

OCT 26 2020

Approved

REQUEST FOR AGENDA PLACEMENT FORM	
Submission Deadline - Tuesday, 12:00 PM before Court Dates	
SUBMITTED BY: Keven George TODAY'S DATE: 10/16/2020	
DEPARTMENT: Johnson County Sheriff's Office	
SIGNATURE OF DEPARTMENT HEAD: <i>Adam King</i>	
REQUESTED AGENDA DATE: 10/26/2020	
SPECIFIC AGENDA WORDING: "Consideration and approval of contract with PowerDMS for "software as a service" to electronically maintain Sheriff's Office policy and procedure manuals and record and maintain proof of dissemination of changes and updates and recording of acknowledgements of receipt of changes and updates to such policies and procedures and associated manuals.	
PERSON(S) TO PRESENT ITEM: Sheriff Adam King	
SUPPORT MATERIAL: (Must enclose supporting documentation)	
TIME: 5 Minutes	ACTION ITEM: X
	WORKSHOP
(Anticipated number of minutes needed to discuss item)	CONSENT:
	EXECUTIVE:
STAFF NOTICE:	
COUNTY ATTORNEY: Jim Simpson	IT DEPARTMENT:
AUDITOR:	PURCHASING DEPARTMENT:
PERSONNEL:	PUBLIC WORKS:
BUDGET COORDINATOR:	OTHER:
*****This Section to be Completed by County Judge's Office*****	
ASSIGNED AGENDA DATE:	
REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE:	
COURT MEMBER APPROVAL	Date

Re: Signed Agreement and Addendum

Lt. Keven George
Johnson County Sheriff's Office
1102 E. Kilpatrick, Suite A
Cleburne, TX 76031

PowerDMS



www.powerdms.com



800.749.5104



101 S. Garland Ave, Ste 300
Orlando, FL 32801



Dear Lt. George:

At the request of Jim Simpson, Assistant County Attorney, please find enclosed the negotiated Software as a Service Agreement with PowerDMS as well as the County Addendum. Mr. Simpson indicated you will assist with coordinating placing these documents on the Commissioners Court Agenda. In case of any questions, please contact me at 407-992-6075 or by email at nikolai.zavas@powerdms.com

Sincerely,

/s/ Nikolai Zavas
Nikolai Zavas
General Counsel

PowerDMS, Inc.
Software as a Service Agreement

This Software as a Service Agreement (this "Agreement") is entered into by and between Johnson County, Texas, a political subdivision of the State of Texas, "Johnson County" or "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.

"Government Customer" means a Customer which is a (a) U.S. Federal agency, (b) state government, agency, department, or political subdivision (including a city, county or municipal corporation), or (c) instrumentality of any of the foregoing (including a municipal hospital or municipal hospital district, police or fire department, public library, park district, state college or university, Indian tribal economic development organization, or port authority).

"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 issued by PowerDMS and 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.

"Subscription Term" means the period of time identified on each Service Order, for which PowerDMS has committed to provide, and Customer has committed to pay for, the Services.

"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, Criminal History Information, TLETS information, TCIC information or NCIC information.

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 (or upon becoming effective under Section 7.3), 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 and only to the extent such Service order does not conflict with the Johnson County and PowerDMS, Inc Contract Terms Addendum, Exhibit B, which is incorporated herein for all purposes.

2. Services

2.1. Services. PowerDMS will (a) make the Services available to Customer and Customer's Users pursuant to this Agreement 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, and both PowerDMS and Customer shall be subject to the terms of this Agreement with respect to the additional Users and any new Services purchased in connection with such modification.

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, (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 acknowledges that PowerDMS does not pre-screen, verify, or endorse the content of the Customer Data that Customer or its Users stores or transmits via the Services. 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 or Restricted 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.

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 Services"). Customer agrees that PowerDMS is not the original source and shall not be liable for any inaccuracies contained in any content provided in any of the Third Party Services. PowerDMS makes no representations, warranties or guarantees with respect to the Third Party Services or any content contained therein. PowerDMS may discontinue access to any Third Party Services through the Services if the relevant agreement with the applicable third party no longer permits PowerDMS to provide such access. If loss of access to any Third Party Services (to which Customer has a subscription under this Agreement) occurs during a Subscription Term, PowerDMS will refund to Customer any prepaid fees for such Third Party Services covering the remainder of the Subscription Term.

