Agreement for Software Services

THIS AGREEMENT ("Agreement") is entered into as of December 10, 2019 ("Effective Date"), between InTech Software Solutions Inc, with an office at 5881 Pagenkopf Rd, Maple Plain, MN, 55359 ("InTech"), and the City of West Allis, WI, a government entity with its principal office located at 7525 W Greenfield Ave, West Allis, WI 53214 ("City").

1. **The Service.**   InTech has developed an online service known as Modus Elections Manager which allows governmental entities to help better manage elections ("Modus"). The City wishes to use Modus to manage elections. The Parties have agreed upon the details of the Modus service, the details of which are found in Exhibit B (the "Proposal").

2. **Term**. The term of this Agreement begins on the Effective Date and continues through December 9th, 2020 ("Term"). At the end of the Term, this Agreement will renew on a year to year basis unless either party notifies the other of its intention not to renew thirty (30) days prior to the renewal of the Agreement. Upon expiration or termination of this Agreement, InTech will make the City Data available to City, and City will no longer have access to Modus.

3. **Fees**.   Within thirty days of invoice, City will pay to InTech the fees for use of Modus as stated in Exhibit B. The fees do not include any taxes, whether federal, state, local or otherwise.

4. **Subscription.** During the Term, InTech grants to City the nontransferable and nonexclusive right to use Modus in managing its elections. Only permanent or temporary employees of City may use Modus. Each user must have a user ID, which consists of a valid email address. Subscription includes SMS texting capabilities for the first 2,500 individual texts per year. Additional texts may be purchased at a price of $100 per package of 2,500 texts.

5. **Technology.** City understands that Modus requires Internet access, which is the responsibility of City to provide. InTech plans to make upgrades to Modus over time. InTech will notify City of any important changes to Modus and design such changes to permit continued use of Modus by the City.

6. **Support and Security.** InTech will provide support, set-up and training so that City can use Modus, including relevant documentation and specifications. InTech will use commercially reasonable security technologies (such as encryption, password protection and firewall protection). InTech cannot promise that such security technologies will be able to prevent all third-party disruptions or interception of any data.

7. **Back-Up.** InTech is responsible for performing and storing backups of City Data on a regular basis. In the event City requires restoration of any back-up of its data, other than due to the fault of InTech, City may be charged on a time-and-material basis for such restoration.

8. **Use of Data.** City grants to InTech the right to use any data provided or inputted by City into Modus ("City Data") as is necessary for InTech to perform under this Agreement. With respect to

the City Data, InTech specifically agrees to abide by Minnesota Data Practices Act (Chapter 13) and will keep City Data covered by the Act confidential. Other than such use, InTech acquires no rights to City Data, including any intellectual property rights.

9. **Warranty, Indemnity and Damages.** InTech warrants that Modus will perform as outlined in Exhibit B. There are no other warranties. InTech agrees to indemnify City against all claims brought by any third party against City related to Modus or alleging that InTech violated this Agreement. Under no circumstances will either party be liable to the other party under this Agreement in excess of the amount of fees paid under this Agreement in the year preceding the date on which the claim first arose. Under no circumstances will either party be liable to the other party for punitive damages.

10. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Minnesota.

11. **Compliance with Laws.** InTech will follow all applicable local, state and governmental laws.

12. **Force Majeure.** If either party is unable to perform under this Agreement due to circumstances beyond its reasonable control, including without limitation natural disaster, act of War, terrorism, or other similar cause, then such non-performance shall not be a violation of this Agreement, but the time for performance shall be extended for a period equal to the duration of the conditions preventing performance.

13. **Complete Agreement and Conflicts**. This Agreement constitutes the complete and exclusive agreement between InTech and City, and all previous discussions and writings shall have no force or effect. This Agreement may only be modified in a written agreement by the parties.

City of West Allis, WI   **InTech Software Solutions Inc**

DATE: _____   DATE: _____

BY: _____   BY: _____

Title: _____   Title: _____

Exhibit A – InTech Support

Support Options: InTech Software Solutions, Inc will provide several options for support, as follows:

- **Email Support:** Support is available via email at: **support@moduselections.com**. This email will be monitored by support staff during normal business hours (9:00am – 5:00pm CST). In the 7 days prior to and including the day of any state-wide election, support will be expanded to include the hours between 7:00am and 10:00pm.
- **Phone Support:** Phone support is available during normal business hours, as defined above.
- **Online Forum:** This software forum will be available to Modus users on a 24/7 basis. The forum will be monitored and updated by InTech support staff. This site will include online documentation, a searchable knowledge base, and a shared source of information for common questions asked by other users.

