

ITEM 4.7

CITY MANAGER'S REPORT JULY 10, 2023 CITY COUNCIL REGULAR MEETING

ITEM: **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH SOLID NETWORKS INC. FOR INFORMATION TECHNOLOGY MAINTENANCE AND SUPPORT SERVICES**

RECOMMENDATION: **Adopt a Resolution Approving a Professional Services Agreement with Solid Networks, Inc. for Information Technology Maintenance and Support Services**

SUMMARY:

Solid Networks has been providing the City with Information Technology Maintenance and Support Services for over ten (10) years. They have installed and configured most of the City's technical systems and have exclusive security network access to servers and other network devices. The engineers from Solid Network possess higher level certification and certification for the hardware that the City staff does not yet possess.

The current Agreement for Information Technology Maintenance and Support Services expired on June 30, 2023. Staff recommends Solid Networks to continue managing the City's technical systems, because the City's Information Technology Department needs on-going support to manage the specialized high-tech systems that require certified engineering.

Tonight staff is requesting that Council approve a thirty-six (36) month term Agreement with Solid Networks for Technical Maintenance and Support Services for an amount not-to-exceed \$410,220. The funds for Fiscal Years 23/24, 24/25 have been included in the biennial budget approved by City Council on June 14th, 2023.

BACKGROUND:

For over a decade Solid Networks has installed, configured, updated, expanded and co-managed the network systems for the City of Lathrop. This vendor possesses exclusive network security access, the capability to monitor the City's technical system non-stop and is very familiar with the City's network systems. Staff is content with the level of knowledge and services provided by Solid Networks.

In July 2020, the City entered into an Agreement with Solid Networks for Technical Maintenance and Support Services for a term of thirty-six (36) months. The Agreement expired on June 30, 2023. The Information Systems Department (ISD) requires on-going support to manage the specialized equipment that City Engineers are not yet certified for and of the City's technical systems. Located roughly twenty

CITY MANAGER’S REPORT
JULY 10, 2023 CITY COUNCIL REGULAR MEETING
SOLID NETWORKS PROFESSIONAL SERVICES AGREEMENT WITH SOLID NETWORKS INC. FOR INFORMATION TECHNOLOGY MAINTENANCE AND SUPPORT SERVICES

(20) minutes from City Hall, allows for prompt response to critical and/or emergency information technology related events.

At staff request, Solid Networks submitted a proposal for a thirty-six (36) month term with services and fee billed on a per monthly basis for a monthly cost as shown in Table 1 and set forth in Exhibit “A” to the agreement. The cost in technical maintenance and support services has increased in comparison to the current agreement cost of \$266,958 is primarily due to the additional hardware installed as well as installed the inflationary condition of the economy, within the last three (3) years, to the City’s technology infrastructure. The ISD department has grown significantly in the last three years and supports approximately two-hundred and sixty (260) users, five-hundred (500) computers with network accounts, one-hundred and eighty (180) Servers, and one-hundred and twenty-five (125) network devices. This vast support ISD is able to provide is facilitated by the support Solid Networks is able to provide.

Table 1.

Term	Monthly Cost	Annual Cost
Term 1 (FY 23/24)	\$10,395	\$ 124,740
Term 2 (FY 24/25)	\$11,395	\$ 136,740
Term 3 (FY 25/26)	\$12,395	\$ 148,740
Total Cost		\$ 410,220

If the proposed agreement is approved, Solid Networks will continue to perform the on-going technical maintenance and support services required by the Information Technology Department at cost of \$10,395 per month for the first twelve (12) months and at a cost listed above for subsequent periods through the fiscal year 25/26. Therefore, Staff recommends Council approval of an agreement to allow Solid Networks to continue managing the City’s technical systems.

REASON FOR RECOMMENDATION:

The original agreement with Solid Networks expired on June 30, 2023. The Information Technology Department requires on-going technical maintenance and support specialized in technology equipment that requires certifications that they City staff does not possess and support services to maintain the City’s technical systems.

CITY MANAGER'S REPORT
JULY 10, 2023 CITY COUNCIL REGULAR MEETING
SOLID NETWORKS PROFESSIONAL SERVICES AGREEMENT WITH SOLID
NETWORKS INC. FOR INFORMATION TECHNOLOGY MAINTENANCE AND
SUPPORT SERVICES

PAGE 3

FISCAL IMPACT:


The funds for FY 23/24 and FY 24/25 services are budgeted and available in the Information Technology budget

ATTACHMENTS:

- A. Resolution of the City Council of the City of Lathrop Approving the Professional Services Agreement with Solid Networks, Inc. for Professional Information Technology Maintenance and Support Services
- B. Agreement with Solid Networks, Inc. for Professional Information Technology Maintenance and Support Services


CITY MANAGER'S REPORT
JULY 10, 2023 CITY COUNCIL REGULAR MEETING
SOLID NETWORKS PROFESSIONAL SERVICES AGREEMENT WITH SOLID
NETWORKS INC. FOR INFORMATION TECHNOLOGY MAINTENANCE AND SUPPORT
SERVICES

APPROVALS:



Tony Fernandes
Information Systems Director

6-28-2023
Date




Cari James
Director of Finance

6/29/23
Date




Michael King
Assistant City Manager

6.30.23
Date



Salvador Navarrete
City Attorney

6.29.2023
Date



Stephen Salvatore
City Manager

7.5.23
Date

RESOLUTION NO. 23 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP APPROVING THE PROFESSIONAL SERVICES AGREEMENT WITH SOLID NETWORKS, INC. FOR INFORMATION TECHNOLOGY MAINTENANCE AND SUPPORT SERVICES

WHEREAS, in July 2020, the City entered into an Agreement with Solid Networks for Technical Maintenance and Support Services and the Agreement expired on June 30, 2023; and

WHEREAS, the City's Information Technology Department needs on-going support to manage the specialized high-tech conditions of the City's technical systems; and

WHEREAS, Solid Networks installed and configured most of the City's technical systems and is well-versed with the City's hardware and software; and

WHEREAS, Staff is content with the level of knowledge and services provided by Solid Networks; and

WHEREAS, this vendor has exclusive access to the City's network systems and the capability to monitor the City's technical system 24/7; and

WHEREAS, at staff request, Solid Networks submitted a proposal for a thirty-six (36) month term with services and fee billed on a per monthly basis for a monthly cost for an annual expense of \$124,740 for the first year, \$136,740 for the second year and \$148,740 for the third year, for a total sum of \$410,220.; and

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Lathrop does hereby approve the Professional Services Agreement with Solid Network, Inc. for Information Technology Maintenance and Support Services.

The foregoing resolution was passed and adopted this 10th day of July 2023, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSENT:


ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

Teresa Vargas, City Clerk

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

**CITY OF LATHROP
AGREEMENT WITH SOLID NETWORKS, INC. FOR PROFESSIONAL
INFORMATION TECHNOLOGY MAINTENANCE AND SUPPORT
SERVICES**

**FOR CO-MANAGEMENT OF SERVERS, NETWORK, VIRTUAL
ENVIRONMENT AND STORAGE AREA NETWORK**

THIS AGREEMENT, dated for convenience this _____ day of July, 2023 is by and between Solid Networks (“CONSULTANT”) and the CITY OF LATHROP, a California municipal corporation (“CITY”);

RECITALS:

WHEREAS, CONSULTANT is specially trained, experienced, and competent to perform Information Technology Maintenance and Support Services, which are required by this agreement; and

WHEREAS, CITY selected the CONSULTANT pursuant to said qualifications; and

WHEREAS, CONSULTANT is willing to render such Information Technology Maintenance and Support Services, as hereinafter defined, on the following terms and conditions;

NOW, THEREFORE, CONSULTANT and the CITY agree as follows:

AGREEMENT

(1) Scope of Service.

CONSULTANT agrees to perform Co-Management of Servers, Network, Virtual Environment and Storage Area Network, in accordance with the scope of work and fee proposal provided by CONSULTANT, attached hereto as Exhibit “A” and incorporated herein by reference. CONSULTANT agrees to diligently perform these services in accordance with the upmost standards of its profession and to CITY’S satisfaction.

(2) Compensation.

CITY hereby agrees to pay CONSULTANT a sum not to exceed \$410,220 for Co-Management of Servers, Network, Virtual Environment and Storage Area Network as set forth in Exhibit “A”.

- Year 1 (FY 23/24) \$10,395 per month (\$124,740 annual)
- Year 2 (FY 24/25) \$11,395 per month (\$136,740 annual)
- Year 3 (FY 25/26) \$12,395 per month (\$148,740 annual)

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

CONSULTANT shall be paid within thirty (30) days of receipt of billings containing all information pursuant to Paragraph 5 below. In no event shall CONSULTANT be entitled to compensation for work not included in Exhibit “A”, unless a written change order or authorization describing the extra work and payment terms has been executed by CITY’s authorized representative prior to the commencement of the work.

(3) Effective Date and Term.

The effective date of this Agreement is July 1, 2023, and it shall terminate no later than June 30, 2026 (which includes fiscal years ending June 30, 2024, 2025, and 2026). Renewal of this contract after the first three (3) fiscal years of this agreement shall be based upon the agreement of the parties at that time.

(4) Independent Contractor Status

It is expressly understood and agreed by both parties that CONSULTANT, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of the CITY. As an independent contractor, CONSULTANT is responsible for controlling the means and methods to complete the scope of work described in Exhibit “A” to City’s satisfaction. CONSULTANT expressly warrants not to represent, at any time or in any manner, that CONSULTANT is an employee of the CITY.

