



# Managed Services: New Agreement 2018

MAPQ2714-01

## Town of New Hartford

Prepared for: Paul Miscione



**M.A. POLCE**  
CONSULTING

### Account Manager

Kelly B Palinski

315-838-1630

kpalinski@mapolce.com

### Inside Account Manager

Dan Sindone

(315) 838-1636

dsindone@mapolce.com

## Scope of Work

Managed Services can save money, improve efficiency on all your computers and networking support services and lower your IT costs. It also gives you peace of mind and provides a professional, comprehensive, fixed-price support at a cost that is always less than other partial solutions. M.A. Polce Consulting, Inc. can provide Town of New Hartford with a customized monthly Managed Services plan to monitor servers and network equipment as outlined below.

## Services Included

M.A. Polce Consulting, Inc. will provide the following services for Town of New Hartford:

- **Performance, Availability & Predictive Failure Monitoring.** We will utilize a monitoring system designed to track the availability and performance of critical networking components, including designated servers, and managed networking gear (e.g. routers, firewalls, managed switches, etc.). The monitoring system will provide our Customer Information Center (CIC) with real time alerts that will be responded to under the terms of this Agreement. The system will also allow for the periodic production of reports which can be made available to the Client.
- **Patch Monitoring & Management.** Patch Monitoring and Management is included as part of these services, unless specified otherwise in the Exclusions / Assumptions section of this Agreement. We will utilize a system that will monitor the operating system patch levels on servers of known systems that run approved operating systems and are connected to the network. This system also allows us to deploy security patches utilizing strategic timing based on best practices. We are also able to monitor and manage patch levels of Microsoft Office applications, and certain critical Microsoft back office server based applications such as Exchange and SQL Server.
- **Anti-Virus & Anti-Malware Services.** Webroot SecureAnywhere desktop software is included. MAPCI will be responsible for maintaining the health of this software application as well as perform virus remediation. Our monitoring system is also compatible with most major antivirus software vendors (i.e. AVG, Symantec/Norton, McAfee, Trend Micro & Webroot).
- **System Administration.** Basic system administration is included as part of these services, unless specified otherwise in the Exclusions / Assumptions section of this Agreement. Basic system administration tasks include such actions as resetting passwords, assisting with basic shared folder creation and the associated permissions, creating and removing users from the user directory, adding a printer to an existing workstation, minor software updates, etc.
- **System Maintenance.** Basic maintenance tasks are included as part of these services, unless specified otherwise in the Exclusions / Assumptions section of this Agreement. Each maintenance task is performed utilizing the most expedient and unobtrusive method available, including automatic/remote, manual/remote, and manual/on-site.
- **Internet Security.** We will utilize a system responsible for providing your network with a layer of Internet security. Adware, P2P/File Sharing, Proxy/Anonymizer & Web Spam categories are blocked by default. The system may be used as a basic content filter and may be configured to block various categories, such as non-work related web sites, per the request of the customer.

- **Customer Information Center & Emergency Support.** Issues that involve systems listed as part of this agreement, assuming the client has met all expectations and requirements contained herein, and assuming the nature of the issue is not listed as an exclusion, will be handled in the most appropriate and expedient manner, and are included in the price of this agreement. Response to alerts and requests are covered during standard business hours, defined by us as 8:00 AM – 5:00PM, Monday through Friday (excluding state or federal holidays or when government offices are closed) and 24x7x365 support is optionally available.
- **Periodic Review Meetings.** Periodic meetings will be held to review monitoring reports and service requests, discuss priorities for the following quarter, and to assess the overall satisfaction of the services being provided. Meetings shall be arranged on a case-by-case basis between you and our Technical Account Manager (TAM).

## Additional Services

**Customer Information Center (CIC).** Proactive and reactive support measures are conducted through the CIC. Level I engineers handle daily support and are backed by Level II engineers for issues that are deemed critical or more specialized. Calls for assistance outside the scope of this monitoring service will be billed between the hours of 8am – 5pm, Monday through Friday at our standard support rates. After hours calls may be subject to an increased rate.

- Standard Integration (includes desktop work) \$120/hr.
- Networking \$150/hr.
- Complex Integration \$150/hr.
- Security, IT Consulting, and Business Analysis \$175/hr.

**Account Management.** Town of New Hartford will have two Account Managers assigned and a complete staff at your disposal for any and all issues that pertain to the interfacing between Town of New Hartford and M. A. Polce Consulting, Inc. The AMs are:

- Kelly B Palinski, Senior Account Manager
- Chris Roy, Technical Account Manager

The Senior Account Manager is responsible for overall client satisfaction and oversees the management of the account. They are directly involved with the setting of short and long term strategic direction, and are responsible specifically with communications and interfacing.

The Technical Account Manager is responsible for daily CIC operations and all support services, on-site and off-site.

