

# City of Arnold, Missouri

**Work Session  
Regular Meeting**

**February 10, 2022  
7:00 p.m.**

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The meeting will be held in-person at Arnold City Hall. You may also join by Zoom.

Zoom Link – Internet Audio/Video

<https://us02web.zoom.us/j/86318159019?pwd=WFFhQ1JEZlE5MWJlc1NDdzhpWFJXUT09>

Dial-in Number: 312 626 6799

Meeting ID: 863 1815 9019

Passcode: 421190

## Agenda

1. ARPA Projects
2. Adjournment

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## Special Meeting

### Immediately Following the Work Session

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## AGENDA

1. Pledge of Allegiance and Opening Prayer
2. Roll Call
3. Business from the Floor
4. Consent Agenda
  - A. Regular Council Minutes from **January 6, 2022**
  - B. Payroll Warrant **#T00135 In the Amount of \$352,932.74**
  - C. General Warrant **#5802 In the Amount of \$484,494.18**
  - D. Payroll Warrant **#T00151 In the Amount of \$392,285.86**
  - E. General Warrant **#5803 In the Amount of \$305,848.44**
5. Ordinances:

- A. **Bill # 2816** An Ordinance Amending Chapter 105 (Elections) of The Arnold Code of Ordinances.
- B. **Bill #2818** An Ordinance Authorizing the Execution of a Ninth Amendment to Redevelopment Agreement Between The City of Arnold and Arnold Crossroads, LLC.

6. Resolutions:

- A. **Resolution #22-02:** A Resolution Approving the Purchase of Computer Server Hardware and Software from Paragon Micro Inc.
- B. **Resolution #22-03:** A Resolution Reappointing Members to Committees.
- C. **Resolution #22-04:** A Resolution Approving the Purchase of a Hosted Phone System from Tech Electronics.

7. Motions

- A. A Motion to Approve Conditional Use Permit PC-2021-39 A&W MVOE.

8. Reports from Mayor and Council:

9. Administrative Reports:

10. Adjournment

Upon request, reasonable accommodations will be provided. Contact Tammi Casey, City Clerk, Arnold City Hall, 2101 Jeffco Boulevard, Arnold, Missouri 63010. Phone: 636-296-2100.

Mayor Ron Counts called the meeting to order at 7:03 p.m.

The council meeting was a hybrid meeting with both Zoom and in person attendance due to COVID. The City provided a link as well as a dial-in number to attend via Zoom.

The pledge of allegiance was recited. Councilman Seidenstricker offered the prayer.

## **ROLL CALL**

Those present per roll call taken by Deputy City Clerk Sharon Ratliff: Mayor Counts, Cooley, Mullins, Plunk, Hood, McArthur, Seidenstricker, Fulbright (excused), Fleischmann, Richison, Bookless (excused), Lehmann (excused), Sweeney, Crutchley (excused), Wagner (excused), Kroupa and Chief Shockey (excused).

## **BUSINESS FROM THE FLOOR**

**None**

## **CONSENT AGENDA**

- A. REGULAR COUNCIL MINUTES FROM December 16, 2021**
- B. PAYROLL WARRANT #T00107 In the Amount of \$379,353.49**
- C. GENERAL WARRANT #5800 In the Amount of \$165,651.34**
- D. GENERAL WARRANT #5801 In the Amount of \$564,889.08**

**Butch Cooley made a motion and so moved to approve the consent agenda. Seconded by Mark Hood. Roll call vote: Cooley, yes; Mullins, yes; Plunk, yes; Hood, yes; McArthur, yes; Seidenstricker, yes; Fulbright, excused; Fleischmann, yes; 7 Yeas: Consent agenda approved.**

## **ORDINANCES**

**BILL NO 2817 - AN ORDINANCE APPROVING A RECORD PLAT TITLE "HENLEY WOODS PLAT TWO-B"** was read twice by Deputy City Clerk Sharon Ratliff. Roll call vote: Cooley, yes; Mullins, yes; Plunk, yes; Hood, yes; McArthur, yes; Seidenstricker, yes; Fulbright, excused; Fleischmann, yes; 7 Yeas: **Ordinance passed.**

## **RESOLUTIONS**

**RESOLUTION NO 22-01 – A RESOLUTION APPROVING A PURCHASE OF COMPUTER SERVER HARDWARE AND SOFTWARE FROM REJIS**

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Regular Meeting  
January 6, 2022

**Tim Seidenstricker made a motion and so moved to approve Resolution No 22-01.**  
Seconded by Rodney Mullins. Roll call vote: Cooley, yes; Mullins, yes; Plunk, yes; Hood, yes; McArthur, yes; Seidenstricker, yes; Fulbright, (excused); Fleischmann, yes; 7 Yeas: **Resolution passed.**

## **MOTIONS**

**None**

## **REPORTS FROM MAYOR, COUNCIL AND COMMITTEES**

Butch Cooley commented that the Street Department did a nice job on the roads this morning with the snow that fell.

## **ADMINISTRATIVE REPORTS**

Bryan Richison – Announced that the Ambulance District dropped off a check and the City of Arnold is paid in full.

**A motion to adjourn the meeting was made by Gary Plunk. Seconded by Brian McArthur.**  
Voice vote: All Yeas: **Motion carried.**

Meeting adjourned at 7:11 p.m.

  
Deputy City Clerk Sharon Ratliff, CMC/MPCC

CITY OF ARNOLD, MISSOURI

ROLL CALL

MEETING: Regular

DATE: 1-6-2022

PAGE: 1

BILL NO - RESOLUTION - MOTION

|                           |                           | Roll Call | Consent Agenda       | Bill #2817 | Resolution 22-01 |         |  |
|---------------------------|---------------------------|-----------|----------------------|------------|------------------|---------|--|
| <b>COUNCIL MEMBERS:</b>   |                           |           |                      |            |                  |         |  |
| <b>MAYOR</b>              | <u>RON COUNTS</u>         | Present   |                      |            |                  |         |  |
| <b>COUNCIL:</b>           | <u>BUTCH COOLEY</u>       | Present   | Yes                  | Yes        | Yes              |         |  |
| <b>COUNCIL:</b>           | <u>RODNEY MULLINS</u>     | Present   | Yes                  | Yes        | Yes              |         |  |
| <b>COUNCIL:</b>           | <u>GARY PLUNK</u>         | Present   | Yes                  | Yes        | Yes              |         |  |
| <b>COUNCIL:</b>           | <u>MARK HOOD</u>          | Present   | Yes                  | Yes        | Yes              |         |  |
| <b>COUNCIL:</b>           | <u>BRIAN MCARTHUR</u>     | Present   | Yes                  | Yes        | Yes              |         |  |
| <b>COUNCIL:</b>           | <u>TIM SEIDENSTRICKER</u> | Present   | Yes                  | Yes        | Yes              |         |  |
| <b>COUNCIL:</b>           | <u>JASON FULBRIGHT</u>    | Excused   | Excused              | Excused    | Excused          |         |  |
| <b>COUNCIL:</b>           | <u>EJ FLEISCHMANN</u>     | Present   | Yes                  | Yes        | Yes              |         |  |
| <b>CITY ADMINISTRATOR</b> | BRYAN RICHISON            | Present   | <b>PARKS DIR:</b>    |            | DAVE CRUTCHLEY   | Excused |  |
| <b>DEPUTY CITY CLERK</b>  | SHARON RATLIFF            | Present   | <b>PUBLIC WORKS:</b> |            | JUDY WAGNER      | Excused |  |
| <b>COM DEV</b>            | DAVID BOOKLESS            | Excused   | <b>TREASURER:</b>    |            | DAN KROUPA       | Present |  |
| <b>FINANCE DIRECTOR</b>   | BILL LEHMANN              | Excused   | <b>POLICE DEPT.</b>  |            | CHIEF SHOCKEY    | Excused |  |
| <b>CITY ATTORNEY</b>      | BOB SWEENEY               | Present   |                      |            |                  |         |  |

Mayor Ron Counts called the special council meeting to order at 8:45 p.m.

The council meeting was a hybrid meeting with both Zoom and in person attendance due to COVID. The City provided a link as well as a dial-in number to attend via Zoom.

**ROLL CALL**

Those present per roll call taken by City Clerk Tammi Casey: Mayor Counts, McArthur, Hood, Plunk, Cooley, Fulbright, Mullins, Fleischmann (via Zoom), Seidenstricker, Richison, Bookless, Lehmann, Sweeney, Crutchley, Wagner (excused), Kroupa and Chief Shockey.

**MOTIONS**

**1. MOTION TO HOLD A CLOSED SESSION FOR THE PURPOSE OF DISCUSSING LITIGATION PURSUANT TO RSMO SECTION 610.021 (1)**

**Butch Cooley made a motion and so moved to hold a Closed Session. Seconded by Jason Fulbright. Roll call vote: McArthur, yes; Hood, yes; Plunk, yes; Cooley, yes; Fulbright, yes; Mullins, yes; Fleischmann, yes; Seidenstricker, yes; 8 Yeas: Motion carried.**

Mayor Counts called for a five-minute recess before going into Closed Session.

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Closed Session ended at 9:43 p.m.

A motion to adjourn the meeting was made by Jason Fulbright. Seconded by Mark Hood. Voice vote: All Yeas.

Meeting adjourned at 9:44 p.m.

  
\_\_\_\_\_  
City Clerk Tammi Casey, CMC/MRCC-S

CITY OF ARNOLD, MISSOURI

ROLL CALL

MEETING: SPECIAL COUNCIL MEETING

DATE: 1/13/2022

PAGE: 1

BILL NO - RESOLUTION - MOTION

COUNCIL MEMBERS:

|                    |                    | ROLL CALL | MOTION TO HOLD CLOSED SESSION |                |  |  |         |
|--------------------|--------------------|-----------|-------------------------------|----------------|--|--|---------|
| MAYOR              | RON COUNTS         | PRESENT   |                               |                |  |  |         |
| COUNCIL:           | BRIAN MCARTHUR     | PRESENT   | YES                           |                |  |  |         |
| COUNCIL:           | MARK HOOD          | PRESENT   | YES                           |                |  |  |         |
| COUNCIL:           | GARY PLUNK         | PRESENT   | YES                           |                |  |  |         |
| COUNCIL:           | BUTCH COOLEY       | PRESENT   | YES                           |                |  |  |         |
| COUNCIL:           | JASON FULBRIGHT    | PRESENT   | YES                           |                |  |  |         |
| COUNCIL:           | RODNEY MULLINS     | PRESENT   | YES                           |                |  |  |         |
| COUNCIL:           | EJ FLEISCHMANN     | VIA ZOOM  | YES                           |                |  |  |         |
| COUNCIL:           | TIM SEIDENSTRICKER | PRESENT   | YES                           |                |  |  |         |
| CITY ADMINISTRATOR | BRYAN RICHISON     | PRESENT   | PARKS DIR:                    | DAVE CRUTCHLEY |  |  | PRESENT |
| CITY CLERK         | TAMMI CASEY        | PRESENT   | PUBLIC WORKS:                 | JUDY WAGNER    |  |  | EXCUSED |
| COM DEV            | DAVID BOOKLESS     | PRESENT   | TREASURER:                    | DAN KROUPA     |  |  | PRESENT |
| FINANCE DIRECTOR   | BILL LEHMANN       | PRESENT   | POLICE DEPT.                  | CHIEF SHOCKEY  |  |  | PRESENT |
| CITY ATTORNEY      | BOB SWEENEY        | PRESENT   |                               |                |  |  |         |

The Public Hearing was called to order by Mayor Ron Counts at 7:00 p.m. Deputy City Clerk Sharon Ratliff made note of those in attendance: Mayor Counts, Mullins, Hood, Cooley, Seidenstricker, Plunk, Fleischmann, Fulbright (excused), McArthur, Richison, Turner, Lehmann (excused), Sweeney, Crutchley (excused), Wagner (excused), Kroupa and Chief Shockey (excused).

**A. HENLEY WOODS PLAT TWO-B (RECORD PLAT)**

Sarah Turner informed council that the record plat approval request is for the final phase of Henley Woods Plat Two B. It is a continuation of the plat procedure and is consistent with the preliminary plat that has previously been recommended by the Planning Commission and approved by City Council. This request is being made within the April 5, 2022 deadline provided by Council. Payne Family Home has completed the majority of the infrastructure, and remaining projects are to be finished and/or escrowed per our usual subdivision procedures. The Planning Commission unanimously recommended approval of this record plat with 2 standard conditions for subdivisions at their December 14, 2021 meeting.

Andy Yost from Payne Family Homes thanked the Council for their consideration of this plat and offered to answer any questions that Council may have.

**PUBLIC COMMENTS**

None

**COUNCIL COMMENTS**

None

Public Hearing ended at 7:02 p.m.

  
Deputy City Clerk Sharon Ratliff, CMC, MPCC



CITY OF ARNOLD, MISSOURI

ROLL CALL

MEETING: Public Hearing

DATE: 1-6-2022

PAGE: 1

BILL NO - RESOLUTION - MOTION

|                           |                           | Roll Call |                      |                |  |         |
|---------------------------|---------------------------|-----------|----------------------|----------------|--|---------|
| <b>COUNCIL MEMBERS:</b>   |                           |           |                      |                |  |         |
| <b>MAYOR</b>              | <u>RON COUNTS</u>         | Present   |                      |                |  |         |
| <b>COUNCIL:</b>           | <u>BUTCH COOLEY</u>       | Present   |                      |                |  |         |
| <b>COUNCIL:</b>           | <u>RODNEY MULLINS</u>     | Present   |                      |                |  |         |
| <b>COUNCIL:</b>           | <u>GARY PLUNK</u>         | Present   |                      |                |  |         |
| <b>COUNCIL:</b>           | <u>MARK HOOD</u>          | Present   |                      |                |  |         |
| <b>COUNCIL:</b>           | <u>BRIAN MCARTHUR</u>     | Present   |                      |                |  |         |
| <b>COUNCIL:</b>           | <u>TIM SEIDENSTRICKER</u> | Present   |                      |                |  |         |
| <b>COUNCIL:</b>           | <u>JASON FULBRIGHT</u>    | Excused   |                      |                |  |         |
| <b>COUNCIL:</b>           | <u>EJ FLEISCHMANN</u>     | Present   |                      |                |  |         |
| <b>CITY ADMINISTRATOR</b> | BRYAN RICHISON            | Present   | <b>PARKS DIR:</b>    | DAVE CRUTCHLEY |  | Excused |
| <b>DEPUTY CITY CLERK</b>  | SHARON RATLIFF            | Present   | <b>PUBLIC WORKS:</b> | JUDY WAGNER    |  | Excused |
| <b>COM DEV</b>            | DAVID BOOKLESS            | Excused   | <b>TREASURER:</b>    | DAN KROUPA     |  | Present |
| <b>FINANCE DIRECTOR</b>   | BILL LEHMANN              | Excused   | <b>POLICE DEPT.</b>  | CHIEF SHOCKEY  |  | Excused |
| <b>CITY ATTORNEY</b>      | BOB SWEENEY               | Present   |                      |                |  |         |

The Work Session was a hybrid meeting with both Zoom and in person attendance. In order to provide public access to the meeting, the City provided a link as well as a dial-in number.

Those in attendance as noted by City Clerk Tammi Casey; Mayor Ron Counts, McArthur, Hood, Plunk, Cooley, Fulbright, Mullins, Fleischmann (via Zoom), Seidenstricker, Richison, Bookless, Lehmann, Sweeney, Crutchley, Wagner (excused), Kroupa and Chief Shockey.

#### **IMPACT OF NEW E-COMMERCE BUSINESS MODELS**

David Bookless spoke to council regarding the possible impact to the City in regards to the new E-Commerce Business models. These businesses consist of such types as ghost kitchens, warehouse distribution, delivery only restaurants, dark stores, etc. We are already seeing many fast food restaurants close their dining rooms and offering delivery or drive-thru only. E-Commerce businesses have increased by 34% since 2020 and are valued at over \$4.3 billion. Mr. Bookless discussed the possible outcomes of having such businesses in Arnold, from traffic issues to missed sales tax revenue.

#### **CYBER SECURITY AUDIT RESULTS**


Deion Christopher provided council with the results of the Cyber Security Audit for the City of Arnold. It began in December of 2020 and finished in November of 2021. There were three phases, external, internal and personnel. The City scored very well in all three phases. The personnel training's final report scored with 95% likelihood that attacks would be reported to our IT Department.

#### **DRIVEWAY PAVING REQUIREMENTS**

David Bookless spoke to council regarding the problems staff is seeing with gravel driveways and our current code. With gravel driveways there can be issues of gravel being washed out into the streets during a storm and possibly obstructing our storm water inlets. Our current code has conflicting regulations as to how much of a driveway needs to be paved. When this happens, the stricter of the regulations must be adhered to. Mr. Bookless reviewed the current code and where those contradictions lie as well as possible solutions to correct the code, such as how many feet of a driveway needs to be paved, the entire driveway, 50 feet, 100 feet, etc. Once this is decided we could require the resident to come into compliance upon selling the home, bring the driveway into compliance over time, bring the driveway into compliance if there are construction changes of over 50% to the home, etc. The City could also offer a grant program similar to the program offered for commercial demo projects. Much discussion followed by council. The Mayor polled the council to indicate their desire to move forward with making changes and providing a grant program. Council indicated their desire to move forward.

2  
Work Session  
January 13, 2022

The Work Session adjourned at 8:40 p.m.

  
City Clerk Tammi Casey, CMC/MRCC-S

**CITY OF ARNOLD, MISSOURI**

**ROLL CALL**

**MEETING:** WORK SESSION

**DATE:** 1/13/2022

**PAGE:** 1

**BILL NO - RESOLUTION - MOTION**

|                           |                           | IN ATTENDANCE |                      |                |  |         |  |
|---------------------------|---------------------------|---------------|----------------------|----------------|--|---------|--|
| <b>COUNCIL MEMBERS:</b>   |                           |               |                      |                |  |         |  |
| <b>MAYOR</b>              | <u>RON COUNTS</u>         | PRESENT       |                      |                |  |         |  |
| <b>COUNCIL:</b>           | <u>BRIAN MCARTHUR</u>     | PRESENT       |                      |                |  |         |  |
| <b>COUNCIL:</b>           | <u>MARK HOOD</u>          | PRESENT       |                      |                |  |         |  |
| <b>COUNCIL:</b>           | <u>GARY PLUNK</u>         | PRESENT       |                      |                |  |         |  |
| <b>COUNCIL:</b>           | <u>BUTCH COOLEY</u>       | PRESENT       |                      |                |  |         |  |
| <b>COUNCIL:</b>           | <u>JASON FULBRIGHT</u>    | PRESENT       |                      |                |  |         |  |
| <b>COUNCIL:</b>           | <u>RODNEY MULLINS</u>     | PRESENT       |                      |                |  |         |  |
| <b>COUNCIL:</b>           | <u>EJ FLEISCHMANN</u>     | VIA ZOOM      |                      |                |  |         |  |
| <b>COUNCIL:</b>           | <u>TIM SEIDENSTRICKER</u> | PRESENT       |                      |                |  |         |  |
| <b>CITY ADMINISTRATOR</b> | BRYAN RICHISON            | PRESENT       | <b>PARKS DIR:</b>    | DAVE CRUTCHLEY |  | PRESENT |  |
| <b>CITY CLERK</b>         | TAMMI CASEY               | PRESENT       | <b>PUBLIC WORKS:</b> | JUDY WAGNER    |  | -       |  |
| <b>COM DEV</b>            | DAVID BOOKLESS            | PRESENT       | <b>TREASURER:</b>    | DAN KROUPA     |  | PRESENT |  |
| <b>FINANCE DIRECTOR</b>   | BILL LEHMANN              | PRESENT       | <b>POLICE DEPT,</b>  | CHIEF SHOCKEY  |  | PRESENT |  |
| <b>CITY ATTORNEY</b>      | BOB SWEENEY               | PRESENT       |                      |                |  |         |  |

BILL NO. 2816

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 105 (ELECTIONS) OF THE  
ARNOLD CODE OF ORDINANCES

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WHEREAS, the Legislature for the State of Missouri has statutorily modified the timeframe for filing for candidacy of municipal offices; and

WHEREAS, the Council of the City of Arnold desires to be in compliance with State statutes;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
ARNOLD, MISSOURI, AS FOLLOWS:

Section 1. Section 105.030 of Chapter 105 of the Code of Ordinances is hereby repealed and a new Section 105.030 of Chapter 105 is hereby adopted as follows:

“Section 105.030 – Filing of Candidacy for Office.

