

**PORTOLA-SECURE SERVICE AGREEMENT**

Agreement # \_\_\_\_\_

This agreement is made on \_\_\_\_\_

Between Portola Systems, Inc. (Hereinafter referred to as "Portola Systems, Inc.")

And \_\_\_\_\_

(Hereinafter referred to as "Client")

\_\_\_\_\_  
[Address 1]

\_\_\_\_\_  
[Address 2]

\_\_\_\_\_  
[City, State Zip Code]

\_\_\_\_\_  
[Contact Name], [Phone Number]

Do hereby agree that Portola Systems, Inc. will provide Client with, in accordance with the terms and conditions outlined herein, the following services and activities with respect to the Client's network security environment as follows:

**1. General Conditions:**

A. The type of equipment and services subject to this Master Agreement are detailed in Site Schedule(s) that are attached to and form part of this Agreement. Site Schedule(s) may be amended or added to from time to time as required and as mutually agreed upon to provide for changing needs and requirements; and

Neither this Agreement nor any rights hereunder may be assigned by the Client without the prior written consent of Portola Systems, Inc., such consent shall not be unreasonably withheld; and

This Service Agreement constitutes the entire agreement between the parties and cancels, replaces and supersedes all existing and prior agreements, written or verbal, made between the parties with respect to Portola Systems, Inc. services under this program. There are no warranties or conditions, expressed, implied, statutory or otherwise applicable to the services or subject matter herein unless provided; and

B. The initial term of the Master Agreement is for Twelve (12) Months commencing on the "Effective Date" in each Site Schedule attached to and forming part of this Agreement, and unless notified otherwise, shall automatically renew to encompass the duration of the term of each Site Schedule. Each Site Schedule shall be for Twelve (12) Months and shall automatically renew for successive Twelve (12) Month periods unless previously terminated as defined in Section 2G of the Master Agreement. Portola Systems, Inc. and Client may elect to synchronize the effective dates of any or all Site Schedules. This synchronization may change the initial term of any or all site schedules such that any or all Site Schedules may match effective time and duration.

This Master Agreement and the incorporated Site Schedule(s) shall be governed and construed in accordance with the laws of the State of California.

**ADDITIONAL TERMS AND CONDITIONS ARE SET FORTH ON THE REVERSE AND FOLLOWING PAGES HEREOF**

ACCEPTED for Portola Systems, Inc. by:

ACCEPTED for "Client" by:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

## 2. Fees, Payments and Charges

A. Installation Fees: Each Site Schedule or amendment thereto may require an Installation Fee. This fee is due in advance of initiating or changing the services defined in the applicable Site Schedule.

B. Payment Schedule: All Installation Fees and Service Fees are payable in advance of the coverage period and are due immediately. Such Fees must be paid Monthly by Credit Card or Automatic Monthly Withdrawal from a Business Checking Account or Quarterly in Advance by Business Check drawn upon a United States financial institution. The client's credit card, checking account or other established authorized automatic payment deduction methods will be processed by Portola Systems, Inc. within the last 5 business days of the month for the next billing period. Net 15 terms apply for all accounts billed quarterly in advance.

C. Past Due Amounts: Past due amounts are subject to a service charge of \$25 per site, per month. Portola Systems, Inc. reserves the right to terminate services for any past due amount extending beyond 30 days. Failure to pay in no way relieves the obligation of the Client to pay.

D. Additional Fees: Time and material rates will apply for any services required that are not covered under this Agreement. Client will be billed separately for Time and Material based services at the then prevailing rate.

E. Fee Changes: Hourly, monthly, quarterly or annual fees identified as part of this program are subject to change subsequent to the initial period or for new Sites (i.e. add-on costs, time and material rates, new service offering pricing, etc). However, all services that are currently under an existing Site Schedule will not be subject to the rate changes (i.e. monthly payment for existing services). In the event that Portola Systems, Inc. does change the rates offered with service not covered under an existing contract, Portola Systems, Inc. will provide the Client with notification 30 days in advance of such changes.

