS will not exercise its rights under Section 4.5 or 4.6 so long as Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

5. **Confidentiality**

5.1. Definition of Confidential Information. “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes its Customer Data. PowerDMS Confidential Information includes the PowerDMS Technology and the Services. The Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

5.2. Obligations. The Receiving Party will use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not less protective of the Confidential Information than those herein.

5.3. Exceptions. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance if the Disclosing Party wishes to contest the disclosure.

5.4. Equitable Relief. The parties recognize and agree there is no adequate remedy at law for breach of the provisions of the confidentiality obligations set forth in this Section 5, that such a breach would irreparably harm the Disclosing Party and the Disclosing Party is entitled to seek equitable relief (including, without limitation, an injunction) with respect to any such breach or potential breach in addition to any other remedies available to it at law or in equity.

6. **Customer Data**

6.1. Data Protection. PowerDMS will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by PowerDMS personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by applicable law, or (c) as Customer expressly permits in writing. Customer acknowledges and agrees that it is commercially reasonable for PowerDMS to rely upon the security processes and measures utilized by PowerDMS's cloud infrastructure providers.

6.2. Data Breach Notification. PowerDMS will notify Customer of unauthorized access to, or unauthorized use, loss or disclosure of Customer Data within custody and control (a “**Security Breach**”) within 72 hours of PowerDMS’s confirmation of the nature and extent of the same or when required by applicable law, whichever is earlier. Each party will reasonably cooperate with the other with respect to the investigation and resolution of any Security Breach. Except to the extent required otherwise by applicable law, Customer will have approval rights on notifying any third-party regulatory authority of the Security Breach. If applicable law or Customer’s policies require notification of its Users or others of the Security Breach, Customer shall be responsible for such notification.

6.3. Data Export, Retention and Destruction. Customer may export or delete Customer Data from the Services at any time during the subscription term, using the existing features and functionality of the Services. Customer is solely responsible for its data retention obligations with respect to Customer Data. If and to the extent Customer cannot export or delete Customer Data stored on PowerDMS's systems using the then existing features and functionality of the Services, PowerDMS will, upon Customer's written request, make the Customer Data available for export by Customer or destroy the Customer Data. If Customer requires the Customer Data to be exported in a different format than provided by PowerDMS, such additional services will be subject to a separate agreement on a time and materials basis. Except as otherwise required by applicable law, PowerDMS will have no obligation to maintain or provide any Customer Data more than ninety (90) days after the expiration or termination of this Agreement.

7. **Term; Termination**

7.1. Term of Agreement. Subject to earlier termination as provided below, this Agreement begins on the Effective Date and continues until the last Service Order has expired or has been terminated.

7.2. Termination for Breach. A party may terminate this Agreement or any Service Order (a) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

7.3. Subscription Term and Renewal. The term of each subscription for Services will be as specified in the applicable Service Order. At least 30 days prior to the expiration of a Service Order, PowerDMS will send a new Service Order notifying Customer of the pricing applicable to a renewal subscription for a period equal to the expiring subscription term or one year (whichever is shorter). The new Service Order shall be deemed to be effective if it is signed by the parties and Customer (a) returns the executed Service Order to PowerDMS, (b) remits payment to PowerDMS of the fees set forth in the invoice referencing the Service Order, or (c) the Customer or any of its Users access or use the Services after the expiration of the previous term.

7.4. Effect of Termination. Upon termination of this Agreement for any reason, Customer and its Users will cease all use of the Services and, except for PowerDMS's right to receive accrued but unpaid fees and as provided in Section 11.12 (Survival), all rights and obligations of the parties hereunder will automatically cease. Notwithstanding the foregoing, termination will not affect or prejudice any right or remedy that a party possesses with respect to any breach of this Agreement occurring on or before the date of termination. If this Agreement is terminated by Customer in accordance with Section 7.2, PowerDMS will refund to Customer any prepaid fees covering the remainder of the subscription term of all Service Orders after the effective date of termination.

