

## **AGREEMENT TO PROVIDE COMPUTER CONSULTING SERVICES**

This Agreement, dated March 12, 2015, is between Wheaton Park District, hereinafter referred to as "Client", and Enteralogix Corporation d/b/a Ispera Government Systems, hereinafter referred to as "Ispera".

WHEREAS, both parties desire that Client shall retain Ispera to perform certain services as defined in a Statement of Work;

SO THEREFORE, in consideration of the obligation of the Client to pay Ispera, and in considerations of the other terms, covenants, and conditions hereof, Client and Ispera agree as follows;

### **Section 1. Term**

The term of this Agreement shall commence on the date stated above and shall continue for a period of 90 days. Either party may terminate this Agreement with thirty (30) days prior written notice. Termination of this Agreement shall not relieve Client of its obligation to pay Ispera for all work performed hereunder through the date of such termination.

### **Section 2. Services To Be Provided**

Ispera agrees to provide to Client, under the terms and conditions of this Agreement, the mutually agreed upon consulting services which will be described on one or more Statements of Work which will become part of this Agreement. All work to be performed by Ispera shall be documented in a Statement of Work signed by the authorized representatives of both parties.

Client will be responsible for the security of its proprietary and confidential information and for maintaining a procedure for reconstruction of lost or altered files, data or programs.

### **Section 3. Relationship of Parties**

It is expressly understood and agreed that the personnel furnished by Ispera to perform services for Client hereunder shall be and shall remain Ispera's employees or agents. Ispera and all personnel furnished hereunder shall be in an independent contractor relationship to Client.

### **Section 4. Solicitation and Hiring**

During the term of this Agreement and for one hundred eighty (180) days after the termination thereof, neither party will solicit, contract directly or indirectly or hire any employee of the other party. If an individual leaves the employment of Ispera or Client, the other party may employ them after a period of ninety (90) days has elapsed. Should either party violate this Section then they shall make payment as a means of restitution equal to fifty (50) per cent of the individual's annual salary.

### **Section 5. Payment**

Ispera shall invoice Client after every two (2) week period of service. Such invoices will be subject to the provisions of the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 et seq. Client is a unit of local government and, as such, is exempt from Illinois sales and use taxes.

### **Section 6. Proprietary Interest and Confidentiality**

Ispera recognizes that during the term of this Agreement there may be required access to information which is confidential or proprietary to the Client. Ispera agrees that it shall require its employees to agree that all such confidential or proprietary information disclosed by the Client to Ispera shall remain strictly confidential. Confidential information shall mean all technical or business information of a proprietary nature (whether patentable, copyrightable, or otherwise) that at the time of disclosure to Ispera is not known by Ispera and is unpublished. The above notwithstanding, any and all data which Client stores in Ispera's system are considered confidential. Ispera and its employees shall use the same care to safeguard the Client's confidential information as it does to its own. If, at any time,

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Ispera or its employees become aware that any of Client's confidential or proprietary information has been released or disclosed, Ispera shall notify Client immediately. Ispera's obligation under this paragraph shall survive the terms of this Agreement.

**Section 7. Rights in Data**

Ispera agrees that it will not claim any right, title, or interest in any such software written by Ispera on the Client's premises for the Client's use. In addition Ispera acknowledges and agrees that any software shall be considered and treated as work for hire and shall be the exclusive property of the Client. Ispera agrees that it will not claim any rights, title, or interest in any such software and will not distribute copies of any such software to any other person or entity during the term of the Agreement and after termination of this Agreement.

**Section 8. Infringement of Software**

The Client warrants and represents that all manufacturer supplied and other non-Client owned software in use at the Client's installation has been procured by the Client under valid licenses from the owner of the software and that the Client shall not, during the term of this Agreement be in default under any such license. The Client shall indemnify and hold Ispera harmless from and against any loss, cost, expense (including, but not limited to, reasonable attorney's fees and costs), liability, judgment, or claim to the extent resulting from the actual or claimed violations or breaches of the foregoing representations and warranties

**Section 9. Insurance and Indemnification**

**INSURANCE**

**a. Commercial General and Umbrella Liability Insurance.**

Ispera shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 for each occurrence.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Client shall be included as additional insured under the CGL, using ISO additional insured endorsement CG 20 11 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Client.

**b. Business Auto and Umbrella Liability Insurance.**

Ispera shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any auto, including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

**c. Workers Compensation Insurance.**

If applicable, Ispera shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 for each accident for bodily injury by accident or

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\$1,000,000 for each employee for bodily injury by disease.

d. General Insurance Provisions.

