

BoardDocs.com
End User Service Agreement
Part I: Order Form

Emerald Data Solutions, Inc. ("Emerald"), 519 Johnson Ferry RD NE, Building A, Suite 100, Marietta, GA 30068, provides a proprietary, web-based service known as BoardDocs, that enables organizations to enhance aspects of the governance process and communications between the administration, the public and the board, all on and subject to the terms of this End User Service Agreement (the "Service"). By executing below, the below named customer ("Customer") agrees to use, and Emerald agrees to make available to Customer, the Service, all in accordance with and subject to the attached terms and conditions (the "Terms and Conditions"). This Order Form (Part I) and the Terms and Conditions (Part II) constitute the entire agreement of the parties (the "Agreement"), which Emerald and Customer hereby execute below as of the "Effective Date" indicated below.

1. General Information.

CUSTOMER INFORMATION			SALES INFORMATION		
Customer Name: City of Othello			Sales Rep Name: George Amend		
Contract Term: <input checked="" type="checkbox"/> 12 mo <input type="checkbox"/> 24 mo <input type="checkbox"/> 36 mo			Sales Rep Phone: 800-407-0141 x 3525		
Project code: 641			Sales Rep Email: gamend@emgrp.com		
Customer code: COWA					
CUSTOMER INFORMATION			SALES INFORMATION		
Main Office Customer Information			Billing Information (if different)		
Origination Name: City of Othello			Organization Name:		
Address: 500 E. Main Street			Address:		
Address:			Address:		
City: Othello			City:		
State: WA	Zip: 99344	Telephone: 509-488-5686	State:	Zip:	Telephone:
CONTACT INFORMATION					
	Primary Contact	IS/Technical Contact	Administrative Contact	Billing Contact	
Name:	Ehman Sheldon	Stan Anderton	Debbie Kurdna	Mike Bailey	
Phone:	509-488-5686	509-488-5686	509-488-5686	509-488-5686	
Email:	esheldon@othellowashington.us	it@othellowashington.us	dkurdna@othellowashington.us	mbailey@othellowashington.us	
General					
Billing Agent: NONE/EDS				Effective Date: <u>JBD 8/1/10</u>	

2. Charges. For each BoardDocs.com site ordered under this Agreement, Customer will pay the applicable Annual Recurring Charge ("ARC") and the Non-Recurring Charge ("NRC") set forth below, less any applicable discounts set forth in this Agreement.

Type of Service	NRC (Non-Recurring Charge)	ARC (Annual Recurring Charge)
BoardDocs LT	\$1,000.00	\$2,700.00

3. Term. The "Term" of this Agreement will commence on the Effective Date (as defined in the Terms and Conditions) and continue for the period selected in the "Contract Term" section above. Upon expiration, this Agreement will automatically renew and remain in effect for consecutive 1 year Terms, unless a party elects to terminate the Agreement upon the expiration of the then-current Term by providing notice of such termination to the other parties at least 60 days prior to the conclusion of the then-current Term. Early termination may subject Customer to termination charges, as set forth in the Terms and Conditions.

BY SIGNING BELOW, THE PERSON SIGNING FOR CUSTOMER PERSONALLY REPRESENTS AND WARRANTS TO EMERALD THAT HE OR SHE HAS THE AUTHORITY TO SIGN FOR CUSTOMER AND BIND CUSTOMER TO THIS AGREEMENT. CUSTOMER UNDERSTANDS AND AGREES TO BE BOUND BY THE ATTACHED TERMS AND CONDITIONS.

