

MASTER SERVICES AGREEMENT



Effective Date: June 30, 2021

This Professional Services Agreement (the "**Agreement**") is entered into as of the Effective Date between **ERTH (HOLDINGS) INC.** ("**ERTH**"), a corporation organized and existing under the laws of Ontario, and **THE CORPORATION OF THE TOWN TILLSONBURG** (the "**Town**").

In consideration of the mutual covenants and agreements contained herein, ERTH and the Town agree as follow:

1. DEFINITIONS

Unless otherwise defined herein, capitalized terms used in this Agreement are defined in Section 16.1.

2. SERVICES

2.1 ERTH will provide to Client the services (the "**Services**") described in the any statement of works entered into by the Parties pursuant to the terms and conditions of this Agreement (each a "**Statement of Work**" or "**SOW**"). The scope of the Services may be amended or modified by written agreement of the parties.

2.2 Upon payment of the Fees, the Town shall have access to the Services described in any applicable SOW. the Town shall not (a) share the Service with anyone outside the Town's organization (Client's organization includes the organizations which are affiliates of the Town). In the event of the Town's breach of this Section 2.3, ERTH reserves the right to cancel this Agreement pursuant to Section 10.2.

2.3 The use of the Services by the Town is limited to normal activity having regard to the ordinary and usual needs and requirements of the Town's business and affairs and the "day-to-day" conduct and operation thereof.

2.4 The parties acknowledge that any computer systems of the Town which are not being maintained by ERTH pursuant to this Agreement shall not be supported by ERTH.

2.5 ERTH will provide such resources and utilize such employees or consultants as it deems necessary to perform the Services. The manner and means used by ERTH to perform the Services are in the sole discretion and control of ERTH. In delivering the Services, ERTH hereby represents and warrants to the Town that:

- a) it has the right and has obtained and holds all necessary licences, permits, consents and other authorizations in order to enable ERTH to deliver the Services, including any software or other intellectual property licences;
- b) there are no existing restrictions or constraints on ERTH's right and ability to deliver the Services in accordance with this Agreement; and
- c) it has not infringed the rights of any other Persons with respect to the delivery of the Service and has not received notice of an impending dispute regarding such an infringement.

3. FEES AND OTHER CHARGES

3.1 For the Services provided by ERTH, the Town will pay ERTH the fees set forth in the applicable SOW in lawful money of Canada (the "**Fees**").

3.2 The Fees payable to ERTH pursuant to this agreement are exclusive of HST, any sales, use or other taxes or governmental charges. the Town is responsible for payment of all such taxes or charges, except for any taxes based solely on ERTH's net income.

3.3 For additional services not described in this Section 3.3 or in a SOW that are requested in writing by the Town ("**Additional Services**"), ERTH will provide an estimate to the Town of fees for the Additional Services and the Town must approve the estimate prior to commencement of Additional Services.

4. INVOICING AND PAYMENT

4.1 ERTH will invoice the Town in accordance with the invoicing terms as set out in the applicable Statement of Work. All Invoices will be due and payable when invoiced, and will be deemed defaulted if they remain unpaid for fifteen (15) days after delivery. Overdue amounts will accrue simple interest at the rate of one (1.5%) percent per month (18% p.a.), or at the highest legal interest rate, if less.

4.2 If the Town's procedures require that an invoice be submitted against a purchase order before payment can be made, the Town will be responsible for issuing such purchase order at least thirty (30) days before the payment due date.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 If applicable, the Town will provide ERTH with access to the Licensed Technology for the sole purpose of allowing ERTH to perform the Services. The Town hereby grants ERTH a royalty-free, non-exclusive, license to use the Licensed Technology (if any), and all Client IP Rights covering such Licensed Technology, solely in order for ERTH to perform the Services and solely during the term of this Agreement. The Town represents that it has obtained all necessary permissions, licenses, consents and has the authority and right to provide such Licensed Technology (if applicable) to ERTH.

5.2 Except as otherwise set out herein, neither this Agreement, nor the provision of Services hereunder, will give either ERTH or the Town any ownership interest in or rights to the existing IP Rights of the other party. All IP

Rights that are owned or controlled by a party at the commencement of this Agreement will remain under the ownership or control of such party throughout the term of this Agreement and thereafter.

5.3 To perfect ownership of EARTH's IP Rights, the Town assigns to EARTH all rights that the Town may have in the Innovations, and will assist and cooperate with EARTH in all reasonable respects, subject to reasonable availability, (a) in actions to acquire, transfer or maintain such IP Rights of EARTH, including executing the customary documents associated therewith, and (b) in actions of enforcement of such EARTH IP Rights, subject to payment by EARTH of all costs reasonably incurred by the Town that are associated therewith.

