



## POPP.com, Inc. (dba POPP Communications) Computer and Cloud Services – Terms of Service

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**SUMMARY:** The Computer and Cloud Services Terms of Service govern a set of services broadly centered around the maintenance and support of client-owned computer systems, delivery of cloud services, as well as the completion of Information Technology-related projects. Clients may also have Phone and Voice Network Services from POPP which are governed by separate Terms of Service.

The Agreement between POPP.com, Inc. ("POPP" or "Company") and Client sets forth the legal rights and obligations governing the Company's offer, provisioning and delivery of Services and Client's receipt and use thereof. Client shall contract for Service on a Company-designed Service Agreement ("SA").

The Agreement in its entirety shall consist of the Service Agreement, these Terms of Service, and POPP's Acceptable Use Policy ("AUP"). In the event of an inconsistency between a term or condition contained in any component document(s) comprising the Agreement (but only to the extent of the inconsistency), including any incorporated attachments, appendices, exhibits or other documents, the order of precedence, from the most to the least controlling, shall be:

1. Any mutually agreed upon written Addenda to the Terms of Service properly executed by authorized representatives of both POPP and Client.
2. Terms of Service and AUP

The offer, provisioning and delivery of Services are subject at all times to the receipt by Company of all required approvals or authorizations from regulatory agencies having jurisdiction over the Services or the Company. Upon execution of the Service Agreement, Client shall be deemed to have accepted, and therefore will be bound by, all the applicable terms and conditions relating to the Services received and used.

**THESE TERMS OF SERVICE AND POPP'S AUP WILL BE LOCATED ON POPP'S MANAGE MY ACCOUNT WEBSITE ([mma.popp.com](http://mma.popp.com)) AND MAY BE MODIFIED BY POPP AT ANY TIME AS PERMITTED OR REQUIRED BY LAW. THE COMPANY SHALL PROVIDE CLIENT WITH AT LEAST THIRTY (30) DAYS PRIOR NOTICE OF ANY CHANGES THAT WOULD MATERIALLY AND ADVERSELY AFFECT CLIENT SO THAT CLIENT MAY ELECT TO DISCONTINUE SERVICE AND AVOID THE EFFECTS OF THE CHANGES. COMPANY NOTICE MAY BE FURNISHED BY: (1) A MESSAGE INCLUDED WITH THE INVOICE; (2) A POSTCARD OR LETTER; (3) CALLING AND SPEAKING TO CLIENT OR LEAVING A MESSAGE; OR (4) E-MAIL. THE COMPANY WILL PUBLISH CHANGES ON RELEVANT COMPANY WEBSITES AT LEAST FIFTEEN (15) DAYS IN ADVANCE OF THEIR TAKING EFFECT. CLIENT SHALL BE BOUND BY CHANGES AFTER THEY BECOME EFFECTIVE. CLIENT ACCEPTS THE INCORPORATION INTO THE AGREEMENT THESE TERMS OF SERVICE, THE AUP, AND ALL MODIFICATIONS MADE THERETO. CLIENT MAY OBTAIN A HARD COPY OF THE AGREEMENT (OR ANY OF ITS COMPONENTS) AT ANY TIME BY CONTACTING POPP AND REQUESTING IT.**

