



## Town of West Seneca

TINA M. HAWTHORNE  
TOWN ATTORNEY  
[thawthorne@twyny.org](mailto:thawthorne@twyny.org)

# MEMO

To: The Honorable Town Board

From: Tina M. Hawthorne, Town Attorney

Date: August 12, 2020

Subject: Information Technology Professional Services

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Information technology proposals were received from three companies for consideration by the Town Board. I have attached all three proposal hereto and a resolution to be adopted in favor of the Board's decision.

**RESOLUTION FOR PROFESSIONAL SERVICES**  
**INFORMATION TECHNOLOGY**

**WHEREAS**, the Town of West Seneca (hereinafter referred to as "Town") recognizes that it requires professional services to maintain, update, and service its information technology systems; and

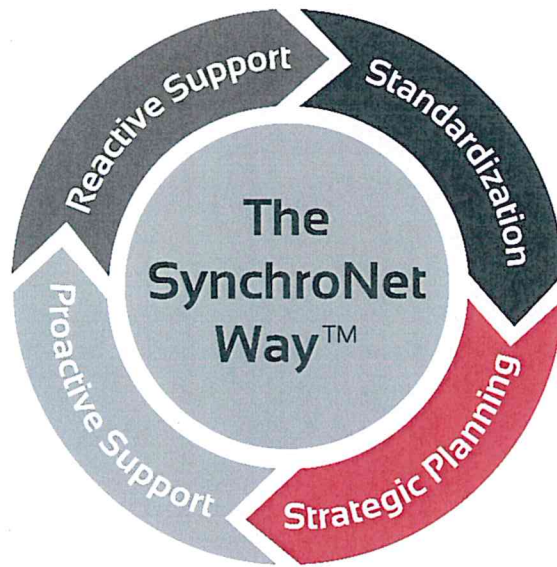
**WHEREAS**, the Town secured proposals for information technology professional services from three companies (iEvolve, SynchroNet, and Alternative Information Services); and

**WHEREAS**, the Town has carefully weighed the proposals, including the services proposed and the cost for said services, and the Town desires to secure cost-effective professional information technology services that best suit the technology needs of the Town for the benefit of the taxpayers; and

**NOW THEREFORE**, be it resolved that the Town Board of the Town of West Seneca authorizes the Supervisor to execute the Professional Services Agreement with \_\_\_\_\_ for information technology professional services as more fully described in the attached proposal at the rates contained therein.



Proposal for  
TOWN OF WEST SENECA



We merge process, standardization, and strategy so that your technology environment truly works for and with you.

## Town of West Seneca

### RE: Request for Proposal for IT Services

June 10, 2020

#### **About SynchroNet Industries, Inc.**

SynchroNet is an IT strategy and consulting firm that arms organizations with the strategy, tools and resources to impact their mission – which we call The SynchroNet Way.

The SynchroNet Way is a unique approach to managing technology that depends on regular process, standardization and documentation. SynchroNet strives to be involved with your team and your organization's goals, making your business more profitable & efficient through the use of technology.

Founded in 1998, SynchroNet has 20 employees and is headquartered in West Seneca, NY. While our deep focus is on the businesses of Western New York, SynchroNet's client base stretches to organizations in 15 states. SynchroNet supports a wide range of small-to-medium sized businesses in construction, finance, legal, healthcare, nonprofits, municipality & law enforcement agencies.

#### **As an Executive of a busy & growing in heavily regulated organization, have you ever found yourself?**

- Struggling to connect to your systems or coping with slow systems, but not sure why?
- Managing outdated hardware or operating systems? Or is the Organization's cloud not reliable or slow?
- Concerned about meeting compliance or industry regulations... or maybe not totally sure where to start?
- Dealing with IT projects that seem to drag on FOREVER?!!
- Hard pressed to get your IT person to call you back in a timely manner?
- Placing a service call and then waiting hours (or days!) for help to FINALLY show up?
- Irritated that when your IT person ACTUALLY does show up, your problem rarely gets fixed the first time?
- Wondering why your IT bills go up and up and up?
- Glossing over or holding back issues from your IT Company because you're not sure how much it'll cost to fix ... or because you doubt they'll solve your problem anyway?
- Anxious that delays or repeat issues interfere with customer service or timely responses to customers or vendors?
- What happens to our IT system if we get hit with a ransomware attack?
- What if those issues never occurred in the first place? Or what if they were fixed on the spot as the need arose?

## Let me introduce you to The SynchroNet Way™ – a refreshing perspective on IT support & strategy:

### The SynchroNet Way™ Overview (attached)

#### What does it mean to be *truly* proactive?

Proactive IT strategy and support relies heavily on processes and procedures that provide help to end users in need (so, all company employees!), but more importantly, establishes performance and systems-based metrics to clearly steer IT decision-making—decisions that eliminate the hidden costs of IT:

» **Measurable end user productivity.** Without metrics, how do organizations *know* their end users can use their computers in the most efficient manner? A good help desk will fix problems, but does nothing to prevent problems from recurring. Every hour your end users spend on the phone with IT support is an hour wasted.

A proactive, expert IT partner must provide meaningful metrics to monitor and eliminate issues to improve end user productivity. The goal of the proactive IT firm must be issue suppression.

» **Buying the right equipment / software.** What is right? Again, without metrics derived from a help desk, how can a proactive IT firm advise a client on the most efficient equipment purchases? How does management or a steering committee know that they are using their IT budget most effectively?

A proactive, expert IT partner understands metrics and trends, making recommendations understandable and easy to ensure clients can maximize the return on investment within their IT budget.

» **Security and data protection.** Bitcoin, the currency with which hackers' trade, has become more valuable than gold. This is bad news for good people and honest businesses; there will be ever more attacks on information, systems and users. But cyber criminals aren't the only threat to data; human error remains a primary vulnerability for criminal exploitation.

A proactive, expert IT partner helps clients adapt to new threats and vigilantly train end users on the proper use of their systems through scalable, standardized processes and procedures that protect client interests.

» **Business continuity.** When known (cyber criminals / employees) or unknown (acts of God) threats compromise organizations, can the client sustain long outages and remain relevant to their stakeholders or customers? How long can systems be offline without negatively impacting the organization? What is the financial and opportunity cost of an outage?

A proactive, expert IT partner ensures business continuity by having a complete IT model at the ready, featuring clear steps and responsibilities to restore full service. In today's climate, clients must be assured, through testing and verifying, that they are indemnified within the appropriate time frame, in the event of a catastrophic outage.

» **Correct job role.** Without the proper contract, processes, procedures and metrics to guide them, clients and their staff often resort to assuming IT functions that are not within their comfort zone or areas of expertise. This drain on valuable time and mindshare often means employees, even executives, are spending more time managing IT, or their IT vendor, than doing their primary job. As a result, clients, without guidance, find themselves making purchasing decisions, authorizing projects, and making IT-related decisions without metrics to support them. This can be costly in many areas.

A proactive, expert IT partner ensures businesses are protected by a comprehensive contract that marries value and benefits so that clients can do their actual job role throughout the engagement and make data-informed decisions along the way.

» **Additional staff costs.** The true promise of IT is to provide productivity to clients and their end users and provide efficiency so that the organization can do more with fewer human capital resources. Inefficient systems, using the wrong software, buying the wrong equipment, and being in the wrong job role can all lead to high inefficiencies that require more staff.

A proactive, expert IT partner mitigates these risks by deploying repeatable mechanisms based on vetted best practices to understand the way that information is used within the client's organization to maximize user efficiency.

» **Knowing what you don't know.** This phrase describes what most non-technical staff feel about IT and the impact on their organization. They are bombarded with products, services and IT demands, yet they feel uncertain when making IT decisions that impact more than just a few departments or personnel.

A proactive, expert IT partner offers strategy and support information phrased in business rather than technical terms to eliminate the uncertainty of knowing if a decision is beneficial or not.

The cost of IT is not just the monthly services fee you pay your vendor; it is that amount PLUS your staff's wasted time and energy spent on these other areas PLUS wasted capital on the wrong investments / services & solutions PLUS any ad hoc IT vendor expenses that come from not having a standardized process / procedure for managing your technology ecosystem.

The true cost of IT is prohibitive. That's why we designed The SynchroNet Way — It combines hardware, software, process, procedure, schedules, roles, accountabilities, and our deep and genuine interest in productivity. **The SynchroNet Way eliminates the hidden costs of IT, identifies risk and exposure, aligns technology to best practices and provides a clear, understandable vision for the future.**

## Pricing / Fees

SynchroNet strives to provide our clients with a 'call one vendor' approach. Call us – we will handle the rest.

Pricing is simple; The SynchroNet Way (see attached) includes all of following:

- (56) FTEs (Full Time Employees) & ~ (7) remote offices
- (56) licenses of Office 365 software
- (65) PCs support and security and maintenance

- (130) email accounts
- (6) Microsoft Server licenses and related network CALs
- Onsite Server hardware and related equipment provided as part of the monthly contract
- Citrix software and subscription for (15) simultaneous users provided as part of the monthly contract, includes Office licensing for (15) users
- Includes all support; both onsite & remote – unlimited. Support is 24x7
- Includes all change requests; user moves/adds/changes, password resets, etc. Troubleshooting of any problems that arise
- Weekly issue analysis and trending to find repeat and problematic issues. These will be brought to your attention for further direction if necessary, or resolved permanently by SynchroNet
- Monthly Best Practice site visit\*\* to main site for the first year, then Quarterly Best Practice Check List site visits\*\* for 2<sup>nd</sup> year and beyond, completed by a SynchroNet Network Administration engineer for main site & (1) once per year for smaller sites. The checklist consists of over (80) best practice questions
- Annual Strategy and technology planning / steering / **budgeting** meeting with SynchroNet virtual Chief Technology Officer onsite or via phone (whichever makes most sense) (1x per year or as needed / requested)
- Ongoing data backup for all organization data, including all hardware, software and cloud storage. Includes backup accuracy checks & backup authorization document
- Includes offsite backup storage for up to 7 years for Town departments that require this type of service
- Includes Security software licensing / subscription for all computers & servers
- Full monitoring of key elements of your technology
- Full support of Town laptops, desktops, and server hardware/software/operating systems
- On demand asset reporting available for all the hardware
- Yearly technology invoice review for software, services, Internet, etc. for all of the Town's services related to technology to ensure the service is required or if it can be removed from the budget because it overlaps another service
- No long term contracts

\*\*Regarding site visits, SynchroNet will abide by NYS and CDC guidelines regarding site visits during COVID-19.

**The total monthly support fee is \$12,312 (all-in, fixed fee; see above for details).**

Above fee includes:

- New firewalls for (8) locations
- (45) refurbished computers – mix of PCs and laptops
- Migration fee from current vendor
- SynchroNet Owned & Managed server hardware (and related equipment) to support the Town's environment installed at 1250 Union Road

**On the 4<sup>th</sup> year, the total monthly support fee prices drops to \$11,250.**

What's not included in above monthly fee?

- "Anything NEW" – (not described above) AKA, new server, new projects or implementations, new equipment, new software, etc. Labor & hardware & software for these items will be identified and quoted as a **FIXED FEE**
- Subscriptions and software renewals are estimated at \$700/year
- We are unsure if town owes Microsoft SQL software for Munis, this may need to be purchased if it is rented or subscribed to from current vendor. I could not find it on any of the 2019 invoices, so it is most likely owned.

As an option, if the Town of West Seneca was willing to put \$50k down on this project upfront – the monthly support fee could start \$11,250 on month 1.

### **The Plan Going Forward:**

As part of our maintenance and regular support, we will install our management software & virus protection, security & backup throughout the Town's eight locations – first and foremost. This will allow us to "fine tune" the above plan to ensure we can re-purpose all usable hardware and completely understand all network systems and departments.

After this initial effort has been completed, we will break out the REQUIRED infrastructure upgrades & migrations into multiple phases designed to minimize disruptions. This is included as part of the onboarding of our services as we have described above. After the main server infrastructure and related is physically set up at 1250 Union Road – transition will begin. The transition will go department by department and application by application, until completed.

Total migration time period is approximately 60 days from the date of approval.





## The SynchroNet Way™

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### Reactive Support

#### Customer Support Team

- 24x7 access to SynchroNet's Support Desk
- Remote support for all customer equipment
- Answer "How-To" questions
- Problem isolation and resolution
- Priority onsite support
- Manage Technology Vendor relationships

### Proactive Support

#### Centralized Services

- Microsoft security and patch management
- Real-time Spyware & Virus protection / licensing
- Cloud services, including Exchange, Spam Protection, and Servers
- Pre-fail hardware alert monitor / notification
- Offsite backup services
- Desktop & Server Optimization

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### Standardization

#### Dedicated Network Administrator

- Infrastructure and Network Administration
- Regularly dispatched to complete onsite task list and implement SynchroNet best practices
- Review centralized services for accuracy
- Ensure optimal configuration / setup for backend server services
- Comprehensive Network Documentation

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### Strategic Planning

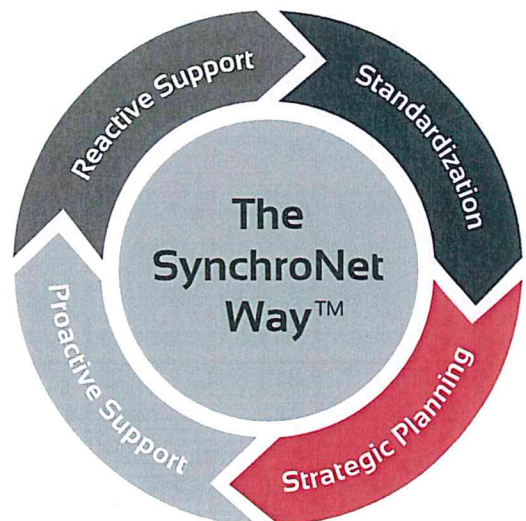
#### Dedicated vCIO

- Technology summary of key technology areas
- Yearly budget planning
- Personal advisor for the technology decisions that impact your business
- Technology Solution Design Desk

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Please email all support needs to:  
[SupportDesk@ManageMyNet.com](mailto:SupportDesk@ManageMyNet.com)

After hours emergency support:  
(716) 677-2677 ext. 1





We have prepared a quote for you

**Renewal: i-Services 36 Month**

Quote # 010561  
Version 2  
Tuesday, July 21, 2020

Prepared by:

**Kevin Kelly**

kkelly@i-evolve.com | 716 505 8324

Prepared for:

**Town of West Seneca**

Gary Dickson

GDickson@twsny.org

## Confidential Disclosure

The enclosed material is proprietary to **I-Evolve** and is therefore copyrighted. This document may not be disclosed in any manner to anyone other than the addressee and the employees or representatives of the addressed firm who are directly responsible for evaluation of its contents. This document may not be used in any manner other than for the purpose it was distributed. Without limiting the rights under copyright, no part of this document may be reproduced, stored in or introduced into a retrieval system, or transmitted in any form or by any means (electronic, mechanical, photocopying, recording, or otherwise), or for any purpose, without the express written permission of I-Evolve.

## About I-Evolve Technology Services

Most IT companies today operate as re-sellers of technology products. At I-Evolve, we take a different approach. Our consultants and engineers concentrate more on the true needs of your company or organization by customizing technology according to the way you do business.

At I-Evolve, we are distinctive in our vendor-neutral, best-of-class business solutions. Our client experience is the benchmark by which we measure success and we continually strive to deliver value beyond product price and service quality.

We strive to earn and keep your trust by being the people who listen better, engineer smarter and respond faster to your every need. What makes us different makes your business better.

### **Mission**

Our mission is to be the technology solutions consultant of choice for each of our clients by understanding the unique business challenges of their organizations. Working with our clients as a partner, rather than a vendor, we craft best-of-class solutions that will deliver.

### **Values**

Our business philosophy is based on integrity, enthusiasm, respect, growth, quality, and service. These values guide the way we manage our business and the way we service our clients.

### **Legacy of Success**

- #1 on Fast Track 50
- Best Places To Work
- Amherst Chamber – Business of the Year
- infoTech Niagara – Best Success

## Certifications and Partnerships

In addition to extensive experience, I-Evolve Consultants carry the following credentials, ensuring they have met both industry and vendor education standards.

