AMENDMENT OF SOLICITATION / MODIFICATION OF CONTRACT		1. Contract Number CW53089	Page of Pages 1 / 1

2. Amendment/Modification Number M0001	3. Effective Date See Blk 16C	4. Requisition/Purchase Request No.	5. Solicitation Caption

6. Issued by: Code

Office of Contracting and Procurement
Information Technology Group
441 4th Street, N.W., Suite 700 South
Washington, D.C. 20001

7. Administered by (If other than line 6):

District of Columbia
Office of Chief Technology Officer
200 I Street, S.E. 5th Floor
Washington, DC 20002

8. Name and Address of Contractor (No. street, city, county, state and zip code)

Powerplan Canada ULC dba PowerPlan Canada Ltd
410 Adelaide Street West
Toronto, Ontario M5V 1s8

Code   Facility

9A. Amendment of Solicitation No.
9B. Dated (See Item 11)
X 10A. Modification of Contractor/Order No. CW53089
10B. Dated (See Item 13) August 18, 2017

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

[ ] The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [ ] is extended. [ ] is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning one (1) copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) BY separate letter or fax which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such may be made by letter or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting and Appropriation Data (If Required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTORS/ORDERS,
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14**

	A. This change order is issued pursuant to (Specify Authority): 27 DCMR, Chapter 36, Section 3601.(a) The changes set forth in Item 14 are made in the contract/order no. in Item 10A.
	B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data etc.) set forth in Item 14, pursuant to the authority of:
X	C. This supplemental agreement is entered into pursuant to authority of: 27 DCMR 3601.2 (a) Bilateral Modification
	D. Other (Specify type of modification and authority)

E. IMPORTANT: Contractor [ ] is not [X] is required to sign this document and return one (1) copy to the issuing office.

14. Description of Amendment/Modification (Organized by UCF Section headings, including solicitation/contract subject matter where feasible.)

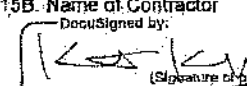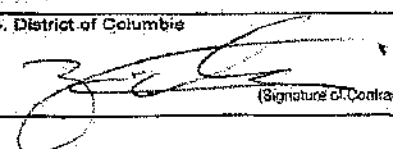The purpose of this modification is to:

1. Add the PowerPlan AMP Insights license and maintenance support and Master Software License and Services Agreement in accordance with Attachment A. The contract value for Base period shall increase from $384,005.00 by $3,500.00 to $387,505.00.

CONTRACT RECAP

Base Year (8/18/2017 through 9/30/2017)	$384,005.00
Change Order – M0001 (Date of Award through – 9/30/2017)	$3,500.00
Cumulative Value	**$387,505.00**

All other terms remain unchanged

Except as provided herein, all terms and conditions of the document is referenced in Item 9A or 10A remain unchanged and in full force and effect.

15A. Name and Title of Signer (Type or print) Kent Kelley, CFO	16A. Name of Contracting Officer Chris Yi	
15B. Name of Contractor DocuSigned by: [signature] 2172C6005581446	15C. Date Signed 9/14/2017	16B. District of Columbia [signature]	16C. Date Signed 9-15-17

Attachment A

B.4 Price Schedule

B.4.1 Base Period from date of award through September 30, 2017.

CLIN	Item Description	Total Price
0001	PowerPlan AMP maintenance and support	$140,000.00
0002	Cost Estimator configuration	$244,005.00
0003	PowerPlan AMP Insights License & Maintenance Support	$3,500.00
	Grand Total B.4.1	$387,505.00

B.4.2 Option Year One (1) October 1, 2017 – September 30, 2018

CLIN	Item Description	Total Price
1001	PowerPlan AMP maintenance and support	$142,800.00
1002	PowerPlan AMP Insights License & Maintenance Support	$42,000.00
	Grand Total B.4.2	$184,800.00

B.4.3 Option Year Two (2) October 1, 2018 – September 30, 2019

CLIN	Item Description	Total Price
2001	PowerPlan AMP maintenance and support	$145,600.00
2002	PowerPlan AMP Insights License & Maintenance Support	$44,100.00
	Grand Total B.4.3	$189,700.00

SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1   SCOPE:

The Office Chief Technology Officer (OCTO), seeks modify the existing PowerPlan AMP contract CW53089 to incorporate the Master Software License and Services Agreement, signed September 13, 2017 (the "Agreement"), attached hereto and made a part of the Contract, in order to procure PowerPlan Insights for AMP.

C.5   REQUIREMENTS

C.5.1   The Contractor shall enable and configure the Insight dash board functionality within PowerPlan AMP, already installed within DC Gov.

C.5.2   The District shall receive three environments:
a)   One (1) test Environment

b) One (1) development environment

c) One (1) production environment

C.5.3 The Contractor shall provide (10) full access user licenses and up to fifty (50) dashboard-only users licenses for the PowerPlan Insights AMP module.

C.5.5 The Contractor shall provide maintenance services in accordance with the terms of the Maintenance Services Schedule.

C.5.6 The Contractor shall use commercially reasonable efforts to provide an Error Correction or Workaround for all verifiable and reproducible Errors in the Software in accordance with the Agreement and the Maintenance Policy.

C.5.7 The Contractor shall provide automated problem spot fixes (Service Packs) to resolve an issue overnight and Patches updates to the Software, in accordance with the Maintenance Policy.

C.5.8 The Contractor shall provide assistance in resolving problems with the PowerPlan AMP Insights Software in accordance with and during the hours of operation more specifically set forth in the Maintenance Policy.

C.5.9 District of Columbia will receive up to a combined total of 1.5 TB disk space in District's Environments.

The Government of the District of Columbia

Master Software License and Services Agreement

Master Software License and Services Agreement

Table of Contents

POWERPLAN

MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

This Master Software License and Services Agreement is made and entered into this 1st day of September, 2017 ("Effective Date") by and between **PowerPlan, Inc.,** a Delaware corporation, with a notice address of 300 Galleria Parkway, Suite 2100, Atlanta, Georgia 30339 ("PowerPlan") and **The Government of the District of Columbia** ("Client") with a notice address of 200 I St. SE, Washington, DC 20003.

Background

PowerPlan is the developer of a suite of software products and related services designed for use in the management of asset intensive operations. Client desires to license or access PowerPlan's software products and receive certain services, as provided in this Agreement.

In consideration of the mutual promises, covenants, and representations herein, and upon the terms and conditions set forth below, the parties agree to the following:

This "Agreement" consists of this Signature Page, Order Forms that incorporate this Agreement by reference from time to time, and any Statements of Work that incorporate this Agreement by reference from time to time, the attached General Terms and Conditions, any information contained in a PowerPlan URL or policy referenced in this Agreement, and the following Order Form and other Exhibits:

Incorporated Documents

- Initial Order Form for Software and Services
- SaaS Services Schedule
- Maintenance Services Schedule
- Professional Services Schedule

Nothing contained in any purchase order, purchase order acknowledgement, Contract Award, or similar document shall in any way modify or add any additional terms or conditions to this Agreement. Client understands and agrees that any additional or conflicting terms in Client's current or future purchase orders, or Contract Award, which are not included in this Agreement or the applicable Order Form, are deemed rejected and are not part of the Agreement between PowerPlan and Client.

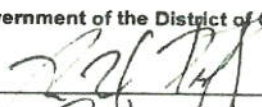IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective on the Effective Date.

PowerPlan, Inc.

By: _____
DocuSigned by:
3172CC005E61446...

Print Name: Kent Kelley

Title: CFO

The Government of the District of Columbia

By: _____

Print Name: Richard Dietz

Title: Project Manager
CARSS
9-13-2017

1

©2017 POWERPLAN, INC.

General Terms and Conditions

1   DEFINITIONS. Defined terms are set forth in Section 11.

2   LIMITATIONS ON LICENSE AND USAGE.

2.1   **Generally.** The rights granted in Section 1 of the License Schedule and Section 1 of the SaaS Services Schedule are conditioned and limited by the following.

(a) The Licensed Products are for use only by Authorized Users.

(b) Use of the Licensed Products is limited by the License Metrics.

(c) The Licensed Products shall be used only in accordance with the Documentation.

