

May 4, 2020

Nicholas Herlihy  
Division Chief  
North Port Fire Rescue  
4980 City Center Blvd  
North Port, FL 34286  
(941) 240-8160  
nherlihy@cityofnorthport.com

Re: International Public Safety Data Institute Order

This letter will confirm that the City of North Port, Florida (the "Client") has ordered the below-listed services from International Public Safety Data Institute ("IPSDI"), a Virginia nonstock corporation. This Order Form (the "Order Form"), along with the attached Standard Terms (the "Standard Terms") comprise the Agreement (the "Agreement") between Client and IPSDI.

**Order.** Client hereby orders the following from IPSDI:

Service Description	Unit Cost	Frequency
StatEngine /NFORS Integration Services	\$5,000	One-time
NFORS Subscription – Unlimited Users (in Client Org. <u>Only</u> ) Client Population Size Tier: Up to 250,000	\$8,000	Annual

**Fees and Invoicing.** IPSDI will issue an Invoice for the Integration Services upon execution of this Order Form by Client. IPSDI will commence work on the Integration Services as soon as payment is received. Upon completion of the Integration Services, IPSDI will send Client a welcome email including a set of credentials to access IPSDI's "Admin Panel" where Client can create user accounts for its end users in StatEngine and NFORS. The first full month (and any partial month) of your StatEngine and NFORS subscription is included with the Integration Service. Billing for StatEngine and NFORS will be on the first day of the second full calendar month after completion of the Integration Services. A credit card is required to begin your subscription to StatEngine and NFORS and must be entered in the Admin Panel. IPSDI may increase the monthly subscription fees by not more than four percent annually to account for the increased costs of doing business.

**Term and Termination.** The City Manager or designee for Client may terminate this Order at any time without penalty or further liability. Any prepaid fees are non-refundable.





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Client and IPSDI hereby accept(s) and agree(s) to the terms set forth in the Agreement.

**CLIENT**

\_\_\_\_\_  
Peter D. Lear, CPA, CGMA

\_\_\_\_\_/\_\_\_\_\_  
[Signature] [Date]

**IPSDI**

Lori Moore-Merrell  
Lori Moore-Merrell (Jun 4, 2020 17:07 EDT)

\_\_\_\_\_  
Lori Moore-Merrell, DrPH, MPH

Lori Moore-Merrell / Jun 4, 2020  
[Signature] [Date]

**ATTEST**

\_\_\_\_\_  
Heather Taylor, CMC  
City Clerk

**APPROVED AS TO FORM AND CORRECTNESS**

\_\_\_\_\_  
Amber L. Slayton  
City Attorney

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# IPSDI Standard Terms

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These Standard Terms (“Standard Terms”) along with the Order Form (“Order Form”) comprise the Agreement (“Agreement”) between Client and International Public Safety Data Institute (“IPSDI”) and explain the terms under which IPSDI will provide services to Client. Any defined term in the Order Form shall have the same definition in the Standard Terms. In the event of a conflict between the provisions in the Standard Terms and the Order Form, the provisions in these Standard Terms shall control.

## 1. Additional Information.

**1.1. “Integration Services”** means (1) integration of Client’s Computer Aided Dispatch (CAD), Records Management System (RMS), or data repository with the StatEngine service, provided by Prominent Edge LLC, to enable data transmission to NFORS; and (2) integration of Client’s CAD system with StatEngine to enable the transmission of Client’s emergency incident data to the NFORS CAD Dashboard and Exposure Report.

**1.2. “NFORS”** means the National Fire Operations Reporting Service. NFORS is owned and operated by IPSDI. Use of the NFORS is subject to the terms and conditions of the NFORS service as may be promulgated and changed from time to time.

**1.3. “StatEngine”** means the StatEngine service provided by Prominent Edge LLC and IPSDI is an authorized reseller of StatEngine. Use of the StatEngine service is subject to the terms and conditions of the StatEngine service as may be promulgated and changed from time to time.