**TABLE OF CONTENTS**

**SUMMARY:** ..... 1

**1.0 DEFINITIONS** ..... 3

**2.0 LIMITATIONS ON SERVICE** ..... 3

**3.0 WARRANTIES AND STANDARDS FOR SERVICES** ..... 4

**4.0 INDEMNIFICATION** ..... 5

**5.0 CLIENT OBLIGATIONS** ..... 6

**6.0 BILLING AND PAYMENT ARRANGEMENTS** ..... 7

**7.0 WIRING** ..... 8

**8.0 SERVICE AND AGREEMENT TERM** ..... 8

**9.0 CLIENT SECURITY DEPOSITS; OTHER ASSURANCES OF PAYMENT** ..... 9

**10.0 BILLING DISPUTES** ..... 9

**11.0 DISPUTE RESOLUTION PROCESS** ..... 9

**12.0 SERVICE INSPECTION, TESTING AND ADJUSTMENT** ..... 9

**13.0 LABOR RATES** ..... 10

**14.0 SUPPORT AND RESPONSIBILITIES** ..... 10

**15.0 EQUIPMENT PURCHASED FROM POPP** ..... 11

**16.0 CLIENT PROPRIETARY NETWORK INFORMATION** ..... 11

**17.0 ASSIGNMENT** ..... 11

**18.0 TERMINATION** ..... 12

**19.0 NOTICES** ..... 12

**20.0 MISCELLANEOUS PROVISIONS** ..... 12

**21.0 ACCEPTABLE USE POLICY** ..... 13

**APPENDIX A - SERVICES - COMPUTER MAINTENANCE AND SUPPORT** ..... 14

**1.0 SCOPE AND COST OF SERVICES** ..... 14

**2.0 MONITORING SOFTWARE** ..... 15

**3.0 SERVICE INCLUSIONS AND EXCLUSIONS** ..... 15

## **1.0 DEFINITIONS**

- 1.1 **Affiliate:** Affiliate means, with respect to either Company or Client, any other entity which controls, is controlled by, or is under common control with the Company or Client. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of Company or Client management and policies, whether through the ownership of voting securities, by contract, or otherwise.
- 1.2 **After Hours:** Any time outside of Regular Business Hours
- 1.3 **Agent/Agent-sold:** When POPP sells the services of another provider, POPP acts as an agent, meaning that POPP acts on behalf of the client to place the order. Once the agent-sold services are installed, the client receives a bill for their services directly from the other provider and the provider's terms and conditions apply to the service.
- 1.4 **Client:** The individual, partnership, association, or corporation which contracts for Service and is responsible for the payment of charges and compliance with the rules and regulations of Company.
- 1.5 **Communications Facilities:** Facilities the Company leases, constructs or otherwise acquires in order to provide Service(s) to Client.
- 1.6 **Company:** POPP.com, Inc. dba POPP Communications.
- 1.7 **Company Holidays:** POPP observed holidays are New Year's Eve (afternoon), New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving (Thursday and Friday), Christmas Eve (afternoon) and Christmas Day. These days are subject to change depending on the day in which these holiday falls during any calendar year.
- 1.8 **End User:** Any person or entity that receives or uses POPP Service, irrespective of whether such person or entity is authorized by Client to receive or use Service.
- 1.9 **Local Area Network (LAN):** The ethernet wiring, ethernet switches, and Wifi that enable computers within your building to communicate with each other and share network resources.
- 1.10 **Mobile Device:** A Smartphone or Tablet running Android version 8+ or iOS version 11+
- 1.11 **Monthly Recurring Charges:** Monthly charges for Services and/or equipment.
- 1.12 **Network Equipment:** Hardware that enables the WAN and LAN to function. E.g. Router, Ethernet Switch, Firewall, WiFi router.
- 1.13 **Non-Recurring Charges:** A one-time charge associated with certain installations, change or transfer of services, either in lieu of or in addition to monthly recurring charges.
- 1.14 **Regular Business Hours:** Monday – Friday 7:00am – 5:30pm CST, excluding company holidays
- 1.15 **Server:** A computer system running the Microsoft Server operating system (2012 or newer)
- 1.16 **Start of Service Date:** The date the Company notifies a Client that Service is available for use by Client.
- 1.17 **User:** Someone who uses a computer system or software application. Also describes a pricing unit for the Computer Maintenance and Support package. A User may have up to 2 Workstations and 1 Mobile Device.
- 1.18 **Wide Area Network (WAN):** A leased connection to other branch offices or to the internet. Aka Internet Connection.
- 1.19 **Workstation:** A computer (desktop or laptop) running the Microsoft Windows 10 Operating System.

## **2.0 LIMITATIONS ON SERVICE**

- 2.1 **Right to Alter Service:** In its sole discretion and without liability to Client, Company may: (a) alter the methods, processes, or suppliers by or through which it provides Service; (b) change the facilities used to provide Service; or (c) substitute comparable Service for that being provided to Client. If necessary due to the potential impact on affected Clients, the Company will furnish prior notice of alterations, changes or substitutions.
- 2.2 **Company's Right to Block or Discontinue Service Without Notice to Client**
  - 2.2.1 **Network Blockage or Degradation:** The Company may discontinue furnishing Service if Client uses or misuses Service in a manner that results, or could result, in network blockage or other degradations that adversely affect the Service furnished to Client or to other existing or prospective Clients of the Company.

2.2.2 Client Violation of Agreement or Law: The Company may discontinue the furnishing of Service if Client uses or threatens to use Service for any unlawful purpose or otherwise violates the terms of the Agreement.

2.3 The billing account service address must be in the POPP Twin Cities metro area of Minnesota

### 3.0 WARRANTIES AND STANDARDS FOR SERVICES

The Company's efforts to resolve computer problems are made in good faith, however Company makes no warranties about the ability to solve/correct all issues with computers, computer software, or computer end-users. The Company makes no guarantees to achieve any specific desired results. The Company and Client agree to comply with all applicable local, state, and federal laws, regulations, and ordinances in the performance of its respective obligations under the Agreement. Company makes no representations or warranties, whether expressed, implied or statutory, regarding the Services, system equipment or Company owned or provided equipment used by Client, including any equipment with respect to which title may transfer to Client (except to the extent set forth in any separate POPP sale transfer document). This exclusion applies to, but is not limited to, any warranty of system availability/uptime and/or functionality during any phase of providing services, any ability to resolve specific computer/technical problems, avoid data loss, recover lost data, as well as any expressed or implied warranties of merchantability, fitness of services or equipment for a particular purpose, or non-infringement of any third-party rights. Information relating to the Client's account will only be given to authorized client contacts listed on the account. It is the Client's responsibility to notify POPP of changes to the authorized contacts.

#### 3.1 Limitations on Liability

3.1.1 Direct Damages: Even if advised of the possibility of losses or damages, Company shall not be liable, except as set forth herein, for any losses or damages resulting from: (a) its provisioning of Service to Client; (b) any act or omission of Client, those using Client's Service or third party entities furnishing products or services used in connection with Service; or (c) the loss or destruction of Client data resulting from the use of Service. In no event shall Company's liability be greater than an amount equal to the sum of two times the Client's monthly Recurring Charges. By entering into the Agreement and remaining a Client, Client manifests its acceptance of this limitation on direct damages as fair and reasonable.

3.1.2 Indirect or Consequential Damages: Neither Company nor Client shall be liable to the other for any indirect, incidental, exemplary, punitive or other consequential damages, whether or not foreseeable, including, but not limited to, damages from the loss of data, business goodwill or profits, savings or revenue, harm to business, whether under contract, tort (including negligence), strict liability or any other theory of liability. A party's out-of-pocket costs for damages recovered by a third party shall be deemed to be indirect damages suffered by such party, except to the extent such damages are part of a claim for which indemnification is due under Section 4.0 "Indemnification". Company shall not be held liable for any damage arising from interruption, delay, error, defects in transmission, or the like, occurring in the course of furnishing Services nor for the costs incurred by Clients for calls/data not placed over Company's Communication Network.

3.1.3 Service Interruptions: The Company's liability for Service interruptions, if any, shall be limited to credit outage allowances expressly provided for in the Agreement.

3.1.4 Delays: The Company shall not be liable to Client for losses or damages resulting from its inability to provide Service or from any delay in meeting a scheduled Start of Service Date.

3.1.5 Force Majeure Events: In no event shall Client have any claim or right against Company for any failure of performance due to causes beyond the Company's control, including, but not limited to: acts of God, fire, explosion, vandalism, cable cut, storm, flood or other similar occurrences; any law, order, regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over Company or of any department, agency, commission, bureau, corporation, or other instrumentality of any federal, state, or local government, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; acts of terrorism; riots; wars; strikes; lock-outs, work stoppages or other labor difficulties; or supplier failures, shortages, breaches or delays.

3.1.6 Facilities, Services, Equipment or Systems of Others: The Company shall not be liable for the unavailability, or deficient performance, of any facilities, services, equipment or systems used in connection with the provision of Services that are under the control of Client or any third party, even if the Company has acted as the Client's agent in procuring such facilities, services, equipment or systems from third parties. Client's rights with regard to the unavailability or deficient performance of such facilities, services, equipment, or systems not provided by the Company shall be strictly as established by the supplying entity.

3.1.7 Cloud/Internet Services: All Cloud/Internet Services are provided "as is." Client acknowledges and agrees that communications and transactions conducted over the internet/PSTN may not be secure; that system failures may limit Client's access to and use of services; and that services are not guaranteed to be error free. By subscribing to and using

Cloud/Internet, Client manifests its acceptance of all the risks associated with the use of these services, specifically, and the Internet, generally.

