

MASTER SERVICES AGREEMENT AND TERMS OF SERVICE

Customer Name:	City of Olmsted Falls (“You” or “Customer”)
IT Services Provider:	Blue Technologies Smart Solutions LLC. (“We” or “Dealer”)
Effective Date:	01/01/2021

1. **Applicability.** This Master Services Agreement (“MSA”) sets forth the terms and conditions under which Dealer will provide and You will accept the IT Services (“Services”) described in any IT Services Purchase Order (“Order”) executed by the parties. Each Order shall set forth the Services to be performed and the related fees. This MSA, the Order and all Attachments thereto are hereby incorporated herein and made a part hereof. (“collectively the Contract Documents”).

2. **Term and Termination.** (a) Unless terminated earlier in accordance with (b) below, the initial term of this MSA shall commence on the Effective Date and terminate thirty-six (36) months thereafter. This MSA shall automatically renew for successive one (1) year terms unless either party provides the other with sixty (60) days written notice of termination prior to the expiration of the then current term.

(b) Either party may terminate this MSA (including any and all Schedules) at any time if the other party fails to cure any material breach of this MSA within ninety (90) days after written notice of such breach delivered. Termination is not an exclusive remedy. The exercise by either party of any remedy under this MSA will be without prejudice to any other legal or equitable remedies it may have.

(c) If this MSA terminates for any reason, then all relevant rights and licenses that have been granted to CUSTOMER associated therewith including without limitation access to the applicable DEALER Services shall terminate. Further, CUSTOMER and DEALER will destroy or return to the other party all copies of Confidential Information of the other party; provided, however, Sections 3(b), 4, 5, 6, 9 and 11 shall survive any expiration or termination of this MSA for the maximum period allowed by law.

3. **Limited Warranty:** (a) Dealer warrants for a period of thirty (30) days following delivery (“Warranty Period”) that all Services shall be performed in a professional manner in accordance with generally applicable industry standards. Dealer’s sole liability (and Customer’s exclusive remedy) for any breach of this warranty shall be for Dealer to re-perform any deficient Services, or, if We are unable to remedy such deficiency within sixty (60) days after written notice thereof to void the invoice for the deficient Services. Dealer shall have no obligation with respect to a warranty claim: (i) if Customer notifies Dealer of such claim after the Warranty Period expires, (ii) if Customer’s claim is the result of third-party hardware or software failures; (iii) Customer’s misuse of the Services, or (iv) is otherwise caused by factors outside of Dealer’s control.

(b) THIS SECTION 3 IS A LIMITED WARRANTY, AND SETS FORTH THE ONLY WARRANTIES MADE BY DEALER. DEALER MAKES NO OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR ANY WARRANTIES REGARDING THE PERFORMANCE OF ANY SOFTWARE OR HARDWARE PROVIDED OR INSTALLED BY DEALER. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE WARRANTY PERIOD.

4. **LIMITATION OF LIABILITY:** DEALER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER

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INCLUDING, WITHOUT LIMITATION, DAMAGES FOR INTERRUPTION OF SERVICES, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, OR LOSS OR INCREASED EXPENSE OF USE, WHETHER IN AN ACTION IN CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR STRICT LIABILITY, EVEN IF DEALER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES. DEALER SHALL NOT BE RESPONSIBLE FOR PROBLEMS THAT OCCUR AS A RESULT OF CUSTOMER'S USE OF ANY THIRD-PARTY SOFTWARE OR HARDWARE.

IN NO EVENT SHALL THE AMOUNT CUSTOMER MAY RECOVER FROM DEALER UNDER THE CONTRACT DOCUMENTS ON ANY THEORY OF LIABILITY EXCEED THE LESSER OF CUSTOMER'S ACTUAL DIRECT PROVABLE DAMAGES OR THE TOTAL PAYMENTS CUSTOMER HAS MADE FOR THE SERVICES IN THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE LIMITATIONS SET FORTH IN THIS SECTION 4 SHALL NOT APPLY TO BODILY HARM OR DAMAGE CAUSED TO TANGIBLE PROPERTY CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF ALL COVERED.

5. **Confidential and Proprietary Information:** Each party agrees that all know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"). Except as may be necessary to perform its obligations under this Agreement, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information that: (i) was known to it prior to receipt of the Confidential Information; (ii) is publicly available; (iii) is rightfully obtained by the Receiving Party from a third party; (iv) is independently developed by

employees of the Receiving Party; or (v) is required to be disclosed pursuant to a regulation, law or court order. The obligations of confidentiality herein shall expire one (1) year after the expiration or termination of this MSA.