<b>Microsoft</b>	MCSE, MCSA, MCTS, MCNE
<b>Citrix</b>	Xen Server, Xen App, Xen Desktop, CISSP, CCA
<b>HP</b>	Accredited Systems Engineer (ASE) Accredited Integration Specialist (AIS)
<b>Cisco Systems</b>	CCNA, CCDA, CCSE, CCDP, CCNP
<b>CompTIA</b>	Network+, IT Project +, Linux +
<b>Linux</b>	LPIC-1, RHCE
<b>Polycom</b>	VoIP, VoIP Technical Certification
<b>Symantec</b>	SCSE
<b>VMware</b>	VCA-DCV, VCP-DCV, VTSP





501 John James Audubon Parkway Suite 201  
Amherst, New York 14228

## i-VMware Product Information

To learn more about i-VMware Service from [i-Evolve](#), please click on the link below:

- [i-VMware](#)

## Notes

Updating the i-VDesktops from Windows 7 to Windows 10.

Pros

- Users are most familiar with this configuration
- Ease of management for onsite equipment

Migrate e-mail to O365

Pros

- Additional mail storage per user at a lower cost
- MS Office license included

Replace Managed Firewalls with AI Behavioral Based i-Comply G3.

Pros

- Enhanced Network Security
- Newer hardware

Replace current managed anti virus with i-Protect G3.

Pros

- Increased security
- Behavioral based - synchronizes security with firewall

Replace current mail filtering with i-Filter G3.

Pros

- Increased security
- Behavioral based - synchronizes security with firewall

Platinum Retainer Credit upon renewal by August 31st (\$15,000)

Pros

- Reduces one time expenses associated with mail migration and firewall implementation

New configuration reduces monthly cost by \$1741.00

Upon renewal, I-Evolve will credit back difference between month to month cost and renewal price. For June and July, that amounts to an additional \$5360 in savings. Assuming a switch to another provider would be 90 to 120 days, the savings estimate to renew with I-Evolve is upwards of \$18,000

	Current	Renewal	Savings
June	\$ 11,296.00	\$ 8,620.00	\$ 2,676.00
July	\$ 11,304.00	\$ 8,620.00	\$ 2,684.00
Est			
August	\$ 11,304.00	\$ 8,620.00	\$ 2,684.00

Sept	\$ 11,304.00	\$ 8,620.00	\$ 2,684.00
Oct	\$ 11,304.00	\$ 8,620.00	\$ 2,684.00
Nov	\$ 11,304.00	\$ 8,620.00	\$ 2,684.00
Dec	\$ 11,304.00	\$ 8,620.00	\$ 2,684.00
			\$ 18,780.00

Migrate mail to O365

Pros

-Additional storage available at lower cost

- MS Office licensing included

Recommend separating Domain Controller and File Server - Left combined for now due to cost



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Prepared For	Prepared By	Details
<b>Town of West Seneca</b> 1250 Union Rd West Seneca, NY 14224 Gary Dickson GDickson@twsny.org (716) 777-2504	<b>I-Evolve Technology Services</b>  Kevin Kelly 716 505 8324 Fax 716 505 8325 kkelly@i-evolve.com	<b>Renewal: i-Services 36 Month</b> Quote #: 010561 Version: 2 Delivered: 07/21/2020 Expires: 07/31/2020 Terms: Net 30 Agreement Length: 36 Months

## Investment Summary

Description	Amount
Hardware/Software	\$26,051.98
Monthly Fees	\$8,619.92
Annual Fees	\$10,425.00
Setup, Conversion, and Professional Service	-\$15,351.39
<b>Total:</b>	<b>\$29,745.51</b>
<b>Tax:</b>	<b>\$0.00</b>
<b>Grand Total</b>	<b>\$29,745.51</b>



## Investment Details

### Hardware / Software

Description	Setup Fee	Qty	Ext. Setup
HP ProBook 450 G7 15.6" Notebook - 1920 x 1080 - Intel Core i5 (10th Gen) i5-10210U Quad-core (4 Core) 1.60 GHz - 8 GB RAM - 256 GB SSD - Pike Silver - Windows 10 Pro - Intel UHD Graphics 620 - In-plane Switching (IPS) Technology - English Keyboard - 13.5	\$950.71	1	\$950.71
HP EliteDesk 800 G5 Desktop Computer - Intel Core i5 9th Gen i5-9500 3 GHz - 8 GB RAM DDR4 SDRAM - 256 GB SSD - Small Form Factor - Windows 10 Pro 64-bit - Intel UHD Graphics 630 - DVD-Writer - English Keyboard	\$983.31	13	\$12,783.03
Shipping & Handling	\$66.00	1	\$66.00
Microsoft Windows Virtual Desktop Access - Subscription License - 1 Device - 1 Month - Price Level D - Additional Product - Microsoft Open Value * 2nd year Payment**	\$159.12	77	\$12,252.24
<p>** This is a 3 Year agreement with Microsoft that is to be signed off annually. It's a regulation by Microsoft that you have a valid license but they update automatically and no installation in required. The amount of users cannot be decreased due to Microsoft Policy.**</p>			
Hardware / Software Subtotal			<b>\$26,051.98</b>

### Monthly Fees

Description	Monthly Fee	Qty	Ext. Monthly
Hosted Server			
Per Standard VM (40Gb HDD, 4GB RAM) includes Data Backup Server 1-Documnet2016 Server 2- ServerFS Server 3- TOWS-KVS01 Server 4- TOWSRPS01 Server 5- Munis-Present Server 6- Munis-Web Server 7-Munis-CMS Server 8-Munis-DB	\$159.00	8	\$1,272.00
i-Protect Cloud Antivirus- Server Enterprise per server (includes anti ransomware)	\$7.99	8	\$63.92
Additional Storage up to 1TB	\$250.00	1.85	\$462.50
Additional Memory (Per GB RAM)	\$6.00	114	\$684.00

## Monthly Fees

Description	Monthly Fee	Qty	Ext. Monthly
<b>Each additional Core CPU</b>	\$20.00	22	\$440.00
<b>VLAN</b>	\$10.00	1	\$10.00
<b>IP Addresses</b>	\$2.00	4	\$8.00
<b>WinSvrStd ALNG LicSAPk MVL 1Proc</b>	\$18.38	8	\$147.04
<b>Microsoft SQL Server Standard 2 Core Licence</b>	\$164.99	2	\$329.98
<b>BGP Bandwidth</b>			
<b>BGP Bandwidth Per 100Mb- BUNDLE</b>	\$525.00	1	\$525.00
<b>Hosted Desktops</b>			
<b>I-Evolve Cloud i-VDesktop Includes: 60Gb HDD, 6GB Ram, 2 CPU</b>	\$44.00	55	\$2,420.00
<b>i-Protect Cloud Antivirus- Desktop Enterprise per endpoint (includes anti ransomware)</b> 55 for Hosted Desktops, 14 for Physical PC's	\$4.98	69	\$343.62
<b>Hosted Desktop Access Gateway</b>	\$50.00	1	\$50.00
<b>i-Comply – (Managed Router/Firewall)</b>			
<b>i-Comply15: Cloud Firewall up to 15 Users/Devices</b> <i>Includes Replacement Hardware – I-Evolve maintains stock replacement hardware in the event of an onsite hardware failure (Excludes HA Model)</i> Highway Department (1), Ice Rink (1), Sewer Department (1), Dog Warden (1), Sewer Garage (1) , Building & Grounds (1)	\$29.99	6	\$179.94
<b>i-Comply15: Enterprise Protect Optional Add on (Recommended)</b>	\$19.99	6	\$119.94
<b>i-Comply50: Cloud Firewall up to 50 Users/Devices</b> <i>Includes Replacement Hardware – I-Evolve maintains stock replacement hardware in the event of an onsite hardware failure (Excludes HA Model)</i> Senior Center	\$49.99	1	\$49.99
<b>i-Comply50: Enterprise Protect Optional Add on (Recommended)</b>	\$49.99	1	\$49.99
<b>100Mb Internet Connection</b>			
	\$1,129.00	1	\$1,129.00
<b>i-Vault (Offsite Backup data in a "non-ready" to use state)</b>			
<b>i-Vault Automatic Offsite Data Backup: up to 100 GB</b> Default data retention period is 60 days. Set up/Installation billed at T&M.	\$75.00	1	\$75.00
<b>i-Filter – (Managed Anti-Spam)</b>			
<b>Per Mailbox</b>	\$2.00	130	\$260.00



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Monthly Fee Subtotal **\$8,619.92**

### Annual Fees

Description	Annual Fee	Qty	Ext. Annual
Office365			
<b>Microsoft Office 365 Business Premium - Subscription License - 1 Year-Annual Commitment</b> Does not include advanced spam filtering. Migration & Support billed at T&M.	\$150.00	69	\$10,350.00
<b>Annual DNS Hosting</b>	\$75.00	1	\$75.00
Annual Subtotal			<b>\$10,425.00</b>

### Setup, Conversion, and Professional Service

Description	Setup Fee	Qty	Ext. Setup
Office 365			
<b>I-Evolve Mail Migration Tool - Per Mailbox/Public Folder</b>	\$20.00	69	\$1,380.00
Last Month of Service			
<b>Last Month of Service</b>	\$8,619.92	1	\$8,619.92
Original Last Month of Service			
<b>Credit for Original Last Months of Service</b> Current Agreement Valid 05/31/2020-05/30/2023. Your agreement will automatically move to monthly rates if new contract is not accepted prior to 05/31/2020.	(\$10,351.31)	1	(\$10,351.31)
Platinum Retainer			
<b>I-Evolve Platinum Retainer Credit</b>	(\$15,000.00)	1	(\$15,000.00)
Setup Subtotal			<b>-\$15,351.39</b>



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All services are subject to I-Evolve's online terms of service found at <http://www.i-evolve.com/Legal> . By signing, Customer acknowledges that Customer has read and understands I-Evolve's online terms of service and that the Customer agrees to be bound by those terms and conditions.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

## Master Service Agreement

This Master Service Agreement (“Agreement”) is entered into by and between the customer named above (“Customer”) and IEVOLVE, Inc. (“IEVOLVE”). Customer has, and is deemed to have, accepted to be bound by this Agreement and the attached Service Agreements (the “Service Agreements”), including all terms and conditions incorporated therein or herein by reference upon Customer signing a service order document (“Service Order”) referencing this Agreement. Additional services may be provided at any time by signing additional Service Orders at any time.

**1. Services.** Subject to the terms and conditions of the Agreement, and in consideration of the payments for such Services, Customer has agreed to purchase and IEVOLVE shall provide the **Services** listed on each Service Order attached or making reference hereto and more fully described in the applicable Service Agreement, each of which Service Order and Service Agreement is incorporated herein by this reference.

### 2. IEVOLVE’s Obligations

**a. Compliance with laws.** IEVOLVE will comply with, and ensure its personnel comply with: (i) all laws, regulations, and orders issued by courts or other governmental bodies of competent jurisdiction and applicable to the provision of the Services; and (ii) any reasonable Customer security policies applicable to the provision of the Services.

### 3. Customer’s Obligations

**a. Access Right.** Customer will in a timely manner provide IEVOLVE with timely information and access to any property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain for IEVOLVE, at Customer’s expense, timely access to property and equipment that Customer does not control (other than public property) as reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace, and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary to provide the Services. Customer will furnish

any conduit holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to perform installation of the Services, and obtain any necessary licenses, permits, and consents (including easements and rights-of-way). Customer will have the site ready for IEVOLVE to perform its work according to any mutually agreed upon schedules. Notwithstanding anything to the contrary herein,

IEVOLVE shall have no liability for any delay or failure in its performance to the extent caused by any delay or failure of Customer, including, but not limited to, the failure to provide IEVOLVE with prompt access.

**b. Safe Work Environment.** Customer will ensure that the location at which IEVOLVE installs, maintains, or provides Services is a suitable and safe working environment, free of Hazardous Materials. “Hazardous Materials” means any substance or material capable of posing an unreasonable risk to health, safety, or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. IEVOLVE does not handle, remove, or dispose of Hazardous Materials, and IEVOLVE has no obligation to perform work at a location that does not comply with this Section 3.b. IEVOLVE will not be liable for any Hazardous Materials.

**c. Compliance with laws.** Customer shall comply with all laws, regulations, and orders issued by courts or other governmental bodies of competent jurisdiction and applicable to the Services and its use of the Services.

**d. Acceptable Use Policy.** Customer will, and ensure its Users (as defined below) will, comply with IEVOLVE’s Acceptable Use Policy (“AUP”) as set forth at [www.i-evolve.com/company/Legal/acceptable\\_use\\_policy.html](http://www.i-evolve.com/company/Legal/acceptable_use_policy.html), or other locations that IEVOLVE may designate. IEVOLVE may revise the AUP or any Service Agreements at any time upon reasonable advance written notice to Customer. For the purposes of this Agreement, a “User” is anyone who uses or accesses any Services provided to Customer. Customer will cause Users to comply with this Agreement and the AUP, and Customer acknowledges and agrees that Customer is responsible for all Users’ use of any Services, unless expressly provided to the contrary in applicable Service Agreements.

**e. Utilities.** Customer shall procure and make available to IEVOLVE, at Customer’s locations where any equipment is necessary for the provision of Services, at Customer’s sole cost and expense, adequate space, continuous electrical service (AC power), and HVAC for such equipment. Unless support for such equipment is included in the Services, Customer shall be solely and exclusively responsible for all maintenance, configuration, management, repair and/or support of such equipment.

#### 4. Fees; Payment Terms

**a.** Customer shall pay the fees and charges for Services as set forth in the applicable Service Order and in accordance with this Section 4. IEVOLVE may change its fees and charges from time to time upon reasonable advance written notice to Customer

**b. Statement of Charges.** Customer will provide IEVOLVE with all information requested on each Service Order, including a valid e-mail address and billing address. IEVOLVE will post and transmit all of its fees and charges electronically to the contact name and e-mail address specified in the applicable Service Order. Customer agrees that all payments are due upon posting to the Customer's account unless specified otherwise in the applicable Service Agreement.

**c. Late Fees.** Unless otherwise provided on the applicable Service Order, if Customer fails to pay any undisputed amount within 30 days from the date any fees or charges are posted to the Customer's account, , in addition to all other remedies that may be available: (a) IEVOLVE may charge interest on the past due amount at the rate of 1% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; and (b) Customer shall reimburse IEVOLVE for all costs incurred by IEVOLVE in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees.

**d. Taxes.** Customer will pay all applicable federal, state, municipal, local, or other governmental sales, use, excise, value-added, or other taxes, tariffs, access fees, or other fees or charges now in force or enacted in the future, that arise from or as a result of, the Services or equipment (collectively, "Taxes"). Taxes are in addition to charges for Services. Taxes are due for any period of time a Service Agreement is or was in effect, even if the IEVOLVE fails to accurately or correctly bill the Customer. If Customer claims to be exempt from payment of any Taxes, Customer must provide the IEVOLVE with proof of such exemption acceptable to IEVOLVE and IEVOLVE will continue to collect Taxes from Customer until such exemption is established to IEVOLVE's satisfaction.

**e. Billing Disputes.** All disputes of any kind must be reported in writing to IEVOLVE no later than 30 days from the date the disputed charge was posted to the Customer's account. Unless disputed within said 30-day period, all charges posted to the Customer's account are deemed to be correct and the Customer waives any claim after said 30-day period. Submission of a written dispute notice by the Customer shall not relieve the Customer of its obligation to timely pay all amounts.

**f. Credits and Refunds.** Credits, refunds, or payments must be used or claimed within one year from the date of such credit, refund, or payment or shall be deemed to have been

earned and correctly applied or paid.

**g. No Deductions or Setoffs.** Except as expressly provided in this Section 4, all amounts payable to IEVOLVE under this Agreement shall be paid by Customer to IEVOLVE in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason.

#### 5. Confidential Information.

**a. Confidential Information** means: (i) written information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent such written information is marked as Confidential Information; and (ii) except to the extent required by applicable law or regulation, the terms of this Agreement and any pricing or other proposals. Confidential Information will not include any information that: (x) is independently developed by the receiving party ("Receiving Party"); (y) is lawfully received by the Receiving Party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

**b. Obligations.** For a period of three years following a party's receipt of any Confidential Information of the other party (the "Disclosing Party"), and except as provided in Section 5.c below, each party agrees: (i) not to disclose or otherwise make available such Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants and legal advisors who have a "need to know," who have been apprised of this restriction, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 5; (ii) to use such Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of Customer, to make use of the Services; and (iii) to notify the Disclosing Party in the event it becomes aware of any loss or disclosure of such Confidential Information of Disclosing Party. Notwithstanding the foregoing, a party's obligations under this Section 5.b with respect to trade secrets, including without limitation, software, shall remain in effect for as long as such information remains a trade secret under applicable law.

**c. Subpoenas and other Legal Requests for Information.** IEVOLVE may provide information and respond to law enforcement requests, subpoenas, court orders, and the like, for any purpose IEVOLVE determines is appropriate in its sole discretion, including to protect IEVOLVE, IEVOLVE's rights and/or property, and in the case where failure to disclose the information may lead to personal injury or loss of property of

the Customer or others.

