



TOWN OF ULYSSES

10 Elm Street, Trumansburg, NY 14886
townofulyssesny.gov

Town Supervisor (607) 387-5767, Ext 232 • supervisor@townofulyssesny.gov
Town Clerk (607) 387-5767, Ext 221 • clerk@townofulyssesny.gov

Professional Services Agreement

This Professional Services Agreement (this “Agreement”), is made this ____ day of _____, 2023 between:

Advance 2000 Inc., with an office and place of business located at 155 Pineview Drive, Buffalo, NY 14228, hereinafter referred to as “A2000,” “We” or the “Consultant.”

and

Town of Ulysses, with an office and place of business located at 10 Elm Street, Trumansburg, NY, 14886, hereinafter referred to as the “Town” or “You.”

WITNESSETH:

WHEREAS, Advance 2000 Inc., is in the business of providing professional consulting services in accordance with applicable laws and maintains the facilities, experience, and personnel to perform the services as outlined in the "Services Offered" Section, which is hereby, made a part of this Agreement.

WHEREAS, the parties have entered into this Services Agreement for the purpose of Advance 2000 Inc. providing technical/professional advice and guidance necessary for the Town.

NOW, THEREFORE, in consideration of the mutual covenants of the parties set forth herein, the parties hereto do agree as follows:

1. Services Offered by Advance 2000 Inc.

- a. Services offered by A2000 are established in A2000’s response to the Town’s request for proposal utilized by the Town to solicit services, a copy of said request for proposal is attached hereto as Attachment ___ and made a part hereof and a copy of the response to the request for proposal is attached hereto as Attachment ___ and made a part hereof, and a written Statement of Work mutually agreed upon by the Town and A2000, a copy of said Statement of Work is attached hereto as Attachment ___ and made a part hereof. This Agreement shall govern all Services provided by A2000, including but not limited to: cloud, compute, telephony, virtual and physical desktops, servers, backups, colocation, equipment rentals, on-site Labor, remote support, and installations. All services shall be referred to as the “Services.”



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- b. The Consultant agrees to provide an outline of all Services, activities, and scheduling in coordination with the Town as the first activity of the contract, based on the Statement of Work; a copy of which is attached hereto as Attachment ___ and made a part hereof.

2. Term of Service

The initial term of the proposed contract shall not exceed six (6) months from the execution of this Agreement. The contract shall be in effect from the date of execution by the Town through project completion. The assessment completion date shall be within a mutually agreed period of time after receipt of Notice to Proceed.

3. Communication

Immediate written notification to the Town Supervisor of any urgent issues identified along with an estimation of the risk.

4. Nature of Relationship

The relationship between the parties to a contract resulting from this solicitation shall be that of independent contractors. Nothing contained herein shall be interpreted or construed as establishing an agency or employer/employee relationship between the parties or between either party and the employees or representatives of the other party. The Consultant is responsible for all Social Security taxes and Bureau of Workers Compensation contributions for itself and any of its employees.

5. The Town is a tax-exempt entity and will provide related documents. A2000 will not charge the Town any tax for services or tangible products procured.

6. The Town is required to follow New York State procurement laws as well as the Town's procurement policy. This applies to all purchase including service contracts, hardware and software.

7. NYS Prohibition of Assignment of Contracts

In accordance with the provisions of Section 109 of the General Municipal Law of the State of New York, The Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Contract, or of its right, title or interest in this Contract, or its power to execute this Contract, to any other person or corporation without the previous consent in writing of the Town.

8. Ownership of Records

- a. The Consultant acknowledges and agrees that the Town is the sole owner of the data, records, and other documentation generated by the Town. The Consultant will take no action to compromise the Town's legal obligation to maintain records and adequate documentation transactions of public business. The Consultant agrees that records and other documentation produced from this work are the property of the Town.



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- b. All records, documents, data, reports or other material, regardless of form or finish, produced by The Consultant as a result of services provided hereunder, are work for hire, and shall become the property of the Town upon creation. The Consultant may not assert any right, title or interest in any product produced under this Contract.