- 3.1.8 Client's Failure to Fulfill Obligations: The Company shall not be liable to Client or any third party for Client's failure to fulfill its obligations, including, without limitation:
- i. Obtaining, installing, and maintaining all necessary equipment, materials, and supplies for interconnecting Client or third-party facilities, services, equipment or systems to Services;
  - ii. Securing all licenses, permits, approvals, rights-of-way, access rights, including ingress and egress from buildings, and other arrangements necessary to install, receive and use Services; and
  - iii. Ensuring that Client or third-party facilities, services, equipment, or systems interface properly with Services; that the signals delivered to the Company's Service are fully compliant with industry standards; and that such signals do not damage Company property or personnel, or degrade Service to other Clients of the Company.
  - iv. License of software: Client understands and acknowledges that most, if not all, software products are protected by various copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Additionally, most, if not all, software products are licensed and not sold. Further, most, if not all, software products require the end user to agree to a license agreement with the software vendor. Included with many such license agreements are restrictions on the use of the software and the requirement of a license for each computer for which the software is installed. Proper licensing of client-provided software is Client's responsibility.
  - v. Client understands and acknowledges that for any software which Client provides to POPP and requests POPP to install, that it is the Client's sole responsibility to ensure that Client has a valid license for each computer on which the software is installed, in the event said license is a requirement of a licensing agreement with a vendor. Additionally, it is the Client's sole responsibility to adhere to various copyright laws and international copyright treaties, as well as other intellectual property laws and treaties and any other terms required under any licensing agreement with software vendors and not the responsibility of POPP.
- 3.1.9 Misuse of Client Service: The Company shall neither provide credit allowances nor otherwise be liable for the use, misuse or abuse of Client's Service by Client, its agents, employees or any third parties including, without limitation, members of the public. If Company cooperates with Client by recommending potential solutions to reduce or eliminate the unauthorized use of Client's Service, Company undertakings shall not be deemed to be promises or guarantees by Company that the unauthorized use of Client's Service will be reduced or eliminated, and in no event shall Company incur any liability in connection with those undertakings to Client or any third party. In all instances, Client shall be responsible for its facilities, services, equipment or systems interconnected with the Company's Service.
- 3.1.10 Billing Errors: The Company's obligation with respect to any errors resulting in Client overpayments for Service is limited to granting invoice credits equal to the dollar amounts erroneously billed in the most recent prior monthly billing period statement. Client must provide Company written notice of any such erroneous billings and/or overpayments within 30 days after the applicable monthly billing period statement is issued to Client; Company shall have no obligation to grant invoice credit requests submitted by Client after such 30 day period. Under no circumstance will any billing error affect the Client's obligation to pay for Services rendered and used.
- 3.1.11 Client-Provided Equipment/Repair and Maintenance: Company shall not be responsible or liable to Client or any third party for any damages resulting from the installation, operation, repair, or maintenance of any Client-provided equipment, including without limitation performed by the Company at its discretion or at the request of Client.

#### **4.0 INDEMNIFICATION**

- 4.1. Client's Indemnification of Company: Client will defend and indemnify the Company, its employees, directors, officers and agents, from and against any suit, proceeding or other claim brought by an entity that is caused by, arises from, or relates to: (a) damage to real or tangible personal property, personal injuries (including death) arising out of the gross negligence or willful act or omission of Client in the use of the Service; (b) representations regarding the nature of Client's traffic and any use, operation or resale of Service by Client in contravention of the Agreement, including without limitation, claims of libel, slander, unauthorized use of copyright or trademark by Client or the business activities and practices of Client arising from Client's use of the Service; and (c) any damages or liabilities arising from any installation, repair or maintenance of any Client-provided equipment, performed by the Company at the request of Client.
- 4.2. Intellectual Property: If a Service provided by the Company becomes, or if the Company reasonably believes a Service it is providing may become, the subject of a suit, proceeding or other claim by an entity (not a party to or an Affiliate of a party to the Agreement) that the Service directly infringes the U.S. patent, trademark or copyright rights ("Intellectual Property") of such entity, the Company shall, at its own expense and option: (a) procure the right for the Company to continue to provide the Service; or (b) modify or

replace the Service with a different service that has substantially similar functionality; or (c) discontinue providing or direct the cessation of any use of the Service and refund to Client a pro-rated portion of any charges paid for the affected Service through the date of Service discontinuation or cessation. Notwithstanding the foregoing, the Company will have no obligation to defend or indemnify Client, and Client will defend, indemnify and hold harmless the Company for any suit, proceeding or claim arising out of: Client's: (a) designs, specifications, modifications, or configurations; (b) combination of Client hardware or software, or other materials, services or methods with the Service; or (c) use, operation or resale of the Service in breach of its obligations and responsibilities.

4.3. These Client and Company indemnifications will survive the Agreement.

## **5.0 CLIENT OBLIGATIONS**

5.1 Commencement of Relationship and Service Provisioning: The execution of the Agreement by Client and acceptance thereof by Company establishes the respective rights and obligations of the parties. If there is no executed Agreement but Client nevertheless uses Services, Client is deemed to have consented to all terms of the Agreement, including documents and publications incorporated therein by reference, e.g., these Terms of Service. Client shall allow Company, its agents, or contractors reasonable access to Client's premises to facilitate Service installation, maintenance, testing, repair and termination of Service, including the retrieval of Company property used to provide Service.

5.2 Use and Maintenance of Client-Provided Facilities, Services, Equipment and Systems: If Client, its agent or contractor fails to operate and maintain Client-provided facilities, services, equipment and systems interconnected with a Service, with the result that there is harm or imminent harm to Company, its Services, personnel or other clients, Company may require Client, at its expense, to acquire, install and use protective equipment/software/services designed to eliminate such harm. If the protective equipment/software/services fails to eliminate the harm, Company, following the delivery of written notice to Client, may suspend or terminate Client's Service, without any liability or further obligation to Client.

