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**TULSA COUNTY**  

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**PURCHASING  
DEPARTMENT**

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# MEMO

DATE: SEPTEMBER 24, 2014

FROM: LINDA R. DORRELL  
PURCHASING DIRECTOR 

TO: BOARD OF COUNTY COMMISSIONERS

SUBJECT: SERVICE AGREEMENT- POWERDMS, INC.

SUBMITTED FOR YOUR APPROVAL AND EXECUTION IS THE ATTACHED SERVICE AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS ON BEHALF OF THE TULSA COUNTY SHERIFF'S OFFICE AND POWERDMS, INC FOR UTILIZATION OF A MANAGEMENT SOFTWARE APPLICATION.

RESPECTFULLY SUBMITTED FOR YOUR APPROVAL AND EXECUTION.

LRD/arh

ORIGINAL: PAT KEY, COUNTY CLERK, FOR THE SEPTEMBER 29, 2014 AGENDA.

COPIES: COMMISSIONER JOHN M. SMALIGO  
COMMISSIONER KAREN KEITH  
COMMISSIONER RON PETERS  
STANLEY GLANZ, SHERIFF  
MARK LIOTTA, CHIEF DEPUTY  
MICHAEL WILLIS, CHIEF DEPUTY  
VICKI ADAMS, CHIEF DEPUTY

**POWERDMS, INC.**  
**Software as a Service (“SaaS”) Agreement**  
**Terms and Conditions**

**THIS SOFTWARE AS A SERVICE (“SAAS”) AGREEMENT** (this “**Agreement**”) is entered into on this \_\_\_\_ day of August 2014 (the “**Effective Date**”), by and between POWERDMS (“**Vendor**”), a Delaware corporation with its principal place of business at 200 East Robinson Street, Suite 425, Orlando, Florida 32801-1925, and Tulsa County Sheriff's Office (“**Customer**”), a Oklahoma entity with a principal place of business at 300 North Denver Avenue, Tulsa, OK 74103 (address). *Tulsa County Commissioners on behalf of*

**Recitals**

**WHEREAS**, Vendor has developed and provides a service (the “**Service**”) for electronic content and relational database management of a Customer’s proprietary or public documents, data and/or materials (“**Customer Data**”) utilizing Vendor’s PowerDMS™ document management software application (“**PowerDMS**”) and PowerStandards software assessment tool (“**PowerStandards**”) (collectively, PowerDMS™ and PowerStandards are referred to as “**Software**”), either or which can be used independently or together in conjunction with Customer’s Customer Data to provide the Service on a dedicated Vendor-hosted Site (as defined herein) accessible by Customer and Customer’s Users via Internet connection; and

**WHEREAS**, Customer desires to subscribe for and utilize the Service and the Site and to acquire a non-exclusive license to use part or all of the Software in accordance with the provisions of this Agreement.

**NOW, THEREFORE**, in consideration of the parties' mutual promises contained in this Agreement, the parties, intending to be legally bound, agree as follows:

**1. Definitions.** The following definitions (and additional definitions provided below) will apply:

- a)** “**Activation Date**” is defined in Section 19.
- b)** “**Customer Data**” means proprietary and/or public data, information or material provided or submitted by Customer or any User which is maintained on the Site by Vendor and displayed in conjunction with the Software in the course of providing the Service.
- c)** “**Customer Representative**” means the Users designated by Customer as authorized to create User accounts, administer Customer’s use of the Service and otherwise represent Customer for the purpose of this Agreement.
- d)** “**Pricing Schedule**” means the subscription fees, base Software fees, and any professional services fees for the Service referenced in the Quotation Sheet.

e) **“Quotation Sheet”** means service order form number 00025667 containing a description of the Software and/or Service(s) to be furnished by Vendor to Customer, the Pricing Schedule for same, the Target Activation Date, and the Term of any subscription for such Software and/or Service(s) which is executed by Customer and forms a binding part of this Agreement.

f) **“Site”** means the access-controlled, server-based site created for Customer and Customer’s Users of the Service and located on the Internet at <http://PowerDMS.com>.

g) **“Term”** means the term of Customer’s subscription for the Services as set forth specifically in the Quotation Sheet.

h) **“User”** means one of Customer’s employees, representatives, consultants, contractors or agents and other persons expressly permitted by Customer in connection with Customer’s business affairs that are authorized to use the Service and have been supplied User identifications and passwords by Customer.

