

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CHIEF OF POLICE TO ENTER INTO AN AGREEMENT WITH INNOVATIVE DATA SOLUTIONS, INC. (IDS) D/B/A POWERDMS, INC. FOR SOFTWARE NECESSARY FOR POLICY MANAGEMENT, TRAINING, AND ACCREDITATION COMPLIANCE, IN THE AMOUNT OF THIRTY-FIVE THOUSAND THIRTY-ONE AND 33/100 DOLLARS (\$35,031.33).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Chief of Police to enter into an agreement with Innovative Data Solutions, Inc. (IDS) d/b/a PowerDMS, Inc. for software necessary for policy management, training, and accreditation compliance, in the amount of \$35,031.33.

The amount of the agreement is \$30,000.00 for a period of five (5) years. Additional costs associated with purchase of the server and single sign on security brings the total cost of the project to \$35,031.33 for over five (5) years.

ADOPTED: _____, 2013

/mms

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 08 day of October 2013 (the "**Effective Date**"), by and between **INNOVATIVE DATA SOLUTIONS, INC. D/B/A POWERDMS, INC.** ("**Vendor**"), a Florida corporation with its principal place of business at 200 East Robinson Street, Suite 1170, Orlando, Florida 32801-1925, and **City of Chattanooga** ("**Customer**"), a Tennessee entity with a principal place of business at 3410 Amnicola Highway, Chattanooga, TN 37406 (address).

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 18.
- 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 00022516 (Attachment A) 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

organization, entity, business, or enterprise without Vendor's prior written consent, which shall not be unreasonably withheld.

b) Customer agrees not to share Site-specific license codes or access passwords with other non-authorized Users and understands that license codes and access passwords are customer specific.

c) Customer agrees not to use the Service to submit to the Site any material that is illegal, misleading, defamatory, indecent or obscene, in poor taste, threatening, infringing of any third party proprietary rights, invasive of personal privacy, and/or data protected by the Health Insurance Portability Accountability Act (HIPAA), or otherwise objectionable in Vendor's sole discretion (collectively "Objectionable Matter"). Customer shall use its best efforts to ensure that its Users do not submit any Objectionable Matter. In addition, Vendor may, at its option, adopt rules for permitted and appropriate use and may update them from time to time on the Vendor web site and provide written notice of such rules to Customer. Customer and Customer's Users will be bound by any such rules. Customer and Customer's Users will comply with all applicable laws regarding Customer Data and use of the Service, including laws involving private data and any applicable export controls. Vendor reserves the right to terminate this Agreement for cause in case the Customer materially breaches the provisions of this Section 6.

d) Vendor reserves the right to suspend or terminate immediately any Customer or User account or activity that is disrupting or causing harm to Vendor's computers, systems or infrastructure or to other parties, or is in violation of state or federal laws regarding "spam," including, without limitation, the CAN-SPAM Act of 2003. Any such spamming activity by Customer will be a material breach of this Agreement.

7. Passwords and Access. Customer is responsible for all activities that occur under Customer's User accounts. Customer is responsible for maintaining the security and confidentiality of all User usernames and passwords. Customer agrees to notify Vendor immediately of any unauthorized use of any Site or Service username or password or account or any other known or suspected breach of security.

8. Customer Data.

a) All Customer Data submitted by Customer to the Site, whether posted by Customer or by Users, will remain the sole property of Customer or such Users to the full extent provided by law.

b) Customer will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Customer Data. Vendor will not use the Customer Data for any purpose other than to provide the Service to Customer.

c) Vendor will use commercially reasonable security measures to protect Customer Data against unauthorized disclosure or use. Vendor's production and disaster recovery systems are maintained in secured SAS-70 type II and SOC 2 certified datacenters in the United States with redundancy on all critical support elements (i.e. data, power, environmental controls, and fire suppression). Production systems and located in Delaware, and disaster recovery systems are located in California. Backup data is stored in datacenters in Illinois and Kansas. Vendor uses a dedicated firewall with a multi-zone configuration where web and back-end servers are isolated from

each other – with the exception of ports and protocols necessary for the application to function. No non-IDS systems are located in any protected zone. Vendor will continue to use SSL within its security architecture and may change the architecture with other technology that meets or exceeds the SSL functionality.

d) All Customer Data accessible at the Site by Customer and Users of Vendor's Service has been designed, created and provided solely by Customer or third parties without the participation or involvement of Vendor. Vendor assumes no responsibility for the accuracy, propriety, or usefulness to Customer and/or Users of such Customer Data. Vendor provides no warranties, representations or indemnification to Customer and/or Users for their access to, and use of, such Customer Data. The provisions of Section 15(a) are expressly inapplicable to the display of any such Customer Data during the use of Vendor's Service by Customer and/or User.