All offices to be elected at the annual municipal election shall be opened for filing with the City Clerk at 8:00 a.m., the fifteenth (15) Tuesday prior to election. The closing filing date for declaration of candidacy for any such elected office shall be 5:00 p.m. on the thirteenth (13) Tuesday prior to the election.”

Section 2. This ordinance shall be in full force and effect upon its passage and approval.

READ TWO TIMES, PASSED AND APPROVED THIS 3<sup>RD</sup> DAY OF FEBRUARY  
2022.

\_\_\_\_\_  
Presiding Officer of the City Council

\_\_\_\_\_  
Mayor Ron Counts

ATTEST:

\_\_\_\_\_  
City Clerk Tammi Casey

1st reading: \_\_\_\_\_

2nd reading: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney Robert Sweeney

**BILL NO. 2818**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN NINTH AMENDMENT TO REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF ARNOLD AND ARNOLD CROSSROADS, LLC**

**WHEREAS**, the City of Arnold, Missouri (the “City”) and Arnold Crossroads, LLC (the “Developer”) entered into a Redevelopment Agreement dated as of July 18, 2005 (as amended, the “Redevelopment Agreement”), relating to the implementation of the Redevelopment Plan for the Arnold Crossroads Redevelopment Area; and

**WHEREAS**, the City finds it is necessary and desirable to amend the Redevelopment Agreement;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARNOLD, MISSOURI, AS FOLLOWS:**

**Section 1.** The Mayor is hereby authorized and directed to execute, on behalf of the City, the Ninth Amendment to Redevelopment Agreement (the “Ninth Amendment”) between the City and the Developer, and the City Clerk is hereby authorized and directed to attest to said document and to affix the seal of the City thereto. The Ninth Amendment shall be in substantially the form attached hereto as Exhibit A, which document is hereby approved by the City Council, with such changes therein as shall be approved by the officers of the City executing the same.

**Section 2.** This Ordinance shall be in full force and effect from and after the date of its passage and approval.

**PASSED** by the City Council and **APPROVED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

1st Reading: \_\_\_\_\_

2nd Reading: \_\_\_\_\_

**EXHIBIT A**

**NINTH AMENDMENT TO REDEVELOPMENT AGREEMENT**

[Follows]



## NINTH AMENDMENT TO REDEVELOPMENT AGREEMENT

**THIS NINTH AMENDMENT TO REDEVELOPMENT AGREEMENT** (this “Ninth Amendment”) is entered into as of the \_\_\_\_ day of February, 2022, by and between the **CITY OF ARNOLD, MISSOURI**, a municipal corporation organized and existing under the laws of the State of Missouri (“City”), and **ARNOLD CROSSROADS, LLC**, a Missouri limited liability company (“Developer”).

### RECITALS:

**WHEREAS**, the Developer and the City executed a Redevelopment Agreement for the Arnold Crossroads Redevelopment Area (the “Redevelopment Area”) dated as of July 18, 2005, as amended by that certain First Amendment to Redevelopment Agreement dated December 15, 2005, as further amended by that certain Second Amendment to Redevelopment Agreement dated March 16, 2006, as further amended by that certain Third Amendment to Redevelopment Agreement dated June 1, 2006, as further amended by that certain Fourth Amendment to Redevelopment Agreement dated July 27, 2006, as further amended by that certain Fifth Amendment to Redevelopment Agreement dated August 21, 2006, as further amended by that certain Sixth Amendment to Redevelopment Agreement dated March 12, 2008 (the “Sixth Amendment”), as further amended by that certain Seventh Amendment to Redevelopment Agreement dated September 24, 2009, as further amended by that certain Eighth Amendment to Redevelopment Agreement dated January 17, 2013 (the “Eighth Amendment”) (collectively, as amended, the “Agreement”), wherein the Developer agreed to redevelop the Redevelopment Area, and the City authorized the redevelopment of the Redevelopment Area, upon the terms and conditions contained in the Agreement; and

**WHEREAS**, the Developer and the City have agreed to amend the Agreement as provided in this Ninth Amendment; and

**WHEREAS**, words and phrases having a defined meaning in the Agreement shall have the same respective meanings when used herein unless otherwise expressly stated herein.

**NOW THEREFORE**, in consideration of the premises and the mutual agreements of the parties set forth herein, the parties hereto agree as follows:

1. Exhibit C-1 attached to the Eighth Amendment is hereby deleted and replaced with the new Exhibit C-1 attached to this Ninth Amendment.
2. Tenet selection for former Gordmans Store shall be a significant sales tax generator in conformance with Section 3.11 of the Agreement.
3. No less than 30 days prior to executing a lease with a new tenant for the former Gordmans Store, the Developer shall notify the City of the anticipated renovation costs not to exceed \$2,468,000.00. Unless the City reasonably objects in writing within 15 days of receipt of Developer’s Notice, the anticipated renovation costs shall be authorized pursuant to the Agreement subject to Section 4.2 of the Agreement.
4. The renovation of the former Gordmans Store contemplated in the Ninth Amendment shall be completed and a Certificate of Substantial Completion pursuant to Section 3.10 of the Agreement submitted to the City no later than April 1, 2028.

5. Notwithstanding any provision of the Agreement to the contrary, the City may reimburse itself for legal and administrative expenses related to the Ninth Amendment from available funds in the Special Allocation Fund.

6. Except as expressly modified hereby, all other terms and conditions of the Agreement shall remain unaltered and in full force and effect.

7. This Ninth Amendment may be executed in counterparts, each of which shall constitute an original. The parties may sign this Ninth Amendment by facsimile copies, and any such facsimile copy shall be deemed to be an original, and no objections shall be made to the introduction into evidence of any telefaxed copy on grounds related to the telefaxed copy not being an original.

**IN WITNESS WHEREOF**, the parties hereto have executed this Ninth Amendment as of the day and year first above written.

**DEVELOPER:**

**ARNOLD CROSSROADS, LLC**, a Missouri limited liability company

By: \_\_\_\_\_  
Larry W. Jones, Managing Member

**CITY:**

**CITY OF ARNOLD, MISSOURI**, a municipal corporation organized and existing under the laws of the State of Missouri

By: \_\_\_\_\_  
Ron Counts, Mayor

(SEAL)

**ATTEST:**

\_\_\_\_\_  
Tammi Casey: City Clerk

**Exhibit C-1**

**PUBLIC IMPROVEMENTS/REIMBURSABLE REDEVELOPMENT PROJECT COSTS  
(INITIAL PHASE)\***

| Category   | Estimated Costs     |
|--|---------------------|
| Land Acquisition & Relocation:   | \$1,700,000         |
| Site Preparation, Building Renovation and<br>Paving:                   | \$3,370,000         |
| Professional Fees, Development, Overhead<br>and Contingency:           | \$200,000           |
| Enhanced Site and Building Improvements for<br>Old K-Mart Building**   | \$662,000           |
| Enhanced Site and Building Improvements<br>for former Gordmans Store** | \$2,468,000         |
| Renovation of vacant 24 Hour space**                                   | \$300,000           |
|  | \$6,232,000         |
| Less: ARC TDD Payment  | \$700,000           |
| TOTAL:   | <u>\$11,000,000</u> |

\*Amount does not include transportation costs to be incurred by the City or otherwise reimbursed by the City or ARC TDD in connection with Section 3.16 or 3.17(c) of this Agreement.

\*\*The amount in this line item may not be allocated or transferred for use in any other category described on Exhibit C-1.

RESOLUTION NO: 22- 02

**A RESOLUTION APPROVING THE PURCHASE OF COMPUTER  
SERVER HARDWARE AND SOFTWARE FROM PARAGON MICRO  
INC.**

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BE IT RESOLVED by the Council of the City of Arnold, Missouri, that the attached quote from Paragon Micro Inc. for computer server hardware and software is hereby approved and the Mayor and/or City Administrator are authorized to sign any necessary documents to complete the transaction.

\_\_\_\_\_  
Presiding Officer of the City Council

\_\_\_\_\_  
Mayor Ron Counts

ATTEST:

\_\_\_\_\_  
City Clerk Tammi Casey

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

**Paragon Micro Inc.**

PO Box 775695  
Chicago IL 60677-5695

DUNS: 800436714  
TIN: 20-0144408  
CAGE CODE: 4ZHT8

**Bill To:**  
City of Arnold  
Accounts Payable  
2101 Jeffco Blvd  
Arnold MO 63010



**Quote**

**Q3358542**

|  |                 |
|--|-----------------|
| <b>Date:</b>   | <b>Expires:</b> |
| 1/20/2022  | 2/19/2022       |
| <b>Sales Rep</b>   |                 |
| 847-719-8417<br>jrusso@paragonmicro.com  |                 |
| <b>Customer Contact</b>  |                 |
| Contact: Christopher, Deion<br>Account: CO38555<br>PO#:<br>Phone: 636-282-6669<br>Email: dchristopher@arnoldmo.org |                 |

|   |              |                    |
|---|--------------|--------------------|
| <b>Quote Name</b>   | <b>Terms</b> | <b>Cost Center</b> |
| Dell PE T640 - 2x Intel 5218/128GB/2x 1TB HDD, 4x 2.4TB HDD/IDRAC9 Ent/MS Win Svr/5Yr | Net 30       |                    |

**External Notes**

| Qty | MPN            | Description  | Notes                  | Unit Price | Total     |
|-----|----------------|--|------------------------|------------|-----------|
| 2   | CUST-SRVR-DELL | <p>Dell PowerEdge T640 - 2x Intel Xeon Gold 5218 2.3Ghz 16 Core / 128GB RAM / 2x 1TB 7.2K RPM SATA HDD, 4x 2.4TB 10K RPM SAS HDD / RAID 1 + RAID 5 / PERC H750 / IDRAC9 Ent / DVD-ROM / Redundant PSU / 6x Microsoft Win Server 2019 Std 16 Core / 5Yr ProSupport / 5Yr Keep Your HDD</p> <p>PowerEdge T640 Server 210-AMBC - 1 -<br/>PowerEdge T640 MLK Motherboard V2 329-BFBL - 1 -<br/>Trusted Platform Module 2.0 461-AAEM - 1 -<br/>Chassis with up to 8 x 3.5 SAS/SATA Hard Drives, Tower Configuration PERC/HBA11 321-BHDQ - 1 -<br/>PowerEdge T640 Shipping DAO 340-BSGU - 1 -<br/>PowerEdge T640 Shipping Material 340-COPO - 1 -<br/>PowerEdge T640 CE, CCC, BIS Marking 389-DSUY - 1 -<br/>Intel Xeon Gold 5218 2.3G, 16C/32T, 10.4GT/s, 22M Cache, Turbo, HT (125W) DDR4-2666 338-BRVH - 1 -<br/>Intel Xeon Gold 5218 2.3G, 16C/32T, 10.4GT/s, 22M Cache, Turbo, HT (125W) DDR4-2666 338-BRVH - 1 -<br/>Additional Processor Selected 379-BDCO - 1 -<br/>Standard Heat Sink for Less = 150W 412-AAJW - 1 -<br/>Standard Heat Sink for Less = 150W 412-AAJW - 1 -<br/>3200MT/s RDIMMs 370-AEVR - 1 -<br/>Performance Optimized 370-AAIP - 1 -<br/>RAID 1 + RAID 5 780-BCDR - 1 -<br/>PERC H750 Adapter, Full Height, without bracket 405-ABCO - 1 -<br/>Windows Server 2019 Standard,16CORE,FI,No Med, No CAL, Multi Language 634-BSFE - 1 -<br/>Windows Server 2019 Standard,16CORE,Digitally Fulfilled Recovery Image, Multi Language 528-CFIB - 1 -<br/>Windows Server 2019 Standard,16CORE,Media Kit, Multi Language 634-BSGL - 1 -<br/>Windows Server 2019 Standard,No Media, WS2016 Std Downgrade DF Media,Multi Lang 528-CHGE - 1 -<br/>Windows Server 2019 Standard,No Media, WS2016 Std Downgrade w/DVD Media,Multi Lang 634-BSGN - 1 -<br/>IDRAC9,Enterprise 385-BBKT - 1 -<br/>IDRAC Group Manager, Disabled 379-BCQY - 1 -<br/>IDRAC,Factory Generated Password 379-BCSF - 1 -<br/>On-Board Dual-Port 10GbE LOM 542-BBCT - 1 -<br/>DVD ROM, SATA, Internal 429-ABCK - 1 -<br/>No Additional Mid Fan 384-BBSO - 1 -<br/>Dual, Hot-plug, Redundant Power Supply (1+1), 1100W 450-ADWM - 1 -<br/>Dell EMC Logo Push Pin 325-BCON - 1 -<br/>No Bezel 350-BBBW - 1 -<br/>Tower Quick Sync 2 (At-the-box-mgmt) 350-BBLH - 1 -<br/>Power Saving Dell Active Power Controller 750-AABF - 1 -<br/>UEFI BIOS Boot Mode with GPT Partition 800-BBDM - 1 -<br/>No Rack Rails, No Cable Management Arm, No Casters 770-BBCR - 1 -<br/>No Systems Documentation, No OpenManage DVD Kit 631-AAACK - 1 -<br/>US Order 332-1286 - 1 -<br/>Custom Configuration 817-BBBB - 1 -<br/>Dell Hardware Limited Warranty Plus On-Site Service 815-6143 - 1 -<br/>ProSupport: Next Business Day On-Site Service After Problem Diagnosis, 5 Years 815-5151 - 1 -<br/>ProSupport: 7x24 HW/SW Technical Support and Assistance, 5 Years 815-5165 - 1 -<br/>Thank you choosing Dell ProSupport. For tech support, visit //www.dell.com/support or call 1-800- 945-3355 989-3439 - 1 -<br/>Keep Your Hard Drive, 5 Year 980-3634 - 1 -<br/>ProDeploy Dell Server T Series - Deployment 807-2306 - 1 -<br/>ProDeploy Dell Server T Series - Deployment Verification 807-2310 - 1 -</p> | Mfg #<br>3000109914976 | 14,789.99  | 29,579.98 |

**Paragon Micro Inc.**

PO Box 775695  
Chicago IL 60677-5695



**Quote**

**Q3358542**

|              |                 |
|--------------|-----------------|
| <b>Date:</b> | <b>Expires:</b> |
| 1/20/2022    | 2/19/2022       |

| Qty | MPN | Description  | Notes | Unit Price   | Total              |
|-----|-----|--|-------|--|--------------------|
|     |     | 32GB RDIMM, 3200MT/s, Dual Rank 16Gb BASE x8 370-AGDS - 4 -<br>1TB 7.2K RPM SATA 6Gbps 512n 2.5in Hot-plug Hard Drive, 3.5in HYB CARR<br>400-ASKJ - 2 -<br>2.4TB 10K RPM SAS ISE 12Gbps 512e 2.5in Hot-plug Hard Drive, 3.5in HYB<br>CARR 400-AURJ - 4 -<br>Windows Server® 2019 Standard Edition, Add License, 16CORE, NO MEDIA/KEY<br>634-BSGE - 5 -<br>WS2019, Additional 2 VMs 634-BSFW - 2 -<br>Broadcom 5719 Quad Port 1GbE BASE-T Adapter, PCIe Full Height 540-BBCW -<br>1 -<br>Power Cord - C13, 3M, 125V, 15A (North America, Guam, North Marianas,<br>Philippines, Samoa, Vietnam) 450-AALV - 2 - |       |  |                    |
|     |     |  |       | <b>Subtotal</b>  | <b>29,579.98</b>   |
|     |     |  |       | <b>Shipping Cost (FedEx Ground® (2-5 Business Days))</b> | <b>0.00</b>        |
|     |     |  |       | <b>Total</b>   | <b>\$29,579.98</b> |

We value your business and will continue to provide you with excellent service in addition to our comprehensive product line.

**SALES TAXES ARE ESTIMATED** and may change depending on the rates levied by the destination's tax jurisdiction at the time of invoicing. Finalized invoice will be sent by Paragon Micro's Accounting Department.

**PRICING AND INFORMATION DISCLAIMER:** All pricing is subject to change without notice. For all prices, products and offers, Paragon Micro, Inc. reserves the right to make adjustments due to changing market conditions, product discontinuation, manufacturer price changes, errors in advertisements and other extenuating circumstances. While Paragon Micro, Inc. uses reasonable efforts to include accurate and up-to-date information on the Site, Paragon Micro, Inc. makes no warranties or representations as to the Site's accuracy. Paragon Micro, Inc. assumes no liability or responsibility for any errors or omissions in the content on the Site.

Accepted By: Printed Name \_\_\_\_\_

Purchase Order # \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_



Pricing Proposal  
 Quotation #: 21475186  
 Created On: 1/14/2022  
 Valid Until: 2/11/2022

**City of Arnold**

**Inside Account Manager**

**Deion Christopher**  
 2900 Arnold Tenbrook Road  
 Arnold, Missouri 63010  
 United States  
 Phone: 636-282-6669  
 Fax:  
 Email:

**Gabriella Jimenez**  
 290 Davidson Ave  
 Somerset, NJ,08873  
 Phone: 732-652-0247  
 Fax:  
 Email: gabriella\_jimenez@shi.com

All Prices are in US Dollar (USD)

| Product   | Qty | Your Price  | Total              |
|---|-----|-------------|--------------------|
| 1 PowerEdge T640<br>Dell - Part#: 3000109564180.1<br>Contract Name: Omnia Partners - IT Solutions<br>Contract #: 2018011-02<br>Note: Hardware; ETA end of March - specs below | 2   | \$12,589.68 | \$25,179.36        |
| <b>Total</b>  |     |             | <b>\$25,179.36</b> |

**Additional Comments**

SHI SPIN: #143012572  
 SHI-GS SPIN (For Texas customers ONLY): #143028315  
 For E-rate SPI orders, applicant shall be responsible for payment of any outstanding or ineligible costs if USAC rejects reimbursement claim in whole or in part.

Please note, if Emergency Connectivity Funds (ECF) will be used to pay for all or part of this quote, please let us know as we will need to ensure compliance with the funding program.