CUSTOMER
Tom Wilson 6-28-10
 SIGNATURE Date
Mayor
 Name and Title of Authorized Representative

EMERALD DATA SOLUTIONS, INC.
Aristides R. Ioannides 8/1/10
 SIGNATURE Date
Aristides R. Ioannides - President
 Name and Title of Authorized Representative

Part II: Terms and Conditions

1. General. This Agreement is made by and between Emerald Data Solutions, Inc. ("Emerald"), 519 Johnson Ferry RD NE, Building A, Suite 100, Marietta, GA 30068, and the customer identified in the Order Form ("Customer"). This Agreement, which includes the Order Form and these Terms and Conditions, will be effective on the date that Emerald executes it after Customer's execution ("Effective Date"). On and subject to the terms and conditions contained in this Agreement, Emerald will make the Service (as defined on the Order Form) available to Customer in accordance with the Service Level Agreement ("SLA") attached hereto as Addendum A, which SLA is made a part of this Agreement. Emerald will use commercially reasonable efforts to make a version of the Service available to Customer by a commencement date agreed to by the parties, including establishing the hosting of the Service and storage of data uploaded via the Service. Such initial Service will be co-branded with both parties' Marks (as defined herein), but Emerald may add additional names and marks, as appropriate. Emerald will operate and maintain all hardware and software needed to provide the Service, subject to the Customer's responsibilities set forth in this Agreement (including, without limitation, Section 4).

2. Payment. Customer agrees to pay Emerald, or its agent identified to Customer by Emerald, all applicable rates and charges set forth on the Order Form, which is made a part of this Agreement. Charges will be due upon Customer's receipt of the applicable invoice from Emerald or its agent, and payable within 30 days of the invoice date. Notwithstanding anything to the contrary in Section 9 below, any amount not paid within such period will bear interest at the lesser of (a) the rate of one and one-half percent (1½%) per month, or (b) the highest rate permitted by applicable law. Annual Recurring Charges will be invoiced annually in advance. Non-Recurring Charges, if any, will be invoiced promptly following the Effective Date. In addition to such rates and charges, Customer will be responsible for all taxes and fees assessed with regard to its use of the Service. Emerald may modify certain components of the Service upon not less than 60 days prior written notice to Customer; provided that Emerald may reduce the foregoing notice period if the modification is based upon a change in law or regulation. Emerald reserves the right to condition provision of the Service on Customer's creditworthiness and reasonable assurance of payment (e.g., a deposit).

3. Term/Termination. This Agreement will be effective upon the Effective Date and continue until the expiration (unless earlier terminated in accordance herewith) of the term set forth in the Order Form (the "Term"). If Customer terminates this Agreement prior to the conclusion of the Term, or Emerald terminates this Agreement in accordance with this Section 3, notwithstanding anything to the contrary in Section 9 below, Customer will pay for all accrued and unpaid charges for Service provided through the effective date of such termination plus a termination charge of fifty percent (50%) of the balance of the annual recurring charges (then in effect at the time of termination) that otherwise would have become due for the unexpired portion of the Term. Emerald may terminate this Agreement and/or cease or suspend the provision of all or any part of the Service upon: (a) Customer's failure to pay any amount when due under this Agreement (after 10 days prior written notice of such failure to pay); (b) the filing of a petition in bankruptcy by or against Customer; or (c) any material breach of this Agreement including but not limited to violation of the AUP (as defined in Section 6). In such case, Customer will pay for all accrued and unpaid charges for Services provided through the effective date of such termination. Upon any termination of this Agreement, Customer's right to use the Service immediately ceases. Customer agrees to destroy any copies in any form of the Content (as defined below) in its possession and accompanying documentation upon termination for any reason.

