KITTITAS COUNTY
INFORMATION TECHNOLOGY DEPARTMENT
AGENDA STAFF REPORT

AGENDA DATE: March 21, 2017

ACTION REQUESTED: Adopt a resolution to execute the Sales Order with Paladin Data Systems
                      Corporation and to authorize the Chairman's signature on the Terms of
                      Service Agreement for Phase II implementation of SMARTGOV

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BACKGROUND: Resolution 2016-093, adopted on July 19, 2016, awarded the bid for permit
                      tracking software to Paladin Data Systems Corporation and authorized
                      signature on the terms of service agreement for Phase I implementation in
                      the amount of $30,000. Paladin Data Systems has completed Phase I
                      (analysis and migration of legacy data, and requirements elicitation for
                      Phase II) and has submitted a Sales Order for Phase II in the amount of
                      $73,304.02 to complete the software implementation, including
                      configuring, training, connecting 3rd party applications, and installing the
                      public portal.

                      The 5 year cost of ownership estimate submitted by Paladin Data Systems
                      in their September 30, 2014 RFP response was $199,059. The 5 year actual
                      cost will be $237,256. The cost increase is due to the county's change in
                      requirements post RFP: an analysis of its legacy data, the migration of
                      additional legacy data, and the quantity and complexity of the legacy data.

                      Jim Goeben, IT Director; Robin Read, Public Health Administrator,; and Dan
                      Carlson, Community Development Services Director serve as project
                      sponsors.

INTERACTION: Deputy Prosecuting Attorney Stephanie Hartung and Judy Pless, Budget
                      and Finance Manager, reviewed the Sales Order, Service Level Agreement,
                      and Master SaaS Subscription and Professional Services Agreement
                      submitted by Paladin Data Systems Corporation and approved them as to
                      form.

RECOMMENDATION: Adopt the resolution to execute the sales order and sign the terms of
                      service agreement.

HANDLING: Return 1 signed copy to Jim Goeben

ATTACHMENTS: Resolution, Sales Order, Service Level Agreement, and Master Services
                      Agreement

LEAD STAFF: Jim Goeben, IT Director

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

RESOLUTION
NO. 2017-_____

RESOLUTION TO EXECUTE THE SALES ORDER WITH PALADIN DATA SYSTEMS CORPORATION AND TO AUTHORIZE THE CHAIRMAN'S SIGNATURE ON THE TERMS OF SERVICE AGREEMENT FOR PHASE II IMPLEMENTATION OF SMARTGOV

WHEREAS, pursuant to Resolution No. 2016-093, adopted on July 19, 2016, the Board of County Commissioners, awarded the bid for permit tracking software to Paladin Data Systems Corporation and authorized signature on the terms of service agreement for Phase I implementation; and

WHEREAS, Phase II, the sales order, governed by the SMARTGOV Service Level Agreement and the Professional Service Agreement, attached hereto and incorporated by reference, has been reviewed and approved; and

WHEREAS, authorization is required by the Board of County of Commissioner to complete the final phase, Phase II;

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Kittitas County, Washington, hereby authorizes execution of the sales order with Paladin Data Systems Corporation.

DATED this _____ day of _____, 2017, at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

_____
Paul Jewell, Chairman

Attest:

_____
Laura Osiadacz, Vice-Chairman

_____
☐ Clerk of the Board, Julie Kjorsvik
☐ Deputy Clerk of the Board, Mandy Buchholz

_____
Obie O'Brien, Commissioner

SMARTGOV

02/14/2017   Sales Order: **1998**

Robert Hanson
Kittitas County, WA
205 W 5th Ave
Ellensburg, WA 98926

Dear Board of Kittitas County Commissioners,

Paladin Data Systems Corporation (Paladin) applauds your decision to invest in affordable innovation for your community. We'll be with you every step of the way to ensure a successful and smooth transition to the SMARTGOV suite.

Quantity	Units	Item	Term	Amount
1	Site	SG Annual Subscription - 30 named users	Subscription	$27,988.00
1	Site	SMARTGOV Citizen Portal	Subscription	$2,500.00
6	User	SG Windows-based Inspection Assistant	Subscription	$3,000.00
6	User	SG Mobile Inspect	Subscription	$0.00
		Subtotal: Annual Subscription		**$33,488.00**
1	Site	SG SMARTConnect Financial ($3,500 value)	One Time	$0.00
1	Site	SG SMARTConnect Merchant	One Time	$3,500.00
1	Site	SG SMARTConnect Doc Mgmt	One Time	$3,500.00
		Subtotal: One Time		**$7,000.00**
160	Hour	SG General & Report Configuration	Professional Services	$25,600.00
80	Hour	SG Training (blend of onsite/remote)	Professional Services	$7,920.00
80	Hour	Finalize Data Migration from Phase 1	Professional Services	$12,800.00
		Subtotal: Professional Services		**$46,320.00**
		WA Development Partner Discount Applied to Professional Services		($20,000.00)
1	Site	Travel & Expenses (estimate only)	Travel	$3,750.00
1		Estimated Sales Tax Due	Other	$2,746.02

-Discount: As a WA State Development Partner, the County would be asked to provide input into the latest technology developments by Paladin Data including our Assessor Treasury System and SMARTGOV 3.0. -Five Year Price Guarantee: This contract provides a five year annual subscription guarantee of $33,488 for 30 named users, 6 Inspection Assistant Users, and the Citizen Portal.

