

City of Oregon City

Information Technology Analysis and Support Services

Scope of Work – Exhibit A

Services included under the terms of this contract are as follows. **Part 1** summarizes the services to be performed as requested in the RFP: IT Network Analysis and Continued Support Services. **Part 2** addresses the selected Option B of remote and onsite services, as outlined in the RFP Response. Detail about approach and methodology is also contained in the Summary of Support Services and Project Methodology (Section 5 of RFP Proposal response).

Part 1: Services to be performed

IT Network Analysis

- Compile/update inventory of all information technology related assets
- Assess system architecture (network, LAN, WLAN, wireless) and update Network diagrams
- Assess current processes using these criteria: reliability, scalability, manageability, efficiency, remote accessibility, and security; and provide a plan for addressing any issues discovered.
- Make recommendations for improved, city-wide, IT system performance. Specifically:
 - Network and user usage optimization
 - Implementation of a virtualized environment
 - Server support and monitoring

Continued Support Services

The Contractor will work with City IT staff to provide the following services to the City of Oregon City:

Desktop Applications Support - Performs basic support functions including:

- Install workstation, server, laptop, printer drivers, and enterprise database software
- Diagnose and correcting desktop application problems
- Configure laptops and desktops for standard applications
- Identify/correct end user hardware problems
- Perform advanced troubleshooting
- Maintain an up-to-date inventory of all computer related hardware and make available to City personnel upon request
- Assist designated City personnel with software and hardware purchases
- Assist in development of software/hardware policies and procedures

Server Administration Services - Manages computer systems and networks including:

- Manage complex application, database, messaging, web and other servers, and associated hardware
- Monitor software, communications, operating systems necessary for the quality,

- security, performance, availability, recoverability, and reliability of the system
- Ensure scheduled preventive maintenance for equipment is properly and promptly performed and maintain records to City specifications
- Develop operation, administrative, and quality assurance back-up plans and procedural documentation
- Active server and MS Exchange administration
- Provide server performance and capacity management services with reporting when specified thresholds are reached
- Manage virtualized environment when implemented
- Configuration management, including changes, upgrades, patches, etc.
- SQL database administration to support specified departmental applications including upgrades, patches, etc.
- Coordinate repair and maintenance work with contracted service and ensure repairs are conducted in a timely fashion

Network Administration Services – Scope of activity includes all City network equipment including, but not limited to, switches, firewalls, routers, and other security devices.

- Primary installation and maintenance of printers, network copiers/scanners, etc.
- Primary maintenance including regular analysis, routine configuration changes, and installation of patches and upgrades
- Alert notifications to designated City personnel in the event of failure
- Complete proactive monitoring of network equipment including bandwidth utilization, and other performance indicators, with reporting when specified thresholds are reached
- Network performance and capacity management services, and network troubleshooting
- Maintain network documentation and procedures

Security –

- Maintenance of virus detection programs on City servers, email and all other City computers and laptops
- Perform security audits as requested and notify City personnel immediately of suspected breaches of security or intrusion detection
- Configure City system to enable remote access in a secure environment and provide VPN administration as requested by designated City personnel
- Oversee public safety security connections for use with outside agencies. Our Police currently connect using CCom, Classweb, and Forcecom

Strategic Planning –

- Engineering, planning, and design services for major system enhancements including installations and upgrades of new or existing systems. Examples include major server upgrades, virtualization and storage system upgrades, and redesign of backup systems
- Provide technical leadership for server technology issues
- Make recommendations for future purchasing and technology needs.
- Design, install, upgrade and configuration of servers, routers, switches, and network software.

Part 2: Summary of Support Services and Project Methodology

Polar Systems - Managed IT Support Proposal Summary

The purpose of this proposal summary is to provide to the City of Oregon City options (A, B and C below) in levels of onsite support and services. PolarStar Managed IT Support includes unlimited remote and onsite support as it relates to triage and problem resolution for the IT environment in scope for ongoing management. Option A includes this PolarStar Managed IT Support. Options B and C offer additional Onsite and vCIO support services as an extension to the base-level PolarStar Managed IT Support. As a necessary component toward gaining an understanding of IT's present state, with the purpose of developing an IT roadmap and strategic plan, an IT Site Assessment is included in options A, B and C. Also attached is a customer story for Cowlitz Family Healthcare Center in Longview, WA. We believe CFHC provides a very relevant example of Polar's ability to support organizations similar to the City of Oregon City both in size and nature of IT projects.