## Value Added Service

As agreed upon in a recent phone conversation with Mike Polce and Paul Miscione, M.A. Polce will provide one Value Add service to this agreement for the 2018 Calendar Year. The Value Add service that we will provide is to migrate the Town of New Hartford from the current Blue Coat Web Filtering (BCWF) service to a new Content Filtering solution called OpenDNS. The renewal for BCWF costs the Town about \$3400 per year. Moving to OpenDNS has been an initiative of ours for the Town for the last few years. This project will include a total of 61 licenses, (covering all departments). OpenDNS is now our preferred content filtering solution for all of our Managed IT Clients. We will utilize a system responsible for providing your network with a layer of Internet security. Adware, P2P/File Sharing, Proxy/Anonymizer & Web Spam categories are blocked by default. The system may be used as a basic content filter and may be configured to block various categories, such as non-work related web sites, per the request of the customer. Overall this initiative is valued at \$4600.

## Exclusions/Assumptions

**Project/Integration Work.** Project/Integration work is defined as any service designed to add or increase functionality or capacity. Projects are outside the scope of this agreement and will be quoted and invoiced separately. Project/Integration work will be identified to the client before any work is performed. Common examples of Project/Integration work include but are not limited to:

- New PC configuration & installation
- IT infrastructure upgrades to replace aging and out-of-date technologies
- Major software upgrades

**Line of Business Applications.** Line of business applications such as, ERP software, etc. that are not specifically mentioned herein fall outside the normal purview of this Agreement. Reasonable attempts will be made to correct connectivity issues to such applications; however, problems specific to the application or network problems caused by the application are excluded.

**Hardware Replacement Cost.** Hardware replacement strategy is handled on a case-by-case basis and the cost associated with hardware replacement falls outside this agreement. Hardware replacement can take the form of warranty, extended warranty, manufacturer's support contract, on-site spare, or purchase as needed. Hardware support options should be discussed to ensure an appropriate hardware replacement strategy exists for all critical equipment.

**Backup Tape Rotation.** If applicable, general tape rotation and offsite transit of tapes are the responsibility of the Client.

**M.A. Polce Consulting will provide the above mentioned Managed Services per month for 12 months for the following devices as follows:**

Butler Hall

- ProLiant ML350 G6 - NHDC1 - Serial # USE2172EL6
- ProLiant ML350 G6 - NHDC2 - Serial # USE2172EL5
- ProLiant ML350 G6 - NHEXCHANGE - Serial # USE041N3VM

- ProLiant ML350 G6 - NHTS1 - Serial # USE041N3VL
- ProLiant ML350 G6 - NHSDG - Serial # USE041N3VK
- Dell PowerEdge T110 II - TCLRKDC1 (Town Clerk's Office) - Serial # BCFV7V1
- Cisco ASA 5505 - Serial # JMX151141UC
- Cisco 3560X (Server Room) - Serial # FDO1549V00N
- Cisco 2960 (Upstairs) - Serial # FOC1552Z12T
- Cisco 2960 (Town Clerk's Office) - Serial # FCQ1601X1BC
- Cisco AIR-AP1142N Access Point - Serial # FTX1632E5TS
- Cisco AIR-AP1142N Access Point - Serial # FTX1632K62Z
- Cisco AIR-AP1142N Access Point - Serial # FTX1632K635
- Cisco AIR-AP1142N Access Point - Serial # FTX1632E5TR
- Barracuda Spam Filter - Serial # BAR-SF-671372
- Barracuda Message Archiver - Serial # BAR-MA-649370
- PhoenixGuard C200 - Serial # S133502000135
- 30 Desktops/Laptops (includes all sites except PD)
- 7 Networked Printers

#### Highway Department

- Cisco 2960 - Serial # FCQ1733X1AC
- Meraki MR32 Access Point - Serial # Q2JD-HUCN-2CZP

#### Recreation Center

- Cisco ASA 5505 - Serial # JMX1548403J

#### Nutrition Center

- Cisco ASA 5505 - Serial # JMX1548403P

#### Parks Department

- Cisco ASA 5505 - Serial # JMX1548403R

#### All Locations

- Cisco Open DNS

<b>Primary Contact Person</b>	Paul Miscione (315) 733-7500 pmiscione@town.new-hartford.ny.us
<b>Secondary Contact Person</b>	Carol Ryan (315) 733-7500 nhsupervisor@town.new-hartford.ny.us
<b>Contract Manager</b>	Paul Miscione (315) 733-7500 pmiscione@town.new-hartford.ny.us

<b>Contract Term</b>	3/1/2018 - 2/28/2019
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**Quoted To:**

