

Software Purchase Agreement

This Software Purchase Agreement is made this _____ day of _____, _____, between the City of Cheyenne, a municipal corporation organized under the laws of the State of Wyoming, 2101 O'Neil Avenue, Cheyenne, Wyoming, ("City") and FileOnQ, Inc., a corporation organized under the laws of the State of _____, 832 Industry Drive, Seattle, WA 98188, ("Seller").

Witnesseth:

Whereas, Seller has developed and is the sole and exclusive owner of a proprietary software package entitled, "EvidenceOnQ" hereinafter referred to as SYSTEM. The SYSTEM consists of all matters, terms, conditions, features and descriptions contained in the Proposal given by Seller to the City dated November 25, 2013, which is attached to this Agreement as Exhibit A; and

Whereas, City desires to purchase a license from Seller to use the SYSTEM for an initial term of twelve (12) months; and

Whereas, Seller desires to grant non-exclusive licenses on the SYSTEM;

Now Therefore, Seller grants and City accepts a personal, non-transferable and non-exclusive right and license to use the SYSTEM upon the terms and conditions set forth below:

1. License. Each license granted under this Software License Agreement conveys to City only a personal, non-exclusive, non-transferable right and license to use the SYSTEM on such computer systems and equipment of the City of Cheyenne Police Department as designated by the Department. This Software License Agreement may not be assigned by City, and the System to which it applies, and documents and materials relating thereto, may not be disclosed, sub-licensed, published, released or transferred to another party by the City without the prior written consent of Seller.

2. Term. This Software License Agreement shall commence upon the receipt by City of the SYSTEM and shall terminate according to the provisions of Paragraph 12 or upon termination of its use by City.

3. Charges. City agrees to pay Seller a total one-time purchase price of Thirty-Nine Thousand, Nine Hundred and Ninety Five Dollars (\$39,995.00), plus any applicable sales and excise taxes. This purchase price shall be due and payable to Seller at its principal place of business within thirty (30) days after both of the following events have occurred: (1) the execution of this Agreement by the parties; and (2) the delivery to the City of the SYSTEM object code, documentation and test files, sufficient to operate the SYSTEM.

4. Additional Charges. In addition to the purchase price of Paragraph 3, the City agrees to pay Seller the additional sum of Five Thousand Four Hundred and Twenty-Six Dollars (\$5,246.00) for software maintenance support for the SYSTEM for a period of twelve (12)

months following the receipt of the SYSTEM in accordance with the Proposal attached hereto as Exhibit A.

5. In exchange for the payments to be made by the City to the Seller pursuant to paragraphs 4 and 5 of this Agreement, the Seller shall provide all software, support, and maintenance services as described in Exhibit A attached hereto.

6. Warranty. Seller warrants to the City that the SYSTEM will substantially perform in the manner described in the November 25, 2013 Proposal attached as Exhibit A and the SYSTEM's documentation for a period of ninety (90) days after City receives the SYSTEM object code, documentation and test files which, in the opinion of Seller, are necessary to operate the SYSTEM or Seller will refund the purchase price of the SYSTEM paid by City. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. The warranty and obligation of Seller stated above is conditioned upon: (a) the SYSTEM being used in connection with the designated computer system; and (b) there having been no alterations or modifications to the SYSTEM by persons other than Seller, which have not been approved in writing by Seller.

7. In exchange for the payment specified in paragraph 4 of this Agreement, Seller shall have the obligation to correct any error, malfunction or defect in the SYSTEM for which it receives written notice from City. For the purpose of this Software License Agreement the term "error, malfunction or defect" shall mean only significant deviations from the design specification for the most current release of the SYSTEM. Seller further agrees to make available to City all standard up-dates, enhancements, and improvements in the SYSTEM during the term of the warranty period and during the term of the software maintenance agreement. City's refusal to accept such standard up-dates, enhancements and/or improvements in the SYSTEM shall, at Seller's sole option, void any warranties and/or software maintenance agreements in effect at that time. Similarly, unapproved changes, modifications or alterations in the SYSTEM's object code shall, at the sole option of Seller, (a) terminate the warranty provisions of this Software License Agreement; and, if applicable; (b) terminate any software maintenance agreement resulting from City's exercise of the software maintenance option provided herein; and (c) void the indemnity and hold harmless provisions of paragraph 11.

8. Servicing of the System. City agrees to advise Seller in writing of the precise nature of any suspected error, malfunction or defect and provide Seller with all relevant information upon request in order that Seller may render the services set forth herein. Seller does not represent or warrant the service results or that all errors, malfunctions or defects will be corrected. City will provide Seller with reasonable computer time. In addition City will provide Seller with a "memory dump" and such additional data as Seller requests in machine readable or interpreted form deemed necessary or desirable by Seller in order to reproduce the environment in which the SYSTEM operated. If Seller determines that there was no error, malfunction or defect in the SYSTEM, City shall pay for all time and materials spent by Seller in attempting to determine and correct City's problem. If City notifies Seller during Seller's normal business hours Monday thru Friday, excluding national holidays, of a suspected error, malfunction or defect, Seller

agrees to use its best efforts to confirm, in a timely manner, the existence of such an error, malfunction or defect. If the suspected error, malfunction or defect is confirmed, Seller shall attempt to correct such error, malfunction or defect but does not warrant the results of such an attempt.