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

- Description SKU Quantity
- PowerEdge T640 Server 210-AMBC - 1 -
- PowerEdge T640 MLK Motherboard V2 329-BFBL - 1 -
- Trusted Platform Module 2.0 461-AAEM - 1 -
- Chassis with up to 8 x 3.5 SAS/SATA Hard Drives, Tower Configuration PERC/HBA11 321-BHDQ - 1 -
- PowerEdge T640 Shipping DAO 340-BSGU - 1 -
- PowerEdge T640 Shipping Material 340-COPO - 1 -
- PowerEdge T640 CE, CCC, BIS Marking 389-DSUY - 1 -
- Intel Xeon Gold 5218 2.3G, 16C/32T, 10.4GT/s, 22M Cache, Turbo, HT (125W) DDR4-2666 338-BRVH - 1 -
- Intel Xeon Gold 5218 2.3G, 16C/32T, 10.4GT/s, 22M Cache, Turbo, HT (125W) DDR4-2666 338-BRVH - 1 -
- Additional Processor Selected 379-BDCO - 1 -
- Standard Heat Sink for Less = 150W 412-AAJW - 1 -
- Standard Heat Sink for Less = 150W 412-AAJW - 1 -
- 3200MT/s RDIMMs 370-AEVR - 1 -
- Performance Optimized 370-AAIP - 1 -
- RAID 1 + RAID 5 780-BCDR - 1 -
- PERC H750 Adapter, Full Height, without bracket 405-ABCO - 1 -
- No Operating System 619-ABVR - 1 -

IDRAC9, Express 385-BBKS - 1 -  
iDRAC Group Manager, Disabled 379-BCQY - 1 -  
iDRAC,Factory Generated Password 379-BCSF - 1 -  
On-Board Dual-Port 10GbE LOM 542-BBCT - 1 -  
DVD ROM, SATA, Internal 429-ABCK - 1 -  
No Additional Mid Fan 384-BBSO - 1 -  
Dual, Hot-plug, Redundant Power Supply (1+1), 1100W 450-ADWM - 1 -  
Dell EMC Logo Push Pin 325-BCON - 1 -  
No Bezel 350-BBBW - 1 -  
No Quick Sync for Tower 350-BBLM - 1 -  
Power Saving Dell Active Power Controller 750-AABF - 1 -  
UEFI BIOS Boot Mode with GPT Partition 800-BBDM - 1 -  
No Rack Rails, No Cable Management Arm, No Casters 770-BBCR - 1 -  
No Systems Documentation, No OpenManage DVD Kit 631-AACK - 1 -  
US Order 332-1286 - 1 -  
Custom Configuration 817-BBBB - 1 -  
Dell Hardware Limited Warranty Plus On-Site Service 815-5143 - 1 -  
ProSupport: Next Business Day On-Site Service After Problem Diagnosis, 5 Years 815-5151 - 1 -  
ProSupport: 7x24 HW/SW Technical Support and Assistance, 5 Years 815-5165 - 1 -  
Thank you choosing Dell ProSupport. For tech support, visit //www.dell.com/support or call 1-800- 945-3355 989-3439 - 1 -  
Keep Your Hard Drive, 5 Year 980-3634 - 1 -  
On-Site Installation Declined 900-9997 - 1 -  
32GB RDIMM, 3200MT/s, Dual Rank 16Gb BASE x8 370-AGDS - 4 -  
1TB 7.2K RPM SATA 6Gbps 512n 2.5in Hot-plug Hard Drive, 3.5in HYB CARR 400-ASKJ - 2 -  
2.4TB 10K RPM SAS ISE 12Gbps 512e 2.5in Hot-plug Hard Drive, 3.5in HYB CARR 400-AURJ - 4 -  
No Media Required 421-5736 - 1 -  
Broadcom 5719 Quad Port 1GbE BASE-T Adapter, PCIe Full Height 540-BBCW - 1 -  
Power Cord - C13, 3M, 125V, 15A (North America, Guam, North Marianas, Philippines, Samoa, Vietnam) 450-AALV - 2 -

---

*The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.*





## A quote for your consideration

Based on your business needs, we put the following quote together to help with your purchase decision. Below is a detailed summary of the quote we've created to help you with your purchase decision.

To proceed with this quote, you may respond to this email, order online through your [Premier page](#), or, if you do not have Premier, use this [Quote to Order](#).

|                             |                                    |                   |                         |
|-----------------------------|------------------------------------|-------------------|-------------------------|
| <b>Quote No.</b>            | <b>3000109565527.1</b>             | <b>Sales Rep</b>  | Cortina Mosley          |
| <b>Total</b>                | <b>\$23,045.70</b>                 | <b>Phone</b>      | (800) 456-3355, 6178458 |
| <b>Customer #</b>           | 26475911                           | <b>Email</b>      | Cortina_Mosley@Dell.com |
| <b>Quoted On</b>            | Jan. 13, 2022                      | <b>Billing To</b> | ACCOUNTS PAYABLE        |
| <b>Expires by</b>           | Feb. 12, 2022                      |                   | CITY OF ARNOLD          |
| <b>Contract Name</b>        | Dell Standard Terms and Conditions |                   | 2101 JEFFCO BLVD        |
| <b>Contract Code</b>        | C000000006563                      |                   | ARNOLD, MO 63010        |
| <b>Customer Agreement #</b> | Dell Standard Terms and Conditions |                   |                         |
| <b>Solution ID</b>          | 15485638                           |                   |                         |

### Message from your Sales Rep

Please contact your Dell sales representative if you have any questions or when you're ready to place an order. Thank you for shopping with Dell!

Regards,  
Cortina Mosley

### Shipping Group

|  |                        |
|--|------------------------|
| <b>Shipping To</b>   | <b>Shipping Method</b> |
| ACCOUNTS PAYABLE<br>CITY OF ARNOLD<br>2101 JEFFCO BLVD<br>ARNOLD, MO 63010<br>(636) 296-6533 | Standard Delivery      |

| Product   | Unit Price  | Quantity | Subtotal    |
|---|-------------|----------|-------------|
| PowerEdge T640 Tailor Made Promo - [pe_t640_tm] | \$11,489.86 | 2        | \$22,979.72 |

---

|                            |                    |
|----------------------------|--------------------|
| <b>Subtotal:</b>           | <b>\$22,979.72</b> |
| <b>Shipping:</b>           | <b>\$65.98</b>     |
| <b>Environmental Fee:</b>  | <b>\$0.00</b>      |
| <b>Non-Taxable Amount:</b> | <b>\$23,045.70</b> |
| <b>Taxable Amount:</b>     | <b>\$0.00</b>      |
| <b>Estimated Tax:</b>      | <b>\$0.00</b>      |
| <hr/>                      |                    |
| <b>Total:</b>              | <b>\$23,045.70</b> |

## Shipping Group Details

|  |   |
|--|---|
| <b>Shipping To</b><br>ACCOUNTS PAYABLE<br>CITY OF ARNOLD<br>2101 JEFFCO BLVD<br>ARNOLD, MO 63010<br>(636) 296-6533 | <b>Shipping Method</b><br>Standard Delivery |
|--|---|

|  |             |               |                         |
|--|-------------|---------------|-------------------------|
| <b>PowerEdge T640 Tailor Made Promo - [pe_t640_tm]</b> | \$11,489.86 | Quantity<br>2 | Subtotal<br>\$22,979.72 |
|--|-------------|---------------|-------------------------|

Estimated delivery if purchased today:  
 Mar. 22, 2022  
 Contract # C000000008563  
 Customer Agreement # Dell Standard Terms and Conditions

| Description   | SKU      | Unit Price | Quantity | Subtotal |
|---|----------|------------|----------|----------|
| PowerEdge T640 Server   | 210-AMBC | -          | 2        | -        |
| PowerEdge T640 MLK Motherboard V2   | 329-BFBL | -          | 2        | -        |
| No Trusted Platform Module  | 461-AADZ | -          | 2        | -        |
| Chassis with up to 8 x 3.5 SAS/SATA Hard Drives, Tower Configuration PERC/HBA11     | 321-BHDQ | -          | 2        | -        |
| PowerEdge T640 Shipping DAO   | 340-BSGU | -          | 2        | -        |
| PowerEdge T640 Shipping Material  | 340-COPO | -          | 2        | -        |
| PowerEdge T640 CE, CCC, BIS Marking   | 389-DSUY | -          | 2        | -        |
| Intel Xeon Gold 5218 2.3G, 16C/32T, 10.4GT/s, 22M Cache, Turbo, HT (125W) DDR4-2666 | 338-BRVH | -          | 2        | -        |
| Intel Xeon Gold 5218 2.3G, 16C/32T, 10.4GT/s, 22M Cache, Turbo, HT (125W) DDR4-2666 | 338-BRVH | -          | 2        | -        |
| Additional Processor Selected   | 379-BDCO | -          | 2        | -        |
| Standard Heat Sink for Less = 150W  | 412-AAJW | -          | 2        | -        |
| Standard Heat Sink for Less = 150W  | 412-AAJW | -          | 2        | -        |
| Performance Optimized   | 370-AAIP | -          | 2        | -        |
| RAID 5  | 780-BCDP | -          | 2        | -        |
| PERC H750 Adapter, Full Height, without bracket                                     | 405-ABCO | -          | 2        | -        |
| BOSS controller card + with 2 M.2 Sticks 480GB (RAID 1),FH                          | 403-BCHJ | -          | 2        | -        |
| No Operating System   | 619-ABVR | -          | 2        | -        |
| iDRAC9,Enterprise   | 385-BBKT | -          | 2        | -        |
| iDRAC Group Manager, Disabled   | 379-BCQY | -          | 2        | -        |
| iDRAC,Factory Generated Password  | 379-BCSF | -          | 2        | -        |
| On-Board Dual-Port 10GbE LOM  | 542-BBCT | -          | 2        | -        |
| No Internal Optical Drive   | 429-ABDL | -          | 2        | -        |
| No Additional Mid Fan   | 384-BBSO | -          | 2        | -        |
| Dual, Hot-plug, Redundant Power Supply (1+1), 1100W                                 | 450-ADWM | -          | 2        | -        |
| Dell EMC Logo Push Pin  | 325-BCON | -          | 2        | -        |
| No Bezel  | 350-BBBW | -          | 2        | -        |
| Tower Quick Sync 2 (At-the-box-mgmt)  | 350-BBLH | -          | 2        | -        |
| Power Saving Dell Active Power Controller   | 750-AABF | -          | 2        | -        |

|  |          |   |   |   |
|--|----------|---|---|---|
| No Rack Rails, No Cable Management Arm, No Casters   | 770-BBCR | - | 2 | - |
| No Systems Documentation, No OpenManage DVD Kit  | 631-AACK | - | 2 | - |
| US Order   | 332-1286 | - | 2 | - |
| Custom Configuration   | 817-BBBB | - | 2 | - |
| Dell Hardware Limited Warranty Plus On-Site Service  | 815-5143 | - | 2 | - |
| ProSupport: Next Business Day On-Site Service After Problem Diagnosis, 5 Years                             | 815-5151 | - | 2 | - |
| ProSupport: 7x24 HW/SW Technical Support and Assistance, 5 Years   | 815-5165 | - | 2 | - |
| Thank you choosing Dell ProSupport. For tech support, visit //www.dell.com/support or call 1-800- 945-3355 | 989-3439 | - | 2 | - |
| Keep Your Hard Drive, 5 Year   | 980-3634 | - | 2 | - |
| On-Site Installation Declined  | 900-9997 | - | 2 | - |
| 3200MT/s RDIMMs  | 370-AEVR | - | 2 | - |
| 32GB RDIMM, 3200MT/s, Dual Rank 16Gb BASE x8   | 370-AGDS | - | 8 | - |
| 2.4TB 10K RPM SAS ISE 12Gbps 512e 2.5in Hot-plug Hard Drive, 3.5in HYB CARR                                | 400-AURJ | - | 8 | - |
| No Media Required  | 421-5736 | - | 2 | - |
| Broadcom 5719 Quad Port 1GbE BASE-T Adapter, PCIe Full Height  | 540-BBCW | - | 2 | - |
| Power Cord - C13, 3M, 125V, 15A (North America, Guam, North Marianas, Philippines, Samoa, Vietnam)         | 450-AALV | - | 4 | - |
| UEFI BIOS Boot Mode with GPT Partition   | 800-BBDM | - | 2 | - |

|                           |                    |
|---------------------------|--------------------|
| <b>Subtotal:</b>          | <b>\$22,979.72</b> |
| <b>Shipping:</b>          | <b>\$65.98</b>     |
| <b>Environmental Fee:</b> | <b>\$0.00</b>      |
| <b>Estimated Tax:</b>     | <b>\$0.00</b>      |
| <b>Total:</b>             | <b>\$23,045.70</b> |

## Important Notes

### Terms of Sale

This Quote will, if Customer issues a purchase order for the quoted items that is accepted by Supplier, constitute a contract between the entity issuing this Quote ("Supplier") and the entity to whom this Quote was issued ("Customer"). Unless otherwise stated herein, pricing is valid for thirty days from the date of this Quote. All product, pricing and other information is based on the latest information available and is subject to change. Supplier reserves the right to cancel this Quote and Customer purchase orders arising from pricing errors. Taxes and/or freight charges listed on this Quote are only estimates. The final amounts shall be stated on the relevant invoice. Additional freight charges will be applied if Customer requests expedited shipping. Please indicate any tax exemption status on your purchase order and send your tax exemption certificate to [Tax\\_Department@dell.com](mailto:Tax_Department@dell.com) or [ARSalesTax@emc.com](mailto:ARSalesTax@emc.com), as applicable.

**Governing Terms:** This Quote is subject to: (a) a separate written agreement between Customer or Customer's affiliate and Supplier or a Supplier's affiliate to the extent that it expressly applies to the products and/or services in this Quote or, to the extent there is no such agreement, to the applicable set of Dell's Terms of Sale (available at [www.dell.com/terms](http://www.dell.com/terms) or [www.dell.com/oemterms](http://www.dell.com/oemterms)), or for cloud/as-a-Service offerings, the applicable cloud terms of service (identified on the Offer Specific Terms referenced below); and (b) the terms referenced herein (collectively, the "Governing Terms"). Different Governing Terms may apply to different products and services on this Quote. The Governing Terms apply to the exclusion of all terms and conditions incorporated in or referred to in any documentation submitted by Customer to Supplier.

**Supplier Software Licenses and Services Descriptions:** Customer's use of any Supplier software is subject to the license terms accompanying the software, or in the absence of accompanying terms, the applicable terms posted on [www.Dell.com/eula](http://www.Dell.com/eula). Descriptions and terms for Supplier-branded standard services are stated at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global) or for certain infrastructure products at [www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm](http://www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm).

**Offer-Specific, Third Party and Program Specific Terms:** Customer's use of third-party software is subject to the license terms that accompany the software. Certain Supplier-branded and third-party products and services listed on this Quote are subject to additional, specific terms stated on [www.dell.com/offeringspecificterms](http://www.dell.com/offeringspecificterms) ("Offer Specific Terms").

**In case of Resale only:** Should Customer procure any products or services for resale, whether on standalone basis or as part of a solution, Customer shall include the applicable software license terms, services terms, and/or offer-specific terms in a written agreement with the end-user and provide written evidence of doing so upon receipt of request from Supplier.

**In case of Financing only:** If Customer intends to enter into a financing arrangement ("Financing Agreement") for the products and/or services on this Quote with Dell Financial Services LLC or other funding source pre-approved by Supplier ("FS"), Customer may issue its purchase order to Supplier or to FS. If issued to FS, Supplier will fulfill and invoice FS upon confirmation that: (a) FS intends to enter into a Financing Agreement with Customer for this order; and (b) FS agrees to procure these items from Supplier. Notwithstanding the Financing Agreement, Customer's use (and Customer's resale of and the end-user's use) of these items in the order is subject to the applicable governing agreement between Customer and Supplier, except that title shall transfer from Supplier to FS instead of to Customer. If FS notifies Supplier after shipment that Customer is no longer pursuing a Financing Agreement for these items, or if Customer fails to enter into such Financing Agreement within 120 days after shipment by Supplier, Customer shall promptly pay the Supplier invoice amounts directly to Supplier.

Customer represents that this transaction does not involve: (a) use of U.S. Government funds; (b) use by or resale to the U.S. Government; or (c) maintenance and support of the product(s) listed in this document within classified spaces. Customer further represents that this transaction does not require Supplier's compliance with any statute, regulation or information technology standard applicable to a U.S. Government procurement.

For certain products shipped to end users in California, a State Environmental Fee will be applied to Customer's invoice. Supplier encourages customers to dispose of electronic equipment properly.

Electronically linked terms and descriptions are available in hard copy upon request.

RESOLUTION NO: 22- 03

**A RESOLUTION REAPPOINTING MEMBERS TO COMMITTEES**

---

BE IT RESOLVED by the Council of the City of Arnold, Missouri, that Tricia Sutton is hereby reappointed to the Beautification Commission for a (2) two-year term expiring on April 22, 2022. Gary Allen is hereby reappointed to the Tourism Commission for a (3) three-year term that will expire on December 20, 2024. Diane Waller is reappointed to the Personnel Board of Review for a (3) three-year term expiring November 1,2023. Steven Buss is hereby reappointed to the Planning Commission for a (4) four-year term expiring December 31, 2024. Alan Bess is hereby reappointed to the Planning Commission for a (4) four-year term expiring December 3, 2025. Justin Lurk is hereby reappointed to the Planning Commission for a (4) four-year term expiring December 31, 2024, or until their successor has been appointed and qualified.

---

Presiding Officer of the City Council

---

Mayor Ron Counts

ATTEST:

---

City Clerk Tammi Casey

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

RESOLUTION NO: 22- 04

**A RESOLUTION APPROVING THE PURCHASE OF A HOSTED  
PHONE SYSTEM FROM TECH ELECTRONICS.**

---

BE IT RESOLVED by the Council of the City of Arnold, Missouri, that the attached contract with Tech Electronics for a hosted phone ssystem is hereby approved and the Mayor and/or City Administrator are authorized to sign any necessary documents to complete the transaction.

\_\_\_\_\_  
Presiding Officer of the City Council

\_\_\_\_\_  
Mayor Ron Counts

ATTEST:

\_\_\_\_\_  
City Clerk Tammi Casey

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

# City of Arnold

## Memorandum from the Information Technology Department

Date: January 11, 2021

To: Bryan Richison, City Administrator

From: Deion Christopher, Information Technology Manager

Re: Hosted Phone System Contract



For the past 36 months the City of Arnold has used a MITEL cloud-based phone system. This system played a key role during the COVID 19 lockdown by allowing staff to maintain optimal voice communications with citizens while working remotely from home. Overall, the MITEL phone system has provided quality service and features.

In September of 2021 I partnered with a telephony and data broker, (WorldNet) to schedule meetings with three large-scale cloud-based IAAS companies (Infrastructure as a Service) because the City's 36-month contract with Tech Electronics was scheduled to end in December of 2021. I personally reached out to Tech Electronics to solicit a quote for their new IAAS platform solution. The contract from Tech Electronics is not a renewal because they are proposing a different IAAS platform called Sequire.

Only two of the companies offered solutions that met our needs. I have attached both of those quotes to this memo.

Below are my findings:

**1. WINDSTREAM** - \$6,654.54 monthly recurring charges. Offering an exact Mitel platform solution that the City currently has through Tech Electronics. NOTE: quote includes \$1,026 per month for redundant Internet. Offers less secure recording and archiving of police phones lines.

**2. MITEL** - No longer an option as of November 2021; Mitel Cloud direct is now under Ring Central. I found it to be limited in security on recording and archiving phone lines in the police department.

