

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: BI-001 **Project No.:** 200600293
Project Description: Dig Safely NY (UFPO) Ticket Management System

Item Description:

- | | | | |
|---|--|---|---------------------------------------|
| <input checked="" type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input type="checkbox"/> Other _____ | | | |

Action Requested:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute | <input checked="" type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input checked="" type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input type="checkbox"/> Other _____ | |

Approvals Needed:

APPROVED AS TO CONTENT:

- | | | |
|--|---------------------------|-----------------------|
| <input type="checkbox"/> Other (if Applicable) | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Operating Officer | <u>Russell J. Stoll</u> | Date: <u>2/4/20</u> |
| <input checked="" type="checkbox"/> Executive Engineer | <u>James J. Bonahue</u> | Date: <u>2-4-2020</u> |
| <input checked="" type="checkbox"/> Director of Administration | <u>Brandon J. Fester</u> | Date: <u>2/4/2020</u> |
| <input checked="" type="checkbox"/> Risk Manager | <u>Molly P. Musarra</u> | Date: <u>2/5/2020</u> |
| <input checked="" type="checkbox"/> Chief Financial Officer | <u>Kevin A. Frederick</u> | Date: _____ |
| <input checked="" type="checkbox"/> Legal | <u>Margaret A. Murphy</u> | Date: <u>2/5/20</u> |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|------------|---------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority | <u>TJH</u> | Date: <u>2/5/20</u> |
|--|------------|---------------------|

Remarks:

Legal determined no insurance required

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Resolution Date: _____

Item No: _____



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

February 5, 2020

To: Terrence D. McCracken, Secretary to the Authority

From: John J. Kuryak, Distribution Engineer 

Subject: Contract BI-001
Dig Safely NY (UFPO) Ticket Management System
ECWA Project No. 200600293

The following material is attached:

- Blue Authorization Form for Risk Manager and Legal Department approval. The Blue Authorization Form is requesting Board Authorization to execute the attached Service Contract.
- Service Contract for the above referenced project.

In August 2006, the Erie County Water Authority entered into an agreement with Bytronics, Inc. to use DigTrack software for our automated online Dig Safely NY (811) UFPO ticket management system. In 2017, Irth Solutions acquired Bytronics, Inc. along with the DigTrack software. Irth Solutions has informed us that the DigTrack software will no longer be available as of March 31, 2020 and they are transitioning all current DigTrack software users to an application called UtiliSphere. Our current DigTrack profile and configuration with Dig Safely NY (811) would be seamlessly imported into UtiliSphere while preserving all our historical DigTrack data.

The Authority will submit an RFP to review other vendors that provide ticket management software, but for now and given the short time frame not only to have an RFP published and the time necessary to train personnel, I recommend entering into an agreement with Irth Solutions for a one-year period terminating on March 31, 2021. I have discussed the matter with the Executive Engineer and Director of Administration, who agree with my recommendation.

If you need any further information, please do not hesitate to contact me.

JKK:jmf

Attachments

cc: R.Stoll

L.Kowalski

L.Lester

CONT-BI-001-0601



Order Form

This Order Form is submitted by irth Solutions LLC ("IRTH") to **Erie County Water Authority (Subscriber)** pursuant to, and incorporates by reference the terms and conditions of, that Master Services Agreement ("Agreement") entered into between IRTH and Subscriber dated January 13, 2020 ("Master Services Agreement"). Subscriber and IRTH have read the Master Services Agreement and acknowledge that the terms of the Master Services Agreement are incorporated by reference to this Order Form and agree to be bound by the Master Services Agreement. Capitalized terms used but not defined herein shall have those meanings ascribed to them in the Master Services Agreement. The effective date of this Order Form ("Service Effective Date") is the date below the signature of the Subscriber. Subscriber contracts for the following specific term, services and costs:

1. SERVICES. UtiliSphere™ Ticket Management

- Unlimited Ticket Management Users
- Up to 50,000 Tickets
- Up to 20 GB attachments (pictures, documents, etc.) per year
- Reports
- Mobility
- Implementation & Training – Web-Based
- Storage - 7 Years or length of term whichever is shortest

2. FEES. \$12,500.00

*Tickets over 50,000 will be charged at \$.28 per ticket

3. TERM. The initial term of this Agreement shall be twelve (12) months from the effective date hereof and thereafter will renew for subsequent twelve (12) month term on each anniversary of the Agreement Effective Date (the initial term and any renewals thereof are collectively referred to herein as the "Term").