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, transmit, 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 limiting 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, 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. Each Service Order shall specify the fees applicable to the Subscription Term. Except as otherwise specified in a Service Order, fees are billed annually in advance of each year of the Subscription Term, but regardless of the billing cycle, Customer is responsible for the fees for the entire Subscription Term. Fees are due within thirty (30) days from the date of 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. Any invoiced amount that is not received by PowerDMS when due as set forth in a Service Order will be subject to a late payment fee of 1.5% per month or the maximum rate permitted by law, whichever is lower.

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 the terms and conditions of this Agreement and all Service Orders (including pricing), as well as 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. NOTWITHSTANDING SECTION 5.1, PowerDMS understands and agrees that Johnson County is a political subdivision of the State of Texas and as such contracts, pricing and payment for services are not confidential and will not be maintained as confidential by Johnson County.

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, at the Disclosing Party's cost, 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 a 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 for as long as any Subscription Terms are in effect.

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 length of the Subscription Term will be as specified in the applicable Service Order. At least 30 days prior to the expiration of a Subscription Term, 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. PowerDMS reserves the right to increase the subscription fees applicable to the renewal subscription. The new Service Order shall be deemed to be effective if 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 Subscription Term. ANY INCREASE IN FEE is ONLY effective if the Sheriff of Johnson County or the Purchasing Agent

of Johnson County provides written, specific, conspicuous and unambiguous approval of the increased fee prior to such increased fee being charged to Johnson county.

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 (Termination for Breach), PowerDMS will refund to Customer any prepaid fees covering the remainder of the Subscription Term 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 primary 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 IN THIS AGREEMENT 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 OR SUBSTITUTE SERVICES, 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. THE PARTIES ACKNOWLEDGE THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES AND THAT IN THE ABSENCE OF SUCH LIMITATIONS, THE PRICING AND OTHER TERMS SET FORTH IN THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

11. General Provisions

11.1. Entire Agreement. This Agreement, Exhibit A, Exhibit B and any Service Orders executed by Customer (or deemed effective under Section 7.3) constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede all prior 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. The parties agree that the terms and provisions of the Johnson County and PowerDMS, Inc. Contract Terms Addendum, Exhibit B, which is incorporated herein for all purposes, shall have priority over all other terms and provisions unless such terms or provisions are specifically modified by written agreement and approved by the Commissioners' Court of Johnson County, Texas.

11.2. Government Entity Addendum. If Customer is a Government Customer, the Government Customer Addendum (attached hereto as Exhibit A) is hereby incorporated into the Agreement.

11.3. 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.

11.4. 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.

11.5. 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.

11.6. 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.

11.7. Publicity. Unless otherwise provided in the applicable Sales Order, PowerDMS may identify Customer as one of its customers.

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

11.9. Resolution of Disputes. In the event of a dispute between the parties regarding this Agreement, the parties agree to select a mutually agreeable, neutral third party to help them mediate any dispute that arises under the terms of this Agreement. The parties agree that they shall share equally the cost of the mediation filing and hearing fees and the cost of the mediator; however, each party shall bear its own attorney's fees and associated costs and expenses. If the mediation fails to resolve the dispute, the parties agree that the dispute may proceed to litigation.

11.10. 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) when receipt is electronically confirmed, if transmitted by facsimile or e-mail; (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 11.10.

11.11. 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 its performance is prevented, hindered or delayed as a result of strikes, riots, fires, explosions, acts of God, epidemics, pandemics, 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.

11.12. 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.

11.13. 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.

11.14. The terms and provisions of the Johnson County and PowerDMS, Inc. Contract Terms Addendum, Exhibit B, are incorporated herein for all purposes.

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


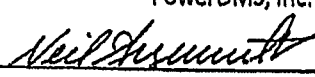
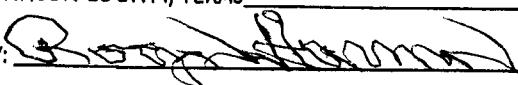
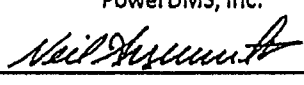
Customer	PowerDMS
JOHNSON COUNTY, TEXAS _____	PowerDMS, Inc.
BY: <u></u>	BY: <u></u>
PRINT NAME: JUDGE ROGER HARMON _____	PRINT NAME: <u>NEIL ARESWAULT</u>
PRINT TITLE: JOHNSON COUNTY JUDGE _____	PRINT TITLE: <u>VP Sales</u>
DATE SIGNED: <u>10/26/2020</u>	DATE SIGNED: <u>10.16.2020</u>

Exhibit A
Government Customer Addendum

This Government Customer Addendum ("Addendum") forms part of the Agreement, and in the case of any conflict or inconsistency between the terms and provisions of this Addendum and the Agreement, the terms of this Addendum shall control.