7.5. Suspension. PowerDMS may suspend Customer’s or any User’s right to access or use any portion of the Services if PowerDMS determines that Customer’s or Users’ use of the Services (i) poses a security risk to the Services, PowerDMS or any third party, (ii) may adversely impact the Services, or the networks or data of any other PowerDMS customer, business partner or service provider, (iii) does not comply with this Agreement, a Service Order or applicable law, or (iv) may subject PowerDMS or any third party to liability. PowerDMS will endeavor to provide as much notice as is reasonably practicable under the circumstances, and to reinstate the Services as soon as reasonably practicable following resolution of the issue.

8. **Representation and Warranties; Disclaimers**

8.1. PowerDMS. PowerDMS represents and warrants that (a) it has the full power and authority to enter into this Agreement, to perform its obligations under this Agreement, and to grant the licenses and rights granted to Customer in this Agreement; (b) this Agreement is the legal, valid, and binding obligation of PowerDMS, enforceable against it in accordance with the terms hereof, except to the extent such enforceability may be limited by bankruptcy, reorganization, insolvency or similar laws of general applicability governing the enforcement of the

rights of creditors or by the general principles of equity (regardless of whether considered in a proceeding at law or in equity) (c) it will comply with all applicable laws relating to its performance and/or obligations under this Agreement; (d) this Agreement does not conflict with any other contract or obligation to which it is a party or by which it is bound, and (e) it will perform the Services in accordance with this Agreement in a timely, professional and workmanlike manner.

8.2. Customer. Customer represents and warrants that (a) it has the full power and authority to enter into this Agreement, to perform its obligations under this Agreement, and to grant the licenses and rights granted to PowerDMS; (b) this Agreement is the legal, valid, and binding obligation of Customer, enforceable against it in accordance with the terms hereof, except to the extent such enforceability may be limited by bankruptcy, reorganization, insolvency or similar laws of general applicability governing the enforcement of the rights of creditors or by the general principles of equity (regardless of whether considered in a proceeding at law or in equity); (c) this Agreement does not conflict with any other contract or obligation to which it is a party or by which it is bound; and (d) it will comply with all applicable laws relating to its performance and/or obligations under this Agreement.

8.3. Disclaimer of Implied Warranties. THE WARRANTIES SET FORTH IN SECTION 8.1 AND 8.2 ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY POWERDMS AND CUSTOMER, HEREUNDER, RESPECTIVELY. EACH OF POWERDMS AND CUSTOMER EXPRESSLY DISCLAIMS, AND THE OTHER PARTY HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING THE SERVICES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, UNINTERRUPTED ACCESS, THAT THE SERVICES ARE SECURE, OR THAT THE SERVICES WILL BE AVAILABLE CONSTANTLY AND IN AN UNINTERRUPTED MANNER AND ANY OTHER IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, ALL THIRD-PARTY OFFERINGS ARE PROVIDED "AS-IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER. POWERDMS MAKES NO WARRANTY THAT THE SERVICES WILL COMPLY WITH THE LAWS (INCLUDING WITHOUT LIMITATION ANY LAWS RESPECTING DATA PRIVACY) OF ANY JURISDICTION OUTSIDE OF THE UNITED STATES OF AMERICA.

9. **Indemnification**

9.1. By PowerDMS. PowerDMS will defend Customer from and against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that the Services infringe or misappropriate such third party's Intellectual Property Rights, provided PowerDMS is promptly notified of any and all such claims, demands, suits or proceedings and given reasonable assistance and the opportunity to assume sole control over defense and settlement. The foregoing obligations do not apply with respect to any infringement resulting from the modification of the Services or combination of the Services with software, hardware, data, or processes not provided by PowerDMS, the continued use of the Services by Customer after being notified of the alleged infringement or after being informed of modifications that would have avoided the infringement, or Customer's use of the Services in violation of this Agreement or the applicable Service Order.