**3. NEXTIVA** – Phone system comparable to the City's current hosted phone system, but could not provide a secure solution for securely recording and archiving phone lines in the police department.

**4. TECH ELECTRONICS** – Current IAAS platform provider. Offers a new platform with similar capabilities as our current system. Offers secure recording and archiving of police department phone lines.

Of the two viable solutions offered, WINDSTREAM is roughly \$1,228.54 (minus redundant Internet) more per month than the City's current phone bill, while the new solution from Tech Electronics is \$551.39 less per month than what the City currently pays for our current hosted phone services. After reviewing the quotes from Windstream and Tech Electronics, it is my recommendation that the City choose the 36 month Sequire Voice solution from Tech Electronics for a one time configuration cost of \$3,000 and a monthly recurring cost of \$3,848.61.





# VOICE

unlock the cloud

|                      |                           |
|----------------------|---------------------------|
| Supplier Information |                           |
| Name:                | Ch. of Arnold             |
| Address:             | 2101 Jeffco Blvd          |
|                      | C/O Ch. Arnold, MO 63010  |
| Phone:               | 636.282.6600              |
| Email:               | dchristo@her@arnoldmo.com |
| Date:                | 12/07/2021                |

| Qty                                     | TechCloud Voice Plan   | Monthly Recurring Fee | Outgoing Minutes             | Monthly Subtotal     |
|---|--|-----------------------|------------------------------|----------------------|
| <b>Optional Carrier Feature Pricing</b> |  |                       |                              |                      |
| 0                                       | Skate  | \$15.99               | Unlimited                    | \$0.00               |
| 105                                     | Standard   | \$17.99               | Unlimited                    | \$1,888.95           |
| 0                                       | Call Center (with recording)   | \$49.99               | Unlimited                    | \$0.00               |
| 1                                       | Call Center (no rec)   | \$9.99                | Unlimited                    | \$9.99               |
| <b>TechCloud Phones</b>                 |  |                       |                              |                      |
| 17                                      | Mobile 148   | \$12.99               | Unlimited                    | \$220.83             |
| 8                                       | Mobile 148   | \$9.99                | Unlimited                    | \$849.15             |
| 0                                       | Mobile 133   | \$5.99                | Unlimited                    | \$0.00               |
| 0                                       | Mobile Work/Lessons/Flotem   | \$9.99                | Unlimited                    | \$0.00               |
| 0                                       | Mobile CP960 Conference Phone  | \$29.99               | Unlimited                    | \$0.00               |
| 0                                       | Mobile CP960 Conference Phone w/ 2 Wireless Mics                           | \$49.99               | Unlimited                    | \$0.00               |
| 10                                      | Mobile Dongle  | \$1.99                | Unlimited                    | \$19.90              |
| <b>Optional Carrier Feature Pricing</b> |  |                       |                              |                      |
| 1                                       | DDI Feature (existing number)  | \$0.00                | \$2.00                       | \$0.00               |
| 0                                       | Additional New DDI Number  | \$1.00                | \$0.00                       | \$0.00               |
| 0                                       | Call Forward (per number) (over 5.00 per minute saved)                     | \$2.00                | \$0.00                       | \$0.00               |
| 0                                       | Call Forward (per number) (existing number)                                | \$0.00                | \$7.50                       | \$0.00               |
| 0                                       | International Calling  | See Rates             | See Rates                    | See Rates            |
| 0                                       | CNAM (Caller Name Outbound) Registration (per DID)                         | \$0.00                | \$10.00                      | \$0.00               |
| 3                                       | 911 Registration & Service (per DID/Location)                              | \$2.00                | \$0.00                       | \$6.00               |
| 0                                       | VFax (Virtual includes DID - non-fax over SIP)                             | \$14.99               | \$0.00                       | \$0.00               |
| 100                                     | IP Fax (Standard Fax includes DID - ATA included)                          | \$34.99               | \$35.00                      | walved \$349.90      |
| <b>Optional Hardware Add-ons</b>        |  |                       |                              |                      |
| 3                                       | 40 pin USB Extension (Mobile 148/133)                                      | \$6.00                | \$0.00                       | \$18.00              |
| 0                                       | Bluetooth Speaker  | \$4.00                | \$0.00                       | \$0.00               |
| 0                                       | Bluetooth Headset (Mobile)   | \$7.00                | \$0.00                       | \$0.00               |
| 1                                       | Professional Faxing Adapter (Cloud Faxes) (Professional Services Required) | \$19.99               | \$0.00                       | \$19.99              |
| 0                                       | Single Port Faxing Adapter (requires voice plan)                           | \$4.00                | \$0.00                       | \$0.00               |
| 0                                       | Power Supply Module (for USB Adapters)                                     | \$3.00                | \$0.00                       | \$0.00               |
| <b>Optional Data Hardware</b>           |  |                       |                              |                      |
| 0                                       | 4 Port PoE Switch, 24W (Unmanaged)   | \$79.99               | \$0.00                       | \$0.00               |
| 0                                       | 24 Port PoE Switch, 170W (Unmanaged)                                       | \$49.99               | \$0.00                       | \$0.00               |
| 0                                       | 48 Port PoE Switch, 370W (Unmanaged)                                       | \$74.99               | \$0.00                       | \$0.00               |
| 9                                       | 2021 Intel NUC10SBE 20-core Full Business                                  | \$21.99               | \$0.00                       | \$269.91             |
| <b>Optional System Feature Pricing</b>  |  |                       |                              |                      |
| 0                                       | Advanced Automated Attendant (includes) (per month)                        | \$0.00                | \$19.99                      | \$0.00               |
| 1                                       | International Call Recording w/ 90-day retention (per month)               | \$39.99               | \$0.00                       | \$39.99              |
| 0                                       | System Call Recording (payweek when)                                       | \$20.99               | \$0.00                       | \$0.00               |
| 0                                       | Advanced Console Architecture (Add'l Fee)                                  | \$9.99                | \$100.00                     | \$0.00               |
| 24                                      | Advanced Mailbox   | \$1.00                | \$0.00                       | \$74.00              |
| <b>TechCloud Professional Services</b>  |  |                       |                              |                      |
| 4                                       | Professional Services for Installation - for Faging in Public Deployment   | \$150.00              | \$600.00                     |                      |
| 0                                       | Professional Services for On-Site Training (plus travel)                   | \$150.00              | \$0.00                       |                      |
| 0                                       | Professional Services for Webinar Based Training (1st session)             | \$250.00              | \$0.00                       |                      |
| 0                                       | Professional Services for Webinar Based Training (Additional Session)      | \$150.00              | \$0.00                       |                      |
| 0                                       | Professional Services for Data Configuration                               | \$150.00              | \$2,400.00                   |                      |
|   |  | <b>One Time Total</b> | <b>Activation Fees Total</b> | <b>Monthly Total</b> |
|   |  | \$2,400.00            | \$0.00                       | \$1,888.95           |

Total does not include applicable taxes and surcharges.  
Based on 36 month contract. Payment can be accepted via ACH or Credit Card



Signature \_\_\_\_\_

Date \_\_\_\_\_

## **Tech Electronics, Inc.**

### **Cloud IAAS General Terms and Conditions**

The following terms and conditions have been incorporated into and are an integral part of any Quote provided by Tech Electronics, Inc. or one of its affiliates ("Tech Electronics") for cloud infrastructure as a service to a Customer (collectively with the Quote, the "Agreement").

#### **1. SERVICES, TERM AND USE**

a. **Services and Term.** The services described in the Quote ("Services") are provided and billed to Customer by Tech Electronics on a monthly (30-day) basis for one year ("Initial Term") and minimum monthly recurring fee ("Monthly Recurring Fee"), each as detailed on the Quote. The term shall commence on the later of the date on which Customer pays the first month's Monthly Recurring Fee or the date on which Customer receives notice from Tech Electronics that Customer's infrastructure is ready for Customer's use, including instructions for Customer to access the infrastructure. Unless Tech Electronics receives written notice of termination of Services from Customer thirty (30) days prior to the end of the Initial Term or a Renewal Term, the Services shall automatically renew at the same Monthly Recurring Fee for one year for the Services detailed on the original Quote (each a "Renewal Term", together with the Initial Term, the "Term").

b. **Use.** Customer and those Customer employees, consultants, contractors, or agents who are authorized by Customer to use the Services in support of Customer's operations and who have been given user logins and passwords by Customer ("Users") may use the Services and associated materials provided to Customer in conjunction with the Services, including any and all training, marketing, and demonstration materials, diagrams, test plans, and work flows ("Materials") solely for Customer's own internal business operations and not for any form of redistribution or resale. Customer will comply, and will ensure that its Users comply, with all applicable local, state, national international and foreign laws, treaties, regulations and conventions in connection with use of the Services, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer shall not use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Customer's Content, Customer's Applications and Third Party Content, for any purpose that may (i) menace or harass any person or cause damage or injury to any person or property, (ii) involve the publication of any material that is false, defamatory, harassing or obscene, (iii) violate privacy rights or promote bigotry, racism, hatred or harm, (iv) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters, (v) constitute an infringement of intellectual property or other proprietary rights, or (vi) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Tech Electronics under this Agreement, Tech Electronics reserves the right, but has no obligation, to take remedial action if any material violates the restrictions in the foregoing sentence (the "Acceptable Use Policy"), including the removal or disablement of access to such material. Tech Electronics shall have no liability to Customer in the event that Tech Electronics takes such action. In addition, Tech Electronics may charge Customer a fee, to be set in Tech Electronics' sole discretion, if Tech Electronics must clean up any unsolicited e-mails. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability,

appropriateness and ownership of all of Customer's Content and Customer's Applications. Customer agrees to defend and indemnify Tech Electronics against any claim arising out of a violation of Customer's obligations under this section. Customer shall, where required by law, inform third parties of the collection, storage or processing of any communications, personal information or other information, to ensure that any required third parties have opted in to such collection, storage or processing, and to otherwise comply with all applicable data protection and privacy law concerning the collection, storage and processing of personal information concerning such third parties. Customer is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By using the Services, Customer accepts responsibility for the confidentiality and timely and proper termination of user records in Customer's local (intranet) identity infrastructure or on its local computers. Tech Electronics is not responsible for any harm caused by Customer's Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Customer's local identity management infrastructure or its local computers. Customer is responsible for all activities that occur under its and its Users' usernames, passwords or accounts or as a result of Customer's or its Users' access to the Services, and agree to notify Tech Electronics immediately of any unauthorized use. Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.

c. Ownership. Subject to the limited rights expressly granted hereunder, Tech Electronics or its suppliers reserves all right, title and interest in and to (i) the Services; (ii) any and all Materials and Confidential Information provided or disclosed to Customer during the term of this Agreement; (iii) any and all derivatives, enhancements or improvements thereof; and (iv) any and all intellectual property rights contained in the foregoing (i), (ii), and (iii). No rights are granted to Customer hereunder other than as expressly set forth herein. Customer shall not (i) copy, reproduce, distribute, republish, download, display, post or transmit in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording or other means or create derivative works based on the Services or, except as expressly authorized herein, the Materials; (ii) alter, remove, obscure, frame or mirror Tech Electronics' or its suppliers' branding, proprietary notices or any content forming part of the Service or the Materials; (iii) disassemble, reverse compile, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Service or the Materials (as applicable to such Materials); (iv) modify, incorporate into or with other software or material, or create a derivative work of any part of the Service or the Materials; (v) attempt to circumvent or circumvent any license, timing or use restrictions that are built into the Services or the Materials; or (vi) access the Services or the Materials in order to (A) benchmark against or build a competitive product or service, or (B) copy any ideas, features, functions, or graphics of the Services or the Materials.

d. Maintenance. Tech Electronics will be responsible for all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, as such Patches are generally received by Tech Electronics. Tech

Electronics is not responsible for performance or security issues encountered with the Services that result from Customer's rejection of Patches that are necessary for the proper function and security of the Services. Except for emergency or security related maintenance activities, Tech Electronics will coordinate with Customer the scheduling of application of Patches, where possible, based on Tech Electronics' next available standard maintenance window.

e. Changes. Tech Electronics may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Term, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content. The Service Availability and other specifications are subject to change at Tech Electronics' discretion; however, Tech Electronics' changes to the Service Availability will not result in a material reduction in the level of performance, security or availability of the applicable Services provided to Customer for the duration of the Term.

## 2. PAYMENT AND BILLING

a. Fees. Customer agrees to pay to Tech Electronics the Monthly Recurring Fee and all associated charges for Services detailed on a Quote, as well as applicable variable usage and non-recurring charges incurred by Customer, if any, in the billing month. In the event of any additional, optional services requested by Customer, Tech Electronics' standard fees for such services shall apply. Tech Electronics may amend the services provided and its standard service fees at any time and from time to time without notice to Customer.

b. Overage Charges. If Tech Electronics and Customer have agreed to set applicable limits, Customer agrees that it is responsible for any and all network bandwidth, compute, hard-drive usage and any other overage charges it incurs for using the Services, even if such overages result because Customer's account has been compromised or "hacked."

c. Payment. Customer shall pay Tech Electronics for the Services in advance by credit card. Customer shall make arrangements for the Monthly Recurring Fee to be charged to its credit card and paid to Tech Electronics at least 10 days before the start of each month hereunder. If there are any additional charges to Customer pursuant to this Agreement, Tech Electronics shall invoice Customer for such charges, payable within 15 days of the invoice date.

d. Late or Missing Payments. If Tech Electronics does not receive timely payment from Customer's credit card processor, Customer agrees to pay all amounts due upon demand. Tech Electronics may charge a late payment fee equal to 1.5% on any overdue balance, or the maximum amount allowed by law if less, for each month or fraction of a month the overdue amount remains unpaid. Tech Electronics may also charge Customer an administrative fee for any returned checks or if the credit card payment processor declines payment. Customer agrees to pay Tech Electronics' costs of collection, including attorneys' fees, incurred by Tech Electronics in enforcing its rights under this Agreement.

e. Taxes. Customer shall pay any applicable taxes and governmentally imposed fees arising from its purchase under this Agreement (excluding taxes on Tech Electronics' income), or provide a tax exemption certificate prior to invoicing. Customer acknowledges and agrees that

in the event that any governmental agency revises or imposes taxes, of any kind, on any service provided hereunder, that Tech Electronics reserves the right to pass on all such taxes without notice to Customer.

### 3. SERVICE AVAILABILITY

a. Tech Electronics' Service Availability Requirement for a given calendar month is 99.9%.

"Service Availability" is calculated per month as follows:

$$\left( \frac{\text{Total - Unplanned Outage - Planned Maintenance}}{\text{Total - Planned Maintenance}} \right) \times 100 \geq 99.9\%$$

Definitions:

- **"Total"** is the total minutes in the applicable calendar month
- **"Unplanned Outage"** is total minutes not Available in the applicable calendar month outside of the Planned Maintenance window
- **"Planned Maintenance"** is total minutes of planned maintenance in the applicable calendar month.
- **"Available"** means the Services are available and operable for access and use by Customer and Authorized Parties over the Internet in material accordance with the Agreement.

b. Currently, Planned Maintenance is four (4) hours for weekly maintenance, plus four (4) hours for monthly maintenance, plus four (4) hours for quarterly maintenance. Tech Electronics' current weekly maintenance begins at 2:00 am (Central) on Saturday; monthly maintenance begins at 6:00 am (Central) on a Saturday; and quarterly maintenance begins at 10:00 am (Central) on a Saturday. All times are subject to change upon reasonable notice, to be delivered to Customer in writing not less than seventy-two (72) hours prior to such change.

c. If actual maintenance exceeds the time allotted for Planned Maintenance, it is considered an Unplanned Outage. If actual maintenance is less than time allotted for Planned Maintenance, that time is not applied as a credit to offset any Unplanned Outage time for the month.

d. The measurement point for Service Availability is the availability of the Service at the Tech Electronics edge of the infrastructure. Customer may request an availability report describing the Availability and other performance of the Services during such calendar month and the calendar year-to-date as compared to the Service Availability Requirement and the Agreement not more than once per month via Tech Electronics' customer center. The report shall be in electronic or such other form as Customer may approve in writing and shall include, at a minimum: (a) the actual performance of the Services relative to the Service Availability Requirement and the Agreement; and (b) if Service performance has failed in any respect to meet or exceed the Service Availability Requirement or Agreement during the reporting period, a description in sufficient detail to inform Customer of the cause of such failure and the corrective

actions Tech Electronics has taken and will take to ensure that the Service Availability Requirement and Agreement requirements are fully met.

e. In the event of a failure by Tech Electronics to meet the foregoing Service Availability Requirement in any calendar month, as Customer's sole and exclusive remedy, Tech Electronics shall provide a service credit of 5% of the monthly fee for the month of disruption to be deducted from future invoices to Customer.

#### **4. TERMINATION**

a. By Tech Electronics. Tech Electronics may terminate, discontinue or suspend Services to a Customer or a User, or cancel an application for Services without incurring any liability in the event of: (i) non-payment of amounts due by Customer for more than thirty-five (35) days following the monthly service period to which they relate if such amounts remain unpaid after ten (10) days' notice of such from Tech Electronics; (ii) breach of this Agreement; (iii) a violation by Customer of any law, rule or regulation of any governmental authority having jurisdiction over the Services; (iv) a violation by Customer of any Tech Electronics policy; (v) hacking, cracking, phishing, denial-of-service attacks, infection by computer viruses, worms or Trojan horses, or other activities that threaten computer or data security by Customer or a User; (vi) activities that Tech Electronics or its suppliers reasonably determine are defamatory, illegal, or offensive or are otherwise injurious or detrimental to the Service, to the supplier of the Service or to another customer; (vii) prohibition against Tech Electronics from furnishing Services by order of a court or other governmental authority having jurisdiction; and (viii) the provision of false or misleading credit information by Customer.

b. By Customer. After the Initial Term, Customer may terminate this Agreement at any time upon 30 days' prior written notice to Tech Electronics. In the event Customer attempts to terminate this Agreement prior to the end of the Initial Term, Customer will pay Tech Electronics, immediately upon presentation of all outstanding invoices, an amount equal to the Monthly Recurring Fee, multiplied by the number of months remaining in the Initial Term.

#### **5. BACKUPS AND DATA LOSS**

a. Customer's use of the Services is at its sole risk. Tech Electronics is not responsible for files and data residing on its account. Customer agrees to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on Tech Electronics' servers.

b. Tech Electronics automatically generates backups of shared server environments, but dedicated servers such as Customer's are not automatically backed up or protected. If loss of data occurs due to an error of Tech Electronics, it will attempt to recover the data at no charge to Customer. If data loss occurs due to negligence of Customer in securing its account or by an action of Customer, Tech Electronics will attempt to recover the data from the most recent archive for its standard archive retrieval fee.

## **6. IP ADDRESSES**

Internet Protocol Numbers (“IP Numbers”) provided or assigned by Tech Electronics in connection with the Services shall at all times remain the property of Tech Electronics and are not portable, and Customer shall have no rights thereto. Assignment of IP Numbers is subject to ICANN and ARIN guidelines and are not guaranteed. Tech Electronics may modify such assignments at any time in its sole discretion. Customer shall provide an accurate host count and IP address justification at the time of this Agreement, with such count subject to verification by Tech Electronics. Tech Electronics may exchange any IP Number assigned to Customer’s Services with another IP Number at any time. Tech Electronics may revoke any additional IP Number assigned to you for more than ninety (90) days if, at that time, Customer is not using at least 80% of its assigned IP Numbers.