F. Breach by Client: If Client fails to perform as a result of this Agreement, Portola Systems, Inc. may, at its sole discretion, terminate this agreement in its entirety or any of the Site Schedules individually that may be involved in such breach. Client's breach of contract in no way relieves Client of the obligation to pay.

G. Early Termination: Client may terminate this Service Agreement in its entirety or any Specific Site Schedule at any time by communicating the intent to terminate the Service Agreement or Site Schedule in writing sixty (60) days prior to the desired termination date. All early terminations are subject to the termination fee of \$2,500 per Site Schedule, or the remaining payment for the Site Schedule, whichever is less.

H. Liquidated Damages: The parties agree that due to the nature of this Agreement it would be impractical or extremely difficult to ascertain the damages suffered by Client; therefore, if Portola Systems, Inc. fails to perform as a result of this Agreement, Client shall be provided with a credit for one Month of free service for each Site that is affected by the failure to perform. This shall be the sole and exclusive remedy for a failure to perform.

## 3. Non-Disclosure and Confidentiality

A. Confidential information shall mean all information designated "Portola Systems, Inc. Confidential" and disclosed to Client which relates to the present or future business relationships or activities of Portola Systems, Inc. with our Clients, including but not limited to all sales, promotional, advertising, pricing, service level agreements, support programs, technical documentation, web site content, reports, programs, systems, methodologies and diagrams. The Confidential Information may be stored in forms including, but not limited to, printed copy, duplicated copy, written, electronic, facsimile or other. Client shall hold such confidential information in trust and confidence for Portola Systems, Inc. and shall not use it except as authorized by Portola Systems, Inc., in writing, prior to disclosing such information. Upon termination or expiration of this agreement, Client shall promptly deliver to Portola Systems, Inc. or destroy all information containing any such confidential information.

B. Portola Systems, Inc. agrees to hold all Client information, data, records, profiles, policies, and security infrastructure private and confidential. Client Information shall only be used in the course of providing services to the Client as defined in this Agreement or as may be required by court order.

## 4. Client Obligations

Client agrees to attend, and Portola Systems, Inc. agrees to provide, an Orientation immediately following activation of the services provided on each Site Schedule. The orientation includes explanation of the support and escalation policy and instructions, change management policy, testing procedures, and a walk through of how to test and swap out equipment should the need arise. Portola Systems, Inc. requires that a primary and backup person from each Site be present at this orientation session. If additional training is required beyond the initial orientation session or if Portola Systems, Inc. is asked to provide such orientation at a time and day different than the initial installation date, Portola Systems, Inc. reserves the right to charge the Client standard time and material rates plus travel time.

A. The Client agrees to establish internal policies and procedures, involving sound, industry standard management practices with respect to the day-to-day operation of the Client's Security Network environment; and further agrees that Portola Systems, Inc. shall be consulted and advised of any changes or alterations to the Client's network environment.

B. Portola Systems, Inc. will provide reasonable consultative and change management services as part of the basic fees provided herein, up to a maximum of four hours of service; If Client wishes to undertake revisions or modifications to their network that is considered to be a major revision that would require extraordinary activity, Portola Systems, Inc. reserves the right to charge additional fees, as mutually agreed upon, to perform such services.

#### 4. Client Obligations (cont.)

C. The Client agrees that any activity or event that occurs without Portola Systems' involvement that adversely affects the ongoings of the network may VOID the coverage associated with this program with respect to any remedial action or services required to correct the situation.

D. Client shall provide full and reasonable access to the Client Site as required and will provide a representative to be present at all times while Portola Systems, Inc. personnel are at the Client's site.

E. Portola Systems, Inc. will provide multiple methods whereby requests for service can be initiated. The Client agrees to conform to these procedures and will sufficiently identify the nature, location, contact point, and specific items associated with the attached Site Schedule for each remedial action that is requested.