4. Access and Use of Service. On and subject to the terms and conditions of this Agreement, Emerald hereby grants to Customer, and Customer hereby accepts, a non-exclusive, non-sublicenseable, non-transferable license to access the Service during the Term solely for Customer's internal purposes. Customer will be responsible for all hardware, software (including browser software) and Internet communication links necessary to access the Service from their respective facilities, including, without limitation, maintaining sufficient bandwidth to meet its utilization demands. Customer will be solely responsible for ensuring that each of the persons or entities that accesses the Service through Customer or its systems ("Users") complies with the terms of this Agreement applicable to Customer and all applicable laws, rules, regulations and ordinances. Customer may access and use the Service only in machine-readable format and only as made available by Emerald through its systems. Customer will not modify, adapt, translate, hypothecate, lease, disclose, loan, sublicense, resell for profit, distribute or create derivative works based on all or any part of the Service. Customer will not attempt to decompile, reverse engineer or disassemble the Service, and Customer will be liable to Emerald for any unauthorized copying, reverse engineering or use of the Service by Users. Unless otherwise agreed in writing by Emerald, Customer will not, and will cause each of the Users to not, remove or modify, or attempt to remove or modify, any proprietary notices contained in or associated with the Service. Customer agrees that it is solely responsible for maintaining, and ensuring that its users maintain, the confidentiality of any user passwords or access codes entrusted to Customer or its Users, and for all activities resulting from their authorized or unauthorized use. Customer will indemnify Emerald against any third-party claims relating to the failure to maintain such password or access code confidentiality and any such activities resulting from the authorized or unauthorized use of passwords or access codes.

5. Content and Mark Licenses. On and subject to the terms and conditions of this Agreement, Emerald hereby grants to Customer a non-exclusive, non-sublicenseable, non-transferable license to use and display the audio and visual information, documents, products and software made available by Emerald or their agents through the Service (the "Content") during the Term solely for Customer's internal purposes. For the avoidance of doubt, the "Content" does not include data or information regarding other customers of Emerald. Emerald retains all rights in the Content not expressly granted by Emerald to Customer. Customer is permitted to store, manipulate, analyze, reformat, print, and display the Content only for Customer's internal purposes. Unauthorized use of the Content is expressly prohibited. Customer will not copy, license, sublicense, sell, transfer, make available, distribute, or assign this content license or the Content to any third party. Customer also will not "mirror" any Content contained on, or accessible from, the Service on any other server or Internet network-based device. Customer will not use any information accessible from the Service in conjunction with any enterprise unrelated to its governmental duties or not authorized or contemplated by this Agreement. Subject to the terms and conditions set forth herein, each party hereby grants to the other during the term of this Agreement a royalty-free, non-exclusive, non-transferable license to use such party's trademarks and service marks provided to the other by such

party (the "Marks") solely in connection with the other's performance of this Agreement. Each party agrees that any use of the other party's Marks is subject to the other party's prior written consent (unless contemplated in this Agreement) and will be in strict accordance with the other party's trademark and service mark guidelines provided by the other party from time to time.

6. Acceptable Use. All use of the Service will comply with the Emerald Acceptable Use Policy ("AUP"), which AUP is posted on Emerald's web site at <http://www.BoardDocs.com/Home.ns/legal/> and which is made a part of this Agreement. Emerald reserves the right to amend the AUP effective upon posting to the web site or other notice to Customer. Customer will not, (a) post or transmit on or through any website or network through which the Service are provided any libelous, obscene or otherwise unlawful information of any kind; (b) interfere with or disable the Service in any way; (c) engage in any conduct involving the Service that would constitute a criminal offense or give rise to civil liability under any local, state, federal or other law or regulation; or (d) post, upload, reproduce or distribute to or through the Service any material protected by copyright, privacy or other intellectual property or proprietary right without first obtaining sufficient written permission from the owner thereof. Notwithstanding anything to the contrary in Section 9 below, Customer agrees to defend, indemnify and hold harmless Emerald from any and all liabilities, costs and expenses, including reasonable attorneys' fees, arising from or related to a failure of Customer or its Users to comply with the AUP or the terms of this Section 6.

7. Ownership. Customer acknowledges and agrees that Emerald owns (as between Emerald and Customer) and will retain all ownership in the Intellectual Property and all other property rights and interests associated with the Service, and all derivative works and components of any of the foregoing. "Intellectual Property" means (a) copyrights, trademarks (and all goodwill associated therewith), service marks (and all goodwill associated therewith) and any other rights to any form or medium of expression; (b) Trade Secrets, privacy rights and any other protection for confidential information or ideas; (c) patents and patent applications; (d) inventions and any other items, information or theories which are protectable or registrable under any of the copyright, patent, trade secret, confidentiality or other similar laws; and (e) any other similar proprietary rights or interests recognized by applicable law. To the extent Customer has or later obtains any Intellectual Property or other property rights or interests in the Service or any derivative work of any of the foregoing, by operation of law or otherwise, Customer hereby disclaims such rights and interests and hereby assigns and transfers such entire rights and interest exclusively to Emerald. In furtherance of the foregoing, Customer and its personnel will confirm such assignment by execution and delivery of such assignments, confirmations of assignment, or other written instruments as Emerald may from time to time reasonably request. Customer will not undertake to obtain Intellectual Property rights in the Service (or any component thereof).