## 2. Intellectual Property and Licenses.

**2.1. IPSDI Intellectual Property.** “IPSDI Intellectual Property” includes all IPSDI’s applications, code (source and object code forms), software, templates, repositories, functionality customizations (and improvement thereto), derivative works, tools, products, content, URLs, domain names, technology, system or network architecture, topology, scripts, user interfaces, “look and feel”, trade secrets, copyright rights, trademarks, patent rights, know-how, inventions and rights of priority as recognized in any country or jurisdiction in the world developed by IPSDI (or licensed from third parties by IPSDI) prior to or during the course of this Agreement. IPSDI Intellectual Property remains the exclusive property of IPSDI. IPSDI owns all rights, including, without limitation, all intellectual property rights to any IPSDI Intellectual Property developed by IPSDI.

**2.2. Client License.** Subject to Client’s compliance with the terms and conditions of this Agreement, including payment obligations, IPSDI hereby grants to Client and its end-users a personal, nonexclusive, revocable, non-transferable and limited end-user license to access and use IPSDI Intellectual Property contained or embodied in any materials delivered to Client by IPSDI.

**2.3. Client Intellectual Property.** Except for IPSDI Intellectual Property, all work performed pursuant to this Agreement shall be considered a work-for-hire and, upon Client’s compliance with its payment obligations, shall become the exclusive property of Client (“Client Intellectual Property”).

## 3. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY.

**3.1. Disclaimer.** EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 3, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND ANY SOFTWARE ARE PROVIDED “AS IS,” AND IPSDI DISCLAIMS

ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. IPSDI DOES NOT WARRANT THAT THE SERVICES OR ANY SOFTWARE PROVIDED BY IPSDI WILL MEET CLIENT’S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

**3.2. Exclusions of Remedies; Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF IPSDI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. IPSDI’S CUMULATIVE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL BE LIMITED TO THE AMOUNT CLIENT ACTUALLY PAYS IPSDI DURING THE THREE (3) MONTHS PRIOR TO THE ACT, OMISSION, OR EVENT GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

**3.3. NOTWITHSTANDING SUBSECTION 3.2 ABOVE, AND TO THE EXTENT PERMITTED BY FLORIDA LAW, IPSDI ASSUMES ALL LIABILITY FOR, AND RELEASES AND AGREES TO DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CLIENT, ITS COMMISSIONERS, OFFICERS, AGENTS, AND EMPLOYEES, FROM ALL LIABILITIES, FINES, CLAIMS, ASSESSMENTS, SUITS, JUDGMENTS, DAMAGES, LOSSES AND COSTS, INCLUDING CONSEQUENTIAL, SPECIAL, INDIRECT, AND PUNITIVE DAMAGES, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS’ FEES AND COURT COSTS, WHETHER SUCH FEES AND COSTS ARE INCURRED IN NEGOTIATIONS, AT THE TRIAL LEVEL OR ON APPEAL, OR IN THE COLLECTION OF ATTORNEYS’ FEES), ARISING OUT OF ANY ACTS, ACTIONS, BREACHES, NEGLIGENCE OR OMISSIONS OF IPSDI,**

OR IPSDI'S OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, AND OTHER PERSONS EMPLOYED OR UTILIZED BY IPSDI IN THE PERFORMANCE OF, OR THE FAILURE TO PERFORM, THIS AGREEMENT. THIS AGREEMENT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CLIENT OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.

**3.4. THIS AGREEMENT FOR INDEMNIFICATION SURVIVES TERMINATION OR COMPLETION OF THE AGREEMENT.** IN ANY PROCEEDINGS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS INDEMNITY PROVISION, THE PREVAILING PARTY SHALL BE REIMBURSED ALL COSTS, EXPENSES AND REASONABLE ATTORNEY FEES THROUGH ALL PROCEEDINGS (AT BOTH TRIAL AND APPELLATE LEVELS).