(5) Billings

CONSULTANT’S bills shall include a list of all tasks, a total amount due, the amounts previously billed, and the net amount due on the invoice. Except as specifically authorized by CITY, CONSULTANT shall not bill CITY for duplicate services performed by more than one person. In no event shall CONSULTANT submit any billing for an amount in excess of the rates or the maximum amount of compensation provided in section (2) for either task or for the entire Agreement, unless modified by a properly executed change order.

(6) Advice and Status Reporting

CONSULTANT shall provide the CITY with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder, and shall furnish to CITY such information as is necessary to enable CITY to monitor the performance of this Agreement.

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

(7) Assignment of Personnel

CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. If CITY asks CONSULTANT to remove a person assigned to the work called for under this Agreement, CONSULTANT agrees to do so immediately, without requiring the City to process a reason or explanation for its request.

The services shall be performed by, or under the direct supervision, of CONSULTANT's Authorized Representative: **Joe Cram**, CONSULTANT shall not replace its Authorized Representative without the prior written approval by the CITY.

(8) Assignment and Subcontracting

It is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONSULTANT. Neither this Agreement nor any interest therein may be assigned by CONSULTANT without the prior written approval of CITY'S authorized representative. CONSULTANT shall not subcontract any portion of the performance contemplated and provided for herein, other than the subcontractors noted in the proposal, without prior written approval of the CITY'S authorized representative.

(9) Insurance

On or before beginning any of the services or work called for by any term of this Agreement, CONSULTANT, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to the CITY the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the CITY. CONSULTANT shall not allow any subcontractor to commence work on any subcontract until all insurance required of the CONSULTANT has also been obtained for the subcontractor. Verification of this insurance shall be submitted and made part of this Agreement prior to execution.

- (a) Workers' Compensation. CONSULTANT shall, at CONSULTANT'S sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CONSULTANT. Said Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars. In the alternative, CONSULTANT may rely on a self-insurance program to meet these requirements provided that the program of self-insurance complies fully with the provisions of the

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

California Labor Code. The insurer, if insurance is provided, or the CONSULTANT, if a program of self-insurance is provided, shall waive all rights of subrogation against the CITY for loss arising from work performed under this Agreement.

- (b) Commercial General and Automobile Liability Insurance. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) CITY, its officers, employees, agents, and volunteers are to be covered as insured with respect to each of the following: liability arising out of activities performed by or on behalf of CONSULTANT, including the insider's general supervision of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents, or volunteers.
- (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

- (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the CITY will be called upon to contribute to a loss under the coverage.
 - (iv) Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
 - (v) Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A: VII.
 - (vi) Notice of cancellation or non-renewal must be received by CITY at least thirty days prior to such change.
- (c) Professional Liability. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than One Million Dollars (\$1,000,000) per claim made and per policy aggregate covering the licensed professionals' errors and omissions, as follows:
- (i) Any deductible or self-insured retention shall not exceed \$150,000 per claim.
 - (ii) Notice of cancellation, material change, or non-renewal must be received by the CITY at least thirty days prior to such change shall be included in the coverage or added as an endorsement to the policy.
 - (iii) The policy must contain a cross liability or severability of interest clause.
 - (iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:
 1. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this Agreement, CONSULTANT must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The CITY shall have the right to exercise at the CONSULTANT'S cost, any extended reporting provisions of the policy should the CONSULTANT cancel or not renew the coverage.
 4. A copy of the claim reporting requirements must be submitted to the CITY prior to the commencement of any work under this Agreement.
- (d) Deductibles and Self-Insured Retentions. CONSULTANT shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, upon express written authorization of the CITY's authorized representative, CONSULTANT may increase such deductibles or self-insured retentions with respect to CITY, its officers, employees, agents, and volunteers. The CITY's authorized representative may condition approval of an increase in deductible or self-insured retention levels upon a requirement that CONSULTANT procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
- (e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the Agreement is reduced, limited, or materially affected in any other manner, CONSULTANT shall provide written notice to CITY at CONSULTANT'S earliest possible opportunity and in no case later than five days after CONSULTANT is notified of the change in coverage.
- (f) In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:
- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

- (ii) Order CONSULTANT to stop work under this Agreement or withhold any payment which becomes due to CONSULTANT hereunder, or both stop work and withhold any payment, until CONSULTANT demonstrates compliance with the requirements hereof;
- (iii) Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for CONSULTANT'S breach.

(10) Indemnification - CONSULTANT'S Responsibility

As to the CONSULTANT'S work hereunder, it is understood and agreed that (a) CONSULTANT has the professional skills necessary to perform the work, (b) CITY relies upon the professional skills of CONSULTANT to perform the work in a skillful and professional manner, and (c) CONSULTANT thus agrees to so perform.

Acceptance by CITY of the work performed under this Agreement does not operate as a release of said CONSULTANT from such professional responsibility for the work performed. It is further understood and agreed that CONSULTANT is apprised of the scope of the work to be performed under this Agreement and CONSULTANT agrees that said work can and shall be performed in a fully competent manner in accordance with the standard of care applicable to CONSULTANT'S profession.

CONSULTANT shall indemnify, defend, and hold CITY, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused by the willful misconduct or negligent acts or omissions of CONSULTANT, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the negligence or willful misconduct of the CITY, its officers, employees, agents, or volunteers. It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

(11) Licenses

If a license of any kind, which term is intended to include evidence of registration, is required of CONSULTANT, its employees, agents, or subcontractors by federal or state law, CONSULTANT warrants that such license has been obtained, is valid and in good standing, and CONSULTANT shall keep it in effect at all times during the term of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

(12) Business Licenses

CONSULTANT shall obtain and maintain a CITY of Lathrop Business License until all Agreement services are rendered and accepted by the CITY.

(13) Termination

Either CITY or CONSULTANT may cancel this Agreement upon 30 days written notification to the other party. In the event of termination, the CONSULTANT shall be entitled to compensation for services performed to the effective date of termination; provided, however, that the CITY may condition payment of such compensation upon CONSULTANT'S delivery to the CITY of any or all documents, photographs, computer software, video and audio tapes, and other materials provided to CONSULTANT or prepared by or for CONSULTANT or the CITY in connection with this Agreement.

(14) Funding

CONSULTANT agrees and understands that renewal of this agreement in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII (B) of the California Constitution and that the Council may determine not to fund this agreement in subsequent years.

(15) Notices

All contracts, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone fax number set forth below during regular business hours of the receiving party and followed with two (2) Days by delivery of a hard copy of the material sent by facsimile transmission. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

To City: City of Lathrop
City Clerk
390 Towne Centre
Lathrop, CA 95330

Copy to: City of Lathrop
Information Technology
390 Towne Centre
Lathrop, CA 95330

MAIN: (209) 941-7430
FAX: (209) 941-7449

To Consultant: Joe Cram
Solid Networks, Inc.
5686 Pirrone Road
Salida CA 95368

Phone: 209-338-1430
Fax: 209-338-1431

(16) Miscellaneous

- (a) Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.
- (b) Controlling Law. The parties agree that this Agreement shall be governed and construed by and in accordance with the Laws of the State of California.
- (c) Definitions. The definitions and terms are as defined in these specifications.
- (d) Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.
- (e) Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

- (f) Incorporation of Documents. All documents constituting the Agreement documents described in Section 1 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.
- (g) Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties concerning the Project and Work, and there are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.
- (h) Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- (i) Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- (j) Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.
- (k) Status of CONSULTANT. In the exercise of rights and obligations under this Agreement, CONSULTANT acts as an independent contractor and not as an agent or employee of CITY. CONSULTANT shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of CITY, and CONSULTANT expressly waives any and all claims to such right and benefits.
- (l) Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

- (m) Time of the Essence. Time is of the essence of this Agreement and each of its provisions. In the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday or any Day observed as a legal holiday by CITY, the time for performance shall be extended to the following Business Day.
- (n) Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Joaquin or in the United States District Court for the Eastern District of California.
- (o) Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

(17) Notice to Proceed

Prior to commencing work under this agreement, CONSULTANT shall receive a written "Notice to Proceed" from CITY. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay CONSULTANT for any services prior to issuance of the Notice to Proceed.

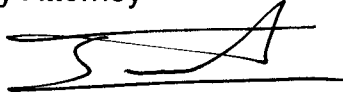
(18) Signatures

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**CITY OF LATHROP – PROFESSIONAL SERVICES AGREEMENT
SOLID NETWORKS, INC. FOR CO-MANAGEMENT OF SERVERS, NETWORK,
VIRTUAL ENVIRONMENT AND STORAGE AREA NETWORK**

Approved as to Form:

City of Lathrop
City Attorney



6.28.2023

Salvador Navarrete

Date

Recommended for Approval:

City of Lathrop
Chief Information Officer

Tony Fernandes

Date

Approved By:
Resolution: _____

City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

Stephen V. Salvatore
City Manager

Date

CONSULTANT:

Solid Networks, Inc.
5686 Pirrone Road
Salida, CA 95368

Fed ID # _____
Business License # 20058

Date

(Print Name and Title)



Solid Networks

Mark Ricci

1.209.338.1424

Mark.Ricci@SolidNetworks.com

**Technology
Simplified**



We have prepared a quote for you

City of Lathrop FY24-FY26 SolidCare MSA Renewal

Quote #008256
Version v1

Prepared for:

City of Lathrop

Tony Fernandes
tfernandes@ci.lathrop.ca.us

Statement of Work

STATEMENT OF WORK

This Statement of Work ("SOW") is governed under the Master Service Agreement (the "Agreement") between **Solid Networks, Inc.** ("we", "us", "our" or "**SNI**"), and **you** ("you", "your" or "**Client**"), the entity who accepts the order to which this SOW is attached (the "Order"). This SOW is effective as of date on which you accepted the Order ("Effective Date").