**2. Grant of Rights.** During the Term, Vendor grants Customer, and Customer’s Users, the right to access the Site and use the Service via the Internet under and subject to the terms herein. Vendor will host the Service. Vendor reserves the right to make changes and updates to the functionality and/or documentation of the Site and the Service from time to time.

**3. Grant of License.** Vendor hereby grants to Customer a non-exclusive license to use the Software, or any component thereof, during the Term to access the Site and view the Customer Data displayed therein. Customer agrees that it will not (i) modify, translate, or create derivative works of the Software (including comparative works); (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Software's source code; or (iii) distribute the Software in printed, hardcopy form, in compiled or assembled form, or in any other manner or form that effectively recreates or simulates the Software, whether electronically or in printed, hardcopy form. Customer acknowledges and agrees that any breach by it, or by any of its agents, employees, or representatives, of this Section shall cause irreparable injury to Vendor and that, in such an event, and in addition to any other remedies that may be available, in law, in equity, or otherwise, Vendor shall be entitled to seek and obtain injunctive relief against any threatened or continuing breach hereof.

**4. Number of Authorized Users.** The number of authorized Users for any given Site or Service during the Term shall be that number as is set forth specifically in the Quotation.

**5. Pricing Schedule.** Customer agrees to pay those subscription fees, base Software fees, and any professional services fees for the Service(s) as are set forth specifically in the Quotation Sheet at such times and in such amounts as delineated therein, or as Vendor and Customer otherwise agree in writing.

**6. Appropriate Use of the Site and the Service.**

a) While Users may be any persons that Customer authorizes to access the Site and use the Service for its business, including, but not limited to, Customer’s employees and contractors, Customer may not sublicense, resell or supply the Service for use in or for the benefit of any other





existing, unaffected backup available to it. Vendor makes no representations or warranties regarding its ability to recover any Customer Data lost, and Customer acknowledges that it is responsible for conducting its own regular backups of Customer Data through its account interface.

**9. Limited License to Customer Data.** Subject to the terms and conditions of this Agreement, Customer grants to Vendor a non-exclusive license to use, copy, store, transmit and display Customer Data to the extent reasonably necessary to provide and maintain the Service.

**10. Vendor's Ownership.** Vendor retains all rights in the Site and the Service. This Agreement grants no ownership rights to Customer. No license is granted to Customer except as to use of the Site and the Service as expressly stated herein. The Vendor name, the Vendor logo, and the product names associated with the Service are trademarks of Vendor or third parties, and they may not be used without Vendor's prior written consent.

**11. Restrictions on Use of the Service.** Customer may not alter, resell or sublicense the Service or provide it as a service bureau. Customer agrees not to reverse engineer the Service or its software or other technology. Customer will not use or access the Service to: (i) build a competitive product or service, (ii) make or have made a product using similar ideas, features, functions or graphics of the Service, (iii) make derivative works based upon the Service or (iv) copy any features, functions or graphics of the Service. Customer will not "frame" or "mirror" the Service. Use, resale or exploitation of the Service except as expressly permitted in this Agreement is prohibited.

**12. Privacy.** Vendor agrees to implement its privacy policies in effect from time to time. Vendor reserves the right to modify its privacy and security policies from time to time in its business judgment and as it deems required for compliance with applicable law.

**13. Additional Warranties.** Customer represents and warrants that it has not falsely identified itself or provided any false information to gain access to the Service and that Customer's billing information is correct.

**14. Professional Services.**

**a)** Customer may retain Vendor to perform professional services ("Professional Services") as the parties may agree upon in writing in the form of a work order or other writing ("Work Order"). Vendor will use reasonable efforts to carry out the Professional Services stated in the Work Order and to provide any resulting functionality in the Service made available online to Customer and Customer's Users. Except as the parties otherwise agree in a Work Order, Professional Services and the results thereof are made available "AS IS."