**6. Non-Solicitation.** Neither IEVOLVE nor Customer shall knowingly, during the Term of this Agreement and for a period of one year thereafter, solicit for employment or employ, whether as employee or independent contractor, any person who is or has been employed by the other party during the Term, without the prior written consent of such other party. The remedies for violation of the terms of this section of the Agreement include, but are not limited to: direct and indirect damage as a result of lost revenue, hiring and training of replacement employees, related attorney fees and court costs. Any amount due shall constitute liquidated damages and shall not constitute or be deemed a penalty.

**7. Disclaimer; Limitations of Liability**

**a. Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, IEVOLVE DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY (I) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (II) ARISING BY USAGE OR TRADE PRACTICES, COURSE OF DEALING OR COURSE OF PERFORMANCE; (III) THAT THE SERVICES ARE ERROR FREE, UNINTERRUPTED OR SECURE FROM THIRD-PARTY ATTACK; AND (IV) THAT SERVICES ARE FREE FROM DEFECTS, FIT TO BE SOLD, WILL PERFORM IN A PARTICULAR MANNER OR SPEED OR TO A PARTICULAR STANDARD OR ANY QUALITY OF SERVICE. FURTHER, IEVOLVE MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY THE SERVICES, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT IEVOLVE'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

**b. Exclusions.** IEVOLVE SHALL NOT BE LIABLE:

i. FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXPECTANCY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, DELIVERY OF SERVICES, OR DELAY IN INSTALLATION OF

SERVICES.

ii. FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICES DEFECTS, SERVICES LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATES, USERS, OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK OR SYSTEMS.

**c. Limitation of Liability.** IEVOLVE'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY CUSTOMER'S NEGLIGENCE, SHALL IN NO EVENT EXCEED THE APPLICABLE CREDITS SPECIFIED IN A SERVICE PUBLICATION OR SERVICE AGREEMENT, OR IF NO CREDITS ARE SPECIFIED, ANY AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO CUSTOMER FOR THE PERIOD OF SERVICES DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR, OR DEFECT IN THE SERVICES OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO IEVOLVE.

**d.** THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS AGREEMENT.

**8. Indemnification.**

a. Each party will defend, indemnify, and hold the other party, its affiliates, agents, and contractors harmless against liabilities, costs, and expenses, including reasonable attorneys' fees (collectively, "Damages"), resulting from third-party claims resulting from personal injury or death to persons or loss or damage to personal tangible property, to the extent such Damages were proximately caused by the negligence or

willful misconduct of the indemnifying party; provided, however, the foregoing indemnification will not apply to any claims made by employees that are covered under applicable workers' compensation laws. Customer will defend, indemnify, and hold IEVOLVE, its affiliates, agents, and contractors harmless against Damages arising from or related to (i) the use, modification, or resale of the Services by Customer or its Users; or (ii) any violation of the AUP.

**b. Procedure.** The indemnified party under this Section 8: (i) must notify the indemnifying party in writing promptly upon learning of any claim, suit, or other action for which indemnification may be sought, provided, that failure to do so shall have no effect except to the extent the indemnifying party is prejudiced thereby; (ii) shall have the right to participate in such defense or settlement with its own counsel and at its sole expense, but the indemnifying party shall have control of the defense or settlement, provided, that in the event that any settlement materially and adversely affects the price or performance of Services in use by Customer and IEVOLVE is unable to provide to Customer, at no additional cost to Customer, alternative Services that meet Customer's reasonable business needs, Customer shall be permitted to terminate the affected Service without liability upon thirty (30) days' prior written notice to IEVOLVE; and (iii) shall reasonably cooperate with the defense, at the indemnifying party's expense.

## 9. Term; Termination; Effect of Termination.

**a. Term.** The term of this Agreement shall begin on the "Effective Date" listed on the earliest Service Order signed by Customer and continue until all Services have been completed unless terminated as set forth herein (the "Term").

**b. Termination.** In addition to any termination provisions of an applicable Service Agreement, either party may terminate this Agreement and/or one or more Services and applicable Service Agreements, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party:

i. materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, including without limitation, nonpayment of fees, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach. Notwithstanding the foregoing, if Customer is in breach, IEVOLVE may elect to suspend (and later terminate) the affected Services, and if the breach implicates the entire Agreement, suspend (and later terminate) the entire Agreement.

ii. (A) becomes insolvent or admits its inability to pay its debts generally as they become due; (B) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not

fully stayed within seven business days or is not dismissed or vacated within 45 days after filing; (C) is dissolved or liquidated or takes any corporate action for such purpose; (D) makes a general assignment for the benefit of creditors; or (E) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**c. Termination by IEVOLVE.** IEVOLVE may immediately terminate or suspend an affected Service, and if the activity implicates the entire Agreement, terminate the entire Agreement, immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer: (i) commits a fraud upon IEVOLVE; (ii) utilizes the Services to commit a fraud upon a third party; (iii) unlawfully uses the Services; (iv) abuses or misuses IEVOLVE's network or Services; or (v) interferes with a third party's use of IEVOLVE's network or services.

**d. Materially Adverse Change.** If IEVOLVE revises a Service and the revision has a materially adverse impact on Customer, and IEVOLVE does not affect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to IEVOLVE, given not later than 90 days after the effective date of the IEVOLVE revisions. A revision to a Service will not be considered materially adverse to Customer if it changes prices that are not fixed, if the price change was mandated by a governmental authority, or if the change affects a charge imposed under Section 4.d (Taxes).

**e. Effect of Termination.** Upon expiration or termination of this Agreement or any Service for any reason:

i. Termination by either party of the Services or the Agreement does not waive any other rights or remedies a party may have under this Agreement. Termination or suspension of a Service will not affect the rights and obligations of the parties regarding any other Service.

**ii. Service Specific Termination and Termination Charges.** Refer to the applicable Service Agreement for termination charges.

iii. The rights and obligations of the parties set forth in this Section 9.e and Section 5, Section 6, Section 7, Section 9, Section 11, and Section 12, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

**10. Insurance.** Customer will maintain insurance on any equipment rented, loaned, or otherwise provided to Customer under the Services. Customer shall provide IEVOLVE with certificates of insurance evidencing the coverage required



under this Section 10 and the value the equipment and naming IEVOLVE Inc. as Loss Payee.

**11. Import/Export Control.** The parties acknowledge that equipment, Services, software, documentation, technical information, and other materials provided under this Agreement may be subject to import and export laws, conventions, or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all applicable laws, conventions, and regulations. The parties will not use, distribute, transfer, or transmit such equipment, Services, software, documentation, technical information, or other materials (even if incorporated into other products) except in compliance with such laws, conventions, and regulations. Customer, not IEVOLVE, is responsible for complying with such laws, conventions, and regulations for all information, equipment, software, and other materials transmitted between countries using the Services.

**12. Miscellaneous.**

**a. Force Majeure.** Except for payment of amounts due as outlined in the applicable Service Agreement, neither party will be liable for any delay, failure in performance, loss, or damage because of fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control.

**b. Trademarks and Service Marks.** The Customer acknowledges and agrees that the Marks (as defined below) are the sole and exclusive property of IEVOLVE and that nothing herein conveys any interest in the Marks to the Customer and the Customer may not use or display the Marks. The License does not include the right to use Marks. "Marks" shall mean any or all of IEVOLVE's trade name, logo, trademark, trade device, service mark, symbol, code or specification, or any abbreviation, contraction, or simulation thereof. This Agreement is not a trademark or service mark license and does not create a franchise.

**c. Marketing.** Customer acknowledges that I-Evolve from time to time may use the technology solution provided to Customer in marketing and reference materials for promotional purposes. Customer acknowledges that such marketing and reference materials may contain Customer's name, image, and likeness.

**d. Amendment; Waiver.** Any supplement to, modification, or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement will not operate as a waiver of any other breach of this Agreement. No failure to exercise, or delay in exercising, any right, remedy,

power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**e. Assignment and Subcontracting.** Except as otherwise provided in this Section 12.e, this Agreement may not be assigned by either party without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed). IEVOLVE may, without Customer's consent, assign in whole or relevant part, its rights and obligations under this Agreement to a third party, or subcontract to a third party, work to be performed under this Agreement, but IEVOLVE will in each case remain financially responsible for the performance of such obligations. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**f. Severability.** If any portion of this Agreement is found to be invalid, illegal, or unenforceable, or if applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intent of the parties.

**g. Injunctive Relief.** Except as expressly provided herein, nothing in this Agreement is intended, or should be construed, to limit a party's right to seek preliminary or permanent injunctive relief from a court of competent jurisdiction for a breach of any provision of this Agreement.

**h. Legal Action.** Any legal action arising in connection with this Agreement must be filed within 3 years after the cause of action accrues or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

**i. Notices.** All notices required under this Agreement will be delivered in writing to the recipient's contact designated on the attached Service Order, or to such other address as designated in writing from time to time. Notices shall be delivered by internationally recognized overnight courier, certified or registered mail, or email and will be effective upon receipt or when delivery is refused, whichever occurs sooner.

**j. Governing Law; Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of law principles, except to the extent a regulatory agency with jurisdiction over the applicable Services applies a different law. Any legal suit, action or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in the city of Buffalo and County of Erie, and each party irrevocably submits to the exclusive jurisdiction of such courts

in any such suit, action, or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

**k. No Third Party Beneficiaries.** No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

**l. Relationship of the Parties.** Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employee/employer or agency relationship. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

**m. Representation on Authority of Parties/Signatories.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**n. Entire Agreement.** This Agreement, together with all Service Orders, Service Agreements, and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Service Agreement, the following order of precedence shall govern: (a) first, the applicable Service Agreement; (b) second, this Agreement; and (c) third, the AUP.

Revised 7/2/17

## Virtual Co-location/ Cloud Services Agreement

### Virtual Colocation Cloud Services Agreement

**Term.** If Customer subscribes to the following services, Business Continuity (the "Services"), the terms and conditions below apply to Customer's use of the Services in addition to the terms of the Agreement.

Sections 1. And 2. Are only applicable to customers who choose Physical Co-location

#### 1. Grant of Access: Customer Equipment.

**a. Customer Equipment.** Subject to the terms and conditions of this Agreement, commencing on the Requested Service Date set forth in Service Order Form and subject to IEVOLVE approval, IEVOLVE agrees to allow Customer to place certain equipment which is not provided to Customer by IEVOLVE (the "Customer Equipment") in the Co-location Space located at 501 John James Audubon Parkway, Amherst, New York 14228 (the "Premises"). Customer's right to occupy the Co-location Space shall commence on the Requested Service date as set forth on Service Order Form or the date on which IEVOLVE completes the build-out of the Premises, whichever is later. The rights granted pursuant to this Section 1(a) are subject to the terms and conditions of any underlying lease or other superior right by which IEVOLVE has acquired its interest in the Premises. Customer agrees that this Agreement shall not grant to Customer any property rights in any of the Premises. In the event, however, that this Agreement is constructed by an IEVOLVE lessor to grant property rights to any premise, Customer agrees either to obtain the consent of the IEVOLVE lessor to this Agreement and, if so required, to enter into an agreement approved by the IEVOLVE lessor, or upon request of IEVOLVE to immediately remove its Customer Equipment from the Premises. Customer shall be responsible for paying any fees or charges imposed by the IEVOLVE lessor as a condition of granting its consent.

**b. Installation and Removal of Customer Equipment.** Customer shall arrange for delivery of each unit of Customer Equipment to the Co-location space at Customer's expense. Customer shall provide IEVOLVE with no less than one (1) week prior to written notice of the actual delivery date. Unless otherwise agreed in writing, Customer shall install the Customer Equipment at the Co-location Space and shall be responsible for any necessary cabling from the junction panel provided by IEVOLVE to the Customer Equipment. Customer may not install any equipment at the Co-location Space, other than the Customer Equipment, without IEVOLVE's prior written approval. Customer shall provide IEVOLVE with written

notification two (2) days before Customer removes any Customer Equipment and such removal shall be subject to IEVOLVE's verification that there are no outstanding charges due and payable by Customer to IEVOLVE.

**c. Use of Customer Equipment.** Customer shall utilize the Co-location Space only for interconnection of the Customer Equipment with the Connectivity Services to be provided herein by IEVOLVE to Customer, unless IEVOLVE otherwise agrees in writing in advance.

**d. Responsibility for Customer Equipment and Co-location Space.** Customer shall be solely responsible for the Customer Equipment, which shall remain Customer's sole property, and all software and data stored thereon (the "Stored Information"). Unless otherwise specifically agreed in writing or Customer subscribes to other IEVOLVE services where administration is required, IEVOLVE shall have no duty to monitor, maintain or care for the Customer Equipment or Stored Information. Customer shall protect, maintain and keep in good order the Co-location Space and the Customer Equipment, and shall ensure that neither Customer nor its agents or contractors damage any part of the Premises, the Co-location Space or any equipment located on or about the Premises.

**e. Acceptance of Co-location Space.** The installation and operation of the Customer Equipment by Customer shall be conclusive evidence that Customer accepts the Co-location Space "as is," and that the Co-location Space is in satisfactory condition and is suitable for the use intended by the Customer.

#### 2. Use of Co-location Space.

**a. Access and Security.** Before beginning any delivery, installation, alteration, replacement or removal work in the Co-location Space, Customer shall obtain IEVOLVE's prior written approval of Customer's employees, agents, and contractors who will be accessing the Co-location Space ("Approved Personnel"). IEVOLVE shall have the right to require the removal of any Approved Personnel, such right not to be unreasonably exercised. Approved Personnel may access the Co-location Space on reasonable advance notice to IEVOLVE in accordance with Schedule 1, attached hereto. Approved Personnel shall at all times while on the Premises comply with IEVOLVE's and IEVOLVE's lessor's current security and safety procedures. IEVOLVE does not guarantee the safety or security of the Co-location Space or of the Customer Equipment.

**b. Alterations and Removal.** Customer shall not make any construction changes or material alterations (collectively “alterations”) to the Co-location Space, including cabling and power supplies, without IEVOLVE’s prior written consent. All fixtures, alterations, additions, repairs, improvements and/or appurtenances attached to or built into, on or about the Co-location Space, (collectively “fixtures”) shall be and remain part of the Co-location Space and shall not be removed by Customer unless so required by IEVOLVE or its lessor, in which event the items required to be removed shall be removed at Customer’s sole cost and expense. Upon termination or expiration of this Agreement (other than termination pursuant to Section 5 (b)(ii) hereof), but subject to paragraph (h) of this Section 2, Customer shall remove all Customer Equipment, except fixtures, within thirty (30) days from the date of such termination or expiration of this Agreement (“removal period”). Within this same thirty (30) days Customer shall restore the Co-location Space, at its expense, to the condition that it was in before installation of such Customer Equipment. In the event of a termination of this Agreement pursuant to Section 5(b)(ii) hereof, but subject to paragraph (h) of this section 2, Customer shall remove all Customer Equipment (other than fixtures) from the Co-location Space within forty-eight (48) hours and shall complete restoration work within seven (7) days of termination. Any items and/or Customer Equipment remaining after the removal periods set forth in this paragraph may, at IEVOLVE’s discretion, be removed, stored or disposed of, and such removal or disposal shall be at IEVOLVE’s discretion and need not be undertaken in a commercially reasonable fashion. The proceeds, if any, from the sale of such equipment shall be applied to the outstanding invoices of Customer, if any. Customer shall be responsible for all costs associated with removal, disposal and storage of the items and/or Customer Equipment and for the cost of restoration of the Co-location Space. Customer shall return to IEVOLVE at the end of the removal period, all access key cards and other security devices that have been provided to Customer.

**c. Inspection.** IEVOLVE and its designees may inspect or observe the Customer Equipment at any time. If the Customer Equipment is located in a security enclosure, Customer shall furnish to IEVOLVE the appropriate keys or information needed to enter into the enclosure.

**d. Compliance with Laws and Regulations.** Customer shall comply at all times with all applicable laws, regulations and ordinances relating to its use of the Co-location Space, the Customer Equipment, and the Stored Information and shall also comply with IEVOLVE’s rules and regulations relating to the Premises and to the provision by IEVOLVE of the Services hereunder, including IEVOLVE’s Acceptable Usage Policy (the

“Usage Policy”) outlined in Section 11.