**Town of New Hartford**  
Paul Miscione  
48 Genesee Street  
New Hartford, NY 13413

**Prepared By:**

Kelly B Palinski  
Senior Account Manager  
kpalinski@mapolce.com  
315-838-1630



MANAGED IT  
SERVICES



HOSTING  
SERVICES



SECURITY



BUSINESS  
INTELLIGENCE



STORAGE &  
VIRTUALIZATION



NETWORKING &  
WIRELESS



DESKTOP  
VIRTUALIZATION



UNIFIED COMPUTING  
SYSTEMS



COLLABORATION

**Description**

**Unit Price Qty Ext. Price**

Managed Services 24x7 Support - 1YR Agreement  
Contract Terms: 2/1/2018 to 1/31/2019

*\$1,382.00 billed Monthly*

**Recurring Amounts:**

*\$1382.00 Billed Monthly*

<b>Subtotal</b>	\$0.00
<b>Tax</b>	\$0.00
<b>Shipping</b>	\$0.00
<b>Grand Total</b>	<b>\$0.00</b>

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

**Billing Terms and Procedures**

Hardware components and total labor cost will be invoiced upon acceptance of this proposal and is due upon receipt of the invoice. Payments must be received prior to the purchase of any hardware and the start of any services.

**Quote Validity**

Typographical and stenographic errors are subject to correction.

Component availability will be noted in the event that a particular component is unavailable. Estimated delivery dates will be provided on a best effort basis. MA Polce will communicate changes in availability as we are made aware of them throughout the procurement process.

**Expiration**

The offer for this proposed custom technology installation as described in this document is good for the month that it is created in, after which an entirely new agreement must be negotiated.

**M.A. Polce Consulting - A Security focused, Managed IT Company**

## MANAGED SERVICES

This Monitoring Agreement Attachment is in conjunction with the Services Agreement, which together with the Schedules sets out the terms and conditions of how MA Polce will provide the following Services.

**1. Performance, Availability & Predictive Failure Monitoring.** MA Polce will utilize a monitoring system designed to track the availability and performance of critical networking components, including designated servers, and managed networking gear (e.g. routers, firewalls, managed switches, etc.). The monitoring system will provide our Customer Information Center (CIC) with real time alerts that will be responded to under the terms of this Agreement. The system will also allow for the periodic production of reports which can be made available to the Client upon request.

**2. Patch Monitoring & Management.** Patch Monitoring and Management is included as part of these services, unless specified otherwise in the Exclusions / Assumptions section of this Agreement. MA Polce will utilize a system that will monitor the operating system patch levels on servers of known systems that run approved operating systems and are connected to the network. This system will allow MA Polce to deploy patches utilizing strategic timing based on best practices; and to monitor and manage patch levels of Microsoft Office applications, including certain critical Microsoft back office server based applications such as Exchange and SQL Server.

**3. Virus Definition Monitoring & Management.** MA Polce will utilize a system that monitors antivirus definition levels of all known systems, unless specified otherwise in the Exclusions / Assumptions section of this Agreement.

**4. System Administration.** Basic system administration is included as part of these services. Basic system administration tasks include such actions as resetting passwords, assisting with basic shared folder creation and the associated permissions, creating and removing users from the user directory, adding a printer to an existing workstation, minor software updates, etc.

**5. System Maintenance.** Basic maintenance

tasks are included as part of these services. Each maintenance task is performed with the goal of minimizing intrusion, using methods such as automatic/remote, manual/remote, and manual/on-site.

**6. Customer Information Center & Emergency Support.** Issues that involve systems listed as part of this agreement, assuming the client has met all expectations and requirements contained herein, and assuming the nature of the issue is not listed as an exclusion, will be handled with the goal of minimizing intrusion, and are included in the price of this agreement.

Response to alerts and requests are covered during standard business hours, defined by us as 8:00 AM – 5:00PM, Monday through Friday (excluding state or federal holidays or when government offices are closed). Extended hours support, defined as Standard Hours Coverage plus 5:00 PM – 11:00 PM Monday through Friday; and 24x7x365 support are optionally available.

Companies who select Standard Hours Support, but request that a particular issue be responded to after hours are subject to our then current non-Standard Hours Support rates.

In the event this Agreement is extended beyond its original term, MA Polce reserves the right to adjust its rate on 60 days' notice to Client.

**7.** From time to time, Monitoring and Remote Management Services may be inoperable for causes beyond MA Polce's reasonable control, including, without limitation the conditions of force majeure and for maintenance. As such, Client acknowledges that MA Polce cannot guarantee the integrity of data stored or transmitted via Client's system/hardware or via the Internet. Client further acknowledges MA Polce is not liable for the inadvertent disclosure of, or corruption or erasure of data transmitted or received



or stored on Client's system, unless caused by the negligence or willful misconduct of MA Polce's employees or anyone under MA Polce's reasonable control.