SERVICES SUMMARY

Contact:	City of Oregon City		Business Development
	David Knoll	Phone: (503) 496-1557	Mark Filipovich
Address:	625 Center St	Email: dknoll@ci.oregon-city.or.us	mfilipovich@polarsystems.com
	Oregon City, OR, 97045	Fax:	

Qty	Description
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PolarStar Network Services

	<u>Services:</u>	<u>INCLUDED</u>	<u>EXCEPTIONS</u>
24	Server Management	Y - 24 servers	
	Asset Auditing/Inventory	Y	
	Monitoring/Alerting	Y	
	Patch and Maintenance Event	Y	
	Backup Management	Y	
	Anti-Virus Management	Y	
	OS Management	Y	
	E-Mail Management	Y	
	Anti-Spam Management	Y	
	DNS Hosting	Y	
	Network Device Management	Y	
	UPS Management	Y	
150	Desktop/Laptop Management	Y - 150 workstations	
	Mobile Device Management	Y	
	Printers and Other Device Management	Y	
	Vendor Relationship Management	Y	
	Quarterly Consultation	Y	
	Reporting	Y	
	Guaranteed Response Time	1 Hour	30 Min for High Severity
	Additional Network Services	Y	
	Scheduled On-site Support	Y - Included in Options B and C	
	Reduced Hourly Labor Rates for the contract period	10%	

12/16
12/15
12/15
12/15
12/15

1250

Polar Systems understands how critical onsite support is to the success of City of Oregon City IT, and how important it will continue to be in the transition a more proactive, strategic state. As such, we have provided support options that include onsite support in numerous capacities. Both options provide twenty (20) hours of onsite support weekly. This would typically include the day-to-day tasks associated with supporting the City's user-base, as well as network documentation, and ongoing management activities. These twenty hours are in ADDITION to any onsite support required within PolarStar Managed IT Support. Option A provides limited vCIO services of two (2) hours per month. Option B includes eight (8) hours per month of vCIO services. vCIO services would typically include project management, stakeholder representation, vendor & technology assessment & management, IT roadmap and strategic consulting, budgetary development, staff development, and more. Polar Systems vCIO services are designed with the flexibility needed to support the unique needs of your organization. As a part of the onboarding process, a plan would be developed to reach mutual agreement of the best use of vCIO resources in support of the City of Oregon City. These support models were built based upon Polar's understanding of the City's onsite requirements and diverse user-base. Should the City of Oregon City wish to move forward with a model including onsite support, but not necessarily as allocated in Options A and B, Polar Systems has the flexibility to draft an optimized onsite support structure.

Option A -- \$100 per user/month

Includes:

- 1) PolarStar Managed IT Support Service as detailed above
- 2) City-wide IT Site Assessment
- 3) *Twenty (20) hours per week of dedicated Onsite Support, for two years
- 4) Two (2) hours per month of vCIO services, for two years

Option B -- \$117 per user/month

Includes:

- 1) PolarStar Managed IT Support Service as detailed above
- 2) City-wide IT Site Assessment
- 3) *Twenty (20) hours per week of dedicated Onsite Support PLUS "clean-up" activities, for two years
- 4) Eight (8) hours per month of vCIO services, for two years

* Examples of "clean-up" activities would include Active Directory clean-up, re-organization, group policy re-organization, addressing security issues identified in IT Site Assessment, and network tuning. Examples of activities EXCLUDED from "clean-up" include but are not limited to: Server migrations, major network re-architecting, virtualization design and implementation



Exhibit C - MASTER SERVICES AGREEMENT

This Master Services Agreement (this “**Agreement**”) is entered into as of July 1, 2013 (the “**Effective Date**”), by and between Polar Systems, Inc., with its principal address at 21890 Willamette Drive, West Linn, OR 97068 (“**Polar Systems**”) and the party below (“**Client**”).

Client Name:		
Billing Address:		
City:	State:	Zip:
Shipping Address:		
City:	State:	Zip:
Telephone Number:	Fax Number:	
Company Website:		
Primary Contact Name:		
Primary Contact Email:		
Accounting Contact Name:		
Accounting Contact Email:		
Company Origin Date:		
Type of Business:	Corporation <input type="checkbox"/>	LLC: <input type="checkbox"/>
	Sole Proprietorship <input type="checkbox"/>	Other: _____
Oregon Clients: Are you inside the city limits of Portland?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Oregon Clients: If no to above, are you outside the city limits of Portland, but within Multnomah County?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Clients outside of Oregon:		
What is your Tax Jurisdiction?		