**b)** Unless otherwise agreed in writing in the Quotation Sheet, Professional Services are provided by Vendor on a time and materials basis at Vendor's then applicable rates and subject to such deposit or advance payment as Vendor may require.

**15. Indemnification.**

**a)** Vendor will defend, indemnify, and hold Customer (and its officers, directors, employees and agents) harmless from and against all costs, liabilities, losses, and expenses (including







**a)** The Term commences on the "Effective Date" and shall continue for the period of time set forth in the Quotation Sheet. Vendor will use commercially reasonable efforts to make the Service available to Customer on the "Target Activation Date" as set forth specifically in the Quotation Sheet. The "Activation Date" will be the date that Vendor first makes the Service available to Customer and provides email or written notice of such availability to Customer. In most cases, the Target Activation Date and the Activation Date will be the same; Vendor will inform Customer of any likely delay. This Agreement shall automatically be renewed and extended for an additional Term. An invoice shall be treated as Vendor's notice to renew and payment of the invoice as customer's agreement to renew. In the event Customer does not pay the submitted invoice, this Agreement shall terminate upon the expiration of the current Term.

**b)** Either party may terminate this Agreement at any time in the event that the other party breaches any material term of this Agreement and fails to cure such breach within sixty (60) days after receiving written notice thereof or, if the breach cannot reasonably be cured during such period, fails to begin diligent efforts to cure that breach during such period and continue with such efforts until the breach is cured.

**c)** Vendor, in its sole discretion, may suspend or terminate Customer's username and password, account, or use of the Service and/or terminate this Agreement if Customer fails to pay any one or more of the subscription fees set forth in this Agreement within the time period expressly set forth therein, or if Customer otherwise materially breaches this Agreement and such breach has not been cured within 10 business days of notice of such breach.

**d)** If the Customer or Vendor enters into liquidation, whether compulsory or voluntary (except for the purposes of bona fide reconstruction or amalgamation with the prior written approval the other party), or compounds with or makes any arrangement with its creditors otherwise than in the ordinary course of business or makes a general assignment for the benefit of its creditors, or if it has a receiver, manager, administrative receiver, or administrator appointed over the whole or substantially the whole of its business or assets, or if it ceases or threatens to cease to carry on its business, the other party may terminate this Agreement immediately.

**e)** Vendor may suspend or terminate Customer's use of the Site or Services at any time without prior notice in order to: (a) prevent damages to, or degradation of, Vendor's Internet network integrity; (b) comply with any law, regulation, court order, or other governmental request or order which requires immediate action; or (c) otherwise protect Vendor from potential legal liability. Vendor shall use commercially reasonable efforts to notify Customer of the reasons for such suspension or termination action as soon as reasonably practicable after such action. In the event of a suspension, Vendor shall promptly restore use of the Site and Services to Customer as soon as the event giving rise to the suspension has been resolved. Nothing contained in this Agreement shall be construed to limit Vendor's action or remedies in any way with respect to any of the foregoing activities. Vendor reserves the right to take any and all additional actions it may deem appropriate with respect to Customer's use of the Site and Services, including taking action to recover the costs and expenses of identifying offenders and excluding them from the Site and Services, and levying cancellation charges to cover Vendor's expenses in the event of disconnection of dedicated access for the causes outlined above.

f) Upon termination of this Agreement for any reason, all outstanding amounts due Vendor by Customer will immediately become due and payable. In addition, except for the provisions set forth in Section 19, all rights and obligations of the parties hereunder will automatically cease. Furthermore, upon such termination, Customer and Users shall cease all use of Services. In the event that Customer has not removed all of Customer's Confidential Information and data from the Site prior to Vendor's deactivation or deletion of Customer's account, then, so long as Customer was in compliance with the terms and conditions of this Agreement at the time of termination of such Agreement, and upon Customer's written request, Vendor shall, as promptly as is reasonably possible after termination, return to Customer all of Customer's Confidential Information and data contained in its account electronically in an appropriate and reasonable format as mutually agreed by the parties and in compliance with Section 8(e) herein. Further, Customer agrees that Vendor shall not be liable to Customer or any third party for any termination of this Agreement.

g) Termination shall not affect or prejudice any rights or other remedy that a party may have with respect to the event giving rise to the termination or any other rights or other remedy which a party may have with respect to any breach of this Agreement which existed at or before the date of termination.