9.2. By Customer. To the extent permitted by applicable law, Customer will defend PowerDMS from and against claim, demand, suit or proceeding made or brought against PowerDMS (a) by a third party alleging that any Customer Data infringes or misappropriates such third party's Intellectual Property Rights, (b) in connection with Customer's violation of any applicable laws, or (c) in connection with a dispute between a User and Customer, in each case provided that Customer is promptly notified of any and all such claims, demands, suits or proceedings and given reasonable assistance and the opportunity to assume sole control over defense and settlement.

9.3. Mitigation. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by PowerDMS to be infringing, PowerDMS may, at its option and expense (a) replace or modify the Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Services, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Services.

9.4. Exclusive Remedy. This Section 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 9.

10. **Limitation of Liability**

10.1. Exclusion of Certain Claims. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, COST OF COVER, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, INCLUDING LOSS OF BUSINESS, REVENUE OR ANTICIPATED PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, POWERDMS SHALL NOT BE LIABLE FOR THE CRIMINAL ACTS OF THIRD PARTIES.

10.2. Limitation of Liability. EXCEPT WITH REGARD TO LIABILITY FOR THE INDEMNITY OBLIGATIONS UNDER SECTION 9 (INDEMNIFICATION), IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE SUM OF ALL AMOUNTS REQUIRED TO BE PAID BY CUSTOMER TO POWERDMS IN CONNECTION WITH THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE EVENT INITIALLY GIVING RISE TO SUCH LIABILITY.

11. General Provisions

11.1. Entire Agreement. This Agreement, Service Order Q-72077 attached hereto as Exhibit A, and any Service Orders executed by Customer constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous written, electronic or oral communications, representations, agreements or understandings between the parties with respect thereto. Any Service Order executed or amended, or any subscription term specified in any Service Order which is renewed or otherwise extended, shall be subject to the terms and conditions of this Agreement. Except for the terms of any Service Order executed by Customer, any additional, supplementary or conflicting terms supplied by either party (whether in hard copy or electronic form), including those contained or referenced in any invoice, purchase order or policies, are expressly rejected by each party and shall serve only the purpose of identifying the products or services ordered.

11.2. No Waiver. The failure of a party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision.

11.3. Assignment. This Agreement is not assignable, transferable or sublicensable by Customer except with PowerDMS's prior written consent. PowerDMS may assign this Agreement without Customer's consent to a parent, subsidiary, an acquirer of all or substantially all of the assets of PowerDMS or a successor by merger or other business combination. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.4. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such provision will be deemed stricken from the Agreement and the remaining provisions of this Agreement will remain in full force and effect.

11.5. Relationship of Parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect whatsoever.

11.6. Publicity. Unless otherwise provided in the applicable Sales Order, PowerDMS may identify Customer as one of its customers and use Customer's logo for such purposes, subject to any trademark usage requirements specified by Customer.

11.7. No Third Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

11.8. Resolution of Disputes. In the event of a dispute between the parties regarding this Agreement, the parties hereby agree to attempt to resolve the dispute by entering into good faith negotiations. If, within thirty (30) days, the parties do not reach agreement on the resolution of the dispute, the dispute may be settled by a mediator approved by the parties with any costs split by the parties. If the dispute is not resolved by mediation, either party may file an action on the dispute in any court having jurisdiction thereof.

11.9. Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given (a) when received, if personally delivered; (b) [intentionally omitted] (c) the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and (d) upon receipt, if sent by certified or registered mail, return receipt requested. All notices will be given using the contact information with respect to each party set forth in the applicable Service Order or such other contact information as may be designated by a party by giving written notice to the other party pursuant to this Section 11.9.

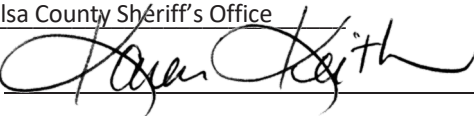
11.10. Force Majeure. Neither party will be liable for failure to perform its obligations hereunder, except the obligation to make payment due, to the extent that it's performance is prevented, hindered or delayed as a result of strikes, riots, fires, explosions, acts of God, acts of terrorism, war, governmental action, labor conditions,

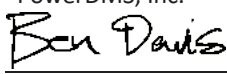
internet service interruptions or slowdowns, vandalism or cyber-attacks, or any other cause beyond the reasonable control of such party.