(d) Client Entities and Authorized Users shall not use the Licensed Products or any of PowerPlan's or PowerPlan's suppliers' Confidential Information to create any software, service or documentation that is in any way similar to the Licensed Products.

(e) Client Entities and Authorized Users shall not encumber, transfer, rent, donate, assign, lease, or otherwise use the Licensed Products in any time-sharing or service bureau arrangement.

(f) Except as expressly provided in this Agreement, Client Entities and Authorized Users shall not, copy, reproduce, market, sell, distribute, sublicense, manufacture, adapt, create derivative works of, translate, localize, port, or otherwise modify or commercially exploit the Licensed Products.

(g) Client Entities and Authorized Users shall not, and shall not allow third parties to, decompile, disassemble, reverse compile, reverse assemble, reverse translate or otherwise reverse engineer the Licensed Products, including use of any similar means to discover the Source Code of the Licensed Products, to discover the Confidential Information therein, or to otherwise circumvent any technological measures that control access to the Licensed Products.

(h) Client Entities and Authorized Users shall not alter or remove any printed or on-screen copyright, trademark, patent, proprietary, or other legal notice contained on or in any Licensed Products or the Source Code of the Software and shall cause all such notices to be reproduced on all copies thereof.

(i) Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by PowerPlan regarding future functionality or features.

2.2   **Reservation of Rights.** The Licensed Products are licensed, not sold. All rights, including all Intellectual Property Rights, not expressly granted in this Agreement are reserved to PowerPlan. No rights are granted by implication.

3   ADDITIONAL TERMS

3.1   **Viruses.** Prior to each delivery of the Software or Deliverables having functionality (collectively, "Code") or if PowerPlan is providing SaaS Services or Cloud Services, prior to putting such Code into production use for Client ("Cloud Production Use"), PowerPlan shall cause the Code to be processed by one or more current, industry-standard Virus detection programs. PowerPlan will not deliver or put into Cloud Production Use any Code to Client that PowerPlan knows has a Virus. PowerPlan does not warrant that the Code is completely free of Viruses. "Virus" means computer code that is not a normal feature of the Code and is designed or intended to have any of the following functions: (i) disrupting, disabling, harming, otherwise substantially impeding the normal operation of, or providing unauthorized access to, the Code, a computer system or network, software or other device; or (ii) damaging or destroying any data file without the user's consent.

3.2   **Accounting Procedures.** Client is solely responsible for ensuring the proper selection, testing, deployment, use, management, and supervision of the Software and audit controls, programs, operating methods and office procedures for establishing the necessary controls over access to and use of data and for establishing all proper checkpoints, safeguards, and procedures necessary for the proper use of the Software, any changes made by Client to alter the calculations, functions, or performance of the Software, and the suitability of the results obtained with the use of the Software. Except as otherwise expressly set forth in the SaaS Services Schedule or Cloud Services Schedule, Client is solely responsible for ensuring the security and backing up of the data stored therein. Client agrees that PowerPlan shall not be liable for any damages caused by Client's failure to fulfill these responsibilities.

3.3   **Cooperation and Access.**

(a) Client shall provide PowerPlan with good faith cooperation and access, including remote access, to such information, facilities, personnel, and equipment as may be reasonably required by PowerPlan in order to provide the Services, including providing data, access, information, and software interfaces to Client's applications as may be reasonably requested by PowerPlan from time to time. Client acknowledges and agrees that PowerPlan's performance is dependent upon the timely and effective satisfaction of Client's responsibilities hereunder and timely decisions and approvals of Client in connection with the Services. PowerPlan shall be entitled to rely on all decisions and approvals of Client.

(b) The parties will mutually agree upon and coordinate all security protocols involving remote access. In the event Client desires PowerPlan to adhere to or use a specific security protocol and doing so will require PowerPlan to incur a material cost, Client shall reimburse PowerPlan for such cost.

(c) Any services requested by Client through PowerPlan's Maintenance Services procedures that are not within the scope of Maintenance Services or that are outside the scope of the SOW Services described in the applicable Exhibits (collectively, "Additional Services") may be subject to an additional charge at Time and Materials Rates, at PowerPlan's discretion.

3.4   **Subcontractors.** PowerPlan may subcontract any work under this Agreement to any third party without Client's prior written consent. PowerPlan shall remain responsible for the performance, acts, and omissions of any subcontractors.

3.5   **Insurance.** PowerPlan will maintain continuously during the Maintenance Term, Cloud Term, and SaaS Term commercial general liability insurance with limits of no less than $1,000,000 per occurrence and $2,000,000 in the aggregate, automobile liability insurance with limits of no less than $1,000,000 combined single limit coverage, Professional Liability of $2,000,000 each claim and in the aggregate, and statutory Worker's Compensation insurance. The commercial general liability policy shall be endorsed to add Client as an additional insured as its interest appears.

4 FEES AND PAYMENTS

4.1 Fees Generally. Fees are stated on the applicable Order Form and are payable pursuant to the applicable Exhibit.

4.2 Currency. All Fees under this Agreement shall be payable in U.S. dollars.

4.3 Expenses. For any Professional Services and on-site Maintenance Services, Client shall reimburse PowerPlan for actual, reasonable travel, living, and other incidental expenses incurred.

4.4 Late Payment. Any amount not paid when due shall bear a late payment charge at the lesser of 1.5% per month or the maximum amount permitted by law until paid. If Client's account is in arrears for 60 days or more, PowerPlan may suspend the provision of Services until such time as Client's account is brought current. The rights in this Section are in addition to any other rights under this Agreement, at law, or in equity.

4.5 Taxes. Client agrees to pay all personal property, sales, use and other taxes (excluding taxes based upon PowerPlan's net income) and license and registration fees, and other assessments or charges levied or imposed by any governmental body or agency as a result of the execution or performance of the Agreement. Any amount due from Client under this Section shall be paid directly by Client, where appropriate, or shall be reimbursed to PowerPlan upon payment thereof by PowerPlan. In the event Client or the transactions contemplated by the Agreement are exempt from the foregoing taxes, fees, assessments or charges, Client agrees to provide PowerPlan as evidence of such tax exempt status, proper exemption certificates, or other documentation acceptable to PowerPlan.

5 PROPRIETARY RIGHTS

5.1 Ownership

(a) **PowerPlan.** PowerPlan and its suppliers retain sole and exclusive ownership of their respective Confidential Information, Licensed Products, Source Code of the Software, and all Intellectual Property Rights in, to, or embodied in or associated with the Licensed Products, Source Code of the Software and Services, and all copies and Modifications thereof (whether developed by PowerPlan, Client, or a third party). Client shall not take any action inconsistent with such title and ownership.

(b) **Client.** Client retains sole and exclusive ownership of Client's Confidential Information and all copies and Modifications thereof. PowerPlan shall not take any action inconsistent with such title and ownership. Notwithstanding anything to the contrary, any suggestions or proposed Modifications to the Software (in any form) provided by Client to PowerPlan may be freely used by PowerPlan without limitation, and any Modification to the Software resulting from such suggestions or proposed Modifications shall be exclusively owned by PowerPlan.

5.2 Indemnification

(a) PowerPlan shall indemnify, defend, and hold harmless Client Entities and their officers and Authorized Users (collectively, "Indemnified Parties") against any third party claim that the Software infringes any patent, copyright, or trademark, or misappropriates any trade secret. If any Software becomes, or in PowerPlan's opinion is likely to become, the subject of a claim of infringement, PowerPlan may, at its sole option, (i) obtain for Client the right to continue using the Software; (ii) replace or modify the affected Software so that it becomes non-infringing while providing substantially equivalent functionality; or (iii) if such remedies are not available on commercially reasonable terms as determined by PowerPlan, terminate the license for the affected portion of the Software and either refund the License Fees for the affected portion of the Software for , less a usage charge based on a 36 month straight-line amortization, or refund all prepaid Cloud Fees and SaaS Fees for the affected portion of the Software. Notwithstanding any other terms in this Section, PowerPlan shall have no liability for infringement claims and Client shall defend, indemnify, and hold harmless PowerPlan if the alleged infringement is based on or arises from (a) the combination or use of the Software with hardware, software, or other materials not provided by PowerPlan, (b) the modification of the Software by anyone other than PowerPlan or at PowerPlan's direction, (c) the use of the Software not in accordance with the Documentation or this Agreement, or (d) the use of other than the then most current Version of the Software if the use of the most current Version of the Software would have eliminated the infringement. THE FOREGOING STATES POWERPLAN'S ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR ANY CLAIM OF INFRINGEMENT.