**8. Periodic Review Meetings.** Periodic meetings will be held to review monitoring reports and service requests, discuss priorities for the following quarter, and to assess the overall satisfaction of the services being provided. Meetings shall be arranged on a case-by-case basis between Client and MA Polce's Technical Account Manager (TAM).

### **Exclusions / Assumptions**

**Project/Integration Work.** Project/Integration work includes any service designed to add or increase functionality or capacity. This also include activities such as setting up and configuring new hardware (ie servers, workstations, or network appliances). Projects are outside the scope of this agreement and will be quoted and invoiced separately. Project/Integration work will be identified to the client before any work is performed. Common examples of

Project/Integration work include, but are not limited to: New hardware configuration & installation; IT infrastructure upgrades to replace aging and out-of-date technologies; and Major software upgrades

**Line of Business Applications.** Line of business applications such as accounting packages, CRM software, ERP software, etc. that are not specifically mentioned herein fall outside the normal purview of this Agreement. Reasonable attempts will be made to correct connectivity issues to such applications; however problems specific to the application or network problems caused by the application are excluded.

**Hardware Replacement Cost.** Hardware replacement strategy is handled on a case-by-case basis and the cost associated with hardware replacement falls outside this agreement. Hardware replacement can take the form of warranty, extended warranty, manufacturer's support contract, on-site spare, or purchase as needed. Hardware support options should be discussed to ensure an appropriate hardware replacement strategy exists for all critical equipment.

## SERVICES AGREEMENT

### Parties.

This Service Agreement (hereinafter "Agreement") is between M. A. Polce Consulting, Inc., a New York State corporation, (**hereinafter "MA Polce"**) and the undersigned (**hereinafter "Client"**) and is effective on the date signed below ("Effective Date").

### Services.

Attached to this Service Order Form are the terms and conditions under which each identified service will be provided by MA Polce to Client, including the cost of providing said services.

### General Terms & Conditions.

**Term.** This Agreement shall remain in effect from the Effective Date until the expiration of the Term as set forth in this Service Order Form. After the Initial Term, this Agreement will automatically renew for the same Term, unless either party gives written notice of its intent not to renew at least thirty (30) days prior to the expiration of the current term.

**Payment.** MA Polce shall invoice Client on the 15<sup>th</sup> of the month in advance of the month in which services are being provided, with payment due upon receipt. A late fee of 5% of the invoiced services will be assessed if payment is not received by the 25<sup>th</sup> of the month in which the invoice is sent.

If Client defaults in payment of any amount when due or any service fee interest thereon, MA Polce may, in addition to any other rights or remedies at law or under this Agreement, and in its sole discretion, (i) suspend or deny Client's use of the Services provided or the performance of any of MA Polce's obligations under this Agreement until such failure is remedied, subject to such conditions as MA Polce may require; and/or (ii) terminate this Agreement. Client shall be given ten business days' notice and an opportunity to cure any nonpayment default prior to MA Polce exercising these options.

**(a) Collections.** We may suspend any or all Services on one (1) Business Days advance notice to you if payment for any Service is overdue. You agree to pay our then current reinstatement fee following a suspension of Service for non-payment. We may charge you a service fee on amounts that are overdue by ten (10) days or more at the lesser of 1.5% per month or the maximum amount allowable under law. You also agree to pay our reasonable costs of collection of overdue amounts, including collection agency fees, reasonable attorneys' fees and costs.

**(b) Taxes.** All prices set out herein are exclusive of all taxes and you shall pay, any taxes, tariffs, duties and other charges or assessments imposed or levied by any government or governmental agency in connection with this Agreement, including, without limitation, any federal, provincial, state and local sales, use, goods and services, value-added and personal property taxes on any payments due in connection with the Services provided hereunder, (except for tax based solely on our net income.) You will provide such information and documentation reasonably requested by us to determine whether we are obligated to collect taxes from you.

Confidential

Client Initials \_\_\_\_\_

## **Confidentiality.**

**(a) Confidential Information.** "Confidential Information" means all information disclosed by either party, before or after the execution of the Agreement, that the recipient should reasonably understand to be confidential including: **(i)** MA Polce prices and other terms of service, audit and security reports, server configuration designs, data center designs and other proprietary technology, **(ii)** Client content transmitted to or from MA Polce, or stored by Client on MA Polce's servers, and **(iii)** other information that is conspicuously marked by either party as "confidential" or if disclosed in non-tangible form, is verbally designated as "confidential" at the time of disclosure and confirmed as confidential in a written notice given within thirty (30) day of disclosure. It shall exclude any information which is independently developed by a non-disclosing party as shown by such party's written business records, is or becomes generally available to the non-disclosing party or the public other than through violation of the Agreement.