## **7. SOFTWARE LICENSING**

Any software licenses obtained on Customer’s behalf (such as licenses from the Microsoft Service Provider License Agreement) are subject to price increases to match any increased made by the software manufacturer.

## **8. CONFIDENTIALITY**

By virtue of this Agreement, the parties may have access to information that is confidential to one another. The parties each agree to disclose only information that is required for the performance of obligations under this Agreement. The parties each agree not to disclose each other’s Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the disclosing party’s disclosure of the Confidential Information to the receiving party; however, Tech Electronics will hold Customer’s Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. The parties may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Tech Electronics will protect the confidentiality of Customer’s Content or Customer’s Applications residing in the Services Environment in accordance with the Tech Electronics security practices as they may be in effect from time to time. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders placed under this Agreement in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

## **9. WARRANTIES.**

a. Tech Electronics warrants that it will perform the Services in all material respects as described in the Quote and the Agreement. If the Services provided to Customer are not performed as warranted, Customer must promptly provide written notice to Tech Electronics that describes the deficiency in the Services.

b. TECH ELECTRONICS DOES NOT GUARANTEE THAT (i) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT TECH ELECTRONICS WILL CORRECT ALL SERVICES ERRORS, (ii) THE SERVICES WILL OPERATE IN COMBINATION WITH CUSTOMER'S CONTENT OR CUSTOMER'S APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, SERVICES OR DATA NOT PROVIDED BY TECH ELECTRONICS, AND (iii) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. CUSTOMER ACKNOWLEDGES THAT TECH ELECTRONICS DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. TECH ELECTRONICS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. TECH ELECTRONICS IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER CONTENT, CUSTOMER'S APPLICATIONS, THIRD PARTY CONTENT OR PATCHES PROVIDED BY THIRD PARTIES.

c. EXCEPT FOR CUSTOMER'S REMEDY WITH RESPECT TO SERVICE AVAILABILITY, FOR ANY OTHER BREACH OF THE SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND TECH ELECTRONICS' ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF TECH ELECTRONICS CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND TECH ELECTRONICS WILL REFUND TO CUSTOMER ANY FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO TECH ELECTRONICS FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

d. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

**10. LIMITATION OF LIABILITY.** THE TOTAL LIABILITY OF TECH ELECTRONICS HEREUNDER OR ARISING IN CONNECTION WITH THE PROVISION OF ANY SERVICES (REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY), WHETHER BASED UPON OR ARISING OUT OF NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT, STRICT LIABILITY, CONTRACT, TORT, WARRANTY, MISREPRESENTATION, PATENT INFRINGEMENT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER TO TECH ELECTRONICS FOR SUCH SERVICES, NOT TO EXCEED ONE YEAR'S MONTHLY RECURRING FEE, OR \$10,000, WHICHEVER IS GREATER. THE PROVISIONS OF THIS SECTION SHALL APPLY IN THE EVENT OF LOSS OR



DAMAGE, IRRESPECTIVE OF THE ORIGIN, RESULTING DIRECTLY OR INDIRECTLY TO PERSONS OR PROPERTY FROM THE PERFORMANCE OR NON-PERFORMANCE OF THE OBLIGATIONS SET FORTH BY THE TERMS OF THIS AGREEMENT OR FROM THE ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT OF TECH ELECTRONICS' AGENTS OR EMPLOYEES. IN NO EVENT SHALL TECH ELECTRONICS BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO OTHER EQUIPMENT OR ANY PLANT OR FACILITIES, LOSS OF PROFIT, OR LOSS OF PRODUCTION, REGARDLESS OF WHETHER THE CLAIM FOR SUCH CONSEQUENTIAL DAMAGES BE BASED ON WARRANTY (EXPRESS OR IMPLIED), CONTRACT, TORT, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT OR OTHERWISE. TECH ELECTRONICS SHALL NOT BE LIABLE TO INDEMNIFY CUSTOMER AGAINST ANY CLAIMS MADE AGAINST CUSTOMER FOR SUCH CONSEQUENTIAL DAMAGES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD TECH ELECTRONICS HARMLESS FOR ALL CLAIMS (INCLUDING CLAIMS FOR INDEMNITY) FOR ANY SUCH CONSEQUENTIAL DAMAGES BROUGHT AGAINST TECH ELECTRONICS. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

**11. CUSTOMER INDEMNITY.** CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD TECH ELECTRONICS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS AND LAWSUITS (REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY), INCLUDING THE PAYMENT OF ALL DAMAGES, EXPENSES, COSTS AND ATTORNEY FEES, WHETHER THESE CLAIMS AND LAWSUITS ARE BASED UPON ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT, INDEMNIFICATION, CONTRIBUTION OR STRICT OR PRODUCT LIABILITY, OR ANY OTHER TYPE OF CLAIM OR CONDUCT ON THE PART OF TECH ELECTRONICS, ITS AGENTS OR EMPLOYEES, EXCEPT TO THE EXTENT SUCH CLAIMS, DEMANDS OR LAWSUITS OCCUR WHILE AN EMPLOYEE OR AGENT OF TECH ELECTRONICS IS ON CUSTOMER'S PREMISES OR REMOTELY ACCESSING CUSTOMER'S SYSTEM AND WHICH DAMAGES, EXPENSES AND OTHER LIABILITY ARE SOLELY AND DIRECTLY CAUSED BY THE ACTS OF SAID EMPLOYEE OR AGENT. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

**12. WAIVER OF SUBROGATION.** CUSTOMER DOES HEREBY FOR ITSELF AND ANY PARTIES CLAIMING UNDER IT, RELEASE AND DISCHARGE TECH ELECTRONICS FROM AND AGAINST ALL HAZARDS COVERED BY CUSTOMER'S INSURANCE, AND ALL CLAIMS AGAINST TECH ELECTRONICS ARISING OUT OF SUCH HAZARDS, INCLUDING ANY RIGHT OF SUBROGATION BY CUSTOMER'S INSURANCE CARRIER, ARE HEREBY WAIVED BY CUSTOMER, AND CUSTOMER SHALL PROMPTLY SO NOTIFY ITS INSURANCE CARRIER. THIS WAIVER OF SUBROGATION EXTENDS TO ANY ALLEGED NEGLIGENCE, GROSS NEGLIGENCE,

WILLFUL OR WANTON CONDUCT OR RECKLESS CONDUCT BY TECH ELECTRONICS. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

### **13. THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES**

a. The Services may enable Customer to link to, transmit Customer Content to, or otherwise access, other Web sites, platforms, content, products, services, and information of third parties. Tech Electronics does not control and is not responsible for such Web sites or platforms or any such content, products, services and information accessible from or provided through the Services and Customer bears all risks associated with access to and use of such Web sites and third party content, products, services and information.

b. Any Third Party Content made accessible by Tech Electronics is provided on an “as-is” and “as available” basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and Customer acknowledges that Tech Electronics is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, Tech Electronics reserves the right to take remedial action if any such content violates applicable restrictions under Section 1(c) of this Agreement, including the removal of, or disablement of access to, such content. Tech Electronics disclaims all liabilities arising from or related to Third Party Content.

c. Customer acknowledges that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Term, and (ii) features of the Services that interoperate with third parties such as Facebook™, YouTube™ and Twitter™, etc. (each, a “Third Party Service”), depend on the continuing availability of such third parties’ respective application programming interfaces (APIs) for use with the Services. Tech Electronics may update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Tech Electronics in its sole discretion, Tech Electronics may cease providing access to the affected Third Party Content or Third Party Services without any liability to Customer. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Term does not affect Customer’s obligations under this Agreement or the applicable Quote, and Customer will not be entitled to any refund, credit or other compensation due to any such changes.

d. Any Third Party Content that Customer stores in its Services Environment will count towards any storage or other allotments applicable to the Services that Customer ordered.

### **14. SERVICES TOOLS AND ANCILLARY SOFTWARE**

a. Tech Electronics may use tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Services and to help resolve Customer’s service requests. The Tools will not collect or store any of Customer’s Content or Customer’s Applications residing in

the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Customer's Content and Customer's Applications) may also be used to assist in managing Tech Electronics' product and service portfolio, to help Tech Electronics address deficiencies in its product and service offerings, and for license and Services management.

b. Tech Electronics may provide Customer with on-line access to download certain Ancillary Software for use with the Services. If Tech Electronics licenses Ancillary Software to Customer and does not specify separate terms for such Ancillary Software, then, subject to Customer's payment obligations, (i) Customer has the non-exclusive, non-assignable, worldwide limited right to use such Ancillary Software solely to facilitate Customer's access to, operation of, and/or use of the Services Environment, subject to the terms of this Agreement and Customer's order, including the Services, (ii) Tech Electronics will maintain such Ancillary Software as part of the Services, and (iii) Customer's right to use such Ancillary Software will terminate upon the earlier of Tech Electronics' notice or the end of the Services associated with the Ancillary Programs. If Ancillary Software is licensed to Customer under separate third party license terms, then Customer's use of such software is subject solely to such separate terms.

**15. FORCE MAJEURE.** Except with respect to Customer's payment obligations for Services rendered prior to the commencement of a force majeure event, notwithstanding any other provision of the Agreement, neither party shall be liable to the other party for any delay or failure in performance of the Agreement to the extent such delay or failure is caused by fire; flood; explosion; accident; war; strike; embargo; governmental requirement; civil unrest; civil or military authority; Act of God; inability to secure materials or labor; electrical, internet, or telecommunication outage that is not caused by the obligated party; or any other causes beyond its reasonable control. Any such delay or failure shall suspend the Agreement until the force majeure ceases.

**16. PUBLICITY.** Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except Customer agrees that Tech Electronics may profile or disclose Customer as a Tech Electronics customer in standard marketing materials, including press releases, corporate presentations and digital properties and/or other marketing vehicles as Tech Electronics may deem appropriate.

**17. GENERAL.**

a. Entire Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, letters of intent, understandings, negotiations and discussions of the parties, whether oral or written. If there is any conflict between this Agreement and Customer's purchase order, or any other document or any oral agreements, this Agreement will govern. No conditions in the acceptance by Customer and no subsequent agreements or communications in any way modifying the provisions of this Agreement shall be binding unless signed by an authorized representative of Tech Electronics.

b. **Waiver.** No waiver of any of the terms and conditions contained herein shall be effective unless such waiver is in writing and signed by an authorized representative of the party waiving such condition.

c. **Severability.** In the event any of the terms and conditions of this Agreement are declared invalid or inoperative, all of the remaining terms and conditions shall remain in full force and effect.

d. **Governing Law.** This Agreement and the rights and obligations of the parties hereunder are to be governed by and construed and interpreted in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within Missouri, without regard to choice or conflict of laws rules.

e. **Waiver of Jury Trial.** EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM IN RESPECT OF THIS AGREEMENT OR TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. EACH PARTY HERETO AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY.

f. **Notices.** Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (i) if by facsimile, hand-delivery or by delivery service, upon receipt thereof; (ii) if mailed, three days after deposit in the U.S. mail, postage prepaid; or (iii) if by electronic mail, upon receipt thereof. All notices shall be addressed to the parties at the addresses specified in the Quote or at such other addresses as either party may in the future specify in writing to the other.

**18. DEFINITIONS.** For purposes of this Agreement, the following capitalized terms have the following meanings:

a. **“Ancillary Software”** means any software agent or tool that Tech Electronics makes available to Customer for download for purposes of facilitating Customer’s access to, operation of, and/or use with, the Services Environment.

b. **“Confidential Information”** means (i) the terms and pricing under this Agreement, (ii) Customer’s Content (including any personal data) and Customer’s Applications residing in the Services Environment, (iii) information related to Tech Electronics’ suppliers, customers and financial information and data; (iv) the Services and associated end user documentation, which shall include any and all associated intellectual property rights of Tech Electronics and its suppliers; and (v) any other information which is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the receiving party, using reasonable business judgment, to be confidential. A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or

omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

c. "Customer's Applications" means all software programs, including any source code for such programs, that Customer or Customer's Users provide and load onto, or create using, any Tech Electronics Services. Services under this Agreement, including Tech Electronics Programs and Services Environments, Tech Electronics intellectual property, and all derivative works thereof, do not fall within the meaning of the term "Customer's Applications."

d. "Customer's Content" means all text, files, images, graphics, illustrations, information, data (including any personal data), audio, video, photographs and other content and material (other than Customer's Applications), in any format, provided by Customer or on behalf of Customer's Users that reside in, or run on or through, the Services Environment.

e. "Services Environment" refers to the combination of infrastructure hardware and software components owned, licensed or managed by Tech Electronics to which Tech Electronics grants Customer and Customer's Users access as part of the Services which Customer has ordered. As applicable and subject to the terms of this Agreement and Customer's Quote, Tech Electronics Programs, Third Party Content, Customer's Content and Customer's Applications may be hosted in the Services Environment.

f. "Tech Electronics Programs" refers to the software products owned or licensed by Tech Electronics to which Tech Electronics grants Customer access as part of the Services, including Program Documentation, and any program updates provided as part of the Services.

g. "Third Party Content" means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Tech Electronics and made available to Customer through, within, or in conjunction with Customer's use of, the Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, data libraries and dictionaries, and marketing data.

## Tech Electronics, Inc.

### Hosted Cloud Services General Terms and Conditions

The following terms and conditions have been incorporated into and are an integral part of any Quote provided by Tech Electronics, Inc. or one of its affiliates ("Tech Electronics") for hosted cloud services to a Customer (collectively with the Quote, the "Agreement").

#### 1. SERVICES, TERM AND USE

a. Services and Term. The services described in the Quote ("Services") are provided and billed to Customer by Tech Electronics on a monthly (30-day) basis for three years ("Initial Term") and minimum monthly recurring fee ("Monthly Recurring Fee"), each as detailed on the Quote. Unless Tech Electronics receives written notice of termination of Services from Customer sixty (60) days prior to the end of the Initial Term or a Renewal Term, the Services shall automatically renew at the same Monthly Recurring Fee for one year for the Services detailed on the original Service Order (each a "Renewal Term", together with the Initial Term, the "Term").

b. Acceptance. Customer's acceptance of the Services, and Hardware (if applicable), is deemed to occur on the earlier of (i) first use of the Services and/or Hardware, as applicable, by Customer or (ii) seven (7) days following delivery of the Services and/or Hardware, as applicable, to Customer.

c. Use. Customer and those Customer employees, consultants, contractors, or agents who are authorized by Customer to use the Service in support of Customer's operations and who have been given user logins and passwords by Customer ("Users") may use the Service and associated materials provided to Customer in conjunction with the Services, including any and all training, marketing, and demonstration materials, diagrams, test plans, and work flows ("Materials") solely for Customer's own internal business operations and not for any form of redistribution or resale. Customer will comply, and will ensure that its Users comply, with all applicable local, state, national international and foreign laws, treaties, regulations and conventions in connection with use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer shall not use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Customer's Content, Customer's Applications and Third Party Content, for any purpose that may (i) menace or harass any person or cause damage or injury to any person or property, (ii) involve the publication of any material that is false, defamatory, harassing or obscene, (iii) violate privacy rights or promote bigotry, racism, hatred or harm, (iv) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters, (v) constitute an infringement of intellectual property or other proprietary rights, or (vi) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Tech Electronics under this Agreement, Tech Electronics reserves the right, but has no obligation, to take remedial action if any material violates the restrictions in the foregoing sentence (the "Acceptable Use Policy"), including the removal or disablement of access to such material. Tech Electronics shall have no liability to Customer in the event that Tech Electronics takes such action. Customer shall have sole responsibility for the accuracy, quality, integrity,

legality, reliability, appropriateness and ownership of all of Customer's Content and Customer's Applications. Customer agrees to defend and indemnify Tech Electronics against any claim arising out of a violation of Customer's obligations under this section. Customer shall, where required by law, inform third parties of the collection, storage or processing of any communications, personal information or other information, to ensure that any required third parties have opted in to such collection, storage or processing, and to otherwise comply with all applicable data protection and privacy law concerning the collection, storage and processing of personal information concerning such third parties. Customer is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By using the Services, Customer accepts responsibility for the confidentiality and timely and proper termination of user records in Customer's local (intranet) identity infrastructure or on its local computers. Tech Electronics is not responsible for any harm caused by Customer's Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Customer's local identity management infrastructure or its local computers. Customer is responsible for all activities that occur under its and its Users' usernames, passwords or accounts or as a result of Customer's or its Your Users' access to the Services, and agree to notify Tech Electronics immediately of any unauthorized use. Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.

d. Ownership. Subject to the limited rights expressly granted hereunder, Tech Electronics or its suppliers reserves all right, title and interest in and to (i) the Services; (ii) any and all Materials and Confidential Information provided or disclosed to Customer during the term of this Agreement; (iii) any and all derivatives, enhancements or improvements thereof; and (iv) any and all intellectual property rights contained in the foregoing (i), (ii), and (iii). No rights are granted to Customer hereunder other than as expressly set forth herein. Customer shall not (i) copy, reproduce, distribute, republish, download, display, post or transmit in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording or other means or create derivative works based on the Services or, except as expressly authorized herein, the Materials; (ii) alter, remove, obscure, frame or mirror Tech Electronics' or its suppliers' branding, proprietary notices or any content forming part of the Service or the Materials; (iii) disassemble, reverse compile, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Service or the Materials (as applicable to such Materials); (iv) modify, incorporate into or with other software or material, or create a derivative work of any part of the Service or the Materials; (v) attempt to circumvent or circumvent any license, timing or use restrictions that are built into the Services or the Materials; or (vi) access the Services or the Materials in order to (A) benchmark against or build a competitive product or service, or (B) copy any ideas, features, functions, or graphics of the Services or the Materials.

e. Maintenance. Customer is required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, as such Patches are generally released by Tech Electronics. Tech Electronics is not responsible for performance or security issues encountered with the Services that result from

Customer's failure to accept the application of Patches that are necessary for the proper function and security of the Services. Except for emergency or security related maintenance activities, Tech Electronics will coordinate with Customer the scheduling of application of Patches, where possible, based on Tech Electronics' next available standard maintenance window.

f. Changes. Tech Electronics may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Term, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content. The Service Availability and other specifications are subject to change at Tech Electronics' discretion; however, Tech Electronics changes to the Service Availability will not result in a material reduction in the level of performance, security or availability of the applicable Services provided to Customer for the duration of the Term.

## 2. PAYMENT AND BILLING

a. Fees. Customer agrees to pay to Tech Electronics the Monthly Recurring Fee and all associated charges for Services detailed on a Quote, as well as applicable variable usage and non- recurring charges incurred by the Customer in the billing month.

b. Credit Worthiness. Subject to credit review, Customer may be required, upon request from Tech Electronics, to make an advance payment or deposit to Tech Electronics for the Services.

c. Taxes. Customer shall pay any applicable taxes and governmentally imposed fees arising from its purchase under this Agreement (excluding taxes on Tech Electronics' income), or provide a tax exemption certificate prior to invoicing. Customer acknowledges and agrees that in the event that any governmental agency revises or imposes taxes, of any kind, on any service provided hereunder, that Tech Electronics reserves the right to pass on all such taxes without notice to Customer.

## 3. SERVICE AVAILABILITY

a. Tech Electronics' Service Availability commitment for a given calendar month is 99.0%.