(b) PowerPlan shall indemnify, defend, and hold harmless the Indemnified Parties against any third party claim arising from PowerPlan's or PowerPlan's Personnel's gross negligence or intentional tortious misconduct.

(c) The indemnification provided in this Section 5.2 is conditioned on (i) Client giving PowerPlan prompt written notice of such claim; (ii) Client providing its full cooperation in the defense of such claim, if requested by PowerPlan and at PowerPlan's expense; and (iii) Client granting PowerPlan the sole authority to defend or settle the claim. Client may engage legal counsel to monitor, but not control, any such claim at Client's expense.

5.3 Confidentiality. By virtue of this Agreement, the parties may be exposed to or provided with certain Confidential Information of the other party. Each party will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own Confidential Information, but in no event less than a reasonable amount of care. Except as required by law, neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement and as may be required to report to its Affiliates, legal and financial advisors, and regulators. Except as otherwise expressly set forth in this Agreement, neither party will disclose to third parties the other's Confidential Information without prior written consent of the other party. Client Entities shall cause Authorized Users and each party shall cause their respective Personnel to be bound in writing by obligations of confidentiality at least as restrictive as set forth in this Agreement. The responsibilities under this Section 5.3 shall continue during the term of this Agreement and for five (5) years thereafter for Confidential Information that is not a trade secret under law and for trade secrets shall continue for so long as such Confidential Information remains a trade secret.

5.4 Injunctive Relief. The parties agree that monetary damages are not an adequate remedy if Sections 2, 5.1, or 5.3 of these General Terms and Conditions, Section 1 of the License Fee Schedule, Sections 12 and 13 of the Cloud Services Schedule, and Sections 1, 3, 12, and 13 of the SaaS Services Schedule are breached and that the non-breaching party will suffer irreparable damage, and therefore, either party, in addition to

any other legal or equitable remedies, shall be entitled to seek an injunction or similar equitable relief against such breach or threatened breach.

6 WARRANTIES

6.1 Software Warranty. For a period of ninety (90) days from the date of first delivery of, or first access to, the Software, PowerPlan warrants that the Software will conform in all material respects to the Documentation, provided the Software is installed and used according to the Documentation. Client shall promptly notify PowerPlan in writing if the Software fails to perform in accordance with this warranty. PowerPlan shall, within thirty (30) days of its receipt of Client's notice, (i) correct such Error; (ii) provide Client with a plan reasonably acceptable to Client for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from PowerPlan, then PowerPlan or Client may terminate the license, and Client will be entitled to a refund of the applicable License Fees.

6.2 Sole Remedy. The warranty in Section 6.1 constitutes PowerPlan's sole and entire liability and Client's exclusive remedies with respect to such warranty. PowerPlan shall not be obligated to correct any breach of the above warranty if Client has not notified PowerPlan of the specific existence and nature of such breach promptly during the applicable warranty period. Without limiting the foregoing, PowerPlan does not warrant and is not responsible for (i) any third-party products or (ii) services not provided solely by PowerPlan Personnel.

6.3 Disclaimer. EXCEPT AS SET FORTH IN THIS SECTION 6, NEITHER POWERPLAN NOR ITS LICENSORS MAKES ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, CONDITION, OR AGREEMENT WITH RESPECT TO THE LICENSED PRODUCTS OR THE SERVICES. POWERPLAN AND ITS LICENSORS EXPRESSLY DISCLAIM AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM USAGE, CONDUCT, OR COURSE OF TRADE. POWERPLAN DOES NOT REPRESENT THAT THE OPERATION OF THE SOFTWARE AND THE DOCUMENTATION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS WILL BE CORRECTED.

7 LIMITATION OF LIABILITY, REMEDY

7.1 Limitation of Remedy. EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTION 5.3, POWERPLAN, ITS LICENSORS, AND OTHER SUPPLIERS SHALL NOT BE LIABLE TO CLIENT, CLIENT AFFILIATES, AUTHORIZED USERS, OR ANY THIRD PARTY, FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES OR LIABILITIES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL EXHIBITS OR AMENDMENTS, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, INCLUDING A BREACH, FOR DAMAGES OR LIABILITIES FOR LOST PROFIT, LOST REVENUE, LOSS OF USE, LOSS OF GOODWILL, LOSS OF REPUTATION, LOSS OF DATA, COSTS OF RECREATING LOST DATA, THE COST OF ANY SUBSTITUTE EQUIPMENT, PROGRAM, OR DATA, OR CLAIMS BY ANY THIRD PARTY REGARDLESS OF WHETHER SUCH DAMAGES OR LIABILITIES HAVE BEEN COMMUNICATED TO POWERPLAN AND REGARDLESS OF WHETHER POWERPLAN HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES.

7.2 Limitation of Liability. EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTIONS 5.2 OR 5.3, THE CUMULATIVE, AGGREGATE LIABILITY (INCLUDING ATTORNEYS FEES AWARDED UNDER THIS AGREEMENT) OF POWERPLAN, ITS LICENSORS, AND OTHER SUPPLIERS TO CLIENT, OTHER CLIENT ENTITIES, AUTHORIZED USERS, OR ANY THIRD PARTY FOR ALL CLAIMS, LIABILITIES AND DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL EXHIBITS OR AMENDMENTS THERETO, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED (i) IF LICENSE FEES ARE PAYABLE UNDER THIS AGREEMENT, THE LICENSE FEES PAID BY CLIENT TO POWERPLAN FOR THE LICENSED PRODUCTS, OR (ii) IF SAAS FEES ARE PAYABLE UNDER THIS AGREEMENT, SAAS FEES PAID TO POWERPLAN DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE DATE THAT THE CLAIM AROSE.

8 DISPUTE RESOLUTION.

The parties agree that any dispute arising in connection with the interpretation of this Agreement or the performance of any party under this Agreement or otherwise relating to this Agreement will be treated in accordance with the following procedures. The dispute will be referred for resolution first to the President or Chief Executive Officer of PowerPlan and his counterpart at Client. Such procedure will be invoked by either party presenting to the other a "Notice of Request for Resolution of Dispute" (a "Notice") identifying the issues in dispute sought to be addressed hereunder. A telephone or personal conference of those executives will be held within ten (10) days after the delivery of the Notice. In the event that the telephone or personal conference between these executives, for any reason, does not take place or does not resolve the dispute, either party may proceed with litigation. Notwithstanding the foregoing, either party may seek injunctive relief in a court of law or equity to assert, protect or enforce its rights in: (i) any Intellectual Property Rights; or (ii) Confidential Information as described in this Agreement. The parties agree that any Confidential Information of either party shall be disclosed during litigation only upon the issuance of appropriate protective orders limiting the disclosure or discoverability of such information outside of the litigation of this Agreement.

9 TERM AND TERMINATION

9.1 Termination. This Agreement may be terminated by a party:

(a) if the other party materially breaches a provision of this Agreement and fails to cure such breach within thirty (30) days of the receipt of written notice of such breach, except that Client shall not be entitled to a thirty (30) day cure period for any non-remediable breach of this Agreement; or

(b) if any assignment is made by the other party for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed to take charge of any or all of the other party's property, or if the other party files a voluntary petition under federal bankruptcy laws or similar state statutes or such a petition is filed against the other party and is not dismissed within sixty (60) days.

9.2 Termination of Exhibits. Where the non-breaching party has a right to terminate this Agreement, the non-breaching party may at its discretion either terminate this Agreement or the applicable Exhibit. In the event that each and every Exhibit is terminated or expires, this Agreement shall automatically terminate. In the event that this Agreement is terminated as provided herein, each and every Exhibit to this Agreement shall automatically terminate. All rights of termination are in

addition to any other rights of the parties under this Agreement, at law, in equity, or otherwise.