Total Investment = $73,304.02

Total Annual Renewal: $33,488.00

Terms of Service:

- Offered pricing on this Sales Order is valid if signed by 03/16/2017.
- SaaS Subscription terms are one (1) year beginning upon signing this Sales Order.
- Pricing is based on the total number of full-time users.
- Subscription includes 5 "occasional users" which individually average < 2 hours of daily usage.
- Subscription and One Time fees, not including services, are billed upon signing this Sales Order.
- Professional Services, including travel, **are estimates only and will not be exceeded without your approval.** Professional Services are billed monthly on a time & materials basis.
- Payment terms are net 30 days.
- Applicable sales taxes are in addition to the quoted price. If your organization is tax exempt please email a copy of your Tax Exemption Certificate to contracts@paladindata.com.
- Please address purchase orders to:
  Contracts, Paladin Data Systems, 19362 Powder Hill Place NE, Poulsbo, WA 98370
- Supplemental training and startup assistance are available in an online format and through telephone support.
- Technical support is available from 5am to 5pm PST by calling (800) 532-8448 or email to support@paladindata.com.
- This Sales Order is governed by the terms and conditions of SMARTGOV's Master SaaS Subscription and Professional Services Agreement available at: www.paladindata.com/agreements/master-psa-saas

Thanks for your order and your trust in SMARTGOV to help you save money, increase efficiency, and raise customer service levels. We truly look forward to serving you and your community.

Sincerely,

Jeff Pavey

Yes! I accept these terms; let's get started today!

_____   _____

 Authorized Signature and Title at Kittitas County, WA   Date

SMARTGOV® Service Level Agreement

This Service Level Agreement ("SLA") for SMARTGOV® Software as a Service (SaaS) describes the service that You will receive from Us and serves as a supplemental document to the Paladin Data Systems Corporation Master SaaS Subscription and Professional Services Agreement ("Agreement") which the Parties have executed.

1.1. "**Access Protocols**" will mean industry standard internet access protocols through which We make SMARTGOV® accessible to You, which includes, unless otherwise specified, **HTTPS**.

1.2. "**Annual Subscription Service Fee**" will mean the annual SMARTGOV® SaaS Subscription fee.

1.3. "**Application Service**" will mean the SMARTGOV® software application being delivered as a hosted service by Us excluding any testing or training environment.

1.4. "**Disaster**" will mean a catastrophic event that is caused by acts beyond Our reasonable control and that result in significant or potentially significant downtime or disruption of the production environment and requires Us to invoke Our Disaster Recovery plan. We have the sole and exclusive right to declare a Disaster.

1.5. "**Disaster Recovery**" will mean Our process to restore System Availability in the event that We declare a Disaster as defined above in 1.4.

1.6. "**Party or Parties**" will mean either We, Us, or Our, as well as You or Your individually or collectively.

1.7. "**Scheduled Downtime**" will mean the total amount of time during any Service Year during which the Application Service core features and functions are unavailable for the majority of Your users according to the Access Protocols, due to planned System maintenance performed by Us, as set forth below. We will provide reasonable notice for all Scheduled Downtime. We will exercise reasonable efforts to perform scheduled System maintenance outside of standard business hours. Generally these scheduled System maintenance activities occur once a month.

1.8. "**Service Standard**" will mean the System Availability during each Service Year will equal or exceed ninety-nine percent (99%).

1.9. "**Service Year**" will mean the preceding 365 days from the date of an SLA claim.

1.10. "**Start Date**" will mean the date in which the Annual Subscription Service Fee commences. Start Date is also known as go-live date.

1.11. "**System**" will mean the Application Service.

1.12. "**System Availability**" will mean, with respect to any Service Year, the ratio obtained by subtracting Unscheduled Downtime during such Service Year from the total time during such Service Year (525,600 minutes) and thereafter dividing the difference so obtained by the total time during such Service Year. If You have been using the Application Service for less than 365 days from the Start Date, Service Year is still the preceding 365 days but any days prior to Your use of the service will be deemed to have had 100% availability. Represented mathematically, System Availability for any particular Service Year is determined as follows:

System Availability = (Total Service Year Time - Unscheduled Downtime) / Total Service Year Time.
NOTE: "Total Service Year Time" is deemed to include all minutes in the relevant Service Year period as described above (525,600 minutes).