4. SERVICE TRANSITION PERIOD. Subscriber will continue to use DigTrack until transitioning to UtiliSphere before the DigTrack Termination date of **March 31, 2020, when the software will no longer be available for customer use.**

6. AUTHORIZED USERS. The Services may only be accessed by Authorized Users. Unless otherwise approved by IRTH in writing, the Services may not be shared with or used by anyone else.

7. ENTIRE AGREEMENT; CONFLICT. This Order Form constitutes the entire agreement between the Parties and supersedes any all prior or contemporaneous written or oral agreements between the Parties with respect to the Services described herein. If this Order form and the Agreement conflict, the Agreement will control. If there is no conflict between this Statement and the Agreement, this Statement will be deemed supplemental to the Agreement. Subscriber agrees that sections 7.2, 12.1, and 12.2 if the MSA do not apply when operating within the DigTrack system.

All terms and conditions of this Order Form is agreed to by:

IRTH:

SUBSCRIBER:

IRTH SOLUTIONS LLC

Erie County Water Authority

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

† Services are billed and paid annually. Upgrade subscriptions contracted in mid-term will be pro-rated to be coterminous with service renewals.

FOR INTERNAL USE ONLY

Effective Date	Customer ID	Contract #	SoS #
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MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("AGREEMENT") GOVERNS YOUR (referred to herein as "SUBSCRIBER," "You," or "Your") ACQUISITION AND USE OF IRTH SOLUTIONS LLC (referred to herein as "IRTH," "We", "Us", or "Our") SERVICES.

IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, BY EXECUTING ANY ORDER FORM THAT REFERENCES THIS AGREEMENT, OR BY MAKING USE OF THE SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND ARE NOT AUTHORIZED TO ACCESS OR USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

It is effective between You and Us as of the date You accepted this Agreement.

TABLE OF CONTENTS

1. Definitions
2. irth Responsibilities
3. Subscriber Use of Services
4. Fees and Payment for Purchased Services
5. Proprietary Rights and Licenses
6. Confidentiality
7. Representations, Warranties, Exclusive Remedies and Disclaimers
8. Mutual Indemnification
9. Limitation of Liability
10. Terms and Termination
11. Insurance
12. General Provisions
13. Availability and Upgrades
14. Services Privacy Policy

STATEMENT OF AGREEMENT

IRTH and Subscriber hereby acknowledge the accuracy of the foregoing Background Information and hereby agree as follows:

1. **DEFINITIONS.** Unless otherwise stated in this Agreement, all of the capitalized terms in this Agreement shall have the following meanings:

- 1.1 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with You or Us. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.2 "Agreement" means this Master Services Agreement, and any amendment to this Agreement, and each Order Form incorporated herein by reference.
- 1.3 "Documentation" means the applicable Service's usage guides and policies, as updated from time to time, accessible by logging into the applicable Service

irth Solutions LLC

- 1.4 "Intellectual Property Rights" means copyright, trademark, patent, publicity, trade secret, and all other intellectual property rights.
- 1.5 "Losses" means actual or alleged claims, allegations, suits, damages, liabilities, losses, expenses, costs, including court costs, collections fees, reasonable attorneys fees, or amounts payable under any judgment, verdict, court order, or settlement.
- 1.6 "Order Form" means an ordering document or online order specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.
- 1.7 "Purchased Services" means Services that Subscriber, or an Affiliate of Subscriber, purchases through an Order Form.
- 1.8 "Services" means the products and services that are made available online by IRTH as described in the Documentation.
- 1.9 "Subscriber Data" means all documents, information, and other data uploaded to the Services by You or Your Users or on behalf of You or Your Users.
- 1.10 "User" means an individual who is authorized by Subscriber to use a Service, for whom Subscriber has ordered the Service, and to whom Subscriber has supplied a user identification and password. Users may include, for example, employees, consultants, contractors and agents.
- 1.11 "Service Credit" means:
 - 1.1 If the Uptime Percentage is less than 99.9% but greater than or equal to 99.0%, Subscriber shall be eligible for a monetary credit equal to the value (as determined by the Fees) of three (3) days of Service.
 - 1.2 If the Uptime Percentage is less than 99.0% but greater than or equal to 95.0%, Subscriber shall be eligible for a monetary credit equal to the value (as determined by the Fees) of seven (7) days of Service.
 - 1.3 If the Uptime Percentage is less than 95.0%, Subscriber shall be eligible for a monetary credit equal to the value (as determined by the Fees) of fifteen (15) days of Service.
- 1.12 "Uptime Percentage" means the total number of minutes in a Term minus the number of minutes of Unscheduled Downtime suffered in a Term, divided by the total number of minutes in a Term.
- 1.13 "Unscheduled Downtime" shall mean any interruption of one (1) minute or more in the availability of the Services to Subscriber (as measured by IRTH on the server side), wherein said interruption is not due to scheduled software or hardware upgrades as set forth in Section 12.2 below.