5.3 Client and Company mutually agree that they shall not disclose to any non-party to the Agreement, any confidential information of the other party. Confidential Information is information which relates to the other party's research, development, trade secrets, business affairs, but does not include information which is generally known or easily ascertainable by nonparties of ordinary skill in computer design, programming, networking, information technology, or the specific business interests of either party. Company hereby acknowledges that during the performance of duties within the Agreement, Company may learn or receive confidential Client information and therefore Company hereby confirms that all such information relating to the Client's business will be kept confidential by Company, except to the extent that such information is required to be divulged to Company's clerical or support staff, associates, or partners in order for Company to perform contractual obligations. Further, without the prior written consent of the Company, Client may not:

5.3.1 Use any service mark or trademark of the Company or its Affiliates, including those licensed to the Company or its Affiliates, or

5.3.2 Refer to the Company or any of its Affiliates in connection with any service or product, promotional offering, or publication of Client.

5.4 Each of Company's personnel assigned to the Client under the Agreement will, at all times, remain an employee of Company and is not an employee of Client. Client is hereby contracting with Company for the services described in the Agreement and Company reserves the right to determine the method, manner, and means by which the services will be performed. Company is not required to perform the services during a fixed hourly or daily time. Company personnel shall not be required to devote his/her full time to the performance of the services required hereunder, and it is acknowledged that Company has other clients and offers services to the general public. The order or sequence in which the work is to be performed shall be under the control of Company.

5.5 Non-Solicitation of Employees: During the term of any active agreement and for a period of twelve (12) months thereafter, Client agrees not to solicit, recruit, or employ any employee of POPP without the prior written consent of the President or Vice President of POPP. POPP hereby agrees that it will not solicit, hire, or retain, in any capacity whatsoever any of Client's employees without written consent from Client.

5.6 Client's Consent to the Use of Electronic Records: Client consents to the use by Company of electronic records in a form or forms chosen by the Company.

5.7 Notice of Claims and Problems: Client immediately shall notify Company upon its receipt of any information that might adversely affect the Company, including, but not limited to, notices of any claims or proceedings that involve Service, and Client promptly shall notify Company of any problem relating to Service or Service performance and reasonably cooperate with Company in repairing the Service problem.

5.8 Additional Services: Client may request additional Service(s) from Company, which Company, in its sole discretion, may agree to provide pursuant to an additional Agreement including, if applicable, any incorporated tariff(s).

5.9 Cooperation on Audits: If another company, carrier, or regulatory agency seeks to audit traffic involving Services furnished under the Agreement, Client will cooperate in any such audit investigation. In addition, to the extent any third party attempts to recover access fees, reciprocal compensation or other charges, surcharges or taxes from Company as a result of such audit investigation, Client will indemnify and hold harmless Company for any and all costs and charges resulting from such third party action.

## **6.0 BILLING AND PAYMENT ARRANGEMENTS**

6.1 Client Responsibility for Payment: Client shall pay Company for Services at the applicable recurring, nonrecurring and usage rates and charges established by the Company. Service requested by Client shall identify the type and quantities of Service desired, the location(s) at which Service is to be provided, the requested term of Service and such other information required by the Company to provision and invoice Service.

6.2 Invoicing and Payment Deadline: Client's obligation to pay for Service shall begin upon acceptance of the agreement. Client will be invoiced immediately for Setup Fees. Service invoicing will occur on a monthly basis. Recurring monthly fees are billed on 15<sup>th</sup>, due and payable in ten (10) calendar days on the 25<sup>th</sup> of each calendar month prior to work being performed for the following calendar month, whether or not client has received an invoice from POPP.

6.3 Billing for cloud services will begin once service/licenses are acquired by POPP on the client's behalf.

6.4 All invoices to Client for labor or other non-recurring charges shall be due within twenty (20) calendar days of invoice date.

6.5 Upon acceptance of any given quote, proposal, and/or statement of work, 50% of all labor charges and the total of all hardware and software costs are due. The balance is due upon delivery and/or completion of proposed hardware and/or software and/or services.

6.6 Usage Charges: Usage Charges (e.g. Cloud Storage costs) are billed in arrears, based upon Client's actual usage during the prior monthly billing period.

6.7 Other Charges Not Included in Service Rates or Charges:

6.6.1 Taxes: Service rates and charges are exclusive of all taxes, fees. Client shall be responsible for, and must pay, all taxes, including, without limitation, sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, consumption and other taxes, fees, duties, charges, however designated, and imposed directly on the Company based on the provision, sale or use of Service. If Client believes it, or the Services it receives and uses, are exempt from any tax, Client will provide Company with a properly executed exemption certificate in a form acceptable to the Company that evidences the exemption claimed. In no event will Client be responsible for any income taxes levied on Company. Client's obligation to pay applicable taxes (and all other charges due and owing for Service) shall survive the expiration of the Agreement.

6.6.2 Setup, Installation and Disconnect Fees: Client shall pay all applicable setup, installation and disconnect fees, which will be invoiced on a Non-Recurring Charge basis and are non-refundable.

6.8 Late Payment Fee on Past Due Amounts: Invoices not paid in full by Due Date of the invoice will be past due and subject to a \$10.00 Late Payment Fee.

6.9 POPP reserves the right to refuse service of any kind on all accounts with past due balances.

6.10 Treatment of Credit Balances: If a Client whose account for Service has been closed has a credit balance showing, POPP will confirm there are no outstanding charges, such as those related to equipment or contractual obligations. Once POPP determines that the Client's obligations have been met, POPP will transfer the credit to another POPP account balance (if applicable), mail a check to the Client's last known address, or refund the credit to the Client's credit card on file within 90 days of the last activity on the account.

6.11 Recovery of Collection Costs: Unless otherwise prohibited by law, Client shall reimburse Company for any costs incurred by the Company in undertaking any collection activity, including, but not limited to, the reimbursement of reasonable attorneys' fees.

6.12 Invoicing De Minimis Amounts: The Company may invoice Client on other than a monthly basis or, alternatively, excuse Client from its monthly payment obligation if only a de minimis amount is due and owing. In such instances, the Company may bill Client every other month or, alternatively, not invoice Client until the amount due and owing reaches a level the Company deems sufficient to justify invoicing costs.

6.13 Handling/Printing/Mailing Fee: All invoices will be delivered to Client electronically via email. Company will assess a \$2 Handling/Printing/Mailing Fee to deliver a paper invoice by mail at Client request.

