

## Master Services Agreement

This Master Services Agreement (“Agreement”) is entered into effective November 29<sup>th</sup>, 2019 (“Effective Date”) by and between OPG-3, Inc., a Minnesota corporation (“OPG-3”) and the City of Lee’s Summit, a Missouri Municipality (“Customer”). In consideration of the mutual promises, covenants and agreements set forth herein, the parties agree as follows:

1. Statements of Work. OPG-3 will perform services (“Services”) as designated in individual Statements of Work (each, a “Statement of Work”) which OPG-3 and Customer may execute and deliver from time to time. No Statement of Work shall take effect or be valid unless in writing and signed by an authorized representative of each party. Each Statement of Work will contain such additional terms and conditions upon which OPG-3 and Customer may agree. In the event of a conflict in meaning between this Agreement and any Statement of Work, the terms of this Agreement will prevail. Upon execution by both parties, each individual Statement of Work shall be attached to this Agreement and incorporated into this Agreement as set forth in Section 18 of this Agreement.

OPG-3 shall procure for Customer a perpetual license to the Laserfiche Software (as that term is defined in the Laserfiche End User License Agreement, attached hereto), and such license shall not expire or be revoked, cancelled, or otherwise terminated if Customer fails to renew or use a Laserfiche software support plan. If at any point it is determined that OPG-3 did not secure a perpetual license for Customer or Laserfiche terminates or attempts to terminate Customer’s perpetual license through no fault of Customer, OPG-3, at OPG-3’s sole cost, shall procure for Customer a perpetual license to the Laserfiche Software. Nothing in this Agreement is intended or shall be construed as limiting Customer’s rights and privileges under a perpetual license to the Laserfiche Software.

2. Customer Responsibilities. Customer will provide OPG-3 with access to the personnel, systems and facilities that are reasonably necessary for OPG-3 to provide the Services.

3. Independent Contractor. The relationship between Customer and OPG-3 is that of independent contractor. Nothing in this Agreement is intended as, or will be construed as, creating a relationship of joint ventures, partners, employer-employee, franchisor-franchisee or agent. Both parties agree to take such steps as are reasonably requested by the other party to ensure that each party will be deemed an independent contractor. Neither party has the authority to create any obligations for the other, or to bind the other to any representation or document. Neither OPG-3, nor any subcontractor, nor any of their employees or agents will be entitled to participate in any employee fringe benefit of Customer. OPG-3 will be solely responsible for:

(a) recruiting, interviewing, testing, selecting, hiring, training, evaluating, counseling and disciplining such personnel OPG-3 may assign to provide the Services. All persons furnished, used, or hired by or on behalf of OPG-3 will be solely OPG-3’s employees, agents or subcontractors, and under no circumstances are they to be considered Customer’s employees, agents or subcontractors.

(b) payment and/or withholding of all applicable federal, state and local income, unemployment, social security, and other taxes for its employees, agents and subcontractors, as well as workers compensation and any other assessments or contributions required by law. No such taxes, workers compensation or other assessment will be paid or withheld by Customer on behalf of OPG-3’s employees, agents or subcontractors.

4. Safekeeping and Security. As part of the Services, OPG-3 will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers and similar security codes or identifiers (each an “Access Device”) issued to OPG-3’s employees, agents or subcontractors.

5. Term; Support and Maintenance Cost Increases.

(a) This Agreement will begin on the Effective Date and will remain in effect for a period of one year (the “Initial Term”). The Initial Term may be renewed, at the City’s sole discretion, for up to four (4), successive one-year terms unless the City notifies OPG-3 at least sixty (60) days before expiration of the then-current term. Notwithstanding the foregoing, the term of this Agreement will continue as to each particular Statement of Work until the term for that particular Statement of Work (if different than as stated in this Section) has expired.

(b) The Parties understand and agree that the Annual Support and Maintenance Costs for Customer’s

perpetual license, as set forth in the Software and Support Costs attached hereto and incorporated herein, are projected to remain flat. If OPG-3 ever increase such Annual Support and Maintenance Costs, OPG-3 shall not increase such costs more than two percent (2%) per annum.

6. Termination.

(a) Either party may, at its option, terminate this Agreement and/or an applicable Statement of Work: (i) immediately upon written notice if the other party breaches its obligations as set forth in this Agreement or the applicable Statement of Work, provided, however, that the party in default will have thirty (30) days to cure such default after written notice thereof, except as to breaches that are not capable of being cured; or (ii) immediately upon written notice if the other party ceases conducting business in the normal course, admits its insolvency, makes a general assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization.