1.13. "**Unscheduled Downtime**" will mean the total amount of time in minutes during any Service Year during which the Application Service core features and functions are unavailable for Your access according to Access Protocols, other than Scheduled Downtime, as defined above. See section 4.1 for details on detection of Unscheduled Downtime.

1.14. "**We, Us, or Our**" will mean Paladin Data Systems Corporation.

1.15. "**You or Your**" will mean the company or other legal entity for which you are accepting this Agreement.

2.1. **System Availability.** We will undertake commercially reasonable measures to make sure System Availability meets the Service Standard, provided that any Unscheduled Downtime occurring as a result of circumstances beyond Our reasonable control including, but not limited to: (i) Your breach of any provision of this Agreement; (ii) non-compliance by You with any provision of this Agreement; (iii) incompatibility of Your equipment or software with the Application Service; (iv) poor or inadequate performance of Your Systems; (v) Your equipment failures; (vi) Your network and internet service provider; (vii) public internet; (viii) security exposure; or (ix) force majeure, will not be considered toward any reduction in System Availability measurements. In the event of a Disaster, System Availability service levels defined 1herein do not apply.

2.2. **System Response Times.** We will undertake commercially reasonable measures to make sure that observed System requests are processed within the System on average within 500ms, excluding circumstances beyond Our reasonable control including, but not limited to: (i) large or complicated reporting requests; (ii) poor or inadequate performance of Your Systems; (iii) Your equipment failures; (iv) Your network and internet service provider; or (v) public internet. Circumstances beyond Our control will not be considered toward any reduction in System requests.

SMARTGOV

3.1. Maintenance Services. We will continuously maintain the Application Service to optimize availability that meets or exceeds the Service Standard. Such maintenance services shall include providing to You all such services and repairs, as needed, to maintain the Application Service or are ancillary, necessary, or otherwise related to Your access to, or use of, the Application Service, so that the Application Service operates properly in accordance with this SLA.

3.2. Support Services. We will: (i) provide unlimited telephone support during business hours; and (ii) respond to and resolve support requests, as specified in Sections 3.3 and 3.4.

3.3. Support Requests. You shall notify Us of support request by e-mail, telephone, or such other means as the Parties may hereafter agree to in writing. We shall classify Your support requests in accordance with the descriptions set forth in the following chart:

Support Request Classification	Description of the support request comprising or causing any of the events or effects set forth below:
Severity 1: Critical Problem	• Application Service is down or unavailable • Data integrity at risk • Material financial impact • Widespread access interruptions
Severity 2: Major Problem	• Application Service is operational; however, performance is highly degraded to the point of material impact on usage • Data entry or access is materially impaired on a limited basis
Severity 3: Minor Problem	• Application Service is operating with minor issues that can be addressed with a work around
Severity 4: Cosmetic Issue	• Minor problem not impacting service functionality • Enhancement requests, missing or erroneous documentation • Minor problem or question that does not affect delivery of services

3.4. Response Service Levels. Response times to support requests will be measured from the time We receive a support request until the time We have responded to such support request. We will respond to all support requests, based on the severity of the request, within the times set forth in the following chart:

Support Request Classification	Required Response Time	Target Resolution Time	Resolution Effort
Severity 1: Critical Problem	1 business hour	48 hours or agreement to reasonable date	Critical situations may require personnel from both organizations to be at their respective work locations or available on an around-the-clock basis.
Severity 2: Major Problem	4 business hours	10 calendar days	We will resolve with a fix or a workaround, at its discretion. If a workaround is provided, the severity is downgraded.
Severity 3: Minor Problem	8 business hours	30 calendar days	We will resolve with a fix or a workaround, at its discretion.
Severity 4: Cosmetic Issue	12 business hours	At Our discretion	We will resolve with a fix or a workaround, at its discretion.

4.1. System Monitoring and Measurement. We will provide for monitoring of System Availability on an ongoing basis. All measurements of System Availability will be calculated on the Service Year period during the term. This monitoring will be performed through a combination of monitoring services of Our choice. These monitoring services are intended to serve as an initial alert to Us that the System may be unavailable. We will then conduct a series of tests to confirm System Availability.

- If the monitoring services report that the System is unavailable and We confirm the System to be unavailable, then Unscheduled Downtime will be calculated as the amount of time between the initial notification and when We confirm the System is available.

- If the monitoring services report that the System is unavailable, but Our tests and assessments confirm that the System is available, then Unscheduled Downtime will be calculated as the time between when the initial

notification was received until We confirm the System is available. If We are able to confirm that the System was, in fact, available during period between the initial notification and the point at which We confirmed that the System was available, then We will remove the Unscheduled Downtime calculated.