Initial Term: July 1, 2013 to June 30, 2015

This Agreement consists of this cover page; the attached Terms and Conditions; and the following Schedule(s), which have been agreed to as of the Effective Date:

EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS READ AND AGREES TO BE BOUND BY THIS AGREEMENT (INCLUDING THE ATTACHED TERMS AND CONDITIONS AND SCHEDULES) AND IS AUTHORIZED TO EXECUTE THIS AGREEMENT.

Polar Systems, Inc.

Client: _____

By: _____
Print Name and Title

By: _____
Print Name and Title

Date: _____

Date: _____

POLAR SYSTEMS MASTER SERVICES AGREEMENT TERMS AND CONDITIONS

1. **Introduction.** This Agreement is between Polar Systems and the Client specified on the cover page of this Agreement. Under the terms of this Agreement, Polar Systems will use reasonable efforts to provide Client with Managed Services and other IT support services as described in one or more mutually agreed Schedules (the “**Services**”). “**Managed Services**” means Services where Polar Systems agrees to proactively monitor, manage and maintain certain IT components or services (such as servers, workstations, backup services, e-mail services, hosting services, etc.)

2. **Services**

(a) **Schedules.** The initial scope of Services under this Agreement is described in Schedules executed on or about the Effective Date. The parties may from time to time add to or modify the initial Services by mutual agreement. Services may be added to or modified through an agreed new Schedule or through other formal or informal means (including by means of a request by Client (made verbally, by e-mail, through a Polar Systems online portal, or otherwise) for consulting or support services outside the scope of currently ordered Services, a change order, or Client approval of a quote). Polar Systems will use reasonable efforts to confirm any informal requests for additional or modified Services by e-mail or other writing. Polar Systems is entitled to rely on requests for additional Services made by any Client user, including requests for on-site Services and Services outside of Regular Business Hours (as defined below). In all cases, the additional or modified Services will be governed by the terms of this Agreement. The term “Schedule” hereunder refers to both a formal Schedule and to any informal document or communication that specifies the scope and fees of Services provided by Polar Systems.

(b) **Hours of Service.** Services will be provided by Polar Systems in one or more of the following windows, as agreed by the parties:

- **Regular Business Hours.** Regular Business Hours are defined as weekdays between 8:00 a.m. and 5:00 p.m. pacific time, excluding holidays on which Polar Systems is closed.
- **Extended Hours Service.** Extended Hours Service is service and support provided between the hours of 6:00 a.m. and 8:00 a.m. pacific time or between the hours of 5:00 p.m. and 8:00 p.m. pacific time, Monday through Friday, or up to four (4) hours of service and support provided between 8:00 am – 5:00 pm on Saturday.
- **After Hours Service.** After Hours Service is service and support provided between the hours of 8:00 p.m. and 6:00 a.m. pacific time Monday through Friday, all day on Sundays and holidays, before 8:00 am and after 5:00 pm pacific time on Saturday, and between 8:00 a.m. and 5:00 p.m. pacific time on Saturday after four hours of Extended Hours support and service are provided in this time frame.

(c) **Help Desk.** For Managed Services, Polar Systems will maintain a centralized “Help Desk” to manage the reporting and handling of technical issues. Client agrees to report all technical issues to the Help Desk. The Help Desk may be contacted by Client by either logging into Polar Systems’ client portal, sending an email or by calling via telephone, or in other methods as communicated by Polar Systems to Client from time to time. The Help Desk is typically staffed during Regular Business Hours. Help Desk support after Regular Business Hours will be provided only if agreed by the parties as indicated on a Schedule.

(d) **Start Date.** Polar Systems may specify in the Schedule an estimated date for beginning the Services. Any such estimated date is made for project planning purposes only and is not a guarantee; Polar Systems may revise an estimated start date at any time if the assumptions upon which Polar Systems relied in determining its initial estimate change the scope or magnitude of the Services, or if Client fails to provide required information, assistance, and/or decisions.

(e) **Warranty Service.** Polar Systems does not provide warranty service for any third party hardware or software unless expressly agreed in writing by Polar Systems. Client may request that Polar Systems provide certain products and services that are also covered under the manufacturer’s warranty in order to expedite repairs to Client systems. Client is responsible for any potential impact that this may have on the balance of Client’s manufacturers’ warranty. Client is also responsible for payment for all requested products and services provided by Polar Systems related to the repair, replacement, and maintenance of third party computer hardware and software that may have been otherwise covered under the manufacturer warranties.

(f) **Compliance.** Client agrees to comply with all applicable federal, state, local and foreign laws, rules and regulations in connection with its use of the Services and of its IT systems.