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 its best 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.

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. **General Vendor Indemnification.** Vendor shall defend, indemnify and hold harmless Customer and each of Customer's officers, employees and agents (each, a "**Customer Indemnitee**") from and against all losses, penalties, damages, injuries, settlements, losses, charges, professional fees, or other expenses or liabilities of every kind and character, including reasonable attorney's fees, arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**"), to the extent that such Action arises out of or results from: (i) Vendor's breach of any representation, warranty or covenant of Vendor under this Agreement; or (ii) the gross negligence or more culpable conduct of Vendor or its employees, agents, servants or subcontractors in connection with the performance by Vendor of this Agreement; provided, however, that Vendor shall have no obligation to defend, indemnify or hold harmless any Customer Indemnitee to the extent that such Action or Losses were caused by the Customer Indemnitee's gross negligence or more culpable act or omission, or a breach of this Agreement by Customer.. Notwithstanding the foregoing, to the extent that any Action or Losses described in this Section 15.a arise out of, result from or allege a claim that any of the Services or Software does or threatens to infringe, misappropriate or otherwise violate any patent, trademark, copyright or trade secret, Customer's sole and exclusive remedies shall be as set forth in Section 15.b hereof.

b. **Infringement Indemnification by Vendor.** Vendor shall defend, indemnify and hold each of the Customer Indemnitees harmless from and against all losses, penalties, damages, injuries, settlements, losses, charges, professional fees, or other expenses or liabilities of every kind and character, including reasonable attorney's fees, arising out of or resulting from any Action, to the extent that such Action arises out of or results from a claim that any of the services provided by Vendor under this Agreement, or Customer's or any User's use thereof, infringes, misappropriates or otherwise violates any U.S. patent, trademark, copyright or trade secret; provided, however, that (i) Vendor shall have no liability or obligation under this Section 15.b relative to infringement or alleged infringement caused in whole or in part by Customer Data; and (ii) Vendor shall have no liability or obligation for any Action or Loss to the extent that such Action or Loss arises out of or results from (a) any alteration or modification of the Service or Software by Customer or Users, (b) use of the Services by Customer or a User pursuant to this Agreement in combination with any apparatus, hardware, software or service not provided by Vendor hereunder if no violation would have occurred without such combination and such apparatus, hardware, software or service is not commercially available and not standard in Vendor's industry; (c) access to or use of the Services by Customer or its Users that is expressly prohibited by this Agreement or otherwise outside the scope of access or manner or purpose of use described in this Agreement; (d) breach of this Agreement by Customer or noncompliance with this Agreement by its Users; or (e) violation of any applicable law by Customer or its Users. Subject to the exclusions contained in clauses (i) and (ii)(a) through (e) of the immediately preceding sentence, if any of the Services is ruled to infringe or otherwise violate the rights of a third party by any court of competent jurisdiction, or if any use of the Services is threatened to be enjoined, or in Vendor's opinion is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, Vendor shall, at Vendor's sole cost and expense: (i) procure for Customer the right to continue to access and use the Services to the full extent contemplated by this Agreement at no additional cost to Customer; or (ii) modify or replace the components, features and operations of the Services that infringe or are alleged to infringe (the "**Allegedly Infringing Features**") to make the Services non-infringing while providing equally or more suitable features and functionality, which modified and replacement services shall constitute Services and be subject to the terms and conditions of this Agreement. If neither of the remedies set forth in the immediately preceding sentence is reasonably available with respect to the Allegedly Infringing Features, then Vendor may

terminate this Agreement and direct Customer to cease any use of the materials that have been enjoined or finally adjudicated as infringing, provided that Vendor shall refund to Customer any prepaid fees for Services that have not been provided. THIS SECTION 15.B STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY INFRINGEMENT, MISAPPROPRIATION OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION.

c. **Corruption or Loss of Data Indemnification by Vendor.** Vendor commits to maintain the data entered by Customer and to take all reasonable precautions to protect such data against corruption or loss caused by events reasonably under its control, including, without limitation, misconfiguration or mismanagement of hardware or software settings. Notwithstanding anything contained in this Section 15 to the contrary, Vendor shall defend, indemnify, and hold each of the Customer Indemnities harmless from and against all losses, penalties, damages, injuries, settlements, losses, charges, professional fees, or other expenses or liabilities of every kind and character, including reasonable attorney's fees, arising out of or resulting from the corruption or loss of Customer's data. Vendor shall have no liability or obligation for any corruption or loss of Customer's data to the extent that such loss or corruption was caused by Customer Indemnities, gross negligence or more culpable act or omission, or a breach of this Agreement by Customer.

d) **Customer Indemnification.** Subject to the provisions of the Tennessee Governmental Tort Liability Act, §§ 29-20-101, et seq., Customer shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities caused by the actions or failures to act of its officers and employees. Nothing herein shall be construed to place any responsibility to any extent upon Vendor, unless caused by the actions or failures to act of Customer's officers and/or employees, excepting any such injury, damage or loss caused, in whole or part, by the negligence or fault of the Vendor.

