

Master Software License Agreement and Professional Services Agreement

This Master License Agreement and Professional Services Agreement ("Third Master") is made and entered into by and between **Integrated Software Specialists, Inc.**, an Illinois corporation having an address of 1251 N. Plum Grove Rd., Suite 105, Schaumburg, IL. 60173, ("ISS"), and the **City of Toledo**, an Ohio municipal corporation having an address of One Government Center, Toledo, OH 43604, ("Customer" or "City") through Presiding Judge Joshua W. Lanzinger of Toledo Municipal Court, located Toledo, Ohio, an Ohio municipal court created by Revised Code Section 1901.01 *et seq.*

Recitals

WHEREAS, the City previously entered into a Master Software License Agreement and Professional Services Agreement on May 2, 2014, ("First Master") pursuant to Ordinance No. 104-14 that provided for the City's requirements for certain judicial administration software; and

WHEREAS, City and ISS previously entered into a Second Master as authorized by Ordinance No. 67-20 for the continued use, enjoyment, and maintenance of Licensed Property and services; and

WHEREAS, City and ISS desire to enter into Third Master as is authorized by Ordinance No. _____ for the continued use, enjoyment, and maintenance of Licensed Property and services; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, along with other good and valuable consideration, the receipt and sufficiency of which all parties mutually acknowledge, ISS and City agree as follows:

1. GENERAL SCOPE

ISS shall furnish the products and services described in this Agreement, as supplemented by the following, which are attached and made a part hereof or incorporated by reference as if fully written out and attached to this Agreement:

- Exhibit A – Software License and Professional Services Agreement
- Exhibit B – Software Maintenance and Support Agreement
- Schedule A – Investment Summary

2. TERM

This Third Master shall be effective as of the "Maintenance Effective Date" as specified in Exhibit B and shall expire five (5) years later unless terminated by either party in accordance with the provisions of this Third Master.

3. INDEMNIFICATION

A. ISS, for itself and its related entities, agents, employees, subcontractors and the agents and employees of said subcontractors, agrees to and shall indemnify, hold harmless and defend Customer, its successors, assigns, officers, employees, agents and appointed and elected officials, for any claim, cost, loss, damage or obligation (including reasonable attorneys' fees and expenses) arising out of or through ISS's, or its related entities, agents, employees, subcontractors and the agents and employees of said subcontractors, actions, performance under, or breach of the conditions of, this Third Master that result in injury to persons or damage to property wheresoever situated; excluding, however, claims arising from Customer's negligence, omission or willful misconduct and for which immunity is not provided by the Ohio

Revised Code for such negligence, omission or willful misconduct. This indemnification obligation shall not be limited in any way by the insurance requirements but shall be in addition to those requirements.

B. In any and all claims against Customer, its officers, officials, agents or employees by any employee of ISS, any subcontractor, agent and anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, ISS hereby expressly waives the immunity provided to ISS by Article II, Section 35 of the Ohio Constitution and Ohio Revised Code Sections 4123.74 and 4123.741, so that this indemnification obligation may be enforced by Customer against ISS in those instances.

4. SUBCONTRACTORS

ISS may not subcontract any part of the work required under this Third Master without Customer's written approval of each such subcontract(s), which approval shall not be unreasonably withheld. ISS shall be responsible and liable to Customer for the work of any subcontractors to the same extent as if it performed the work itself in accordance with the terms of this Third Master. Additionally, ISS shall require its subcontractor to indemnify Customer and maintain insurance for the benefit of city.

5. INSURANCE

ISS shall maintain insurance coverage at its sole cost and expense and will provide certificates of insurance to Customer, naming the City of Toledo as additional insured. The insurance will not be cancelled or terminated without thirty (30) calendar days prior written notice to Customer. Such coverage will at a minimum include commercial general liability insurance of \$2,000,000 products and completed operations aggregate limit; \$1,000,000 personal and advertising injury, bodily injury and property damage, per person/per occurrence.

6. COMPLIANCE WITH LAW

Each party agrees that it will perform its obligations in accordance with all applicable Ohio laws, rules, and regulations now or hereinafter in effect during the term hereof.