(g) **Restrictions.** Client shall not: (1) use or allow use of the Services to provide time-sharing, outsourcing, service bureau, or other IT services to third parties; or (2) reverse engineer, decompile, disassemble, modify or change any portion of software provided to Client by Polar Systems in connection with the Services (“**Software**”), or attempt to do any of the foregoing.

3. **Fees and Payment**

(a) **Fees.** Client shall pay Polar Systems the fees and other amounts set forth in the Schedule(s). Polar Systems will deliver invoices on or shortly after the effective date of the applicable Schedule to Client for any one-time set up fee. Invoices for any recurring monthly Services fee will be delivered approximately fifteen (15) days in advance of the Services. Polar Systems may in its sole discretion require that a portion or all of the invoices for hardware and software purchases be paid in advance of Polar Systems’ ordering of such hardware or software, and/or on a COD basis.

(b) **Rates; Block Time.** For Services provided that are not Managed Services, unless other arrangements are made in advance, Polar Systems’ standard rates will apply, with time billed in 1 hour increments. Polar Systems may, but is not required to, provide any requested Services. A multiplier of 1.5 times the standard rate for Services will apply for Services provided during Extended Hours and a multiplier of 2 times the standard rate will apply for Services provided during After Hours. Polar Systems will use reasonable efforts to notify Client in advance of performing any additional Services. Client may acquire in advance a block of hours (“**Block Time**”) to use to pay for such Services. Trip charges are applicable on all on-site engagements unless otherwise specified. The minimum charge for any on-site engagement is based on a two (2) hour visit plus appropriate trip charges.

(c) **Terms.** Unless otherwise set forth on the Schedule, all invoices delivered by Polar Systems will be due within ten (10) days after the invoice date. All payments under this Agreement shall be made in United States dollars and are non-refundable. All payments not submitted when due will be subject to interest at the rate of eighteen (18) percent annually, or the maximum amount allowed by applicable law if lower, calculated from the date when payment becomes overdue until payment is made. Client’s agreement to any Schedule constitutes a valid purchase order for the Services associated with that Schedule including any additional Services performed related to but outside the scope of that Schedule.

(d) Taxes. Client agrees to pay all federal, state, local and other taxes based on this Agreement, the Services or its use, excluding taxes based on Polar Systems' net income. If Client claims tax-exempt status for any purpose in connection with this Agreement, Client represents and warrants that it is a tax-exempt entity and will provide Client upon request with a correct copy of Client's tax-exempt certification.

(e) Expenses. Client shall reimburse Polar Systems for all reasonable out-of-pocket expenses incurred by Polar Systems in connection with this Agreement, including but not limited to travel, lodging, meals, and shipping expenses. All travel must be pre-approved by Client.

(f) Renewals. All fees of Polar Systems are subject to change upon renewal based on Polar Systems' current fees.

4. **Authorization to Access Client Devices**. Client hereby authorizes Polar Systems to access, connect to and manage Client devices via remote technologies without first contacting Client as required for the Services. These activities may include, but are not limited to:

- Updating or changing software drivers;
- Installing and applying software patches;
- Rebooting devices within maintenance windows;
- Deleting temporary files & clearing caches;
- Starting or restarting application services;
- Verifying and validating data backup jobs;
- Staging and executing scripts for automated maintenance routines;
- Network performance tuning; and
- Transferring data associated with routine system tuning and upkeep between systems within Client's network.

Notwithstanding the above, Client is responsible for notifying Polar Systems of a restriction of remote access, connections or management activities related to any managed device.

5. **General Client Requirements**. Client will, at its own cost:

(a) Cooperate with and assist Polar Systems in the performance of the Services, and interact with Polar Systems in a professional and courteous manner.

(b) Provide all necessary information when requesting technical support. This information includes but is not limited to:

- Name of the end user experiencing issue
- Location of end user and computer
- Contact information for end user
- Detailed description of the issue

(c) If Services are performed at Client's place of business, Client agrees to furnish full and safe access to Client's network and systems for on-site activities by Polar Systems' employees, including without limitation to make necessary adjustments and changes. Client will also provide adequate parking, internet access, work space, heating and air conditioning, light, ventilation and electricity. Client also agrees: (a) to provide any security passwords necessary for Polar Systems' employees to perform requested tasks, and (b) that Polar Systems may request a unique administrative password for the purpose of providing ongoing maintenance and support of Client's network and systems. Client acknowledges that in approving a unique administrative password to Polar Systems and its employees that Client assumes full responsibility and any liability resulting from that decision, unless due to Polar Systems' willful misconduct or gross negligence.