9. Protection and Security. City acknowledges that the SYSTEM constitutes a valuable asset and trade secret of Seller and City further acknowledges that Seller has an exclusive proprietary right and interest in and to the SYSTEM and that any information, documents, flow charts, logic diagrams, source code, test materials, or the like relating in any way to the SYSTEM is Seller's CONFIDENTIAL Trade Secret Information. City, therefore, agrees to use the SYSTEM only as provided in this Software License Agreement and only during the term of the license granted by this Software License Agreement. City further agrees not to provide or otherwise make available any written materials, documents, flow charts, logic diagrams, source code, test materials, or other information relating to the SYSTEM in any form, to any person other than City's or Seller's employees without prior written consent from Seller. City further agrees to protect all written materials, flow charges, logic diagrams, source code, test materials, or other information relating to the SYSTEM, in any form, from unauthorized disclosure by its agents, employees or customers.

10. Permission to Copy. Any portion of the SYSTEM furnished by Seller in machine readable form may be copied by City only for use with the designated computer system and for the following purposes: (a) to enable City to understand the contents of the SYSTEM, or (b) to modify the SYSTEM in accordance with this Software License Agreement, or (c) for safe keeping and back-up purposes, provided, however, that no more than three machine readable copies and five printed copies of any portion of the SYSTEM shall be in existence at any one time. In addition, it is mutually understood and agreed that the City shall have the right to retain the original and copies of all or any portion of the SYSTEM, and all data stored within the SYSTEM in machine readable form or otherwise for so long as necessary to ensure that the City is in compliance with its obligations under law with respect to the proper storage and use of evidentiary materials and that the City's right to retain the SYSTEM and data stored within the SYSTEM shall survive the termination or discontinuance of the rights granted under this Software License Agreement,

11. Indemnification. In the event that any portion of the SYSTEM or related materials furnished to City by Seller is, in Seller's sole opinion, likely to or does become the subject of a claim of infringement of a copyright or patent Seller may, at its option and expense, procure for City the right to continue using the SYSTEM or related materials or modify the SYSTEM or related materials to make them non-infringing. If in Seller's opinion, neither of the foregoing alternatives is reasonably available to Seller then Seller may terminate this Software License Agreement upon thirty (30) days written notice to City, provided however, that the Seller shall have no right to unilaterally terminate this Agreement or to alter its terms and conditions in any manner which would be inconsistent with the legal obligations of the City with respect to the preservation, storage or use of evidence and evidentiary materials. Seller agrees to hold City harmless from any patent or copyright infringement arising out of the City's use of the SYSTEM provided Seller is notified promptly in writing and is given complete authority and information required for defending or settling any charge of patent or copyright infringement or suit resulting

therefrom, and further provided that City is not in default of any of the provisions of this Software License Agreement.

11. Cancellation or Termination. Except as provided in this Agreement, the right and license granted hereunder may be cancelled by Seller if City is in default of any amount due under this Agreement for a period of sixty (60) days and may be cancelled by either party at any time upon default by the other party of any covenant of this Software License Agreement if such default is not corrected within thirty (30) days after receipt of written notice thereof.

12. Limitation of Liability. IN NO EVENT SHALL THE CITY BE LIABLE TO THE SELLER FOR LOSS OF PROFIT OR OTHER ECONOMIC LOSS, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES, ARISING OUT OF ANY BREACH OF THIS SOFTWARE LICENSE AGREEMENT OR ANY OBLIGATIONS UNDER THIS AGREEMENT OR THE LICENSE GRANTED OR FOR ANY CLAIM MADE AGAINST SELLER BY ANY OTHER PARTY, EVEN IF CITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH 11.

13. Both parties agree that the provisions of this Software License Agreement are severable and should any of the provisions be deemed invalid, then only that provision should fail, and the remainder of this Software License Agreement shall be in full force and effect. This Software License Agreement and the performance thereunder shall be construed and regulated in accordance with the laws of the State of Wyoming. This Software License Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes all prior understandings and agreements, written or oral, and shall not be modified or altered except by written instrument duly executed by the parties.

14. Except for enforcement of the payment terms of this Agreement as between the parties, the City reserves all immunities and defenses available to the City as a governmental entity under the laws of the State of Wyoming.

15. This Agreement is not intended to create or confer, and shall be construed to create or confer, any rights on any person or entity which is not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Software License Agreement to be executed as of the date indicated below:

Accepted by:

Seller

By:

[Authorized Signature]

[Typewritten Name]

[Title]

[Date]

Attest:

City

By:

[Authorized Signature]

[Typewritten Name]

[Title]

[Date]

Attest:

[FN1] George L. Cross Research Professor Emeritus, University of Oklahoma College of Law,
Norman, Oklahoma, Of Counsel, Phillips, McFall, McCaffrey, McVay & Murrah, P.C.,
Oklahoma City, Oklahoma.

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