2. OUR RESPONSIBILITIES

- 2.1 Provision of Purchased Services. IRTH will (a) make the Purchased Services available to Subscriber pursuant to this Agreement and one or more Order Form, (b) provide IRTH's standard support for the Purchased Services to Subscriber at no additional charge, (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (for which We will give You reasonable advance notice), and (ii) any unavailability caused by emergency maintenance or circumstances beyond our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, or denial of service attack.
- 2.2 Protection of Subscriber Data. IRTH will collect, use, disclose and protect Subscriber Data as set forth in the Services Privacy Policy, which is hereby incorporated into this Agreement by reference.

3. SUBSCRIBER USE OF SERVICES

- 3.1 Subscriptions. Unless otherwise provided in an Order Form, (a) Services are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.
- 3.2 Usage Limits. Some Services are subject to usage limits, including, for example, the quantities specified in an Order Form. Unless otherwise specified, (a) a quantity in the Order Form refers to Users, and the Service may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Service. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services promptly upon Our request, and/or pay any invoice for excess usage in accordance with Section 4.2 below.
- 3.3 Subscriber Responsibilities. Subscriber will (a) be solely responsible for providing and maintaining equipment, software, and connections to the Internet as necessary to enable it and its Users to access the Services, (b) be solely responsible for each User's compliance with this Agreement, (c) be solely responsible for ensuring the security, confidentiality, and proper use, of all of User passwords and other credentials, (d) be solely responsible for all Losses arising from the use of User credentials by any individual (whether proper, improper, lawful, unlawful, authorized, or unauthorized), (e) be solely responsible for the accuracy, quality and legality of Subscriber Data and the means by which You acquired the Subscriber Data, (f) prevent unauthorized access to or use of Services through User credentials or any equipment, software or connections under Subscriber's control, (g) notify Us promptly of any actual or suspected unauthorized access to or use of any Service, and (h) use Services only in accordance with the Documentation and applicable laws and government regulations.
- 3.4 Usage Restrictions. Subscriber will not (a) make or attempt to make any Service available to, or use or attempt to use any Service for the benefit of, anyone other than Subscriber, (b) sell, resell, license, sublicense, distribute, rent, lease, or otherwise share the benefits of any Service, whether or not consideration is exchanged, (c) use or attempt to use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use or attempt to use a Service to store or transmit malicious code, (e) intentionally or unintentionally interfere with or disrupt the integrity or performance of any Service, (f) gain or attempt to gain unauthorized access to any Service or its related systems or networks, (g) intentionally or unintentionally permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit or otherwise violates this Agreement, (h) copy a Service or any part, feature, function or user interface thereof, (i) frame or mirror or attempt to frame or mirror any part of any Service, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (j) access any Service in connection with any efforts to build or design a competitive product or service, (k) reverse engineer or attempt to reverse engineer any Service, (l) modify or make any derivative uses of a Service, or any part thereof, (m) use any manual or automated data mining or similar data gathering or extraction method on any webpage, screen or other content contained in, generated by, or otherwise relating to a Service, or (n) intentionally or unintentionally permit any User to access or use or attempt to access or use the Services in a manner that violates this Agreement.