6. **Managed Services Client Requirements**. For all Managed Services, Client will at its own cost:

(a) Maintain sufficient bandwidth and a high speed Internet connection at the Client site(s) to support the Services. If this is not maintained, Polar Systems will not be obligated to provide the Services and/or may increase fees for the Services to reflect the higher cost of supporting Client.

(b) Unless specifically agreed in a Schedule, maintain, manage, and keep records of valid licenses, warranties and/or support contracts for hardware, operating software and application software used in its network and systems with respective third-party vendors.

(c) Notify Polar Systems upon the removal of a covered device from the network so the Polar Systems' remote management and monitoring systems can be updated.

(d) Provide necessary supplies when deemed necessary, including but not limited to printer consumables, backup tape media, and tape drive cleaning supplies.

(e) Maintain Client site conditions within the environmental range of all Client system devices and media as specified by the manufacturer.

(f) Include (except to the extent that Client wishes to discuss certain aspects of Polar Systems services without Polar Systems present) its Polar Systems account representative in Client's material IT planning and IT decision making meetings in order to facilitate continuity of Services.

(g) Be responsible for designating one or more authorized contacts responsible for screening end-user service requests and to determine level of service needed and assignment of requests to Polar Systems.

7. **Term; Termination**.

(a) Term. This Agreement is effective beginning the Effective Date and continues for the length of the initial term set forth on the Cover Page. After the end of the initial term, this Agreement shall automatically renew for successive renewal terms of equal length as the initial term (provided that the maximum length of a renewal term is one (1) year), unless either party provides written notice of its intent to terminate this Agreement at least thirty (30) days prior to the end of the then-current term.

(b) New Services Adjust to Term. If new Services are added to this Agreement, then the term for the Services will begin on the Effective Date of the Schedule for such Services and will end on termination of this Agreement. The parties may extend the term for this Agreement by written agreement in a new Schedule or amendment to this Agreement. Such extended term, unless otherwise specifically agreed in writing, will apply to all Schedules and Services provided under this Agreement.

(c) Termination for Breach; Suspension. Either party may terminate this Agreement if the other party materially breaches this Agreement and such breach is not cured within thirty (30) days after written notice. Polar Systems may suspend the Services upon notice to Client if Client materially breaches this Agreement, including but not limited to by not paying any fees or costs due hereunder that are not disputed in good faith by Client by the due date.

(d) Termination for Insolvency. Either party may terminate this Agreement if: (i) the other party has a receiver or administrative receiver appointed over its assets; (ii) the other party's governing body passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation, reconstruction, or merger), or a court of competent jurisdiction enters an order to that effect; (iii) the other party makes a general assignment for the benefit of creditors; (iv) the other party ceases or threatens to cease to carry on business; (v) the other party is generally not paying its debts as they become due; or (vi) the other party is the subject of any petition under any bankruptcy or other law for the protection of debtors, except an involuntary petition that is dismissed within 60 days after filing.

(e) Liquidated Damages. If Client terminates this Agreement or a Schedule without cause, or if Polar Systems terminates this Agreement or a Schedule due to Client's material breach, then: (i) Client shall pay to Polar Systems all pre-paid, documented out of pocket expenses incurred by Polar Systems in reliance on the terminated Services. The parties acknowledge that Polar Systems' actual damages arising from such termination would be difficult to determine with accuracy and, accordingly, have agreed to the foregoing liquidated damages, which the parties acknowledge is a reasonable estimate of Polar Systems' potential losses.

(f) Survival. Sections 7, 8, 10, 11, 12, 13, 14 and 15 of this Agreement shall survive termination or expiration of this Agreement. Termination of this Agreement will not affect any accrued rights or liabilities of either party.

8. Intellectual Property

(a) Ownership. Client agrees that Polar Systems and its third party licensors and suppliers own all right, title and interest, including but not limited to copyright, patent, trade secret, and all other intellectual property rights, in the Services and the Software (including but not limited to the look and feel, algorithms, documentation format, database structures, methodologies, and know-how associated with the Services and the Software) and any and all copies and Updates. Polar Systems reserves all rights to the Services and the Software not specifically granted herein.

(b) Software license. Polar Systems and/or third parties may provide software in connection with the Services. All such software is licensed to Client subject to the terms and conditions of an end user license agreement ("**EULA**") which is typically provided as either a document accompanying such software or an on-screen dialogue accepted during initial use of such software. Client represents to Polar Systems that it will abide by the terms and conditions of any EULA associated with any software provided to Client with any Services.

