



PARTNER RESALE ORDER CONFIRMATION (NORTH AMERICA)

Order # **12375**

Customer Name (Full Legal Entity Name)	City of Columbus		
Installation/Primary Address	1111 East Broad Street, Columbus OH 43205		
License Key Contact	Sandy Elswick	Title	Technical Support Manager
Telephone	614) 645-5654	Email	SJElswick@columbus.gov

Cherwell Partner	Avante Solutions	Partner Contact	Raquel Alexander
Partner Telephone	(866) 282-6831	Partner Email	ralexander@avantesolutions.com

Item	Licensed Software/Services Descriptions	Quantity	Start Date for Maintenance & Support/ Subscription/ Hosting	End Date for Maintenance & Support/ Subscription/ Hosting
CSM Licensed Software - Perpetual Licenses	Cherwell Service Management (CSM) Concurrent User Licenses For additional licenses, the Maintenance and Support term starts on the date of this Order Confirmation form and is prorated to be coterminous with Customer's existing maintenance and support term.	40	1-Nov-2017	31-Jan-2019
Payment Terms	Licensed Software, Training classes, Hosting fees and Maintenance and Support to be invoiced immediately. Training Packages are valid for one year from date of order and are non-refundable. Professional Services to be invoiced by applicable provider as rendered. Pricing does not include any applicable sales tax or similar tax. Customer is obtaining the Licensed Software from Cherwell Software but will be invoiced by the Cherwell Partner listed above for the initial term of the Customer's license agreement, which includes the first annual term of maintenance and support for perpetual licenses and a three year maximum term for subscription licenses. Invoicing and payment for such initial term of this order will be between Customer and Partner.			

NOTE: All software to be delivered electronically

This Order Confirmation, together with the applicable license, subscription and/or services agreement identified below and incorporated herein, constitutes an agreement (collectively, the "Agreement") between Cherwell Software, LLC, on its own behalf and on behalf of its subsidiaries, divisions and affiliates (collectively "Cherwell") and Customer, and must be signed by an authorized representative of Customer. Use of the Licensed Software described above is subject to the Agreement. Customer acknowledges and agrees to the terms contained in the Agreement and/or addenda attached hereto, or if no Agreement attached, the Agreement located at the applicable URL identified below. Customer further acknowledges that as between Customer and Cherwell, no Cherwell Partner is authorized to modify the terms and conditions of the Agreement nor the rights granted to Customer with regard to the Licensed Software. If Customer is ordering additional software licenses or services and has already executed an Agreement with Cherwell, by signing below Customer agrees that the products and services quoted above are subject to the terms and conditions contained in Customer's existing Agreement.

End-User License Agreement (EULA)	Attached	Subscription Agreement	http://files.cherwell.com/legal/us-eusa.pdf
Hosting Services Addendum (HSA)	_____	Special Terms Addendum (attached)	_____
		Existing Cherwell Customer	_____

<http://files.cherwell.com/legal/us-hsa.pdf>

Each party signing below represents that it has authority to bind the company or legal entity named below.

CUSTOMER	City of Columbus	CHERWELL	Cherwell Software, LLC
By (print name and title)		By (print name and title)	
Signature		Signature	
Date		Date	

Version May 2017

CHERWELL END-USER LICENSE AGREEMENT

THIS END-USER LICENSE AGREEMENT ("EULA"), TOGETHER WITH ANY APPLICABLE CHERWELL ORDER CONFIRMATION FORM THAT REFERENCES THIS EULA (COLLECTIVELY, THE "AGREEMENT"), IS BETWEEN CHERWELL SOFTWARE, LLC, A DELAWARE LIMITED LIABILITY COMPANY ("CHERWELL"), AND THE CUSTOMER IDENTIFIED ON THE ORDER CONFIRMATION FORM ("CUSTOMER"). THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN CUSTOMER AND CHERWELL REGARDING THE CHERWELL SOFTWARE PRODUCTS ("LICENSED SOFTWARE") AND THE MAINTENANCE AND SUPPORT AND PROFESSIONAL SERVICES THAT ARE LISTED ON THE ORDER CONFIRMATION FORM. BY INSTALLING OR USING THE LICENSED SOFTWARE, CUSTOMER ACKNOWLEDGES THAT IT HAS READ AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT.