9.3 **Effects of Termination**. Upon termination of this Agreement for any reason, all rights and obligations of the parties hereunder and all licenses and Services shall cease, except as follows:

(a) Client's liability for any Fees, charges, payments, or expenses due to PowerPlan that accrued prior to the termination date shall not be extinguished by termination, and such amounts shall be immediately due and payable.

(b) Client shall deliver to PowerPlan, at Client's expense, all originals and copies of the (i) Licensed Products; (ii) Source Code of the Software; and (iii) Confidential Information of PowerPlan in the possession or under the control of Client. Client shall certify in writing to PowerPlan within ten (10) days following termination that it has complied with this Section 9.3(b).

(c) PowerPlan shall return to Client any Confidential Information of Client in the possession or under the control of PowerPlan.

(d) Prior to or within ten (10) days following termination or expiration of any Cloud Services or SaaS Services, Client may request that PowerPlan provide SOW Services related to the transition of data or other reasonable services related to such termination ("Termination Services"). All Termination Services shall be mutually agreed in an SOW. As a part of Termination Services, PowerPlan may provide a copy of the Hosted Data in a comma delimited, CSV, or other format specified by PowerPlan. In no event shall PowerPlan be required to disclose PowerPlan's metadata in connection with the provision of Hosted Data or other Termination Services.

(e) The provisions of the Signature Page, Sections 4 (for accrued but unpaid Fees and expenses), 5, 6.3, 7, 8, 9.3, 10, and 11 of the General Terms and Conditions, Section 2 of the License Schedule (for accrued but unpaid Fees and expenses), Section 2.2 of the Maintenance Services Schedule (for accrued but unpaid Fees and expenses), Section 4 of the Professional Services Schedule (for accrued but unpaid Fees and expenses), Sections 5 (for accrued but unpaid Cloud Fees and expenses) and 13 of the Cloud Services Schedule, and Sections 5 (for accrued but unpaid SaaS Fees and expenses) and 13 of the SaaS Services Schedule shall survive any termination of this Agreement.

10 GENERAL PROVISIONS

10.1 **Authorized Users**. Client shall cause all Client Affiliates and Authorized Users to be bound by the terms and conditions of this Agreement that are applicable to Client, and any default by any Client Affiliate or Authorized User of the terms and conditions of this Agreement shall be a default of Client.

10.2 **Data Use**. PowerPlan shall treat all Client Data as confidential and shall only use the Client Data to (i) provide the Services (including reporting to Client on their use of the Services), (ii) aggregate information relating to transactions for statistical analysis and business measures of the performance of the Licensed Products or Services, to improve PowerPlan's products and services, and to manage PowerPlan's systems, including the Platform, (iii) monitor Client's use of the Licensed Products or Services for security and technical support purposes and for purposes of otherwise complying with PowerPlan's obligations to Client, (iv) enforce this Agreement, and (v) share with any PowerPlan subcontractors who need to know such information in order to provide the Licensed Products or Services, provided that they are bound by similar confidentiality obligations. For purposes of clarity, PowerPlan's

obligation to keep such Client Data confidential shall not apply to information that (1) PowerPlan learns of from another source or independently develops without reference to the Client Data or (2) PowerPlan is required to disclose by law (but only to the extent of such required disclosure). PowerPlan may use, modify, market, and disclose any De-identified Data for any legal purpose. "De-identified Data" means data and information generated by or captured through the use of the Licensed Products, or that is derived from such data and information, that both (i) does not identify and cannot be reasonably used to identify any individual person, including, without limitation, any Client personnel, and (ii) is aggregated with data of third parties, including, without limitation, other customers of PowerPlan, such that the data cannot identify Client or be attributed solely to Client or use of the Licensed Software by Client, Authorized Users, Client's personnel, or Client's customers.

10.3 **Delivery**. Delivery of each Licensed Product shall be deemed to occur upon the earlier to occur of (i) initial delivery of the Licensed Product by PowerPlan to a third party shipper addressed to Client; (ii) the initial date the Licensed Product or license keys are made available by PowerPlan for download by Client; (iii) initial upload of the Licensed Product on to Client's server or computer system; (iv) when any Professional Services commence with reference to the Licensed Product (only applicable to SaaS Services); or (iv) when Client is given access to any functionality of the applicable Licensed Product (only applicable to SaaS or Cloud Services).

10.4 **Governing Law**. The validity, construction, and performance of the Agreement and the legal relations among the parties to the Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, excluding that body of law applicable to choice of law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

10.5 **Entire Agreement**. This Agreement, including all the Exhibits attached hereto, constitute the entire agreement between the parties with regard to the subject matter hereof. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

10.6 **Order of Precedence**. In the event of a direct conflict between the General Terms and Conditions and the Exhibits, such document shall take priority in the following order (first priority to last): General Terms and Conditions, Order Forms, Statements of Work, and Schedules.

10.7 **Waiver**. The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor, except as otherwise expressly provided otherwise in this Agreement, shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power, or privilege by such party.

10.8 **Severability**. If any provision in this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified, or severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect.

10.9 Assignment. Except in connection with a merger or sale involving a majority of the stock or assets of a party, this Agreement and the rights and obligations hereunder, may not be assigned in whole or in part by either party without the prior written consent of the other party. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators, and assigns of the parties hereto. Any attempt at assignment without such consent shall be null and void and of no force and effect. Any applicable fees resulting from any assignment will be based on PowerPlan's then current pricing, terms, and conditions.

10.10 Export. Client shall not export, transship or re-export, or participate in a deemed export of, the Licensed Products and Services (collectively, "Export Materials") (i) to any individual located in any nation to which export, transshipment or re-export is prohibited by U.S. law or regulation from time to time (collectively, the "Restricted Nations"); (ii) to any business or organization owned, controlled by or acting on behalf of an individual, business or organization in a Restricted Nation; (iii) to the governments of a Restricted Nation or any business or organization owned, controlled by or acting on behalf of a government of a Restricted Nation; or (iv) to any individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's list of Specially Designated Nationals or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons, as each may be amended from time to time. Client represents and warrants that it (i) is not an individual located in a Restricted Nation; (ii) is not a business or organization owned, controlled by or acting on behalf of an individual, business or organization in a Restricted Nation; (iii) is not a government of a Restricted Nation; (iv) is not a business or organization owned, controlled by or acting on behalf of a government of a Restricted Nation; and (v) is not an individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's list of Specially Designated Nationals or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons. Client will defend, indemnify, and hold PowerPlan, and PowerPlan's officers, directors, employees, shareholders, agents, suppliers, or representatives harmless from and against any and all damages and expenses, including legal fees, incurred directly or indirectly as a consequence of Client's failure to comply with this Section. This obligation shall survive termination of this Agreement.

10.11 License to the Government. If any Licensed Product is acquired by or on behalf of a unit or agency of the United States Government, the Government agrees that such Licensed Product is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement with PowerPlan to the contrary, the Government's rights with respect to such Licensed Products are, in the case of civilian agency use, Restricted Rights, as defined in FAR §52.227.19, and if for Department of Defense use, limited by the terms of this Agreement, pursuant to DFARS §227.7202.

10.12 Force Majeure. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the party invoking this provision, including, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including ecommerce software, payment gateways, chat, statistics or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment, the affected party's performance shall be extended for the period of delay or inability to perform due to such occurrence, and provided further that the other party may terminate this Agreement if such condition continues for a period of 180 days. This provision shall not apply to payment obligations.

10.13 Non-solicitation. Client and PowerPlan agree that neither party shall hire or engage any Personnel or former Personnel of the other within twelve (12) months from the last date such Personnel provided Services hereunder without the other party's written consent. This provision shall not apply to Personnel who reply solely to a published solicitation for employment without otherwise violating the terms of this Section.