4.2. **System Performance Reports.** Upon Your request and at no cost to You, We will provide standard System Availability reports to You, setting forth measurements of Unscheduled Downtime and a calculation of System Availability for the relevant preceding Service Year period. You agree that Our monitoring and measurement method and standard System Availability reports are the sole and exclusive methods of measuring System Availability under this Agreement. No other measure will be accepted unless validated, and mutually agreed to in writing by both Parties before implementation. If You disagree with any measurement or other information set forth in any such report, it must so inform Us in writing within ten (10) calendar days after receipt thereof. Accuracy of any such report will be deemed conclusive unless such notice is provided by You. Any such notice must indicate specific measurements in dispute and must include a detailed description of the nature of the dispute. We and You agree to attempt to settle any such disputes regarding System Availability and/or related measurements in a timely manner by mutual good faith discussions.

4.3. **Credits for Unscheduled Downtime.** In the event We fail to meet the Service Standard, then You will receive a credit of 5% of the Annual Subscription Service Fee. You must claim credit in writing within thirty (30) days following Our provision of the system performance report as set forth in Section 4.2. Credits properly claimed by You will be applied to the next renewal period's Annual Subscription Service Fee and such fee will be reduced by the amount of the credit. Our invoice for each renewal period will reflect any credit earned during the previous subscription period and the reduction to the Annual Subscription Service Fee for the upcoming renewal period.

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THIS MASTER SOFTWARE AS A SERVICE (SaaS) SUBSCRIPTION AND PROFESSIONAL SERVICES AGREEMENT ("Agreement") GOVERNS YOUR ACQUISITION AND USE OF OUR SaaS SUBSCRIPTION AND PROFESSIONAL SERVICES. BY EXECUTING A SALES ORDER THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" WILL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SaaS SUBSCRIPTION OR THE PROFESSIONAL SERVICES.

You may not access the SaaS Subscription if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the SaaS Subscription for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement is effective between You and Us as of the date of Your acceptance of the Sales Order (**"Effective Date"**).

1. **DEFINITIONS** IN addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:
1.1.   "**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
1.2.   "**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
1.3.   "**Non-SaaS Subscription Applications**" means online applications and offline software products that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the SaaS Subscription.
1.4.   **"Party or Parties"** means either We, Us, or Our, as well as You or Your individually or collectively.
1.5.   **"Personally Identifiable Information"** means information about a person that contains some unique identifier, including but not limited to name or Social Security Number, from which the identity of the person can be determined. In OMB M-06-19 (July 12, 2006), "the term Personally Identifiable Information means any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history or certification, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual."
1.6.   **"Professional Services"** means the labor or time and materials work that You or Your Affiliates purchase under a Sales Order.
1.7.   **"SaaS Subscription"** means the software as a service (**"SaaS"**) products ordered by You on a Sales Order and made available by Us online via the customer login link and/or other web pages designated by Us, including associated offline components, as described in the User Guide. SaaS Subscription excludes Non-SaaS Subscription Applications.
1.8.   "**Sales Order"** means the documents for placing orders, including addenda thereto, that are entered into between You and Us or any of Our Affiliates from time to time, including addenda and supplements. By entering into a Sales Order, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party. Sales Orders will be deemed incorporated herein by reference.
1.9.   **"Start Date"** means the date in which the SaaS Subscription fee commences. Start Date is also known as go-live date.
1.10.   **"Subscription Term"** means the twelve months from the Start Date and thereafter Subscription Term is a twelve month term.
1.11.   **"Third Party"** means any entity or individual other than We, Us, or Our, as well as You or Your.
1.12.   "**Training Record**" means a record of a person within ASMi that has training information being managed. This training information data includes but is not limited to task lists, accreditations, lectures, On the Job Training, courses, medical certifications, or online training.
1.13.   **"User Guide"** means the online user guide for the SaaS Subscription, accessible via login, as updated from time to time.
1.14.   **"Users"** means individuals who are authorized by You to use the SaaS Subscription, for whom subscriptions have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include, but are not limited to Your employees, consultants, contractors and agents, and any Third Party with which You transact business.
1.15.   **"We," "Us" or "Our"** means Paladin Data Systems Corporation described in Section 14.1 (Contracting Seller, Notices, Governing Law and Jurisdiction).
1.16.   **"You" or "Your"** means the company or other legal entity for which you are accepting this Agreement and Affiliates of that company or entity.
1.17.   **"Your Data"** means all electronic data or information owned by Your company or other legal entity and submitted by You to the SaaS Subscription.

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2. SaaS SUBSCRIPTION AND PROFESSIONAL SERVICES

2.1.   **Provision of SaaS Subscription.** We will make the SaaS Subscription available to You pursuant to this Agreement and the relevant Sales Order during a Subscription Term. You agree that Your purchases are not contingent on the delivery of any future functionality or features, and not dependent on any oral or written public comments made by Us regarding future functionality or features.