6. **Indemnification:** Customer will defend, and/or settle, any third party claim or suit brought against Dealer or its employees, agents, officers, directors, shareholders or contractors ("Indemnified Parties") caused by the actions or omissions of Customer arising out of or related to: (i) the use or transmission of Customer Data; (ii) the loss, theft or misuse of passwords and/or login information used to access any administrative login or user accounts; (iii) violation of Regulatory Requirements applicable to Customer's business operations; or (iv) claims based on software licensing violations, copyright infringement, trademark and patent infringement. Customer will pay all damages finally awarded by a court of competent jurisdiction or agreed to in settlement by Customer attributable to such claim.

7. **Independent Contractor:** The parties to this MSA are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

8. **Assignment:** Customer may not assign any part of the Contract Documents without Dealer's prior written consent. Any purported assignment in violation of this section shall be void.

9. **Disputes; Governing Law:** (a) Except for a breach or threatened breach of Section 5 or 11, in the event of a dispute between the parties over any matter relating to this MSA ("Dispute"), each party agrees to use good faith efforts to resolve the Dispute by informal means through discussions and meetings with the other party.

(b) If the parties are not able to informally resolve a Dispute within thirty (30) days (or such longer period as is mutually agreed to between the parties), then either party may

MASTER SERVICES AGREEMENT AND TERMS OF SERVICE

proceed with such other legal remedies as the party deems appropriate under the circumstances. Except as otherwise provided in the Contract Documents, if any claim, suit, or other proceeding is instituted to compel compliance with or remedy the breach of this MSA, then the prevailing party will be awarded all reasonable litigation expenses, including attorney's fees, in addition to any other remedies available.

(c) Each of the parties recognizes that the damages which will arise out of a breach of Section 5 or Section 11 are of a special, unique and extraordinary character, and that monetary damages alone are an inadequate remedy. Either party may therefore seek specific performance, including injunctive relief, for a breach of Section 5 and Dealer in the event of breach of Section 11.

(d) Notwithstanding the place where this MSA may be executed by either party, this MSA is governed by the laws of the State of Ohio, without giving effect to its principles of conflicts of law. The parties herein agree to submit to jurisdiction and venue exclusively in the State and Federal Courts located in Cleveland, Ohio for resolution of all disputes and causes of action arising out of this MSA.

10. **Counterparts.** This MSA may be executed in counterparts, all of which taken together shall constitute one single agreement between the parties. A facsimile or PDF transmission of this MSA's executed signature page constitutes due and proper execution of this MSA by the party signing that page.

11. **Non-Solicitation.** Customer agrees during the Term of this MSA and, for a period of twenty-four (24) months thereafter, Customer will not directly or indirectly, solicit, recruit, contract with or employ any employee or any subcontractor of Dealer without Dealer's prior written consent. Customer agrees that if it hires or contracts with any employee or subcontractor of Dealer during the period set forth above without prior written consent, it shall be

presumed that Customer solicited the employee or subcontractor and Customer shall pay to Dealer, as liquidated damages and not as a penalty, an amount equal to the greater of \$75,000 or 100% of the annual salary paid to that employee by Dealer or its subcontractor.

12. **Notices:** Any notices hereunder shall be in writing to the notice address set forth below and shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent certified or registered U.S. mail (return receipt requested); or (iii) one day after it is sent if by next day delivery by a major commercial delivery service.

13. **Complete Understanding; Modification:** The Contract Documents constitute the full and complete understanding and agreement between the parties and supersede all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by both parties.

14. **Waiver and Severability:** Waiver or failure by either party to exercise in any respect any right provided for in the Contract Documents shall not be deemed a waiver of any further right thereunder. If any provision of the Contract Documents is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of the Contract Documents shall continue in full force and effect.

15. **Force Majeure:** Neither party shall be liable to the other for any delay or failure to perform any obligation under the Contract Documents (except for a failure to pay fees) if the delay or failure is due to unforeseen events which are beyond the reasonable control of such party, such as strikes, blockade, war, terrorism, riots, or natural disasters.

MASTER SERVICES AGREEMENT AND TERMS OF SERVICE

Accepted and agreed to as of the Effective Date by the authorized representative of each party:

Customer: City of Olmsted Falls	Dealer: Blue Technologies Smart Solutions, LLC.
Authorized Signature: _____	Authorized Signature: _____
Name: <u>James P. Graven</u>	Name: _____
Title: <u>Mayor</u>	Title: _____
Notice Information: Address: 26100 Bagley Road Olmsted Falls, Ohio 44138 Phone: <u>(440) 235-5550</u>	Notice Information: Address: 5885 Grant Ave. Cleveland, OH 44105 Phone: <u>216-271-4800</u>
Primary Contact Name: _____	Primary Contact Name: <u>Paul Hanna</u>
Email: _____	Email: <u>phanna@btohio.com</u>