10.14 No Agency; Independent Contractors. Nothing contained in this Agreement shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

10.15 Third Party Beneficiaries. There are no express or implied third party beneficiaries of this Agreement.

10.16 Compliance. During the term of this Agreement and for a period of one (1) year following its expiration or termination, Client shall maintain and make available to PowerPlan records sufficient to permit PowerPlan or an independent auditor retained by PowerPlan to verify, upon ten (10) days written notice, Client's compliance with the terms of this Agreement; provided, that such audit shall be performed during regular business hours and subject to Client's reasonable confidentiality requirements. If such verification process reveals any noncompliance by Client or other Client Entities of this Agreement, Client shall pay the applicable Fees and shall reimburse PowerPlan for the reasonable costs and expenses of such verification process (including, but not limited to the fees of an independent auditor) incurred by PowerPlan, and Client shall promptly cure, and shall cause other Client Entities to promptly cure, any such noncompliance; provided, however, that the obligations under this Section are not a waiver of PowerPlan's termination rights or other rights under this Agreement, at law, in equity, or otherwise.

10.17 Notices. Any notice or communication from one party to the other shall be in writing and either personally delivered or sent via nationally recognized overnight service, or certified mail, postage prepaid and return receipt requested, addressed to the attention of Legal at the address of the other party as specified in the first paragraph of the Signature Page of this Agreement or at such other address as such party may from time to time designate in a notice to the other party. All notices shall be in English and shall be effective upon receipt.

10.18 Construction. In the interpretation of this Agreement, words importing the singular or plural number shall include the plural and singular number respectively, words denoting gender shall include all genders and references to persons shall include corporations or other entities and vice versa. The word "including" and its derivatives, (such as "include" and "includes") means including, without limitation, whether or not capitalized and whether or not "without limitation" or words of similar meaning are included in other provisions of this Agreement. Captions and headings contained in this Agreement have been included for ease of reference and convenience and shall not be considered in interpreting or

construing this Agreement. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party than against another, because the parties participated equally in preparing this Agreement. Unless the context otherwise specifically requires, all references to sections of this Agreement shall refer to all subsections thereof.

10.19 Authority. The parties and each individual executing this Agreement on behalf of a party represent and warrant that such individual is duly authorized to execute and deliver this Agreement on behalf of his or her party.

10.20 Marketing Client agrees to provide PowerPlan with the following marketing assistance: (i) within thirty (30) days of the Effective Date, Client and PowerPlan will develop and issue a press release highlighting why Client selected PowerPlan's solution and which will include a quote attributed to a high-level executive employed by Client; (ii) Client agrees to provide a spokesperson for media inquiries related to the selection and implementation of PowerPlan's solution; (iii) upon successful implementation of PowerPlan's solution, Client agrees to serve as the subject of a go-live press release, a written case study and video case study on the selection and implementation of PowerPlan's solution; and (iv) Client grants approval to PowerPlan to use Client's logo in marketing collateral and on PowerPlan's web site.

10.21 Mobile Approvals. Client agrees that transferring data and information over the Internet and the use of mobile devices is inherently dangerous and subject to computer system and network security breaches and failure. As a result, Client agrees that it is using Mobile Approvals (the "App") at its own risk and that in no event shall PowerPlan be held liable for any loss or damages related to use of the App, however caused, including, but not limited to, loss or damages caused from unauthorized access to Client data, systems and mobile devices. No warranty is given by PowerPlan in order to prevent such access. Client is responsible for maintaining the confidentiality of its login names and passwords and accepts responsibility for all damages that may occur as a result of such mobile access. If Client has reason to believe that someone is using any of its account(s) without permission, Client must contact PowerPlan immediately. PowerPlan will not be responsible for any loss or damage resulting from the misuse of Client login names and passwords.

11 DEFINITION OF TERMS. In addition to any other terms set forth in this Agreement, including all Exhibits, the following terms shall have the following meanings:

11.1 Affiliate means those entities that are controlled by, controlling, or under common control with Client. The term "control" as used in this definition means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

11.2 Authorized User means Personnel of a Client Entity who both has a need to access and use the Software solely for Client Entities' benefit and complies with the requirements set forth in Section 5.3.

11.3 Client Data means the data Client, other Client Entity, or Authorized User loads into or stores using the Licensed Products, including the Hosted Data.

11.4 Client Entities means Client and all Affiliates of Client for which any Software is used to monitor, budget for, or manage any PP&E of such Affiliate.

11.5 Cloud Services means those Services more particularly described in the Cloud Services Schedule, if attached or incorporated into this Agreement.

11.6 Cloud Fees means fees for Cloud Services.

11.7 Confidential Information means any information that is of value to its owner, or is required to be kept confidential by contract or otherwise, and is treated as confidential, that is disclosed by or on behalf of the discloser or otherwise directly or indirectly obtained from the discloser. Confidential Information includes, but is not limited to, the following: trade secrets, proprietary information, technical processes and formulas, the Software and Deliverables in Source Code, Object Code, and any other form, Documentation, benchmark and performance test results, product designs, any sales, cost, and other unpublished financial information, product and business plans, projections and marketing data, and the terms and conditions (but not the existence) of this Agreement. Confidential Information does not include information (i) generally known to the public through no act or omission of recipient; (ii) independently developed by the recipient without use of or reference to the discloser's Confidential Information; and (iii) obtained by recipient from any third party not owing any confidentiality obligation to the discloser.

11.8 Deliverable means documents, material, and computer software, including interfaces, delivered or made accessible to Client Entities by PowerPlan in the provision of Professional Services, except that the Software, Documentation, and Source Code of the Software are not included in the definition of Deliverables.

11.9 Documentation means the user guide(s), installation instructions, user instructions, release notes, manuals, and on-line help files in the form generally made available by PowerPlan to its customers regarding the use of the applicable Software, including the minimum hardware, software, operating system, and other system and configuration requirements for the proper use of the Software, as Modified and provided to Client from time to time.

11.10 Error is defined in the Maintenance Policy.

11.11 Error Correction is defined in the Maintenance Policy.

11.12 Exhibit means any Schedule, Order Form, Attachment, Exhibit, or Statement of Work attached to this Agreement or incorporated by reference from time to time.

11.13 Fees means License Fees, Maintenance Fees, SaaS Fees, Cloud Fees, Professional Services Fees, and all other fees payable to PowerPlan under this Agreement.

11.14 Hosted Data means the Client Data that Client, other Client Entity, or Authorized User loads into or stores using the Hosted Software.

11.15 Hosted Software means the Licensed Products for which PowerPlan is providing the Cloud Services or SaaS Services, as specified in the Order Form, and any New Releases.

11.16 Intellectual Property Rights means any and all rights existing from time to time in any jurisdiction under copyright law, patent law, trade secret law, confidential information law, trademark law, unfair competition law, or other similar rights.

11.17 License Fee means the fee payable by Client for the license of the Licensed Products.

11.18 License Metrics means the limitations on the usage of the Licensed Products as designated on the applicable Order Form, including the maximum PP&E Value.

11.19 Licensed Products means the Software, Documentation, and Deliverables, regardless whether provided as an on-premise license or access to which is provided remotely over the Internet as a part of Cloud Services or SaaS Services.

11.20 Maintenance Policy is defined in Section 1(a) of the Maintenance Services Schedule.

11.21 Modification means any enhancement, New Release, Error Correction, derivative work, or other change.

11.22 New Release means any new Version, new Service Pack, or new Patch that is made available to Client as a part of Maintenance Services.

11.23 Object Code means machine-readable computer software code generated from Source Code by a compiler, interpreter, assembler, or similar technology.

11.24 Order Form means the document executed by the parties that specifies the Licensed Products and/or Services that PowerPlan agrees to license or provide to Client Entities in accordance with this Agreement.

11.25 Patch is defined in the Maintenance Policy.

11.26 Personnel means an employee, contractor, agent, or consultant who is employed by or provides services to an entity.

11.27 Platform means the information technology infrastructure, including computers, servers, hardware, databases, database management systems, networks, communications infrastructure, devices, websites, Software, and third party software used by PowerPlan to provide the SaaS Services or the Cloud Services.

11.28 Platform Services means the Services and licenses more particularly described in the SaaS Services Schedule, if attached or incorporated into this Agreement, other than Maintenance Services.

11.29 PP&E means property, plant and equipment, as defined in accordance with Generally Accepted Accounting Principles ("GAAP").

11.30 PP&E Value means, as measured by GAAP, the aggregate of the net book value of all PP&E of the Client Entities.

11.31 Professional Services means the SOW Services and Additional Services to be provided to Client Entities, if such Services are attached or incorporated into this Agreement.