- 6.14 Dishonored Checks: When a check which has been presented to the Company by a Client in payment for charges is returned by the bank, Client shall be responsible for the payment of a returned check charge of \$30.00.
- 6.15 Payments: All payments will be in U.S. currency.
- 6.16 Phone Payments: Each credit card or electronic check payment made over the phone will be assessed a \$5 fee.
- 6.17 Right of Offset: If Client defaults on any payment obligation owed the Company under any agreement for more than thirty (30) days and Company has funds that are owed the defaulting Client, Company, upon notification to the defaulting Client, may offset that which it is owed by first applying such funds to the full balance due by the defaulting Client. Any amount remaining following the offset shall be remitted to Client in the normal course of business.
- 6.18 Manufacturer Support: POPP in troubleshooting reported issues may encounter issues that require the involvement of the manufacturer of the hardware or software, and Client agrees that POPP is not responsible for any manufacturer charges for such involvement in resolution of Client issues.

## **7.0 WIRING**

- 7.1 Company does not warranty existing wiring inside Client's building or suite is suitable for any specific use. Client may request Company technicians to install new voice/data cabling or attempt to repair existing cabling/jacks. Any cabling performed by Company will be billable at Time & Materials rates.
- 7.2 Company technicians are not allowed to complete Inside or Voice and Data Wiring in certain buildings, including but not limited to, Mall of America, Rosedale Center, IDS Center, and the 511 Building (downtown Mpls). These building owners require their own employees/vendors to perform Wiring. In these instances, Company will defer to in-house technicians to perform wiring.
- 7.3 Company will not terminate Wiring directly to Client-owned Safety Systems, Telephone Systems or other specialized client-owned equipment. POPP will provide, coil and tag Inside Wiring at the DMARC or will extend the Wiring from the DMARC to an area near the Client-owned equipment. The termination of the Wiring to the equipment is to be performed by a qualified vendor for said equipment. Coordination of said vendor and any fees associated to said vendor are the sole responsibility of the Client.

## **8.0 SERVICE AND AGREEMENT TERM**

- 8.1 Service: POPP agrees to perform for Client the services listed in the "Scope of Services," attached hereto as Appendix A ("Services"). The service known as "POPP Computer Maintenance and Support" is intended to cover the monitoring and maintenance of computer operating systems and software only. It is not intended to cover any materials, equipment, consumables, hardware failures, troubleshooting or replacements, or any labor related to projects other than the proper maintenance of operating systems and software. Any labor provided outside the scope of the Agreement will be at the current labor rate.
- 8.2 Computer Maintenance and Support Agreement Term: The Service Agreement shall commence on the date set forth in the signed Service Agreement and shall continue until the end of the month after either party hereto provides the other with thirty (30) calendar days written notice of termination. For example, if notice of termination is given on March 15th, the agreement will be in effect until the end of April.
- 8.3 If Client has contracted for products or services for longer than a month-to-month term, Client shall remain responsible for 100% of charges until the end of the respective subscription/lease agreement term, Examples include, but are not limited to:
  - 8.3.1 Subscription Software Services (e.g., M365 with an annual commitment)
  - 8.3.2 Managed/Leased Hardware Services (e.g., SonicWall firewall with a security service subscription)
- 8.4 After receipt of an order that adds to the Services, POPP may take reasonable action and expend reasonable amounts of time and money in completion of such order. If Client decides to cancel order, Client agrees to pay POPP for such action and expenditure as set forth in the Terms of Service.
- 8.5 Although POPP will undertake to perform in accordance with Client's requests, POPP does not guarantee any particular result and Client acknowledges and agrees that POPP shall not be liable to Client for any claims or damages in the event that, after reasonable efforts, POPP is unable to achieve the result requested by the Client.
- 8.6 The enforcement of the agreement shall be governed by the laws of the State of Minnesota. If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified



accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

## **9.0 CLIENT SECURITY DEPOSITS; OTHER ASSURANCES OF PAYMENT**

9.1 Deposits and Other Assurances of Payment: Applicants for Service or existing Clients whose financial condition is neither known nor acceptable to the Company may be required at any time to provide the Company with a deposit as a condition of the initial or continued receipt of Service. A deposit may be in cash or equivalent, up to an amount equal to the applicable installation charges, if any, or up to two (2) month's actual or estimated monthly recurring and usage charges for the Service(s) requested or provided. The Company will pay simple interest at the rate set annually by the Commissioner of the Minnesota Department of Commerce for the period during which it holds a Client's cash deposit, unless a different rate of interest is established and applicable in the jurisdiction in which service is provided. The Company may refund a deposit at any time to Client by crediting it, with accrued interest, against the Client's account. The Company may refuse to accept a request for Service, cease processing a Service request, or suspend or terminate Service if Client refuses or fails to comply with any Company request for a security deposit or other assurance of payment.

## **10.0 BILLING DISPUTES**

10.1 In the event that the Client disputes any charges billed by the Company prior to suspension of service, the Company shall withhold suspension of service and promptly investigate the dispute. Client must submit to Company an itemized statement in writing identifying the disputed charges and reasonably explaining the basis of the dispute prior to the next billing cycle. A dispute of charges does not impact the Client's responsibility to pay all undisputed charges by the due date.

10.2 Company shall promptly investigate the dispute and advise Client of the investigation and its results within thirty (30) days of the Company's receipt of Client's dispute. In concluding its investigation, the Company will consider all relevant and credible information provided by Client as well as by other information reasonably available to Company. If a dispute is not resolved within that period, either Company or Client may seek alternative dispute resolution in accordance with the Dispute Resolution Process set forth in Section 11.

10.3 Upon completion of its investigation and advising Client of its findings, the Company may proceed with disconnection of service as provided in Section 7810 of the Minnesota Administrative Code. Upon being advised of the Company's investigation and findings, Client shall remit payment in full for any outstanding bill that was subject to dispute, even if Client is not satisfied with the results of the Company's investigation. Company may assess a late payment fee of \$10 on any undisputed balances not paid when due or any disputed balances later found to be correct. Late payment fees may be assessed, as of the original Due By Date, against any disputed amount denied by Company.

## **11.0 DISPUTE RESOLUTION PROCESS**

11.1 The parties agree to use the dispute resolution procedures set forth in this section with respect to any controversy or claim arising out of or relating to the Agreement or its breach, except that either party may elect to litigate the following types of controversies or claims: (i) action seeking a temporary restraining order or injunction, (ii) a suit to compel compliance with this dispute resolution process, (iv) Client's non-compliance with publicity provisions, or (v) billing or payment disputes or collections matters.