"Service Availability" is calculated per month as follows:

$$\left( \frac{\text{Total} - \text{Unplanned Outage} - \text{Planned Maintenance}}{\text{Total} - \text{Planned Maintenance}} \right) \times 100 \geq 99.0\%$$

Definitions:

- "Total" is the total minutes in the applicable calendar month
- "Unplanned Outage" is total minutes not Available in the applicable calendar month outside of the Planned Maintenance window
- "Planned Maintenance" is total minutes of planned maintenance in the applicable calendar month.



- **“Available”** means the Services are available and operable for access and use by Customer and Authorized Parties over the Internet in material accordance with the Agreement.

b. Currently, Planned Maintenance is four (4) hours for weekly maintenance, plus four (4) hours for monthly maintenance, plus four (4) hours for quarterly maintenance. Tech Electronics’ current weekly maintenance begins at 2:00 am (Central) on Saturday; monthly maintenance begins at 6:00 am (Central) on a Saturday; and quarterly maintenance begins at 10:00 am (Central) on a Saturday. All times are subject to change upon reasonable notice, to be delivered to Customer in writing not less than seventy-two (72) hours prior to such change.

c. If actual maintenance exceeds the time allotted for Planned Maintenance it is considered an Unplanned Outage. If actual maintenance is less than time allotted for Planned Maintenance, that time is not applied as a credit to offset any Unplanned Outage time for the month.

d. The measurement point for Service Availability is the availability of the Service at the Tech Electronics production data center’s Internet connection points. Customer may request an availability report describing the Availability and other performance of the Services during such calendar month and the calendar year-to-date as compared to the Service Availability Requirement and the Agreement not more than once per month via Tech Electronics’ customer center. The report shall be in electronic or such other form as Customer may approve in writing and shall include, at a minimum: (a) the actual performance of the Services relative to the Availability Requirement and the Agreement; and (b) if Service performance has failed in any respect to meet or exceed the Service Availability Requirement or Agreement during the reporting period, a description in sufficient detail to inform Customer of the cause of such failure and the corrective actions Tech Electronics has taken and will take to ensure that the Service Availability Requirement and Agreement requirements are fully met.

e. In the event of a failure by Tech Electronics to meet the foregoing Service Availability commitment in any calendar month, as Customer’s sole and exclusive remedy, Tech Electronics shall provide a service credit of 5% of the monthly fee for the month of disruption to be deducted from future invoices to Customer.

#### **4. TERMINATION**

a. By Tech Electronics. Tech Electronics may terminate, discontinue or suspend Services to a Customer or a User, or cancel an application for Services without incurring any liability in the event of: (i) non-payment of amounts due by Customer for more than thirty-five (35) days following the monthly service period to which they relate if such amounts remain unpaid after ten (10) days’ notice of such from Tech Electronics; (ii) breach of this Agreement; (iii) a violation by Customer of any law, rule or regulation of any governmental authority having jurisdiction over the Services; (iv) a violation by Customer of any Tech Electronics policy; (v) hacking, cracking, phishing, denial-of-service attacks, infection by computer viruses, worms or Trojan horses, or other activities that threaten computer or data security by Customer or a User; (vi) activities that Tech Electronics or its suppliers reasonably determine are defamatory, illegal, or offensive or are otherwise injurious or detrimental to the Service, to the supplier of the Service or to another customer; (vii) prohibition against Tech Electronics from furnishing

Services by order of a court or other governmental authority having jurisdiction; and (viii) the provision of false or misleading credit information by Customer. In the event Tech Electronics elects to terminate this Agreement during the Initial Term, subject to this section, Customer shall immediately return to Tech Electronics all rental Hardware.

b. **By Customer.** In the event Customer terminates this Agreement prior to the end of the current Term, Customer will pay Tech Electronics, immediately upon presentation of all outstanding invoices, an amount equal to the Monthly Recurring Fee, multiplied by the number of months remaining in the current Term. Customer shall also promptly return to Tech Electronics all rental Hardware in its possession, in accordance with the directions provided by Tech Electronics.

## **5. CONFIDENTIALITY**

By virtue of this Agreement, the parties may have access to information that is confidential to one another. The parties each agree to disclose only information that is required for the performance of obligations under this Agreement. The parties each agree not to disclose each other's Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Tech Electronics will hold Customer's Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. The parties disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Tech Electronics will protect the confidentiality of Customer's Content or Customer's Applications residing in the Services Environment in accordance with the Tech Electronics security practices as they may be in effect from time to time. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders placed under this Agreement in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

## **6. WARRANTIES.**

a. Tech Electronics warrants that it will perform the Services in all material respects as described in the Quote and the Agreement. If the Services provided to Customer are not performed as warranted, Customer must promptly provide written notice to Tech Electronics that describes the deficiency in the Services.

b. **TECH ELECTRONICS DOES NOT GUARANTEE THAT (i) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT TECH ELECTRONICS WILL CORRECT ALL SERVICES ERRORS, (ii) THE SERVICES WILL OPERATE IN COMBINATION WITH CUSTOMER'S CONTENT OR CUSTOMER'S APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, SERVICES OR DATA NOT PROVIDED BY TECH ELECTRONICS, AND (iii) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. CUSTOMER ACKNOWLEDGES THAT TECH ELECTRONICS DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND**

THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. TECH ELECTRONICS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. TECH ELECTRONICS IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER CONTENT, CUSTOMER'S APPLICATIONS OR THIRD PARTY CONTENT.

c. EXCEPT FOR CUSTOMER'S REMEDY WITH RESPECT TO SERVICE AVAILABILITY, FOR ANY OTHER BREACH OF THE SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND TECH ELECTRONICS' ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF TECH ELECTRONICS CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND TECH ELECTRONICS WILL REFUND TO CUSTOMER ANY FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO TECH ELECTRONICS FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

d. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

**7. LIMITATION OF LIABILITY.** THE TOTAL LIABILITY OF TECH ELECTRONICS HEREUNDER OR ARISING IN CONNECTION WITH THE PROVISION OF ANY SERVICES (REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY), WHETHER BASED UPON OR ARISING OUT OF NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT, STRICT LIABILITY, CONTRACT, TORT, WARRANTY, MISREPRESENTATION, PATENT INFRINGEMENT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER TO TECH ELECTRONICS FOR SUCH SERVICES, NOT TO EXCEED ONE YEAR'S MONTHLY RECURRING FEE, OR \$10,000, WHICHEVER IS GREATER. THE PROVISIONS OF THIS SECTION SHALL APPLY IN THE EVENT OF LOSS OR DAMAGE, IRRESPECTIVE OF THE ORIGIN, RESULTING DIRECTLY OR INDIRECTLY TO PERSONS OR PROPERTY FROM THE PERFORMANCE OR NON-PERFORMANCE OF THE OBLIGATIONS SET FORTH BY THE TERMS OF THIS AGREEMENT OR FROM THE ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT OF TECH ELECTRONICS' AGENTS OR EMPLOYEES. IN NO EVENT SHALL TECH ELECTRONICS BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO OTHER EQUIPMENT OR ANY PLANT OR FACILITIES, LOSS OF PROFIT, OR LOSS OF PRODUCTION, REGARDLESS OF WHETHER THE CLAIM FOR SUCH CONSEQUENTIAL DAMAGES BE BASED ON WARRANTY (EXPRESS OR IMPLIED), CONTRACT, TORT, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT OR OTHERWISE. TECH ELECTRONICS SHALL NOT BE

LIABLE TO INDEMNIFY CUSTOMER AGAINST ANY CLAIMS MADE AGAINST CUSTOMER FOR SUCH CONSEQUENTIAL DAMAGES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD TECH ELECTRONICS HARMLESS FOR ALL CLAIMS (INCLUDING CLAIMS FOR INDEMNITY) FOR ANY SUCH CONSEQUENTIAL DAMAGES BROUGHT AGAINST TECH ELECTRONICS. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

**8. CUSTOMER INDEMNITY.** CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD TECH ELECTRONICS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS AND LAWSUITS (REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY), INCLUDING THE PAYMENT OF ALL DAMAGES, EXPENSES, COSTS AND ATTORNEY FEES, WHETHER THESE CLAIMS AND LAWSUITS ARE BASED UPON ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT, INDEMNIFICATION, CONTRIBUTION OR STRICT OR PRODUCT LIABILITY, OR ANY OTHER TYPE OF CLAIM OR CONDUCT ON THE PART OF TECH ELECTRONICS, ITS AGENTS OR EMPLOYEES, EXCEPT TO THE EXTENT SUCH CLAIMS, DEMANDS OR LAWSUITS OCCUR WHILE AN EMPLOYEE OR AGENT OF TECH ELECTRONICS IS ON CUSTOMER'S PREMISES OR REMOTELY ACCESSING CUSTOMER'S SYSTEM AND WHICH DAMAGES, EXPENSES AND OTHER LIABILITY ARE SOLELY AND DIRECTLY CAUSED BY THE ACTS OF SAID EMPLOYEE OR AGENT. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

**9. WAIVER OF SUBROGATION.** CUSTOMER DOES HEREBY FOR ITSELF AND ANY PARTIES CLAIMING UNDER IT, RELEASE AND DISCHARGE TECH ELECTRONICS FROM AND AGAINST ALL HAZARDS COVERED BY CUSTOMER'S INSURANCE, AND ALL CLAIMS AGAINST TECH ELECTRONICS ARISING OUT OF SUCH HAZARDS, INCLUDING ANY RIGHT OF SUBROGATION BY CUSTOMER'S INSURANCE CARRIER, ARE HEREBY WAIVED BY CUSTOMER, AND CUSTOMER SHALL PROMPTLY SO NOTIFY ITS INSURANCE CARRIER. THIS WAIVER OF SUBROGATION EXTENDS TO ANY ALLEGED NEGLIGENCE GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT OR RECKLESS CONDUCT BY TECH ELECTRONICS. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

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b. Any Third Party Content made accessible by Tech Electronics is provided on an “as-is” and “as available” basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and Customer acknowledges that Tech Electronics is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, Tech Electronics reserves the right to take remedial action if any such content violates applicable restrictions under Section 1(c) of this Agreement, including the removal of, or disablement of access to, such content. Tech Electronics disclaims all liabilities arising from or related to Third Party Content.

c. Customer acknowledges that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Term, and (ii) features of the Services that interoperate with third parties such as Facebook™, YouTube™ and Twitter™, etc. (each, a “Third Party Service”), depend on the continuing availability of such third parties’ respective application programming interfaces (APIs) for use with the Services. Tech Electronics may update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Tech Electronics in its sole discretion, Tech Electronics may cease providing access to the affected Third Party Content or Third Party Services without any liability to Customer. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Term does not affect Customer’s obligations under this Agreement or the applicable Quote, and Customer will not be entitled to any refund, credit or other compensation due to any such changes.

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b. Tech Electronics may provide Customer with on-line access to download certain Ancillary Software for use with the Services. If Tech Electronics licenses Ancillary Software to Customer and does not specify separate terms for such Ancillary Software, then, subject to Customer’s payment obligations, (i) Customer has the non-exclusive, non-assignable, worldwide limited right to use such Ancillary Software solely to facilitate Customer’s access to, operation of, and/or use of the Services Environment, subject to the terms of this Agreement and Customer’s order, including the Services, (ii) Tech Electronics will maintain such Ancillary Software as part of the Services, and (iii) Customer’s right to use such Ancillary Software will terminate upon the earlier of Tech Electronics’ notice or the end of the Services associated with

the Ancillary Programs. If Ancillary Software is licensed to Customer under separate third party license terms, then Customer's use of such software is subject solely to such separate terms.

**12. FORCE MAJEURE.** Except with respect to Customer's payment obligations for Services rendered prior to the commencement of a force majeure event, notwithstanding any other provision of the Agreement, neither party shall be liable to the other party for any delay or failure in performance of the Agreement to the extent such delay or failure is caused by fire; flood; explosion; accident; war; strike; embargo; governmental requirement; civil unrest; civil or military authority; Act of God; inability to secure materials or labor; electrical, internet, or telecommunication outage that is not caused by the obligated party; or any other causes beyond its reasonable control. Any such delay or failure shall suspend the Agreement until the force majeure ceases.

**13. PUBLICITY.** Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except Customer agrees that Tech Electronics may profile or disclose Customer as a Tech Electronics customer in standard marketing materials, including press releases, corporate presentations and digital properties and/or other marketing vehicles as Tech Electronics may deem appropriate.

**14. GENERAL.**

a. Entire Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, letters of intent, understandings, negotiations and discussions of the parties, whether oral or written. If there is any conflict between this Agreement and Customer's purchase order, or any other document or any oral agreements, this Agreement will govern. No conditions in the acceptance by Customer and no subsequent agreements or communications in any way modifying the provisions of this Agreement shall be binding unless signed by an authorized representative of Tech Electronics.

b. Waiver. No waiver of any of the terms and conditions contained herein shall be effective unless such waiver is in writing and signed by an authorized representative of the party waiving such condition.

c. Severability. In the event any of the terms and conditions of this Agreement are declared invalid or inoperative, all of the remaining terms and conditions shall remain in full force and effect.

d. Governing Law. This Agreement and the rights and obligations of the parties hereunder are to be governed by and construed and interpreted in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within Missouri, without regard to choice or conflict of laws rules.

e. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM IN RESPECT OF THIS AGREEMENT OR TRANSACTIONS RELATED HERETO, IN EACH

CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. EACH PARTY HERETO AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY.

f. Notices. Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (i) if by facsimile, hand-delivery or by delivery service, upon receipt thereof; (ii) if mailed, three days after deposit in the U.S. mail, postage prepaid; or (iii) if by electronic mail, upon receipt thereof. All notices shall be addressed to the parties at the addresses specified in the Quote or at such other addresses as either party may in the future specify in writing to the other.

**15. DEFINITIONS.** For purposes of this Agreement, the following capitalized terms have the following meanings:

a. "Ancillary Software" means any software agent or tool that Tech Electronics makes available to Customer for download for purposes of facilitating Customer's access to, operation of, and/or use with, the Services Environment.

b. "Confidential Information" means (i) the terms and pricing under this Agreement, (ii) Customer's Content (including any personal data) and Customer's Applications residing in the Services Environment, (iii) information related to Tech Electronics' suppliers, customers and financial information and data; (iv) the Services and associated end user documentation, which shall include any and all associated intellectual property rights of Tech Electronics and its suppliers; and (v) any other information which is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the receiving party, using reasonable business judgment, to be confidential. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

c. "Customer's Applications" means all software programs, including any source code for such programs, that Customer or Customer's Users provide and load onto, or create using, any Tech Electronics Services. Services under this Agreement, including Tech Electronics Programs and Services Environments, Tech Electronics intellectual property, and all derivative works thereof, do not fall within the meaning of the term "Customer's Applications."

d. "Customer's Content" means all text, files, images, graphics, illustrations, information, data (including any personal data), audio, video, photographs and other content and material (other than Customer's Applications), in any format, provided by Customer or on behalf of Customer's Users that reside in, or run on or through, the Services Environment.

e. "Hardware" means the computer hardware purchased or leased by Customer as detailed on a quote from Tech Electronics.

f. “Services Environment” refers to the combination of hardware and software components owned, licensed or managed by Tech Electronics to which Tech Electronics grants Customer and Customer’s Users access as part of the Services which Customer has ordered. As applicable and subject to the terms of this Agreement and Customer’s Quote, Tech Electronics Programs, Third Party Content, Customer’s Content and Customer’s Applications may be hosted in the Services Environment.

g. “Tech Electronics Programs” refers to the software products owned or licensed by Tech Electronics to which Tech Electronics grants Customer access as part of the Services, including Program Documentation, and any program updates provided as part of the Cloud Services.

h. “Third Party Content” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Tech Electronics and made available to Customer through, within, or in conjunction with Customer’s use of, the Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, data libraries and dictionaries, and marketing data.



**Tech Electronics, Inc.**

**Voice Carrier General Terms and Conditions**

The following terms and conditions have been incorporated into and are an integral part of any Quote provided by Tech Electronics, Inc. or one of its affiliates (“Tech Electronics”) for telephone carrier services to a Customer (collectively with the Quote, the “Agreement”).

**1. SERVICES**

Tech Electronics will provide Customer with the services described in the Quote (the “Services”) in accordance with the terms of this Agreement. Pricing for the Services will be as set forth in the Quote.

**2. SERVICE DISTINCTIONS AND RESTRICTIONS**

Customer acknowledges and understands that the Services covered under this Agreement are not traditional telephone services. Important distinctions (some, but not necessarily all, of which are described in this Agreement) exist between said Services and the traditional telephone service, including but not limited to different regulatory treatment than the traditional telephone service. This treatment may limit or otherwise affect Customer’s rights of redress before Federal, State or local telecommunications regulatory agencies. Due to fraud and other factors, some international or premium Public Switch Telephone Network (PSTN) destinations may be blocked. The list of blocked PSTN terminations may be updated from time to time by Tech Electronics at its sole discretion and can change without notice. Customer may obtain a current list of blocked destinations by submitting a request in writing to Tech Electronics at [helpdesk@techelectronics.com](mailto:helpdesk@techelectronics.com).

**3. EMERGENCY SERVICES - 911 / E911 DIALING**

In accordance with FCC regulations for Interconnected Voice over IP service providers, Tech Electronics provides access to emergency services via 911/E911 dialing to all its customers based in the United States of America. Customer understands and acknowledges that Tech Electronics does not provide access to emergency services outside of the United States. There are important differences to the 911/E911 service provided by Tech Electronics as compared to that provided by traditional wire-line service providers. A more detailed description of this service and an acknowledgement of applicable restrictions is set forth on Exhibit A.

As part of setting up its account, Customer is responsible for providing physical address information for each emergency location. THIS INFORMATION MUST BE PROVIDED IN ORDER FOR 911 EMERGENCY CALLS TO BE DELIVERED TO A LOCAL PUBLIC SERVICE OFFICE. If Customer fails to configure the 911 information, 911 emergency calls will be routed to a national center. 911 emergency calls that are routed to the national center because Customer failed to provide address information will be subject to a per call surcharge.

#### **4. ELECTRICAL POWER**

Customer acknowledges and understands that the services will not function in the absence of electrical power.

#### **5. INTERNET ACCESS**

Customer acknowledges and understands that the Services will not function if there is an interruption of Customer's broadband or high-speed internet access service. Interruption includes service outages due to ISP or broadband provider blocking of ports or other acts. Customer's ISP or broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise inhibit the usage of the Service during which E911/911 service may not function. Customer acknowledges that Tech Electronics is not responsible for the blocking of ports by Customer's ISP or broadband provider or any other impediment to Customer's usage of the Service, and any loss of Service, including E911/911 service, which may result.

#### **6. NUMBER PORTING**

Customer will be responsible for understanding the number porting process before orders are submitted. Tech Electronics covers most markets in the continental US 48 states for local number portability, however, not all markets are covered. Some markets have restricted access where numbers cannot be ported. Customer understands port orders shall not be submitted until onsite equipment, and IP-PBX has been configured and tested. Porting information and preparation details are provided in customer portal.

#### **7. NUMBER PROVISIONING**

Tech Electronics covers most markets, but not all, in the continental US 48 states for new number access. The number provisioning process begins once an account has been activated with a payment. Customer understands Tech Electronics does not inventory DID numbers in all markets and provisioning times can vary. Local DID vanity number selection is not offered.

#### **8. USE OF SERVICES BY CUSTOMER OUTSIDE OF THE UNITED STATES**

If Customer connects a device to Tech Electronics' Service from a country other than the United States and uses the Service from a country other than the United States, Customer does so at its own sole risk, including the risk that such activity violates local laws in the country where Customer does so. Customer is liable for any and all such use of the Services by itself or any person making use of the Services provided to Customer and agrees to indemnify and hold harmless Tech Electronics against any and all liability for any such use.