4. FEES AND PAYMENT FOR PURCHASED SERVICES

- 4.1 Fees. Subscriber will pay all fees specified in all executed Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, (iii) quantities purchased cannot be decreased during the relevant subscription term and (iv) IRTS shall have the right to adjust fees for the Services on an annual basis.
- 4.2 Invoicing and Payment. We will invoice You in advance and otherwise in accordance with the applicable Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the

invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

- 4.3 **Overdue Charges.** If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals on payment terms shorter than those specified in Section 4.3.
- 4.4 **Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our Services is 30 or more days overdue, We may, without limiting our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our Services to You until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 13.1, before suspending any Services to You.
- 4.5 **Payment Disputes.** We will not exercise our rights under Section 4.4 or Section 4.5 above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 4.6 **Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with the Purchased Services hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 4.7, We will invoice You and You will pay that amount unless You provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.
- 4.7 **Future Enhancements.** You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.
- 4.8 **Monitoring.** IRTH may, at its sole discretion, monitor Subscriber's use of the Services – including Subscriber's compliance with any contractual usage limits, the identity and employment status of its Users, the use and protection of User credentials, and details regarding User access and usage including specific information added or accessed by Users and whether specific Users' access is and has been limited to the designated account structure – throughout and at any time during the term of the Agreement. Subscriber hereby consents to such monitoring, and hereby represents and warrants that it has provided all necessary disclosures to and acquired all necessary approvals from all Users to ensure such Users' informed consent to the same.

5. PROPRIETARY RIGHTS AND LICENSES

- 5.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all of our right, title and interest in and to the Services and all associated software, including all of our related Intellectual Property Rights. No rights are granted to You hereunder other than as expressly set forth herein.
- 5.2 **License by You to Host Subscriber Data.** You hereby grant Us and our Affiliates for the full duration of the Term a worldwide, royalty-free, sublicenseable, limited license to host, copy, transmit, distribute, share, backup, store, and display all of your Subscriber Data: (a) as necessary for Us to provide the Services in accordance with this Agreement; (b) as necessary for Us to prevent or address service or technical problems, (c) as compelled by law in accordance with Section 6.3 below, or (d) as You authorize in writing. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to any Subscriber Data.
- 5.3 **License by You to Use Feedback.** You grant to Us a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or any User relating to the operation of the Services.

6. CONFIDENTIALITY

- 6.1 Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes your Subscriber Data; our Confidential Information includes the Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology

and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

- 6.2 Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those employees and contractors (including employees and contractors of Affiliates) who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 6.2.
- 6.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

7. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

- 7.1 Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 7.2 Our Warranties. Except as set forth in Section 4.1, we warrant that (a) this Agreement, any executed Order Form(s), and the Documentation accurately describe the applicable administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of your Subscriber Data, see attached "Services Privacy Policy", (b) we will not materially decrease the overall security of the Purchased Services during a subscription term, (c) the Purchased Services will perform materially in accordance with the applicable Documentation, and (d) we will not materially decrease the functionality of the Purchased Services during a subscription term. For any breach of an above warranty, your exclusive remedies are those described in Sections 10.3 and 10.4.
- 7.3 Subscriber Warranties. You hereby represent and warrant that: (i) You and your Users have obtained all necessary permissions and documents, including consent forms, licenses, agreements, and certifications, necessary to ensure that We can possess, have custody of, use, store, copy, distribute, and modify Subscriber Data in a manner consistent with the law and the provisions of this Agreement; (ii) You and your Users will at all times comply with all applicable laws, ordinances, codes, and regulations – including all applicable laws for processing and transferring Subscriber Data to Us in connection with the Services – in

the performance of its obligations and receipt of Services under the Agreement; and (iii) the Subscriber Data does not and shall not infringe upon or otherwise violate any third party Intellectual Property Rights.

- 7.4 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

8. MUTUAL INDEMNIFICATION

- 8.1 Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party's Intellectual Property Rights (a "Claim Against You"), and we will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 7.2, (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Your breach of this Agreement.
- 8.2 Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that your Subscriber Data, or Your use or any User's use of any Service in breach of this Agreement, infringes or misappropriates a third party's Intellectual Property Rights or violates applicable law (a "Claim Against Us"), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.
- 8.3 Exclusive Remedy. This Section 8 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 8.

9. LIMITATION OF LIABILITY

- 9.1 Limitation of Liability. IRTH'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID BY SUBSCRIBER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT GIVING RISE TO SUCH LIABILITY. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. IRTH shall not be liable to Subscriber or any third party for: (i) any Losses that Subscriber or any User may suffer arising out of the use of, the inability to use, interruptions to, impairments to, or loss of use of any Services; (ii) any loss, failure, corruption, or inaccuracy of data or communications, including those related to Subscriber Data; (iii) any Losses related to Subscriber Data; (iv) interoperability, or lack thereof, of specific Subscriber or User applications or software; (v) Losses arising from any unauthorized access to Subscriber Data; or (vi) the cost of procurement of substitute goods, services, or technology.
- 9.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL,

INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

10. TERMS AND TERMINATION

- 10.1 Term of Agreement. This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated (the "Term").
- 10.2 Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. We may, at our sole discretion and without notice, change the per-unit pricing at the end of any annual renewal, including if Your subscription automatically renews; all pricing changes will be effective upon [JP1]renewal and thereafter.
- 10.3 Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 10.4 Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with Section 10.3, We will refund to You any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 10.3, You will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 10.5 Your Data Portability and Deletion. Upon request by you made within 30 days after the effective date of termination or expiration of this Agreement, we will make Subscriber Data available to You for export or download as provided in the Documentation. After that 30-day period, We will have no obligation to maintain or provide Subscriber Data, and will thereafter delete or destroy all copies of Subscriber Data in Our systems or otherwise in Our possession or control as provided in the Documentation, unless legally prohibited.
- 10.6 Surviving Provisions. The Sections titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Your Data Portability and Deletion," and "General Provisions" will survive any termination or expiration of this Agreement.

11. INSURANCE

- 11.1 Insurance. IRTH shall provide and maintain insurance against losses or claims which may arise out of or result from IRTH's performance or obligation to perform under this Agreement. IRTH shall provide the following coverage's to meet Subscriber's insurance requirements: (a) Commercial General Liability with Broad Form Liability Endorsement, in the amount of \$2,000,000; (b) Vehicular Liability Insurance, in the amount of \$1,000,000; (c) Umbrella Liability with amount of \$5,000,000. (d) Workers' Compensation, including the following: Statutory Coverage applicable in the state where the Services are performed and Employers Liability Coverage "B" (or stop gap coverage), in the amount of \$1,000,000; and (e) Professional Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence; (f) EDP Errors and Omissions Insurance in the amount of \$2,000,000. Before any Services begin, IRTH must furnish properly executed certificates of insurance or endorsements naming Subscriber as an additional insured on IRTH's Commercial General Liability policy. Subscriber shall be furnished at least thirty (30) days prior notice of any non-renewal and/or cancellation and/or reduction in limits or material change in any of the required coverages. Whenever IRTH shall have Subscriber's property in its possession, IRTH shall be deemed the insurer thereof and shall be responsible for such property until its return to and acceptance by Subscriber. If IRTH's insurance is canceled because IRTH failed to pay its premiums or any part thereof, or if IRTH fails to provide and maintain certificates as set forth herein, Subscriber shall have the right, but shall not be obligated, to withhold payment of IRTH's invoices until Subscriber has received satisfactory

evidence of IRTH's payment of insurance premiums or pay such premium to the insurance company or to obtain such coverage from other companies and to deduct such payment from any sums that may be due or become due to IRTH, or to seek reimbursement for said payments from IRTH, which sums shall be due and payable immediately upon receipt by IRTH of notice Subscriber.

12. AVAILABILITY AND UPGRADES

- 12.1 Uptime Commitment. IRTH will use commercially reasonable efforts to maintain availability of the Services to Subscriber at least 99.9% of the time during any continuous twelve (12) month period throughout the Term ("Uptime Commitment"). If IRTH does not meet the Uptime Commitment, and if Subscriber meets all of its obligations under this Agreement, Subscriber will be eligible to receive a Service Credit and such Service Credit shall be Subscriber's sole and exclusive remedy for any failure by IRTH to meet the Uptime Commitment. The maximum Service Credit to be issued by IRTH to Subscriber for all Unscheduled Downtime that occurs in a one-year Term shall not exceed the monetary credit equal to the value of fifteen (15) days of Service. In order to receive any of the Service Credits, Subscriber must notify IRTH in writing within thirty (30) days after expiration of each Term. Failure to comply with this requirement will forfeit Subscriber's right to receive a Service Credit. The Uptime Commitment does not apply to any performance issues: (i) caused by factors described in the "Force Majeure" clause of this Agreement; (ii) caused by performance issues with the Internet; (iii) that resulted from Subscriber's equipment, third party equipment, or both; or (iv) resulting from software or hardware upgrades as set forth in Section 12.2 below.
- 12.2 Software Upgrades and Maintenance Releases. IRTH may provide Subscriber with Upgrades, Maintenance Releases, or both, for software associated with the Services. Subscriber agrees to timely implement and use the most recent Upgrade provided by IRTH. Normal software or hardware upgrades are scheduled for nights and weekends, Eastern Standard Time, and designed to minimize interruption to the Service. Subscriber will be notified of such interruptions in advance. In the event that an unscheduled interruption occurs, IRTH will apply the appropriate use of internal and external resources to resolve the problem and return the Service to availability as soon as reasonably possible. During these scheduled and unscheduled interruptions, Subscriber may be unable to transmit and receive data. Subscriber agrees to cooperate with IRTH during the scheduled and unscheduled interruptions.

