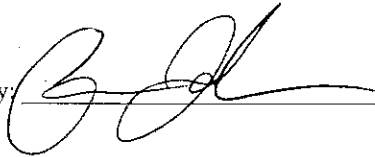


RESOLUTION NO. 103 - 2017

Moved by:



A Resolution authorizing the City of Harrisburg to enter into a contract with PowerDMS, Inc. for the Police Bureau to subscribe to an online Policy, Training, & Accreditation Management Software for Law Enforcement.

**WHEREAS**, the City of Harrisburg Police Bureau (the "Police Bureau") desires to streamline their policy management and accreditation processes to efficiently issue and disseminate policy updates and store and track training and accreditation records; and

**WHEREAS**, PowerDMS, Inc. ("PowerDMS") offers Policy, Training, & Accreditation Management Software for Law Enforcement designed to help law enforcement agencies improve compliance, reduce risk, increase accountability, and save valuable personnel time for conducting police work and solving problems in the community; and

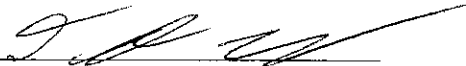
**WHEREAS**, the City intends to enter into the contract with PowerDMS for the Police Bureau to subscribe to Policy, Training, & Accreditation Management Software for Law Enforcement; and

**WHEREAS**, a copy of the negotiated contract with PowerDMS is attached as "Exhibit A;" and

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG**, that the City of Harrisburg is authorized to enter into a contract with PowerDMS, Inc. for the Police Bureau to subscribe to an online Policy, Training, & Accreditation Management Software for Law Enforcement.

**BE IT FURTHER RESOLVED** that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

Seconded by:



Passed by City Council October 24, 2017

Wanda R.D. Williams  
President of City Council

Attest [Signature]  
City Clerk

Approved

Returned to City Council with objections

YEAS		NAYS
	MR. ALLATT	
	MS. DANIELS	
	MS. STEEN	
	MR. JOHNSON	
	MR. MASEN	
	MR. MAJORS	
	MS. WILLIAMS	
Yeas	<u>7</u>	
Nays	<u>0</u>	



Subscription Quote

<b>Contract Details</b>		<b>Order Details</b>	
Account Number: A-1276		Order #: Q-10143	
Customer: Harrisburg Bureau Of Police (PA)		Order Date: 9/30/2017	
Sales Rep: Don Philippi		Valid Until: 9/30/2017	
		Initial Term: 12	
<b>Customer Contact</b>			
Billing Contact:	Harrisburg Bureau Of Police (PA)	Billing Contact Email:	jcameron@cityofhbg.com
	Jennifer Cameron	Phone:	717-255-3131
Address:	123 Walnut St	Fax:	
	Harrisburg, PA 17101		
<b>Payment Terms</b>			
Payment Term:	Net 30	Notes:	PCPA Discounts
PO Number:			50% of One Time Implementation/Training Fee
			\$400 Off Standards Subscription
<b>Subscription Service</b>			

Item	Type	Qty	Price	Total
SDMS-AS	Recurring	150	\$36.09	\$5,413.50
Annual PowerDMS.com hosted subscription fee				
PCPA Manual	Recurring	1	\$0.00	\$0.00
View Standards Manual electronically.				
PowerSTANDARDS for PCPA	Recurring	1	\$750.00	\$750.00
Attach proofs to show compliance with PCPA Standard, assign assessment tasks, track revisions, and status-based grading.				
Plus Services Package	Services	1	\$4,800.00	\$2,400.00
200 documents loaded; Up to 20 hours of remote training; Project management assistance; Access to our self-paced learning portal, live training webinars, training tutorials, and quicksheets. One-time implementation fee.				
<b>TOTAL:</b>				<b>\$8,563.50</b>

Additional Terms and Conditions

**Payment Terms** All invoices issued hereunder are due upon the invoice due date. The fees set forth in this Quotation Sheet 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 writing by PowerDMS and Licensee, this Quotation Sheet and the services to be furnished pursuant to this Quotation Sheet are subject to the terms and conditions set forth in the attached negotiated terms and conditions. The Effective Date (as defined in the online terms and conditions of this Software as a Service Agreement) shall be the date set forth below.