1. **Applicability.** The provisions of this Addendum shall apply only if Customer is a Government Customer under the Agreement.
2. **Termination for Non-Appropriation of Funds.** If Customer is subject to federal, state or local law which makes Customer's financial obligations under this Agreement contingent upon sufficient appropriation of funds by the applicable legislature (or other appropriate governmental body), and if such funds are not forthcoming or are insufficient due to failure of such appropriation, then Customer will have the right to terminate the Agreement at no additional cost and with no penalty by giving prior written notice documenting the lack of funding. Customer will provide at least thirty (30) days advance written notice of such termination. Customer will use reasonable efforts to ensure appropriated funds are available. If Customer terminates the Agreement under this Section 2, Customer agrees not to replace the Services with functionally similar products or services for a period of one year after the termination of the Agreement.
3. **Indemnification.** If Customer is prohibited by federal, state or local law from agreeing to hold harmless or indemnify third parties, Section 9.2 of the Agreement shall not apply to Customer, to the extent disallowed by applicable law.
4. **Open Records.** If the Customer is subject to federal or state public records laws, including laws styled as open records, freedom of information, or sunshine laws ("Open Records Laws") the confidentiality requirements of Section 5 of the Agreement apply only to the extent permitted by Open Records Laws applicable to the Customer. This Section is not intended to be a waiver of any of the provisions of the applicable Open Records Laws, including, without limitation, the requirement for the Customer to provide notice and opportunity for PowerDMS to assert an exception to disclosure requirements in accordance with the applicable Open Records laws.
5. **Resolution of Disputes.** The arbitration provisions of Section 11.9 shall not apply, and instead, if mediation fails to resolve the dispute, either party may initiate a legal proceeding in a court of competent jurisdiction.
 - a. The terms and provisions of the Johnson County and PowerDMS, Inc. Contract Terms Addendum, Exhibit B, are incorporated herein for all purposes.

Customer
JOHNSON COUNTY, TEXAS _____
BY:  _____
PRINT NAME: JUDGE ROGER HARMON _____
PRINT TITLE: JOHNSON COUNTY JUDGE _____
DATE SIGNED: 10/26/2020 _____

PowerDMS
PowerDMS, Inc.
BY:  _____
PRINT NAME: NEIL ARSENAULT _____
PRINT TITLE: VP SALES _____
DATE SIGNED: 10.16.2020 _____

JOHNSON COUNTY and POWERDMS, INC CONTRACT TERMS
ADDENDUM — 2020
Exhibit B to PowerDMS, Inc. Software as a Service Agreement

The Johnson County Commissioners Court Finds, and the Parties Agree, as Follows:

1.1

This Addendum is part of an Agreement between Johnson County, Texas, a political subdivision of the State of Texas, (hereinafter referred to as "COUNTY" or as "CUSTOMER" in accord with the PowerDMS, Inc Software as a Service Agreement), and PowerDMS, Inc (hereinafter sometimes known as "PowerDMS" or "COMPANY" or "Service Provider") hereunder (collectively, the "Parties" or each individually a "Party"). This Addendum is part of the Agreement with PowerDMS and is intended to modify the PowerDMS Software as a Service Agreement and any other document proffered to Johnson County by PowerDMS, or or its agents and the PowerDMS Order Form and other documents defining the Agreement between Johnson County, Texas and PowerDMS, Inc.

2.1

This Agreement will be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

2.2

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.3

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

3.1

The Parties agree that under the Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

3.2

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) ...

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

4.1

The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

4.2

The Parties agree and understand that County will not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

4.3

The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

4.4

The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

5.1

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

- a. the date the governmental entity receives the goods under the contract;
- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

6.1

No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information County reasonably believes that COMPANY might lawfully seek to claim as confidential, then County will forward the request to COMPANY. It shall be the obligation of COMPANY to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with COMPANY in making such submission to the Texas Attorney General's Office. COMPANY acknowledges and understands that contracts, agreements, payment and revenue of a political subdivision of the State of Texas are public information and are not confidential.

6.3

Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

6.4

Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

6.5

It is understood and agreed that Johnson County will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.

6.6

Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

7.1

If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by COMPANY pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary. Notwithstanding the foregoing, in no event shall this Agreement continue for a period exceeding 60 months from the date of execution of this Addendum without additional specific consideration and approval by the Commissioners Court of Johnson County, Texas.