13. GENERAL PROVISIONS

- 13.1 Notices. Notices given by Us to Subscriber will be given by email, by conventional mail, or by courier service. Notices will be sent to the email address or mailing address Subscriber provides to Us as part of the registration process, or to updated addresses which Subscriber provides to Us by notice given consistent with this provision. Notices given by Subscriber to Us must be given by email and addressed to administration@irth.com, by conventional mail, or courier service sent to IRTH Solutions LLC, 5009 Horizons Drive, Columbus, Ohio 43220, or by facsimile sent to 1-614-784-8018, or such updated addresses which We may provide Subscriber by notice given consistent with this provision. Notices will be deemed given the first business day after sending by email (provided that email shall not be sufficient for notices of termination or a claim for indemnification), the second business day after mailing, the first business day after delivery by courier service, or the first business day after sending by confirmed facsimile.
- 13.2 Governing Law and Venue. The validity, construction and interpretation of this Agreement and the rights and duties of the parties hereto shall be governed by the internal laws of the State of Ohio, excluding its principles of conflict of laws. Litigation respecting the terms or enforcement of this Agreement shall only be brought in a court of competent jurisdiction situated in Franklin County, Ohio
- 13.3 Entire Agreement. This Agreement, the Services Privacy Policy, and each Order Form, is the entire agreement between You and Us regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

No modification, amendment or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form; (2) this Agreement; and (3) the Documentation.

- 13.4 **Assignment.** Except as set forth below, Subscriber shall not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without Our prior written consent (not to be unreasonably withheld). We may assign any of Our rights or obligations hereunder without Subscriber's prior written consent. Either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent, to an Affiliate of such party or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if Subscriber is acquired by, sells substantially all of its assets, to, or undergoes a change of control in favor of, a direct competitor of Us, then We may immediately terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 13.5 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 13.6 **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 13.7 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

[Signature Page to Master Services Agreement]

This Agreement has been duly executed by the duly authorized representatives of the parties on the date set forth above.

IRTH:

IRTH SOLUTIONS LLC

By: _____

Name: _____

Its: _____

SUBSCRIBER:

Erie County Water Authority

By: _____

Name: _____

Its: _____

Date: _____

Services Privacy Policy

irth Solutions LLC

This Services Privacy Policy (the "Privacy Policy") governs the manner in which irth Solutions LLC ("Company," "we", or "us") collects, uses, maintains and discloses information collected from users (each, a "User," or "you") of the products and services we make available online, including our website(s) ("Services"). By using these Services, you signify your acceptance of this Privacy Policy.

Personally identifiable information

We collect personally identifiable information from Users in a variety of ways, including, but not limited to, when Users visit Services, register through the Services, fill out forms accessible by us, provide information through the Services, or otherwise make use of activities, services, features or resources we make available on our Services. Users may be asked for, as appropriate, name, email address, mailing address, phone number, and other information.

We will collect personal identification information from Users only if they voluntarily submit such information to us. Users can refuse to supply personally identification information; however, refusing to provide personally identifiable information may prevent a User from using the Services or otherwise limit User's ability to engage in certain activities on our website.

Other information

We automatically collect other information about Users whenever they interact with our Services. This automatically collected information may include the browser name, the type of computer, the IP address, the domains from which Users are referred to the Services, and technical information about a User's means of connection to our Services, such as the operating system and the Internet service providers utilized and other similar information.

Web browser cookies

Our Services may use "cookies" to enhance our Users' experiences. Your web browser places cookies on your hard drive for record-keeping purposes and to identify you should you visit the Services again. You may choose to set your web browser to refuse cookies, or to alert you when cookies are being sent. If you reject cookies, you may still use the Services but please note that some parts of the Services may be limited or not function properly.

How we use collected information

We collect and use our Users' information for the following purposes:

- *To run and operate our Services and other services*

We use your information and share it with select third parties in order to display content on the Services correctly and to otherwise make the Services function properly. We also use your information and share it with select third parties in order to maintain and develop the Services and in connection with other services we provide to you.