#### 5. Operations

A. Normal business hours for the Security Operations Center (SOC) are 8:00am – 5:00pm Pacific, Monday through Friday excluding statutory holidays unless otherwise stated.

B. Portola Systems, Inc. offers Client additional options for 24x7 extended service coverage. Terms and pricing for this or other customizable support options are available by contacting Portola Systems, Inc. at 707-824-8800.

C. Portola Systems, Inc. will respond to requests for service during the Service Hours designated on each Site Schedule. Portola Systems, Inc. shall respond within the Response Time designated on each Site Schedule. Standard business days shall include Monday to Friday, excluding statutory holidays unless otherwise stated.

#### 6. Limitation of Liability

A. Portola Systems, Inc. services, as set forth in all appendices attached hereto, shall not include any provisions for special modifications to Client's software or physical environment beyond what may be specifically detailed as part of the Site Schedules.

B. Supply or replacement of hardware or software deemed to be defective or in need of replacement will be the responsibility of Portola Systems, Inc. Should a unit need replacement, Portola Systems, Inc. will send the Client overnight (next business day) a new fully functional unit that is ready for swap-out replacement with the nonfunctioning unit. Client's credit card will be charged for new unit cost and credited back to Client once Portola Systems, Inc. has received the old unit back.

C. Repair or replacement of damaged components or systems caused by misuse or abuse, or by consumable supplies deemed substandard or unsuitable will be the responsibility of Client.

D. Remedial services for both hardware and software required as a result of exposure to environment conditions inconsistent with manufacturer's specifications, floods, fire, insurrection and other Acts of God, Force Majeure, willful, intentional sabotage by persons unknown or any successful penetration of a VIRUS affecting the operation of the network or any associated application software are generally and specifically excluded from this Program. Portola Systems, Inc. will not be responsible for any loss, damages, delay or non-performance as a result of if any of the above or by any other cause which is either unavoidable or beyond their reasonable control.

E. Portola Systems, Inc. shall in neither event be liable for any direct or indirect, special or consequential damages, including business or economic loss resulting from or arising from the performance or non-performance of this agreement, nor for any damages claimed against the Client by any other party.

F. Notwithstanding any of the provisions herein, Portola Systems, Inc. shall not be liable for any loss, damage or delay arising from damage to or alteration or loss of software, and/or data operated or used in conjunction with the network or associated equipment and shall be relieved from any responsibility whatsoever relating to or arising from Portola Systems, Inc. involvement under the provisions of this agreement. Portola Systems, Inc. shall not be liable for any direct or indirect, special or consequential damages, including business or economic loss resulting from or arising from the performance or non-performance of this agreement, nor for any damages claimed against the Client by any other party.

G. Portola Systems, Inc. shall not be liable for any loss, damage or delay whatsoever if unable to perform any of it's obligations by reason of the unavailability of maintenance spare equipment, parts or components or the Client's failure to comply with any of the terms and conditions of this agreement.

H. Limitation of liability for Security / Viruses / Trojans / Unauthorized Access and other violations of security policy. Portola Systems, Inc. shall provide best efforts in keeping with industry practices to protect Clients' network. Portola Systems, Inc. is not liable for any loss arising from the aforementioned.

I. Every right, exemption from liability, defense and immunity of whatsoever nature applicable to Portola Systems, Inc. herein shall also be available and extend to protect every agent of Portola Systems, Inc. acting in the course of or in conjunction with his/her employment and for the purpose of the foregoing provisions, Portola Systems, Inc. is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of persons who are or might be agents, servants, or employees from time to time.

## 7. Change Management Policy

A. Portola Systems, Inc. maintains a change management system with strictly enforced policies. During the client orientation training session the client will receive from Portola Systems, Inc. a separate document explaining the change management process, policy, and means for communicating desired changes to the Security Operations Center (SOC).