16. Disclaimers and Limitations.

a) THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VENDOR. THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE SITE AND SERVICE ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES. VENDOR DOES NOT WARRANT THAT USE OF THE SYSTEM WILL BE ERROR-FREE OR UNINTERRUPTED. VENDOR IS NOT RESPONSIBLE FOR SOFTWARE INSTALLED OR USED BY CUSTOMER OR USERS OR FOR THE OPERATION OR PERFORMANCE OF THE INTERNET.

b) Except with regard to Customer's payment obligations and with regard to either party's indemnification obligations, in no event will either party's aggregate liability exceed the license fees paid by the Customer during the subscription. Except in regard to Customer breach of Sections 6, 7, or 11, in no event will either party be liable for any indirect, special, incidental, consequential

damages of any type or kind (including, without limitation, loss of data, revenue, profits, use or other economic advantage).

c) The Service may include gateways, links or other functionality that allows Customer and/or Users to access third party services (“Third Party Services”) and/or third party Content. Vendor does not supply and is not responsible for any Third Party Services or Content, which may be subject to their own licenses, end-user agreements, privacy and security policies, and/or terms of use. VENDOR MAKES NO WARRANTY AS TO THIRD PARTY SERVICES OR CONTENT.

17. Confidentiality.

a) “Confidential Information” means non-public information, technical data or know-how of a party and/or its affiliates, which is furnished to the other party in written or tangible form in connection with this Agreement. Oral disclosure will also be deemed Confidential Information if it would reasonably be considered to be of a confidential nature or if it is confirmed at the time of disclosure to be confidential.

b) Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving party and not subject to a confidentiality obligation to the providing party; (ii) independently developed by the receiving party; (iii) publicly disclosed through no fault of the receiving party; (iv) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential; (v) approved for release by written agreement with the disclosing party; or (vi) disclosed pursuant to the requirements of law, regulation, or court order, provided that the receiving party will promptly inform the providing party of any such requirement and cooperate with any attempt to procure a protective order or similar treatment.

c) Neither party will use the other party’s Confidential Information except as reasonably required for the performance of this Agreement. Each party will hold in confidence the other party’s Confidential Information by means that are no less restrictive than those used for its own confidential materials. Each party agrees not to disclose the other party’s Confidential Information to anyone other than its employees or subcontractors who are bound by confidentiality obligations and who need to know the same to perform such party’s obligations hereunder. The confidentiality obligations set forth in this Section will survive for one (1) years after the termination or expiration of this Agreement.

d) Upon termination or expiration of this Agreement, except as otherwise agreed in writing or otherwise stated in this Agreement, each party will, upon the request of the disclosing party, either: (i) return all of such Confidential Information of the disclosing party and all copies thereof in the receiving party’s possession or control to the disclosing party; or (ii) destroy all Confidential Information and all copies thereof in the receiving party’s possession or control. The receiving party will then, at the request of the disclosing party, certify in writing that no copies have been retained by the receiving party, its employees or agents.

e) In case a party receives legal process that demands or requires disclosure of the disclosing party’s Confidential Information, such party will give prompt notice to the disclosing party, if legally permissible, to enable the disclosing party to challenge such demand.

f) The provisions contained in this Section 17 are subject to the requirements of the Tennessee Open Records Act, T.C.A. § 10-7-501 *et seq.*

18. Term and Termination

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 its best 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 at the expiration of each successive Term unless either Vendor or Customer give written notice to the other party by no later than thirty (30) days prior to expiration of the then-current Term that such notifying Party does not wish to renew this Agreement. In such event, the Term of 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) Either party may terminate this Agreement without cause by giving the other party written notice of its intention to terminate the Lease, and said notice shall be received at least ninety (90) days prior to the termination date.

d) 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.

e) 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.

f) 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 its best 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.

g) 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 Sections 15 and 18, all rights and obligations of the parties hereunder will automatically cease. Furthermore, upon such termination, Customer and Users shall cease all use of Services. Vendor shall deactivate or delete Customer's account and all related information and files in Customer's account or bar any further access to the site or the 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, within 14 days after termination, return to Customer all of Customer's Confidential Information and data contained in its account electronically in an appropriate format such as SQL or other format as mutually agreed by the parties. Further, Customer agrees that Vendor shall not be liable to Customer or any third party for any termination of this Agreement.