#### **9. OTHER SERVICE RESTRICTIONS**

Additional usage restrictions may be placed on the Services due to a high risk of fraud, regulatory restrictions and/or difficulties in settlement. These restrictions include, but are not limited to, calls terminating to or originating from a specific country or geographic area being

blocked. Restrictions for said Services, if any, may change without notice from time to time at Tech Electronics' sole discretion.

#### **10. ACCEPTABLE USE OF SERVICES**

Customer agrees to use the Services only for lawful purposes. Customer agrees not to use the Services for transmitting or receiving any communication or material of any kind which in Tech Electronics' sole judgment the transmission, receipt or possession of such communication or material (i) would constitute criminal or illegal activities, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law or (ii) encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law. Customer agrees not to attempt to hack, misuse, disrupt or disable or damage the Service in any way and that it will not interfere with or disrupt other users of Services and/or any other service provider who furnishes services to Customer in connection with this Agreement, Customer agrees to configure, operate and maintain any and all devices using Tech Electronics' services in accordance with industry standards and best practices, including the limitation of excessive keep-alives, short registration timers, message flooding and other abusive activities. Customer agrees not to engage in the delivery of unwanted or unsolicited communications or SPAM to third parties using the Services or resources. Tech Electronics reserves the right to terminate Customer's Services immediately and without advance notice if Tech Electronics, in its sole discretion, believes that Customer has violated the above restrictions, leaving Customer responsible for the full month's charges to the end of the current term, including without limitation unbilled charges and taxes, plus a termination or disconnect fee, all of which become immediately due and payable. If Tech Electronics, in its sole discretion, believes that Customer has violated the above restrictions, Tech Electronics may forward the objectionable material, as well as Customer's communications with Tech Electronics and Customer's personally identifiable information to the appropriate authorities for investigation and prosecution and Customer hereby consents to such forwarding.

#### **11. FRAUDULENT ACTIVITY**

Customer is responsible for maintaining the security of its Tech Electronics web account, Tech Electronics service credentials and Customer equipment connected to the Tech Electronics network. Should Customer's account and or equipment become compromised, resulting in Tech Electronics services being used on behalf of Customer whether authorized or unauthorized, Customer is responsible for any charges or fees associated with such usage. If Customer believes that its account or equipment has been compromised, Customer must immediately report the suspicious activity to Tech Electronics. Tech Electronics reserves the right to immediately disable any accounts that appear to have fraudulent activity. At any time, Customer may request that new credentials be issued to Customer. Should Customer's account be disabled because of fraudulent activity, prior to Tech Electronics restoring service, Customer must provide Tech Electronics with information documenting the steps taken to prevent fraudulent activity from occurring and, if applicable, arrange for settlement of any charges incurred as a result of fraudulent activity.

## **12. ABUSE OF SERVICE**

Customer understands and acknowledges service plan minute thresholds and guidelines as detailed on the Quote. Inbound soft cap guidelines are detailed on the Tech Electronics price list. Customer's inbound minute usage volumes greater than 1,000 minutes above and beyond the published soft cap guideline per month for inbound service is deemed abuse and can be billed at 3.7 cents per minute beyond published guideline at Tech Electronics' sole discretion. Customer understands inbound minute volumes above 5,000 minutes of published guideline in a given month will be deemed abuse and can result in an immediate service disablement. Service disablement will remain until overage balance has been paid and updated service plan to cover abusive usage has been accepted and applied with overage abuse of 3.7 cents per minute paid in full.

## **13. TERM**

Services are offered for an initial term that begins on the date that Tech Electronics activates the Service and ends on the day before the same date three (3) years later. Thereafter, the Agreement shall automatically renew for additional terms of one (1) year. After the initial term, either party may terminate this Agreement upon 30 days prior written notice to the other party. Customer shall send any notice of termination by electronic mail to [customerservice@Techelectronics.com](mailto:customerservice@Techelectronics.com).

## **14. CHARGES AND FEES**

The charges and fees for the Services are categorized into five types: (1) Usage, (2) Recurring, (3) Surcharges, (4) One Time and (5) Taxes and Regulatory Fees. Usage charges are assessed to Customer's account as Services are used and are based on usage rates in effect at the time the Service was delivered. Usage rates may vary depending on a number of factors including but not limited to: (i) the type of Services provided, (ii) the originating and terminating locations where the Services are offered and provided, (iii) the time that the Service is utilized, including but not limited to time of day, day of week, day of month, and (iv) quality of Service. Domestic usage is billed in six second increments and may be subject to a minimum connect charge. International usage rates vary by country and may be billed in different duration increments and subject to a minimum connect charge. Recurring charges are billed to Customer monthly. If Customer terminates Services prior to the end of a term, Customer will be responsible for the full charges to the end of the then-current term, including without limitation unbilled Recurring charges, all of which become immediately due and payable. Surcharges may be assessed on a per call basis when the call is placed. One Time charges shall be billed as they are incurred. All charges accrue at the time such Services have been activated by Tech Electronics. Expiration of the term or termination of Service does not excuse Customer from paying all unpaid, accrued charges due in relation to the Agreement. Taxes and other Regulatory Fees will vary by tax jurisdiction and be assessed at the end of the billing cycle.

All funds, charges, fees and credits will be settled in United States Dollars (USD).

**15. SERVICE CREDITS**

Service Credit allowances shall be provided at the sole discretion of Tech Electronics upon written request by Customer to [customerservice@Techelectronics.com](mailto:customerservice@Techelectronics.com). If it is determined by Tech Electronics that a credit is warranted, the amount will be credited directly to Customer's Tech Electronics online account balance to be used for future Services. Cash credits will not be issued. Credits will not be refunded in the event that this Agreement is terminated.

**16. TAXES**

Customer is responsible for, and shall pay, any and all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of Customer's subscription or use or payment for Services. Such amounts are in addition to payment for the Services and will be assessed to Customer's account as set forth in this Agreement. If Customer is a recognized charitable or non-profit organization and is exempt from payment of such taxes, Customer must provide Tech Electronics with original certificates that satisfies applicable legal requirement attesting to tax-exempt status. Tax exemption will only apply from and after the date on which Tech Electronics receives such certificate.

**17. PAYMENT**

To use the Services, Customer must pay with a valid credit card number (American Express, Visa MasterCard, or any other issuer then-accepted by Tech Electronics) or using an ACH bank transfer. Tech Electronics reserves the right to stop accepting credit cards from one or more issuers. No suspension or termination of the Services or of this Agreement shall relieve Customer from paying any amounts due hereunder.

**18. DELINQUENT PAYMENTS**

If any charges or fees for Services are due but unpaid for any reason including, but not limited to, non-payment, declined or reversed Credit Card charges, Tech Electronics may suspend or terminate Services and all accrued charges shall be immediately due, plus a late fee of the lesser of 1.5% per month or the maximum allowed by law accrued from the date of invoice until payment in full is received by Tech Electronics. Customer will be fully liable to Tech Electronics for all costs incurred by Tech Electronics in collecting accrued charges, including but not limited to collection costs and attorneys' fees and any charges it receives from the credit card issuer.

**19. BILLING DISPUTES**

All billing disputes or requests for adjustments must be made in good faith and received by Tech Electronics in writing within 45 days of the disputed event or Customer's right to raise such billing disputes will be deemed waived. All billing disputes must be submitted to the following email address: [customerservice@Techelectronics.com](mailto:customerservice@Techelectronics.com). Each billing dispute should contain sufficient information for Tech Electronics to investigate the disputed event, including but not limited to, the time and date of the event, type of service used, origination and termination details, and the nature of the dispute. Tech Electronics will respond to each dispute within 21 days of receipt of properly completed dispute information. If Tech Electronics determines that a

disputed event was billed in error, Tech Electronics will issue a credit to reverse the amount that was incorrectly billed. Tech Electronics shall solely determine disputed events, and Tech Electronics' decision on the disputed event, absent arithmetic errors, shall be final.

## **20. SUSPENSION AND TERMINATION**

Tech Electronics reserves the right to suspend or discontinue providing Services generally, or to terminate Customer's Service, at any time in its sole discretion. If Tech Electronics discontinues providing the Service generally, or terminates Customer's Service in its discretion without a stated reason, Customer will only be responsible for charges accrued through the date of termination, including a pro-rated portion of any final month's recurring charges. If Customer's Service is terminated for any stated reason, including without limitation violation of this Agreement, or because of any improper or unacceptable use of Services as set forth in Section 10.0, Customer will be responsible for the full month's charges to the end of the current term, including without limitation unbilled charges plus termination or disconnect fee, all of which immediately become due and payable.

## **21. PROHIBITION ON RESALE**

Services are being provided to Customer as an end user. Customer may not resell or transfer the Service to any other person or party for any purpose, without prior written permission from Tech Electronics. Resale of the service without permission will result in the immediate suspension of Service to Customer.

## **22. COPYRIGHT, TRADEMARKS, UNAUTHORIZED USAGE OF FIRMWARE OR SOFTWARE**

The Services and any software used to provide the Services or provided to Customer in conjunction with providing the Services, and all Services, information, documents and materials on Tech Electronics' website(s) are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") of Tech Electronics are and shall remain the exclusive property of Tech Electronics and nothing in this Agreement shall grant Customer the right or license to use any of such marks. Customer acknowledges that it has not been granted any license to use the firmware or software used to provide the Services. If Customer uses an interface device not approved by Tech Electronics with Services, Customer will indemnify and hold harmless Tech Electronics, its officers, directors, employees and affiliates against any liability arising out of such use.

## **23. BILLING ADDRESSES AND CUSTOMER DETAILS**

Customer is responsible for maintaining its current billing addresses and other Customer information held by Tech Electronics at [www.Techelectronics.com](http://www.Techelectronics.com). Changes to Customer's contact information for legal notices must be made in writing and submitted to Tech Electronics at [customerservice@techelectronics.com](mailto:customerservice@techelectronics.com).

## **24. PRIVACY**

Customer acknowledges and understands that the Services utilize, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Information transmitted over the public Internet or third party networks may not be encrypted. Tech Electronics shall not be liable for any lack of privacy which may be experienced with regard to using the Services. Customer acknowledges and understands that from time to time Tech Electronics employees, subcontractors and agents may view Company's data and call information in order to resolve specific errors discovered with Tech Electronics' Services or third party service providers.

## **25. SERVICE OUTAGES**

Customer acknowledges and understands that the Services rely on existing Customer infrastructure (not provided by Tech Electronics) and are dependent on high-speed, quality broadband access to each Customer's location. Service outages may occur that are outside of the control of Tech Electronics. Outages may occur for a variety of reasons including but not limited to power failures, service interruptions by Customer's broadband provider and/or internet service provider ("ISP"), service interruptions by third party service providers and failings of the public internet, Tech Electronics' components or Public Switch Telephone Network ("PSTN"). Should such an outage occur, the Services may be unavailable in part or entirely until such time that the outage is resolved and access connectivity is restored.

Notwithstanding the foregoing, Tech Electronics may perform scheduled or emergency maintenance (including temporary suspension of Services as necessary) to maintain or modify its Services. Tech Electronics will use commercially reasonable efforts to provide Customer with notice of such maintenance.

## **26. NO WARRANTIES ON SERVICES**

TECH ELECTRONICS MAKES NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS OF THE SERVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, TECH ELECTRONICS DOES NOT WARRANT THAT THE SERVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. IN NO EVENT SHALL TECH ELECTRONICS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO TECH ELECTRONICS OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION

THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF TECH ELECTRONICS' OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE, IF ANY, BY TECH ELECTRONICS OR TECH ELECTRONICS' AGENTS OR RESELLERS, ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

## **27. LIMITATION OF LIABILITY**

a. THE TOTAL LIABILITY OF TECH ELECTRONICS HEREUNDER OR RELATING TO THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICES, INCLUDING 911 DIALING/EMERGENCY SERVICES AND/OR INABILITY OF CUSTOMER OR ANY THIRD PERSON OR PARTY OR USER OF CUSTOMER'S SERVICE TO DIAL 911 OR TO ACCESS EMERGENCY SERVICE PERSONNEL, THE LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICES, OR DEFAULT OF TECH ELECTRONICS IN THE PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED UPON OR ARISING OUT OF NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT, STRICT LIABILITY, CONTRACT, TORT, WARRANTY, MISREPRESENTATION, PATENT INFRINGEMENT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER TO TECH ELECTRONICS FOR SUCH SERVICES, NOT TO EXCEED ONE YEAR'S MONTHLY RECURRING FEE, OR \$10,000, WHICHEVER IS GREATER. THE PROVISIONS OF THIS SECTION SHALL APPLY IN THE EVENT OF LOSS OR DAMAGE, IRRESPECTIVE OF THE ORIGIN, RESULTING DIRECTLY OR INDIRECTLY TO PERSONS OR PROPERTY FROM THE PERFORMANCE OR NON-PERFORMANCE OF THE OBLIGATIONS SET FORTH BY THE TERMS OF THIS AGREEMENT OR FROM THE ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT OF TECH ELECTRONICS' AGENTS OR EMPLOYEES. IN NO EVENT SHALL TECH ELECTRONICS BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO OTHER EQUIPMENT OR ANY PLANT OR FACILITIES, LOSS OF PROFIT, OR LOSS OF PRODUCTION, REGARDLESS OF WHETHER THE CLAIM FOR SUCH CONSEQUENTIAL DAMAGES BE BASED ON WARRANTY (EXPRESS OR IMPLIED), CONTRACT, TORT, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT OR OTHERWISE. TECH ELECTRONICS SHALL NOT BE LIABLE TO INDEMNIFY CUSTOMER AGAINST ANY CLAIMS MADE AGAINST CUSTOMER FOR SUCH CONSEQUENTIAL DAMAGES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD TECH ELECTRONICS HARMLESS FOR ALL CLAIMS (INCLUDING CLAIMS FOR INDEMNITY) FOR ANY SUCH CONSEQUENTIAL DAMAGES BROUGHT AGAINST TECH ELECTRONICS. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

b. Tech Electronics shall not be liable for any delay or failure to initiate and provide Services, including the inability to access 911 dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following: act or



omission of Tech Electronics or an underlying carrier, service provider, vendor or other third party; equipment, network or facility failure; power outage; equipment, network or facility upgrade or modification or relocation; force majeure events such as (but not limited to) fire, flood, explosion, accident, war, strike, embargo, governmental requirement, civil unrest, civil or military authority, act of God, inability to secure materials or labor, electrical, internet, or telecommunication outage that is not caused by the obligated party, or any other causes beyond its reasonable control; outage of Customer's ISP or broadband service provider; act or omission of Customer or any person using the Service provided to Customer; or any other cause that is beyond Tech Electronics' control.

c. Customer, and not Tech Electronics, is responsible for any and all liability that may arise out of the content transmitted between Users of Services and between Users of Services and third parties. Customer shall assure that Customer's or any User's use of the Services and content will at all times comply with all applicable laws, regulations and written and electronic instructions for use. Tech Electronics reserves the right to terminate or suspend affected Services, and/or remove Customer's or Users' content from the Services, if Tech Electronics determines that such use or content does not conform with the requirements set forth in this Agreement or interferes with Tech Electronics' ability to provide Services to Customer or others or receives notice from anyone that Customer's or Users' use or Content may violate any laws or regulations. Tech Electronics' actions or inaction under this Section shall not constitute review or approval of Customer's or Users' use of Content. Customer will indemnify and hold harmless Tech Electronics against any and all liability arising from the content transmitted by or to Customer or to Users using the Services. A "User" means any person, whether authorized or unauthorized, using the Service provided to Customer.

## **28. CUSTOMER INDEMNITY**

CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD TECH ELECTRONICS HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS AND LAWSUITS (REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY), INCLUDING THE PAYMENT OF ALL DAMAGES, EXPENSES, COSTS AND ATTORNEY FEES, WHETHER THESE CLAIMS AND LAWSUITS ARE BASED UPON ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT, INDEMNIFICATION, CONTRIBUTION OR STRICT OR PRODUCT LIABILITY, OR ANY OTHER TYPE OF CLAIM OR CONDUCT ON THE PART OF TECH ELECTRONICS, ITS AGENTS OR EMPLOYEES, RELATING TO THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICES, INCLUDING 911 DIALING/EMERGENCY SERVICES AND/OR INABILITY OF CUSTOMER OR ANY THIRD PERSON OR PARTY OR USER OF CUSTOMER'S SERVICE TO DIAL 911 OR TO ACCESS EMERGENCY SERVICE PERSONNEL, THE LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICES, OR DEFAULT OF TECH ELECTRONICS IN THE PERFORMANCE UNDER THIS AGREEMENT. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

## **29. WAIVER OF SUBROGATION**

CUSTOMER DOES HEREBY FOR ITSELF AND ANY PARTIES CLAIMING UNDER IT, RELEASE AND DISCHARGE TECH ELECTRONICS FROM AND AGAINST ALL HAZARDS COVERED BY CUSTOMER'S INSURANCE, AND ALL CLAIMS AGAINST TECH ELECTRONICS ARISING OUT OF SUCH HAZARDS, INCLUDING ANY RIGHT OF SUBROGATION BY CUSTOMER'S INSURANCE CARRIER, ARE HEREBY WAIVED BY CUSTOMER, AND CUSTOMER SHALL PROMPTLY SO NOTIFY ITS INSURANCE CARRIER. THIS WAIVER OF SUBROGATION EXTENDS TO ANY ALLEGED NEGLIGENCE GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT OR RECKLESS CONDUCT BY TECH ELECTRONICS. THIS PROVISION (AND ALL OTHER PROVISIONS IN THIS AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

## **30. GENERAL CONDITIONS**

a. Tech Electronics' primary methods of communication with Customer are via electronic mail ("email") and the Tech Electronics web site at [www.Techelectronics.com](http://www.Techelectronics.com). Notices to Customer shall be sent to the email address ("Email Address") specified by Customer at the time of registration for the Services or as subsequently updated by Customer. Customer is responsible for notifying Tech Electronics of any Email Address changes. Customer agrees that sending a message to the Email Address is the agreed upon means of providing notification. Email is used to communicate important information about the Services, billing, changes to the Services and other information. The information is time-sensitive in nature. It is required that Customer read any email sent to the Email Address in a timely manner in order to avoid any potential interruption in the Services provided hereunder. Tech Electronics may also post notices as set forth previously and such posting on the Tech Electronics website will also constitute notice to Customer.

b. This Agreement (including the Quote) and the rates for Services at [www.Techelectronics.com](http://www.Techelectronics.com) constitute the entire agreement between Customer and Tech Electronics and govern Customer's use of the Services, superseding any prior agreements between Customer and Tech Electronics and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.

c. Tech Electronics may change the rates, terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the earliest date of when Customer is notified by email or the notice is posted on the Tech Electronics website at [www.Techelectronics.com](http://www.Techelectronics.com). Such changes will become binding on Customer on the date mailed and/or posted to Tech Electronics website and no further notice by Tech Electronics is required; provided, however, that no change to the rates shall become effective until after the initial term of this Agreement.

d. All exhibits to this Agreement are fully incorporated in this Agreement.

e. The failure of either party to enforce at any time any provision of this Agreement, or to exercise any option which is herein provided, or to require or fail to require at any time

performance by the other party of any provision herein, shall in no way affect the validity of, or act as a waiver of this Agreement, or any part hereof, or any right of such party thereafter to enforce it.

f. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

g. All Section headings and captions used in this Agreement are for convenience or reference only and are not intended to define or limit the scope of any provisions in this Agreement.

h. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

i. Customer acknowledges that its breach of the Agreement will cause irreparable damage and hereby agrees that Tech Electronics shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

j. Each party represents and warrants that the execution of this Agreement and performance of such party's obligations hereunder will not conflict with, result in the breach of any provision of, or the termination of or constitute a default under, any agreement with any other person or entity of which either party is a party or by which they are bound.

k. No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

l. Sections 14, 18, 22, 27, 28 and 29 shall survive the cancellation, expiration or termination of this Agreement.