Notwithstanding any other provision in this Agreement, this Agreement is subject to the appropriation power of Customer's governing body and if said body does not appropriate funds to pay charges and fees that will become due and owing in that budget year, Customer may cancel its subscription without any penalty or owing any charges or fees going forward from the end of service and subscription

(b) Upon termination of this Agreement, the parties will have the following obligations:

(i) each party will return the other party's Confidential Information;

(ii) Customer will immediately pay all outstanding amounts due and owing to OPG-3, including all fees and costs owed for Services rendered under a Statement of Work authorized by this Agreement as of the effective date of termination;

(iii) OPG-3 will provide to Customer all written materials, including records, notes, data, memoranda, models, source code (if applicable), object code, flow charts, etc., that constitute work in progress; and

(iv) all property of Customer will be returned by OPG-3 to Customer including, but not limited to, any Confidential Information and all Access Devices.

7. Proprietary Materials and Ownership.

(a) Customer will have and retain all rights, including intellectual property rights, in its preexisting proprietary materials including all documents, materials or other works of original authorship created by Customer or by OPG-3 for Customer under this Agreement ("Customer Proprietary Materials"). OPG-3 acknowledges that it does not own the Customer Proprietary Materials and will acquire no right, title, or interest in such Customer Proprietary Materials furnished to or used by OPG-3.

(b) OPG-3 will have and retain all rights, including intellectual property rights, in its preexisting proprietary materials including all software, documents, materials or other works of original authorship created by OPG-3 ("OPG-3 Proprietary Materials"). Customer acknowledges that it does not own the OPG-3 Proprietary Materials and will acquire no right, title or interest in such OPG-3 Proprietary Materials.

(c) For any third-party products, tools, software, documents and other material ("Third-Party Materials") that Customer acquires through OPG-3 (e.g. Laserfiche-branded software), any applicable third party will have and retain all rights, including intellectual property rights, in its materials. Nothing in this Agreement shall be construed as altering any rights retained by such third parties pursuant to any licenses, sublicenses, or other provisions governing the sale, purchase or use of such Third-Party Materials.

(d) In providing the Services, OPG-3 may use Third Party Materials other than those described in Section 7(c). OPG-3 represents and warrants that it has all rights needed to use such Third-Party Materials for purposes of providing the Services under this Agreement. Customer acknowledges that it does not own such Third-Party Materials and will acquire no right, title or interest in such Third-Party Materials.

8. Confidential Information.

(a) During the term of this Agreement, each of OPG-3 and Customer may have access to information that the other considers to be confidential and/or a trade secret. This information may include, but is not limited to, proprietary materials, technical know-how, technical specifications, software code, manners of conducting business and operations, strategic business plans, systems, results of testing, financial information, customer lists and other customer information, product information, concepts, and compilations of data and any other information given from one party to the other with the exception of those items enumerated in Section 8(c) (collectively, "Confidential Information").

(b) Each party will use the other's Confidential Information only to perform its obligations under, and for the purposes of, this Agreement. Each party: (i) will maintain the confidentiality of the other's Confidential Information in the same manner in which it protects its own information of like kind, but in no event will either party take less than reasonable precautions to prevent the unauthorized use or disclosure of the Confidential Information; and (ii) is permitted to disclose Confidential Information to its employees and authorized subcontractors on a need-to-know basis only, provided that all such subcontractors have written confidentiality obligations to that party. OPG-3 is responsible for, and will indemnify and hold Customer harmless against, any damages arising from any unauthorized disclosure of Confidential Information.

(c) The confidentiality provisions of this Agreement do not apply to information that is required to be disclosed pursuant to Missouri's public records laws, is entirely in the public domain, was known to the party prior to access to the information, was received lawfully from a third party through no breach of any obligation of confidentiality owed to the other party, or is created by that party's employees independently of the other party's Confidential Information.

(d) The provisions of this Section 8 will survive termination of this Agreement and will inure to the benefit of the parties and their successors and assigns.

9. Publicity. Neither party will use the other party's name, trademarks or service marks or refer to the other party directly or indirectly in any media release, public announcement or public disclosure relating to this Agreement or its subject matter to the extent the materials in such media release, announcement or disclosure have not previously been made publicly available, without the other party's prior written permission to do so. In the event a party agrees to such use, the other party agrees to comply with any conditions the party may impose on such use. This restriction includes any promotional or marketing materials, customer lists or business presentations (but not including any announcement intended solely for internal distribution by a party or any disclosure required by legal, accounting or regulatory requirements). Both parties agree to submit to the other party all advertising, sales, promotions, and other publicity material relating to any product or service in which either party's name is mentioned or language is used from which the connection of either party's name may be reasonably inferred or implied. Either party may refuse such consent, with or without cause or explanation. Nothing in this Agreement is intended to or shall prevent Customer from complying with its obligations complying with the Missouri public records laws.