8. Disclaimer. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND THE INTERNET AND ACCESSES THE SAME AT ITS OWN RISK. EMERALD EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT ACCESSIBLE OR ACTIONS TAKEN ON THE INTERNET AND EMERALD EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT OR ACTIONS. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SERVICE AND ANY RELATED SOFTWARE PROVIDED BY EMERALD ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY EMERALD, ITS AFFILIATES OR CONTRACTORS WILL CREATE A WARRANTY.

9. Limitations of Liability. NO PARTY OR SUCH PARTY'S AFFILIATES OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA OR COSTS OF COVER ARISING FROM OR RELATED TO THE SERVICE OR THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED AND REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LIABILITY, LOSS OR DAMAGE, EXCEPT WITH RESPECT TO SECTION 10 AND ANY INDEMNITY PROVIDED BY CUSTOMER UNDER THIS AGREEMENT. CUSTOMER'S REMEDIES FOR ANY AND ALL CLAIMS RELATED TO THIS AGREEMENT AND EMERALD'S AGGREGATE LIABILITY UNDER THIS AGREEMENT ARE LIMITED TO THE REMEDIES SET FORTH IN THE SLA.

10. Nondisclosure. Upon execution of this Agreement, each party may issue a press release announcing the transaction, but not disclosing any terms, conditions or pricing associated with the transaction. Customer will not: (a) make any disclosure to any other person or issue any other press release or other public announcement regarding this Agreement or any relation between Customer and Emerald; or (b) use the name, trademarks or other proprietary identifying symbol of Emerald or its affiliates without such person or entity's prior written consent. In the case of any additional press release or other public announcement, an authorized representative of such entity's management may only provide such prior written consent. In addition to the foregoing restrictions, if Customer is a governmental agency and a third party properly requests the disclosure of any information relating to this Agreement pursuant to the provisions of any applicable state or federal open records or freedom of information statute, then Customer may disclose such information to such third party; provided that Customer will (a) furnish only that portion of such information which is legally required to be furnished; (b) endeavor to protect the confidentiality of such information to the extent reasonable under the circumstances (including, without limitation, to the extent legally permissible, asserting any applicable exceptions to the statutory disclosure requirement or disclosing only Emerald redacted versions of such information and seeking application of any applicable disclosure exception or exemption) and will use its good faith efforts to prevent the further disclosure of such information provided to such third party; and (c) restrict disclosure of any such information that constitutes a trade secret, as defined under applicable law, by redaction, erasure, blue-inking or other method, to the fullest extent permitted under applicable law. Emerald will, in addition to any other available remedies available at law or equity, have the right to terminate this Agreement and any other agreements between such party and Customer if Customer violates this provision.

11. Confidentiality. A party's "confidential information" means information or data (in oral, written, electronic or other form), including, without limitation, any trade secret, related to or owned or controlled by such party, valuable to such party and not generally known or readily available through legal means (other than its disclosure in reliance on this Agreement) to the receiving party. Customer acknowledges that the Application contains confidential information of Emerald. A receiving party may use the

disclosing party's confidential information to perform its obligations and exercise its rights under this Agreement, but may disclose it only to its officers, directors and employees on a need-to-know basis after informing any such disclosees that it is confidential and directing them to comply with this Agreement. Notwithstanding the foregoing, after giving reasonable notice to the disclosing party (which notice affords the disclosing party an opportunity to seek a protective order or other remedy), the receiving party may disclose the disclosing party's confidential information to the extent required by law. On request, each receiving party will return or destroy all records that contain or reflect the disclosing party's confidential information. A party may seek injunctive relief to redress or prevent violations of this Section 11, in addition to, and not in lieu of, any other rights and remedies available to such party. Confidential information that is not a trade secret will cease to be protected under this Agreement on the third anniversary of its disclosure. Confidential information that is a trade secret will be protected for so long as such confidential information constitutes a trade secret under applicable law.