(c) Client Content. Client, at its expense, shall defend or at its option settle any action, suit or proceeding brought against Polar Systems which alleges that any Client Content or that Polar Systems' access to third party software or hardware required for the Services infringes any third party copyright or patent, or misappropriates a third party trade secret, and shall pay damages finally awarded against Polar Systems, provided that (i) Polar Systems notifies Client promptly in writing of the claim, (ii) Client has sole control of the defense and all related settlement negotiations, and (iii) Polar Systems provides Client with commercially reasonable assistance, information and authority to perform the above at Client's expense.

9. Polar Systems Equipment

(a) Equipment. Client agrees that Polar Systems may in support of the Services deliver certain Polar Systems Equipment to Client and install such Polar Systems Equipment on Client premises. "**Polar Systems Equipment**" means any equipment provided by Polar Systems to Client including but not limited to network management appliances (NMA), firewall appliances, backup devices, SSL VPN appliances, and continuous data protection devices.

(b) Ownership. The Polar Systems Equipment is and at all times shall remain the sole and exclusive property of Polar Systems and Client agrees Client does not become an owner of any Polar Systems Equipment by virtue of the payments provided for in this Agreement. Upon termination of this Agreement, subject to any applicable laws or regulations, Polar Systems may, but shall not be obligated to, retrieve any associated Polar Systems Equipment not returned by Client as required below. Client agrees to pay any expense incurred by Polar Systems in any retrieval of the unreturned Polar Systems Equipment. Polar Systems will not be deemed to have "abandoned" the Polar Systems Equipment if it does not retrieve such equipment. Polar Systems shall be entitled to seek injunctive relief to enforce its rights with respect to the Polar Systems Equipment.

(c) Access. Client agrees to provide Polar Systems and its authorized agents access to Client premises during regular business hours upon reasonable notice during the term of this Agreement and after its termination to install, connect, inspect, maintain, repair, replace, or disconnect or remove the Polar Systems Equipment, to install associated software, and to conduct an audit of the Polar Systems Equipment.

(d) Upgrades. Polar Systems shall have the right to upgrade, modify and enhance Polar Systems Equipment and associated software from time to time through "downloads" from Polar Systems' network or otherwise.

(e) Termination. Client agrees that, if the Agreement is terminated, Client has no right to possess or use the Polar Systems Equipment. Client agrees to arrange for the return of Polar Systems Equipment to Polar Systems, in the same condition as when received (excepting ordinary wear and tear), upon termination of the Agreement. Polar Systems may charge Client a continuing monthly fee until any outstanding Polar Systems Equipment is returned, collected by Polar Systems or fully paid for by Client.

(f) Loss. Client agrees to pay Polar Systems liquidated damages as reasonably determined by Polar Systems for the replacement cost of the Polar Systems Equipment without any deduction for depreciation, wear and tear or physical condition of such Polar Systems Equipment if (i) Client tampers with, or permit others to tamper with, Polar Systems Equipment, (ii) the Polar Systems Equipment is destroyed, lost, or stolen, whether or not due to circumstances beyond Client's reasonable control, or (iii) the Polar Systems Equipment is damaged (excluding equipment malfunction through no fault of Client) while in Client possession, whether or not due to circumstances beyond Client's reasonable control. Client agrees to return any damaged Polar

Systems Equipment to Polar Systems. Notwithstanding the above, Client shall not be required to pay liquidated damages to Polar Systems if the damage or destruction of the Polar Systems Equipment arises out of the acts or omissions of Polar Systems or its agents, employees or subcontractors.

(g) Tampering. Client will not, nor will allow others to, open, alter, misuse, tamper with or remove the Polar Systems Equipment as and where installed by Polar Systems or use it contrary to this Agreement. Client will not, nor will allow others to, remove any markings or labels from the Polar Systems Equipment indicating Polar Systems ownership or serial or identity numbers. Client will reasonably safeguard the Polar Systems Equipment from loss or damage of any kind, including accidents, breakage or fire, and will not permit anyone other than an authorized representative of Polar Systems to perform any work on the Polar Systems Equipment. Nothing in this Agreement shall prevent Polar Systems from enforcing any rights it has with respect to theft or unauthorized tampering of Polar Systems Equipment under applicable law.