9. Recognition of NYS Freedom of Information Law

The Consultant acknowledges that the Town of Ulysses shall adhere to The New York State Freedom of Information Law, Public Officers Law, Article 6, which provides for public access to information.

10. Insurance Requirements

- a. The Consultant shall furnish the above insurances to the Town and shall also name the Town as an additional insured in said policies.
- b. The Consultant shall obtain, and maintain during the life of this Agreement, general liability and property damage insurance as shall protect it from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from operations under this Agreement, and other insurance policies pursuant to this Agreement. The amounts of such insurance shall be as follows:
 - i. General liability insurance in an amount not less than \$1,000,000 (one million dollars) for injuries, including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$1,000,000 (one million dollars) on account of any one occurrence.
 - ii. Property damage insurance in an amount not less than \$1,000,000 (one million dollars) for damage on account of all occurrences.
 - iii. Workers compensation at statutory limits.
 - iv. Automobile liability insurance covering vehicles owned, and not owned vehicles, used by the Consultant in an amount not less than \$1,000,000 (one million dollars) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.
 - v. Umbrella Liability of Subcontractors
 1. Contractor shall ensure that all Subcontractors provide bodily injury and property damage insurance.
 - a. Liability Limit: each accident or incident \$1,000,000 (one million dollars)

11. Prevailing Wage



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- a. The parties hereto, in accordance with the provisions of section 220(3) of the Labor Law, hereby agree that *if* the work to be performed by Consultant is considered “public work” as defined by the New York State Labor Law, then there shall be paid each employee engaged in work under this Contract not less than the wage rate and supplements set opposite the trade or occupation in which he/she is engaged, as listed on Appendix ___ attached hereto and made a part of this Agreement, which are the wage rates and supplements established as the prevailing rate of wages for the work covered by this Contract.
- b. Labor classifications not appearing on the schedule of wages can be used only with the written consent of the Owner and then the rate to be paid will be given by the Owner after being advised by the Department of Labor.
- c. The Consultant shall post in a prominent and accessible place on the site of the work a legible statement of all wage rates and supplements, as specified in the Agreement, for the various classes of mechanics, workingmen/women, or laborers employed on the work.

12. Standard Clauses for NYS

- a. Labor Law section 220-e and Executive Law sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and providing equal opportunity.
- b. Affirmative action as required by the Labor Law.
- c. Prevention of dust hazard required by Labor Law section 222-a.
- d. Preference in employment of persons required by Labor Law section 222.
- e. Eight-hour workday as required by Labor Law section 220(2).
- f. New York State Sexual Harassment Training Requirements
- g. New York State Workplace Violence Training Requirements

The Standard Clauses of New York State Contracts, a copy of which is attached hereto as **Attachment ___** and made a part hereof.

13. Confidentiality: YOU ACKNOWLEDGE AND AGREE THAT A2000 IS THE OWNER OF ALL INTELLECTUAL AND OTHER PROPRIETARY RIGHTS IN AND TO THE SERVICES, INCLUDING, WITHOUT LIMITATION, THE A2000 CLOUD SERVICES, ITS SOURCE CODES, AND OPERATING SYSTEMS, ITS HARDWARE AND SOFTWARE COMPONENTS AND ALL NON-PUBLIC BUSINESS, TECHNICAL, FINANCIAL, KNOW-HOW, COMMERCIAL, AND OTHER INFORMATION WHICH IS CONFIDENTIAL AND OR PROPRIETARY AND OR TRADE SECRET TO A2000 AND SHALL BE DEEMED CONFIDENTIAL AND PROPRIETARY TO A2000 FOR ALL PURPOSES, WHETHER OR NOT IT IS LABELED OR IDENTIFIED AS SUCH AT THE TIME OF DISCLOSURE OR USE BY YOU. YOU FURTHER ACKNOWLEDGE AND AGREE THAT NOTHING CONTAINED IN THIS AGREEMENT OR BY THE USE OF THE SERVICES SHALL GRANT YOU ANY RIGHT, TITLE, INTEREST, OR LICENSE IN OR TO THE SERVICES. A2000 SHALL NOT POSSESS OWNERSHIP RIGHTS IN OR TO ANY DOCUMENTS, RECORDS, INFORMATION, OR OTHER DOCUMENTATION OF YOU AND A2000 SHALL KEEP



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CONFIDENTIAL ANY AND ALL DOCUMENTS, RECORDS, INFORMATION, OR OTHER DOCUMENTATION OF YOU THAT A2000 HAS ACCESS TO DURING THIS AGREEMENT.