The services described in the Order and as described below (collectively, the "Services") will be provided to you. Services that are not specifically described in the Order and this SOW will be out of scope and will not be provided to you unless otherwise agreed to by us in writing. (From this point forward, the Order and this SOW will be collectively referred to as this "SOW").

SCOPE OF SERVICES

Onboarding Services.

The following onboarding services will be performed under this SOW:

Uninstall any monitoring tools or other software installed by previous IT consultants.

Compile a full inventory of all protected servers, workstations, and laptops.

Uninstall any previous virus protection and install our managed antivirus application.

Install remote support access application on each managed device to enable remote support.

Configure patch management application and check for missing security updates.

Uninstall unsafe applications or applications that are no longer necessary.

Optimize device performance including disk cleanup, antivirus, and spyware scans.

Review firewall configuration and other network infrastructure devices.

Review status of battery backup protection on all devices.

Stabilize network and assure that all devices can securely access the file server.

Review and document current server configuration and status.

Determine existing backup strategy and status; prepare backup options for consideration.

Review password policies and update user and device passwords.

As applicable, make recommendations for changes that should be considered to the managed environment.

If deficiencies are discovered during the onboarding process, we will bring those issues to your attention and discuss the impact of the deficiencies on our provision of our monthly managed services. Please note, unless otherwise expressly stated in this SOW, onboarding-related services do not include the remediation of any issues, errors, or deficiencies ("Issues"), and we cannot guarantee that all Issues will be detected during the onboarding process.

Ongoing / Recurring Services. Upon the completion of onboarding services (if any), the services listed in the Order and described below will be provided to you on an ongoing basis during the term of this SOW.

Managed Services

See the Order for the scope of our managed services.

Data Backup

SNI's backup and disaster recovery (BDR) services include:

- Managed backup of servers and workstations listed in the Order

- § 24/7 monitoring of backup system, including offsite backup, offsite replication and an onsite backup appliance ("Backup Appliance")
- § Troubleshooting and remediation of failed backup disks
- § Preventive maintenance and management of imaging software
- § Firmware and software updates of backup appliance
- § Problem analysis by the network operations team
- § Monitoring of backup successes and failures
- § Daily recovery verification

- Backed-Up Servers / Workstations: See Order for servers/workstations that will be backed up.

*Note: Data on equipment that is not specifically listed in the Order will **not** be backed up.*

- Storage Limitation: Client will be allocated the of storage space for backup and recovery purposes as listed in the Order. Any space required or requested by Client beyond this amount will be provided to Client in blocks of 100 GBs, at the cost of \$5.00 per block.
- Backup Frequency: On-site backups will occur in real time; offsite backups will occur no less than every three (3) hours, Monday through Friday.
- Backup Data Security: All backed up data is encrypted in transit and at rest in 256-bit AES encryption. All facilities housing backed up data implement physical security controls and logs, including security cameras, and have multiple internet connections with failover capabilities.
- Backup Retention: SNI only guarantees retrieval of the most recent recovery point sent to the backup appliance in a local recovery situation. SNI only guarantees retrieval of archived data sent to the off-site data center in the prior calendar day.

License Grant. All Backup Appliances are embedded with proprietary software ("BDR Software"). SNI hereby grants to Client a non-exclusive, royalty free, non-transferable license, during the term of this SOW, to use the BDR Software in conjunction with the BDR-related services provided by SNI. Client shall not reverse engineer, de-compile or otherwise use the BDR Software in any manner not specifically authorized by SNI.

Data Recovery Services

You must contact us if data recovery services are needed. Upon your payment of the applicable fees (described below), we will make your backed up data available to you in a hosted, virtual environment. Your access to the backed up data will continue for a period of two (2) weeks; extended access time is available as described in the Fees section, below.

Locations Covered by Services

Services will be provided remotely unless, in our discretion, we determine that an onsite visit is required. Onsite visits will be scheduled in accordance with the priority assigned the issue (below), and are subject to technician availability. Unless we agree otherwise, all onsite Services will be provided at Client's primary office location listed in the Order.

Managed Equipment / Hardware / Software

The Services will be applied to the equipment listed in the Order ("Covered Hardware").

The Services will apply to the software listed in the Order ("Supported Software") provided, however, that all Supported Software must, at all times, be properly licensed, and under a maintenance and support agreement from the Supported Software's manufacturer.

In this SOW, Covered Hardware and Supported Software will be referred to as the "Environment."

Term; Termination

The Services will commence, and billing will begin, on the date indicated in the Order ("Commencement Date"). We reserve the right to delay the Commencement Date until all onboarding/transition services (if any) are completed, and all deficiencies / revisions identified in the onboarding process (if any) are addressed or

remediated to SNI' satisfaction.

The Services shall continue for a minimum term of thirty-six (36) months from the Commencement Date and, thereafter, shall continue on a month-to-month basis, cancelable by either party for any reason upon the provision of one (1) month prior written notice.

Assumptions / Minimum Requirements / Exclusions

The scheduling, fees and provision of the Services are based upon the following assumptions and minimum requirements:

- All equipment with Microsoft Windows® operating systems must be running then-currently supported versions of such software and have all of the latest Microsoft service packs and critical updates installed.
- All software must be genuine, licensed and vendor-supported.
- Server file systems and email systems (if applicable) must be protected by licensed and up-to-date virus protection software.
- The Environment must have a currently licensed, vendor-supported server-based backup solution that can be monitored.
- All wireless data traffic in the environment must be securely encrypted.
- There must be an outside static IP address assigned to a network device, allowing VPN access.
- All servers must be connected to working UPS devices.
- Recovery coverage assumes data integrity of the backups or the data stored on the backup devices. We do not guarantee the integrity of the backups or the data stored on the backup devices. Server restoration will be to the point of the last successful backup.
- Client must provide all software installation media and key codes in the event of a failure.
- Any costs required to bring the Environment up to these minimum standards are not included in this SOW.
- Client must provide us with exclusive administrative privileges to the Environment.
- Client must not affix or install any accessory, addition, upgrade, equipment or device on to the firewall, server, or NAS appliances (other than electronic data) unless expressly approved in writing by us.

Exclusions. Services that are not expressly described in this SOW will be out of scope and will not be provided to Client unless otherwise agreed, in writing, by SNI. Without limiting the foregoing, the following services are expressly excluded under this SOW, and if required to be performed, must be agreed upon by SNI in writing:

- Major refresh projects, such as hardware (network, systems, endpoint) replacement or additions, major reconfigurations in hardware or software.
- Customization of third party applications, or programming of any kind.
- Support for operating systems, applications, or hardware no longer supported by the manufacturer.
- Data/voice wiring or cabling services of any kind.
- Battery backup replacement.
- Equipment relocation.
- The cost to bring the Environment up to the Minimum Requirements (unless otherwise noted in "Scope of Services" above).
- The cost of repairs to hardware or any supported equipment or software, or the costs to acquire parts or equipment, or shipping charges of any kind.

Service Levels

Automated monitoring is provided on an ongoing (*i.e.*, 24x7x365) basis; response, repair, and/or remediation services (as applicable) will be provided only during business hours unless otherwise specifically stated in the Order. We will respond to problems, errors or interruptions in the provision of the Services in the timeframe(s) described below. Severity levels will be determined by SNI in our reasonable discretion. All remediation services will initially be attempted remotely; SNI will provide onsite service only if remote remediation is ineffective and, under all circumstances, only if covered under the Service plan selected by Client.

Trouble / Severity	Managed Service Plan
Critical problem: Service not available (all users and functions unavailable)	Response within four (4) hours after notification.
Significant degradation of service (large number of users or business critical functions affected)	Response within eight (8) hours after notification.
Limited degradation of service (limited number of users or functions affected, business process can continue).	Response within twenty-four (24) business hours after notification.
Small service degradation (business process can continue, one user affected).	Response to requested schedule, as available. No service level agreement.

* All time frames are calculated as of the time that SNI is notified of the applicable issue / problem by Client through SNI's designated support portal, help desk, or by telephone at the telephone number listed in the Order. Notifications received in any manner other than described herein may result in a delay in the provision of remediation efforts. Ticket triage time target is .2 hours (12 minutes) during business hours. SLA target 90+%.

Fees

The fees for the Services will be as indicated in the Order.

Initially, you will be charged the monthly fees indicated in the Order. Thereafter, if the amount of Covered Hardware or Supported Software changes, or if the number of authorized users accessing the Environment changes, then you agree that the fees will be automatically and immediately modified to accommodate those changes. Under no circumstances will the number of authorized users, or the quantity of Covered Hardware or Supported Software drop below the amounts initially indicated in this SOW without our consent.

In addition, we reserve the right to increase our monthly recurring and data recovery fees; provided, however, we will not do so more than once per calendar year. If an increase is more than five percent (5%) of the fees charged for the Services in the prior calendar year, then you will be provided with a thirty (30) day opportunity to terminate this SOW by providing us with written notice of termination. Your continued acceptance or use of the services after this thirty (30) day period will indicate your acceptance of the increased fees.