11.2 Either party may submit a dispute to binding arbitration for resolution by a single arbitrator with a professional arbitration service mutually agreeable to the parties after furnishing the other party ten (10) days prior written notice. If the parties cannot agree on an arbitration service, the arbitration will take place pursuant to the American Arbitration Association ("AAA") Commercial Arbitration Rules and Mediation Procedures. The parties shall bear equally the costs of arbitration, including the fees and expenses of the arbitrator. Each party shall bear the cost of preparing and presenting its case, which will be heard at a mutually agreeable site in Hennepin County, Minnesota.

11.3 This section and the arbitrator's authority to grant relief shall be subject to the Federal Arbitration Act, 9 U.S.C. §§ 1-16, et seq. ("FAA"), the provisions of the Agreement, and the AAA Code of Ethics for Arbitrators in Commercial Disputes. The arbitrator shall have no power or authority to make any award that provides for punitive or exemplary damages or damages otherwise limited or excluded in the Agreement. The arbitrator's decision shall be final, binding, and non-appealable. The award may be confirmed and enforced in any court of competent jurisdiction. The FAA shall govern all post-award proceedings.

## **12.0 SERVICE INSPECTION, TESTING AND ADJUSTMENT**

12.1 Inspection: Upon reasonable notice, Company may conduct inspections of Service to determine whether Client is satisfying its obligations under the Agreement. Company may interrupt Service at any time, without liability or penalty, if it determines the Client

is non-compliant with any Agreement requirement. No outage allowance credit will be given for any Service interruption occurring during an inspection.

- 12.2 Access and work on Client's Premises: Upon reasonable notice, Client shall make Service available to Company computer programs, data and documentation required by POPP to complete the Services. POPP will ensure that its employees and agents will, whenever on Client's premises, obey all reasonable instructions and directions issued by Client.

### **13.0 LABOR RATES**

- 13.1 POPP's current Labor Rates can be found at [popp.com/ccs\\_lr](http://popp.com/ccs_lr)
- 13.2 General Technician Labor Rate shall apply to any time POPP is engaged or involved in the performing of support items, tasks, or processes that include but are not limited to:
  - 13.2.1 Troubleshooting, installation, and configuration of common hardware and/or software.
  - 13.2.2 Network administration and/or management.
  - 13.2.3 Workstation and server administration and/or management.
- 13.3 Project/Engineering Labor Rate shall apply to any time POPP is engaged or involved in the discussion, consulting, analysis, strategizing, architecting, engineering, and/or development of processes, which include but are not limited to:
  - 13.3.1 Hardware, software, and/or services which comprise a local area, wide area, VoIP and/or wireless network.
  - 13.3.2 Software application development, whether existing or custom.
  - 13.3.3 Guidance, usage, and implementation of commercially available line of business/specialized software.
  - 13.3.4 Development of business process, technology direction, diagrams/workflows.
  - 13.3.5 Migrating programs and data from current location to new location (be it hardware and/or virtual).
  - 13.3.6 Installation and configuration of uncommon hardware and/or software.
- 13.4 All work is performed remotely by default. If it is necessary to perform the work on-site or Client request that work be performed on-site that work will be billed at the On-site Labor Rate.
- 13.5 In the event that troubleshooting work is billable, the billable time will begin as soon as the technician begins troubleshooting the reported issue.
- 13.6 These rates are subject to change, subject to a thirty (30) calendar day written notice.

### **14.0 SUPPORT AND RESPONSIBILITIES**

- 14.1 The following items are billable to the Client if not covered under a Computer Maintenance and Support Package at the rates in Section 13.0 "Labor Rates":
  - 14.1.1 Proactive maintenance and testing.
  - 14.1.2 Troubleshooting and support.
  - 14.1.3 The installation of any updates and security patches.
- 14.2 Support calls are prioritized by severity, and then by the order in which each call is received. Critical equipment outages are treated with the highest priority. POPP will make a good faith attempt to return every support service call within four (4) business hours from receipt of call, during regular business hours.
- 14.3 Client is responsible for maintaining a working broadband connection, and Local Area Network with sufficient bandwidth to facilitate services and agrees to cooperate with POPP and POPP's employees for the purpose of providing remote support and troubleshooting. This may require Servers, Workstations, and other equipment to be left powered on and connected to the network

outside of working hours for maintenance to take place. POPP can furnish any necessary local area network cabling (not already in place) at billable labor rates.

- 14.4 Client is responsible for the cost of all hardware, software, consumables, labor, and related costs for repair or replacement of hardware.
- 14.5 Client-provided hardware and/or software and/or services, can be installed or addressed, however, unless specifically indicated in the quote, proposal, and/or statement of work, installation of client-provided hardware and/or software and/or services is not included as part of said proposal and shall be chargeable to Client at the rates in Section 13.0 "Labor Rates".
- 14.6 After-hours support is provided by an "on-call" technician for any emergency technical call that is received outside of regular business hours, including weekends and holidays. POPP's technician will make a good faith effort to assist with client emergencies by telephone or remote support tools outside of regular business hours.
- 14.7 Service calls that cannot be completed during regular business hours will be completed by POPP during the next available regular business hours' time slot. In the event that client requests that POPP continue to work after regular business hours, client shall pay the "After Hours Rate" for said work.

## **15.0 EQUIPMENT PURCHASED FROM POPP**

- 15.1 Title to any hardware and/or software here in being purchased is retained by POPP until complete and full payment of all outstanding invoice(s) is paid for by Client, regardless of whether Client has paid a specific invoice which may itemize a specific item of hardware and/or software. Once all Client's invoices have been paid to POPP, title shall pass to Client. Further, Client grants POPP authorization to enter upon its premises for removal of any hardware and/or software purchased from POPP for any unpaid invoice(s). While Client acknowledges that POPP has no obligation to accept return of any said listed hardware and/or software, in the event POPP accepts return or repossesses any listed hardware and/or software, Client will remain liable to POPP for 50% of the original purchase price of said listed hardware and/or software as a restocking charge.
- 15.2 Costs Incurred to Provision Services: Client will be responsible for all costs incurred in accommodating the provisioning of Service at its premises, including, without limitation, those pertaining to electricity, HVAC, and security. If any of Client's equipment requires reprogramming to make it compatible with Company provided Service, Company shall not be liable for any applicable costs associated with reprogramming charges.