Harrisburg Bureau Of Police (PA)

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

THE INFORMATION AND PRICING CONTAINED IN THIS QUOTATION SHEET IS STRICTLY CONFIDENTIAL

# Exhibit A

## Terms and Conditions

These Terms and Conditions (the "**Terms**") govern your subscription ("**Customer Subscription**") for our services ("**Vendor Services**") using our software ("**Vendor Software**") and access-controlled website ("**Vendor Site**") for the management of your documents, records and data (collectively, "**Customer Content**"). In addition to these Terms, each Customer Subscription is governed by a quotation sheet ("**Quotation Sheet**") specifying the Vendor Services included in each Customer Subscription ("**Subscription Services**"), the term of the Customer Subscription ("**Subscription Term**") and the fees applicable to the Customer Subscription ("**Subscription Fees**").

These Terms also govern any use of the Vendor Services by any person who has been supplied a user identification and password for the Vendor Services by you, on your behalf or at your request (each a "**User**"), and you agree to be responsible for any use of the Vendor Services by any of your Users. By using the Vendor Services or permitting any User to use the Vendor Services, you agree to these Terms. If you do not agree to all of the Terms, you do not have the right to access, or permit any User to access, the Vendor Site or use either the Vendor Service or the Vendor Software.

### 1. Use of Subscription Services.

a. Subject to the terms and conditions of this Agreement, PowerDMS, Inc. ("**we**" or "**Vendor**") grant you ("**you**" or "**Customer**") and your Users the nonexclusive right to use the Subscription Services during the Subscription Term.

b. Neither Customer nor any User will (i) modify, translate, or create derivative works of the Vendor Services, Vendor Software or Vendor Site (collectively, "**Vendor Technology**"); (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Vendor Software's source code or any other technology used by Vendor to provide the Vendor Service; (iii) sublicense, resell or distribute any Vendor Technology in any manner or form; (iv) share login credentials for the Subscription Services with other parties; (v) "frame" or "mirror" the Vendor Services or Vendor Site; or (vi) use or permit any User to use the Vendor Technology from any location outside of the United States.

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

d. Customer will have sole responsibility, and Vendor assumes no responsibility, for the Customer Content. Without limiting the foregoing, Customer will not submit, or permit any of its Users to submit, to the Vendor Services any Customer Content or other materials (collectively "**Restricted Materials**") that are:

- Illegal or illegally created or obtained;
- false or misleading;

- defamatory;
- indecent or obscene;
- threatening;
- infringing of any third party rights;
- invasive of personal privacy;
- subject to mandatory public disclosure by Vendor except in accordance with Customer's written instructions to Vendor;
- protected by the Health Insurance Portability Accountability Act (HIPAA);
- Restricted Data, as that term is defined in Title 28, Part 20, Code of Federal Regulations; or
- Personally Identifiable Information (PII), other than the PII respecting each User required for such User to be able to log into and utilize the Subscription Services.

e. Customer shall comply with all applicable laws in using the Vendor Services.

f. Vendor may, from time to time, adopt and update rules for permitted and appropriate use of the Vendor Services. Upon delivery to Customer, or publication on the Vendor Site, of any such rules or updates, any further use of the Subscription Services by Customer and Customer's Users shall be subject to such rules.

g. Vendor reserves the right, in addition to any other remedies available to it, to suspend any User account or User activity if Vendor believes such account or activity (i) is the source of disruption of the Vendor Services or harm to the systems or infrastructure of Vendor or any third party, (ii) is being used to conduct illegal activity or activity that could potentially expose Vendor to legal liability, or (iii) has been used to submit Restricted Materials to the Vendor Services, or (iv) otherwise violates the terms and conditions set forth in this Agreement or any rules adopted by Vendor with respect to the use of the Vendor Services.

h. The Vendor Services are subject to modification from time to time at Vendor's sole discretion; provided that any such modification will not degrade the functionality of the Subscription Services in any material manner, except as required by applicable law. Vendor will use reasonable efforts to give Customer prior written notice of any material modification.