Removal of Software Agents; Return of Firewall & Backup Appliances

Unless we expressly direct you to do so, you will not remove or disable, or attempt to remove or disable, any software agents that we installed in the Environment. Doing so without our guidance may make it difficult or impracticable to remove the software agents, which could result in network vulnerabilities and/or the continuation of license fees for the software agents for which you will be responsible, and/or the requirement that we remediate the situation under a separate

statement of work. Depending on the particular software agent and the costs of removal, we may elect to keep the software agent in the Environment but in a dormant and/or unused state.

Within ten (10) days after being directed to do so, Client will remove, package and ship, at Client's expense and in a commercially reasonable manner, all hardware, equipment, and accessories provided to Client by SNI that were used in the provision of the Services. If you fail to timely return all equipment to us, or if the equipment is returned to us damaged (normal wear and tear excepted), then we will have the right to charge you, and you hereby agree to pay, the replacement value of all such unreturned or damaged equipment.

Additional Terms

Monitoring Services; Alert Services

Unless otherwise indicated in this SOW, all monitoring and alert-type services are limited to detection and notification functionalities only. These functionalities are guided by Client-designated policies, which may be modified by Client as necessary or desired from time to time. Initially, the policies will be set to a baseline standard as determined by SNI; however, Client is advised to establish and/or modify the policies that correspond to Client's specific monitoring and notification needs.

Remediation

Unless otherwise provided in this SOW, remediation services will be provided in accordance with the recommended practices of the managed services industry. Client understands and agrees that remediation services are not intended to be, and will not be, a warranty or guarantee of the functionality of the Environment, or a service plan for the repair of any particular piece of managed hardware or software.

Modification of Environment

Changes made to the Environment without our prior authorization or knowledge may have a substantial, negative impact on the provision and effectiveness of the Services, and may impact the fees charged under this SOW. You agree to refrain from moving, modifying, or otherwise altering any portion of the Environment without our prior knowledge or consent. For example, you agree to refrain from adding or removing hardware from the Environment, installing applications on the Environment, or modifying the configuration or log files of the Environment without our prior knowledge or consent.

Anti-Virus; Anti-Malware

Our anti-virus / anti-malware solution will generally protect the Environment from becoming infected with new viruses and malware ("Viruses"); however, Viruses that exist in the Environment at the time that the security solution is implemented may not be capable of being removed without additional services, for which a charge may be incurred. We do not warrant or guarantee that all Viruses and malware will be capable of being detected, avoided, or removed, or that any data erased, corrupted, or encrypted by malware will be recoverable. In order to improve security awareness, you agree that SNI or its designated third party affiliate may transfer information about the results of processed files, information used for URL reputation determination, security risk tracking, and statistics for protection against spam and malware. Any information obtained in this manner does not and will not contain any personal or confidential information.

Breach/Cyber Security Incident Recovery

Unless otherwise expressly stated in this SOW, the scope of this SOW does not include the remediation and/or recovery from a Security Incident (defined below). Such services, if requested by you must be handled under a separate statement of work. Given the varied number of possible Security Incidents, we cannot and do not warrant or guarantee (i) the amount of time required to remediate the effects of a Security Incident (or that remediation will be possible under all circumstances), or (ii) that all data impacted by the incident will be recoverable. For the purposes of this paragraph, a Security Incident means any unauthorized or impermissible access to or use of the Environment, or any unauthorized or impermissible disclosure of Client's confidential information (such as user names, passwords, etc.), that (i) compromises the security or privacy of the information or applications in, or the structure or integrity of, the Environment, or (ii) prevents normal access to the Environment, or impedes or disrupts the normal functions of the Environment.

Environmental Factors

Exposure to environmental factors, such as water, heat, cold, or varying lighting conditions, may cause installed equipment to malfunction. Unless expressly stated in this SOW, we do not warrant or guarantee that installed equipment will operate error-free or in an uninterrupted manner, or that any video or audio equipment will clearly capture and/or record the details of events occurring at or near such equipment under all circumstances.

Fair Usage Policy

Our Fair Usage Policy ("FUP") applies to all services in this SOW that are described or designated as "unlimited." An "unlimited" service designation means that, subject to the terms of this FUP, you may use the service as reasonably necessary for you to enjoy the use and benefit of the service without incurring additional time-based or usage-based costs. However, unless expressly stated otherwise in this SOW, all unlimited services are provided during our normal business hours only and are subject to our technicians' availabilities, which cannot always be guaranteed. In addition, we reserve the right to assign our technicians as we deem necessary to handle issues that are more urgent, critical, or pressing than the request(s) or issue(s) reported by you. Consistent with this FUP, you agree to refrain from (i) creating urgent support tickets for non-urgent or non-critical issues, (ii) requesting excessive support services that are inconsistent with normal usage patterns in the industry (e.g., requesting support in lieu of training), (iii) requesting support or services that are intended to interfere, or may likely interfere, with our ability to provide our services to our other customers, or (iv) opening tickets for services that are outside the scope of this SOW (e.g., opening tickets for project work, break/fix work, etc.)

O365 / Email

You are solely responsible for the security, confidentiality and integrity of all email and the content of all email, received, transmitted or stored through the email service that is under your control ("Email"). You agree to refrain from uploading, posting, transmitting or distributing (or permitting any of your authorized users of the Email to upload, post, transmit or distribute) any prohibited content, which is generally content that (i) is obscene, illegal, or intended to advocate or induce the violation of any law, rule or regulation, or (ii) violates the intellectual property rights or privacy rights of any third party, or (iii) mischaracterizes you, and/or is intended to create a false identity or to otherwise attempt to mislead any person as to the identity or origin of any communication, or (iv) interferes or disrupts the services provided by SNI or the services of any third party, or (v) contains Viruses, trojan horses or any other malicious code or programs. In addition, you must not use the Email for the purpose of sending unsolicited commercial electronic messages ("SPAM") in violation of any federal or state law.

SNI reserves the right, but not the obligation, to suspend Client's access to the Email and/or all transactions occurring under Client's Email account if SNI believes, in its discretion, that Client's email account is being used in an improper or illegal manner.

Patch Management

We will keep all managed hardware and managed software current with critical patches and updates ("Patches") as those Patches are released generally by the applicable manufacturers. Patches are developed by third party vendors and, on rare occasions, may make the Environment, or portions of the Environment, unstable or cause the managed equipment or software to fail to function properly even when the Patches are installed correctly. We will not be responsible for any downtime or losses arising from or related to the installation or use of any Patch. We reserve the right, but not the obligation, to refrain from installing a Patch if we are aware of technical problems caused by a Patch, or we believe that a Patch may render the Environment, or any portion of the Environment, unstable.

Backup (BDR) Services

All data transmitted over the Internet may be subject to malware and computer contaminants such as viruses, worms and trojan horses, as well as attempts by unauthorized users, such as hackers, to access or damage Client's data. Neither SNI nor its designated affiliates will be responsible for the outcome or results of such activities.

BDR services require a reliable, always-connected internet solution. Data backup and recovery time will depend on the speed and reliability of your internet connection. Internet and telecommunications outages will prevent the BDR services from operating correctly. In addition, all computer hardware is prone to failure due to equipment malfunction, telecommunication-related issues, etc., for which we will be held harmless. Due to technology limitations, all computer hardware, including communications equipment, network servers and related equipment, has an error transaction rate that can be minimized, but not eliminated. SNI cannot and does not warrant that data corruption or loss will be avoided, and Client agrees that SNI shall be held harmless if such data corruption or loss occurs. **Client is strongly advised to keep a local backup of all of stored data to mitigate against the unintentional loss of data.**

Procurement

Equipment and software procured by SNI on Client's behalf ("Procured Equipment") may be covered by one or more manufacturer warranties, which will be passed through to Client to the greatest extent possible. By procuring equipment or software for Client, SNI does not make any warranties or representations regarding the quality, integrity or usefulness of the Procured Equipment. Certain equipment or software, once purchased, may not be returnable or, in certain cases, may be subject to third party return policies and/or re-stocking fees, all of which shall be Client's responsibility in the event that a return of the Procured Equipment is requested. SNI is not a warranty service or repair center. SNI will facilitate the return or warranty repair of Procured Equipment; however, Client understands and agrees that the return or warranty repair of Procured Equipment is governed by the terms of the warranties (if any) governing the applicable Procured Equipment, for which SNI will be held harmless.

Business Review; IT Strategic Planning

Suggestions and advice rendered to Client are provided in accordance with relevant industry practices, based on Client's specific needs and SNI's opinion and knowledge of the relevant facts and circumstances. By rendering advice, or by suggesting a particular service or solution, SNI is not endorsing any particular

manufacturer or service provider.

VCTO or VCIO Services

The advice and suggestions provided us in our capacity as a virtual chief technology or information officer will be for your informational and/or educational purposes only. SNI will not hold an actual director or officer position in Client's company, and we will neither hold nor maintain any fiduciary relationship or position with Client. Under no circumstances shall Client list or place the SNI on Client's corporate records or accounts.

Sample Policies, Procedures.

From time to time, we may provide you with sample (*i.e.*, template) policies and procedures for use in connection with Client's business ("Sample Policies"). The Sample Policies are for your informational use only, and do not constitute or comprise legal or professional advice, and the policies are not intended to be a substitute for the advice of competent counsel. You should seek the advice of competent legal counsel prior to using or distributing the Sample Policies, in part or in whole, in any transaction. We do not warrant or guarantee that the Sample Policies are complete, accurate, or suitable for your (or your customers') specific needs, or that you will reduce or avoid liability by utilizing the Sample Policies in your (or your customers') business operations.