1. GRANT OF LICENSE

1.1 Perpetual License. The Licensed Software, which includes all configurable and executable application content or "Blueprints," is licensed to Customer for use subject to the terms of this Agreement. Cherwell hereby grants to Customer and Customer fully accepts, upon delivery, a nonexclusive, nontransferable and perpetual (unless terminated as provided below) right to use only the executable version (no source code) of the Licensed Software. Customer is allowed only the number of concurrent users of the Licensed Software as shown on the Cherwell Order Confirmation Form. If Customer wishes to expand the number of authorized concurrent users covered by the license, Customer can purchase additional user licenses. Customer's authorized concurrent users of the Licensed Software can include Customer, its subsidiaries and affiliates, and their employees and authorized representatives, agents and contractors. Customer may install copies of the Licensed Software in non-production environments, for purposes of testing, development or disaster recovery, provided, however, that such copies cannot be used for production purposes and there cannot be more than one installation of the Licensed Software in a production environment. In no event shall the number of concurrent users in a production environment exceed the authorized concurrent users covered by the license.

1.2 Intellectual Property Rights. The Licensed Software is protected by copyright and other intellectual property laws. Cherwell retains all rights, title and interest in and to the Licensed Software. Customer agrees that this is a license only and that no title passes to Customer. If Customer makes or installs copies of the Licensed Software as provided in this Agreement, the original and all copies of the Licensed Software may not leave Customer's control and are owned by Cherwell. Customer retains all rights to its data.

1.3 Restrictions. To the maximum extent permitted by applicable law, Customer may not resell or otherwise transfer for value the Licensed Software without the written consent of Cherwell. Customer may not export, ship, transmit, or re-export the Licensed Software in violation of any applicable law or regulation, including, without limitation, the Export Administration Regulations issued by the United States Department of Commerce and the United States trade embargoes and economic sanctions administered by the U.S. Treasury Department, Office of Foreign Assets Control, or any such similar law or regulation issued by such other governmental entity which may have jurisdiction over such export. Customer agrees not to: (i) modify, decompile, disassemble or reverse engineer the object code portions of the Licensed Software; (ii) distribute, rent, lease or lend the Licensed Software; or (iii) use the Licensed Software except as expressly permitted under this Agreement.

2. INDEMNIFICATION

2.1 Cherwell shall defend, indemnify and hold Customer harmless against all third party claims, suits, proceedings, costs, damages, losses and expenses (including reasonable attorneys' fees), and judgments incurred, claimed or sustained by Customer arising out of or related to any allegation that any portion of the Licensed Software (including any updates, error corrections, or upgrades thereto), when used solely in the manner and for the purpose for which it was licensed hereunder, violates any patent, copyright, trade secret, trademark, or other third party intellectual property right. If a claim is filed in a court or other administrative proceeding seeking to enjoin the use of the Licensed Software, Cherwell shall either: (i) at Cherwell's cost, procure for Customer the right to continue to use the relevant portion of the Licensed Software; (ii) replace,

at Cherwell's cost, the relevant portion of the Licensed Software with a substitute product that functions substantially in accordance with the applicable specifications for that portion of the Licensed Software; or (iii) at Cherwell's cost, modify the Licensed Software so that it does not infringe or misappropriate, provided that the Licensed Software, as modified, continues to perform substantially in accordance with the applicable specifications.

2.2 Cherwell's indemnification obligation pursuant to the above shall not apply to the extent any infringement claim is found to be caused by (i) Customer's use of the Licensed Software in a manner that is not provided for under this Agreement or Cherwell's user documentation; or (ii) Customer's use, operation or combination of all or any component or portion of the Licensed Software with all or any portion of other software, equipment or systems not provided or required by Cherwell. As a condition precedent to any liability of Cherwell, if Customer receives notice of any infringement claims for which indemnification may be available under the above, Customer must promptly notify Cherwell in writing of the infringement claim.