**(b) Use and Disclosure.** Each party agrees not to use each other's Confidential Information except in limited circumstances in connection with the performance or use of the Services, or in the exercise of rights under this Agreement, or to disclose the other's Confidential Information to any third party except as provided in subsection (d) below and except as to its service providers, agents and representatives who need to know the information to represent or advise it with respect to the subject matter of the Agreement; and provided that such service providers, agents and representatives are bound by confidentiality restrictions at least as stringent as those stated in the Agreement.

**(c) Your Name.** Neither party may publicly use the other party's logo or other trade or service mark without permission from the other.

**(d) Disclosure of Confidential Information.** MA Polce shall not collect or access personal files or data that Client chooses to store in its account. In furtherance of MA Polce's policy to respect and protect Client privacy, neither MA Polce nor its agents, officers or employees may disclose Confidential Information. Notwithstanding anything else stated in this Agreement, MA Polce reserves the right to disclose Confidential Information if required to do so by lawful Court order, process or subpoena, or in the good faith belief that such action is reasonably and imminently necessary to: (1) comply with such legal process; or to the extent allowed by law due to (2) actual or threatened public safety concerns. Disclosure of subscriber names and other registration and identification information may be necessary, but only to the limited extent required to comply with such Court order, legal process or subpoena. Client will be notified upon receipt of any such Court order, legal process or subpoena and, unless otherwise required by law or Court Order, Client shall be allowed a reasonable time and opportunity to defend or move against any such Court Order or legal process and/or to move to quash any such subpoena, prior to the release of any requested information. MA Polce will fully cooperate with law enforcement authorities investigating suspected lawbreakers, and MA Polce reserves the right to make a good faith report to such authorities of any reasonably suspect activity.

**Privacy.** MA Polce will not monitor, edit, or disclose any personal information about Client or its account with M. A. Polce Consulting, Inc. without Client's prior permission, unless MA Polce takes such action in good faith believing it is necessary to: (a) conform to legal requirements or comply with legal process or lawful Court order; (b) protect in good faith imminent, actual and/or threatened public safety concerns; or (c) act to protect Client's interests. Client will be notified upon receipt of a request, Court order, legal process or subpoena and, unless otherwise required by law or Court Order, Client shall be allowed a reasonable time and opportunity to defend or move against any such Court Order or legal process and/or to move to quash any such subpoena, prior to the release of any such requested information. Client agrees that MA Polce may access Client's account, including its contents, as stated above or to

respond to service or technical issues.

**Your Obligations.** You agree to do all of the following at your own expense:

**(a) Security Precautions.** Use reasonable security precautions in connection with your use of the Services (including encrypting any Protected Information transmitted to or from, or stored by you on, the servers or storage devices used by you) and implement security procedures necessary to limit access to the Service to you and any of your authorized users. You shall notify us immediately if there is a security breach or unauthorized use of the Service.

**(b) Law, AUP.** Comply with all legal requirements applicable to your use of the Services and with the AUP.

**(c) Investigation of AUP.** Cooperate with Phoen1x Connection's reasonable investigation of any suspected violation of the AUP.

**(d) Account, Password and Security.** Maintaining confidentiality with regard to your password and account information. Furthermore, you are entirely responsible for any and all activities that occur under your account. We will not be held liable for any third party claims and/or actions taken with respect to Services offered.

**Suspension of Service.** We may suspend Services to you without liability if: **(i)** we reasonably believe that the Services are being used in violation of the Agreement or applicable law; **(ii)** you fail to cooperate with any reasonable investigation of any suspected violation of the AUP; **(iii)** there is a denial of service attack on your servers or other event for which we reasonably believe that the suspension of Services is necessary to protect our network or our other customers; **(iv)** If requested by a law enforcement or government agency; or **(v)** your failure to pay for the Services or any other charges when due. We shall give you written notice of a suspension under this Section, which notice shall be at least one Business Day in advance of the suspension unless a law enforcement or government agency directs otherwise or suspension on shorter or subsequent notice is necessary to protect us or our other customers from an imminent and significant risk. Information on our servers will be unavailable during a suspension of Services.

**Unauthorized Use of Service.** We agree only to perform the specific services described in the Service Order Form and other parts of the Agreement. You shall be responsible for unauthorized use of the Services by any person, unless such unauthorized use results from our failure to perform our obligations under the Agreement.

### **Representations and Warranties.**

**(a) Reciprocal.** Each party represents and warrants to the other that: **(i)** each has the power and authority and the legal right and capacity to enter into the Agreement and to perform its obligations under the Agreement; **(ii)** each has taken all necessary action on its part to authorize the execution and delivery of the Agreement; and **(iii)** the execution and delivery of the Agreement and the performance of its obligations hereunder do not conflict with or violate applicable laws or regulations, or company operations.