14. Security: Both Parties shall use reasonable technical measures to ensure the protection and confidentiality of each other's proprietary and confidential information to prevent accidental, unauthorized, or unlawful destruction, modification, disclosure, access, or loss of data. Both Parties shall inform one another of any security breach involving proprietary and confidential information. Where "security breach" means any event involving the actual or potential compromise of the security, confidentiality, or integrity of the data, including but not limited to any unauthorized access or use. You shall not use A2000 proprietary information for Your benefit or the benefit of any other person or party, and A2000 shall not use Your proprietary information for the benefit of A2000 or any other person or party.

The Parties shall protect each other's proprietary information by employing the same standard of care and safeguards to protect their proprietary information. The Parties shall not disclose proprietary information not belonging to them to any other person or party unless authorized in advance and in writing between the Parties. This Agreement does not grant the Parties rights, titles, interests, or licenses, whether stated, implied, or otherwise, to the other's proprietary information.

15. Equipment including Rentals:

If You rent equipment: from A2000 for use in connection with the Services, You agree: (i) to keep all said equipment secure and safe from theft, vandalism, loss, or damage; (ii) to keep all subject equipment in a good state of repair, normal wear and tear expected; (iii) to pay to A2000 all costs and expenses incurred by A2000 for any lost or damaged said equipment, where the loss or damage is due to an act of negligence or omission by You, or for the replacement of any equipment that You did not return to A2000. You shall return any equipment that We delivered to You upon our demand with reasonable written notice after the termination or conclusion of this Agreement. You shall be responsible for the costs and expenses to ship or otherwise transport, including delivery and return equipment referenced herein. You shall allow A2000 to enter the premises where You placed the equipment to recover it. Upon request by A2000, You agree to ensure the equipment is in a commercially reasonable manner against loss, damage, theft, or vandalism and to be responsible for the payment of all premiums, costs, and expenses to maintain such insurance for so long as You remain in possession of said equipment from A2000. All costs, fees, and expenses, including, but not limited to, attorney and court costs, moving, storage, and repossession expenses, shall be and remain the obligation of You. You shall pay all such costs, fees, and expenses upon demand. You shall not pledge, lien or otherwise encumber the equipment in any way.

If A2000 utilizes any of Your equipment or property in connection with the Services, A2000 shall: (i) keep all said equipment and property secure and safe from theft, vandalism, loss, or damage; (ii) keep all subject equipment and property in a good and state of repair, normal wear and tear excepted; (iii) to pay to You all costs and expenses incurred by You for any loss or damages to



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said equipment or property or for the replacement of any equipment or property that A2000 did not return to You. A2000 shall return any equipment or property that it utilized to You upon Your demand. A2000 shall be responsible for all costs and expenses relating to the shipment or transport, including delivery and return, of equipment or property referenced herein. Upon request by You, A2000 shall agree to ensure the equipment and property is maintained in a commercially reasonable manner against loss, damage, theft, or vandalism and to be responsible for the costs and expenses to maintain said equipment and property so long as A2000 remains in possession of said equipment from You. All costs, fees, and expenses, including, but not limited to, attorney and court costs, moving, storage, and repossession expenses, shall be and remain the obligation of A2000. A2000 shall pay such costs, fees, and expenses upon demand by You. A2000 shall not pledge, lien, or otherwise encumber Your equipment in any way.

16. On-Site Labor:

Additional Statements of Work. Labor can be purchased from A2000 by executing written additional Statements of Work.

A2000 will perform the Services as deemed necessary by the terms and conditions in a mutually agreed-upon written Statement of Work. If A2000 personnel are working on Your premises: (a) You will provide a safe and secure working environment for such personnel and (b) A2000 will comply with all workplace safety and security standards and policies that apply to Your employees.