10. Confidentiality

(a) Definition. "Confidential Information" means any business or technical information or data that is disclosed by one party to the other party pursuant to this Agreement. Confidential Information does not include information that: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; or (c) was previously known by the receiving party as shown by its written records. The terms of this Agreement (and information relating to the negotiation of this Agreement) shall be deemed the Confidential Information of the Parties.

(b) Confidentiality Obligations. A receiving party agrees: (a) to hold the disclosing party's Confidential Information in confidence; (b) not to, directly or indirectly, use, disclose, copy, transfer or allow access to the Confidential Information, except to its employees who have a need to know such information for the purpose of this Agreement; and (c) to protect the disclosing party's Confidential Information with the same degree of care that it uses to protect its own Confidential Information, no less than a reasonable standard of care. A receiving party may disclose Confidential Information of the disclosing party as required by law or court order; in such event, such party shall inform the other party as soon as practicable, prior to any such required disclosure.

(c) Remedies. Each party acknowledges and agrees that any violation of this Section may cause such party irreparable injury for which such party would have no adequate remedy at law, and that such party shall be entitled to preliminary and other injunctive relief against the other party for any such violation. Such injunctive relief shall be in addition to, and in no way in limitation of, all other remedies or rights that such party may have at law or in equity.

(d) Termination. Upon the termination or expiration of this Agreement, the receiving party will return to the disclosing party or destroy all the Confidential Information delivered or disclosed to the receiving party, together with all copies in existence thereof at any time made by the receiving party; provided that, with respect to electronic images of Confidential Information, the receiving party's obligations shall be limited to using commercially reasonable efforts to delete those electronic images from local desktop computer document storage systems and active files on servers but shall not extend to receiving party's routine information systems backup or document retention programs.

11. Warranty

(a) Limited Warranty. Each party warrants that it has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder. Polar Systems warrants that the Services will be provided in a professional and workmanlike manner, using personnel that are qualified and experienced. In the event that Client provides notice of a breach of the foregoing warranty within thirty (30) days after the delivery of the Services, Polar Systems will, as Client's sole and exclusive remedy, use reasonable commercial efforts to correct the breach at no additional charge.

(b) Disclaimer. Polar Systems does not warrant that the Services will be provided uninterruptedly or error-free. Except to the extent set forth in a Schedule, Client agrees that it has the sole responsibility for securing and backing up its data. **POLAR SYSTEMS IS NOT RESPONSIBLE FOR CLIENT'S FAILURE TO MAINTAIN ADEQUATE BACKUPS, NOR FOR THE COST OF RECONSTRUCTING DATA STORED ON DISKS, TAPES, ETC. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, POLAR SYSTEMS AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY; FITNESS FOR A PARTICULAR PURPOSE; OR ANY WARRANTIES ARISING AS A RESULT OF CLIENT USAGE IN THE TRADE OR BY COURSE OF DEALING.**

12. Indemnification. Each party will defend, indemnify and hold harmless the other from and against any and all liability, damages, losses, claims, actions, judgments and costs, including reasonable attorney's fees, for damage to any property and for injury to or death of persons, including employees or agents of such other party performing work under this Agreement, caused by the willful misconduct or negligent acts or omissions of the indemnifying party, its agents or employees.

13. Limitation of Liability. Client agrees that any liability of Polar Systems or any of its suppliers relating to this Agreement and the Services shall be limited to the amount of fees actually received by Polar Systems from Client under the applicable Schedule during the prior three (3) months not withstanding the clients ability to make a claim under Polar System's errors and omissions policy. In no event shall either party or any of its suppliers be liable for any special, incidental, indirect, cover, consequential, exemplary or punitive damages; any damages based on injury to person or property or death; or any lost sales, profits or data, even if a party is told that any of such damages may occur. The foregoing limitations of liability shall not apply to property damage, death or personal injury caused by the willful misconduct or gross negligence of a party, or to a party's obligations under Sections 10 and 12. The fees charged by Polar Systems under this Agreement are calculated with specific reference to the level of liabilities undertaken by Polar Systems hereunder.

14. Assignment. Neither party may assign this Agreement without the prior written consent of the other party, except that such consent shall not be necessary for an assignment made to a party's successor in connection with the sale of all or substantially all of such party's business or portion of such party's business to which this Agreement relates, so long as such successor agrees in writing to the terms of this Agreement.

15. Dispute Resolution

(a) Negotiation. Each party shall attempt in good faith to resolve any controversy, claim or dispute of whatever nature arising out of or relating to this Agreement ("**Dispute**") promptly by negotiation between executives or managers who have authority to settle the Dispute and who are at a higher level of management within each of the parties' organizations than the parties' appointed project managers. Each party shall provide the other with all information and documentation relied upon by the party to substantiate its position with respect to the Dispute.