7.2

COMPANY certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. COMPANY states that it is not ineligible to receive State or Federal funds due to child support arrearages

7.3

COMPANY verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. COMPANY further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

7.4

Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of Johnson County and signed by the Johnson County Judge.

7.5

Notwithstanding any other provision in this Addendum or the associated documents, to the extent COMPANY is being contracted to provide information technology and services or to maintain and make available information for use by Johnson County and the public, including documents, data, content and records then said documents, data, content and records are and shall be the exclusive property of Johnson County, Texas or the State of Texas or a political subdivision thereof.

7.6


At any time following the expiration of the initial term of the contract, COUNTY may terminate the contract at its discretion by giving COMPANY 90 days written notice of such termination.

8.1

In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. **THE TERMS OF THIS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENTS PUT FORTH BY COMPANY IS HEREBY DELETED.**


APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:



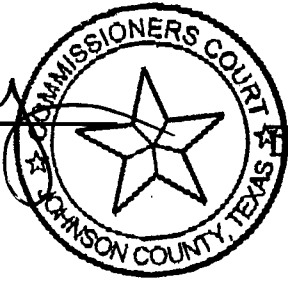
Roger Harmon
As Johnson County Judge

10/26/2020
Date

Attest: 

County Clerk, Johnson County

10/26/2020
Date



PowerDMS, Inc. (COMPANY):

Neil Assmann

Authorized Representative of
PowerDMS, Inc.

10.16.2020

Date

Printed Name: NEIL ASSMANN

Title: VP SALES



Contract Details **Order Details**

Account Number: A-1005
Customer: Johnson County Sheriff's Office (TX)
Sales Rep: Laura Hays

Order #: Q-112395
Order Date: 11/1/2020
Valid Until: 10/30/2020
Subscription Start Date: Per signature date below
Subscription Term (months): 12

Customer Contact

Billing Contact: Johnson County Sheriff's Office (TX)
Keven George
Address: 1102 E. Kilpatrick
Cleburne, TX 76031

Billing Contact Email: kgeorge@johnsoncountytexas.org
Phone: 817-556-6058
Fax:

Payment Terms

Payment Term: Notes:

Subscription Service

YEAR-1

Item	Type	Qty	Total
PowerDMS Pro Base	Recurring	1	\$4,000.00
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	Recurring	200	\$3,281.25
Per user license for PowerDMS Pro			
PowerDMS Training	Recurring	200	\$1,750.00
Develop courses from your content to train employees, and create tests and exams to ensure understanding. Assign, track and award certificates.			
PowerDMS University - 100-499	Recurring	1	\$500.00
Access to PowerDMS University with unlimited Boot Camp registrations.			
SSO Service <250	Recurring	1	\$750.00
Single Sign on Service			
Onboarding Lite Package	Services	1	\$0.00
This package ensures a smooth implementation and successful ongoing use of PowerDMS. This package includes Implementation Management: Led by a designated Implementation Specialist, guiding administrators through predetermined milestones to lead to a successful product launch, Project Management, Document and User Import and Site Configuration.			
YEAR-1 TOTAL:			\$10,281.25
Subscription Term Total :			\$10,281.25

Additional Terms and Conditions

Payment Terms All invoices issued hereunder are due upon the invoice due date. The fees labeled "Year 1 Total" shall be invoiced immediately, and if the Subscription Term is for a period longer than one year, the fees for future years shall be invoiced annually in advance of each 12 month period of the Subscription Term, but regardless of the billing cycle, Customer is responsible for the fees for the entire Subscription Term. The fees set forth in this Service Order are exclusive of all applicable taxes, levies, or duties imposed by taxing authorities and Customer shall be responsible for payment of any such applicable taxes, levies, or duties. All payment obligations are non-cancellable, and all fees paid are non-refundable.

Terms & Conditions Unless otherwise agreed in a written agreement between PowerDMS and Customer, this Service Order and the services to be furnished pursuant to this Service Order are subject to the terms and conditions set forth here: <http://www.powerdms.com/terms-and-conditions/>. The Effective Date (as defined in the terms and conditions) shall be the date set forth below.

Accepted and Agreed By Authorized Representative of:
Johnson County Sheriff's Office (TX)

Signature: 

Printed Name: Roger Harmon _____

Title: County Judge _____

Date 10/26/2020 _____

THE INFORMATION AND PRICING CONTAINED IN THIS SERVICE ORDER IS STRICTLY CONFIDENTIAL