2.2.   **SaaS Subscriptions.** As specified in the Sales Order, (i) the SaaS Subscription is purchased as either Training Record or User subscriptions, (ii) additional Training Record or User subscriptions may be added during the Subscription Term at the same pricing as the pre-existing subscriptions, prorated for the remainder of the Subscription Term in effect at the time the additional Training Record or User subscriptions are added, and (iii) the added Training Record or User subscriptions will terminate on the same date as the pre-existing subscriptions.

2.3.   **Provision of Professional Services.** We will provide to You the Professional Services specified on the applicable Sales Order. The Professional Services are cost estimates based on time and materials work for Your budgeting and Our resource scheduling purposes. If the estimate is exceeded, We will continue to provide the Professional Services on a time and materials basis if a new Sales Order or purchase order for continuation of the Professional Services is signed by the Parties.

3. USE OF THE SaaS SUBSCRIPTION

3.1.   **Our Responsibilities.** We will: (i) provide Our basic support for the SaaS Subscription to You at no additional charge (ii) use commercially reasonable efforts to make the SaaS Subscription available and (iii) We will provide You access to Your Data via a data extract process that enables You to download a current copy of Your Data upon request.

3.2.   **Your Responsibilities.** You will (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the SaaS Subscription, and notify Us promptly of any such unauthorized access or use, and (iv) use the SaaS Subscription only in accordance with the User Guide and applicable laws and government regulations, (v) validate for correctness all output and reports and (vi) have sole responsibility for downloading and storing data extract files You have requested, (vii) You will NOT (a) make the SaaS Subscription available to anyone other than Users, (b) sell, resell, rent or lease the SaaS Subscription to any Third Party, (c) use the SaaS Subscription to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of Third Party privacy rights, (d) use the SaaS Subscription to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the SaaS Subscription or Third Party data contained therein, or (f) attempt to gain unauthorized access to the SaaS Subscription or their related systems or networks; (viii) If You store Personally Identifiable Information, then You will maintain, at Your expense, in effect an insurance policy which will cover all Your costs, including damages You are obligated to pay any Third Party, which are associated with any Security Breach or loss of personal data, regardless of cause (including, without limitation, Your negligence or gross negligence and unlawful Third Party acts). Costs to be covered by this insurance policy will include without limitation: (a) costs to notif**y** individuals whose personal data was lost or compromised; (b) costs to provide credit monitoring (or similar data protection services) and credit restoration services to individuals whose personal data was lost or compromised; (c) costs associated with Third Party claims arising from the Security Breach or loss of personal data, including litigation costs and settlement costs; and (d) any investigation, enforcement or similar miscellaneous costs. Such insurance will provide coverage for up to $1,000,000.00 (one million dollars). For the purposes of this section, "Security Breach" means (1) the failure by You to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by You of: (a) personal data in any format or (b) Third Party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of Your privacy policy or misappropriation that results in the violation of any applicable data privacy laws or regulations; or (3) any other act, error, or omission by You in Your capacity as such which is reasonably likely to result in the unauthorized disclosure of personal data (or a reasonable belief there has been an unauthorized disclosure). .

4. NON-SaaS Subscription PROVIDERS

4.1.   **Acquisition of Non-SaaS Subscription Products.** We or a Third Party may from time to time make available to You, Third Party products or services, including but not limited to Non-SaaS Subscription Applications and implementation, customization and other consulting services. Any acquisition by You of Non-**SaaS Subscription** products or services, and any exchange of data between You and any Non- SaaS Subscription provider, is solely between You and the applicable Non-**SaaS Subscription** provider. We do not warrant or support Non-SaaS Subscription products or services, except as specified in a Sales Order. Subject to Section 4.3 (Integration with Non-SaaS Subscription Applications), purchase of Non-SaaS Subscription products is not required to use the SaaS Subscription except for a supported computing device, operating system, web browser and Internet connection.

4.2.   **Non-SaaS Subscription Applications and Your Data.** If You install or enable Non-SaaS Subscription Applications for use with SaaS Subscription, You acknowledge that We may allow providers of those Non-SaaS Subscription Applications to access Your Data as required for the interoperation of such Non-SaaS Subscription Applications with the SaaS Subscription. We will not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Non-**SaaS Subscription** Application providers. The SaaS Subscription will allow You to restrict such access by restricting Users from installing or enabling such Non-SaaS Subscription Applications for use with the SaaS Subscription.

4.3. **Integration with Non-SaaS Subscription Applications.** The SaaS Subscription may contain features designed to operate with Non-SaaS Subscription Applications. To use such features, You may be required to obtain access to such Non-**SaaS Subscription** Applications from their providers. If the provider of any Non-SaaS Subscription Application ceases to make the Non-SaaS Subscription Application available for operation with the corresponding SaaS Subscription features on reasonable terms, We may cease providing such SaaS Subscription features without entitling You to any refund, credit, or other compensation.