Penetration Testing; Vulnerability Assessment

You understand and agree that security devices, alarms or other security measures, both physical and virtual, may be tripped or activated during the penetration testing process, despite our efforts to avoid such occurrences. You will be solely responsible for notifying any monitoring company and all law enforcement authorities of the potential for "false alarms" due to the provision of the penetration testing services, and you agree to take all steps necessary to ensure that false alarms are not reported or treated as "real alarms" or credible threats against any person, place or property. Some alarms and advanced security measures, when activated, may cause the partial or complete shutdown of the Environment, causing substantial downtime and/or delay to your business activities. We will not be responsible for, and will be held harmless and indemnified by you against, any claims, costs, fees or expenses arising or resulting from (i) any response to the penetration testing services by any monitoring company or law enforcement authorities, or (ii) the partial or complete shutdown of the Environment by any alarm or security monitoring device.

HaaS

You will use all SNI-hosted or SNI-supplied equipment and hardware (collectively, "Infrastructure") for your internal business purposes only. You shall not sublease, sublicense, rent or otherwise make the Infrastructure available to any third party without our prior written consent. You agree to refrain from using the Infrastructure in a manner that unreasonably or materially interferes with our other hosted equipment or hardware, or in a manner that disrupts or which is likely to disrupt the services that we provide to our other clientele. We reserve the right to throttle or suspend your access and/or use of the Infrastructure if we believe, in our sole but reasonable judgment, that your use of the Infrastructure is violates the terms of this SOW or the Agreement.

Unsupported Configuration Elements Or Services

If you request a configuration element (hardware or software) or hosting service in a manner that is not customary at SNI , or that is in "end of life" or "end of support" status, we may designate the element or service as "unsupported," "non-standard," "best efforts," "reasonable endeavor," "one-off," "EOL," "end of support," or with like term in the service description (an "Unsupported Service"). We make no representation or warranty whatsoever regarding any Unsupported Service, and you agree that we will not be liable for any loss or damage arising from the provision of an Unsupported Service. Deployment and service level guarantees shall not apply to any Unsupported Service.

Order Executive Summary

Order Notes:

- Primary Service Address: 390 Towne Centre Drive, Lathrop, CA 95330
- Managed hardware and software counts are from client inventory spreadsheet.
- Agreement Commencement Date: Starts on the next month after signed approval.
- 24x7 Response for remediation services provided on an on-call basis
- Urgent Support Contact: 209-338-1450
- Non-Urgent Support Contact: Service@SolidNetworks.com
- Agreement Term: **36 months**
- Agreement Scaling: Additional equipment may be added to this support agreement at any time during the term of agreement. Additional devices will be charged the monthly support fee for the remainder of the agreement term which may be prepaid. These devices will be reviewed on a quarterly basis.



SolidCare Co-Managed Network Services		Recurring	Qty	Ext. Recurring
C.N100.Network Services	Co-Managed Network Services	\$6,575.00	1	\$6,575.00
C.N102.CFMC	Managed Cisco Firepower Management Center		1	
C.N103.Firewall-24x7	Managed Network Firewall 24x7		2	
C.N104.Router-24x7	Managed Network Router 24x7		4	
C.N105.Switch.L2.8x5	Managed Network Switch Layer 2 - 8x5		82	
C.N105.Switch.L3-24x7	Managed Network Switch Layer 3 - 24x7		3	
C.N109.Network.WAN	Managed Network WAN		7	
C.N110.Access Point.8x5	Managed Network Access Points 8x5		14	
Recurring Subtotal				\$6,575.00

SolidCare Co-Managed System Services		Recurring	Qty	Ext. Recurring
C.S120 System Services	Co-Managed System Services	\$3,700.00	1	\$3,700.00
C.S123.Virtual Server	Managed Virtual Servers		13	
C.S125.Cisco UCS	Managed Cisco UCS		2	
C.S126.Vmware H-VDI Support	VMware Horizon VDI Support		1	
C.S130.Storage Array	Managed Storage Array		3	
Recurring Subtotal				\$3,700.00

SolidCare Co-Managed Voice Services		Recurring	Qty	Ext. Recurring
C.V140.Voice Services	Co-Managed Voice Services	\$1,570.00	1	\$1,570.00
C.V143.Virtual Voice-Server	Managed Virtual Server		5	
C.V145.Vgateways	Managed Voice Gateways		4	
C.V151.Handsets	Managed Handsets		200	
Recurring Subtotal				\$1,570.00

SolidCare Co-Managed Additional Services		Recurring	Qty	Ext. Recurring
C.W160.Added Services	Co-Managed Additional Services	\$550.00	1	\$550.00
C.W168.ManagedC W	Managed ConnectWise: Connectwise RMM with ScreenConnect (per endpoint /server)- Includes Connectwise licensing for selected servers/endpoints		55	
Recurring Subtotal				\$550.00

Service Credit - Y2023-24		Recurring	Qty	Ext. Recurring
C.X196.SalesCredit	Service Credit for 1st year 2023-24	(\$2,000.00)	1	(\$2,000.00)
Recurring Subtotal				(\$2,000.00)

Service Credit - Y2024-25		Recurring	Qty	Ext. Recurring
C.X197.SalesCredit	Service Credit for 2nd year 2024-25	(\$1,000.00)	1	(\$1,000.00)
Recurring Subtotal				(\$1,000.00)



City of Lathrop FY24-FY26 SolidCare MSA Renewal

Quote #: 008256

Version: 1 Updated: 05/24/2023 Expiration Date: 06/23/2023

Prepared by:

Solid Networks

Mark Ricci
1.209.338.1424
Mark.Ricci@SolidNetworks.com

Prepared for:

City of Lathrop

390 Towne Centre Drive
Lathrop, CA 95330
Tony Fernandes
(209) 941-7200
tfernandes@ci.lathrop.ca.us

Ship To:

City of Lathrop

390 Towne Centre Drive
Lathrop, CA 95330
Tony Fernandes
(209) 941-7200
tfernandes@ci.lathrop.ca.us

Recurring Expenses Summary

Description	Amount
SolidCare Co-Managed Network Services	\$6,575.00
SolidCare Co-Managed System Services	\$3,700.00
SolidCare Co-Managed Voice Services	\$1,570.00
SolidCare Co-Managed Additional Services	\$550.00
Service Credit - Y2023-24	(\$2,000.00)
Recurring Total:	\$10,395.00

Payment Options

Description	Payments	Interval	Amount
Term Options			
Agreement Year 2023-24	12	Monthly	\$10,395.00
Agreement Year 2024-25	12	Monthly	\$11,395.00
Agreement Year 2025-26	12	Monthly	\$12,395.00

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

Solid Networks

City of Lathrop

Signature: Mark Ricci

Signature: _____

Name: Mark Ricci

Name: Tony Fernandes

Title: Account Manager

Title: Information Technologies Manager

Date: _____

Date: _____

OFFSITE STAGING & CONFIGURATION AGREEMENT FOR QUOTE# 008256 v1

The Offsite Staging & Configuration Agreement ("Agreement") is entered into upon approval of the Solid Networks Quote between (Quote listed customer "Client") and Solid Networks [SNI].

Client wishes to purchase equipment from SNI which will be held, staged, or configured at a location other than the client premises.

The parties therefore enter into this agreement, on the following terms and conditions:

A. Provisions Related to Equipment Purchases.

1. Transfer of Title

All equipment purchased by client hereunder shall be deemed to have been delivered and title shall transfer to Client when received at the offsite location. The offsite location may be an office location of Client or a staging facility as indicated in the SHIP-TO location of the agreement.

2. Invoicing

Client may be invoiced for the equipment upon delivery to the offsite location.

Solid Networks, Inc.

Master Services Agreement

The following terms and conditions govern our relationship with you and limit our liability for any services or products that we provide to you. Please read these terms carefully and keep a copy for your records.

SCOPE; SERVICES

- a) *Scope.* This master services agreement (this “Agreement”) governs all services that **Solid Networks, Inc.**, a California corporation with offices located at 5686 Pirrone Road, Salida, California 95368 (“us”, “our”, “we” or “SNI”), performs for, as well as any licenses or products that we sell or re-sell, to you (collectively, the “Services”).
- b) *Quotes.* The Services are not described in this Agreement; instead, you will be provided with an electronic quote, proposal, and/or order (“Quote”) that describe the Services through which you agree to purchase the Services from us. The Quote may have one or more statements of work (each a “SOW”) attached to it that further describe, summarize, and/or define the scope of the Services. **By accepting the Quote, you agree to the terms of each SOW and the terms of this Agreement. If you do not agree to the terms of the SOW and this Agreement, then you should not accept the Quote. From this point forward in this Agreement, Quotes and SOWs will be collectively referred to as “SOW.”**
- c) *Conflict.* If there is a material difference between the language in a SOW and the language in this Agreement, then the language of the SOW will control, except in situations involving warranties, limitations of liability, or termination of this Master Services Agreement. Under those limited circumstances, the terms of this Agreement will control unless the SOW expressly states that it is overriding the conflicting provisions of this Agreement.