12. Customer Data. Customer reserves exclusive rights to all of its information stored in fields and as attachments in the Application database. At the Customer's request, Emerald will export the data from the database for a nominal fee. Customer hereby grants to Emerald, and Emerald hereby accepts, a non-exclusive, royalty-free, irrevocable, perpetual license to use such information and data for purposes of providing the Services to Customer and performing any other obligations under this Agreement, for their internal business purposes relating to the Services or the Application, and for the maintenance or use of business records and information associated with any of the foregoing. Customer is solely responsible for such information and data (including, without limitation the accuracy of such information and data) and for ensuring that Customer has the necessary rights to use such information and data, and Customer will indemnify Emerald against any third party claims relating to such information or data. Customer has only the limited rights granted by this Agreement. Emerald reserves all rights not expressly granted to Customer in this Agreement.

13. Miscellaneous

- (a) Any claim or dispute relating to this Agreement will be submitted for binding arbitration in accordance with the Federal Arbitration Act, 9 U.S.C. 1-16. The parties agree that the arbitrator must adhere to the terms and conditions in this Agreement.
- (b) Customer may not assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Emerald, which consent will not be unreasonably withheld or delayed.
- (c) Customer understands that the Application is accessed through the Internet and data may travel over the networks of several third party Internet service providers. Emerald is not responsible for Internet connectivity to Customer's location.
- (d) If any portion of this Agreement is held to be unenforceable, the unenforceable portion will be construed as nearly as possible to reflect the original intent of the parties and the remainder of the provisions will remain in full force and effect.
- (e) Notices under this Agreement will be sent to the address set forth above for Emerald (or such other address as Emerald may provide to Customer) and the address set forth in the General Customer Information Section of the Order Form.
- (f) Except with regard to the SLA, neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights under this Agreement.
- (g) The terms and conditions of this Agreement, including all addenda, will prevail notwithstanding any conflicting terms and conditions of any form for purchase or payment submitted by Customer.
- (h) All terms and provisions of this Agreement which should by their nature survive the termination of this Agreement will so survive, including but not limited to Sections 3, 4 (except the license, which is restricted to the Term), 5 (except the license, which is restricted to the Term), 6, 7, 8, 9, 10, 11, 12 and 13.
- (i) Emerald will not be liable to Customer, or any User, for any delay or failure to perform any provision of this Agreement to the extent such delay or failure to perform is caused by an event beyond the reasonable control of Emerald, respectively (a "Force Majeure"), including, without limitation, an act of God; flood; riot; fire; explosion; judicial or governmental act; terrorism; military act; strike or lockout; third party act or omission; failure of utility or telecommunications facilities; virus, worm, trojan horse or other code, command, file or program designed to interrupt, destroy or limit the functionality of any software, hardware or equipment; Internet slow-down or failure; lightning or other weather condition or event.
- (j) This agreement will be governed by the laws of the state of Georgia. This paragraph will not be deemed to impose or require exclusive jurisdiction in the courts of the State of Georgia.
- (k) This Agreement, including Addendum A, constitute one and the same legally binding instrument and the entire agreement between Customer and Emerald with respect to the subject matter hereof and expressly supercedes any prior written or oral agreements or understandings between the parties.

ADDENDUM A to Terms and Conditions of END USER SERVICE AGREEMENT SERVICE LEVEL AGREEMENT

This Addendum A to the Agreement by and between Customer and Emerald describes the required availability and other matters relating to the Services.

NETWORK AVAILABILITY GOAL

Emerald's goal is to maintain service availability 100%.