(b) Mediation. If the Dispute has not been resolved through negotiation within thirty (30) business days of the initiation thereof, the parties may make a good faith attempt to settle the Dispute by mediation conducted by a mutually agreed mediator.

16. Other Provisions

(a) Security Interest. Client hereby grants to Polar Systems a security interest in any and all hardware and other items purchased by Client from Polar Systems ("**Deliverables**"), until such time as those Deliverables are paid in full by the Client, in order to secure Client's obligations to Polar Systems. Client agrees that in the event of default in any payment, Polar Systems shall have, in addition to its rights under applicable law, the right to immediately repossess any and all Deliverables previously sold to Client, but not fully paid for by Client, without further operation of law and without notice to Client. Client further agrees to pay for any and all costs, including attorney's fees, engineering fees and other applicable costs which Polar Systems incurs as a result of said repossession. Client further agrees to execute any additional documents, at Client's expense, to perfect or continue the security interest created by this Agreement.

(b) Publicity. Polar Systems may include Client's name and logo in a list of Polar Systems clients and as a user of the Services.

(c) Independent Contractors. The parties are independent contractors, and nothing in this Agreement shall be construed as creating a joint venture, partnership, agent or employment relationship between Polar Systems and Client.

(d) Non-Solicitation. Client shall not, directly or indirectly, solicit, hire or retain, nor cause to be solicited, hired or retained as an employee or independent contractor, any Polar Systems employee or former employee employed by Polar Systems in a technical or sales position at any time during the term of this Agreement and for a period of one (1) year following termination of this Agreement. Client agrees that if Client wishes to hire any employee of Polar Systems employed by Polar Systems in a technical or sales position while bound by this section, Client will pay to Polar Systems a fee equal to the greater of: (1) \$75,000, (2) such employee's most recent annual salary and bonus and (3) the salary and bonus offered to such employee by Client. Client agrees that this fee is fair and not excessive.

(e) Notices. Any notice or other communication required or permitted in this Agreement shall be in writing and delivered to the addresses listed on the Contact section of the Cover Page of this Agreement either: (i) by personal delivery; (ii) by certified mail; or (iii) by nationally recognized overnight courier, and shall be effective upon receipt.

(f) Integration. This Agreement (including the Cover Page and any Schedules) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals, negotiations, conversations, discussions and agreements between the parties concerning the subject matter hereof. Client specifically acknowledges and agrees that, in entering into this Agreement, Client has not relied on any information or promises that are not specifically set forth in this Agreement. Polar Systems will have no obligation to provide any services, software, networking, or hardware except as specifically set forth in this Agreement. This Agreement may not be modified or waived except in a written document, signed by both parties. Any additional or conflicting terms on any purchase order for any products or services covered by this Agreement shall be void and without effect unless agreed to in a separate writing signed by both parties.

(g) Applicable Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Oregon, without regard to its conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sales of Goods does not apply to this Agreement. The parties submit to the jurisdiction of the state and federal courts sitting in Clackamas County, Oregon, and agree that such courts shall have sole and exclusive jurisdiction over any and all disputes and causes of action involving such parties that arise out of or in connection with this Agreement.

(h) Force Majeure. Except for Client's payment obligations, each party shall be excused from performance and shall not be liable for any delay or failure to perform caused by the occurrence of, war, terrorism, sabotage, insurrection, riot or other act of civil disobedience, labor disturbance or shortage, act of public enemy, failure of the Internet, act of any government affecting the terms hereof, explosion, hurricane, earthquake, flood or other act of God.

(i) Third-party Beneficiaries. There are no intended third-party beneficiaries of this Agreement, and nothing in this Agreement may be relied upon by, or shall benefit, any party other than Polar Systems and Client.

(j) Severability. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, then the invalidity or unenforceability shall not affect the other provisions of the Agreement and all provisions not affected shall remain in full force and effect. Both parties will attempt to substitute with a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

(k) Headings and Counterparts. Headings to clauses are for ease of reference only and will not affect the interpretation of this Agreement. This Agreement may be executed in any number of counterparts and by the parties upon different counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same agreement.

(l) Electronic Signatures. The parties agree that this Agreement and all Schedules may be submitted and signed electronically by digital signatures or other electronic manifestation of acceptance. Such signatures will be fully binding on the parties, in the same manner as if physically signed and submitted by a party. Each party waives any objection that its digital signatures and acceptances are not valid.