## **16.0 CLIENT PROPRIETARY NETWORK INFORMATION**

- 16.1 Client Proprietary Network Information: To inform Client of Company or Affiliate products that may be of interest to Client, the Company may wish to use information derived from its provision of Service to Client, particularly information referred to as Client Proprietary Network Information ("CPNI") under Part 64, Subpart U, of the Commission's Rules and Regulations, 47 CFR Sec. 64.2001 et seq. CPNI includes, among other things, the identity and quantity of Services to which Client subscribes, information on how the Services are used, and billing information pertaining to the Services. Federal law restricts the use of CPNI for purposes other than providing the Service to which Client subscribes, without Client approval.
- 16.2 Client Approval of CPNI Use by Company: By entering into the Agreement it is deemed that the client has signified its approval of the use of CPNI by Company or an Affiliate of Company. A Client's approval will remain in effect until Client contacts Company and states it no longer wants the Company to use its CPNI to market other Company or Affiliate products to Client. To revoke its approval, Client may contact Company at any time and at no cost to Client by dialing 1-800-234-7677 or by locating information about contacting Company <http://www.popp.com>.

## **17.0 ASSIGNMENT**

- 17.1 Assignment: Client may not sell, transfer, or assign the Agreement or the Service(s) thereunder, in whole or in part, without the prior written consent of the Company, which consent may be granted or denied in the Company's sole and exclusive discretion. Any such assignment without Company's prior written consent shall be void, and in such event, Company shall have the option of terminating the Agreement and Service(s) thereunder, and requiring Client to pay the applicable charges. In the event the Agreement is assigned by Client in accordance with the foregoing to any other party which, prior to the assignment, has an agreement (the "Prior Agreement") with the Company for the provision of Service, the Service being provided under the transferred Agreement shall continue to be governed by the transferred Agreement, and the other/prior Service provided shall continue to be governed by the Prior Agreement, each without reference to the other except that the Company may require a deposit as provided in the Agreement.
- 17.2 POPP may subcontract with others to provide some or all of the services set forth in these terms of service. Any such subcontracting shall incorporate by reference all the terms of the Agreement.

## **18.0 TERMINATION**

18.1 Termination. The Agreement can be terminated with 30 days written notice from either party. Upon termination of the Agreement, POPP shall uninstall all remote monitoring and management software from all Client equipment. Client acknowledges that monitoring, updates, patching, virus scanning, and backups provided by POPP will cease. POPP shall not be held responsible for any damages or consequences resulting from the removal/absence of remote monitoring and management, anti-virus, and backup software provided by POPP.

## **19.0 NOTICES**

19.1 Notices to POPP: Notice required of Client under the Agreement shall be in writing and delivered by certified mail; return receipt requested, to POPP Communications, 620 Mendelssohn Avenue North, Golden Valley, MN 55427-4300 Attn: Finance Department. A notice shall be effective on the date of its receipt by the Company.

19.2 Notices to Client: Notice sent to Client will be e-mailed to the designated primary contact on the account.

## **20.0 MISCELLANEOUS PROVISIONS**

20.1 Relationship Among the Company, Client, and Third Parties: The Agreement does not render the Company or Client the agent or legal representative of the other, nor does it create a partnership or joint venture between the Company and Client. Neither Company nor Client shall have any right or authority to bind the other in any manner whatsoever. The Agreement confers no rights or authority of any kind on third parties. POPP and Client are contractors independent of one another and neither party's employees will be considered employees of the other party for any purpose.

20.2 Severability: Any provision found unlawful by a court or regulator having jurisdiction shall be deemed to be severed from the Agreement, but such severance shall have no effect on the enforceability of the remaining provisions of the Agreement.

20.3 Choice of Law and Venue: The Agreement is made pursuant to, and shall be construed and enforced in accordance with the laws of the State of Minnesota, without reference to its principles of conflicts of laws, and Client explicitly consents to the exclusive jurisdiction and venue of the federal and state courts located in Hennepin County, Minnesota.

20.4 Non-exclusive Dealing: The Agreement is non-exclusive. Nothing shall prevent Client or Company from entering into similar arrangements with, or otherwise providing Services to, any other person or entity.

20.5 No Publicity: Client may not issue a news release, public announcement, advertisement, or other form of publicity concerning the existence of the Agreement or the Service provided without the prior written consent of the Company. Failure to comply with this obligation shall allow the Company to immediately terminate the Agreement, in addition to seeking any and all other remedies available in law or equity.

20.6 Survivability: The terms and conditions contained in the Agreement that, by their sense and context, are intended to survive the performances of the parties shall survive the completion of those performances and the Agreement's termination. These include, without limitation, the making of payments due under the Agreement.

20.7 No Waiver: No waiver of any of the provisions of the Agreement shall be binding unless made in writing and signed by the waiving party. The failure of either party to insist on the strict enforcement of any provision of the Agreement shall not be deemed to constitute a waiver of the provision, and all terms and conditions shall remain in full force and effect.

20.8 Complete Agreement: The Agreement, incorporating all the applicable documents, appendices referenced herein, represents the entire agreement for Computer and Cloud Services between the parties with respect to Service, and supersedes all other prior Computer and Cloud Services agreements between the parties, whether written or oral. The Agreement may be modified only by writings executed by authorized representatives of the parties, Company changes made to referenced URL sites, Company changes to applicable tariffs, or as otherwise specifically provided for between the parties. In no event shall the Agreement or any component thereof be modified, amended or affected in any way by e-mail correspondence between or among the parties' employees, agents or representatives. Should the client also choose to purchase Phone, Voice, or Internet services from POPP, a separate service agreement and Terms of Service shall govern those products.

20.9 POPP shall not be bound by any terms or conditions printed on purchase order, check, or correspondence from Client without prior written acceptance of such terms. Any such terms or conditions are hereby rejected, unless agreed to in writing signed by POPP's President or Vice President.

**21.0 ACCEPTABLE USE POLICY**

21.1 The terms and conditions of the AUP, which may be updated from time to time, are hereby incorporated by reference and made a part of the Agreement. Client acknowledges that it has reviewed the POPP Acceptable Use Policy (AUP) found at [www.popp.com](http://www.popp.com) and agrees to be bound by the terms and conditions of the AUP.