COMPONENTS INCLUDED

All components of the Emerald IP Network (e.g. Routers, Servers, Circuits, loops) and Emerald-hosted applications are included in the determination of Network Availability.

NETWORK AVAILABILITY MEASUREMENT AND REMEDIES

Network Downtime is measured based on the total outage time incurred by Customer. Network Downtime will exist when a particular Customer site (the "Affected Service") is unable to be accessed from the Global Internet and Emerald records such failure in the trouble ticket system.

Network Downtime is measured from the time the trouble ticket is opened to the time the Affected Service is again to be accessed from the Global Internet. Upon Customer's written request to the Emerald's Technical Support Department made within five (5) business days of the last day of the month in which the Network Downtime occurred, Emerald will provide a service credit equal to the pro-rated charges for one day of Services for the Affected Service for each cumulative hour of Network Downtime.

SERVICE CREDIT EXCEPTIONS

Service credits will not be available to Customer in cases which the Service is unavailable as a result of (i) the acts or omissions of Customer, its employees, contractors or agents or its end users; (ii) the failure or malfunction of equipment, applications or systems not owned or controlled by Emerald, (iii) circumstances or causes beyond the control of Emerald, including instances of Force Majeure, or (iv) scheduled service maintenance, alteration, or implementation.

MAINTENANCE WINDOW DEFINITION

Maintenance performed by Emerald will be classified as one of the following two (2) types:

NORMAL MAINTENANCE

Normal Maintenance will refer to: (i) upgrades of hardware or software; or (ii) upgrades to increase capacity. Normal Maintenance while being conducted may degrade the quality of the Services provided which may include an outage of the Services; provided, however, that an outage related to Normal Maintenance will not be deemed to be Network Downtime. Normal Maintenance will be undertaken by Emerald only on Sunday morning between the hours of 12:00 AM and 6:00 AM Local Time and on Wednesday morning between the hours of 12:00 AM and 6:00 AM Local Time. For purposes of this SLA, "Local Time" will refer to the local time in the time zone in which an Affected Service is located; provided, however, that if Affected Service is located in multiple time zones, Local Time will refer to Eastern Standard Time. Emerald will provide two (2) days prior notice of Normal Maintenance.

URGENT MAINTENANCE

Urgent Maintenance will refer to efforts by Emerald to correct Emerald IP Network or Hosted Hardware conditions which are likely to cause a material Service outage and which require immediate correction. Urgent Maintenance, while being conducted, may degrade the quality of the Services provided which may include an outage of the Services. An outage related to Urgent Maintenance will be deemed an outage for purposes of calculating Network Downtime and Network Availability. Emerald may undertake Urgent Maintenance at any time Emerald deems necessary. Emerald will provide notice of Urgent Maintenance to Customer as soon as is commercially practicable under the circumstances.

MAXIMUM CREDITS AND TERMINATION OPTION

In the event that Customer is entitled to multiple credits under this SLA arising from the same event, such credits will not be cumulative and Customer will be entitled to receive only the maximum single credit available for such event. Under no circumstances will Emerald be required to credit Customer in any one calendar month charges in excess of seven (7) days of service. A credit will be applied only to the month in which the event giving rise to the credit occurred. Notwithstanding the foregoing, in the event that, in any single calendar month, either (A) Customer would be eligible to receive credits totaling fifteen (15) or more days (but for the limitation set forth in this section) resulting from three (3) or more events during such calendar month, (B) any single event entitling Customer to credits under the section entitled "Network Availability Goal" above exists for a period of eight (8) consecutive hours, or (C) any number of events entitling Customer to credits under "Network Availability Goal" above exists for an aggregate of forty-eight (48) hours, then, Customer may terminate this agreement for cause and without penalty by written notice to Emerald within five (5) business days following the end of such calendar month. Such termination will be effective forty-five (45) days after receipt of written notice by Emerald. The provisions of this Service Level Agreement state Customer's sole and exclusive remedy for service interruptions or service deficiencies of any kind whatsoever.