i. Vendor warrants to Customer that Vendor has all necessary rights and authority to license and deliver this software to Customer for use and Vendor has the necessary equipment and trained personnel to substantially perform the Vendor Services pursuant to this Agreement to the functional specifications set forth in the applicable product user documentation. Vendor will comply with all applicable laws and shall maintain an information security process with physical safeguards appropriate for the sensitivity of customer information. Vendor warrants that the hosted environment will be available to be accessed at least 99% (Uptime) of each calendar month during the term of this Agreement. Where Vendor fails to meet the Uptime service level, the Customer is entitled to a refund of the annual fee in the amount of a prorated monthly fee.

j. During the term of this Agreement, Vendor shall provide notice of and make available to Customer certain upgrades, enhancements, bug fixes, and support which it makes generally available, at no additional charge (to the extent generally provided at no additional charge). Customer agrees that Vendor may provide any of the foregoing by means of making a download or opt in upgrade available on its Internet site. Service requests can be made to Vendor by Customer via phone, email, or chat at no additional charge.

k. All Customer data shall be continually backed up, securely stored, and be capable of being restored by the Vendor at any time during the term of this Agreement.

**2. Fees.** Subscription Fees for each Customer Subscription shall be payable in the amounts and upon the terms specified in the Quotation Sheet. Vendor reserves the right to adjust Subscription Fees upon the expiration of any Subscription Term, with any such adjustment to be reflected in the Quotation Sheet issued by Vendor to Customer with respect to the following Subscription Term. Subscription Fees for subsequent Subscription Terms shall not exceed a 3% price increase from the Subscription Fees of preceding Subscription Term. Except as expressly provided in this Agreement, Subscription Fees are nonrefundable. Late payments shall be subject to a charge of 0.5% per month (6% per annum) on any outstanding balance or the maximum permitted by law, whichever is lower, plus all reasonable expenses and fees of collection.

### **3. Customer Content.**

a. As between Customer and Vendor, all Customer Content submitted to the Vendor Services by Customer or by Customer's Users will remain the sole property of Customer or such Users. 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 Content to the extent reasonably necessary (i) to provide, maintain and improve the Vendor Services and (ii) to confirm compliance with the terms of this Agreement.

b. During the Term of this Agreement, Customer may extract Customer Content at any time through the Subscription Services. For a period of ninety (90) days after the end of the Term, Customer Content will be furnished to Customer in a commonly used databased file format upon written request. Thereafter, Vendor shall have no further obligation to retain any Customer Content.

c. Except as authorized by Customer (in this Agreement or otherwise) or required under applicable law, Vendor shall not disclose any Customer Content to anyone other than Vendor's employees or subcontractors who are bound by confidentiality obligations and who need to know the same to perform Vendor's obligations hereunder. The confidentiality obligations set forth in this paragraph do not apply to Customer Content which is (A) already in the possession of Vendor and not subject to a confidentiality obligation to Customer; (B) independently developed by Vendor; (C) publicly disclosed through no fault of Vendor; or (D) rightfully received by Vendor from a third party that is not under any obligation to keep such information confidential.

**4. Ownership of Vendor Technology.** Vendor retains all rights in the Vendor Technology, including, without limitation, any intellectual property developed by Vendor during the course of its performance of any services for Customer. Except as expressly provided in this Agreement, no license or other right is granted to Customer or its Users in the Vendor Technology. The Vendor name, the Vendor logo, and the product names associated with the Vendor Technology are trademarks of Vendor or third parties, and they may not be used without Vendor's prior written consent.