(1) Evidence of Insurance.

Prior conducting any activity permitted under this agreement, Ispera shall furnish the Client with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the Client prior to the cancellation or material change of any insurance referred to therein. Written notice to the Client shall be by certified mail, return receipt requested.

Failure of the Client to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Client to identify a deficiency from evidence that is provided shall not be construed as a waiver of Ispera's obligation to maintain such insurance.

The Client shall have the right, but not the obligation, to prohibit Ispera from performing work under this Agreement until such certificates, or other evidence that insurance has been placed in complete compliance with these requirements, is received and approved by Client.

Failure to maintain the required insurance may result in termination of this Agreement, at the Client's option.

Ispera shall provide certified copies of all insurance policies required above within 10 days of the District's written request for said copies.

(2) Acceptability of Insurers.

For insurance companies, which obtain a rating from A. M. Best, a policy rating shall be no less than an A-, and the financial rating shall be no less than VII, using the most recent edition of the A. M. Best Key Rating Guide. If the Best rating is less than an A-; VII or a Best's rating is not obtained, the District has the right to reject insurance written by an insurer it deems unacceptable.

(3) Cross-Liability Coverage.

If Ispera's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

**INDEMNIFICATION**

To the extent allowed by law Ispera agrees to defend, indemnify, and hold Client harmless from and against all claims, suits, liabilities, costs and expenses, including reasonable attorney's fees, for any injury, damage or loss to persons, including death, whether they be third persons or employees of either of the parties hereto, or injury, damage or loss of property which arise out of the acts or omissions of Ispera, its employees, officers, and agents, and related to its performance of this Agreement. This indemnity shall survive the termination of this Agreement and shall not apply to any injury, damage or loss caused in whole by the negligence of Client, or willful acts of Client.

To the extent allowed by law, Client agrees to defend, indemnify, and hold harmless from and against all claims, suits, liabilities, costs and expenses, including reasonable attorney's fees, for any injury, damage or loss to persons, including death, whether they be third person or employees of either of the parties hereto, or injury, damage, or loss of property which arise out of the acts or omissions of Client, its employees, officers, and agents, and related to its performance of

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the Agreement. This indemnity shall survive the termination of the Agreement and shall not apply to any injury, damage, or loss caused in whole by the negligence of willful acts of Ispera.

**Section 10. Taxes**

Ispera shall assume full responsibility for the payment of all federal, state and local taxes imposed or required under unemployment insurance, social security and income tax laws, with respect to Ispera personnel engaged in performance of services for Client hereunder.

**Section 11. Product Liability; Limitation and Responsibility**

Ispera's liability on any claim for damages arising out of this Agreement shall be limited to direct damages and shall not exceed the amount paid to Ispera for such portion of the services which are in dispute or ten thousand dollars (\$10,000.00), whichever is less. Ispera shall in no event be liable for loss of profit, goodwill, lost data, or other special or consequential damages suffered by Client or others as a result of the performance of services by Ispera under this Agreement, whether or not the possibility of such damages was disclosed by Ispera or could have been reasonably foreseen by Ispera. Such limitation shall be the extent of Ispera's liability to Client in the event of any alleged default by Ispera under this Agreement and/or any negligent act or failure to act or breach of contract for which Ispera is found to be liable, and the foregoing shall constitute Client's sole and exclusive remedy against Ispera therefore.

**Section 12. Entire Agreement**

With respect to the matters covered herein, this document and the Statements of Work referred to herein constitute the entire Agreement between the parties and supersede all previous communications, representations, understandings, and Agreements, whether oral or written, between the parties or any officer or representative thereof.

**Section 13. Modification**

This Agreement cannot be modified or amended in any way, except in writing, signed by both parties.

**Section 14. Governing Law**

This Agreement shall be governed by the laws of the State of Illinois

**Section 15. Waivers and Cumulative Effect**

No delay on the part of Ispera in exercising its rights hereunder shall represent a waiver of such right and all such rights shall be cumulative.

**Section 16. Severability**

Should any one provision of this Agreement be adjudicated unenforceable as written, it shall be modified to make it legally enforceable as close to the original intent of the parties as possible without having further effect on the Agreement.

**Section 17. Binding Effect**

Each party hereto represents the execution of this Agreement has been duly authorized and when signed by both parties will represent a legal, binding, and enforceable contract.