10. Solicitation. Neither party will solicit, recruit or assist another party in soliciting or recruiting any employees or subcontractors of the other who were involved with the performance of this Agreement for a period beginning with the Effective Date of this Agreement and extending for one year after its termination.

11. Warranty. EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, OPG-3 DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

Notwithstanding the foregoing, OPG-3 represents and warrants that all statements of fact made by OPG-3 in the Proposal (as defined below), this Agreement and any executed Statement of Work are substantially true and correct or will be true and correct when made and, if applicable, shall continue to be substantially true and correct during the term of this Agreement or any extension thereof.

The provisions of this Section shall not operate to modify, amend, limit or otherwise reduce the scope of any representation or warranty set forth in any third-party software license agreement, terms of use agreement or the LSAP (as defined below).

12. Infringement Indemnification. Provided Customer complies with the terms and conditions of this Section 12, OPG-3 shall indemnify, defend, and hold harmless Customer, from and against all losses, fines, penalties, and damages, resulting from, imposed upon, or incurred by Customer to the extent arising out of or resulting from any claim

by a third party that the products or services delivered by OPG-3 pursuant to the provisions of this Agreement, including but not limited to the Laserfiche Software (as that term is defined in the Laserfiche End User License Agreement, attached hereto), or a Statement of Work infringe or misappropriate any copyright, patent, or other proprietary right of such third party.

Following the discovery of any facts or conditions that could reasonably be expected to give rise to a loss for which indemnification under this Section 13 can be obtained (a "Claim"), Customer shall, promptly after the Customer's receipt of notice of the Claim (but in no event more than five (5) business days after being served with any summons, complaint or similar legal process), provide written notice to OPG-3 (an "Indemnification Notice"), setting forth: i) the specific facts and circumstances of the Claim; and ii) the amount of loss for which indemnity hereunder is being sought (or a non-binding, reasonable estimate thereof if the actual amount is not known or not capable of reasonable calculation). Each Indemnification Notice shall be accompanied by copies of all notices and documents, including all court papers, received by Customer relating to the Claim.

If an Indemnification Notice is delivered to OPG-3 as provided herein, OPG-3 shall be entitled to participate in the defense thereof and, if OPG-3 so chooses, to assume the defense thereof with counsel selected by OPG-3. If OPG-3 so elects to assume the defense of a Claim, then OPG-3 shall not be liable to Customer for the reasonable fees and expenses of counsel subsequently incurred by Customer in connection with the defense thereof. Furthermore, if OPG-3 chooses to defend any Claim, then Customer shall cooperate in the defense or prosecution of such Claim. Such cooperation shall include the retention and (upon the OPG-3's request) the provision to OPG-3, of records that are reasonably relevant to such Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any such records or other material provided hereunder. If OPG-3 has not, within twenty (20) business days after receipt of an Indemnification Notice relating to a Claim, chosen to assume defense of such Claim or fails to defend such Claim actively and in good faith, then Customer shall (upon further written notice) have the right to defend case at the cost and expense of OPG-3.

13. Indemnification from the Laserfiche EULA. OPG-3 shall indemnify, defend, and hold harmless Customer, from and against all losses, judgements, fines, penalties, and damages, resulting from, imposed upon, or incurred by Customer to the extent arising out of or resulting from any claim that Customer breached the Laserfiche End User License Agreement, but only to the extent that Customer's alleged breach resulted from Customer's compliance with Missouri law, including not be limited to the Missouri Open Records law and law prohibiting political subdivisions, including municipalities, from waiving their sovereign immunity by indemnifying other entities.

14. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES ARISING OUT OF ITS BREACH OF THIS AGREEMENT.

15. Choice of Law. This Agreement will be construed in accordance with the laws of the State of Missouri, excluding its conflict of law provisions. All parties consent and agree to the jurisdiction of the State of Missouri, and consent and agree to venue for any litigation in the state and federal courts located in Jackson County, Missouri for any matters.

16. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced to the extent it is not in violation of law or is not otherwise unenforceable, and all other provisions and requirements of this Agreement will remain in full force and effect.

17. Force Majeure. If either party is prevented from performing its duties or responsibilities under this Agreement by reason of any fire or other casualty, acts of God, earthquake, floods, explosion, extraordinary actions of the elements, war, riots, mob violence, acts of terrorism, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, strikes, lockouts, actions of labor unions, condemnation, court orders, laws, regulations or orders of government or military authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the control of such party whose performance is delayed (a "Force Majeure Event"), but excluding therefrom any cause attributable to the financial inability of the party to perform or procure performance, such failure to perform will not be deemed a breach of this Agreement so long as performance is promptly undertaken upon cessation of the Force Majeure Event and thereafter diligently pursued to completion within the applicable time frame set forth in this Agreement or, if there is no such time frame, within a commercially reasonable time thereafter.