11.32 SaaS Fees means the fees for SaaS Services as more particularly described on an applicable Order Form.

11.33 SaaS Services means the Platform Services and Maintenance Services, if attached or incorporated into this Agreement.

11.34 Service Pack is defined in the Maintenance Policy.

11.35 Services means the Professional Services, Maintenance Services, SaaS Services, and Cloud Services to be provided in accordance with the terms of this Agreement.

11.36 Software means the Object Code version of the software identified on the Order Form, including all Modifications provided by, or granted access to, by PowerPlan to Client Entities from time to time. Unless otherwise mutually agreed in writing, Software does not include any Deliverables.

11.37 Source Code means computer software program instructions that must be translated by a compiler, interpreter, or assembler into Object Code before execution.

11.38 SOW Services means the installation, implementation, training, consulting and other services provided by PowerPlan in accordance with any Statement of Work, if attached or incorporated into this Agreement.

11.39 Time and Materials Rates means, unless otherwise provided on an Order Form or Statement of Work, PowerPlan's standard quoted rates for time and materials at the time the Professional Services are performed.

11.40 Version is defined in the Maintenance Policy.

11.41 Workaround is defined in the Maintenance Policy.

POWER**PLAN**

Order Form

As it relates to the Software specified herein, this Order Form dated September 1, 2017 (the "Order Form Effective Date") is subject to the terms of the Master Software License and Services Agreement between PowerPlan, Inc. ("PowerPlan") and The Government of the District of Columbia ("Client") with an effective date of September 1, 2017 (the "Agreement"). All terms of the Agreement are incorporated herein by reference. Capitalized terms not defined in this Order Form are defined in the Agreement.

Client:	The Government of the District of Columbia	Purchase Order #:	
Address:	200 I St. SE	If No P.O. Required Check Here	☐
Address:	Washington, DC 20003	Order Date: September 1, 2017	

SaaS Services

The Initial Annual SaaS Fee and One Time Set-Up Fee will be invoiced upon execution of this Order Form. Client hereby agrees to an Initial SaaS Term commencing on the Order Form Effective Date through September 30, 2019.

Software	Annual SaaS Fee During Initial SaaS Term	One Time Set-Up Fee	Initial SaaS Term Begin Date	Initial SaaS Term End Date	Payment Terms	License Metrics
Insights for AMP	$42,000 (USD)	$0 (USD)	Order Form Effective Date	9/30/2019	Due Upon Receipt	See Special Notes

1. At Delivery, Client shall receive one (1) test, one (1) development and one (1) production environment (collectively, the "Environments").
2. The SaaS Fee provided under this Order Form provides Client with up to ten (10) full access users, up to fifty (50) dashboard-only users, and up to a combined total of 1.5 TB disk space in Client's Environments.
3. Upon execution of this Order Form, Client will pay $3,500.00 (USD) for the period beginning September 1, 2017 through September 30, 2017 in order to co-term to Client's fiscal year end.
4. The first year of SaaS Fees for the term beginning October 1, 2017 through September 30, 2018 is $42,000 (USD).
5. Upon the conclusion of the Initial SaaS Term and renewal consistent with Section 4 of the SaaS Schedule, the SaaS Fee associated with following year's Additional SaaS Term will be $44,100 (USD).
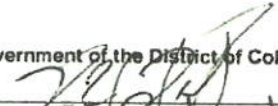
Billing / Accounts Payable Contact		**Software Delivery Contact**	
Name:	David Clark	Name:	David Clark
Address:	200 I St. SE, Washington, DC 20003	Address:	200 I St. SE, Washington, DC 20003
Phone:	202-727-2055	Phone:	202-727-2055
Email:	david.allen.clark@dc.gov	Email:	david.allen.clark@dc.gov

The pricing set forth in this offer is valid if accepted by Client by September 30, 2017.

PowerPlan, Inc.

By: _____
3172CC005E6f446...
Print Name: Kent Kelley
Title: CFO

The Government of the District of Columbia

By: _____
Print Name: Richard Dietz
Title: Project Manager
CARSS
9-13-2017

9

©2017 POWERPLAN, INC.

Maintenance Services Schedule

This Maintenance Services Schedule ("Maintenance Services Schedule") between **PowerPlan, Inc.** and the Client identified on the Signature Page of the Master Software License and Services Agreement to which this is attached ("Agreement") is incorporated into the Agreement.

1 MAINTENANCE SERVICES GENERALLY

(a) During the Maintenance Term or SaaS Term, and as long as Client is not in default, PowerPlan will provide to Client maintenance services ("Maintenance Services") in accordance with the terms of this Maintenance Services Schedule. Maintenance Services will be provided in accordance with PowerPlan's maintenance policy, including maintenance service levels, in effect at the time Maintenance Services are provided ("Maintenance Policy"). PowerPlan's Maintenance Policy is at http://www.powerplan.com/files/PowerPlan-Standard-Software-Maint-Policy-Website.pdf..

(b) PowerPlan will use commercially reasonable efforts to provide an Error Correction or Workaround for all verifiable and reproducible Errors in the Software in accordance with this Agreement and the Maintenance Policy.

(c) PowerPlan will provide Service Packs and Patches to the Software that PowerPlan makes generally available to its customers as part of Maintenance Services and in accordance with the Maintenance Policy.

(d) PowerPlan will make available to Client new Versions in accordance with the Maintenance Policy as and when developed, except for new products or modules for which PowerPlan generally charges a separate license or SaaS Fee. PowerPlan is not obligated to develop New Versions.

(e) PowerPlan will provide one or more reasonable means of communication to allow Client's IT personnel ("Maintenance Contacts") to contact PowerPlan for assistance in resolving problems with the Software ("Help Desk") in accordance with and during the hours of operation more specifically set forth in the Maintenance Policy.

2 LIMITATIONS OF MAINTENANCE SERVICES

(a) PowerPlan is under no obligation to provide Maintenance Services with respect to: (i) Software that has been altered or modified by Client or any third party; (ii) Software used on a system that does not meet the minimum hardware, software, operating system, and other system and configuration requirements set forth in the Documentation; (iii) hardware, network, or communication problems, (iv) the Deliverables, or (v) any systems or software not both supplied by PowerPlan and identified as covered on the Order Form.

(b) Except as specifically provided on an Order Form, PowerPlan shall have no responsibility for the procurement, installation, or support of any other hardware, software, or other computing or communications systems and the day-to-day operation of the Licensed Products.

2.1 **Maintenance Term.** Unless otherwise set forth on the applicable Order Form and unless terminated in accordance with the terms and conditions of this Agreement, the term for Maintenance Services shall commence on the Effective Date and end as set forth in the Order Form ("Initial Maintenance Term"). Thereafter, the Maintenance Term shall automatically renew for additional one (1) year terms (each, an "Additional Maintenance Term"; the Initial Maintenance Term and all Additional Maintenance Terms are collectively referred to as the "Maintenance Term"), unless either party provides written notice to the other party at least ninety (90) days prior to the end of the then-current Maintenance Term of its intent to not renew the Agreement. The Maintenance Term for additional Software shall be co-terminous with the then Maintenance Term.

2.2 **Maintenance Fees.** Client shall pay the fees for Maintenance Services as provided on the applicable Order Form ("Maintenance Fees"). Any Maintenance Fees payable for less than a 12 month period shall be prorated on a daily basis. Unless otherwise specified on the Order Form, Maintenance Fees shall be paid annually in advance. PowerPlan shall notify Client at least thirty (30) days in advance of the then Maintenance Term of any change in Maintenance Fees for the next twelve (12) months of the Maintenance Term.

2.3 **Reinstatement of Maintenance Services.** In the event Client discontinues receiving Maintenance Services and desires to reinstate such services, unless otherwise agreed, Client shall pay all Maintenance Fees which would have been applicable during the period during which Maintenance Services were lapsed.

Professional Services Schedule

This Professional Services Schedule ("Services Schedule") between **PowerPlan, Inc.** and the Client identified on the Signature Page of the Master Software License and Services Agreement to which this is attached ("Agreement") is incorporated into the Agreement.