B. Clients can expect a four (4) hour response time on change order requests submitted during normal business hours 8:00am-5:00pm, Pacific. Change orders received after hours will be handled the next business morning. Clients with 24x7 coverage are required to call Portola Systems, Inc. Technical Support Hotline and provide urgent notification for change orders requiring processing after hours. All Change orders that reach the status of COMPLETED require Client acceptance. An email confirming the COR Completion and Sign-off will be sent and a customer acceptance reply is required.

## 8. Escalation Policy

A. Portola Systems, Inc. constantly strives to provide the Client with outstanding customer service and support. In order to assist you with your technical support during the Client orientation training session, Portola Systems, Inc.' personnel will provide a list of technical support contacts, policies and procedures.

B. Escalation procedures and support coverage hours may vary from site to site within a Client's environment based on whether the client/location is under "Standard" or "Extended" coverage. Please review your site-specific service level agreement for service coverage hours and response time guarantees.

## 9. Logging, Alerting, and Reporting

A. Portola Systems, Inc. provides all the hardware and software necessary to manage alerts, log activity, and provide periodic reporting for the Client under this Agreement. In addition, Portola Systems, Inc. will provide and make available to the Client raw log data and standardized reports such as trending, usage, protocol, and malicious activity reporting.

B. Portola Systems, Inc. provides such logging, reporting, and alerting for each of the Client's site/id that is under a managed services contact. Security events written to the Client's security log files occur 24x7x365 days a year.

C. Historical log files are maintained at Portola Systems, Inc. for short-term data retention periods as deemed acceptable based on monthly log volumes and client requirements. Portola Systems, Inc. typically attempts to maintain the raw log data for one (1) calendar year and rotate other formatted reports on a quarterly basis. If the Client requires access to logs or report beyond the scheduled rotation period. The Client can obtain such services for an additional nominal fee.

D. Portola Systems, Inc., in keeping with new innovative tools, software, and industry standards reserves the right to add, modify, change, or replace software or tools used to provide alerting, logging, and reporting at anytime deemed appropriate. Portola Systems, Inc. will notify the Client of such intent in situations where there might be an impact on the Client's knowledge or understanding of how to access such reports or interpret reported information.

E. Portola Systems, Inc. shall maintain log data files for a period of one (1) calendar year and shall purge such logs on a quarterly basis. Portola Systems, Inc. shall provide Client with several options to retain log data for longer periods of time as necessary. Clients may be required to log or retain data in order to comply with regulatory or other requirements. These logging standards may not be in compliance with such requirements. Client retains the responsibility for compliance with all regulations for their business.

PORTOLA-SECURE SERVICE AGREEMENT – SITE SCHEDULE

Agreement # \_\_\_\_\_

Client Name: \_\_\_\_\_

Effective Date \_\_\_\_\_

	SITE 1	SITE 2
Site ID:	_____	_____
Client Name:	_____	_____
Site Address 1	_____	_____
Site Address 2	_____	_____
Site City, State, Zip	_____	_____
Primary Contact:		
Name	_____	_____
Phone Number	_____	_____
Emergency Number	_____	_____
Email Address	_____	_____
Secondary Contact:		
Name	_____	_____
Phone Number	_____	_____
Emergency Number	_____	_____
Email Address	_____	_____
Service & Equipment:		
Service Plan	_____	_____
Appliance	_____	_____
Additional Services	_____	_____

Support Coverage 8:00 am – 5:00 pm PST four (4) hour response time.

Time & Materials billed outside above support coverage at a rate of \$200/hr.

This is:  New Site Schedule  Revised Site Schedule  Additional page to Site Schedule

Portola Systems, Inc. hereby agrees to provide preventative and remedial managed security services for the equipment listed above, according to the terms and conditions hereof and as stated in the Master Managed Services Program Agreement in effect between Portola Systems, Inc. and the Client.

Due w/signed agreement \$ 0.00    Monthly payment \$ \_\_\_\_\_    Total 12 month Site Schedule payment: \$ \_\_\_\_\_.

ACCEPTED for Portola Systems, Inc. by:

ACCEPTED for "Client" by:

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_