h) 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), 10 (Vendor's Ownership), 11 (Restrictions on Use of the Service), 15 (Indemnification), 16 (Disclaimers and Limitations), 17 (Confidentiality), 18 (Term and Termination), 19 (Survival of Provisions), 20 (Notice), 22 (Arbitration), and 23 (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. 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, which will not be unreasonably withheld, 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. Unless the parties agree otherwise, mediation shall be a condition precedent to the exercise of any legal remedy other than a proceeding seeking an immediate injunction or restraining order to protect the rights of a party pending litigation. Notwithstanding the issuance of an injunction or restraining order or the refusal of a court to issue such an order, the dispute shall continue to be subject to mediation.

23. Miscellaneous

a. **Choice of Law; Jurisdiction.** This Agreement will be interpreted in accordance with the laws of the State of Tennessee and applicable federal law, without any strict construction in favor of or against either party. The State and federal courts located in Hamilton County, Tennessee 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.** 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. No amendment to or modification of this Agreement will be binding unless in writing and signed by an authorized representative of each party.

24. Audit Provision.

- a. Customer may audit all financial and related records (including digital) associated with the terms of the Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Vendor. Customer

may further audit any Vendor records associated with the terms of the Agreement to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the expenditure of any funds appropriated by Customer) or to identify conflicts of interest.

25. Vendor shall at all times during the term of the Agreement and for a period of seven (7) years after the expiration or earlier termination of this Agreement, keep and maintain the foregoing records of expenditures of any funds appropriated by Customer. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Vendor. Documents shall be maintained by the Vendor necessary to clearly reflect all work done and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. Vendor shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by Customer at all reasonable times and ~~without~~ upon reasonable prior notice, , however, that Vendor may condition the copying of such records on the payment by Customer of the reasonable costs of such copies.
- a. The obligations of this Section 25 shall be explicitly included in any subcontracts or agreements formed between the Vendor and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfilment of the Vendor's obligations to Customer under this Agreement.
 - b. Costs of any audits conducted in accordance with this Section 24 and not addressed elsewhere will be borne by Customer unless the audit identifies significant findings that would benefit Customer. Vendor shall reimburse Customer for the actual and reasonable costs of an audit that identifies significant findings that would benefit Customer.
 - c. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which Customer may have by federal, state, or municipal law, whether those rights, powers, or obligations are express or implied.

26. **Non-discrimination.** Vendor covenants to comply with all federal, county, and city laws and ordinances in regard to discrimination due to handicap, age, race, color, religion, sex, national origin, or any other classification protected by said laws.

{SIGNATURES ON FOLLOWING PAGE}

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

INNOVATIVE DATA SOLUTIONS, INC.

By: 

Print Name: TIM GUNTHER

Title: Director of Business Development

Date: 10/2/2013

CITY OF CHATTANOOGA

By: 

Print Name: BOBBY H. DODD

Title: CHIEF OF POLICE

Date: 10-08-13

Attachment A



Prepared By: Tim Gunther
 Quote No.: 00022516
 Valid Until: 10/04/2013

Prepared For	Billing Information
Name: Nathan Vaughn Email: vaughn_n@chattanooga.gov Phone: (423) 643-5246 Address: 3410 Annicola Highway Chattanooga, TN, 37406	Name: Chattanooga Police Department Phone: (423) 643-5246 Address: 3410 Annicola Highway Chattanooga, TN, 37406

	Name	Price	Quantity	Discount*	Price
Subscriptions	Annual PowerDMS.com hosted subscription fee <i>Annual fee for up to 650 users for 5 years.</i>	\$10,000.00	5	\$20,000.00	\$30,000.00
	Subscriptions Subtotal			USD	\$30,000.00
	Additional Subscription Information:				
	Subscription Start Date - Subscription period shall start upon execution of the quote sheet by the subscriber. Subscription Billing Frequency - Subscription fees shall be invoiced annually with the first invoice being issuable upon acceptance of the Order Form by PowerDMS. All subscription fees are expected to be paid in advance of the subscription period specified in the invoice.				

Order Form Total	\$50,000.00 - \$20,000.00* = \$30,000.00
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Billing Terms: All invoices issued hereunder are **due upon receipt**. Unpaid invoices are subject to a late payment charge of 1.5% per month on any outstanding balance or the maximum permitted by law, whichever is lower, plus all reasonable expenses and fees of collection. All amounts payable hereunder are exclusive of any sales, use and other taxes or duties, however designated. All payment obligations are non-cancellable, and all fees paid are non-refundable.