2.3 Cherwell will have the right to control the defense, select counsel, and direct the course of resolution, including settlement of any infringement claim (but only if the settlement does not include an admission of liability by Customer, does not involve more than the payment of money and grants Customer a full and unconditional release from all liability with respect to the claim). In addition to the defense provided by Cherwell, Customer may elect to retain its own counsel, but Cherwell will not be responsible for any fees or expenses of such counsel.

3. WARRANTIES AND DISCLAIMERS

3.1 Limited Warranties. Each party represents and warrants to the other that it has the legal power to enter into this Agreement. Cherwell further represents and warrants that: (i) it has the right to grant to Customer the license to use the Licensed Software as set forth in this Agreement without violating any rights of any third party and that, to the best of Cherwell's knowledge, the Licensed Software does not infringe or otherwise violate any intellectual property rights of any third party; (ii) the Licensed Software shall operate in material compliance with Cherwell's user documentation; (iii) all services provided by Cherwell pursuant to this Agreement relating to the Licensed Software will be performed in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Cherwell's industry; and (iv) the Licensed Software shall be delivered free of any virus or otherwise malicious code, or any code or command intended to bring down the Licensed Software or Customer's computers/networks automatically or upon command or otherwise impair their use.

3.2 Limited Remedy. In the event of any breach of warranty, Customer's sole and exclusive remedy shall be for Cherwell to either correct or replace, at no additional charge to Customer, any portion of the Licensed Software or services found to be defective or, if Cherwell is unable to correct or replace the defect, refund the license fees and any prepaid but unused Maintenance and Support or hosting fees paid to Cherwell by Customer; and in the event Cherwell introduces any virus or such disabling code or commands into the Licensed Software or any of Customer's equipment, make commercially reasonable efforts to restore any and all data or programming lost by Customer as a result of such virus or disabling code.

3.3 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH IN SECTION 3 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESSED OR IMPLIED. CHERWELL DOES NOT WARRANT THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS SET FORTH IN THIS SECTION 3, CHERWELL MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE LICENSED SOFTWARE, ITS QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

4. LIMITATION OF LIABILITY; EXCLUSION OF DAMAGES

4.1 Limitation of Liability. To the maximum extent permitted by applicable law and except for Customer's payment obligations under this Agreement and Cherwell's obligation to indemnify Customer under Section 2, each party's entire liability under this Agreement shall be limited to the amount paid by Customer for the Licensed Software, which does not include any amounts paid for related services.

4.2 Exclusion of Consequential and Related Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS, LOSS OF USE OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT THAT ANY THIRD PARTY CLAIM SUBJECT TO INDEMNIFICATION UNDER SECTION 2 INCLUDES SUCH DAMAGES. IN PARTICULAR, AND WITHOUT LIMITATION, CHERWELL SHALL HAVE NO LIABILITY FOR ANY DATA STORED OR PROCESSED WITH THE LICENSED SOFTWARE.

5. MAINTENANCE AND SUPPORT AND SERVICES

5.1 General. The initial Maintenance and Support term will run for fifteen (15) months from the signature date of the Order Confirmation Form, with twelve (12) month renewal terms to commence after that date. Maintenance and Support will be invoiced in accordance with the Order Confirmation Form. Cherwell will invoice Customer for Maintenance and Support renewal fees at least sixty (60) days prior to the end of the then current term for a renewal term of twelve (12) months and Customer may at its option renew the Maintenance and Support Services accordingly by either providing written notice of renewal to Cherwell prior to the end of the then-current term or by payment of Cherwell's renewal invoice prior to the end of the then-current term. For the first two renewal terms, the annual price increases for Maintenance and Support shall be capped at CPI or 3%, whichever is lower. Notwithstanding the above and for the avoidance of doubt, the total Maintenance and Support fees increase as Customer adds additional concurrent user licenses. Failure to pay any amount due under this Agreement may result in suspension of Maintenance and Support. If Maintenance and Support is interrupted as a result of expiration or termination, Customer may be charged a reinstatement fee equal to the cost of Maintenance and Support for the period from the date of expiration or termination to the date of renewal.