**Section 18. Successors and Assigns**

This Agreement is binding on the successors and assigns of the parties hereto.

**Section 19. Arbitration**

If Client and Ispera are unable to resolve any dispute arising under this Agreement within a thirty (30)-day period, such dispute may at any time thereafter be submitted by either party hereto to arbitration in a city within 30 miles of Ispera's office, before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association then effect. The parties agree that the arbitrator's award shall be final and binding upon them and may be enforced by any court having jurisdiction over the parties.

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**Section 20. Freedom of Information Act**

Ispera and Client recognize that this Agreement is a "public record" as defined by the Illinois Freedom of Information Act. Ispera agrees to maintain all records and documents related to this Agreement in compliance with the Freedom of Information Act, 5 ILCS 140/1 et seq. In addition, Ispera shall produce at no charge to Client public records in its possession which are responsive to a request received by the Client under the Freedom of Information Act so that the Client may provide records to those requesting them within the timeframes required. If additional time is necessary to compile records in response to a request, then Ispera shall so notify Client and if possible, Client shall request an extension so as to comply with the Act. In the event Client is found to have not complied with the Freedom of Information Act due to Ispera failure to produce documents or otherwise appropriately respond to a request under the Act, then Ispera shall indemnify and hold Client harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties.

Client: Wheaton Park District

Signed: 

Title: Exec Dir

Date: 3/16/15

Enteralogix Corporation d/b/a Ispera Government Systems

Signed: 

Title: President

Date: 3/13/2015

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## **STATEMENT OF WORK**

This Statement of Work is incorporated into and made a part of the Master Services Agreement between Enteralogix Corporation d/b/a Ispera Government Systems ("Ispera") and Wheaton Park District ("Client"). It contains proprietary and confidential information that Client must keep in confidence at all times and must not disclose to third-parties without the prior written consent of Ispera.

### **1. SERVICES TO BE PROVIDED**

Ispera will provide as needed general technology consulting services as directed by Client.

### **2. DELIVERABLES**

No defined deliverables specified. Deliverables based on services as directed by Client.

### **3. CLIENT OBLIGATIONS**

Client will provide suitable workspace with telephone, network connection and Internet connectivity as needed for services performed onsite at Client location.

### **4. FEES**

A per hour charge of \$125 for general consulting services. On-site services to be provided with a minimum charge of 2 hours. Off-site/Ispera office(s) minimum charge of 30 minutes. Discounted rate above from \$200 per hour effective through 6/12/2015 (through term of MSA).

### **5. CANCELLATION TERMS AND CONDITIONS**

Either party can terminate this agreement for cause based on a failure on the part of the other party to meet the obligations of the Master Services Agreement or perform the tasks and services as described in this Statement of Work. Failure to perform in this regard will be deemed to be a breach of the Agreement, in which case the injured party can declare a breach of services by providing the party in breach with written notification. If the breach can be cured and the notified party in breach does not cure their breach within 30 days of receiving written notice, then the injured party can then terminate with 30 days notice. While the injured party must pay for services rendered up to and including the End Date, which shall be construed as the last day upon which the breach may be cured, as set forth above, they are not subject to any early termination charges.

### **6. CONTACTS**

The contact person for Ispera on this agreement shall be:

Jeremy Ramirez  
Enteralogix Corporation d/b/a Ispera Government Systems  
160 S. Municipal Drive, Suite 101  
Sugar Grove, IL 60554  
630.658.7025

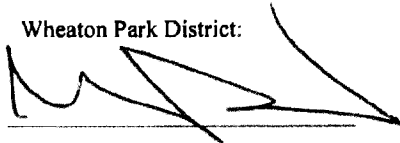
The contact person for Client on this agreement shall be:

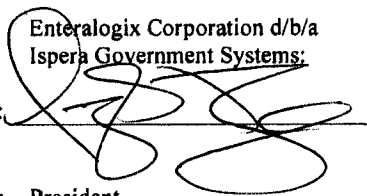
Mike Benard  
Executive Director  
Wheaton Park District  
102 E. Wesley Street  
Streamwood, IL 60187  
630.510.4945

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The provision of IT services by Ispera shall be governed by the general terms and conditions set forth in the mentioned Master Services Agreement and by the specific terms and conditions set forth herein.

Wheaton Park District:  
Signed:   
Title: Executive Director  
Date: 3/12/15

Enteralogix Corporation d/b/a  
Ispera Government Systems:  
Signed:   
Title: President  
Date: 3/13/2015

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