GENERAL REQUIREMENTS

- a) *Environment.* For the purposes of this Agreement, “Environment” means, collectively, any computer network (cloud-based or otherwise), computer system, peripheral or device (virtual or physical) installed, maintained, monitored, or operated by us pursuant to a SOW. To avoid a delay or negative impact on our provision of the Services, during the term of each SOW you agree to refrain from modifying or moving the Environment or installing software in the Environment, unless we expressly authorize such activity.
- b) *Requirements.* At all times, all software on the Environment must be genuine and licensed, and you agree to provide us with proof of such licensing upon our request. If we require you to implement certain minimum hardware or software requirements in a SOW (“Minimum Requirements”), you agree to do so as an ongoing requirement of us providing our Services to you.
- c) *Updates.* Patches and updates to hardware and software (“Updates”) are created and distributed by third parties—such as equipment or software manufacturers—and may be supplied to us from time to time for installation into the Environment. If required under a SOW, we will implement and follow the manufacturers’ recommendations for the installation of Updates; however, (i) we do not warrant or guarantee that any Update will perform properly, (ii) we will not be responsible for any downtime or losses arising from or related to the installation, use, or inability to use any Update, and (iii) we reserve the right, but not the obligations, to refrain from installing an Update until we have determined, in our reasonable discretion, that the Updates will be compatible with the configuration of the Environment and materially beneficial to the features or functionality of the affected software or hardware.
- d) *Third Party Support.* If, in our discretion, a hardware or software issue requires vendor or OEM support, we may contact the vendor or OEM (as applicable) on your behalf and invoice you for all fees and costs involved in that process. If the fees or costs are anticipated in advance or exceed \$125, we will obtain your permission before incurring such expenses on your behalf unless exigent circumstances require otherwise.
- e) *Advice; Instructions.* From time to time, we may provide you with specific advice and directions related to the Services. (For example, our advice or directions may include upgrading the Environment’s server or hard drive capacity or replacing obsolete equipment.) You are strongly advised to promptly follow our advice which, depending on the situation, may require you to make additional purchases or investments in the Environment or the location in which the Environment is maintained, at your sole cost. We will not be responsible for any problems or issues (such as downtime or security-related issues) caused by your failure to promptly follow our advice. If, in our discretion, your failure to follow or implement our advice renders part or all of the Services economically or technically unreasonable to provide, then we may terminate the applicable SOW for cause by providing notice of termination to you. Unless specifically and expressly stated in a SOW, any services required to remediate issues caused by your failure to follow SNI’s advice or directions, or your unauthorized or unilateral modification of the Environment, as well as any services required to bring the Environment up to or maintain the Minimum Requirements, are out-of-scope and not covered under any SOW.
- f) *Prioritization.* All Services will be performed on a schedule, and in a prioritized manner, as we deem reasonable and necessary.

- g) *Authorized Contact(s)*. We will be entitled to rely on any directions or consent provided by your personnel or representatives who are authorized in a SOW to provide such directions or consent (“Authorized Contacts”). If no Authorized Contact is identified in an applicable SOW, then your Authorized Contact will be the person(s) (i) who signed this Agreement, (ii) who signed the applicable SOW, and/or (iii) who, given the totality of the circumstances, reasonably appears to have been given the authority by you to provide us with directions or consent. If you notify us in writing (e.g. by email), your change will take effect no later than three (3) business days after we receive your notice; and, if notice is given in person or by telephone, your change will take effect on the business day on which you provide us with your notice.
- h) *Insurance*. If you are supplied with SNI Equipment (defined below), you agree to acquire and maintain, at your sole cost, insurance for the full replacement value of that equipment. SNI must be listed as an additional insured on any policy acquired and maintained by you under this Agreement, and the policy will not be canceled or modified during the term of the applicable SOW without prior notification to SNI. Upon SNI’s request, you agree to provide proof of insurance to SNI, including proof of payment of any applicable premiums or other amounts due under the insurance policy.

FEES; PAYMENT

- a) *Fees*. You agree to pay the fees, costs, and expenses described in each SOW. You are responsible for sales tax and any other taxes or governmental fees associated with the Services. If you qualify for a tax exemption, you must provide us with a valid certificate of exemption or other appropriate proof of exemption. You are also responsible for all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes).
- b) *Schedule*. All undisputed fees will be due and payable in advance of the provision of the Services. If applicable, recurring payments made by ACH will be deducted from your designated bank account on the first business day of the month in which the Services are to be provided, and, if applicable, your designated credit card will be charged on the first business day of the month in which the Services are to be provided.
- c) *Nonpayment*. Fees that remain unpaid for more than fifteen (15) days after the due date on the invoice will be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 2% per month or the maximum allowable rate of interest permitted by applicable law. We reserve the right, but not the obligation, to suspend part or all of the Services without prior notice to you in the event that any portion of undisputed fees are not timely received by us, and monthly or recurring charges shall continue to accrue during any period of suspension. Notice of disputes related to fees must be received by us within sixty (60) days after the applicable Service is rendered or the date on which you pay an invoice, whichever is later; otherwise, you waive your right to dispute the fee thereafter. A re-activation fee may be charged to you if we suspend the Services due to your nonpayment. Time is of the essence in the performance of all payment obligations by you.

ACCESS

You hereby grant to SNI and its designated third party vendors the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access the Environment solely as necessary to enable us to provide the Services. It is your responsibility to secure, at your own cost and prior to the commencement of any Services, any necessary rights of entry, licenses (including software licenses), permits or other permissions necessary for SNI to provide Services to the Environment and, if applicable, at your designated premises, both physically and virtually. Proper and safe environmental conditions must be provided and assured by you at all times. SNI shall not be required to engage in any activity or provide any Services under conditions that pose or may pose a safety or health concern to any personnel, or that would require extraordinary or non-industry standard efforts to achieve.

LIMITED WARRANTIES; LIMITATIONS OF LIABILITY

- a) *Hardware / Software Purchased Through SNI*. All hardware, software, peripherals or accessories purchased through SNI (“Third Party Products”) are generally nonrefundable once the product is obtained from SNI’s third party provider or reseller. If you require a refund, then the third party provider’s or reseller’s return policies shall apply. We do not guarantee that purchased Third Party Products will be returnable, exchangeable, or that re-stocking fees can be avoided. You will be responsible for the payment of all re-stocking or return-related fees charged by the third party provider or reseller. We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third Party Products to you, but will have no liability whatsoever for the quality, functionality or operability of any Third Party Products, and we will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third Party Products. All Third Party Products are provided “as is” and without any warranty whatsoever as between SNI and you (including but not limited to implied warranties).
- b) *Liability Limitations*. **This paragraph limits the liabilities arising under this Agreement or any SOW and is a bargained-for and material part of our business relationship with you.** You acknowledge and agree that SNI would not enter into any SOW or this Agreement unless SNI could rely on the limitations described in this paragraph. In no event shall either party be liable for any indirect, special, exemplary, consequential, or punitive damages, such as lost revenue, loss of profits (except for fees due and owing to SNI), savings, or other indirect or contingent event-based economic loss

arising out of or in connection with this Agreement, any SOW, or the Services, or for any loss or interruption of data, technology or services, or for any breach hereof or for any damages caused by any delay in furnishing Services under this Agreement or any SOW, even if a party has been advised of the possibility of such damages; however, reasonable attorneys' fees awarded to a prevailing party (as described below) shall not be limited by the foregoing limitation. Except for your payment obligations and your indemnification obligations described in this Agreement, a responsible party's ("Responsible Party's") aggregate liability to the other party ("Aggrieved Party") for damages from any and all claims or causes whatsoever, and regardless of the form of any such action(s), that arise from or relate to this Agreement (collectively, "Claims"), whether in contract, tort, indemnification, or negligence, shall be limited solely to the amount of the Aggrieved Party's actual and direct damages, not to exceed the amount of fees paid by you (excluding hard costs for licenses, hardware, etc.) to SNI for the specific Service upon which the applicable claim(s) is/are based during the six (6) month period immediately prior to the date on which the cause of action accrued. The foregoing limitations shall not apply to the extent that the Claims are caused by a Responsible Party's willful or intentional misconduct, or gross negligence. Similarly, a Responsible Party's liability obligation shall be reduced to the extent that a Claim is caused by, or the result of, the Aggrieved Party's willful or intentional misconduct, or gross negligence.

INDEMNIFICATION

Each party (an "Indemnifying Party") agrees to indemnify, defend and hold the other party (an "Indemnified Party") harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys' fees, (collectively, "Damages") that arise from, or are related to, the Indemnifying Party's breach of this Agreement. The Indemnified Party will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this section. The Indemnifying Party shall be permitted to have counsel of its choosing participate in the defense of the applicable claim(s); however, (i) such counsel shall be retained at the Indemnifying Party's sole cost, and (ii) the Indemnified Party's counsel shall be the ultimate determiner of the strategy and defense of the claim(s) for which indemnity is provided. No claim for which indemnity is sought by an Indemnified Party will be settled without the Indemnifying Party's prior written consent, which shall not be unreasonably delayed or withheld.