5. FEES AND PAYMENT

5.1. **Fees.** You will pay all fees specified in all Sales Orders. Except as otherwise specified herein or in a Sales Order, (i) fees are based on the SaaS Subscription and/or Professional Services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of Training Record or User subscriptions purchased cannot be decreased during the Subscription Term. Training Record or User subscription fees are based on the Subscription Term   and each Subscription Term anniversary; therefore, fees for Training Record or User subscriptions added in the middle of a Subscription Term will be charged a prorated amount for the remaining Subscription Term.

(a) If We determine, based on electronic monitoring of Your Training Record or User subscriptions, the actual number of either Training Record or User subscriptions exceeds the number licensed on a Sales Order, We reserve the right to amend the Sales Order for successive Renewal Terms to increase the number of either Training Record or User subscriptions and the fees.

(b) Professional Service fees do not include travel, lodging or other expenses incurred by Us unless specified on the Sales Order. You will reimburse Us for all travel, lodging, communications, incidentals and other out-of-pocket expenses as they relate to the services rendered by Us to You.

5.2. **Invoicing and Payment.** We will invoice You in advance for SaaS Subscription in accordance with the relevant Sales Order. We will invoice You monthly for Professional Services in accordance with the relevant Sales Order. Unless otherwise stated in the Sales Order, invoiced charges are due net 30 days from the invoice date.

5.3. **Overdue Payments.** If any payments are not received by the due date, then at Our discretion, (a) such overdue payments may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Sales Orders on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

5.4. **Suspension of SaaS Subscription or Professional Services.** If any amount owing by You under any agreement is 30 days' overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations so that all such obligations become immediately due and payable, and suspend Our SaaS Subscription or Professional Services to You until such amounts are paid in full.

5.5. **Payment Disputes.** We will not exercise Our rights under Section 5.3 (Overdue Payments) or 5.4 (Suspension of SaaS Subscription or Professional Services) if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

5.6. **Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible, the appropriate amount will be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable based on Our income, property and employees.

6. PROPRIETARY RIGHTS

6.1. **Reservation of Rights in SaaS Subscription.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the SaaS Subscription, including all related intellectual property and trademark rights. No rights are granted to You other than as expressly set forth herein.

6.2. **Restrictions.** You will not (i) permit any Third Party to access the SaaS Subscription except as permitted herein or in a Sales Order, (ii) create derivate works based on the SaaS Subscription, (iii) copy, frame or mirror any part or content of the SaaS Subscription, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer, decompile or otherwise attempt to derive source code, or (v) access the SaaS Subscription in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the SaaS Subscription.

6.3. **Ownership.** We retain sole and exclusive ownership of, and all right, title and interest in and to the SaaS Subscription, the documentation User Guide, any modifications and all suggestions, ideas, improvements, feedback, evaluation materials, presentations, designs, technology, inventions, know-how, works of authorship, software, specifications, and other materials, information and any other intellectual property made, developed, conceived or reduced to practice by Us (whether alone, or jointly with You) in the performance of this Agreement.

6.4. **Your Applications and Code.** If You, a Third Party acting on Your behalf, or a User creates applications or program code using the SaaS Subscription, You authorize Us to host, copy, transmit, display and adapt such applications and program code, solely as necessary for Us to provide the SaaS Subscription in accordance with this Agreement. Subject to the above,

We acquire no right, title or interest from You or Your licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein.

6.5. **Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein. You grant to Us a non-exclusive license to use Your Data for the purposes of performing Our obligations under this Agreement.

6.6. **Our Protection of Your Data.** We receive no ownership rights in Your Data. We will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We will not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the SaaS Subscription or Professional Services and prevent or address service or technical problems, or except at Your request in connection with customer support matters.

6.7. **Report Writer Software**. You acknowledge the SaaS Subscription service may utilize ad hoc report writer software (**"Ad Hoc"**) under a license granted to Us by a Third Party, which licenses Us the right to sublicense the use of the Ad Hoc as part of the Service to You. Such sublicense is nonexclusive and solely for Your internal use and You may not further resell, re-license, or grant any other rights to use such sublicense to any Third Party. You further acknowledge the Ad Hoc licensing Third Party retains all right, title, and interest to the Ad Hoc and all documentation related to the Ad Hoc. All confidential or proprietary information of Ad Hoc licensing Third Party is Confidential Information under the terms of this Agreement.

7. CONFIDENTIALITY

7.1. **Definition of Confidential Information.** "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information will include, but not be limited to Your Data; Our Confidential Information will include, but not be limited to the SaaS Subscription; and Confidential Information of each Party will include the terms and conditions of this Agreement and all Sales Orders, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. However, Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a Third Party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. **Protection of Confidential Information.** The Receiving Party (i) will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (ii) will not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (iii) except as otherwise authorized by the Disclosing Party in writing, will limit access to Confidential Information of the Disclosing Party to its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement. Neither party will disclose the terms of this Agreement or any Sales Order to any Third Party other than its Affiliates and their legal counsel and accountants without the other Party's prior written consent.