6. LIMITED WARRANTIES AND EXCEPTIONS

6.1 EARTH warrants that the Services provided hereunder will be performed in a professional manner and in accordance with customary industry practices.

6.2 THE WARRANTY IN SECTION 6.1 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY/MERCHANTABLE QUALITY, FITNESS FOR USE OR A PARTICULAR PURPOSE, CONTINUAL OR UNINTERRUPTED SERVICE OR NON-INFRINGEMENT, EACH OF WHICH IS EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

7. INDEMNIFICATION

7.1 Subject to the provisions of Sections 7.2, 8.1, 8.2, and 8.3, EARTH will indemnify, defend and hold the Town and its affiliates and their respective officers, directors, employees, and agents (the "**Client Indemnitees**") harmless from and against any and all liabilities, losses, damages, costs, and expenses ("**Losses**"), and any legal fees and expenses relating to its defence, resulting from any suit or action brought against the Town Indemnitees alleging infringement of any third party copyright or trade secret by EARTH or its contractors resulting from the delivery of the Services to the Town.

7.2 If any claim or action is commenced against Client for Losses resulting from such claim or action (a "**Claim**"), the Town will give written notice to EARTH within twenty (20) days of notice of such Claim. If EARTH is obligated under this Agreement to indemnify Losses arising from such Claim, then EARTH may, in its discretion, take control of the defence and investigation of the Claim, using such counsel and other assistance as it selects in its discretion. the Town agrees to cooperate in all commercially reasonable respects in such investigation and defence, including trial and any appeals, provided that the Town may also participate, at its own expense, in such defence. No settlement of a Claim that involves a remedy other than payment of money by EARTH will be agreed to and entered

without the consent of the Town, which consent will not be unreasonably withheld.

7.3 THE FOREGOING STATES the Town's SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO CLAIMS OF INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS OF ANY KIND.

8. LIMITATIONS ON LIABILITY

8.1 IN NO EVENT WILL A PARTY (INCLUDING ANY THIRD PARTY INVOLVED IN DELIVERY OF THE SERVICES) BE LIABLE UNDER THIS AGREEMENT FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, OR LOST PROFITS OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 EARTH shall not be liable for protection or privacy of information transferred through the Town's network provider or for any damages resulting from or related to any failure or delay of EARTH to provide service under this Agreement, unless caused by EARTH's gross negligence or willful misconduct.

8.3 THE AGGREGATE CUMULATIVE LIABILITY OF EACH PARTY ARISING OUT OF THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY the Town TO EARTH HEREUNDER.

8.4 No action, regardless of form, arising from this Agreement may be brought by either party more than two (2) years after the cause of action has come to the attention of the injured party..

9. CONFIDENTIALITY AND NON-SOLICITATION

9.1 Except as otherwise expressly provided in this Agreement, each party (the "**Receiving Party**") agrees that all Confidential Information provided to it by the other party (the "**Disclosing Party**") by any method and in any format whatsoever, whether before or after the Effective Date (collectively, "**Confidential Information**"), shall be deemed to be confidential and proprietary to the Disclosing Party. The Receiving Party may use such Confidential Information only in connection with and for the purposes of exercising its rights and carrying out its obligations under this Agreement. Each party agrees to use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of the other party's Confidential Information.

9.2 In the event that the Receiving Party or any person to whom it discloses the Confidential Information pursuant to the terms of this Agreement becomes legally compelled to disclose any of the Confidential Information, the Receiving Party shall provide the Disclosing Party with

prompt written notice so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the confidentiality provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or the Disclosing Party waives in writing compliance with the confidentiality provisions of this Agreement, the Receiving Party or the person legally compelled to disclose the Confidential Information shall furnish only that portion of the Confidential Information that is legally required and the Receiving Party shall use its best efforts to obtain reliable written assurances from the recipients of the Confidential Information that confidential treatment will be accorded such Confidential Information.

9.3 The Receiving Party shall not disclose the Confidential Information of the Disclosing Party without their prior written consent, provided that the Receiving Party may disclose the Disclosing Party's Confidential Information to the Receiving Party's directors, officers, employees, agents, advisors, consultants and representatives (collectively, "**Representatives**"), but only to the extent that such Representatives need to have access to such Confidential Information for purposes associated with the performance of this Agreement. Each Receiving Party shall advise each such Representative of the confidentiality obligations set forth in this Agreement. Compliance by each Representative with such confidentiality obligations shall remain the responsibility of the Receiving Party employing or retaining the Representative. Notwithstanding the foregoing, ERTH may disclose to certain entities, including without limitation the Ontario Energy Board and the Independent Electricity System Operator, such portions of the Town's Confidential Information that ERTH must disclose in order to perform its obligations under this Agreement.

9.4 ERTH shall comply with all applicable federal and provincial legislation in relation to privacy, including without limitation as and when applicable to ERTH, the *Personal Information Protection and Electronic Documents Act* (Canada).