**e. Relocation.** In the event that relocation is due to an event involving damage, destruction or condemnation of the Premises or Co-location Space, relocating the Customer Equipment shall become the responsibility of IEVOLVE. IEVOLVE reserves the right to move Customer equipment as its discretion. Customer may request in writing and IEVOLVE, in its sole discretion, may agree to relocate the Customer Equipment to another location of Customer’s choice. IEVOLVE may condition its approval of such relocation to Customer’s acceptance of additional terms and conditions. In the event that IEVOLVE agrees to relocate the Customer Equipment as a result of Customer’s request, all costs of the relocation shall be borne by Customer.

**f. Third Parties.** Customer may not permit any other person to occupy or use the Co-location Space (including by placing such person’s equipment in the Co-location Space) without first obtaining IEVOLVE’s prior written consent, which consent may be withheld or conditioned in IEVOLVE’s sole discretion.

**g. Use of Capacity.** Customer’s electrical usage is billed at 20 cents per KWH. Usage is factored into the monthly invoice. Reports of usage are not standard but can be requested by contacting the IEVOLVE Offices.

**h. Lien.** IEVOLVE may exercise a right of lien over the Customer Equipment to secure payment of any charges due and payable by Customer to IEVOLVE that remain unpaid after the due date.

### 3. Services

**a.** During the term (as set out in the Service Order Form) of this Agreement, and subject to the terms and conditions of this Agreement, IEVOLVE will provide to Customer the Co-location, Connectivity, and related Services (the “Services”). The Services shall be performed in accordance with IEVOLVE’s then applicable policies and specifications and, unless expressly stated otherwise, shall be provided at the Co-location Space and under the direction of Customer

#### **b. Connectivity Services.**

**i. Right to Modify.** IEVOLVE reserves the right to modify its network and facilities used to provide the Connectivity Services for purposes including but not limited to accommodating evolving technology and increased network demand, and providing enhanced services. IEVOLVE shall use reasonable efforts to notify Customer of any planned changes to IEVOLVE’s network or facilities that may adversely affect

the Services provided hereunder

**ii. IEVOLVE-Provided Equipment.** IEVOLVE is acting only as a reseller and/or provider of any hardware, software, circuit and equipment (collectively, the "IEVOLVE-Provided Equipment") offered under this Agreement that was manufactured by a third party. IEVOLVE shall not be responsible for any changes in Service(s) that cause IEVOLVE-Provided Equipment to become obsolete, require modification or alteration, or otherwise affect the performance of the Service(s). Any malfunction or manufacturer's defects of the IEVOLVE-Provided Equipment either sold or provided by IEVOLVE to Customer or purchased directly by Customer used in connection with the Service(s) will not be deemed a breach of IEVOLVE's obligations under this Agreement. Any rights or remedies Customer may have regarding the performance or compliance of IEVOLVE-Provided Equipment are limited to those rights extended to Customer by the manufacturer of such IEVOLVE-Provided Equipment. Customer is entitled to use any IEVOLVE Provided Equipment only in connection with Customer permitted use of the Service(s). In the event that equipment hardware needs to be replaced, Customer will be billed any shipping or travel related expenses for sites exceeding 75 miles from IEVOLVE Buffalo office. Customer shall not resell, transfer, export or re-export any Customer-Provided Equipment, or any technical data derived there from, in violation of any applicable United States or foreign law.

#### 4. Charges, Payments, and Taxes

**a. Charges.** The Company's fees and charges are set forth in the Appendix A and the Master Services Agreement. IEVOLVE'S fees and charges may be changed by IEVOLVE from time to time upon reasonable notice to Customer. The Customer will be billed for Services, Equipment costs (including shipping), installation fees, taxes and other recurring charges, in advance. However usage charges, termination charges and other charges may be billed in arrears, as IEVOLVE shall determine. Based on the fees set forth in the Plan, Customer is responsible for paying the first and last months of service in advance.

**b. Late Fees.** Amounts that are posted to the Customer's account will be deemed late if not paid within 10 days from the date of posting and will bear interest at the greater of the rate of 1.5% per month or the maximum rate allowed by law.

**c. Assurances.** If in its reasonable judgment IEVOLVE determines that Customer is not creditworthy or financially secure, IEVOLVE may require full payment in advance or other assurances to secure Customer's payment obligation

hereunder.

**d. Taxes.** IEVOLVE may invoice and Customer shall pay all taxes, fees or assessments and other charges imposed on or required to be collected by IEVOLVE by any governmental agency that may result from this Agreement, or any of the activities contemplated hereunder. Customer shall also be responsible for paying all taxes, fees or assessments and other charges imposed on Customer by any governmental agency that may result from this Agreement, or any of the activities contemplated hereunder.

**e. Power.** IEVOLVE will continually investigate obtaining the best price for delivery of electric. If the supply of electrical service rises above the normal averages, IEVOLVE reserves the right to increase the fee paid for power by the Customer upon reasonable notice to Customer.

#### 5. Relocation.

Should the Customer relocate facilities during the term of this Agreement, a new service agreement will be required to implement new services at the Customer's new facilities. Installation and move fees may apply and are solely at IEVOLVE's discretion. Customer agrees to give IEVOLVE ninety (90) days notice of any facilities move. However, IEVOLVE in no way warrants that the Services are guaranteed to be delivered to Customer's new facilities at any date as Services are dependent on construction.

#### 6. Amendment

IEVOLVE may amend, modify or update this Agreement or the Usage Policy at any time in its sole discretion. IEVOLVE will provide electronic and written notice of any amendment, modification or update of this Agreement or the Usage Policy. If any material modification to this Agreement or the Usage Policy is unacceptable to Customer, Customer may terminate Customer subscription and a prorated refund for the duration remaining will be sent to Customer. However, if Customer does not terminate the Agreement, or if Customer continues to use the Services following effectiveness of the modification, Customer's continued use will mean that Customer have accepted that modification.

#### 7. Quality of Service.

(VoIP Services) i-Communicate and i-Connect service are dependent upon installation of recommended i-Comply gateway device and Customer ordering broadband services through IEVOLVE or one of IEVOLVEs recommended broadband providers throughout the term of this Agreement.

## 8. Representations and Warranties.

**a. Customer Warranties.** Customer represents and warrants to IEVOLVE: (i) that it owns or has the legal right and authority, and will continue to own or maintain the legal right and authority during the term, to place and use the Customer Equipment in the Co-location Space; (ii) that Customer's services, products, materials and the Customer Equipment (collectively, "Customer's Business") do not and will not operate in any manner that would violate any applicable law or regulation or this Agreement.

**b. Disclaimers by IEVOLVE.** THE CO-LOCATION SPACE AND THE SERVICES ARE PROVIDED "AS IS" AND IEVOLVE DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IEVOLVE DOES NOT WARRANT THAT THE CO-LOCATION SPACE AND/OR THE SERVICES WILL BE AVAILABLE UNINTERRUPTED, ERROR-FREE OR IN A COMPLETELY SECURE BASIS. IT IS INTENDED THAT THE FEES AND CHARGES PAYABLE BY CUSTOMER HEREUNDER SHALL BE A NET RETURN TO IEVOLVE, FREE OF EXPENSE, CHARGE, OFFSET, DIMINUTION OR OTHER DEDUCTION WHATSOEVER ON ACCOUNT OF THE PREMISES OR THE CO-LOCATION SPACE (EXCEPTING FEDERAL AND STATE INCOME TAXES OF GENERAL APPLICATION AND THOSE EXPENSES WHICH THIS AGREEMENT EXPRESSLY MAKES THE RESPONSIBILITY OF IEVOLVE). CUSTOMER HEREBY WAIVES ALL RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE TO MAKE REPAIRS TO THE CO-LOCATION SPACE OR THE PREMISES AT IEVOLVE'S OR IEVOLVE'S LESSOR'S EXPENSE.

## 9. Limitation of Liability.

**a. IEvolve Liability.** Customer agrees, to the extent not prohibited by law, that IEVOLVE shall not be liable for any claim involving, concerning, or related to the loss or destruction of Customer data or any portion thereof or for any damage either to person or property sustained by Customer or by other persons due to the Premises or Co-location Space or any part thereof becoming out of repair or due to the happening of any accident or event in or about the Premises or Co-location Space or due to the act or neglect of any occupant of the Premises or any other person, including, but not limited to damage caused by gas, electricity, power outage, snow,

frost, steam, sewage, sewer gas or odors, fire, water or the bursting or leaking of pipes, faucets, sprinklers and plumbing fixtures (collectively, "excluded liability"), unless such excluded liability arose as the result of IEVOLVE's intentional misconduct or negligence.

**b. Limitation.** IN NO EVENT WILL IEVOLVE BE LIABLE TO CUSTOMER, ANY EMPLOYEE, AGENT OR CONTRACTOR OF CUSTOMER, OR ANY THIRD PARTY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING IN RELATION TO THE CO-LOCATION SPACE, THE EQUIPMENT, THE SERVICES, INCLUDING WITHOUT LIMITATION THE SERVICES SET FORTH IN THE SERVICE ORDER FORM AND SCHEDULE(S), CUSTOMER'S BUSINESS OR OTHERWISE, WHICH CLAIMS INVOLVE INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IEVOLVE'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER RELATED TO OR ARISING UNDER THIS AGREEMENT WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO IEVOLVE PURSUANT TO THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM.

## 10. Indemnity.

Customer shall indemnify, defend and hold harmless IEVOLVE from and against any and all claims, demands, actions, damages, liability, judgments, expenses and costs (including but not limited to reasonable attorney's fees) arising from (i) Customer's use of the Co-location Space, the Customer Equipment, the IEVOLVE Provided Equipment or the Services, (ii) Customer's Business, (iii) claims relating to a breach of the IEVOLVE Rules and Regulations, including but not limited to, (a) infringement or misappropriation of intellectual property rights, defamation, libel, slander, obscenity, pornography, or violation of rights of privacy and publicity, or (b) spamming, or any other offensive, harassing or illegal conduct, (iv) any breach by Customer of any warranty, covenant or obligation hereunder, (v) any injury to or death of any person or damage to any property occurring upon the, Co-location Space, the Premises, and/or the building or the land of which the Premises are a part, arising out of (or in connection with), or claimed to arise out of (or in connection with) Customer's use of the Co-location Space, the Customer Equipment, the IEVOLVE-Provided Equipment or the Services, or (vi) any action or inaction on the part of Customer that causes IEVOLVE to be in breach of any agreement with the

IEVOLVE lessor, or (vii) the violation of any law or regulation by Customer.

#### **11. Casualty or Eminent Domain.**

In the event of any taking by eminent domain or damage by fire or other casualty to the Premises and/or the Co-location Space ("Event"), Customer shall be bound by any action taken by IEVOLVE and the owner of the Premises (if other than IEVOLVE) in relation to the Event. Customer shall have no claim against IEVOLVE in relation to an Event, including but not limited to a claim for relocation, expenses, the value of any unexpired term, or loss of business from full or partial interruption or interference due to the operation of this provision. Without limiting the foregoing, either party shall have the right to terminate this Agreement on the happening of an Event, without any liability to the other party.

#### **12. Confidentiality.**

Each party acknowledges that, in the course of the performance of this Agreement, it may have access to customer information and communications, including proprietary information claimed to be unique, secret, confidential, and which constitutes the exclusive property and trade secrets of the other party ("Confidential Information"). Except as provided in IEVOLVE's Usage Policy, each party agrees to maintain the confidentiality of the Confidential Information, to use the Confidential Information only to the extent necessary for legitimate business uses in connection with this Agreement. Upon request of either party or on termination or expiration of this Agreement, each party shall return the Confidential Information of the other party then in its possession. Nothing in this Agreement shall prohibit or limit either party's use of information which (a) is now, or hereafter becomes, publicly known or available through lawful means; (b) is rightfully in receiving party's possession, as evidenced by receiving party's records; (c) is disclosed to the receiving party without Confidential Information or proprietary restriction by a third party who rightfully possesses and rightfully discloses the information; (d) is independently developed by the receiving party without any breach of this Agreement; or (e) is the subject of a written permission to disclose provided by the disclosing party. Notwithstanding any other provision of this Section 11, IEVOLVE may disclose to IEVOLVE's lessor Confidential Information of Customer related to Customer's use of the Co-location Space, provided that IEVOLVE's lessor has agreed to protect the Confidential Information on terms consistent with the terms of this Section 11. Customer further agrees and acknowledges that IEVOLVE may disclose Customer's account information in accordance with IEVOLVE's Usage Policy and Privacy Policy, located at [www.i-evolve.com](http://www.i-evolve.com)

[evolve.com/company/Legal/other\\_policies.html](http://evolve.com/company/Legal/other_policies.html), as amended from time to time by IEVOLVE effective upon posting of the revised policy at the URL.

#### **13. Acceptable Usage Policy.**

Customer and its employees are subject to this Usage Policy, and by virtue of using IEVOLVE'S Services, agree to be bound by this Usage Policy. IEVOLVE will revise this Usage Policy from time to time and notify the Customer of changes via email and postal mail. A Customer's use of the Services after notice of revisions to the Usage Policy will constitute such person's acceptance of any changes or additions to the Usage Policy. Subscribers violate this Usage Policy when they (or their affiliates or customers) engage in the following prohibited activities.

#### **14. Violations of Intellectual Property Rights.**

Any violation of any person's intellectual property rights, rights of privacy, rights of publicity or other personal rights is prohibited. IEVOLVE is required by law to remove or block access to content appearing on or through the Services upon receipt of proper notice of copyright infringement (see "Copyright Infringement Notice Information" below).

#### **15. Spamming.**

IEVOLVE has zero tolerance for UBE/UCE (unsolicited bulk email/unsolicited commercial email). This policy protects our customers as well as the Internet community from the negative effects of "spam" related activity. IEVOLVE defines UBE/UCE as unsolicited broadcast or commercial email that is sent to addresses that do not affirmatively and verifiably request such material from that specific sender.

#### **16. Our Policies:**

a. IEVOLVE's customers, or any user of bandwidth and/or services on its network (herein described as 'users') are prohibited from sending UBE/UCE. Users may be asked to produce records that verify that explicit affirmative permission was obtained from a recipient before a mailing was sent. IEVOLVE may consider the lack of such proof of explicit affirmative permission of a questionable UBE/UCE at its sole discretion.

b. IEVOLVE's customers are prohibited from maintaining open mail relays on their servers. Ignorance of the presence or operation of an open mail relay is not and will not be considered an acceptable excuse for its (the open mail relay) operation. Multiple infractions of this policy will result in a

discontinuation of service.

c. IEVOLVE's customers will be notified in the event that their sites are in violation of the above policy. Again, failure to rectify such situations may be cause for termination of service.

d. IEVOLVE's customers are prohibited from providing hosting services for websites that have been included in UBE/UCE. Hosting includes, but is not limited to, hosting website(s), providing DNS services as well as website redirect services.

e. Valid complaints received by IEVOLVE will be forwarded to the Customer for a response and resolution. If within twenty-four (24) hours there is no response, IEVOLVE may block traffic to and from the IP address involved in the UBE/UCE complaint until the problem is resolved and preventative measures have been implemented to prevent the violation from recurring. All users are responsible for maintaining a working email contact and updating that information with IEVOLVE when it changes

f. If IEvolve receives repeat complaints indicating that a problem has not been resolved, IEvolve reserves the right to suspend and/or cancel any and all services provided to the user after a notification of no less than two (2) hours. IEvolve will then forward mail to the company directly, bypassing the spam filtering. To report an incidence of abuse, please email [abuse@i-evolve.com](mailto:abuse@i-evolve.com).

#### **17. Misrepresentation of Transmission Information**

Forging, misrepresenting, omitting or deleting message headers, return mailing information and/or Internet protocol addresses to conceal or misidentify the origin of a message is prohibited.

#### **18. Viruses and Other Destructive Activities**

Use of the Services for creating or sending Internet viruses, worms or Trojan horses, or for pingging, flooding or mail bombing, or engaging in denial of service attacks is prohibited. It is also prohibited for Customer to engage in other activity that is intended to disrupt or interfere with, or that results in the disruption of or interference with, the ability of others to effectively use the Services (or any connected network, system, service or equipment) or conduct their business over the Internet.

#### **19. Hacking "Hacking" and related activities is prohibited.**

"Hacking" includes, but is not limited to, the following activities: illegally or without authorization accessing computers,

accounts or networks, penetrating or attempting to penetrate security measures, port scans, stealth scans and other activities designed to assist in hacking.

#### **20. Export Control Violations**

The exportation of encryption software outside of the United States and/or violations of United States law relating to the exportation of software is prohibited.

#### **21. Child Pornography**

The use of the Services to store, post, display, transmit, advertise or otherwise make available child pornography is prohibited. IEvolve is required by law, and will, notify law enforcement agencies when it becomes aware of the presence of child pornography on, or being transmitted through, the Services.