**(b) Client Representations.** Client represents and warrants that: **(i)** the information provided for the purpose of establishing an account is accurate; **(ii)** Client will not use MA Polce's services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D:4 and D:3, as set forth in Supplement No. 1 to Part 740 of the United States Export Administration Regulations; **(iii)** Client will not provide administrative access to MA

Polce's services to anyone that is located in or is a national of any embargoed or highly restricted country under United States export regulations, which include, as of December 2007, Cuba, Iran, and Sudan and those hereinafter included; and **(iv)** Client is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated Nationals and Blocked Persons.

**(c) MA Polce Representations.** MA Polce represents and warrants that it will provide services in conformance with the specifications set forth in this Agreement and in compliance with all applicable laws, rules and regulations.

#### **Disclaimers.**

**(a)** MA Polce agrees to make its best effort to protect data and ensure confidentiality as outlined in this Agreement. Due to factors beyond MA Polce's control, however, MA Polce cannot warrant or represent that services will be uninterrupted, error-free, or completely secure. Client acknowledges the inherent risks associated with Internet connectivity that could result in the loss of privacy, data, confidential information, and property.

**(b)** Client acknowledges that technologies are not universally compatible, and there may be particular services or devices that MA Polce is unable to monitor, manage, or patch. MA Polce agrees to inform Client when such a situation exists. Client agrees to make suitable corrections if necessary, and to hold MA Polce harmless under these circumstances.

**(c)** MA Polce constantly reviews and updates its best practices based on the relative threats to patch delivery timing. Every effort is made to balance the reduction of vulnerabilities with the slight destabilization risk associated with applying new patches to otherwise stable systems. MA Polce will use its best efforts to provide advance notice to Client of any such application of patches and/or potential interruptions. Client acknowledges MA Polce shall not be held responsible for potential interruptions in service due to the timing in applying patches.

**(d)** Since patch definitions and antivirus definitions are distributed by software vendors, MA Polce has no direct control over the effectiveness or lack thereof of the software being applied. Client acknowledges that MA Polce shall not be held responsible for potential interruptions in service due to patches released by software vendors.

**(e)** Except as expressly provided herein, MA Polce disclaims any warranties, express or implied, with regard to merchantability, merchantable quality, durability, fitness for a particular purpose, title and those arising by statute or otherwise in law or from a course of dealing or use of trade. Client acknowledges and agrees that MA Polce's licensors and suppliers make no direct warranty of any kind under this Agreement, with the exception of any manufacturer's warranties that may be in place with respect to such licenses, supplies and/or equipment.

**(f)** Client acknowledges that unless back up services are purchased from MA Polce, MA Polce will not back up Client data stored on any device.

#### **Solicitation of MA Polce Employees.**

Client agrees that during the term of this Agreement and for twelve (12) months following its termination, Client shall not solicit for employment, either with Client or a third party, any MA Polce employee with whom Client has direct contact in connection with this Agreement.

#### **Indemnification.**

The indemnification obligations defined in this Section shall be in lieu of and supersede any indemnification

obligations that may otherwise exist by law.

**(a)** Client agrees to defend, indemnify and hold harmless MA Polce and each of its officers, directors, shareholders, agents, and employees from and against any and all claims, whether civil or criminal, requests for injunctive relief, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorney's fees) brought by a third party or administrative body under any theory of legal liability arising out of or related to any of the following: **(i)** Client's actual or alleged use of MA Polce's services in violation of any part of the Agreement, or applicable law; or **(ii)** Client's actual or alleged breach of obligations to its customers or end-users. Indemnification shall not apply if the claim arises from MA Polce's negligence or failure to perform obligations under the Agreement.

**(b) Reciprocal.** Each party agrees to indemnify and hold the other harmless (to include each party's respective officers, directors, shareholders, agents, and employees) from and against any and all claims, expenses, costs (including reasonable attorney's fees), brought by a third party under any theory of legal liability arising out of the other party's: **(i)** gross negligence, **(ii)** willful misconduct; or **(iii)** infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right, publication of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing material, and claims of violations of data protection legislation, to the extent such losses are based upon (i) the content of any information transmitted by Client or by any of its customers or authorized end-users, (ii) the use and/or publication of any and all communications or information transmitted by Client or by any of its customers or authorized end users, or (iii) the use of services by Client in any manner inconsistent with the terms of this Agreement, including without limitation the Acceptable Use Policy (AUP).

**(c) Procedures.** If either party seeks indemnification under this Section, then that party shall provide prompt notice of its claim for indemnification to the other. (However, failure to give prompt notice shall not affect the party's obligations under this Section unless the delay prejudices the defense of the matter). The other party will have the right to select its own attorney to defend it. The indemnifying party shall reimburse the other party for reasonable fees and expenses, including reasonable attorney's fees, incurred by the party to defend itself. The indemnifying party will keep the other party informed of the status of any litigation, and will not settle any matter covered by this Section without the prior consent of the other party, which shall not be unreasonably withheld. Amounts due under this Section shall be paid as incurred and may be offset against other amounts due under the Agreement.