17. Force Majeure Event. A2000 is not liable for any delay or failure of performance if a Force Majeure Event causes such delay or failure. Force Majeure Event means an event beyond the reasonable control of a party, including without limitation, acts of God, fire, explosion, vandalism, cable cut by a third party, adverse weather conditions, governmental action, labor difficulties, and supplier failures. You shall not be liable to A2000 for any costs or expenses to A2000 due to a Force Majeure Event.

18. A2000 Warranty. A2000 warrants that, for forty-five (45) days from the completion of the Services (the "Warranty Period") that if A2000 receives from You written notice of any of the Services nonconforming with the provisions contained in this Agreement during the Warranty Period, A2000 shall re-perform and remedy the non-conforming Services at its sole expense.

19. Colocation

A2000 Colocation, if managed by A2000, can refer to the operation and maintenance of Your infrastructure, equipment, facilities, data files, software, services, and resources, as specified in Your Agreement.



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You acknowledge and agree that: The performance of any Service is subject to the technical limitations of the managed devices.

If A2000 contracts with a third party to procure licenses, such licenses will be owned and maintained by A2000 unless separately agreed by the Parties.

If you purchased a backup, A2000 shall use all reasonable efforts to comply with Your backup preferences. In addition, You grant A2000 a non-exclusive royalty-free right and license to digitize, convert, make copies of, and archive Your data, content, and information to perform their obligations under this Agreement

Unless due to A2000's negligent acts or omissions, A2000 shall not be liable or responsible for security breaches, viruses, hacked servers, worms, lost or stolen data, corrupted data, ransomware, or malicious activity.

20. Fees and Payment: The Services' fees, costs, and expenses are set forth on Exhibits to this Agreement. Upon mutual agreement between the Town and A2000, A2000 may amend each Exhibit from time to time, and each Exhibit is incorporated herein by this reference. You agree to pay in full all invoices by A2000 for the Services, rental equipment, and other charges related to or generated by the Services within the time specified on each invoice, as measured from the invoice date. You may dispute an invoice by providing A2000 with a written explanation for said dispute. Only then may You withhold payment of the specific amount in dispute, provided that You pay any undisputed amount. In good faith, A2000 will cooperate with You in reviewing the dispute and reaching a mutually acceptable outcome.
21. Emergency Security Issue: If A2000 identifies an emergency or security issue, A2000 reserves the right and authority to automatically suspend the offending use or other logistics causing the emergency or security issues until they may be remedied or resolved. Any suspension hereunder will be to the minimum extent and duration required for A2000 to address the emergency or security issue. If We elect to suspend an account or the Services for any reason without prior notice to You, A2000 will provide You the grounds for the suspension as soon as possible.
22. Data Transfer: As part of providing the Services, A2000 may store, transfer, or process Your data in normal operations. You consent to and authorize the storage, transfer, and processing of Your data by A2000. A2000 shall provide a thirty (30) day period to transfer Your data via remote access upon the termination or conclusion of this Agreement.
23. Acceptable Use: Provided that You comply with the terms of this Agreement and our policies and procedures for the use of the Services, and You are not in default or breach, We will permit You to use the Services to store, retrieve and serve software applications, data and or content owned,



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licensed or lawfully obtained by You. You are solely responsible and shall be and remain liable for Your content or any actions arising or resulting from there. At the discretion of A2000, We may elect to track information regarding the use of the Services by You. We will not sell, disclose or license the content owned or held by You, except as We may determine to be necessary or desirable to comply with the Agreement, or upon the request of any governmental or regulatory body, or by subpoenas or court orders, or for any other legal purposes. You are and shall remain responsible and liable for all applications running on and with traffic originating from the instances or activities You initiate as part of the Services. In the exercise of Your judgment, You should take such actions as You deem necessary or appropriate to protect the authentication keys and security credentials. You are with this advised that any actions taken by You or any third persons or parties using or employing authentications and or Your credentials shall be actions taken by You for which You will remain accountable and liable.