1 SOW SERVICES

(a) PowerPlan shall provide SOW Services to Client as mutually agreed on a Statement of Work ("Statement of Work" or "SOW"). All Professional Services are provided on a time and materials basis, at Time and Materials Rates, and are subject to availability of PowerPlan Personnel. PowerPlan does not guarantee that SOW Services performed on a time and materials basis can be fully performed for any "not to exceed" or maximum price set forth in the Statement of Work. PowerPlan shall assign an adequate number of Personnel to perform the SOW Services. PowerPlan will charge a premium of one and one half (1.5) times the relevant contracted rate for any SOW Services work that is performed on weekends or during a PowerPlan published holiday. Should Client cancel or delay previously scheduled work less than seven (7) calendar days prior to its start date, Client shall be responsible for the fees for any resources that PowerPlan is unable to fully redeploy as well as any non-refundable travel expenses that PowerPlan incurs.

(b) PowerPlan shall report to Client as soon as practicable if PowerPlan discovers that the time or cost of performance of the SOW Services will exceed the estimated time or cost authorized in the Statement of Work. PowerPlan shall describe the reasons for the anticipated time or cost overrun and shall estimate the revision in the original estimated time or costs necessary to complete the work. PowerPlan shall not perform work in excess of any maximum identified in the Statement of Work, unless the parties have executed a Change Order pursuant to Section 2(a).

(c) For SOW Services related to the initial installation of any Software ("Initial Implementation"), each party shall designate a project manager who shall be responsible for coordinating the activities of each party. PowerPlan will make commercially reasonable efforts to maintain the same project manager throughout the project. During Initial Implementation, if the number of PowerPlan's Personnel assigned to perform the Initial Implementation is reduced because of death, permanent termination of employment, or extended illness, PowerPlan shall use commercially reasonable efforts to replace such Personnel as soon as practicable with equivalent ability and experience.

2 CHANGES TO SOW SERVICES

(a) Either party may propose a change order to add to, reduce, or change the work specified in the Statement of Work (upon execution by both parties, a "Change Order"). Each proposed Change Order shall specify the changes to the SOW Services or Deliverables, and the effect, if any, on the Statement of Work, including PowerPlan's compensation, due to the change. Once executed by both parties, a Change Order shall become a part of the Statement of Work.

(b) In the event of any delay in Client's performance of any of the obligations set forth in this Agreement, including any Statement of Work, or any other delays caused by Client, the milestones, fees and date(s) set forth in the Statement of Work shall be adjusted as reasonably necessary to account for such delays.

3 TERM. Unless terminated as set forth in the General Terms and Conditions, the Statement of Work shall terminate when all SOW Services are completed.

4 FEES FOR **SOW** SERVICES. Client shall pay for all Professional Services ("Professional Services Fees") within 30 days after receipt of the applicable invoice. Fees for Professional Services shall be billed monthly in arrears, unless otherwise expressly set forth in the applicable Statement of Work.

5 SOW SERVICES WARRANTY. PowerPlan warrants that the applicable SOW Services will be performed in a good and workmanlike manner, consistent with generally accepted industry standards. Client shall promptly notify PowerPlan in writing if the SOW Services fail to perform in accordance with this warranty. PowerPlan shall, after receipt of Client's notice, re-perform the SOW Services within a reasonable time. If PowerPlan is unable to re-perform the SOW Services as warranted, PowerPlan shall refund the fees paid for the non-conforming SOW Services.

6 SOLE REMEDY. The warranty in Section 5 above constitutes PowerPlan's sole and entire liability and Client's exclusive remedies with respect to such warranty. PowerPlan shall not be obligated to correct any breach of the above warranty if Client has not notified PowerPlan of the specific existence and nature of such breach promptly during the applicable warranty period. Without limiting the foregoing, PowerPlan does not warrant and is not responsible for (i) any third-party products or (ii) services not provided solely by PowerPlan Personnel.

SaaS Services Schedule

This SaaS Services Schedule ("SaaS Services Schedule") between **PowerPlan, Inc.** and the Client identified on the Signature Page of the Master Software License and Services Agreement to which this is attached ("Agreement") is incorporated into the Agreement.

1 **PLATFORM SERVICES.** Subject to the terms and conditions of this Agreement (including Section 2 of the General Terms and Conditions) and the applicable Order Form, during the SaaS Term, PowerPlan grants to Client for the benefit of Client Entities limited to the U.S. and Canada, and Client accepts, the following non-exclusive, non-assignable, limited, and non-transferable right and license to access the functionality of the Licensed Products remotely over the Internet:

(a) of a single instance of the Software in a production environment to process or view Client Entities' data as such data relates to Client Entities' PP&E and projects or initiatives related to such PP&E;

(b) such additional instances of the Software, including testing environments, as are more particularly set forth on the applicable Order Form; and

(c) to use a reasonable number of copies of the Documentation in support of the rights granted in subsections (a) and (b) above.

2 **MAINTENANCE SERVICES.** During the SaaS Term and subject to the terms and conditions of this Agreement, PowerPlan will provide to Client the Maintenance Services, as described in the Maintenance Services Schedule.

3 **LIMITATIONS OF SAAS SERVICES.** The scope of the Client's authorized usage shall be as specified in the Order Form. SaaS Services do not include any Client security requirements beyond those set forth in this SaaS Services Schedule. The SaaS Services do not include a right to possess a copy of the Software or otherwise access the Software except remotely via the Internet.

4 **SAAS TERM.** Unless otherwise set forth on the applicable Order Form and unless terminated in accordance with the terms and conditions of this Agreement, the term for SaaS Services shall commence on the Effective Date and end as set forth in the Order Form ("Initial SaaS Term"). Thereafter, the SaaS Term shall automatically renew for additional one (1) year terms (each, an "Additional SaaS Term"; the Initial SaaS Term and all Additional SaaS Terms are collectively referred to as the "SaaS Term"), unless either party provides written notice to the other party at least ninety (90) days prior to the end of the then-current SaaS Term of its intent to not renew the Agreement.

5 **SAAS FEES.** Unless otherwise stated in the Order Form, Client shall pay the SaaS Fees annually in advance, in the amount specified on the applicable Order Form, with the first annual payment due and payable on the date of execution of the Order Form. Thereafter, Client shall pay the annual SaaS Fees on or before the applicable anniversary of the Initial SaaS Term Begin Date. If Client exceeds the License Metrics during the SaaS Term, then Client will pay the applicable SaaS Fees for the overage within fifteen (15) days after receipt of an invoice for such overages. SaaS Fees are not contingent under any circumstances upon the performance of any Professional Services, including initial implementation. PowerPlan shall notify Client at least thirty (30) days in advance of the then SaaS Term of any change in SaaS Fees for the next Additional SaaS Term.

6 **SERVICE LEVELS.** During the SaaS Term, and as long as Client is not in default, PowerPlan will provide the Platform Services in accordance with PowerPlan's Service Level Policy in effect from time to time ("Service Level Policy"). PowerPlan's Service Level Policy is at http://powerplan.com/files/powerplan-service-level-policy.pdf..

7 **OTHER SERVICES.**

7.1 **Server Configuration.** PowerPlan will provide a server of sufficient capacity to provide a productive operating environment for the scope of the Platform Services specified in the Order Form. The server will be configured in a redundant disk configuration to help ensure data security and recovery. The operating system will be appropriate to the hardware selected for production and test use. Industry standard security patches, service packs and anti-virus software will be installed at initial implementation, and updated on a monthly or on an as needed basis, as applicable.

7.2 **Network Configuration.** PowerPlan will provide Client shared network bandwidth. Inbound and outbound traffic will be routed and monitored through PowerPlan-provided firewall(s), switches, routers and load balancers.

7.3 **Physical Security and Environmental Control.** PowerPlan uses commercially reasonable industry measures designed to protect the Platform against unauthorized physical access and the threats of fire, power, temperature, humidity and other physical forces with the following capability:

(a) Co-location in a secure data center with physical access limited to authorized personnel and protected by multi-level security systems. Other persons are admitted only on an as-needed and supervised basis (such as to maintain hardware components).

(b) Continuous, conditioned power supplied by a redundant power infrastructure, including battery backup systems and diesel-powered generators, with regular system testing for continuous availability.

(c) Redundant HVAC climate control, fire suppression systems and locked cabinets.