**Limitation of Damages.** Both parties agree that the allocations of risk made in this Section are reasonable and that neither party would enter into the Agreement without these limitations on liability.

**(a)** To the extent permitted by law, Client acknowledges that MA Polce shall not be liable for direct, special, incidental, indirect, or consequential loss or damage, lost business revenue, loss of profits, loss of data, damages for delay, punitive or exemplary damages or failure to realize expected profits or savings due to equipment failure, even where MA Polce has been advised of the possibility of any such losses or damages.

**(b)** Client acknowledges that MA Polce shall not be liable for unauthorized access to, or alteration, theft, loss or destruction of, any data, equipment or services beyond the control of MA Polce and/or our employees, officers or agents.

**(c)** MA Polce is liable to Client to the extent expressly provided for in this Agreement. The limitations, exclusions and disclaimers in this Agreement shall apply irrespective of the nature of any cause of action, demand, or action Client may wish to assert, including breach of contract, tort, or any other legal theory and shall survive a fundamental

breach or breaches or the failure of the essential purpose of this agreement or of any remedy contained herein.

**(d)** Except for claims based on willful misconduct or negligence, MA Polce's maximum aggregate monetary liability shall not exceed the fee paid under this Agreement in effect at the time of the occurrence of the event(s) giving rise to the claim.

### **Termination.**

**(a)** Client may terminate the Agreement prior to its expiration without liability (except for amounts due MA Polce for services through the effective date of termination) if: **(i)** MA Polce fails in a material way to provide services in accordance with the terms of the Agreement and does not cure the failure within ten (10) days of delivery of Client's written notice describing the failure in reasonable detail; or **(ii)** MA Polce materially violates any other provision of the Agreement and fails to cure the violation within thirty (30) days of delivery of Client's written notice describing the violation in reasonable detail.

**(b)** MA Polce may terminate the Agreement prior to its expiration without liability if: **(i)** Client fails to pay any amount due within ten (10) days of delivery of MA Polce's written notice of default due to non-payment; **(ii)** Client materially violates any other provision of the Agreement and fails to cure the violation within thirty (30) days of delivery of MA Polce's written notice describing the violation in reasonable detail; **(iii)** Client's use of computer services is in violation of a material term of the AUP and fails to cure the violation within one (1) day of delivery of MA Polce's written notice describing the violation in reasonable detail; or **(iv)** MA Polce receives notice of a legal claim for intellectual property infringement related to provision of its services and after giving Client at least thirty (30) days written notice, MA Polce is unable to modify its service in a way that avoids an ongoing risk of liability.

**(c) Early Termination.** Client acknowledges that MA Polce has quoted recurring fees for services based on Client's agreement to pay them for the entire Term. Without limiting any other remedy available arising from the early termination of the Agreement, in the event Client terminates the Agreement without cause, or MA Polce terminates the Agreement with cause, then all fees due, including the recurring fees for the remaining part of the Term, will be charged to Client's account upon the termination date. Client acknowledges that MA Polce will not refund any fees paid in advance of termination.

**Notices.** Notices given under the Agreement shall be in writing and sent via U.S. Mail or overnight courier to:

M. A. Polce Consulting, Inc.  
401 Phoenix Drive  
Rome, NY 13441

Notices will be considered delivered as of the date the notice is given to the overnight courier.

**(d) Data Disposal.** Data stored on our systems will be destroyed upon termination of services in accordance with our internal policy, "Electronic Data Disposal Policy," which complies with the recommendations of the National Institute of Standards and Technology's Guidelines for Media Sanitization.

### **Miscellaneous.**

**(a) Loaned/Rented Equipment.** Client acknowledges that any equipment utilized by MA Polce that is not explicitly

purchased by Client shall remain the property of M.A. Police Consulting, Inc., and must be returned upon request. Client further agrees to cease using any technology that remains the property of M. A. Police Consulting, Inc. upon termination of this Agreement.

**(b) Equipment & Facilities.** Client acknowledges that MA Police may utilize Client's equipment and grants access to Client's facilities in connection with services rendered under this Agreement. Client retains title and ownership in all of its equipment. Facility access may be withdrawn for any reason at any time; provided, however, that Client will hold MA Police harmless if denied access results in MA Police being unable to perform its duties adequately.

**(c) Passwords.** Client acknowledges that MA Police must have access to any and all passwords on systems that MA Police is responsible for monitoring and supporting. MA Police acknowledges that such passwords are to be kept confidential. MA Police shall notify Client in the event that such passwords need to be changed due to a security breach, change of employment of an employee or otherwise.