5.2 Maintenance. "Maintenance" entitles Customer to receive updates, upgrades, patches, bug fixes and new releases or versions of the Licensed Software, including updated documentation, as Cherwell may provide from time to time without requirement of a separate license agreement, and without additional charge other than payment of the annual Maintenance and Support fee.

5.3 Support. Where provided by and purchased from Cherwell, "Support" entitles Customer to technical assistance with Customer's ongoing use of the Licensed Software, Monday through Friday, 6:00 a.m. to 6:00 p.m. (Mountain Standard Time). Cherwell will provide support for the most current version of the Licensed Software and one prior version, including interim releases between the two versions; for example, upon release of version 5.x Cherwell will support version 5.x and 4.x. Cherwell may provide limited support for older versions. Cherwell will use its best efforts to answer Customer's specific questions and provide support in accordance with Cherwell's service and support guidelines. Support does not include any third party products that are not part of the Licensed Software. If Support is purchased from and provided directly by a Partner, as described in Section 8.7 below, then the terms and conditions of any agreement between Customer and Partner shall govern with regard to Support.

5.4 Professional Services. Where provided by and purchased from Cherwell, "Professional Services" may include training, implementation, installation, on-site assistance, customization, and configuration of the Licensed Software. The total "Professional Services" fee quoted on the Cherwell Order Confirmation Form, if any, is an estimate of the number of days required based on Cherwell's current understanding of Customer's stated implementation requirements. A statement of work shall be mutually agreed upon prior to commencement of any Professional Services. Any professional or related services purchased from and provided directly by a Partner, as described in Section 8.7 below, shall be governed by the terms and conditions of any agreement between Customer and Partner.

6. TERM/TERMINATION

6.1 Effective Date and Term. This Agreement is effective as of the earlier of the date set forth on the Cherwell Order Confirmation Form or the date Customer first installs or uses the Licensed Software (the "Effective Date"). Customer's right to use the Licensed Software shall continue in perpetuity unless and until Cherwell terminates this Agreement for material breach by Customer. The parties acknowledge and agree that the license granted pursuant to Section 1 shall survive termination or expiration of Maintenance and Support Services.

6.2 Termination. Either party may terminate this Agreement upon written notice to the other party if the other party fails to cure a material breach of this Agreement within thirty (30) days of written notice of the breach from the terminating party. If Customer elects to terminate only Maintenance and Support for Cherwell's failure to cure a material breach of its Maintenance and Support obligations, Cherwell shall return to Customer any prepaid but unused Maintenance and Support fees, on a monthly pro-rata basis as of the date Cherwell was notified of Customer's intent to terminate. Upon any termination by Cherwell for an uncured breach by Customer, unless such termination is with regard to Maintenance and Support services only, Customer agrees to remove all Licensed Software from its computers, destroy all copies of the Licensed Software, and, upon request from Cherwell, certify in writing its compliance.

7. CONFIDENTIALITY

7.1 Definition. As used in this Agreement, "Confidential Information" means any information, whether oral or written, designated by a party as confidential or that reasonably should be understood to be confidential or proprietary in nature. Customer's Confidential Information shall include Customer data stored or processed with the Licensed Software. Cherwell's Confidential Information shall include the Licensed Software. Confidential Information of each party shall include the terms of this Agreement (but not the fact of its existence), as well as each party's business and marketing plans, financial data, employee data, product plans and designs, and technical information. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public other than by breach of this Agreement; (ii) was known to the receiving party prior to its disclosure; (iii) becomes known to the receiving party after proper disclosure from a third party not under an obligation of confidentiality; or (iv) was disclosed to the minimum extent necessary to comply with a lawful court order or government law or regulation, provided that in the case of (iv) the disclosing party shall provide the other party with advance written notice thereof and reasonably cooperate with the other party to limit disclosure and obtain protective orders or other relief as appropriate.