**3.5. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO AFFECT THE RIGHTS, PRIVILEGES, AND IMMUNITIES OF THE CLIENT AS SET FORTH IN FLORIDA STATUTES, SECTION 768.28.**

**3.6. THE TERMS OF THIS SECTION SURVIVE THE TERMINATION OF THIS AGREEMENT.**

**3.7. FURTHER, IPSDI SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CLIENT FROM ANY SUITS, ACTIONS, DAMAGES, AND COSTS OF EVERY NAME AND DESCRIPTION, INCLUDING ATTORNEYS' FEES, ARISING FROM OR RELATING TO VIOLATION OR INFRINGEMENT OF A TRADEMARK, COPYRIGHT, PATENT, TRADE SECRET OR INTELLECTUAL PROPERTY RIGHT.**

**3.8. Essential Basis of the Agreement.** IPSDI and Client acknowledge and understand that the disclaimers, exclusions and limitations of liability set forth in this Section 3 form an essential basis of the agreement between the Parties, that the Parties have relied upon such disclaimers, exclusions and limitations of liability in negotiating the terms and conditions in this Agreement, and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.

#### **4. Miscellaneous.**

**4.1. Non-Payment.** In accordance with the Local Government Prompt Payment Act, Florida Statutes Sections 218.70, *et seq.*, Client's payments shall be due forty-five (45) days after receipt of invoice. Overdue amounts shall bear interest from thirty (30) days after the due date at the rate of one percent (1.0%) per month on the unpaid balance. IPSDI must invoice Client for any interest accrued in order to receive the interest payment. In the event any amount due to IPSDI under this Agreement becomes past due, IPSDI may restrict or remove Client's access to Stat Engine and NFORS. This clause shall survive any termination of the Agreement.

**4.2. Termination by IPSDI.** IPSDI may terminate this Agreement at any time after the first anniversary of the date on the top of the Order Form.

**4.3. Termination by Client.** The performance of services under the Agreement may be terminated with or without cause by the City Manager in whole or in part or whenever the City Manager determines that termination is in the Client's best interest. Any such termination shall be effected by the delivery to IPSDI of a written notice of

termination at least thirty (30) days before the date of termination, specifying the extent to which performance of services under the Agreement are terminated and the date upon which such termination becomes effective. Any fees pre-paid by Client to IPSDI are non-refundable.

**4.4. Determination of Population Size and Fees.** The fees set forth on the Order Form are determined based on IPSDI's calculation of the population size served by Client. IPSDI reserves the right to adjust the rates charged to Client upon 90-days' notice to Client if IPSDI determines that Client's population size has changed or if IPSDI determines that the initial determination of Client's population size was incorrect.

**4.5. No Third Party Beneficiary Rights.** This Agreement is not intended to and shall not be construed to give any person other than the parties signatory hereto any interest or rights, (including any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

**4.6. Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for herein.

**4.7. Amendments and Modifications.** This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties. The City Manager or designee may agree to amendments that do not increase compensation to IPSDI. Only the City Commission can approve increases in compensation to IPSDI under this Agreement.

**4.8. Choice of Law; Venue.** The laws of the State of Florida govern the rights, obligations, and remedies of the Parties under this Agreement. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida.

**4.9. Force Majeure.** Neither party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond its reasonable control, including labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**4.10. Assignment.** Except in the event of a sale of substantially all of the equity or assets of IPSDI or Client, neither party will assign this Agreement, or delegate or sublicense any rights under this Agreement, without the other party's prior written consent, except that IPSDI may utilize subcontractors. Any assignment or transfer in violation of this section will be void. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

**4.11. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

**4.12. Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement.

**4.13. Marketing.** Only during the term of this Agreement, Client hereby authorizes IPSDI to publicly disclose Client's identity in connection with IPSDI's sales and marketing efforts.

**4.14. No Agency.** Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the Parties, it being understood and agreed that no provision contained herein, or any acts of the Parties shall be deemed to create any relationship between them other than that as detailed herein.

**4.15. Non-Discrimination.** The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age,

disability, family or religious status in administration of its programs, activities, or services. IPSDI shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

**4.16. Severability in Event of Partial Invalidity.** If any provision of the Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and will remain in effect