24. Email Usage: All electronic communications must adhere to all applicable laws. Without limiting the foregoing, the following are strictly prohibited: Sending of Spam/Unsolicited email, including but not limited to:
- a. Pyramid schemes.
 - b. Chain letters.
 - c. Sending any mail in contravention of any state or federal laws and regulations, and Forgery: Altering or obscuring mail headers or assuming a sender's identity without the explicit permission of that sender.
25. Network: You may make network connections from the A2000 Cloud to other servers only with the permission and authorization of the destination servers and networks. Examples of unacceptable network traffic include but are not limited to:
- a. Unauthorized probes and port scans for vulnerabilities.
 - b. Unauthorized penetration tests, traffic that circumvents authentication, or attempts to gain entry into systems.
 - c. Open web crawling or any traffic that impairs or otherwise disrupts servers.
 - d. Unauthorized network monitoring or packet capture.
 - e. Forged or non-standard protocol headers, such as altering source addresses, etc.
 - f. Flooding; Denial of Services (DoS) of any kind and or any malicious activity.
 - g. You may not operate network Services such as:
 - i. Open proxies.
 - ii. Open mail relays.
 - iii. Open, recursive domain name servers Unsecured connectivity.
 - iv. Unsecured FTP



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26. **Changes of Services:** You may increase or decrease the number of Services to any number or size at any time. We will automatically account for increases or decreases and adjust your monthly billing per Your A2000 Agreement. Requests for a significant increase or decrease in the number of resources may require the execution of a new A2000 Agreement and shall be determined solely by A2000. If You reduce the resources to an amount less than Your Minimum Monthly Commitment (MMC), You will be billed the MMC as Your new MRC until such time when the resources You are consuming total an amount that exceeds the MMC. When Your server consumption of storage reaches a threshold of 95% usage, A2000 shall automatically expand Your storage to 90% usage to maintain Your data's integrity. You further agree that all of this is not a material change to the Services provided to You. Your MMC amount shall be 80% of the executed MRC amount on Your signed Agreement.
27. **Termination by You:** You may elect to terminate this Agreement before the term You selected for any reason or no reason at all, subject to the following:
- You shall provide A2000 a minimum of sixty (60) days advance notice in writing of the election by You to terminate the Agreement (the "Termination Notice").
 - On the sixty-first (61st) day after A2000 receives the Termination Notice, all Services provided by A2000 under this Agreement shall cease, and A2000 shall have no duty, responsibility, or other obligation to provide or continue any of the Services. This date may be referred to as the Termination Date.
 - or before, but not later than, the sixty-first (61st) day after A2000 receives the Termination Notice, at your cost and expense, You will return all rental equipment if applies, proprietary information, and other property of A2000 to the principal office of A2000, or as otherwise reasonably directed by A2000.
 - You shall compensate A2000 in an amount equal to the Services actually provided by A2000 as of the sixty-first (61st) day after the Termination Notice.
 - You shall be responsible for paying all fees, costs, and expenses for the export or transfer of Your data. Upon receipt of Termination Notice, A2000 will provide You a sixty (60) day period to transfer Your data via remote access.
 - On the sixty-second (62nd) day from the date of Termination Notice, A2000 will permanently delete all Your data from its system.

Termination or Suspension by A2000: A2000 may elect to terminate this Agreement, suspend or discontinue the Services "For Cause", as defined below. For cause, shall mean: (a) immediately if You attempt a denial of services attack (commonly known as a DoS attack) or commit other acts that are detrimental or potentially damaging to the Services, or acts or omissions by You cause emergency or security issues; (b) You seek to hack or break any security mechanism; (c) We otherwise determine in our commercially reasonable discretion that use of the Services by You poses a security or Services risk that may subject A2000 or any third party to liability, damages or danger; (d) You otherwise use the Services in a way that disrupts or threatens the Services; (e) You are in default of payment obligations to A2000; (f) We determine, in our sole discretion, there is



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evidence of fraud with respect to the account maintained for You; (g) We receive notice or We otherwise determine, in our commercially reasonable discretion, that You may be using the Services for any illegal purpose or in a way that violates the law or violates, infringes, or misappropriates the rights of any third party; (h) We determine, in our commercially reasonable discretion, that our provision of any of the Services to You is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason or subject to applicable law, upon liquidation, commencement of dissolution proceedings or disposal of assets of You, failure to continue the business of You, assignment for the benefit of creditors of You, or if You become the subject of a voluntary or involuntary bankruptcy or similar proceeding.