7.3. **Compelled Disclosure.** If the Receiving Party is required to disclose any Confidential Information of the other by law, regulation or governmental authority, the Receiving Party will provide reasonable notice to Disclosing Party of such required disclosure and reasonably cooperate with the Disclosing Party in preventing or limiting such disclosure, or obtaining an appropriate protective order or other remedy. If a protective order or other remedy is not obtained, then the Receiving Party may disclose such Confidential Information as necessary for compliance with the applicable law, regulation or governmental authority. Notwithstanding such disclosure, such information will remain Confidential Information and subject to the requirements of this Section.

8. WARRANTIES AND DISCLAIMERS FOR SaaS SUBSCRIPTION AND PROFESSIONAL SERVICES

8.1. **Our Warranties for SaaS Subscription.** We warrant that (i) We have the legal power to enter into this Agreement, (ii) the SaaS Subscription will perform materially in accordance with the User Guide, (iii) subject to Section 4.3 (Integration with Non- SaaS Subscription Applications), the functionality of the SaaS Subscription will not be materially decreased during a Subscription Term, and (iv) We will not transmit Malicious Code to You, provided it is not a breach of this subpart (iv) if You or a User uploads a file containing Malicious Code into the SaaS Subscription and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy will be as provided in Section 13.4 (Termination for Cause) and Section 13.6 (Refund or Payment upon Termination) below.

8.2. **Our Warranties for Professional Services.** We warrant the Professional Services will be performed consistent with generally accepted industry standards.

8.3. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. LIMITATION ON WARRANTIES FOR PROFESSIONAL SERVICES

YOU MUST REPORT ANY DEFICIENCIES IN THE PROFESSIONAL SERVICES TO US IN WRITING WITHIN THIRTY (30) DAYS OF COMPLETION OF THE PROFESSIONAL SERVICES IN ORDER TO RECEIVE WARRANTY REMEDIES. THE

WARRANTY HEREIN IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. EXCLUSIVE REMEDY FOR PROFESSIONAL SERVICES

For any breach of the above warranty, Your exclusive remedy, and Our entire liability, will be the re-performance of the Professional Services. If We are unable to re-perform the Professional Services as warranted, You will be entitled to recover the fees paid to Us for the deficient services. IN NO EVENT WILL WE BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING FROM ANY PROFESSIONAL SERVICES PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO CLAIMS FOR LOST PROFITS OR OTHER ECONOMIC DAMAGES.

11. LIMITATION OF LIABILITY

11.1.   **Limitation of Liability.** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) WILL EXCEED THE AMOUNT PAID BY YOU IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU. THE FOREGOING WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT).

11.2.   **Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12. TERM AND TERMINATION FOR PROFESSIONAL SERVICES

Professional Services will commence on the date specified on the applicable Sales Order. Either Party may terminate Professional Services any time by providing the other Party with at least 14 days written notice. Any Professional Services outstanding at the time of termination will continue to be covered by this Agreement as if it had not been terminated.

13. TERM AND TERMINATION FOR SaaS SUBSCRIPTION

13.1.   **Term of Agreement.** This Agreement commences on the date You accept it and continues until all Training Record or User subscriptions have expired or been terminated.

13.2.   **Term of Purchased Training Record or User Subscriptions.** Training Record or User subscriptions purchased by You commence on the Start Date specified in the applicable Sales Order and continue for the Subscription Term specified. Except as otherwise specified in the applicable Sales Order, all Training Record or User subscriptions will automatically renew for additional periods equal to the expiring one year Subscription Term, unless either Party gives the other notice of non-renewal at least 30 days before the end of the relevant Subscription Term. The pricing during any such renewal term will be the same as the prior term unless We have given You written notice of a pricing increase at least 180 days before the end of such prior term, in which case the pricing increase will be effective upon renewal and thereafter.

13.3.   **Stop in SaaS Subscription.** Upon 180 days' prior written notice, We may terminate provision of the SaaS Subscription as a hosted offering. We will export and return Your Data to You via digital media at Our expense. We will refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of stop in SaaS Subscription.

13.4.   **Termination for Cause.** A Party may terminate this Agreement for cause: (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, We may terminate this Agreement if You fail to make any payment due hereunder within 30 days after receiving written notice from Us that such payment is delinquent.