## **5. Indemnification.**

a. Vendor agrees to indemnify, hold harmless, and defend Customer and its agents, employees, directors, and elected and appointed officials from and against any and all claims, damages, losses and expenses, including but not limited to court costs and reasonable attorneys' fees, for which Customer may be held liable of whatsoever kind or nature, including but not limited to injury to any person including the Customer's employees and damages to any property of whatsoever kind or nature, arising out of or in any manner connected with the services to be performed under this Agreement by Vendor, its subcontractor, or any individual or legal entity working on behalf of or under Vendor's supervision or in any way connected with the use, misuse, maintenance, operation, or failure of the software, whether due in whole or part to any act, omission, or negligence of Vendor, its subcontractor, or any individual or legal entity working on behalf of or under Vendor's supervision. Vendor will defend, indemnify, and hold Customer (and its Users, officers, directors, employees and agents) harmless from and against all costs, liabilities, losses, and expenses (including reasonable attorneys' fees) (collectively, "**Losses**") incurred in connection with any third party claim, suit, action, or proceeding arising from the actual or alleged infringement of any United States copyright, patent, trademark, or misappropriation of a trade secret by the Subscription Services. In case of such a claim, Vendor may, in its sole discretion and at its sole cost, procure a license that will protect Customer against such claim, replace the Subscription Services with a comparable non-infringing service, or terminate the Subscription Service without fault, provided that in case of such a termination, Customer will receive a pro-rata refund of the applicable Subscription Fees. The obligations contained in this paragraph will not apply to the extent that the alleged infringement would not exist without: (i) modification of any Vendor Technology by Customer or any User, (ii) combination by Customer or any User of any Vendor Technology with any third party technology, (iii) continued use of any Vendor Technology by Customer or any User more than thirty (30) days after Customer is notified of the alleged infringement or modifications that would have avoided the alleged infringement, or (iv) used by Customer or any User of any Vendor Technology in breach of this Agreement. Vendor shall not be responsible for any claims, damages, losses or expenses arising out of the Customer's negligence.

b. Customer will defend, indemnify, and hold Vendor (and its officers, directors, employees and agents) harmless from and against all Losses incurred in connection with Customer's breach of Section 1 (Use of Site and Services).

c. In case of any claim that is subject to indemnification under this Agreement, the party that is indemnified ("**Indemnitee**") will provide the indemnifying party ("**Indemnitor**") reasonably prompt notice of the relevant claim. Indemnitor will defend and/or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under this Agreement. Each party will cooperate in good faith with the other to facilitate the defense of any such claim and will tender the defense and settlement of any action or proceeding covered by this Section to the Indemnitor upon request. Claims may be settled without the consent of the Indemnitee, unless the settlement includes an admission of wrongdoing, fault or liability.

## **6. Disclaimers and Limitations.**

a. This software is subject to a limited warranty. Vendor warrants to Customer that the software will perform according to its printed documentation, and to the best of Vendor's knowledge Customer's use of this software according to the printed documentation is not an infringement of



any third party's intellectual property rights. To the extent permitted by law, THE ABOVE-  
STATED LIMITED WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS OR  
IMPLIED, AND LICENSOR DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING ANY  
IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, OR OF  
FITNESS FOR A PARTICULAR PURPOSE. No agent of Vendor is authorized to make any  
other warranties or to modify this limited warranty. Any action for breach of this limited warranty  
must be commenced within one year of the expiration of the warranty. Licensee has specific  
legal rights pursuant to this warranty and, depending on Licensee's jurisdiction, may have  
additional rights.

b. Except with regard to liability for the indemnity obligations with respect to infringement of third  
party intellectual property rights under Section 5 (Indemnification) or Customer's breach of  
Section 1 (Use of Site and Services), in no event will either party's aggregate liability exceed the  
Subscription Fees required to be paid by the Customer to Vendor during the twelve (12) month  
period ending on the date on which the relevant claim is submitted. 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).  
Both Parties recognize that this Agreement reflects a reasonable allocation of risks and that  
such allocation is a significant inducement to provide the services described in this Agreement  
to the Customer.

c. If the Subscription Services are impacted by any incident resulting in data loss, Vendor will  
take commercially reasonable steps to restore the Customer Content from the most recent  
existing, unaffected backup available. Vendor makes no representations or warranties regarding  
its ability to recover any Customer Content lost, and Customer acknowledges that it is  
responsible for conducting its own regular backups of Customer Content through the  
Subscription Services.

d. Third party services or content might be accessible through the Vendor Services. Vendor is  
not responsible for, and makes no warranty respecting, any such services or content.