#### **22. Other Illegal Activities**

The use of the Services to engage in any activities that are determined by IEvolve, in its sole and absolute discretion, to be illegal is prohibited. Such illegal activities include, but are not limited to, storing, posting, displaying, transmitting or otherwise making available ponzi or pyramid schemes, fraudulently charging credit cards or displaying credit card information of third parties without their consent, and failure to comply with applicable online privacy laws. IEvolve will cooperate fully with appropriate law enforcement agencies in connection with any and all illegal activities occurring on or through the Services.

#### **23. Obscene, Defamatory, Abusive or Threatening Language**

Use of the Services to store, post, transmit, display or otherwise make available obscene, defamatory, harassing, abusive or threatening language is prohibited.

#### **24. Other Activities**

Engaging in any activity that, in IEvolve's sole and absolute discretion, disrupts, interferes with or is harmful to (or threatens to disrupt, interfere with or be harmful to) the Services, IEvolve's business, operations, reputation, goodwill, customers and/or customer relations, or the ability of IEvolve's customers to effectively use the Services is prohibited. Such prohibited activities include making available any program, product or service that is designed to or could be used to violate this Usage Policy. In addition, the failure by Customer to cooperate with IEvolve in correcting or preventing violations



of this Usage Policy by, or that result from the activity of, a Customer is a violation of this Usage Policy.

In general, IEvolve does not monitor Customer's websites or activities to determine whether it is in compliance with this Usage Policy. However, when IEvolve becomes aware of any violation of this Usage Policy or its User Agreement, IEvolve may take any action to stop or correct such violation, including, but not limited to, shutting down a website, denying access to the Services or to the Internet, and/or removing information. In addition, IEvolve may take action against Customer because of the activities of such Customer. IEvolve reserves the right to take any such action even though such action may affect other customers of Customer.

IEvolve may disclose any information in its possession, including, without limitation, information about Customer, internet transmissions and website activity in order to comply with a court order, subpoena, summons, discovery request, warrant, statute, regulation or governmental request, to protect IEvolve or others from harm, and/or to ensure the proper operation of the Services. IEvolve has no obligation to notify any person, including Customer about whom information is sought, that IEvolve has provided the information.

**Copyright Notice Infringement Information.** In accordance with the Digital Millennium Copyright Act, IEvolve has adopted a policy that provides for termination of websites hosted by IEvolve that are found to infringe on copyrights of third parties. If a copyright holder believes that there has been a violation of his or her copyright on a website that is hosted by IEvolve or its subsidiaries, and the copyright holder wants IEvolve to remove the website or disable the material in question, IEvolve will remove the website or disable the material if the copyright holder provides IEVOLVE with all of the following information:

- a. A signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed. Identification of the copyrighted work that is claimed is being infringed, or, in the case of claimed infringement of multiple copyrighted works, a representative list of such works.
- b. Identification of the material that is claimed to be infringing or is the subject of infringing activity and that should be removed or access to which should be disabled, with information reasonably sufficient to permit us to locate the material.
- c. Information reasonably sufficient to permit us to contact the person giving the notification, such as an address and telephone, and, if available, an electronic mail address at which such person may be contacted.
- d. A statement that the person giving the notification has a good faith belief that use of the material in the manner

complained of is not authorized by the copyright owner, its agent, or the law.

e. A statement that the information in the notification is accurate, and under penalty of perjury, that the person giving the notification is authorized to act on behalf of the owner of the exclusive right that is allegedly infringed. Notices should be directed to: Legal Department IEvolve Inc. 501 John James Audubon Parkway Suite 201 Amherst, NY 14228

## 25. General Provisions

**a. No Third-Party Beneficiary.** It is the explicit intention of the parties hereto, that no person or entity other than the parties and their respective successors and assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties.

**b. Relationship of the Parties.** Customer and IEVOLVE are, and shall remain, independent contractors. Neither party will have the authority to make any representations, claims or warranties of any kind on behalf of the other party or on behalf of such party's licensors or suppliers.

**c. Privacy Statement.** IEvolve demonstrates its commitment to its customers' privacy by providing this statement. IEVOLVE will do everything in its power to ensure a customer's right to privacy. IEVOLVE is committed to developing long lasting relationships that are built on trust. IEvolve will never violate that trust.

**d. Confidentiality of Personal Information.** IEVOLVE will never provide or sell Customer's personal or business information to any third party.

**e. Policy Changes.** While IEvolve will provide its clients with reasonable notification, IEvolve reserves the right to change its policy at any time to meet the needs of its customers, changing laws and new technology.

**f. Force Majeure.** Subject to the next following sentence, neither party shall be deemed in default of this Agreement to the extent that performance of its obligations (other than an obligation to pay for services rendered by the other party) or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, strikes, unavailability of material, facilities, telecommunications services or supplies or any other cause beyond the reasonable control of such party ("Force Majeure"). In the event of such a Force Majeure, the party shall give the other party prompt written notice within ten (10) days of the Force Majeure. In addition, the time for performance or cure shall be extended for a period equal to

the duration of the Force Majeure but not in excess of three (3) months.

**g. Assignment.** This Agreement and the rights and obligations hereunder shall not be assigned or otherwise transferred by Customer without the prior written consent of IEVOLVE. A transfer or assignment of this Agreement shall include a sale of all or substantially all of the assets of Customer or a change in control of Customer. This agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

**h. Notices.** All notices hereunder shall be delivered personally, made by certified or registered mail, return receipt requested, or sent by telecopy or facsimile transmission, answer back requested, and shall be sent to the parties at the following addresses:

IEvolve Inc.  
501 John James Audubon Pkwy  
Suite 201  
Amherst, New York 14228  
**Attention:** Legal Department  
**Telephone:** 716.505.8324  
**Facsimile:** 716.505.8325

Such notice will be effective, (i) if sent by telecopy or facsimile on the date of transmission unless transmitted after normal business hours, in which case on the following date; (ii) if mailed, five days after the date of posting; or (iii) as of the date delivered, if personally delivered.

**i. Waiver.** Any waiver of any right or default hereunder shall be effective only if given in writing and shall not operate as or imply a waiver of any similar right or default on any subsequent occasion.

**j. Severability.** No determination by a court of competent jurisdiction that any term or provision of this Agreement is invalid or otherwise unenforceable shall operate to invalidate or render unenforceable any other term or provision of this Agreement and all remaining provisions shall be enforced in accordance with their terms.

**k. Governing Law.** This Agreement will be governed by and construed under, and the legal relations between the parties and hereto will be determined in accordance with, the laws of the State of New York, without giving effect to such state's conflict of law principles.

**l. Customer Data.** Customer is responsible for its content residing on IEVOLVE servers, and except as otherwise agreed

with IEVOLVE, for the backup thereof.

**m. IP Address Ownership.** IEVOLVE shall maintain and control ownership of all IP numbers and addresses that may be assigned to Customer by IEVOLVE and IEVOLVE reserves, in its sole discretion, the right to change or remove any and all such IP numbers and addresses.

**n. Intellectual Property.** Customer represents and warrants that Customer's use of the Services shall not infringe the intellectual property or other proprietary rights of IEVOLVE or any third party. Customer further acknowledges that all right, title and interest in any and all technology, including the software that is part of or provided with the Services and any trademarks or service marks of IEVOLVE (collectively, "IEVOLVE Intellectual Property") is vested in IEVOLVE and/or in IEVOLVE's licensors. Unless otherwise specifically provided in this Agreement, Customer shall have no right, title, claims or interest in or to the IEVOLVE Intellectual Property. Customer may not copy, modify or translate the IEVOLVE Intellectual Property or related documentation, or decompile, disassemble or reverse engineer the IEVOLVE Intellectual Property, to use it other than in connection with the Services, or grant any other person or entity the right to do so. Unless otherwise specifically provided in this Agreement, Customer is not authorized to distribute or to authorize others to distribute the IEVOLVE Intellectual Property in any manner without the prior written consent of IEVOLVE; provided, however, that nothing in this sentence would preclude Customer from using the IEVOLVE Intellectual Property as incorporated in the Services. This paragraph shall not operate to extinguish, restrict, vary, waive or affect in any manner whatsoever any right, title or interest with Customer may now have or hereafter acquires in, or in relation to, the third-party software that is part of or provided with the Services solely to the extent such third party licensors publicly provide such rights, title or interest in the third-party software to Customer.

**o. No Photographs.** Customer may not photograph, or electronically or otherwise reproduce any part of the interior of the Co-location Space, without IEVOLVE's prior written permission.

**p. Entire Agreement; Amendments; Headings.** This Agreement, including the Service Order Form and Schedule(s) hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior or contemporaneous, written or parties respecting the subject matter of this Agreement. This Agreement may be modified only by an instrument in writing duly executed by both parties. The Section headings in this Agreement are inserted for convenience of reference only and shall not be used in

interpreting this Agreement.

**q. Survival.** The rights and obligations of the parties in this Agreement that would by their nature or context be intended to survive the expiration or termination of this Agreement shall so survive.

**r. Increases in Service Fees.** Notwithstanding the terms and conditions set forth herein, after the expiration of the initial term of this Agreement, IEVOLVE may, at any time, increase the fees and charges upon giving the Customer notice in writing. In event Customer shall be unwilling to pay the increased monthly charge, the Customer may terminate this Agreement upon giving notice in writing to IEVOLVE. Failure to notify IEVOLVE within thirty (30) days will constitute Customer's consent to the increase and all other terms and conditions of the Agreement shall remain in full force and effect.

**s. Communications Circuits.** Customer is responsible for the cost and maintenance of all telephone or other communication circuits required for dutiful transmission and system access. All data files are transmitted over communication company circuits, which are wholly beyond the control and jurisdiction of IEVOLVE and are maintained by the Communications Company. If these communication circuits are not functional for any reason, the data files may not accurately or completely reach IEVOLVE facility or equipment. IEVOLVE cannot be responsible for the continued operation or neither functioning of these communication circuits nor the reliability of the data files being received over them.

**t. Password Security.** It is the FULL responsibility of Customer to write down the password that Customer chose during initial installation of Services. IEVOLVE will not be held responsible of loss of password and does NOT maintain client passwords. Customer understands that without the password, the encrypted stored data can not be retrieved and shall not hold IEVOLVE responsible in any way for any losses of any kind whatsoever.

**u. Termination.** If Customer terminates Service for convenience or Customer terminates Service for cause, Customer will pay IEVOLVE a termination fee (the Termination Fee") (which customer acknowledges is a reasonable approximation of damages and is not a penalty) as follows: (a) all unpaid amounts for Service provided through the date of termination; plus (b) all previously waived charges for the Service; plus (c) 100% of the remaining monthly recurring charges (if any) for the Term; plus (d) if not recovered by the foregoing, any termination liability payable to third parties.

## 26. Proof of Insurance

Customer shall provide proof of insurance prior to installation of equipment in the Co-location Space and maintain such insurance at all times during the initial term and any renewal term of this Agreement and during any ten (10)-day removal period of the Equipment. Proof of insurance shall be provided by delivery of certificates of insurance to IEVOLVE showing the following types of insurance, in the following minimum amounts: (a) Worker's compensation insurance complying with the law of the state in which each Co-location Space used by Customer is situated, regardless of whether Customer is required by such law to maintain worker's compensation insurance, and employer's liability insurance with the limit of \$1 million per occurrence; (b) Occurrence form commercial general liability insurance including coverage for personal injury, bodily injury, death, contractual liability and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Customer operations, in the amount not less than 1 million combined single limit per occurrence; (c) Standard form property and casualty insurance insuring against the perils of fire, vandalism, and malicious mischief extended coverage (all risk) covering Equipment located in the Space in an amount not less than its full replacement value; (d) Professional liability insurance (including Multimedia Errors and Omissions insurance) including coverage for losses attributable to damage, destruction, and/or fraudulent modification of electronic data; and (e) Excess or umbrella liability coverage with a combined single limit of \$1 million per occurrence to be excess of (a) and (b). IEVOLVE and its landlord shall not insure or be responsible for any loss or damage to property of any kind owned or leased by Customer or Customer's employees, servants, and agents, including but not limited to the Equipment. The maintenance of insurance by Customer shall not affect or limit the extent of its liability under this Agreement. IEVOLVE, except in the case of worker's compensation insurance, shall be named as an additional insured on the policies required above. The certificates of insurance shall show that the insurance is prepaid, and in full force and effect and that such insurance shall not be cancelled, non-renewed or decreased, during the initial term or any renewal term of the Agreement or during any ten (10)-day removal period, without at least thirty (30) days written notice to IEVOLVE. Any insurance policy covering the Equipment against loss or physical damage shall provide that such insurance shall be primary and noncontributing with any other insurance available to IEVOLVE.

## SCHEDULE 1- ACCESS TO THE PREMISES

### 1. Escorted Access:



Customer's Approved Personnel may access the Co-location Space, accompanied at all times by an IEVOLVE escort, for the purpose of installing, operating, maintaining, repairing or removing the Customer Equipment in accordance with the terms and conditions of the Agreement on reasonable advance notice to IEVOLVE. Reasonable advance notice means a minimum of (i) twenty-four (24) hours for routine maintenance; (ii) one (1) hours in the case of emergencies; and (iii) seven (7) days for installation or removal of Customer Equipment. [Changes for escort services are sixty dollars per hour (\$60/hour) with a one hour minimum.] Approved Personnel shall at all times whiles on the Premises comply with IEVOLVE's and IEVOLVE's lessor's security and safety procedures as amended from time to time.

Revised 7/2/17

## Internet Services 36 Month Agreement

### Internet Service Agreement

THIS SERVICE AGREEMENT ("Service Agreement"), between the customer named above ("Customer") and IEVOLVE, Inc. ("IEVOLVE") is effective when signed by both Customer and IEVOLVE (the "Effective Date"), and shall continue in effect as long as the Services are provided under this Service Agreement. This agreement is part of the master services agreement signed by the parties (the "Master Services Agreement").

#### 1. Term.

This Service Agreement shall be effective on the Effective Date and the term of the Service Agreement shall commence upon the later of (i) installation of the initial Services or (ii) the Effective Date and shall continue for a period of 36 months (the "Term"). The Term automatically renews for another Term of equal length, unless either party gives the other party written notice of its intent not to renew at least 30 days before the end of the then-current Term. If notice of non-renewal is not timely received, then the Term will automatically renew.

#### 2. Authorization.

Customer hereby authorizes IEVOLVE to provide the services described on any attachments to this Service Agreement (the "Services").

#### 3. Charges, Payments, and Taxes

**a. Charges.** IEVOLVE's fees and charges are set forth in *Appendix A* and the applicable Master Services Agreement. IEVOLVE's fees and charges may be changed by the IEVOLVE from time to time upon reasonable advance notice to Customer. The Customer will be billed for Services, equipment costs (including shipping), installation fees, taxes and other recurring charges, in advance. However usage charges, termination charges and other charges may be billed in arrears, as IEVOLVE shall determine. Customer is responsible for paying the first and last months of service in advance.

**b. Late Fees.** Amounts that are posted to the Customer's account will be deemed late if not paid within 10 days from the date of posting and will bear interest at the greater of the rate of 1.5% per month or the maximum rate allowed by law.

**c. Service - Billed in Full Months.** The Services are billed in full months and during each month, all normal charges will apply. "Normal charges" include access, line, usage, taxes, surcharges and any other fees. The Customer is obligated to pay for a full month's Services, even if notice of non-renewal is given by the Customer at the beginning of the month.

#### 4. Special Terms and Conditions

**a.** In addition to the provisions set forth in 3 (a) above, IEVOLVE will require a deposit of the first and last month's payment prior to the delivery of service and also may request a deposit at any time as a condition to continuation of

Services. Unused customer deposits will be refunded following expiration or termination of this Service Agreement.

**b.** If the Customer fails to make any payment when due and such failure continues for 5 business days after written notice from IEVOLVE, IEVOLVE reserves the right to immediately terminate or suspend Services without any further notification to Customer.

**c.** Upon a termination of the Services and timely payment of all charges then due, IEVOLVE may release or transfer terminated Internet related services such as web domain names, IP addresses or DNS to the Customer's new service provider, in IEVOLVE'S sole and absolute discretion, if: i. IEVOLVE is notified in writing by the Customer of such requested transfer and all necessary information and consents are provided to IEVOLVE; ii. the new service provider is able to accept such information; iii. the Customer making the request was not in breach of this Service Agreement at any time during the Term.

**5. Installation, Acceptance and Access.** IEVOLVE will attempt to provide the Services by any requested installation date, but will not be liable for any delays in Services delivery. The Services are delivered on the date the Services is installed ("Service Start Date"). Unless Customer notifies IEVOLVE in writing within 3 business days following the Service Start Date that Services are not operational, then the Services will be deemed accepted by the Customer. At this time, the Term will commence and Customer will begin paying for the Services as of the Service Start Date.