If You are in breach or default of this Agreement such that gives rise to ability of A2000 to terminate this Agreement For Cause, A2000 will provide written notice to You stating that You have a ten (10) day period to cure the said breach or default. If You do not cure said breach or default within the ten (10) day period, then A2000 may terminate this Agreement.

Effect of Termination by A2000:

1. Suspension. Upon any suspension of Your use of any Services, in whole or in part, for any reason, then: (a) all fees, costs, charges, and expenses will continue to accrue for any Services that are still in use by You, notwithstanding the suspension (including continued storage of data on the Services during the period of suspension and Wide Area Network); (b) You remain liable for all fees, costs, charges, expenses, invoices, and any other obligations You have incurred, or will incur, through the date of suspension or after that concerning the Services; and (c) all of Your rights to the applicable Services shall be discontinued, suspended or terminated during the applicable period.

2. Termination. Upon termination of this Agreement by A2000: (a) You remain liable for the payment of all fees, charges, expenses, invoices, and any other obligations You have incurred through the date of termination or will incur after the date of termination concerning the Services; (b) all of the rights under this Agreement for the Services shall immediately terminate; and (c) You shall immediately return, or if instructed by A2000, destroy all A2000 proprietary and Confidential Information and any A2000 Information then in possession of You, and You shall return all rented equipment, as more specifically provided for in this Agreement

28. Indemnification:

1. You will defend, indemnify, and hold harmless A2000, its parent and holding companies, affiliates, subsidiaries and licensors, and each of their respective employees, officers, directors, agents and representatives (“Related Parties”) from and against any claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees) arising out of or relating to any third person or party claims or audits, actions or proceedings concerning: (a) You or end users’ use of the Services (including any activities under your A2000 account and use by Your employees and personnel); (b) any breach of this Agreement or violation of applicable law by You or any end



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user; (c) Your content or the combination of Your content with other applications, content or processes, including any claim involving alleged license non compliance or infringement or misappropriation of third-party rights by Your content or by the use, development, design, production, advertising or marketing of Your content; or (d) a dispute between You and any end user. Suppose We are obligated to respond to a third-party subpoena or other compulsory legal order or process described above. In that case, You will also reimburse A2000 or any Related Parties for reasonable attorneys' fees and court costs, as well as for the time and materials for responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates. A2000 shall defend, indemnify, and hold harmless You, and each of Your departments, boards, commissions, and Your respective directors, officers, employees, agents, and volunteers from and against any and all claims, actions, liabilities, costs, losses, or expenses (including attorney's fees) arising out of, or resulting from, A2000's performance under this Agreement including all such causes of action based upon common, constitutional, or statutory law, or, in whole or in part, arising out of actual or alleged bodily injury or personal injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of A2000. This indemnification shall survive the termination of this Agreement.

29. **Currency:** Unless otherwise indicated, all dollar amounts referred to in this Agreement are United States Dollars. All amounts owing under this Agreement are in United States Dollars. All amounts denominated in other currencies shall be converted in the United States Dollar equivalent amount per the applicable exchange rate in effect on the date of calculation.
30. **Disclaimers:** THE SERVICES ARE PROVIDED "AS IS." A2000 (as defined above), except to the extent otherwise provided for in this Agreement and Your Request for Proposals, MAKE NO REPRESENTATIONS, GUARANTEES OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES AND THE RENTAL EQUIPMENT OR THE THIRD PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICES, RENTED EQUIPMENT OR THIRD PARTY CONTENT WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THE THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR RELATED PARTIES DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.
31. **Limitation of Liability:** Except to the extent covered by applicable insurance, (including any related deductible) A2000 SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING



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DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF IT HAS BEEN ADVISED BY YOU OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, A2000 SHALL NOT BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES OR THE RENTED EQUIPMENT, (II) THE DISCONTINUATION, SUSPENSION OR TERMINATION OF ANY OR ALL OF THE SERVICES, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SLA, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES OR THE RENTED EQUIPMENT; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA.