**Rev. 4/19/23**

## APPENDIX A - SERVICES - COMPUTER MAINTENANCE AND SUPPORT

### 1.0 SCOPE AND COST OF SERVICES

- 1.1 POPP agrees to provide consulting services related to computer hardware, software, network configuration, Windows operating systems and networks, database development, and programming. Such work will be done on behalf of Client and will be performed at a location or locations to be determined by POPP. Work may be performed at the client's site or remotely, at POPP's discretion.
- 1.2 Computer Maintenance and Support Package Definitions:
- 1.2.1 Client must choose Standard or Premium, and all enrolled computers will be enrolled at one level or the other. Client may not, for example, enroll some computers at Standard and other computers at Premium.
- i. Computer Maintenance and Support – Standard:
1. Computer Maintenance and Support - Standard plan includes only the labor hours required to deliver the services in the Computer Maintenance and Support - Standard plan, and does not include any Support hours for the day-to-day troubleshooting and support work, day-to-day administrative add/move/change work. Any such work requested by the client will be billable at the rates described in Section 13.0 "Labor Rates."
  2. Computer Maintenance and Support – Standard also does not include any hours for Project/Engineering labor. POPP will provide the Client with advance notification if work requested will be charged at the Project/Engineering rate, as described in Section 13.0 "Labor Rates", due to the nature of the request. See also section 4.0 "Service Inclusions and Exclusions."
- ii. Computer Maintenance and Support – Premium:
1. The Computer Maintenance and Support- Premium plan includes the labor hours required to deliver the services in the Computer Maintenance and Support - Standard plan as well as day-to-day troubleshooting and support work and day-to-day administrative add/move/change work; performed during regular business hours, as described in Section 13.0 "Labor Rates". "Day-to-day" work describes items that can generally be solved/updated within 30 minutes of time each. POPP will provide Client with notification if work requested exceeds the definition of day-to-day and/or will be billable at the General Technician Labor Rate or the Project/Engineering rate, as described in Section 13.0 "Labor Rates", based on the nature or extent of the request. Additionally, some items are excluded as describe in Section 4.0 "Service Inclusions and Exclusions."
  2. Pricing for Premium plan is per User. A User may have up to 2 Workstations and 1 Mobile Device. If total workstations exceeds 2x qty. of users, additional charges apply.
- 1.2.2 Client agrees to enroll all active computers (servers and workstations) that are or will be a member of the Client's Microsoft Active Directory Domain into the Computer Maintenance and Support Package. Client may optionally enroll other machines (e.g. employee owned machines that will Remote Desktop into a company owned machine). Support will only be provided, and services will only be performed on enrolled machines/equipment.
- 1.3 Software Updates. Maintaining the systems described above shall include applying all appropriate software and operating system updates in a reasonable amount of time. POPP shall determine when software updates are appropriate and what constitutes a reasonable amount of time.
- 1.4 Client acknowledges that if Client requests updates that POPP considers inappropriate, or wishes to have updates applied before POPP deems them safe, POPP is not responsible for the consequences of such actions and Client may be charged a Regular Business Hours or After Hours Rate, as the case may be, for all labor related to the consequences of such actions.
- 1.5 Furthermore, if Client performs or allows anyone other than POPP to perform any maintenance on any of these machines, POPP is not responsible for the consequences of such actions and Client may be charged a Regular Business Hours or After Hours Rate, as the case may be, for all labor related to the consequences of such actions.
- 1.6 Setup Services Fee ("Setup Fee"): In addition to the monthly fees set forth in the signed Pricing Proposal, Client agrees to pay an initial Computer Maintenance and Support Setup Fee in the amount specified in the signed Pricing Proposal. This fee is 100% of the monthly recurring service charge for the Computer Maintenance and Support.
- 1.7 Client shall pay the non-refundable Setup Fee (if any) upon execution of the Agreement before onboarding will begin.
- 1.8 Setup Fee does not include any migration, project, or engineering labor. Any migration, project or engineering labor is billable at the rates in Section 13.0 "Labor Rates"

## 2.0 MONITORING SOFTWARE

- 2.1 In order to provide the services specified in the Agreement, POPP must install remote monitoring and management software on Client's servers, desktop computers, laptops, and possibly other equipment at Client's office. Client grants permission to POPP to install remote monitoring and management software from ConnectWise or any other remote monitoring and managing software deemed necessary by POPP.

## 3.0 SERVICE INCLUSIONS AND EXCLUSIONS

Table A

<b>Servers – Computer Maintenance and Support Standard and Premium Packages</b>	
<b>Server Monitoring and Patching (Cloud or On-site Servers)</b> POPP will remotely monitor your servers and notify you if they go offline or we detect current or looming problems. POPP will also remotely install and validate operating system updates and security patches.	<b>Included</b>
<b>Server Anti-Virus/Anti-Malware Protection</b> Virus Scanning software license on all covered servers.	<b>Included</b>
<b>Server Cloud Backups - Monitoring &amp; Testing</b> Backup software license for the backup critical server data to the cloud and perform quarterly testing to verify restoration.	<b>Included</b>
<b>Backup Cloud Storage</b>	Sold Separately
<b>Workstations – Computer Maintenance and Support Standard and Premium Packages</b>	
<b>Workstation Monitoring and Patching</b> POPP will remotely monitor your workstations and notify you if we detect current or looming problems. POPP will also remotely install and validate operating system updates, security patches	<b>Included</b>
<b>Workstation Anti-Virus/Anti-Malware Protection</b> Virus Scanning software license on workstation.	<b>Included</b>
<b>Workstation Backup and Cloud Storage</b>	Sold Separately
<b>Network Devices (Add-on)</b>	
<b>Network Equipment Monitoring and Patching</b> POPP will remotely monitor your network equipment and notify you if it goes offline. POPP will check available firmware upgrades from the manufacturer and remotely apply on an annual basis.	Sold Separately
<b>Computer Maintenance and Support Exclusions (not included, always billable)</b>	
Hardware-related labor and or parts (installs/diagnostics/upgrades/physical moves/repair	Billable
Projects, Engineering/Consulting, and Other Significant Network/Environment Changes	Billable
Installation of New Hardware/Software/Subscription Services (outside of basic software updates)	Billable
Computer Rebuilds, New Computer Setups, Recovery of Backed Up Data, Virus remediation labor after the first 30 min. (per incident)	Billable
Website design/development	Billable
Work performed outside of regular business hours	Billable
Network Cabling	Billable

- 3.1 Cloud Services are not included in Computer Maintenance and Support Packages unless explicitly included in Table A above.
- 3.2 Labor for services not included is billable at the rates in Section 13.0 "Labor Rates".

**Rev. 12/15/20**