Issue Response: InTech will make it a priority to respond to City support queries as quickly as possible, and will be able to respond in most cases within hours of the submitted request for support services. InTech guarantees it will provide a response to support questions and issues by the next business day.

Issue Resolution / Rollout Policy: InTech's response to support issues will depend on the type and severity of the issue the user is encountering, as follows:

- **User Training or Business Process Help**: InTech offers onsite training services, as indicated in the City's proposal. Online documentation and training videos are also available to users. InTech will provide a response to City requests for business process help or training requests within 1 business day.
- **Non-critical Bug Fixes.** A non-critical bug is defined by InTech as any user-experienced issue that does not block the user's ability to utilize system functions. Non-critical bug fixes or usability enhancements will be assessed, scheduled, and rolled out in the next regular system release. Regular system releases are defined in the "Software Upgrades" section below.
- **Critical Bug Fixes.** A critical bug is defined by InTech as any bug that inhibits the user's ability to utilize the functions of the system. InTech has multiple levels of testing in place to help ensure that these bugs never make it into our productions system. (*See Software Updates below*.) In the case that a critical bug is encountered in the system, InTech will provide an update to the system as quickly as is possible. InTech will typically be able to implement critical fixes within 3 to 5 business days.

Service Availability: Service is intended to be available for use at all times, except for scheduled downtime, InTech warrants availability of Service during business hours (M-F 8am-5pm) to 97% monthly uptime. Scheduled maintenance downtime will occur after business hours: typically, between 10pm and 5am.

Software Maintenance and Support Costs: As the Modus Elections Manager is a subscription service, software maintenance and support are provided without any additional cost or subscription fee. InTech's mission is to keep the Service current to ensure compliance with relevant state election laws. Many of these state-wide improvements to the system will be made available free of charge. In the event that the City is requesting additional new functionality (not included in the agreed upon requirements documents), this functionality can be custom-coded and provided on a time-and-material basis.

Software Updates: Scheduled rollouts will occur between the hours of 10pm and 5am. Because Modus Elections Manager is a web-based system, rollouts only occur on InTech's servers. Client software will be automatically updated the next time the user accesses the system.

Custom-coded Features: The Modus Elections Manager system was designed by a consortium of users from cities and counties of different sizes and differing business practices. As a result, the system is quite flexible and will accommodate the needs and business requirements of most, if not all, jurisdictions.

In the event a jurisdiction has a requirement for new functionality not provided in the system, InTech will work to try to ensure that this functionality can be included in the next state-wide release of the system to all users. This approach has at least 2 significant benefits: (1) it will improve the Modus Elections Manager system for the greater user community; and (2) it will provide a significant support cost savings to the City.

Training: With each new customer, InTech includes installation and configuration services. Elections staff will be personally trained and well acquainted with the system upon completion of these configuration activities. InTech can provide training in any of the following ways:
- **Train the Trainer**: City staff may be trained and provided with the knowledge needed to conduct training sessions with the elections staff in its cities and townships.
- **Group Training**: InTech will provide on-site group training sessions conducted by an InTech trainer, as indicated in the proposal. (*Recommended*)
- **Virtual Training**: When new features are added to the Modus Elections Manager, InTech will provide online training conferences and invite its clients to attend. In addition, the City may choose to schedule one-on-one training using online virtual conferencing software.
- **Online User Documentation.** Includes written documentation, training videos, and knowledge base.

System Technology: The Modus Elections Manager is a web-based application built on the Microsoft Silverlight 5.0 platform. The system utilizes standard secure HTTPS protocol (TCPIP port 443) browser-based communication. As a result, the system will be accessible only from locations where internet services are available, and on browsers and operating systems which support Microsoft Silverlight version 5.1.50907.0 or higher. In the event the Modus Elections Manager is revised or otherwise requires use of a newer version of the Silverlight or other software / operating system, InTech will advise City at least sixty (60) days prior to this conversion taking effect.

InTech recommends that published Microsoft Silverlight patches and updates are regularly included in the City IT department's desktop release management program.

Microsoft Silverlight is currently supported on the following browsers:
- Internet Explorer Version 10 or higher
- Safari 6.x – 9.x

Microsoft Silverlight is currently supported on the following Operating Systems:
- All Microsoft Windows operating systems, XP or higher (except Windows 8 RT)
- Mac OS 10.6 – 10.11

Note that the Silverlight add-in is supported by Microsoft through October 2021. InTech is currently working to move its services off of the Silverlight platform, with a target date of Q4, 2019.

All supported user platforms must meet these minimum requirements.