32. Using Microsoft Software: As part of the Services, You may rent and use specific software (included related documentation) developed and owned by Microsoft Corporation or its licensors from A2000 (“Rented Microsoft Software”). The Rented Microsoft Software is neither sold nor distributed to You, and You may use it solely as part of the Services. You may only use the Rented Microsoft Software in connection with the Services, and may not otherwise transfer, use, sell, or license Microsoft software. Microsoft is not responsible for providing any support in connection with the Services. The Rented Microsoft Software or other rented software prices are subject to change without notice to You. However, such costs will be available to You on A2000’s website at Rented Microsoft Software or the Microsoft website. Regarding Microsoft Software Products, You hereby agree to comply with Microsoft’s terms and conditions, which pertain to the general use of Microsoft software and the specific Rented Microsoft Software You may be using and otherwise use the Rented Microsoft Software only as authorized by Microsoft. You shall be compliant with Microsoft’s licensing terms and shall solely assume all costs associated resulting from Your non-compliant, unlicensed, or improperly licensed use.

33. Remedies for non-compliance: If any unlicensed or improperly licensed software, including but not limited to Rented Microsoft Software, is used by You, (1) Your future MRC will be increased to an amount which reflects Your then-current usage and that which is necessary to obtain sufficient licenses and be compliant with Microsoft licensing in accordance with such usage, and (2) You will pay to A2000 an amount which corresponds to the amount You would have paid for the unlicensed or improperly licensed software had you obtained proper licensing from the Start



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Date of Your Services (the date reflected on Your first A2000 invoice). Such payment shall be due within 30 days of Your receipt of the invoice detailing such amount.

Audit by Microsoft or A2000. In the event an audit by Microsoft or A2000 discovers You have been using unlicensed or improperly licensed Microsoft software or underbilled or not invoiced by A2000, (1) You shall reimburse A2000 for any costs A2000 may incur as a result of Your unlicensed or improper use or underbilled or not invoiced, (2) Your future MRC will be increased to an amount which is sufficient to purchase the licenses corresponding to Your use, and (3) You shall reimburse A2000 for the cost of the licenses which You would have incurred had You obtained proper licensing for the Microsoft software.

Bring Your Own. If any unlicensed or improperly licensed software is used, then within 30 days of Your knowledge of such unlicensed or improper use or notification of such unlicensed or improper use by A2000, (1) You must order sufficient licenses which correspond to Your then-current use and (2) You shall reimburse A2000 for the cost of the licenses which You would have incurred had You obtained proper licensing for the Microsoft software plus any expenses incurred by A2000 due to Your use of unlicensed software.

34. A2000 Customer Referral Program. As part of being an A2000 customer, You can apply to participate in the A2000 customer referral program. This program can be canceled or changed at any time. Once approved by A2000, You will be eligible to receive discounts on Your MRC invoice.
35. Severability: If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original part. If such construction is not possible, the invalid or unenforceable part will be severed from this Agreement, but the rest of the Agreement will remain in full force and effect.
36. Governing Law: This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of New York and shall be adjudicated in the County of Tompkins in the State of New York.
37. Headings: The heading in this Agreement are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
38. Entire Agreement: This Agreement, including exhibits or attachments hereto, contains the entire agreement of the parties and there are no other promises, conditions, understandings, or other agreements, whether oral or written, relating to the subject matter of this Agreement.



TOWN OF ULYSSES

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39. A2000 Cloud Services use Restrictions: You may use the Services in any manner only as expressly permitted by this Agreement. You may not attempt to (a) modify, alter, tamper with, share content, resell or otherwise create derivative works of the Services; (b) reverse engineer; (c) access or use the Services in a way intended to avoid incurring fees.
40. No License: Nothing contained herein shall be construed as granting or implying any license or other rights to You with regard to the patents, trademarks, copyrights, and trade secrets of A2000.
41. Force Majeure: Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber-terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services). However, this Section will not apply to your payment obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned officers' thereunto duly authorized as of the day and year first above written.

Dated: The ____ day of _____ 2023

By: _____

[insert A2000 info]

Date: _____

Accepted: Town of Ulysses

By: _____

Ulysses Town Supervisor

Date: _____