7. EQUAL EMPLOYMENT OPPORTUNITY

ISS agrees that it will not discriminate against any person because of race, ancestry, religion, color, sex, age, national origin or disability and agrees to comply with City's anti-discrimination laws and ordinances, as amended Toledo Municipal Code Sections 554.01 *et seq.*

8. INDEPENDENT CONTRACTOR

This Third Master shall not be construed as creating an employer-employee relationship, a partnership or a joint venture. ISS' services shall be those of an independent contractor. ISS agrees and understands that the Third Master does not grant any rights or privileges established for employees of the City. Moreover, ISS shall execute as requested any and all City and State forms that exist to confirm that no Public Employee Retirement Services ("PERS") will be or should be deducted from payment.

9. GOVERNING LAW/JURISDICTION/VENUE

This Third Master shall be governed by, and construed in accordance with, the laws of the State of Ohio, without giving effect to its conflict of law rules. Any litigation arising between ISS and Customer arising under or regarding this Third Master shall occur, if in the state courts, in the Lucas County court having jurisdiction thereof, or if in the federal courts, in the United States District Court for the Northern District of Ohio, Western Division.

10. WAIVER

No term or provision of this Third Master shall be deemed waived unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

11. FORCE MAJEURE

A party shall be excused for delays in the performance of its obligations hereunder to the extent due to causes beyond its reasonable control and which could not have been avoided through the exercise of reasonable care, such as acts of God, acts or omissions of civil or military authorities, fires, floods, epidemics, quarantine restrictions, war, riots, strikes, or the unavailability of necessary labor, materials, or manufacturing facilities ("Force Majeure"). The party whose performance is being adversely affected shall give timely notice to the other party and will act in good faith to resume performance as soon as is practicable.

12. ASSIGNMENT

ISS may only assign this Third Master to any subsidiary, parent company, or any successor to its interests in the subject matter with the prior written consent of Customer, which shall not be unreasonably withheld and may only assign its right to payment hereunder or grant a security interest in this Third Master or such payment right to any third party with the prior written consent of Customer, which shall not be unreasonably withheld.

13. NOTICES

Any notices given by the parties to one another in connection with this Third Master shall be given in writing and delivered in hand, via return receipt mail or express delivery service to the parties' respective addresses set forth above or to such other address as the parties may substitute by giving notice to one another in accordance with this Section.

14. CONFLICTS/SEVERABILITY

In the event of a conflict between the terms and conditions in the foregoing sections of this Contract and the terms and conditions in any of the exhibits, schedules, or other documents attached or incorporated by reference into this Third Master, the foregoing terms and conditions shall control unless Customer specifically waives such terms and conditions in writing. This Third Master may be executed in one or more counterparts, each of which shall be deemed an original but, when taken together, shall constitute one and the same document. Facsimile signatures shall in all respects have the same weight, force and legal effect and shall be fully as valid, binding and enforceable as if such signed facsimile copies were original documents bearing original signatures. In the event that any provision of this Third Master shall be held to be void or unenforceable by a court of law, such provision shall be eliminated and shall not affect the validity of any remaining provision.

15. ENTIRE THIRD MASTER/AMENDMENT

This Third Master, including all exhibits and incorporated documents and any subsequent amendments, contains all representations and the entire understanding of the Third Master between the parties. No changes to this Third Master shall be valid unless made by a written amendment executed and approved by the parties. Time is of the essence of this Contract.

16. CAPTIONS

The headings in this Third Master are for purposes of reference only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof.

17. AUTHORITY TO ACT

The signatory or signatories hereto on behalf of ISS warrant(s) and represent(s) that they and have the power and authority to enter into this Third Master and to consummate the transactions contemplated hereby on behalf of ISS and have been duly authorized to execute this Third Master.

IN WITNESS WHEREOF, ISS and Customer have caused this Third Master to be executed as of the date of the Mayor's signature listed below.

INTEGRATED SOFTWARE SPECIALISTS, INC.

(Signature) (Date)

(Print Name) (Title)

CITY OF TOLEDO

Wade Kapszukiewicz, Mayor (Date)

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

(Judge)

(Court Administrator)

APPROVED AS TO FORM:

Department of Law