## **7. Term and Termination**

a. The Term of this Agreement shall begin on the Effective Date and end on the first anniversary  
of the Effective Date or, if later, after the Subscription Terms for all Customer Subscriptions  
have expired.

b. The Subscription Term of each Customer Subscription shall be as set forth in the Quotation  
Sheet for the Subscription. A Quotation Sheet issued by Vendor to Customer shall be deemed  
to be effective if Customer (i) executes and returns it to Vendor or (ii) remits payment to Vendor  
of the Subscription Fees specified in it.

c. Either party may immediately terminate this Agreement and any Quotation Sheet at any time  
in the event that the other party (i) breaches any material term of this Agreement or such  
Quotation Sheet and fails to cure such breach within thirty (30) days after written notice thereof;  
or (ii) becomes insolvent, makes a general assignment for the benefit of creditors, suffers or  
permits the appointment of a receiver for its business or assets, becomes subject to any  
proceeding under any bankruptcy or insolvency law, or is wound up or liquidated, voluntarily or  
otherwise. Customer shall have the right to suspend or terminate this Agreement and/or any  
Quotation Sheet (without penalty) for its convenience at any time without cause with (60) sixty

days advance written notice to Vendor. The Customer's obligation to make payments during any of its fiscal years succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds are not appropriated or otherwise made available to support continuation of performance of this Agreement in a subsequent fiscal period, the Customer shall have the right to terminate this Agreement and/or any Quotation Sheet (without penalty) with immediate effect by written notice to Vendor.

**d.** Upon termination of this Agreement for any reason, Customer and Users shall cease all use of Vendor Services and, except as provided in Section 8 (Survival of Provisions), all rights and obligations of the parties hereunder, apart from Customer's accrued financial obligations, shall automatically cease. Notwithstanding the foregoing, termination shall 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.

**8. Survival of Provisions.** The terms and conditions of this Agreement that by their sense and context are intended to survive termination hereof shall so survive, including without limitation the following Sections, and all defined terms used herein, shall survive termination: all definitions, 1(b)-(e) (Use of Subscription Services), 3 (Customer Content), 4 (Ownership of Vendor Technology), 5 (Indemnification), 6 (Disclaimers and Limitations), 7 (Term and Termination), 8 (Survival of Provisions), 9 (Notice), and 10 (Miscellaneous).

**9. 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 72 hours after mailing (if sent by first class mail) or sending by courier or 24 hours after sending (if sent by email), or, if earlier, when actually received. Customer may give notice to Vendor by email to [accounting@powerdms.com](mailto:accounting@powerdms.com). A party may, by giving notice, change its applicable address, email, or other contact information.

**10. Miscellaneous.**

**a. Choice of Law.** This Agreement will be interpreted in accordance with the laws of the Commonwealth of Pennsylvania and applicable federal law, without regard to conflict of laws principles. Each party hereto consents to the exclusive jurisdiction of the state courts of Pennsylvania situate in the County of Dauphin, Pennsylvania or in the United States District Court for the Middle District of Pennsylvania for any litigation that may arise out of this Agreement and each party hereto waives any objection based on forum non conveniens or any other objection to such venue. The United Nations Convention on Contracts for Sale of Goods shall not apply.

**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 any Vendor Services.

**d. 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.

**e. Force Majeure.** If the performance of this Agreement by either party (other than the payment of Subscription Fees by Customer) 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 performance to the extent that it is prevented, hindered or delayed by such causes.

**f. Authority.** Each of the undersigned represents and warrants that he or she has full legal authority to bind the party for which he or she purports to execute this Agreement by signing below.

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

**h. Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

**i. Entire Agreement.** This Agreement and any Quotation Sheets in effect between the parties comprise, together, the entire agreement between Customer and Vendor and supersede all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No amendment or modification to this Agreement shall be binding unless in writing and signed by an authorized representative of each party. This Agreement supersedes, and shall not be modified or amended by, any standard terms and conditions contained or referenced in any Quotation Sheet, purchase order or other communication between Vendor and Customer.

**IN WITNESS WHEREOF,** the parties hereby execute this Agreement to be effective on the date on which both parties have signed it.

**VENDOR**

**CUSTOMER**

**PowerDMS, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**INTER**

**OFFICE**

# MEMO

To: HARRISBURG CITY COUNCIL  
From: Kirk Petroski, City Clerk  
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2017      RESOLUTION NO. <sup>103</sup> -2017

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:

Rebecca K. Kemkeel  
Assistant City Solicitor


10-6-17  
Date

Requested by Department/Bureau: Police Bureau

Department/Bureau Contact Person: Capt. Moody

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

Received by: 

Date: 10-10-17