11.11. **Electronic Signatures; Counterparts.** Signatures and other express indications of agreement sent by electronic means (facsimile or scanned and sent via e-mail or signed by electronic signature service where legally permitted) will be deemed original signatures. This Agreement may be signed in multiple counterparts, each of which will be deemed an original and which will together constitute one agreement.

11.12. **Survival.** All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, acknowledgements and reservations of proprietary rights, confidentiality obligations, warranty disclaimers, and limitations of liability.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates indicated below.

Customer
Board of County Commissioners on behalf of the
Tulsa County Sheriff's Office
BY: 
PRINT NAME: Karen Keith
PRINT TITLE: Chairman
DATE SIGNED: 10/21/2019

PowerDMS
PowerDMS, Inc.
BY: 
PRINT NAME: Ben Davis
PRINT TITLE: CFO
DATE SIGNED: 10/03/2019

Attest:

Tulsa County Clerk



Approved as to form:
Nolan M. Fields IV Digitally signed by Nolan M. Fields IV
Date: 2019.10.16 12:01:34 -05'00'
Asst. District Attorney

Exhibit A



t 800.749.5104 f 407.210.0113 www.powerdms.com 101 S. Garland Ave, Ste 300 Orlando, FL 32801

Service Order

Contract Details	Order Details
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Account Number: A-3675 Customer: Board of County Commissioners on behalf of Tulsa County Sheriff's Office (OK) Sales Rep: Eddie Blackmon	Order #: Q-72077 Order Date: per agreement Valid Until: 10/04/2019 Subscription Start Date: per agreement Initial Term (months): 12
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Customer Contact	Billing Contact
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Billing Contact: Tulsa County Sheriff's Office (OK) Address: 303 W 1st Street Tulsa, OK 74103	Billing Contact Email: Phone: Fax:
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Payment Terms	Notes:
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Payment Term: NET 30 PO Number:	
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Subscription Service

Item	Qty	Type	List Price	Total
PowerDMS Pro Base	1	Recurring	\$4,000.00	\$3,114.80
Capture signatures to ensure acknowledgement of crucial content, and generate reports based on user activity. Create workflows to simplify content updates and approvals. View content changes side-by-side.				
PowerDMS Pro License	600	Recurring	\$25.00	\$7,649.33
Per user license for PowerDMS Pro				
SSO Service 501-1000	1	Recurring	\$1,500.00	\$0.00
Single Sign on Service 501-1000 Users				
PowerDMS Professional Package	1	Services	\$2,500.00	\$2,500.00
The Professional services package offers access to a PowerDMS technical resource who will assist your IT team with user import and single sign-on setup. You'll receive six hours of consulting, including a kickoff, two technical consulting sessions, groups and security, site settings review and roll out.				
PowerDMS Standards for Adult Local Detention Facilities (ALDF)	1	Recurring	\$850.00	\$850.00
Attach proofs to show compliance with ACA ALDF Standard, assign assessment tasks, track revisions, and status-based grading.				
ACA Adult Local Detention Facilities (ALDF) Manual	1	Recurring	\$85.00	\$85.00
View Standards Manual electronically.				
PowerDMS Standards for ICE	1	Recurring	\$1,150.00	\$800.86
Attach proofs to show compliance with ICE Standard, assign assessment tasks, track revisions, and status-based grading.				
ICE Detention Manual (DHS ICE)	1	Recurring	\$0.00	\$0.00
View Standards Manual electronically.				
PowerDMS Standards for PREA Subpart A	1	Recurring	\$1,150.00	\$0.00
Attach proofs to show compliance with PREA Subpart A-Adult Prisons and Jails, assign assessment tasks, track revisions, and status-based grading.				
PowerDMS University - 500- 999	1	Recurring	\$750.00	\$0.00
This is access to PowerDMS University for 500 to 999 users.				
TOTAL:				\$14,999.99