TERM; TERMINATION

- a) *Term.* This Agreement begins on the earliest date on which you accept an Order and continues until terminated as described in this Agreement. Each SOW will have its own term and will be terminated only as provided herein, unless otherwise expressly stated in the applicable SOW. The termination of one SOW shall not, by itself, cause the termination of (or otherwise impact) this Agreement or the status or progress of any other SOW between the parties.
- b) *Termination Without Cause.* Unless otherwise agreed by the parties in writing or otherwise permitted under this Agreement, no party will terminate this Agreement without cause if, on the date of termination, a SOW is in progress. In addition, no party will terminate a SOW without cause prior to the SOW's natural expiration date. Notwithstanding the foregoing, if SNI decides to cease providing a service to all of its customers generally, then SNI may terminate an applicable SOW (or the applicable portion of the SOW) without cause by providing no less than one hundred and twenty (120) days prior written notice to you. If you terminate a SOW without cause and without SNI's consent, then you will be responsible for paying the termination fee described in the "Termination for Cause" section, below. If no SOW is in progress, then either party may terminate this Agreement without cause by providing the other party with five (5) days prior written notice.
- c) *Termination For Cause.* In the event that one party (a "Defaulting Party") commits a material breach under a SOW or under this Agreement, the non-Defaulting Party will have the right, but not the obligation, to terminate immediately this Agreement or the relevant SOW (a "For Cause" termination) provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, with the notice prominently displaying the heading "Notice of Breach", and (ii) the Defaulting Party has not cured the default within twenty (20) days (ten (10) days for non-payment by Client) following receipt of written notice of breach from the non-Defaulting Party. If SNI terminates this Agreement or any SOW For Cause, or if you terminate any SOW without cause prior to such SOW's expiration date, then SNI shall be entitled to receive, and you hereby agree to pay to us, all amounts that would have been paid to SNI had this Agreement or SOW (as applicable) remained in effect. If you terminate this Agreement or a SOW For Cause, then you will be responsible for paying only for those Services that were properly delivered and accepted by you up to the effective date of termination.
- d) *Client Activity As A Basis for Termination.* In the event that (i) any Client-supplied equipment, hardware or software, or any action undertaken by you, causes the Environment or any part of the Environment to malfunction consequently requiring remediation by SNI on three (3) occasions or more ("System Malfunction"), and if under those circumstances, you fail to remedy, repair or replace the System Malfunction as directed by us (or you fail to cease the activity causing the System Malfunction, as applicable), or (ii) you or any of your staff, personnel, contractors, or representatives engage in any unacceptable act or behavior that renders it impracticable, imprudent, or unreasonable to provide the Services to you, then SNI will have the right, upon ten (10) days prior written notice to you, to terminate this Agreement or the applicable SOW For Cause or, at our discretion and if applicable, amend the applicable SOW to eliminate from coverage any System Malfunction or any equipment or software causing the System Malfunction.

- e) *Consent.* You and we may mutually consent, in writing, to terminate a SOW or this Agreement at any time.
- f) *Equipment / Software Removal.* Upon termination of this Agreement or applicable SOW for any reason, you will provide us with access, during normal business hours, to your premises or any other locations at which SNI-owned equipment or software (collectively, "SNI Equipment") is located to enable us to remove all SNI Equipment from the premises. If you fail or refuse to grant SNI access as described herein, or if any of the SNI Equipment is missing, broken or damaged (normal wear and tear excepted) or any of SNI-supplied software is missing, we will have the right to invoice you for, and you hereby agree to pay immediately, the full replacement value of any and all missing or damaged items. Certain services may require the installation of software agents in the Environment ("Software Agents"). You agree not to remove, disable, circumvent, or otherwise disrupt any Software Agents unless we explicitly direct you to do so.
- g) *Transition; Deletion of Data.* In the event that you request SNI's assistance to transition away from our services, we will provide such assistance if (i) all fees due and owing to us are paid to us in full prior to SNI providing its assistance to you, and (ii) you agree to pay our then-current hourly rate for such assistance, with up-front amounts to be paid to us as we may require. For the purposes of clarity, it is understood and agreed that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. **Unless otherwise expressly stated in a SOW, we will have no obligation to store or maintain any Client data in our possession or control beyond fifteen (15) calendar days following the termination of this Agreement.** We will be held harmless for, and indemnified by you against, any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, our deletion of your data beyond the time frames described in this section.

RESPONSE; REPORTING

- a) *Response.* We warrant and represent that we will provide the Services, and respond to any notification received by us of any error, outage, alarm or alert pertaining to the Environment, in the manner and within the time period(s) designated in an applicable SOW ("Response Time"), except for (i) those periods of time covered under the Onboarding Exception (defined below), or (ii) periods of delay caused by Client-Side Downtime (defined below), Vendor-Side Downtime (defined below) or (iii) periods in which we are required to suspend the Services to protect the security or integrity of the Environment or our equipment or network, or (iv) delays caused by a force majeure event.
 - i) Scheduled Downtime. For the purposes of this Agreement, Scheduled Downtime will mean those hours, as determined by us but which will not occur between the hours of 8:00 AM and 5:00 PM Pacific Time, Monday through Friday without your authorization or unless exigent circumstances exist, during which time we will perform scheduled maintenance or adjustments to the Environment. We will use our best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.
 - ii) Client-Side Downtime. We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by your actions or omissions ("Client-Side Downtime").
 - iii) Vendor-Side Downtime. We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by third party service providers, third party licensors, or "upstream" service or product vendors.
 - iv) Remedies; Limitations. Except for the Onboarding Exception, if we fail to meet our service level commitment in a given calendar month and if, under such circumstances, our failure is not due to your activities, omissions, or inactivity, then upon receiving your written request for credit, we will issue you a pro-rated credit in an amount equal to the period of time of the outage and/or service failure. All requests for credit must be made by you no later than forty-five (45) days after you either (i) report the outage or service failure to us, or (ii) if applicable, receive a monthly report showing the outage and/or failure. The remedies contained in this paragraph and in the "Term; Termination" section above are in lieu of (and are to the exclusion of) any and all other remedies that might otherwise be available to you for our failure to meet any service level commitment during the term of this Agreement.
- b) *Onboarding Exception.* You acknowledge and agree that for the first forty-five (45) days following the commencement date of a SOW, the Response Time commitments described in this Agreement will not apply to us, it being understood that there may be unanticipated downtime or delays due to our initial startup activities and/or familiarization with you (the "Onboarding Exception").

CONFIDENTIALITY

- a) *Defined.* For the purposes of this Agreement, Confidential Information means any and all non-public information provided to us by you, including but not limited to your customer data, customer lists, internal documents, and related information. Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of SNI, (ii) was developed independently by us, or (iii) is or was lawfully and independently provided to us prior to disclosure by you, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.

- b) *Use*. We will keep your Confidential Information confidential and will not use or disclose such information to any third party for any purpose except (i) as expressly authorized by you in writing, or (ii) as needed to fulfill our obligations under this Agreement.
- c) *Due Care*. We will exercise the same degree of care with respect to the Confidential Information we receive from you as we normally take to safeguard and preserve our own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.
- d) *Compelled Disclosure*. If we are legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information, we will immediately notify you in writing of such requirement so that you may seek a protective order or other appropriate remedy and/or waive our compliance with the provisions of this Section. We will use its best efforts, at your expense, to obtain or assist you in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, we may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that we have been advised, by written opinion from our counsel, that we are legally compelled to disclose.
- e) *Business Associate*. If we enter into a business associate agreement (“BAA”) with you for the protection of personal health information, then the terms of the BAA will be read in conjunction with the terms of the confidentiality provisions of this Agreement. The terms that protect confidentiality most stringently shall govern, and conflicting privacy- or confidentiality-related terms shall be governed by the BAA.

ADDITIONAL TERMS; THIRD PARTY SERVICES

- a) *EULAs*. Portions of the Services may require you to accept the terms of one or more third party end user license agreements (“EULAs”). If the acceptance of a EULA is required in order to provide the Services to you, then you hereby grant us permission to accept the EULA on your behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. **You agree to be bound by the terms of such EULAs and will look only to the applicable third party provider for the enforcement of the terms of such EULAs.** If, while providing the Services, we are required to comply with a third-party EULA and the third party EULA is modified or amended, we reserve the right to modify or amend any applicable SOW with you to ensure our continued compliance with the terms of the third party EULA.
- b) *Third Party Services*. Portions of the Services may be acquired from, or rely upon the services of, third party manufacturers or providers, such as data hosting services, help desk services, domain registration services, and data backup/recovery services (“Third Party Service”). Not all Third Party Services may be expressly identified as such in a SOW, and at all times we reserve the right to utilize the services of any third party provider or to change third party providers in our sole discretion as long as the change does not materially diminish the Services to be provided to you under a SOW. We will not be responsible, and will be held harmless by you, for the failure of any third-party provider or manufacturer to provide Third Party Services to SNI or to you.
- c) *Data Loss*. Under no circumstances will we be responsible for any data lost, corrupted or rendered unreadable due to (i) communication and/or transmissions errors or related failures, (ii) equipment failures (including but not limited to silent hardware corruption-related issues), or (iii) our failure to backup or secure data from portions of the Environment that were not expressly designated in the applicable SOW as requiring backup or recovery services. Unless expressly stated in a SOW, we do not warrant or guarantee that any maintained storage device or functionality, data backup device or functionality, or load balancing functionality will operate in an error-free manner.
- d) *BYOD*. You hereby represent and warrant that we are authorized to access all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones and tablet computers) that are connected to the Environment (collectively, “Devices”), regardless of whether such Devices are owned, leased or otherwise controlled by you. Unless otherwise stated in a SOW, Devices will not receive or benefit from the Services while the devices are detached from, or unconnected to, the Environment. **Client is strongly advised to refrain from connecting Devices to the Environment where such devices are not previously known to us and are not expressly covered under a managed service plan from us (“Unknown Devices”).** We will not be responsible for the diagnosis or remediation of any issues in the Environment caused by the connection or use of Unknown Devices in the Environment, and we will not be obligated to provide the Services to any Unknown Devices.
- e) *Equipment*. Unless otherwise noted in a SOW or Order, all SNI Equipment is licensed to you, and is neither owned by you nor leased to you. Upon the expiration of an applicable SOW, your license to use the SNI Equipment shall immediately terminate, and thereafter all SNI Equipment must be returned to us immediately at your expense. All configurations on the SNI Equipment are our proprietary information and will not be circumvented, modified, or removed by you without our prior written consent.