**19. Survival of Provisions.** The following provisions will survive termination: all definitions, Customer's accrued financial obligations, the license to Customer Data to the extent reasonable for Vendor's discharge of its post-termination obligations, and the following Sections and paragraphs: 1 (Definitions), 8(a) & (d) (Customer Data), 11 (Vendor's Ownership), 12 (Restrictions on Use of the Service), 16 (Indemnification), 17 (Disclaimers and Limitations), 18 (Confidentiality), 18 (Term and Termination), 20 (Survival of Provisions), 21 (Notice), 23 (Arbitration), and 24 (Miscellaneous).

**20. Notice.** Vendor may give notice by means of electronic mail to Customer's email address on record in Customer's account or by written communication sent by first class mail or by courier service to Customer's address on record in Customer's account. Such notice will be deemed to have been given upon the expiration of 36 hours after mailing (if sent by first class mail) or sending by courier or 12 hours after sending (if sent by email), or, if earlier, when received. Customer may give notice to Vendor by email to [Contracts@powerdms.com](mailto:Contracts@powerdms.com). A party may, by giving notice, change its applicable address, email, or other contact information.

**21. Assignment.** This Agreement may not be assigned by Customer without the prior written approval of Vendor but may be assigned by Vendor to (i) a parent or subsidiary, (ii) an acquirer of all or substantially all of Vendor's assets involved in the operations relevant to this Agreement, or (iii) a successor by merger or other combination. Any purported assignment in violation of this Section will be void. This agreement may be enforced by and is binding on permitted successors and assigns.

**22. Intentionally left Blank**

**23. Miscellaneous**

**a. Choice of Law; Jurisdiction.** This Agreement will be interpreted in accordance with the laws of the State of Oklahoma and applicable federal law, without any strict construction in favor of or against either party. The State and federal courts located in Tulsa County, Oklahoma will

have exclusive jurisdiction and venue over any dispute or controversy arising from or relating to this Agreement or its subject matter.

**b. Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the invalid, illegal, or unenforceable provision will not affect any other provisions, and this Agreement will be construed as if the invalid, illegal, or unenforceable provision is severed and deleted from this Agreement.

**c. No Agency.** No joint venture, partnership, employment, or agency relationship exists between Customer and Vendor as a result of this Agreement or use of the Service.

**d. No Waiver.** The failure of Vendor to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by Vendor in writing.

**e. Force Majeure.** Except for the payment by Customer, if the performance of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the control of such party, that party will be excused from such to the extent that it is prevented, hindered or delayed by such causes.

**f. Entire Agreement.** This Agreement comprises the entire agreement between Customer and Vendor and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. Vendor reserves the right to modify this Agreement during the Subscription renewal process through notification to the Customer of a change in the terms of this Agreement. Any modification to the Agreement provided via notice to the Customer during this renewal process shall become binding on the Customer upon its payment for the renewal Term. If either party wishes to amend the terms of this Agreement at a time other than during the annual renewal of the Agreement, no such amendment or modification shall be binding unless in writing and signed by an authorized representative of each party.

{SIGNATURES ON FOLLOWING PAGE}

IN WITNESS WHEREOF, the parties by their signatures below hereby execute this Agreement as of the Effective Date.

**PowerDMS**

By: 

Print Name: Tim Gunther

Title: Vice President, Sales and Marketing

Date: 9/18/14

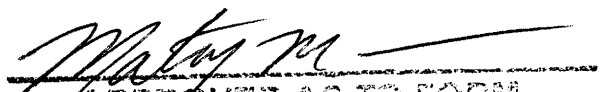
Board of County Commissioners on behalf of  
TULSA COUNTY SHERIFF'S OFFICE

By:

Print Name:

Title:

Date:

  
APPROVED AS TO FORM  
ASSISTANT DISTRICT ATTORNEY