**6. IEVOLVE MAKES NO WARRANTIES ABOUT THE SERVICES PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSES. IN NO EVENT SHALL IEVOLVE BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OR REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS, OR GOODWILL ARISING IN ANY MANNER FROM THIS SERVICE AGREEMENT AND/OR THE PERFORMANCE OR NON-PERFORMANCE HEREUNDER.** The Service Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws and/or principles. This Service Agreement is subject to and controlled by Customer's standard terms and conditions of service and the service-specific terms and conditions attached as *Schedule 1* hereto, as such terms and conditions may be modified from time to time and all of which are hereby expressly incorporated by reference.

7. This Service Agreement shall be accepted by IEVOLVE only when signed by duly authorized officers of both Customer and IEVOLVE. No modification or revision to this Service Agreement by Customer (whether written or oral) shall be binding on IEVOLVE if it is in conflict with, inconsistent with or in addition to any of the terms contained herein, and in the Master Services Agreement, unless expressly accepted and agreed to by IEVOLVE in writing. Any customer form containing terms and conditions of purchase shall not have the effect of modifying the terms and conditions herein and all such terms and conditions which are in conflict with, inconsistent with or in addition to any of the terms contained herein are specifically rejected by Customer.

8. Customer shall be solely responsible for ensuring that the materials and services sold hereunder are used only by authorized users. Under no circumstances shall IEVOLVE have any liability whatsoever to Customer or any other party in connection with or arising out of the unauthorized use of such materials or services.

9. Maintenance by IEVOLVE (which may impact service) is included in the fees for service, unless such maintenance is necessitated by acts or omissions attributable to the Customer, for which Customer will pay cost of maintenance to IEVOLVE. In addition to service maintenance, IEVOLVE may make certain network modifications and changes to the Customer's Services which changes do not materially and adversely affect Service performance. In the event of such a network modification(s) and changes, customer understands that the same may limit Customer's ability to retain existing specialty programming and/or necessitate other changes or modifications to customer's Services. Customer will reasonably cooperate with IEVOLVE to facilitate such modifications.

#### 10. Prohibited Uses.

Listed below are the Prohibited Uses. The use of Services and the equipment as described below in this Section is strictly prohibited ("Prohibited Uses"). The Customer hereby authorizes IEVOLVE to terminate or modify the Services at any time and without notice, if IEVOLVE determines in its sole discretion that the Services or the equipment is, or was at any time, used for a Prohibited Use. The Customer is solely responsible for any Prohibited Use of the Services or the equipment by the Customer or by anyone other than the Customer using the Services or the equipment, whether authorized by the Customer or not. The Prohibited Use are as follows:

**a. Unlawful Uses.** The Customer may not use the Services or the equipment for any illegal act or use in any jurisdiction where the Services are used or where a call originates or terminates.

**b. Submission of the Customer Information to Authorities.** If IEVOLVE believes that the Services or the equipment is or

has been used for an unlawful purpose, the IEVOLVE may forward the relevant information to the appropriate authorities for investigation and prosecution without notice to the Customer. Such information may include the Customer's identity, address and calling detail records and any other information in the possession of the IEVOLVE. The Customer hereby consents to the IEVOLVE's forwarding of any such communications and information to these authorities.

**c. Subpoenas and other Legal Requests for Information.** In addition, IEVOLVE will provide information and respond to law enforcement requests, subpoenas, court orders, and the like, for any purpose IEVOLVE determines is appropriate in its sole discretion, including to protect IEVOLVE, IEVOLVE's rights and/or property and in the case where failure to disclose the information may lead to personal injury or loss of property of the Customer or others.

**d. Inappropriate Conduct.** The Customer shall not use the Services or the equipment in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior.

**e. Tampering, Circumvention and Theft of Service.** The Customer may not change the electronic serial number, "machine access control address" or equipment identifier of the equipment. The Customer may not perform a factory reset of the equipment unless instructed to do so by IEVOLVE. The Customer shall not attempt to hack, break-in, circumvent the Customer's billing, tracking or other systems, or otherwise disrupt the Services or make any use of the Services that is inconsistent with its intended purpose. IEVOLVE may immediately terminate the Services without notice if IEVOLVE believes, in its sole and absolute discretion, that the Customer has tampered with the equipment or the Services or otherwise breached the terms of this paragraph. In the event of such termination, the Customer will remain responsible for the full month's charges to the end of the current Term, including, without limitation, unbilled charges, plus a termination fee (as defined below), if applicable, all of which will immediately become due and payable.

**f. Loss, Damage, Theft or Misuse of Equipment.** The Customer shall immediately notify IEVOLVE in writing if the equipment is stolen, damaged or is being fraudulently used or otherwise being used in an unauthorized manner. When the Customer notifies IEVOLVE, the Customer must provide the account number and a detailed description of the circumstances of the equipment theft, fraudulent use or unauthorized use of Services. Failure to do so in a timely manner may result in the termination of the Services and additional charges to the Customer. The Customer is responsible for all monthly charges and usage charges until the Customer notifies IEVOLVE of theft or fraudulent use of the equipment or the Services.

g. Customer acknowledges that it has read and accepted IEVOLVE's Acceptable USE Policy (the "AUP") located at [www.i-evolve.com/company/Legal/acceptable\\_use\\_policy.html](http://www.i-evolve.com/company/Legal/acceptable_use_policy.html), or

other locations that IEVOLVE may designate.

#### **11. Miscellaneous Provisions.**

IEVOLVE Provided Equipment – Customer acknowledges that equipment not purchased by the Customer but provided by IEVOLVE in order to facilitate the Services shall remain property of IEVOLVE. Such equipment shall be returned to IEVOLVE immediately upon termination of Services.

**a. Labels on Equipment.** At all times while this Service Agreement is in effect or when using the Services, the Customer must display all warning or other notification labels on the equipment or telephones, as directed by the IEVOLVE or other equipment provider. This includes but is not limited to an accurate and legible local number for appropriate police and fire departments, as well as other first responders.

**b. License to the Customer.** IEVOLVE hereby grants the Customer a non-exclusive license to the IP for the sole purpose of the Customer's use of the Services, and for no other purpose (the "License"). "IP" means any software, firmware or other intellectual property that is provided by IEVOLVE or used by the Customer in connection with the Service, whether provided along with the Equipment, is in the Equipment, is located on IEVOLVE's website for viewing or download, along with all documentation, manuals, guides or other information or materials used in connection with the Services. All IP included in this Service Agreement is the sole and exclusive property of IEVOLVE. The License is valid only during the Term and will automatically terminate upon the expiration or termination of the Term or the termination or discontinuance of the Services for any reason. The Customer acknowledges and agrees that the IP is the sole and exclusive property of IEVOLVE and that nothing herein conveys any interest in the IP to the Customer, except the foregoing grant of the License. This paragraph shall survive expiration or termination of the Service Agreement

**c. Usage of Equipment.** The Customer may use certain equipment provided by IEVOLVE (hereinafter "IEVOLVE-Provided Equipment") only in connection with the appropriate service and as permitted in this Service Agreement. Any other use of this IEVOLVE-Provided Equipment is strictly prohibited and may result in immediate termination of the Services and require payment of the termination fee (as defined below) and all other charges then due, plus any damages incurred by IEVOLVE as a result thereof. The Customer may not use the IEVOLVE-Provided Equipment with any other devices or other equipment not provided by IEVOLVE. The Customer agrees: (i) the IEVOLVE-Provided Equipment or any IP provided in connection with the Service may not be transferred to another party, (ii) the Customer will not reverse engineer, translate,

decompile, disassemble or derive the source code from the binary code of the Equipment's firmware or software of any IP provided with the Services, and (iii) the Customer agrees that no provider of IP or any software used by the Customer in connection with the Services will have any liability to the Customer.

**d. IEVOLVE as Reseller or Licensor.** IEVOLVE is acting only as a reseller or licensor of the hardware, software and equipment used in connection with the products and/or Services that were or are manufactured or provided by a third party ("Non-IEVOLVE Product"). IEVOLVE shall not be responsible for any changes in the Services that cause the Non-IEVOLVE Product to become obsolete, require modification or alteration, or otherwise affect the performance of the Services. Any malfunction or manufacturer's defects of any and all Non-IEVOLVE Products either sold, licensed or provided by IEVOLVE to Customer or purchased directly by Customer used in connection with the Services will not be deemed a breach of IEVOLVE's obligations under this Service Agreement. Any rights or remedies Customer may have regarding the ownership, licensing, performance or compliance of Non-IEVOLVE Product are limited to those rights extended to Customer by the manufacturer of such Non-IEVOLVE Product. Customer is entitled to use any Non-IEVOLVE Product supplied by IEVOLVE only in connection with Customer's permitted use of the Services. Customer shall use its best efforts to protect and keep confidential all intellectual property provided by IEVOLVE to Customer through any Non-IEVOLVE Product and shall make no attempt to copy, alter, reverse engineer, or tamper with such intellectual property or to use it other than in connection with the Services. Customer shall not resell, transfer, export or reexport any Non-IEVOLVE Product, or any technical data derived there from, in violation of any applicable United States or foreign law.

**e. IP Address Ownership.** If IEVOLVE assigns Customer an Internet Protocol address, if applicable, for Customer's use, the right to use that Internet Protocol address shall belong only to IEVOLVE, and Customer shall have no right to use that Internet Protocol address except as permitted by IEVOLVE in its sole discretion in connection with the Services, during the Term of this Service Agreement. IEVOLVE shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to Customer by IEVOLVE, and IEVOLVE reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion.

**f. Suspension of Service.** IEVOLVE reserves the right to suspend the Service, in whole or in part, including any features, at any time in the IEVOLVE's sole and absolute discretion if deemed necessary but agrees it shall restore the Services to Customer promptly and in a commercially

reasonable manner. If IEVOLVE determines that the suspension of the Services is not the fault of the Customer, then the Customer may request a pro-rated (number of full 24 hour periods divided by the number of days in the billing cycle) credit of the monthly charges for each day the Service was not operating pursuant to this Service Agreement.

**g. Termination.** If Customer terminates Service for convenience or Customer terminates Service for cause, Customer will pay IEVOLVE a termination fee (the Termination Fee)(which customer acknowledges is a reasonable approximation of damages and is not a penalty) as follows: (a) all unpaid amounts for Service provided through the date of termination; plus (b) all previously waived charges for the Service; plus (c) 100% of the remaining monthly recurring charges (if any) for the Term; plus (d) if not recovered by the foregoing, any termination liability payable to third parties.

**h. Relocation.** Should the customer relocate its facilities during the Term of this Service Agreement, a new service agreement will be required to implement new services at the customers' new facilities and shall replace this Service Agreement. Installation and move fees may apply and are solely at IEVOLVE's discretion. Customer agrees to give IEVOLVE ninety (90) days notice of any facilities move. However, IEVOLVE in no way warrants that its services are guaranteed to be delivered to customer premises at any date as service is dependent on construction and facilities available from its last mile provider.

**i. Amendment.** IEVOLVE may amend, modify or update this Service Agreement or AUP at any time in its sole discretion. IEVOLVE will provide electronic and written notice of any amendment, modification or update of this Service Agreement or the AUP to Customer. If any material modification to this Service Agreement or the AUP is unacceptable to Customer, Customer may terminate this Service Agreement and a prorated refund for the duration remaining will be sent to Customer. However, if Customer does not terminate the Agreement, or if Customer continues to use the Services following effectiveness of the modification, Customer's continued use will mean that Customer have accepted that modification.

**j. Customer Supplied Equipment.** In the event that IEVOLVE approves the use of customer supplied equipment, Customer acknowledges that it takes full responsibility for the installation, maintenance and operation of such equipment and IEVOLVE will in no way be held liable for Services interruptions or degradation of Services as a result of customer supplied equipment.

**k. Previous Contractual Obligations.** Customer agrees that IEVOLVE will not be responsible for the termination or cancellation of any existing service contracts or agreements with any other communications service provider and any fees or penalties associated with such contracts.

**l. Installation.** Customer acknowledges that it is the owner of the site that IEVOLVE Internet Services will be installed in, or if the customer is a tenant and not the owner of the site, the Customer acknowledges that it has secured the permission of the owner for installation of services required to support this Service Agreement. The Customer is also required to secure any licenses, permits or right of ways in order to complete this installation.

Revised 7/2/17



## 2020 Platinum IEvolve Retainer Rates

### 2020 Service Rates

Unlike traditional Systems Integrators, our primary focus is not as a reseller of technology products. Instead, our consultants concentrate on the true business needs of your organization as a trusted technology advisor. As a result, we deliver vendor-neutral, best-of-breed business solutions.

Our mission is to be the technology solutions consultant of choice for each of our clients by understanding the unique business challenges of their organizations. Working with our clients as a partner, rather than a vendor, we offer best-of-breed solutions. Our Service Levels are as follows:

Service Level	Platinum	Gold	Silver	Bronze
Retainer Amount	\$15,000.00 *	\$5000.00 *	\$2500.00 *	No Retainer
Sr. Technology Consultant	\$150.00	\$155.00	\$160.00	\$175.00
Technology Consultant	\$115.00	\$125.00	\$130.00	\$145.00
Sr. Systems Engineer/Developer	\$105.00	\$115.00	\$120.00	\$135.00
Systems/Telecom Engineer/Developer	\$95.00	\$105.00	\$110.00	\$125.00
Service Minimums	Platinum	Gold	Silver	Bronze
Phone Support/Web Case/Call Back	¼ Hour	¼ Hour	¼ Hour	¼ Hour
Dial in/Remote Support	¼ Hour	¼ Hour	½ Hour	¾ Hour
Emergency/Cell Phone Support	¼ Hour	¼ Hour	½ Hour	1 Hour
After Hours & Weekend Support	½ Hour	½ Hour	1 Hour	2 Hours
<b>Select One:</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### Retainer details \*:

1. Retainer must be paid in advance in order to receive discounted rate.
2. Retainer amount above does not include tax.
3. Travel time fees are one way to the customer from our office. No additional tolls or parking will be charged.
4. All work will be done during normal business hours (Monday through Friday 8:00am - 5:30pm.) Any work performed outside of normal business hours during the week, or on a Saturday will be billed 1.5 times the normal billing rate. Work done on a Sunday or a holiday will be billed at 2 times the normal billing rate.
5. IEvolve's current holiday schedule includes the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Thursday and Friday, Christmas Eve, Christmas Day, and any other holidays predetermined by IEvolve. Advance notice of Holiday observation dates will be provided if the Holiday falls on a weekend.
6. One hour minimum for onsite support calls plus travel.
7. Retainers are non-refundable and expire after 18 months of non-use.
8. Retainers will be auto renewed when a 10% remaining balance is reached.
9. Non-retainer customers may never exceed \$2,500.00 in services without payment.

#### Retainer/Service Agreement

All services are subject to I-Evolve's online terms of service found at <http://www.i-evolve.com/company/Legal/tos.html>. By signing, Customer acknowledges that Customer has read and understands I-Evolve's online terms of service and that the Customer agrees to be bound by those terms and conditions, the fee schedule and any other applicable terms governing the service.



501 John James Audubon Parkway Suite 201  
Amherst, New York 14228

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date



This Service Agreement ("Agreement") is made this day of by and between (referred to as CLIENT) located at and Alternative Information Systems (AIS), located at 489 Ellicott St, Buffalo NY 14203.

WHEREAS, Alternative Information Systems is a provider of Managed IT Services;

WHEREAS, CLIENT desires to contract with Alternative Information Systems for the provision of the Alternative Information Systems Managed Services Solutions;

NOW THEREFORE, for and in consideration of the premises contained herein and good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

### **Service Period**

This Agreement shall be effective as of the date of this Agreement, execution by CLIENT unless sooner terminated in accordance with the terms here of and shall be for an initial term of months.

### **Continuance / Automatic Renewal**

This Agreement shall renew automatically at the end of the prior Agreement term for a period of months unless Alternative Information Systems or the CLIENT affirmatively terminates it in accordance with the conditions set forth in this Agreement.

### **Purchase Price**

CLIENT is purchasing Alternative Information Managed Services program under this Agreement for the device purchase price outlined in Appendix A.3. Said purchase price shall be paid in monthly installments with the first installment due upon execution of this agreement. Each payment thereafter shall be due the first day of each calendar month. Services provided hereunder shall be assessed against this Account as provided herein.

### **Charges for Service Delivery**

Services shall be charged against the Account in accordance with the terms and conditions as outlined in Appendix A.3, and the Rate Card in Appendix A.4.