7.4 **Monitoring.** PowerPlan shall monitor the availability of the Platform 24/7.

8 **HOSTED DATA.** PowerPlan maintains controls consistent with the ISO 27002 framework. Without limiting the foregoing, PowerPlan takes the following measures to protect the Hosted Data:

(a) The Hosted Data is maintained in secure directories that require access authentication.

(b) PowerPlan performs daily backups. Full system backups and server image backups will be performed on a monthly basis. Monthly system images and the Hosted Data will be securely uploaded and stored off-site at a data management facility. Daily backups will be retained for 30 days. Monthly backups will be retained for at least three months.

(c) PowerPlan maintains antivirus protection software on the Platform. In the event viruses, worms or similar problems are determined to have infected the Platform, PowerPlan will use commercially reasonable efforts to restore the system as quickly as reasonably possible.

(d) PowerPlan shall take commercially reasonable steps, or cause such commercially reasonable steps to be taken, designed to prevent security breaches. It is impossible to maintain flawless security, and PowerPlan does not make any representation, condition, or warranty in this regard. Accordingly, Client agrees that it will not include in the Hosted Data: (i) any information, or documents or technical data that are classified, ITAR controlled or otherwise have been determined by the United States Government or by a foreign government to require protection against unauthorized disclosure for reasons of national security and/or (ii) any data that is "protected health information, including any medical, demographic, visual or descriptive information that can be used to identify a particular patient/individual" subject to the U.S. "Health Insurance Portability & Accountability Act of 1996," as amended, and regulations promulgated under that Act (collectively "HIPAA"). Except with respect to PowerPlan's express obligations in this Section 8, Client is solely responsible for any damage or losses caused by unauthorized destruction, loss, interception, or alteration of the Hosted Data by unauthorized persons.

9   EXCLUSIONS. SaaS Services do not include:

(a) Support on Client's site;

(b) Modifications or customizations made to the Hosted Software or integrations to third party systems;

(c) Any third party software Client requests PowerPlan to provide in the Platform Services;

(d) Issues caused by material changes to the configuration of the Hosted Software by Client;

(e) Errors caused by Client's negligence or fault;

(f) Consulting or training services; and

(g) Responsibility for changes to or replacement of any Client hardware that may be necessary to use the Hosted Software due to a new Version, Minor Release, Patch or Workaround of the Hosted Software.

10   CLIENT RESPONSIBILITIES

(a) Client shall assist PowerPlan in PowerPlan's efforts to resolve problems and confirmed Platform problems reported by Client.

(b) Prior to reporting a Platform problem or Errors to PowerPlan, Client shall use commercially reasonable efforts to resolve the Authorized User's problem by utilizing all available on-line and information and resources.

(c) Client shall ensure that any communications or documentation distributed by it to Authorized Users clearly and conspicuously states that Authorized Users should call Client for technical problems related to the Platform or the Hosted Software. PowerPlan will have no obligation to furnish any assistance, information or documentation directly to Authorized Users.

(d) In certain situations, PowerPlan may require detailed information regarding Client's system environment to effect a timely resolution. In these situations, and other integration/gateway related issues, PowerPlan may require the involvement of Client's information technology staff to provide the information necessary to assist in problem resolution. Client shall make such staff available to PowerPlan in a timely manner.

(e) Client is responsible for properly maintaining the functional operation of its information technology equipment and interfaces, including connectivity to the Internet. Consulting, implementation, integration and support for Client interfaces, or training services that may be needed for the Client to take advantage of Hosted Software revisions or new Versions of the Hosted Software are not within the scope of SaaS Services.

(f) Prior to logging any connectivity problems, Client shall verify that it is able to reach other popular Internet sites such as Google (http://www.google.com) or Yahoo (http://www.yahoo.com).

(g) Client is responsible for virus protection for Client workstations and all of Client's host systems that are networked to those workstations.

(h) Client must use an Internet browser that meets the requirements as published by PowerPlan in the Documentation.

(i) Client is responsible for configuration of its corporate Internet firewall to allow all necessary ports to be used.

11   DATA SECURITY. In order to enhance data security:

(a) Client shall use utmost discretion in granting administrator privileges.

(b) Client's Authorized Users shall not share their login identifier or password.

(c) Client shall be responsible for designing, authoring, validating, and approving all custom reports.

(d) Client authorizes PowerPlan to transfer Hosted Data outside the European Economic Area for the purposes of data processing by PowerPlan, its subsidiaries, and its affiliated companies. Any transfer of personal information outside of the European Economic Area is done in circumstances designed to ensure that the information is processed only in accordance with applicable data protection laws. By submitting personal information, Client consents to the use of that information as set out in this subsection and represents to PowerPlan that Client has received express consent from the individual persons (including Client's employees) whose data is being used/transferred prior to providing this personal data in the Platform. Where the personal information is that of a third party, Client certifies that it has obtained that information pursuant to applicable data protection laws and has obtained all necessary authorizations and consents with respect to such information. The parties acknowledge and agree that PowerPlan is a processor of all Hosted Data processed under the terms of this Agreement and shall have no obligations as a controller of data according to the laws of any member country of the European Economic Area or other country.

12   PROHIBITED ACTIVITIES

12.1   **Prohibited Data.** Client shall not submit, or permit Client Entities or Authorized Users to submit, to the Platform any Hosted Data that is illegal, misleading, defamatory, indecent or obscene, in poor taste, threatening, infringing of any third party proprietary rights, invasive of personal privacy, or otherwise objectionable (collectively, "Prohibited Data"). Client is solely responsible for all Hosted Data submitted to the Platform by Client Entities and all Authorized Users.

12.2   **Removal of Hosted Data.** Client acknowledges that PowerPlan has no control over Hosted Data on the Platform and does not purport to monitor the Hosted Data on the Platform. PowerPlan reserves the right to remove Hosted Data from the Platform where it reasonably suspects

13

such Hosted Data is Prohibited Data. PowerPlan shall notify the Client if it becomes aware of any allegation that Hosted Data on the Platform may be Prohibited Data.

13   USE LIMITATIONS AND RESTRICTIONS. Client shall not, and shall not permit the Client Entities, Authorized Users, and any other person to, access or use the Platform except as expressly permitted by this Agreement, and without limiting the generality of the foregoing, Client shall not, except as this Agreement expressly permits:

(a)   bypass or breach any security device or protection used by the Platform or access or use the Platform or the Services other than by an Authorized User through the use of his or her own then valid access credentials;

(b)   input, upload, transmit or otherwise provide to or through the Services or Platform, any information or materials that are unlawful or injurious, or contain, transmit or activate any Virus;

(c)   damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Platform or PowerPlan's provision of services to any third party, in whole or in part;

(d)   remove, delete, alter or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Licensed Products or Services, including any copy thereof;

(e)   access or use the Licensed Products or Services in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Rights or other right of any third party, or that violates any applicable Law; or

(f)   access or use the Licensed Products or Services for purposes of competitive analysis of the Licensed Products or Services, the development, provision or use of a competing software service or product or any other purpose that is to PowerPlan's detriment or commercial disadvantage.

If Client becomes aware of any actual or threatened activity prohibited by this Section, Client shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Licensed Products or Services and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify PowerPlan of any such actual or threatened activity.

14   USE OF THE INTERNET. Client acknowledges and agrees that the Internet, and communications over it, may not be absolutely secure and that connecting to it provides the opportunity for unauthorized access to computer systems, networks, and all data stored therein. Data transmitted through the Internet or stored on any equipment through which data is transmitted may not remain confidential and PowerPlan does not make any representation, condition, or warranty regarding privacy, security, authenticity, or non-corruption or destruction of any such data. Use of the Internet is at Client's risk.

15   DATA CENTER AUDITS. The data center utilized by PowerPlan for SaaS Services issues annual SSAE-16 (SOC 1 Type 2) reports. Publicly-traded companies in the United States commonly use SSAE SOC 1 reports for security assurance in relation to their Internal Controls over Financial Reporting. This extensive and costly audit process is designed to ensure that the data center follows policies, procedures, and business processes, including the following: organization and administration, physical security, environmental security, logical security, and change management. Additional audits are not within the scope of SaaS Services.