9.5 Upon termination of this Agreement, ERTH shall return to the Town all of its Confidential Information upon written request.

9.6 During the term of this Agreement and for a period of one (1) year thereafter the Town shall not, without the prior written consent of ERTH, hire or allow its respective affiliates to hire (i) any employee of ERTH, or (ii) any person who was an employee of ERTH during the previous six (6) months, who was directly involved with the implementation and maintenance of the Services.

10. TERM AND TERMINATION

10.1 This Agreement shall commence on the Effective Date and shall remain in full force and until such that (i) there are no SOWs in effect between the parties and (ii) a party provides the other party with written notice of termination, subject to earlier termination as provided for in this Section 10.3 and 10.4 below.

10.2 Subject to Section 10.3 below, this Agreement may be terminated by either party: (a) for any reason, upon one hundred and eighty (180) calendar days' prior written notice to the other party, or (b) upon thirty (30) days' prior written notice if the other party materially breaches or fails to perform any material term set out in this Agreement or any SOW and the breaching party fails to cure such breach within the thirty (30) day period, or (c) immediately in the event of bankruptcy or insolvency by the other party.

10.3 Notwithstanding Section 10.2 ERTH may terminate the Agreement immediately if (i) the Town fails to pay an invoice within ninety (90) days of the invoice date, or (ii) the Town breaches Section 2.3.

10.4 Upon the termination of the Agreement for any reason, the Town will be responsible for entering into new arrangements related to the services contemplated herein. ERTH will use commercially reasonable efforts to assist with transferring the Town to a new service provider and the Town agrees to pay ERTH's then current rates for such work that is required.

10.5 Each party's obligations under Sections 4, 5, 6, 7, 8, 9, 10.4, 11, 12, 14 and 16.3 of the Agreement will survive termination or expiration of the Agreement. Within thirty (30) days of termination of this Agreement for any reason, ERTH will submit to the Town an invoice for any fees or expenses accrued and unpaid under this Agreement prior to the date of such termination.

11. INDEPENDENT CONTRACTORS

ERTH will perform the Services as an independent contractor, and nothing contained in this Agreement will be construed to create or imply a joint venture, partnership, principal-agent or employment relationship between the parties. Neither party will take any action or permit any action to be taken on its behalf that purports to be done in the name of or on behalf of the other party and will have no power or authority to bind the other party to assume or create any obligation or responsibility express or implied on the other party's behalf or in its name, nor will such party represent to any one that it has such power or authority.

12. GOVERNING LAW

This Agreement will be governed by the procedural and substantive laws of the Province of Ontario, without regard to conflicts of laws principles. This Agreement is prepared and executed and will be interpreted in the English language only, and no translation of the Agreement into another language will have any effect. The United Nations Convention on Contracts for the International Sale of

Goods is specifically excluded from and will not apply to this Agreement.

13. LANGUAGE

It is hereby agreed that both parties specifically require that this Agreement and any notices, consents, authorizations, communications and approvals be drawn up in the English language. Il est convenu par le autori acte que les deux parties exigent que ce contrat et tout avis, consentement, authorization, communication et approbation soient rédigés en langue anglaise.

14. DISPUTE RESOLUTION

14.1 The parties will attempt in good faith to resolve any dispute arising in connection with this Agreement informally according to the following procedure. Upon written request of a party identifying a dispute to be resolved, each party will designate a management representative with the responsibility and authority to resolve the dispute. The designated management representatives will meet preliminarily within fifteen (15) days after the request is received from the requesting party. At this first meeting, the designated management representatives will identify the scope of the dispute and the information needed to discuss and attempt to resolve the dispute. These management representatives will then gather relevant information regarding the dispute and will meet again to discuss the issues and negotiate in good faith to resolve the dispute. Such second meeting will occur within fifteen (15) days of the first meeting.

14.2 Nothing in this Section 14 will restrict the right of either party to apply to a court of competent jurisdiction for injunctive relief or damages at any time. However, the right of either party to file a lawsuit does not abrogate each party's obligations under Subsection 14.1. Moreover, a party that elects to file a lawsuit will provide the written notice identified in Subsection 14.1 to the other party at the same time the lawsuit is filed with a court.

14.3 The prevailing party in any judicial action brought to enforce or interpret this Agreement or for relief for its breach will be entitled to recover its costs and its reasonable legal fees incurred to prosecute or defend such action.