Any supplemental services provided by Alternative Information Systems which are outside the terms of this Agreement, including but not limited to, any maintenance provided beyond normal business hours and services in excess of the Account purchased herein, shall be charged to CLIENT as an additional charge in accordance with the terms and conditions as outlined in Appendix A.4. Any additional billing charges will be invoiced at the end of each month, with payment expected within thirty (30) days, unless otherwise specified by Alternative Information Systems.



CLIENT shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes, including federal, state, or other taxes that are imposed by execution of services provided pursuant to this Agreement. Without limiting the foregoing, CLIENT shall promptly pay to Alternative Information Systems an amount equal to any such taxes actually paid or required to be collected or paid by Alternative Information Systems.

Alternative Information Systems reserves the right to refuse or suspend service under this Agreement in the event CLIENT has failed to pay any invoice within thirty (30) days of said invoice date, whether it be an invoice for services provided under this Agreement or any other agreement between the parties.

### **Devices Covered**

Alternative Information Systems reserves the right to renegotiate rates based on the additions of locations, hardware, software, hardware support requirements, and/or services as well as modify this Agreement (or any portion thereof) with a 30-day notice.

For purposes of this Agreement, the Network shall include all locations as outlined in Appendix A.1. In addition, this agreement is based on services provided to those devices listed in Appendix A.3. Any additional devices added to the network without the consent or acknowledgement of Alternative Information Systems will not be honored or supported by Alternative Information Systems under this agreement. Please review this agreement from time to time so that you will be apprised of any changes.

### **Conditions of Service**

The CLIENT Network is eligible for monitoring and support under this Agreement provided it is in good condition and Alternative Information Systems serviceability requirements/standards and site environmental conditions are met. Alternative Information Systems reserves the right to inspect the Network upon the commencement of the term of this agreement for the purpose of creating a diagram of the Network and/or conducting a diagnostic test of the Network. Unless stated otherwise, said inspection shall be charged against the Account using our standard hourly billing rates.

Alternative Information Systems shall not be responsible to CLIENT for loss of use of the Network or for any other liabilities arising from alterations, additions, adjustments or repairs which have been made to the Network other than by authorized representatives of Alternative Information Systems.

Alternative Information Systems reserves the right to suspend or terminate this Agreement if in its sole discretion, conditions at the service site pose a health or safety threat to any Alternative Information Systems representative.



## Service Responsibility of Alternative Information Systems

Alternative Information Systems will provide remote and/or on-site services under the following conditions using the following bill rates, unless otherwise specified in Appendix A.4.

It is the responsibility of the CLIENT to promptly notify Alternative Information Systems of any events/incidents that could impact the services defined within this agreement and/or any supplemental service needs, and for Alternative Information Systems to respond in a timely manner via phone, email, remote access, and/or on-site services as defined in Appendix A.3 of this Agreement.

- a) If services are requested by the CLIENT outside of normal business hours, Alternative Information Systems shall provide such service subject to the availability of its representatives, according to the terms and conditions set forth in this Agreement.
- b) Alternative Information Systems shall monitor, advise, and provide supplemental services as defined in this agreement during business hours, unless otherwise specified in Appendix A.3, and in accordance with Alternative Information Systems Network policies then in effect. Alternative Information Systems shall provide scheduled remote and onsite support services in accordance with this agreement. Alternative Information Systems representatives shall have and the CLIENT shall provide full access to the Network in order to affect the necessary monitoring and/or supplemental services. All services defined in this Agreement shall be provided during regular business hours, unless otherwise specified in Appendix A.2.
- c) Alternative Information Systems shall be obligated to provide service only at the Service Site(s) defined in this agreement as outlined in Appendix A.1. If the CLIENT desires to relocate, add or remove locations, the CLIENT shall give appropriate notice to Alternative Information Systems of its intention to relocate sixty (60) days in advance. Alternative Information Systems reserves the right to renegotiate service terms with respect to any relocation and/or addition of locations by the CLIENT. Such right includes the right to refuse service to Network at the relocation and/or new site.
- d) Alternative Information Systems is obligated to provide CLIENT with Service Agreements higher-priority response for emergency as well as non-emergency service requests. (Appendix A.4)
- e) Alternative Information systems shall establish a Microsoft Windows managed patching policy for Microsoft updates for workstations and servers using third-party tools. The patching policy will adhere to the standard AIS maintenance schedule as follows:

Workstations - 2<sup>nd</sup> and 4<sup>th</sup> Wednesday of each month from 10pm -12:00am  
Servers - 3<sup>rd</sup> Thursday of each month from 10pm-12:00am

At the discretion of the client this policy can be changed to other days, times or disabled if client has its own windows patching solution such as Windows Server Update Services.



## Things to Do Before Contacting Support

When you call or send a message, please ensure that you have the following detailed and complete information:

- Your name and location and where and how to contact you in case of a problem
- A description of the problem and its severity
- Any error messages and what was processing at the time the problem occurred
- The applications and versions you're working with
- Any changes made recently
- In case of a request or question, a description of request or question and relevant details

## Client Responsibilities

1. CLIENT shall provide adequate workspace, heat, light, ventilation, electric current and outlets, internet, remote access, and long-distance telephone access for use by Alternative Information System's representatives.
2. CLIENT agrees that it will inform Alternative Information Systems of any modification, installation, or service performed on the Network by individuals not employed by Alternative Information Systems in order to assist Alternative Information Systems in providing an efficient and effective Network support response time.
3. CLIENT will designate a managerial level representative to authorize all Network Support Services. Whenever possible, said representative shall be present whenever an Alternative Information Systems service representative is on-site. This contact information shall be outlined in Appendix A.1, and it is the CLIENT's responsibility to inform Alternative Information Systems of any changes made to this representation thirty (30) days in advance.
4. CLIENT agrees that a maintenance window must be established and honored to allow for proper system maintenance, patching and reboots as outlined in Service Responsibility of Alternative Information Systems

## Scope of Managed Service Agreement

This Agreement is designed to provide the Account with centralized, proactive monitoring supplemental services for certain Networking System. This Agreement includes:

**LOCATION(S):** Specific location(s) to be covered by this agreement can be found in Appendix A.1.



## **Service Limitations**

In addition to other limitations and conditions set forth in this Agreement, the following service and support limitations are expressed:

- a) Cost of consumables, replacement parts, hardware, software, network upgrades and associated services are outside the scope of this agreement. Alternative Information Systems will provide consultative specification, sourcing guidance and/or Time and Material/Project offerings.
- b) Except as otherwise stated in Appendix A.2 of this agreement all Server, Network Device and Software upgrades are outside the scope of this agreement.
- c) Manufacturer warranty parts and labor/services are outside the scope of this agreement.
- d) Periodic reboots for such devices as firewalls, routers, and servers are required to apply/activate critical update patches and configuration changes. Alternative Information System's support services within this agreement are predicated upon the CLIENT'S support and commitment to providing time/scheduling for network device reboots with its staff and/or users support.
- e) Application software support is limited to the manufacturer's products listed in Appendix A.3.
- f) Virus mitigation within the scope of this agreement is predicated on CLIENT satisfying recommended backup schemes and having appropriate Anti-Virus Software with current updates.
- g) Restoration of lost data caused by systems/hardware failure is outside the scope of this agreement.
- h) This agreement and support services herein are contingent on CLIENT'S permission of Alternative Information Systems having secure remote access into CLIENT'S network (eg. VPN, Citrix/Terminal Server, Telnet, SSH, RAS or other solution expressly approved by Alternative Information Systems). Depending on the remote access solution used, additional charges may apply to the contract.
- i) Support services required or requested outside the scope of this agreement may not be exchanged for days or services within this agreement. Outside of scope support services are available and will be provided on either a Time and Material, or Project basis.

## **Warranties and Disclaimers**

Alternative Information Systems makes and the CLIENT receives no warranty, express or implied, and all warranties of merchantability and fitness for a particular purpose are expressly excluded. In no event shall Alternative Information Systems or any of its Directors, Employees or Other Representatives be for any special, incidental, indirect, or consequential damages of any kind including, without limitations, those resulting from loss of data, income, profit, and on any theory of liability, arising out of or in connection with the services or use thereof even if it has been advised or has knowledge of the possibility of such damages.



The CLIENT shall assume full responsibility for the overall effectiveness and efficiency of the operating environment in which the Network is to function.

### **Indemnification**

CLIENT hereby agrees to indemnify and defend at its sole expense: Alternative Information Systems, its employees, agents, representatives, directors and shareholders, from and against any and all claims arising out of or based upon CLIENT'S use of all services, software or hardware provided or serviced hereunder, including, but not limited to, claims based on software licensing violations, copyright infringement, trademark infringement and patent infringement. In addition, CLIENT agrees to pay any judgment and costs associated with such claim.

### **Opt-Out/Termination**

Alternative Information Systems and/or CLIENT shall have the right to terminate this Agreement under any of the following conditions:

- If the CLIENT does not pay Alternative Information Systems within thirty (30) days from receipt of Alternative Information Systems invoice and/or otherwise materially breaches this Agreement.
- If Alternative Information Systems fails to perform its obligations under this Agreement and such failure continues for a period of thirty days after written notice of the default, the CLIENT shall have the right to terminate this Agreement.
- Either party may terminate this Agreement upon sixty days (60) written notice.
- If one of the parties shall be declared insolvent or bankrupt.
- If a petition is filed in any court and not dismissed in ninety days to declare one of the parties bankrupt and/or for a reorganization under the Bankruptcy Law or any similar statute.
- If a Trustee in Bankruptcy or a Receiver or similar entity is appointed for one of the parties.

Upon termination, all hardware and software installed by Alternative Information Systems that was required to conduct network support services are the property of Alternative Information Systems and will be surrendered and returned to Alternative Information Systems at end of the agreement.

### **Non-Hire/Non-Disclosure**

Because employees are one of our most valuable assets, policy and professional ethics require that our employees not seek employment with or be offered employment by any CLIENT during the course of engagement and for period of one (1) year thereafter. Your signature on this document confirms your organizations agreement to adhere to this professional standard of conduct.

CLIENT acknowledges that Alternative Information Systems is involved in a highly strategic and competitive business. CLIENT further acknowledges that CLIENT would gain substantial benefit and that





Alternative Information Systems would be deprived of such benefit, if CLIENT were to directly hire any personnel employed by Alternative Information Systems Except as otherwise provided by law, CLIENT

shall not, without the prior written consent of Alternative Information Systems, solicit the employment of Alternative Information Systems personnel during the term of this Agreement and for a period of one **(1) year following expiration of this Agreement.**

CLIENT agrees that Alternative Information Systems damages resulting from breach by CLIENT of this provision would be impracticable and that it would be extremely difficult to ascertain the actual amount of damages. Therefore, in the event CLIENT violates this provision, CLIENT shall immediately pay Alternative Information Systems an amount equal to 60% of employee's total annual compensation, as liquidated damages and Alternative Information Systems shall have the option to terminate this Agreement without further notice or liability to CLIENT. The amount of the liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs Alternative Information Systems would incur to identify, recruit, hire and train suitable replacements for such personnel.

This Confidentiality, Privacy and Compliance portion of this Agreement is in addition to other terms and conditions set forth in any and all contracts currently existing or hereafter created between CLIENT and Alternative Information Systems This agreement shall under no circumstances be deemed to alter any such contract except as specifically provided below.

Alternative Information Systems acknowledges that in the course of providing services to said CLIENT, Your Company may learn from CLIENT certain non-public personal and otherwise confidential information relating to said CLIENT, including its customers, consumers or employees. Alternative Information Systems shall regard any and all information it receives which in any way relates or pertains to said CLIENT, including its customers, consumers or employees as confidential.

Alternative Information Systems shall take commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose other than purposes which serve CLIENT or as expressly and specifically permitted in writing by said CLIENT or as required by applicable law.

Said CLIENT acknowledges that it also has responsibility to keep records and information of its business, customers, consumers, and employees, confidential.

Said CLIENT also acknowledges that all information and services, consulting techniques, proposals, and documents disclosed by Alternative Information Systems or which comes to its attention during the course of business and provided under this agreement constitute valuable assets of, and confidential and/or proprietary to Alternative Information Systems.

This provision shall survive termination of this Agreement and any other agreements between CLIENT & Alternative Information Systems.



## **Insurance**

Alternative Information Systems shall maintain at its sole expense commercial general liability insurance for personal injury and property damage for a general aggregate of \$2,000,000; Professional Liability insurance (AKA Errors & Omissions Liability insurance) for a general aggregate of \$1,000,000; worker's compensation insurance as required by law; and hired and non-owned automobile liability insurance for the combined single limit of \$1,000,000. At CLIENT's request, Alternative Information Systems further agrees to furnish CLIENT with certificates, including renewal certificates, evidencing such coverage within thirty (30) days of commencing performance under this Agreement, at every renewal and at other times as may be reasonably requested by CLIENT.

## **General Provisions**

- a) **Sole Agreement:** This Agreement constitutes the entire and only understanding and agreement between the parties hereto with respect to the subject matter hereof and, except as expressly set forth herein, maybe amended only by a writing signed by each of the parties hereto.
- b) **Severability:** If a court of competent jurisdiction determines that any terms or provision of this Agreement is invalid or unenforceable; such determination shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement, which shall continue to be given full force and effect.
- c) **Captions:** The captions of the paragraphs of this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement or any of the provisions hereof.
- d) **Binding Effect:** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, legal representatives, personal representatives, administrators, successors, and permitted assigns, as the case may be.
- e) **Waiver:** Any failure of either party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived, but only if such waiver is in writing and signed by the other parties. Any such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement, or conditions shall not operate as a waiver of and/or set precedence with respect to any subsequent and/or other failure.
- f) **Governing Law:** Notwithstanding the place where this Agreement may be executed by any party, this Agreement, the rights and obligations of the parties, and any claims and disputes relating hereto shall be subject to and governed by the laws of the State of New York as applied to agreements among New York residents to be entered into and performed entirely within the State of New York, and such laws shall govern all aspects of this Agreement. The parties agree to submit to the personal jurisdiction and venue of the state and federal courts in the State of New York, in the Judicial Circuit where Alternative Information Systems has its principal office, for resolution of all disputes and causes of action arising out



of this Agreement, and the parties hereby waive all questions of personal jurisdiction and venue of such courts, including, without limitation, the claim or defense therein that such courts constitute an inconvenient forum.

g) Assignment: This Agreement and the rights and duties hereunder shall not be assignable by either party hereto except upon written consent of the other.

h) Force Majeure: Alternative Information Systems shall not be liable for any problems due to external causes beyond its control including, but not limited to, terrorist acts, natural catastrophe, fire, flood, or other act of God, and/or power failure, virus propagation, improper shut down of the Network and related Network Systems/Services.

i) Attorneys' Fees. In any action between the parties to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover all expenses, including reasonable attorneys' fees.

j) IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first below written.

**Remedies**

In the event CLIENT terminates this Agreement for any reason other than a breach of the terms herein, CLIENT shall be entitled to a refund of any monies extended in advance of the month or part thereof for which services by Alternative Information Systems were last performed.

**Acceptance:**

By Signing below, the Client and Alternative Information Systems enter into a binding contract for the managed service plan and term selected below. Client and AIS further agree to the provisions, details, terms and conditions set forth in this contract.

**Essential Managed Service** - includes monitoring for server's/network devices, and remote labor for managed devices. ONSITE labor is not included and is charged at Appendix A.4 Rate.

**Premier Managed Service** - includes monitoring for servers, remote and ONSITE labor for all managed devices.

Term:  1 Year  2 Year  3 Year

**Monthly Contract Price:**

Alternative Information Systems		<Client>	
Signature:		Signature:	
Printed Name:		Printed Name:	
Title:		Title:	
Date:		Date:	



## Appendix A.1 – Contact Information

### Account Representative

Your Alternative Information Systems Account Representative / Primary Contact is <INSERT NAME HERE>. Please contact <him/her> if you wish to make any changes to, or ask questions about your service agreement with us.

You can contact your account representative in the following ways:

- Telephone: (716) 716-831-9929
- support@aisbuffalo.com

### Client Information

The primary CLIENT contact is:

Title-

Location:

Phone:

Fax:

Email:

The secondary CLIENT contact

Title-

Location:

Phone:

Fax:

Email:

Changes to this agreement may only be requested by the persons named above. It is the responsibility of the CLIENT to notify Alternative Information Systems of changes to the contact person.

This agreement covers the following CLIENT locations:

Site Name	Address	Phone	Contact



## Appendix A.2 – Scheduled Business Hours and Holidays

### *AIS Business Schedule*

Standard hours of operations are during regular business hours. All requests during this this time will be prioritized by our SLA policy (Appendix A.4). Requests for service outside of these hours will be responded to next business day. If the request is urgent or an emergency, it will be billed at the rate defined in Appendix A.4.