OWNERSHIP

Each party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights and other intellectual property owned or licensed by such party (“Intellectual Property”), and nothing in this Agreement or any SOW shall be deemed to convey or grant any ownership rights or goodwill in one party’s Intellectual Property to the other party.

ARBITRATION

Except for undisputed collections actions to recover fees due to us (“Collections”), any dispute, claim or controversy arising from or related to this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be settled by arbitration before one arbitrator who is mutually agreed upon by the parties. The arbitration shall be administered and conducted by the American Arbitration Association (the “AAA”) or if there is no AAA arbitrator available within a twenty (20) mile radius of our office, then by any arbitration venue as determined by us, pursuant to that venue’s arbitration rules for commercial disputes (the “Rules”). In the event of any inconsistency between the Rules and the procedures set forth in this paragraph, the procedures set forth in this paragraph will control. The arbitrator will be experienced in contract, intellectual property and information technology transactions. If the parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, the arbitration venue shall select the arbitrator. The arbitration shall take place in our office. The arbitrator will determine the scope of discovery in the matter; however, it is the intent of the parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent. Initially, the cost of the arbitration shall be split evenly between the parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys’ fees and costs.

MISCELLANEOUS

- a) *Compliance.* Unless otherwise expressly stated in a SOW, the Services are not intended, and will not be used, to bring Client into full regulatory compliance with any rule, regulation, or requirement that may be applicable to Client’s business or operations. Depending on the Services provided, the Services may aid Client’s efforts to fulfill regulatory compliance; however, the Services are not (and should not be used as) a compliance solution.
- b) *Disclosure.* You warrant and represent that you know of no law or regulation governing your business that would impede or restrict our provision of the Services, or that would require us to register with, or report our provision of the Services (or the results thereof), to any government or regulatory authority. You agree to promptly notify us if you become subject to any of the foregoing which, in our discretion, may require a modification to the scope or pricing of the Services.
- c) *Security.* You understand and agree that no security solution is one hundred percent effective, and any security paradigm may be circumvented and/or rendered ineffective by certain malware, such as certain ransomware or rootkits that were unknown to the malware prevention industry at the time of infection, and/or which are purposely or intentionally downloaded or installed into the Environment. We do not warrant or guarantee that all malware or malicious activity will be capable of being detected, avoided, quarantined or removed, or that any data deleted, corrupted, or encrypted by such malware (“Impacted Data”) will be recoverable. Unless otherwise expressly stated in a SOW, the recovery of Impacted Data is not included in the scope of a SOW. **You are strongly advised to (i) educate your employees to properly identify and react to “phishing” activity (i.e., fraudulent attempts to obtain sensitive information or encourage behavior by disguising oneself as a trustworthy entity or person through email), and (ii) obtain insurance against cyberattacks, data loss, malware-related matters, and privacy-related breaches, as such incidents can occur even under a “best practice” scenario. Unless a malware-related incident is caused by our intentionally malicious behavior or our gross negligence, we are held harmless from any costs, expenses, or damages arising from or related to such incidents.**
- d) *Non-Solicitation.* Each party (a “Restricted Party”) acknowledges and agrees that during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, the Restricted Party will not, individually or in conjunction with others, directly or indirectly solicit, induce or influence any of the other party’s employees with whom the Restricted Party worked to discontinue or reduce the scope of their business relationship with the other party, or recruit, solicit or otherwise influence any employee of the other party with whom the Restricted Party worked to discontinue his/her employment or agency relationship with the other party. In the event of a violation of the terms of the restrictive covenants in this section, the parties acknowledge and agree that the damages to the other party would be difficult or impracticable to determine, and in such event, the Restricted Party will pay the other party as liquidated damages and not as a penalty an amount equal to fifty percent (50%) percent of that employee first year of base salary with the Restricted Party (including any signing bonus). In addition to and without limitation of the foregoing, any solicitation or attempted solicitation for employment directed to a party’s employees by the Restricted Party will be deemed to be a material breach of this Agreement, in which event the affected party shall have the right, but not the obligation, to terminate this Agreement or any then-current SOW immediately For Cause.
- e) *Collections.* If we are required to send your account to Collections or to start any Collections-related action to recover undisputed fees, we will be entitled to recover all costs and fees we incur in the Collections process including but not limited to reasonable attorneys’ fees and costs.

- f) *Assignment.* Neither this Agreement nor any SOW may be assigned or transferred by a party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, we may assign our rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of our business, or any other transaction in which ownership of more than fifty percent (50%) of our voting securities are transferred; provided, however, that such assignee expressly assumes our obligations hereunder.
- g) *Amendment.* Unless otherwise expressly permitted under this Agreement, no amendment or modification of this Agreement or any SOW will be valid or binding upon the parties unless such amendment or modification is originated in writing by SNI, specifically refers to this Agreement or the SOW being amended, and is accepted in writing (email or electronic signature is acceptable) by you.
- e) *Time Limitations.* The parties mutually agree that, unless otherwise prohibited by law, any action for any matter arising out of this Agreement or any SOW (except for issues of nonpayment by Client) must be commenced within six (6) months after the cause of action accrues or the action is forever barred.
- f) *Severability.* If any provision hereof or any SOW is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of this Agreement or any SOW will be valid and enforceable to the fullest extent permitted by applicable law.
- g) *Other Terms.* We will not be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication supplied by you unless such terms or conditions are incorporated into a duly executed SOW, or unless we have expressly acknowledged the other terms and, thereafter, expressly and specifically accepted such other terms in writing.
- h) *No Waiver.* The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.
- i) *Merger.* This Agreement, together with any and all Quotes and SOWs, sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the Services; however, any payment obligations that you have or may have incurred under any prior superseded agreement are not nullified by this Agreement and remain in full force and effect. No representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. We will not be bound by any of our agents' or employees' representations, promises or inducements if they are not explicitly set forth in this Agreement or any Quote or SOW. Any document that is not expressly and specifically incorporated into this Agreement or SOW will act only to provide illustrations or descriptions of Services to be provided and will not modify this Agreement or provide binding contractual language between the parties. The foregoing sentence shall not apply to any business associate agreement required under HIPAA, which the parties may (if required) enter into after the Effective Date of this Agreement.
- j) *Force Majeure.* Neither party will be liable to the other party for delays or failures to perform its obligations under this Agreement or any SOW because of circumstances beyond such party's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by the other party, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.
- k) *Survival.* The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive. If any provision in this Agreement is deemed unenforceable by operation of law, then that provision shall be excised from this Agreement and the balance of this Agreement shall be enforced in full.
- l) *Insurance.* SNI and you will each maintain, at each party's own expense, all insurance reasonably required in connection with this Agreement or any SOW, including but not limited to, workers compensation and general liability. We agree to maintain a general liability policy with a limit not less than \$1,000,000 per occurrence. All of the insurance policies described herein will not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the other party by certified mail.
- m) *Governing Law; Venue.* This Agreement and any SOW will be governed by, and construed according to, the laws of the state of California. You hereby irrevocably consent to the exclusive jurisdiction and venue of Stanislaus County, California, for any and all claims and causes of action arising from or related to this Agreement.
- n) *No Third Party Beneficiaries.* The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.
- o) *Usage in Trade.* It is understood and agreed that no usage of trade or other regular practice or method of dealing between the Parties to this Agreement will be used to modify, interpret, supplement, or SNI in any manner the terms of this Agreement.

- p) *Business Day.* If a time period set forth in this Agreement expires on a day other than a business day in Stanislaus County, California, such period will be extended to and through the next succeeding business day in Stanislaus County, California.
- q) *Notices; Writing Requirement.* Where notice is required to be provided to a party under this Agreement, such notice may be sent by U.S. mail, overnight courier, or email as follows: notice will be deemed delivered three (3) business days after being deposited in the United States Mail, first class mail, certified or return receipt requested, postage prepaid, or one (1) day following delivery when sent by FedEx or other overnight courier, or one (1) day after notice is delivered by email. Notice sent by email will be sufficient only if (i) the sender emails the notice to the last known email address of the recipient, and (ii) the sender includes itself in the “cc” portion of the email and preserves the email until such time that it is acknowledged by the recipient. Notwithstanding the foregoing, any notice from you to SNI regarding (a) any alleged breach of this Agreement by SNI, or (b) any request for indemnification, or (c) any notice of termination of this Agreement or any SOW, must be delivered to SNI by U.S. mail or courier, unless such requirement is expressly and specifically waived by SNI. All electronic documents and communications between the parties, including email, will satisfy any “writing” requirement under this Agreement.
- r) *Independent Contractor.* SNI is an independent contractor, and is not your employer, employee, partner, or affiliate.
- s) *Subcontractors.* Generally, we do not utilize subcontractors to perform onsite services; however, should we elect to subcontract a portion of those services, we will guarantee the work as if we performed the subcontracted work ourselves.
- t) *Data & Service Access.* Some of the Services may be provided by persons outside of the United States and/or your data may occasionally be accessed, viewed, or stored on secure servers located outside of the United States. You agree to notify us if your company requires us to modify these standard service provisions, in which case additional (and potentially significant) costs will apply.
- u) *Counterparts.* The parties intend to sign, accept and/or deliver any Quote, this Agreement, SOW or any amendment in any number of counterparts, and each of which will be deemed an original and all of which, when taken together, will be deemed to be one agreement. Each party may sign, accept, and/or deliver any Quote, this Agreement, any SOW or any amendment electronically (e.g., by digital signature and/or electronic reproduction of a handwritten signature) or by reference (as applicable).

**PAGE LEFT
INTENTIONALLY
BLANK**