13.5.   **Effect of Termination.** Upon termination for any reason, (a) all licenses granted will automatically and immediately terminate, and We may immediately disable and discontinue Your access to and use of the SaaS Subscription without further notice to You, (b) You will promptly return to Us all Documentation and all information and materials that You have acquired pertaining to the SaaS Subscription and any other Confidential Information of Ours and (c) within 30 days of the effective date of such termination, We will export all Your Data then-stored in the Service and ship the information to You in a digital format.

13.6.   **Refund or Payment upon Termination.** Upon any termination by You for cause, We will refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination by Us for cause, You will pay any unpaid fees covering the remainder of the term of all Sales Orders after the effective date of termination. In no event will any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

13.7.   **Return of Your Data.** Within 30 days after the effective date of termination of SaaS Subscription and upon request by You, We will make available to You for download a file of Your Data. After such 30-day period, We will have no obligation to maintain or provide any of Your Data and will thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

13.8.   **Surviving Provisions.** Section 5 (Fees and Payment), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 11 (Limitation of Liability), 13.6 (Refund or Payment upon Termination), 13.7 (Return of Your Data), 14 (Contracting Seller, Notices, Governing Law and Jurisdiction) and 15 (General Provisions) will survive any termination or expiration of this Agreement.

14. CONTRACTINGSELLER, NOTICES, GOVERNING LAW AND JURISDICTION
14.1.   **Seller:** Paladin Data Systems Corporation, a Washington corporation.
14.2.   **Address Notices to:** 19362 Powder Hill Pl. NW, Poulsbo, WA 98370, Attn: Contracts
14.3.   **Governing Law.** Washington and controlling United States federal law
14.4.   **Exclusive Court Jurisdiction.** Kitsap County, Washington
14.5.   **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email will not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You will be addressed to the relevant billing contact designated by You. All other notices to You will be addressed to the relevant SaaS Subscription system administrator designated by You.
14.6.   **Agreement to Governing Law and Jurisdiction.** Each Party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.
14.7.   **Waiver of Jury Trial.** Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

15. GENERAL PROVISIONS
15.1.   **Amendment; No Waiver.** Except as otherwise expressly provided herein, this Agreement may not be amended or modified and the observance of any provision of this Agreement may not be waived except with the written consent of the Parties. No failure by either Party to enforce any rights hereunder will constitute a waiver of such right then or in the future or any other right or remedy hereunder. To the extent the terms and conditions of any Exhibit, attachment, purchase order, invoice, proposal or response to request for proposal, conflict with or are inconsistent with this Agreement, the terms and conditions of this Agreement will control and no such conflicting terms will be deemed as a waiver or amendment of this Agreement.
15.2.   **Anti-Corruption.** You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Us.
15.3.   **Assignment; Binding Effect.** This Agreement may not be transferred or assigned by either Party without the express written consent of the other, which will not be unreasonably withheld or delayed, except that either Party may, without the consent of the other Party, assign this Agreement in its entirety to a parent, subsidiary or affiliate of such Party or an acquirer of more than 50% of the assigning Party's outstanding voting capital stock or to a purchaser of all or substantially all of the assigning Party's assets. Notwithstanding the foregoing or any other provision of this Agreement, You may not assign, sublicense, delegate or transfer this Agreement or any of its rights or obligations under this Agreement to any competitor of Ours. Any purported transfer or assignment in contravention of this Section will be null and void. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
15.4.   **Basis of Bargain.** The Parties acknowledge that they have entered into this Agreement in reliance upon the disclaimers of warranties and limitations of liability and damages as set forth in this Agreement, and that such provisions form an essential basis of the bargain between the Parties and do not cause this Agreement, or the remedies available hereunder, to fail of its or their essential purpose.
15.5.   **Counterparts.** This Agreement may be executed in any number of English language counterparts or duplicate originals, and each such counterpart or duplicate original will constitute an original instrument, but all such separate counterparts or duplicate originals will constitute one and the same instrument.
15.6.   **Entire Agreement.** This Agreement, including the Exhibits attached, constitutes the entire Agreement of the Parties concerning its subject matter and supersedes any and all prior or contemporaneous, written or oral negotiations, correspondence, understandings and agreements between the Parties respecting the subject matter of this Agreement.
15.7.   **Export Compliance.** The SaaS Subscription, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each Party represents that it is not named on any U.S. government denied-party list. You will not permit Users to access or use SaaS Subscription in a U.S.-embargoed country or in violation of any U.S. export law or regulation.
15.8.   **Force Majeure.** Except with respect to payment obligations, neither Party will be liable for any failure of performance or equipment due to causes beyond such Party's reasonable control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action, or request of any governmental entity or agency, or any civil or military authority; national emergencies, insurrections, riots, wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

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15.9.   **Headings and Interpretation.** Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement. The words "include," "includes," and "including" when used in this Agreement will be treated in each case as followed by the words "without limitation."

15.10.   **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

15.11.   **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

15.12.   **Insurance and Risk of Loss.** You bear all responsibility for damages to Your equipment and facilities.

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