Regular Business Hours	Monday through Friday	8:00 AM to 5:00 PM
After Hours	Monday through Friday	5:00 PM to 11:00 PM
	Saturday	8:00 AM to 5:00 PM
Overnight	Monday through Friday	11:00 PM to 8:00 AM
	Saturday	5:00 PM to 11:59 PM
	Sunday	12:00 AM to 8:00 AM Monday

### *Holidays Observed and Service Support Hours*

AIS is closed on the following holidays. Service Requests made on these days will be performed on the next business day during regular business hours. In the event a service call is required, the client will be billed at the overnight rate (Appendix A.4).

New Year's Day	January 1st
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Day After Thanksgiving	4th Friday in November
Christmas Day	December 25th



### Appendix A.3 – Program Description: Devices Supported

This agreement is based on the following information agreed upon by you. Any changes to this information require an updated service agreement. See quote attached

Device	Quantity	Device Price	Extended Price

Since part of this service agreement includes device support, CLIENT is responsible for informing Alternative Information Systems of changes to the number of devices within five (5) business days.

Under this agreement, the CLIENT is entitled to a quantity of supported devices as defined in the Program Description. Any additional devices added to program will have an incremental increase in cost as defined as "Device Price" above. The monthly pricing will be automatically updated with the addition of a device.

Alternative Information Systems support, and maintenance is limited to items, services, hardware and applications listed under Program Description.

## Appendix A.4 – Service Desk, Response Times and Rates

### Alternative Information Systems Service Desk Services

The Alternative Information Systems Service Desk provides a point of escalation for your company when they have an issue or question. Alternative Information Systems staff is available during regular business hours (Appendix A.2) to support your team. We commit to responding to your question promptly (response times are based on SLA).

<b>Support Phone #:</b>	716-831-9929
<b>Support Email Address:</b>	aistech@aisbuffalo.com
<b>Support web site:</b>	support.aisbuffalo.com
<b>Client Portal (tickets):</b>	aisbuffalo.itclientportal.com

*Requests to support may be made by calling, emailing or submitting an electronic request through our customer portal. (Customer portal must be included in your contract and you must have an active account in our system).*

#### How to Contact Service Desk:

#### Emergency Support Issues

Our Managed Service Program enables access to emergency support services when the need arises. Should your team detect an issue with a service or device outside regular business hours, you can contact the on-call technician. The on-call technician will respond to your request within one hour and take steps to resolve your issue. Should they be unable to resolve your issue, it will be escalated to a manager.

#### Service Level Agreements (SLA)

SLA's are classified first based on status and second by client. AIS prioritize SLA's in the following order:

- 1) **Critical** - Ability to conduct business has stopped.
- 2) **High** - Significant Degradation of Service.
- 3) **Medium** - Small Service Degradation.
- 4) **Low** - No Service degradation (Adds, Moves, Changes)

Client Order: 1<sup>st</sup> - Premier Managed Service Clients, 2<sup>nd</sup> - Essential Managed Service Clients, and then Standard (all other customers).

#### *SLA Initial Response*

An initial response SLA is defined as met when the 2 following conditions are met:



- 1) The status of the issue has been changed in the AIS system from new to any of the following: in progress, dispatch, escalate, on hold parts, and hold vendor.
- 2) The client has received notification from AIS that we have received, acknowledged the issue and began remediation activity.

*SLA Resolution*

AIS makes every effort to resolve your issue within the SLA Resolution time. There are times when circumstances are beyond our control and it is impossible to meet the SLA Resolution time. Some of these circumstances may include acts of god, delays caused by other vendors, inability or delays to obtain parts for old or end of life equipment. SLA Resolution is not a guarantee and is done as best effort.

**SLA Initial Response**

Severity	Standard	Essential	Premier
Critical	4 HR	2 HR	1 HR
High	8 HR	4 HR	2 HR
Medium	24 HR	16 HR	8 HR
Low	32 HR	24 HR	16 HR

**SLA Resolution**

Severity	Standard	Essential	Premier
Critical	8 HR	4 HR	2 HR
High	16 HR	8 HR	4 HR
Medium	32 HR	32 HR	16 HR
Low	40 HR	40 HR	32 HR

**Rate Card (if not included in Managed Services)**

<b>Regular Business Hours</b>	L1 – Remote	\$95 hour
	L2 - On Site	\$125 hour
	L3 – On Site Network	\$175 hour
<b>After Hours</b>	All	\$285 hour
<b>Overnight</b>	All	\$300 hour

**Service/Incident Escalations**

As not every support case can be resolved at the point of report, it is important to outline the process by which cases are and can be escalated.

**Functional Escalations**

As outlined in the Service Desk Severity and Response Times chart above, our service desk team will escalate any unresolved issue(s) to a manager or senior technician to achieve SLA goals.





## Appendix A.5 – Terms, Conditions and Definitions

Essential managed services include monitoring for server's/network devices, and remote labor for managed devices during regular business hours. ONSITE labor is **not** included and is charged at T&M rate.

Premier managed services include monitoring for server's/network devices, remote and ONSITE labor for all managed devices during regular business hours.

Onsite support is defined as having a technician perform service at the specified site(s) as defined in Appendix A1. The rate charged will be determined by your managed service plan, Alternative Information's Business Schedule and rate chart.

Remote Support is defined as having a technician perform service through a remote connection, tool, or application other than the specified site(s) as defined in Appendix A1. The rate charged will be determined by your managed service plan, Alternative Information's Business Schedule and rate chart.

Monitoring is performed by Alternative Information Systems by third party tools. As part of monitoring alerts are triggered by pre-defined criteria and notifications are sent to AIS, client or both as defined by your agreement. Remediation actions are performed under the terms of your managed service contract and may be billable.

Switch Managed Service includes configuration changes, monitoring of switches for connectivity and performance issues. Remediation actions are performed under the terms of your managed service contract and may be billable. Switches are monitored using the SNMP protocol.

Un-Managed switch is a switch that does not have an administrative interface that can be logged into. Switches that are monitored using the ICMP protocol.

Access Point Managed Service - includes configuration changes, monitoring of access points for connectivity and management of wireless controller. Remediation actions are performed under the terms of your managed service contract and may be billable.

UP/Down Monitoring – Monitors devices using the ICMP protocol to check for connectivity. This can include Un managed access points, unmanaged switches, security devices, printers, and any other device that has an IP address and is connected to the network

\*Server is defined as any device that has a Microsoft Windows server operating system installed

\*Workstation is defined as any device that has a Microsoft Windows desktop operating system installed.



\*AIS ends support for Microsoft operating systems on the Extended Support End Date schedule as defined by Microsoft Lifecycle Policy. This information can be found at: <https://support.microsoft.com/en-us/hub/4095338/microsoft-lifecycle-policy>. Once the Support end date has passed, support is done on a best effort and case by case basis

**Included and Additional Services in managed service offerings as defined by plan:**

Managed Services Features		Essential	Premier
<b>Server &amp; Network Monitoring</b>	Proactive Monitoring.	X	X
<b>Remote Support &amp; Resolution</b>	Included with all managed service plans.	X	X
<b>Remote Support for End Users</b>	Included with all managed service workstation plans.	X	X
<b>Email Management</b>	Administer Exchange and Office 365.	X	X
<b>Virus Protection Management</b>	Centralized management & monitoring of Anti-Virus.	X	X
<b>Backup Management</b>	Monitoring and Manage Backups	X	X
<b>Vendor Management</b>	Coordinate for optimal solutions and support.	X	X
<b>User Administration</b>	Add or make changes to users in Active Directory.	X	X
<b>Customer Portal Access</b>	Create service orders, view status of orders and projects.	X	X
<b>Scheduled Business Reviews</b>	Evaluate current service state and set future roadmaps.	X	X
<b>Monthly Reporting</b>	Device, Network, and Service reporting.	X	x
<b>Virtual CIO</b>	IT Planning, strategy and consulting services.		X
<b>Onsite Support Included</b>	Technicians will be dispatched with no additional charges.		X
<b>Weekly Reporting</b>	Device, Network, and Service reporting.		X

*Service and Support will be provided during Regular business hours as defined in Appendix A.2. Service and Support provided outside of regular business hours will be billed at the rates listed in Appendix A.4.*



### Basic Quote Information:

<b>Quote ID:</b>	LQ01536	<b>Issued By:</b>	Floyd Streeter
<b>Quote Issue Date:</b>	2/26/2020	<b>Phone:</b>	+15855688432
<b>Quote Expiration Date:</b>	3/27/2020	<b>Email:</b>	Floyd.Streeter@crowncastle.com

### Quote Recipient Information:

**Company Name:** Town of West Seneca  
**Contact:** Pete Bumbaco  
**Contact Phone:** 716-831-9929  
**Contact Email:** PBumbaco@aisbuffalo.com

### Service Location Information:

Location	
<b>Location 1:</b>	1250 Union 1st Floor Buffalo NY 14224

Service Description	Term (in months)	Total MRC	Total NRC
Internet Dedicated Internet Access 100Mbps	36	\$575.00	\$0.00

### Quote Terms and Conditions:

- This quote is valid for 30 days from the "Quote Issue Date" listed above
- This quote is for budgetary purposes only and does not include applicable taxes, surcharges or other fees
- This quote is not a contract for service
- All information contained herein is confidential and intended solely for the quote recipient's benefit. The quote recipient shall not disclose information contained herein to any other parties.
- "MRC" referenced above refers to Monthly Recurring Charge
- "NRC" referenced above refers to Non-Recurring Charge

### Comments:



**Quote Number: 2172**

Payment Terms: Net 30 days  
Expiration Date: 06/07/2020

**Quote Prepared For**

**Gary Dickson**  
**Town of West Seneca**  
1250 Union Rd  
489 Ellicott St  
West Seneca, NY 14224  
United States  
Phone:558-3203  
gdickson@twsny.org

**Quote Prepared By**

**Peter Bumbaco**  
**Alternative Information Systems, Inc**  
489 Ellicott St  
Buffalo, NY 14203  
United States  
Phone:7168319929  
Fax:716-332-0496  
[pbumbaco@aisbuffalo.com](mailto:pbumbaco@aisbuffalo.com)

Item#	Quantity	Item	Unit Price	Adjusted Unit Price	Extended Price
<b>Monthly Items</b>					
1)	8	Vmware Virtual Server Hosted Vmware Server	\$300.00	\$300.00	\$2,400.00
2)	59	Essential VDI Workstation	\$45.00	\$45.00	\$2,655.00
3)	30	Essential Workstation Remote Support Services	\$25.00	\$25.00	\$750.00
4)	13	SPLA - Windows Server STD Microsoft Server STD SPLA	\$12.00	\$12.00	\$156.00
5)	4	SPLA - SQL Standard Server (core) Microsoft SQL Server	\$28.00	\$28.00	\$112.00
6)	59	Microsoft 365 Business Standard (premium) Office 365 Business Premium	\$12.50	\$12.50	\$737.50
7)	8	Anti Virus Server Anti Virus Software	\$0.00	\$0.00	\$0.00
8)	89	Anti Virus Workstation Antivirus Software	\$0.00	\$0.00	\$0.00
9)	59	Windows 10 Enterprise E3 (CSP) Windows 10 pro license	\$0.00	\$0.00	\$0.00
10)	71	Microsoft 365 Business Basic (essentials) O365 Essentials	\$5.00	\$5.00	\$355.00
<b>Monthly Total</b>					<b>\$7,165.50</b>
<b>Subtotal</b>					<b>\$7,165.50</b>
<b>Total Taxes</b>					<b>\$0.00</b>
<b>Total</b>					<b>\$7,165.50</b>

Quoted pricing for products and services are valid for until the day listed as "expiration date". After this date you should request a new quote. Pricing is only valid for the quantity listed and may change if the quantity purchased is different from the original quoted quantity. Payment is due based on terms listed in this quote as "payment terms".

Authorizing Signature \_\_\_\_\_

Date \_\_\_\_\_

Quoted pricing for products and services are valid for until the day listed as "expiration date". After this date you should request a new quote. Pricing is only valid for the quantity listed and may change if the quantity purchased is different from the original quoted quantity. Payment is due based on terms listed in this quote as "payment terms".



Quote Number: 2173

Payment Terms:  
Expiration Date: 06/12/2020

**Quote Prepared For**

**Gary Dickson**  
**Town of West Seneca**  
 1250 Union Rd  
 489 Ellicott St  
 West Seneca, NY 14224  
 United States  
 Phone:558-3203  
 gdickson@twsny.org

**Quote Prepared By**

**Peter Bumbaco**  
**Alternative Information Systems, Inc**  
 489 Ellicott St  
 Buffalo, NY 14203  
 United States  
 Phone:7168319929  
 Fax:716-332-0496  
[pbumbaco@aisbuffalo.com](mailto:pbumbaco@aisbuffalo.com)

Item#	Quantity	Item	Unit Price	Adjusted Unit Price	Extended Price
<b>One-Time Items</b>					
1)	32	Exchange server Retire and migration of data	\$105.00	\$105.00	\$3,360.00
2)	8	Document server 2106 Document management SQL migration	\$105.00	\$105.00	\$840.00
3)	8	Town of West Seneca server OC APP server SQL migration	\$105.00	\$105.00	\$840.00
4)	8	Server FS Active directory and services	\$105.00	\$105.00	\$840.00
5)	8	Town of West Seneca KVS KVS server migration	\$105.00	\$105.00	\$840.00
6)	8	Munis present APP IIS SQL migration	\$105.00	\$105.00	\$840.00
7)	8	Munis CMS SQL Octopus	\$105.00	\$105.00	\$840.00
8)	8	Munis Database SQL Munis	\$105.00	\$105.00	\$840.00
9)	8	Munis WEB Munis MIU agent	\$105.00	\$105.00	\$840.00
10)	10	Misc. Misc project factoring additional hours if needed	\$105.00	\$105.00	\$1,050.00
11)	130	Email migration Email migration software tool to migrate email for 130 devices	\$30.00	\$30.00	\$3,900.00
<b>One-Time Total</b>					<b>\$15,030.00</b>

Quoted pricing for products and services are valid for until the day listed as "expiration date". After this date you should request a new quote. Pricing is only valid for the quantity listed and may change if the quantity purchased is different from the original quoted quantity. Payment is due based on terms listed in this quote as "payment terms".

Item#	Quantity	Item	Unit Price	Adjusted Unit Price	Extended Price
Includes onsite hour for the first 30 days. Hours are based on prior projects of this scope. You will be billed only for the hours used for the project.					
				<b>Subtotal</b>	<b>\$15,030.00</b>
				<b>Total Taxes</b>	<b>\$0.00</b>
				<b>Total</b>	<b>\$15,030.00</b>

Authorizing Signature \_\_\_\_\_

Date \_\_\_\_\_

Quoted pricing for products and services are valid for until the day listed as "expiration date". After this date you should request a new quote. Pricing is only valid for the quantity listed and may change if the quantity purchased is different from the original quoted quantity. Payment is due based on terms listed in this quote as "payment terms".





Quote Number: 2176

Payment Terms:  
Expiration Date: 06/13/2020

**Quote Prepared For**

**Gary Dickson**  
**Town of West Seneca**  
 1250 Union Rd  
 489 Ellicott St  
 West Seneca, NY 14224  
 United States  
 Phone:558-3203  
 gdickson@twsny.org

**Quote Prepared By**

**Peter Bumbaco**  
**Alternative Information Systems, Inc**  
 489 Ellicott St  
 Buffalo, NY 14203  
 United States  
 Phone:7168319929  
 Fax:716-332-0496  
[pbumbaco@aisbuffalo.com](mailto:pbumbaco@aisbuffalo.com)

Item#	Quantity	Item	Unit Price	Adjusted Unit Price	Extended Price
<b>One-Time Items</b>					
1)	40	Virtual PC set-up Set up of all virtual PC's within the virtual network	\$105.00	\$105.00	\$4,200.00
<b>One-Time Total</b>					<b>\$4,200.00</b>
<b>Subtotal</b>					<b>\$4,200.00</b>
<b>Total Taxes</b>					<b>\$0.00</b>
<b>Total</b>					<b>\$4,200.00</b>

Authorizing Signature \_\_\_\_\_

Date \_\_\_\_\_

Quoted pricing for products and services are valid for until the day listed as "expiration date". After this date you should request a new quote. Pricing is only valid for the quantity listed and may change if the quantity purchased is different from the original quoted quantity. Payment is due based on terms listed in this quote as "payment terms".