- *To improve customer service*

Information you provide helps us respond to customer service requests and support needs more efficiently.

- *To research our services*

We may use information in the aggregate to understand how our Users as a group use the services and resources provided on our Services and to evaluate the effectiveness of the Services and our marketing and business efforts.

- *To improve our Services*

We use User information and feedback and share it with select third parties to improve our products and services.

- *To send Users information they agreed to receive about topics we think will be of interest to them.*
We use User information and share it with select third parties on an ongoing basis to share details, news, and marketing information about our services and the services of select third parties.

- *To send periodic emails*
We may use your email address to send you information and updates or to respond to your inquiries, questions, and/or other requests.

We may also disclose any collected information, including personally identifiable information, if: (1) the disclosure is necessary or useful to our provision of services; (2) we believe in good faith that disclosure is necessary to protect our rights, interests, or property; (3) we are acting in good faith to protect your safety or the safety of others, to investigate fraud, or to respond to a government request; (4) we believe in good faith the disclosure is required by law, such as to comply with a subpoena, search warrant, court order, or similar legal or administrative process; and (5) a third party purchases or otherwise acquires us or the Services, in which case your information will likely be among the assets transferred.

How we protect your information

We have adopted appropriate data collection, storage and processing practices and security measures to help protect against unauthorized access, alteration, disclosure or destruction of your personal information, username, password, transaction information and data stored in connection with our Services. Nevertheless, we cannot guarantee and do not warrant the security of any information submitted through or stored in connection with the Services.

Sharing your personal information

In addition to the uses and disclosures described above, we may share information with third party service providers to help us operate our business and the Services or administer activities on our behalf, such as sending out newsletters or surveys.

Electronic newsletters

If a User decides to join our mailing list, they may receive emails that may include company news, updates, related product or service information, etc. If at any time the User would like to unsubscribe from receiving future emails, we include detailed unsubscribe instructions at the bottom of each email or User may contact us via the contact information listed below.

Third party websites

Users may find advertising or other content on our Services that links to the sites and services of our partners, suppliers, advertisers, sponsors, licensors and other third parties. We do not control the content or links that appear on these other websites and are not responsible for the practices employed by websites linked to or from our Services. Browsing and interaction on any other website, including websites which have a link to our Services, is subject to that website's own terms and policies, including the privacy policy.

Changes to this privacy policy

We have the discretion to update this privacy policy at any time. When we do, we will post a notification on the Services. We encourage Users to frequently check this page for any changes to stay informed about how we are helping to protect the personal information we collect. You acknowledge and agree that it is your responsibility to review this privacy policy periodically and become aware of modifications. Your continued use of the Services following the posting of changes to this policy will be deemed your acceptance of those changes.

Children's Privacy

The Services are not designed to solicit or collect data from individuals under the age of 13. In accordance with the Children's Online Privacy Protection Act (COPPA), we do not knowingly collect or store any personal information, even in aggregate, about children under the age of 13. If we discover we have received any information from a child under the age of 13 in violation of this policy, we will delete that information within a reasonable time. If you believe that we have any information from or about anyone under the age of 13, please contact us at the contact points specified below.

Controlling and Updating Your Personally Identifiable Information

If you believe that the Services contain information about you that needs to be updated or corrected, you can update that information by contacting us at the contact information below.

Your California Privacy Rights

Under California's "Shine the Light" law, California residents who provide personal information in obtaining products or services for personal, family, or household use are entitled to request and obtain from us once a calendar year information about the customer information we shared, if any, with other businesses for their own direct marketing uses. If applicable, this information would include the categories of customer information and the names and addresses of those businesses with which we shared customer information for the immediately prior calendar year (e.g., requests made in 2013 will receive information regarding 2012 sharing activities).

To obtain this information in connection with information collected through the Services, please send an email message to customersuccess@irthsolutions.com with "Request for California Privacy Information" in the subject line and in the body of your message. We will provide the requested information to you at your e-mail address in response.

California Do Not Track Disclosures

We do not collect personally identifiable information about users' online activities over time and across third-party web sites or online services. For this reason, at this time, the Services do not respond to "do not track" signals. Third parties may collect personally identifiable information through the Services as described in this Privacy Policy.

Contacting us

If you have any questions about this Privacy Policy, the practices of the Services, or your dealings with the Services, please contact us at customersuccess@irthsolutions.com.