18. Waiver. Any waiver of a provision of this Agreement or of a party's right or remedy under this Agreement

must be in writing and signed by the party to be effective. Failure or delay by a party to enforce its rights or remedies under this Agreement at any time will not be deemed a waiver and will not affect the validity of this Agreement or prejudice such party's right to take subsequent actions.

19. Entire Agreement and Amendment.

(a) The following exhibit(s), attachment(s) and/or addenda are attached hereto and hereby incorporated into and made part of this Agreement:

- Attachment 1 – City of Lee's Summit ("City") Agreement #2019-029
- Attachment 2 – Statements of Work (SOWs)
- Attachment 3 – Software and Support Costs
- Attachment 4 – OPG-3's Final Business Proposal and Q&A to the City's Request for Proposals
- Attachment 5 – Laserfiche End User Licensing Agreement (EULA)
- Attachment 6 – Laserfiche LSAP Agreement

If there is any conflict between the terms of this Agreement and any of the attachments referenced above, the order of preference for conflict resolution shall be the following order of precedence:

- 1 – Software and Support Costs
- 2 – City of Lee's Summit ("City") Agreement #2019-029
- 3 – this Master Services Agreement
- 4 – Statements of Work (SOWs)
- 5 – OPG-3's Final Business Proposal and Q&A to the City's Request for Proposals
- 6 – Laserfiche End User Licensing Agreement (EULA)
- 7 – Laserfiche LSAP Agreement

(b) Except as specified herein, this Agreement, together with all Statements of Work, represents the entire agreement between the parties with respect to its subject matter and supersedes all prior oral or written representations, agreements, or other communications, relating to the subject matter of this Agreement. This Agreement may not be amended or modified except by written agreement signed by each party's authorized representative. No terms or conditions of either party's invoice, purchase order or other administrative document will be effective as a modification of the terms and conditions of this Agreement, regardless of the other party's failure to object to such form.

20. Assignment. Neither party may assign this Agreement without the other party's prior written consent, which will not be unreasonably withheld or delayed. Any attempted assignment without such consent will be void. The rights and duties of the parties hereunder will inure to the benefit of and be binding upon their respective successors and permitted assigns.

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original and all of which together will constitute one and the same instrument. Any signature page delivered electronically will be binding to the same extent as an original signature page.

22. Notices. Any notice must be in writing and will be deemed to be delivered at the time of delivery if delivered by hand, mail or courier, or at the time received, if sent by fax or by email. Until changed by notice in the manner described above, the addresses of the parties for the purpose of notice will be as set forth below.

<b>Customer</b>	<b>OPG-3</b>
City of Lee's Summit Attn: Teresa Wright, Application Administrator 220 SE Green St Lee's Summit, MO 64063	OPG-3, Inc. Attn: Scott Ogren, Dir of Operations 8030 Old Cedar Ave, Ste 205 Bloomington, MN 55425

23. Interpretation. Each party has actively participated in the negotiation and preparation of this Agreement, and no presumption of interpretation in favor of either party will be made. The necessary grammatical changes required to make the provisions of this Agreement apply either to corporations or other entities or to individuals, men or women, as the

case may require, will in all cases be assumed as though in each case fully expressed. The captions of Sections are for convenience only and will not be deemed to limit, construe, affect or alter the meaning of such Sections. Notwithstanding that some references may say “include” or “including” and others “include without limit” or “including without limitation”, references to “include” or “including” will mean “include without limit” or “including without limitation”, unless expressly and specifically provided to the contrary.

24. Surviving Provisions. All provisions of this Agreement relating to confidentiality, ownership, limitations of liability and any other subject that would, by its nature, be deemed to survive termination of this Agreement, will survive the termination or expiration of this Agreement.

25. Immigration Requirements. Pursuant to Section 258.530, RSMo., OPG-3 warrants and affirms to Customer that (i) OPG-3 is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) OPG-3 does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

OPG-3 shall swear to and sign an affidavit declaring such affirmation, and provide Customer with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with a Statement of Work. The required documentation must be from the federal work authorization program provider (e.g. the electronic signature page from the E-Verify program’s Memorandum of Understanding); a letter from OPG-3 reciting compliance is not sufficient.

IN WITNESS WHEREOF, the parties have executed this Master Services Agreement as of the Effective Date.

**OPG-3, INC.**

**CUSTOMER: City of Lee’s Summit**

By: Jereb Cheatham  
Jereb Cheatham

By: \_\_\_\_\_  
Stephen A. Arbo

Its: Vice President, Business Development

Its: City Manager

ATTESTED:

\_\_\_\_\_  
Trisha Fowler Arcuri,  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Daniel R. White,  
Chief Counsel of Management and Operations