15. FORCE MAJEURE

Notwithstanding any other provision herein, neither party shall be liable for any delay in performance or non-performance of any of its obligations under this Agreement (other than an obligation to pay money) if such delay or non-performance is due to any cause beyond its control including but not limited to any act of God, flood, drought, lightning or fire, labour lockout, labour dispute (other than a trade dispute affecting the party claiming force majeure), war, terrorist act, plague, military operations or riot, and any act, omission or decision of Government ("**Force Majeure Event**"). If either of the parties shall become aware of a Force Majeure Event which gives rise to or which is likely

to give rise to any such failure or delay to perform its obligations under this Agreement, it shall immediately give written notice to the other party and shall inform the other party of the period of time which it is estimated that such failure or delay shall continue. The parties shall, as soon as reasonably practicable following such notification, discuss all of the implications of the Force Majeure Event and use their best efforts to agree to a plan to remedy or overcome any problems arising from the Force Majeure Event.

16. MISCELLANEOUS

16.1 Capitalized Terms. The following definitions apply to the capitalized terms used in this Agreement that are not otherwise defined:

a) "**Confidential Information**" means any information written or otherwise disclosed in any medium by one party to the other under this Agreement and marked or otherwise designated as "Confidential" or clearly by its nature is likely to be confidential. However, Confidential Information will not include any information of a party that: (a) is or becomes a part of the public domain through no act or omission of either party or otherwise available to the public other than by breach of this Agreement; or (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party without access to the Confidential Information.

b) "**Effective Date**" means the date set out at the beginning of the Agreement.

c) "**ERTH Technology**", means ERTH's proprietary information, methodologies and materials, software tools, computer programs and interfaces and their documentation, computer languages, methods, design flows, libraries, algorithms, databases and templates.

d) "**Innovations**" means any invention, development or innovation conceived or developed in the course of performance of the Services, including, but not limited to, information, methodologies and materials, tools (including software tools), computer programs and interfaces and their documentation, computer languages, methods, design flows, libraries, algorithms, databases, encoding techniques, articles, writings, compositions, works of authorship and modifications thereof.

e) "**IP Rights**" means all intellectual property rights, including patents, copyrights, trademarks (including service marks), trade secrets, and design rights, whether registered or unregistered, including any application for registration of any of the foregoing and all rights or forms of protection of a similar nature of having equivalent or similar effect to any of these, that may subsist anywhere in the world.

f) "**Licensed Technology**" means the materials and technology (if any) owned, controlled or otherwise provided by the Town (including Third Party Technology) that ERTH

reasonably requires access to in order to perform the Services.

g) **“Third Party Technology”** means such third party information, materials and technology, and the IP Rights therein, as are routinely used by the Town, as of right, and as ERTH reasonably requires access to in order to perform the Services.

16.2 Notices. Notices to be given or submitted by either party to other pursuant to this Agreement will be in writing and directed:

in the case of the Town, to:

the Town Distribution Inc.

The Corporation of the Town of Tillsonburg
Attention: Clerk
Cc: Chief Administrative Officer

200 Broadway, Suite 204
Tillsonburg, ON N4G 5A7

in the case of ERTH, to:

ERTH (Holdings) Inc.
Attention: VP, Client Services
Cc: Legal Counsel
180 Whiting Street
Ingersoll, ON N5C 3B5

16.3 Severability. If any term or provision of this Agreement is determined to be invalid or unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the parties to extent possible. In any event, all other terms and provisions will be deemed valid and enforceable to the maximum extent possible.

16.4 Entire Agreement. the Town acknowledges that it has read, understands and will be bound by this Agreement, and that this Agreement is the complete and exclusive statement of the agreement between the parties

regarding the subject matter hereof, superseding all proposals, oral or written, and all other communications between the parties relating to such subject matter.

16.5 Amendment. Any terms and conditions of any purchase order or other instrument issued by the Town in connection with the Agreement that are in addition to or inconsistent with the terms and conditions of this Agreement will be of no force or effect. This Agreement may be modified only by a written instrument duly executed by an authorized representative of each of ERTH and the Town.

16.6 No Waiver. The failure of a party to enforce any provision of this Agreement will not constitute a waiver of such provision or the right of such party to enforce such provision or any other provision.

16.7 Assignment. the Town may only assign this Agreement with the prior written consent of ERTH, which shall not be unreasonably withheld. ERTH may, with prior consent of the Town, assign this Agreement if it is in compliance with the material terms of this Agreement.

16.8 Statements of Work. Any Statement of Work entered into pursuant to this Agreement shall constitute part of this Agreement as if included herein. In the event of any inconsistency between the terms and conditions of this Agreement and any SOW, the terms and conditions in the SOW shall prevail.

- The next page is the signature page. -

In Witness Whereof, the parties hereto have executed this Agreement as of the Effective Date.

THE CORPORATION OF THE TOWN OF TILLSONBURG:

Signature: 

Date: June 30, 2021

Name: Kyle Pratt

Title: Chief Administrative Officer

ERTH (HOLDINGS) INC.:

Signature: _____

Date: June 30/21

Name: Laurie Palmer

Title: COO - Business & Infrastructure