7.2 Protection. Each party agrees to hold the other party's Confidential Information in strict confidence and to treat such other party's Confidential Information with at least the same degree of care employed with respect to its own Confidential Information (but in no event less than reasonable care). Neither party shall (i) use the other party's Confidential Information for its own account or in any manner not contemplated by this Agreement; nor (ii) disclose the other party's Confidential Information to a third party without the prior written consent of the other party. Both parties shall limit access of each other's Confidential Information to those of its employees, contractors and agents who have a need for such access and who are bound to confidentiality obligations substantially similar to those set forth in this Section. This Section shall survive termination or expiration of the Agreement (for any reason) for a period of three (3) years.

8. MISCELLANEOUS

8.1 Severability. If any of the terms, or portions thereof, of this Agreement are invalid or unenforceable under any applicable statute or rule of law, the court shall reform the Agreement to include an enforceable term as close to the intent of the original term as possible; all other terms shall remain unchanged.

8.2 Entire Agreement. This Agreement constitutes the entire agreement between Customer and Cherwell relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, proposals and negotiations, whether written or oral, relating to the Licensed Software. Any additions to, or modifications of, this Agreement shall be binding upon the parties only if in writing and executed by a duly authorized representative of Customer and Cherwell. TERMS AND CONDITIONS OF ANY

CORRESPONDING PURCHASE ORDER OR OTHER DOCUMENT RELATING TO THE LICENSED SOFTWARE THAT ADD TO OR CONFLICT WITH THE TERMS CONTAINED IN THIS AGREEMENT SHALL BE DEEMED MATERIAL AND ARE REJECTED.

8.3 Waiver. The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further or future right under this Agreement.

8.4 Past Due Accounts. CHERWELL MAY WITHHOLD ANY APPLICABLE LICENSE KEY OR PASSWORD UNTIL ALL AMOUNTS DUE FOR THE LICENSED SOFTWARE ARE FULLY PAID.

8.5 Assignment. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective successors and permitted assigns. A party may not assign any of its rights, obligations, or responsibilities under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld, except that neither a change in control in the assigning party nor assignment to any entity (other than a competitor of the other party) that controls, is controlled by or is under common control with the assigning party, shall be deemed an assignment in violation of the foregoing; provided, however that the assigning party gives the other party written notice of any such change in control or assignment.

8.6 Choice of Law. This Agreement is governed under the laws of the state of Ohio, without regard to its conflicts of laws principles and venue will be in Franklin County, Ohio. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

8.7 Third Parties and Third Party Resellers. No person who is not a party to this Agreement has or shall have any right to enforce any term of this Agreement and no consent of any third party shall be required for any cancellation or variation of the Agreement. From time to time, Cherwell may authorize certain third parties, such as value-added resellers or solutions partners (“Partners”), to resell the Licensed Software and Maintenance and Support Services. Customer acknowledges that as between Customer and Cherwell, Partners are not authorized to modify the terms and conditions of this Agreement nor the rights granted to Customer with regard to the Licensed Software. In certain jurisdictions or markets, Customer may purchase, from the Partner (rather than Cherwell), Support Services and Professional Services to be performed by the Partner. In such case, the terms of any agreement between Customer and Partner for such services shall govern, and Cherwell shall not be liable or otherwise responsible for Partner’s performance or non-performance under such agreement. Maintenance, as described in this Agreement, shall in all cases be provided by Cherwell, subject to the terms of this Agreement.

8.8 Taxes. Unless otherwise stated on an Order form, Cherwell’s fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including without limitation value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases under this Agreement. If Cherwell has the legal obligation to remit or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to, and paid by Customer, unless Customer provides Cherwell with a valid tax exemption certificate authorized by the appropriate taxing authority. For the avoidance of doubt, Cherwell is solely responsible for taxes assessable against Cherwell based on its income, property or employees.

Signature lines for the EULA are located on the Cherwell Order Confirmation form to which the EULA is incorporated by reference.