**(d) Software.** You agree not to remove, modify or obscure any copyright, trademark or other proprietary rights notices that appears on any software we provide to you. You may not reverse engineer, decompile, or disassemble any software we provide, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation and then following at least ten (10) days advance written notice, or is permitted by the terms of any "open source" license that governs the use of the software.

**(e) Third Party Products.** As a convenience to you, we may from time to time, arrange for your license of third party software, services, and other products not included as part of the Service, and/or may provide support to you in relation to those products. Your use of third party software, services, and other products is governed by the terms of any license or other agreement between you and the third party.

**(f) Wireless Service.** There are additional rules if you require industry standard cellular wireless communications services to communicate with vehicles. All vehicles must be within cellular coverage to communicate. You agree that we are not the underlying wireless carrier and that we may contract with various wireless carriers from time to time. Accordingly, under no circumstances shall we be liable to you for any loss, injury or damage, of whatever kind or nature, resulting from or arising out of any mistakes, errors, omissions, delays or interruptions in the receipt, transmission or storage of any messages, signals or information arising out of or in connection with the services or use of any underlying carrier's wireless network.

You have no property right in any number assigned to you, and understand that any such number can be changed from time to time. You understand that MA Police and the underlying carrier cannot guaranty the security of wireless transmissions, and will not be liable for any lack of security relating to the use of the services. The wireless service is for your use only and you may not resell the service to any other party.

**(g) Ownership.** MA Police and Client acknowledge and agree that each party retains exclusive ownership and rights in its trade secrets, inventions, copyrights, and other intellectual property, and that MA Police shall own any intellectual property that it may develop in the course of performing services under this Agreement.

**(h) Attorney's Fees.** If legal action is commenced to enforce the terms of this Agreement or the relationship between MA Police and Client, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

**(i) Governing Law, Jurisdiction, Venue, Restrictions.** The Agreement shall be governed by the laws of the State



of New York. It shall not be governed by the United Nations Convention on the International Sale of Goods. Exclusive venue for all disputes arising out of or relating to the Agreement shall be the state or federal courts in Oneida County, New York, and each party agrees not to dispute personal jurisdiction or venue, and waives all objections thereto.

**(j) Modifications.** The Agreement may be amended only by a written agreement signed by both parties.

**(k) Non-Waiver.** A failure or delay in enforcing any provision of the Agreement by either party shall not be deemed a waiver of that party's rights with respect to that provision or any other provision of the Agreement. A waiver, by either party, of any of its rights under the Agreement is not a waiver of any of its other rights with respect to a prior, contemporaneous or future occurrence, whether similar in nature or not.

**(l) Construction.** The headings in the Agreement are not part of the Agreement, but are for the convenience of the parties. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) references to one gender include all genders, (iii) "or" has the inclusive meaning frequently identified with the phrase "and/or," (iv) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (v) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any law, statute, rule, regulation or Agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or Agreement as it may be modified, varied, amended or supplemented from time to time. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.

**(m) Counterparts.** Any documents signed in connection with the Agreement may be signed in multiple counterparts, which taken together will constitute one original. Facsimile signatures or signatures on an electronic image, such as .pdf or .jpg format, shall be deemed to be original signatures.

**(n) Survival.** The following provisions will survive expiration or termination of the Agreement: fees, indemnity obligations and any provision that is made the basis of a claim for indemnification, confidentiality obligations, provisions limiting liability and disclaiming warranties, provisions regarding ownership of intellectual property, and these miscellaneous provisions.

**(o) Force Majeure.** Neither party shall be in default of any obligation under the Agreement if the failure to perform the obligation is due to any event beyond that party's control, including significant failure of a part of the power grid, significant failure of the Internet, acts of Nature, war, riot, insurrection, fire, epidemic, strikes or other organized labor action, sabotage, terrorist activity or threat thereof, or other events of a magnitude or type for which precautions are not generally taken in the industry.

**(p) Severability.** In the event any term of this Agreement is held unenforceable by a change in law or a court having jurisdiction, the remaining part of the Agreement will remain in full force and effect, provided that the Agreement without the unenforceable provision(s) is consistent with the material economic incentives of the parties leading to the Agreement.

**(q) Relationship between the Parties.** Both parties are independent contractors and not partners or otherwise involved in a joint venture. Neither party is the agent of the other, nor shall either party represent to any person that it has the power to bind the other on any agreement. The Agreement is non-exclusive. MA Police may provide service to any person, including competitors of Client.

**(r) Assignment.** Client may not assign or transfer this Agreement or any of its rights or obligations under this Agreement to any third person without MA Polce's consent, which is contingent on the assignee receiving our credit approval. MA Polce may delegate its obligations to its affiliates and agents, suppliers and contractors, upon written notice to Client.

**(s) Agreement.** The Agreement is the complete and exclusive agreement and supersedes and replaces any prior agreement, understanding or communication, written or oral.