## EXHIBIT A

### 911/E911 EMERGENCY SERVICE

1.0 911/E911 EMERGENCY SERVICE. When you dial 911, your telephone number and registered address are simultaneously sent to the local emergency center assigned to your location, and emergency operators have access to the information they need to send help and call you back if necessary. Some locations where the emergency center is not equipped to receive your telephone number and address have basic 911 and the local emergency operator requests your call back number or your exact location. Until you give the operator your phone number, he/she may not be able to call you back or dispatch help if the call is not completed or is not forwarded, is dropped or disconnected, or if you are unable to speak. Some locations do not have access to either basic 911 or E911. If you don't have access to basic 911 or E911 your 911 call will be sent to an emergency call center who will ask for the name, telephone number and location of customer calling 911, and then contact the local emergency center for such customer in order to send help. You authorize us to disclose your name and address to third-parties involved with providing 911 dialing to you, including, without limitation, call routers, call centers and local emergency centers.

2.0 911 ACKNOWLEDGEMENT AND WARNING LABELS. Customer acknowledges and agrees that Tech Electronics' equipment and services do not support E911/911 emergency dialing or other emergency functions in the same way that the traditional public switched telephone network or wireline 911 services work. The differences are detailed in this section and Customer agrees to notify any potential user of the Services, who may place calls using Customer's Services, of the E911/911 limitations described herein. Tech Electronics will provide Customer with warning labels regarding the limitations of E911/911 emergency dialing. Customer agrees to place a label on and/or near each telephone or other Customer equipment on which the services may be utilized. If additional labels are required, Customer may request them from Tech Electronics by email at [helpdesk@Techelectronics.com](mailto:helpdesk@Techelectronics.com). Tech Electronics will provide Customer with advisory notices regarding E911/911 emergency dialing and request acknowledgments from customer. Customer agrees to respond and affirmatively acknowledge that Tech Electronics has advised Customer of the circumstances under which Tech Electronics E911 service may not be available or may be limited in comparison to traditional E911/911 emergency dialing. Tech Electronics advises Customer to maintain an alternative means of accessing traditional 911 services.

3.0 NON-VOICE SYSTEMS. Customer acknowledges that the E911/911 services are not set up to function with outdialing systems including fire and security systems, medical monitoring equipment or access control equipment. Customer has no claim against Tech Electronics for interruption or disruption of such systems by the Services.

4.0 E911/911 service is a mandatory component of all Tech Electronics inbound/outbound voice service plans. E911/911 service is not offered on Toll free numbers, conferencing or similar service accessories or add-on plans. E911/911 service is only available in selected areas. Customers who subscribe to Tech Electronics e911/911 service will be required to register the physical location of their equipment with Tech Electronics, via the Tech Electronics website at [www.Techelectronics.com](http://www.Techelectronics.com) or by calling customer service, and agree to update the location

whenever the physical location of service changes. Customer acknowledges that Tech Electronics' only mechanism for routing 911 calls to the correct emergency call taker is the physical location currently registered for the account. Customer acknowledges and understands that any enhanced location information passed to an emergency operator by Tech Electronics will be based upon the physical location provided to Tech Electronics by customer. In the event that the physical location has not been updated, is in error or is not complete, Tech Electronics will attempt to route a 911 call to an emergency call center to complete the call. At the sole discretion of Tech Electronics, an additional charge will be made for 911 calls terminating at the emergency call center.

5.0 GEOGRAPHICALLY DISTRIBUTED USERS. Customer acknowledges and understands that it is Customer's sole responsibility to ensure that E911/911 location and call back number information is entered and maintained for each geographically distributed location or remote end user using Tech Electronics services within Customer's account or in accordance with their state regulations.

6.0 Customers required to subscribe to Tech Electronics' E911 service will be subject to a monthly E911 service charge as well as any Federal, State or local surcharges levied for E911. The monthly E911 service fee shall be in addition to the applicable charges for services. The monthly charge for Tech Electronics E911 service is assessed on a per 911 location database entry basis and will be set at a level that reimburses Tech Electronics for the direct costs it incurs in providing E911 service, including expenses Tech Electronics incurs, either directly or indirectly, Tech Electronics reserves the right to adjust the level of charges associated with E911 services to reflect increases or decreases in the costs it incurs.

7.0 Customer also acknowledges that Tech Electronics' E911 service has certain characteristics that make it different from traditional, legacy, public switched telephone network E911/911 service. These characteristics may make Tech Electronics' E911 services unsuitable for some customers. Customer should carefully evaluate its own circumstances when deciding whether to rely solely upon Tech Electronics' E911/911 service. Customer acknowledges and understands that it is Customer's responsibility to determine the technology or combination of technologies best suited to meet Customer's emergency calling needs, and to make the necessary provisions for access to emergency calling services (such as maintaining a conventional public switched telephone network landline phone or wireless phone as a backup means of completing emergency calls). The following characteristics distinguish Tech Electronics' E911 service from traditional, legacy, public switched telephone network E911/911 service:

a. Tech Electronics' E911 service will not function if Customer's phone, private branch exchange, voice gateway, internet connection or devices fail or are not configured correctly or if Customer's Tech Electronics service is not functioning for any reason, including, but not limited to, electrical power outage, broadband service outage, third party or Tech Electronics equipment outage, service outage for any reason or suspension or disconnection of service because of billing or other issues. If there is a power outage, Customer may be required to reset or reconfigure the equipment before being able to use the Tech Electronics service, including for E911 purposes.

b. After initial activation of the E911 service, and following any change of and update to Customer's physical location, there may be some delay before the automatic number and location information can be passed to the local emergency service operator. Customer acknowledges and understands no guarantee can be made that the automatic number and location information will be activated within this schedule.

c. E911 dialing does not function if you change your phone number or if you add or port new phone numbers to your account, unless and until you successfully register your location of use for each changed, newly added or newly ported phone number.

d. The local emergency service operator receiving Tech Electronics E911 emergency service calls may not have a system configured for E911 services or be able to capture and/or retain automatic number or location information. This means that the operator may not know the phone number or physical location of the person who is making the Tech Electronics E911 call. Due to technical factors in network design, and in the event of network congestion on the Tech Electronics network, there is a possibility that a Tech Electronics 911 call will produce a busy signal or will experience unexpected answering wait times and/or take longer to answer than 911 calls placed via traditional, legacy, circuit-switched telephone networks.

e. If Customer does not correctly identify the actual location where the telephone equipment is or will be located at the time of activation of the service, Tech Electronics E911 communications may not be directed to the correct local emergency operator.

**8.0 CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT TECH ELECTRONICS DOES NOT HAVE ANY CONTROL OVER WHETHER, OR THE MANNER IN WHICH, CALLS USING ITS 911 DIALING SERVICE ARE ANSWERED OR ADDRESSED BY ANY LOCAL EMERGENCY RESPONSE CENTER. TECH ELECTRONICS DISCLAIMS ALL RESPONSIBILITY FOR THE CONDUCT OF LOCAL EMERGENCY RESPONSE CENTERS AND THE NATIONAL EMERGENCY CALLING CENTER. Tech Electronics uses third parties to assist it in routing 911 dialing calls to local emergency response centers and to an emergency calling center. Tech Electronics disclaims any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither Tech Electronics nor its officers or employees may be held liable for any claim, damage, or loss, and Customer hereby waives any and all such claims or causes of action, arising from or relating to Tech Electronics' 911 dialing service. Customer acknowledges and understands that Tech Electronics will not be liable for any service outage and/or inability to dial 911 or any other emergency telephone number using Tech Electronics or to access an emergency service operator due to the 911 dialing characteristics and limitations set forth in this Agreement.**

**Account Summary**

|                                      |                          |
|--------------------------------------|--------------------------|
| Customer Name                        | City of Arnold, Missouri |
| Quote #                              | 2341020                  |
| Windstream Enterprise Representative | Thomas Fitzpatrick       |
| Contract Term Length                 | 36 Months                |
| Effective Date                       | September 16, 2021       |
| MMF                                  | \$6,654.54               |

**Summary of Charges (Total for All Locations)**

| Product               | Monthly Recurring Charges | One-Time Charges |
|-----------------------|---------------------------|------------------|
| UCaaS - Mitel         | \$2,731.39                | \$0.00           |
| SD WAN                | \$426.00                  | \$0.00           |
| Internet Service      | \$600.00                  | \$0.00           |
| Common Voice Features | \$0.00                    | \$0.00           |
| Dynamic IP            | \$2,897.15                | \$0.00           |
| <b>Total*</b>         | <b>\$6,654.54</b>         | <b>\$0.00</b>    |

The Monthly Recurring Charges represented above DO NOT include the taxes or charges that Windstream passes on to governmental entities AND the following Windstream fees and surcharges: Access Recovery Charge of up to \$3.00 per line or a maximum of 5 per trunk. Regulatory Assessment Surcharge of up to 8% applies to Interstate and International charges in the following states MN, NY and PA. An Administrative Service Fee of up to 12% applies to Interstate, Intrastate and Internet services monthly charges in all states except MN, NY and PA.

**Usage Rates\*\***

Rates listed within the Usage Rates section are applicable for all locations, unless otherwise noted on the individual Service Location listing in the Usage Rates sub-section. Additional charges apply for all voice features, router maintenance, CPE maintenance and directory listings. Local Usage is an additional charge in CA, DC, MA, MD, NH, NJ, NY, PA and RI and will be billed at the current retail rate. Customers participating in an Equipment for Services Lease Program will be billed program rates. Precision - each call is billed to two decimal places and rounds the billed amount for each call up to the nearest whole cent.

**Service Agreement Summary**

This Service Agreement is subject to and controlled by the Windstream Service Terms and Conditions and the service-specific terms and conditions located at <http://www.windstreamenterprise.com/service-terms-and-conditions>, including how such terms may be modified from time to time, and all of which are hereby incorporated herein by reference. Rates are subject to change on 30 days' notice via bill message on customer's invoice. By your signature you warrant that you have read, understand and agree to the Service Agreement, Windstream Service Terms and Conditions and applicable service-specific terms and conditions, and acknowledge that you are authorized to sign this Service Agreement and order the Service(s) as outlined herein.

**CUSTOMER**

**WINDSTREAM**

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

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

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

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

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

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

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

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

**This offer is voidable by Windstream if not signed and returned by 10/31/2021.**



Location Summary

| Location Name            | Monthly Recurring Charges | One-Time Charges | Credits |
|--------------------------|---------------------------|------------------|---------|
| City of Arnold MO        | \$1,232.00                | \$0.00           | \$0.00  |
| City of Arnold MO        | \$1,232.00                | \$0.00           | \$0.00  |
| City of Arnold, Missouri | \$3,877.39                | \$0.00           | \$0.00  |
| City of Arnold - UCaaS   | \$313.15                  | \$0.00           | \$0.00  |

Location Detail

|                  |  |                    |           |
|------------------|--|--------------------|-----------|
| Location Name    | City of Arnold MO                        | Account Number     | 215941036 |
| Location Address | 2900 TENBROOK RD , ARNOLD, MO 63010-3108 | Service Order Type | New       |

Monthly Recurring Charges

| Product                                     | Qty. | Unit Price | Total Price       |
|---|------|------------|-------------------|
| <b>Common Voice Features</b>                |      |            |                   |
| 900/976 Block                               | 1    | \$0.00     | \$0.00            |
| International Block                         | 1    | \$0.00     | \$0.00            |
| <b>Dynamic IP</b>                           |      |            | \$886.00          |
| Ethernet Access(20 Mb)                      | 1    | Included   |                   |
| 20 DID Station Numbers                      | 1    | \$4.00     | \$4.00            |
| <b>Internet Service</b>                     |      |            | \$200.00          |
| Broadband Internet Access(200 Mbps/10 Mbps) | 1    | Included   |                   |
| <b>SD WAN</b>                               |      |            | \$142.00          |
| Equipment - VMware VCE 610                  | 1    | Included   |                   |
| SD-WAN Management - Concierge               | 1    | Included   |                   |
| SD-WAN Service License ( 30Mbps)            | 1    | Included   |                   |
| <b>Total</b>                                |      |            | <b>\$1,232.00</b> |

Usage Rates\*\*

| Usage Type                                     | Product and Usage Rates   |                   |                      |           |
|--|---------------------------|-------------------|----------------------|-----------|
|  | Rate                      | Initial Increment | Additional Increment | Precision |
| Long Distance Directory Assistance Charges (D) | 1.99                      |                   |                      |           |
| In State Long Distance Charges (D)             | 0.03                      | 6 sec             | 6 sec                | 2 digit   |
| Regional Long Distance Charges (D)             | 0.03                      | 6 sec             | 6 sec                | 2 digit   |
| Caribbean Long Distance Charges                | Standard<br>International | 30 sec            | 6 sec                | 2 digit   |
| Canadian Long Distance Charge (D)              | Standard<br>International | 30 sec            | 6 sec                | 2 digit   |
| International Long Distance Charges (D)        | Standard<br>International | 30 sec            | 6 sec                | 2 digit   |
| Out of State Long Distance Charges (D)         | 0.03                      | 6 sec             | 6 sec                | 2 digit   |

Location Detail

|                  |  |                    |           |
|------------------|--|--------------------|-----------|
| Location Name    | City of Arnold MO                          | Account Number     | 215941037 |
| Location Address | 1695 MISSOURI STATE RD , ARNOLD, MO 63010- | Service Order Type | New       |

**Monthly Recurring Charges**

| Product                                     | Qty. | Unit Price   | Total Price       |
|---|------|--------------|-------------------|
| <b>Common Voice Features</b>                |      |              |                   |
| 900/976 Block                               | 1    | \$0.00       | \$0.00            |
| International Block                         | 1    | \$0.00       | \$0.00            |
| <b>Dynamic IP</b>                           |      |              | <b>\$886.00</b>   |
| Ethernet Access(20 Mb)                      | 1    | Included     |                   |
| 20 DID Station Numbers                      | 1    | \$4.00       | \$4.00            |
| <b>Internet Service</b>                     |      |              | <b>\$200.00</b>   |
| Broadband Internet Access(200 Mbps/10 Mbps) | 1    | Included     |                   |
| <b>SD WAN</b>                               |      |              | <b>\$142.00</b>   |
| Equipment - VMware VCE 610                  | 1    | Included     |                   |
| SD-WAN Management - Conclerge               | 1    | Included     |                   |
| SD-WAN Service License ( 30Mbps)            | 1    | Included     |                   |
|   |      | <b>Total</b> | <b>\$1,232.00</b> |

**Usage Rates\*\***

| Usage Type                                     | Product and Usage Rates |                   |                      |           |
|--|-------------------------|-------------------|----------------------|-----------|
|  | Rate                    | Initial Increment | Additional Increment | Precision |
| Regional Long Distance Charges (D)             | 0.03                    | 6 sec             | 6 sec                | 2 digit   |
| Out of State Long Distance Charges (D)         | 0.03                    | 6 sec             | 6 sec                | 2 digit   |
| International Long Distance Charges (D)        | Standard International  | 30 sec            | 6 sec                | 2 digit   |
| Canadian Long Distance Charge (D)              | Standard International  | 30 sec            | 6 sec                | 2 digit   |
| Long Distance Directory Assistance Charges (D) | 1.99                    |                   |                      |           |
| In State Long Distance Charges (D)             | 0.03                    | 6 sec             | 6 sec                | 2 digit   |
| Caribbean Long Distance Charges                | Standard International  | 30 sec            | 6 sec                | 2 digit   |

**Location Detail**

|                  |  |                    |           |
|------------------|--|--------------------|-----------|
| Location Name    | City of Arnold, Missouri                 | Account Number     | 215898935 |
| Location Address | 2101 JEFFCO BLVD , ARNOLD, MO 63010-2746 | Service Order Type | New       |

**Monthly Recurring Charges**

| Product                      | Qty. | Unit Price | Total Price     |
|------------------------------|------|------------|-----------------|
| <b>Common Voice Features</b> |      |            |                 |
| 900/976 Block                | 1    | \$0.00     | \$0.00          |
| International Block          | 1    | \$0.00     | \$0.00          |
| <b>Dynamic IP</b>            |      |            | <b>\$800.00</b> |

|   |    |              |                   |                 |
|---|----|--------------|-------------------|-----------------|
| Ethernet Access(20 Mb)                      | 1  | Included     |                   |                 |
| 20 DID Station Numbers                      | 1  | \$4.00       | \$4.00            |                 |
| <b>Internet Service</b>                     |    |              |                   | <b>\$200.00</b> |
| Broadband Internet Access(200 Mbps/10 Mbps) | 1  | Included     |                   |                 |
| <b>SD WAN</b>                               |    |              |                   | <b>\$142.00</b> |
| Equipment - VMware VCE 610                  | 1  | Included     |                   |                 |
| SD-WAN Management - Concierge               | 1  | Included     |                   |                 |
| SD-WAN Service License ( 30Mbps)            | 1  | Included     |                   |                 |
| <b>UCaaS - Mitel</b>                        |    |              |                   |                 |
| Travel and Expenses 1                       | 1  | \$1.25       | \$1.25            |                 |
| Teams User Integration                      | 97 | \$2.81       | \$272.57          |                 |
| Voice Mail Only User                        | 70 | \$4.33       | \$303.10          |                 |
| Additional AA Ports                         | 7  | \$6.64       | \$46.48           |                 |
| Basic IPT User                              | 1  | \$12.04      | \$12.04           |                 |
| Cloud Standard UC User                      | 97 | \$14.74      | \$1429.78         |                 |
| UCaaS CPE Device Type 1                     | 1  | \$15.70      | \$15.70           |                 |
| UCaaS Implementation/Education Service 1    | 1  | \$650.47     | \$650.47          |                 |
|   |    | <b>Total</b> | <b>\$3,877.39</b> |                 |

Usage Rates\*\*

| Usage Type                                     | Product and Usage Rates |                   |                      |           |
|--|-------------------------|-------------------|----------------------|-----------|
|  | Rate                    | Initial Increment | Additional Increment | Precision |
| International Long Distance Charges (D)        | Standard International  | 30 sec            | 6 sec                | 2 digit   |
| Regional Long Distance Charges (D)             | 0.03                    | 6 sec             | 6 sec                | 2 digit   |
| Out of State Long Distance Charges (D)         | 0.03                    | 6 sec             | 6 sec                | 2 digit   |
| In State Long Distance Charges (D)             | 0.03                    | 6 sec             | 6 sec                | 2 digit   |
| Long Distance Directory Assistance Charges (D) | 1.99                    |                   |                      |           |
| Caribbean Long Distance Charges                | Standard International  | 30 sec            | 6 sec                | 2 digit   |
| Canadian Long Distance Charge (D)              | Standard International  | 30 sec            | 6 sec                | 2 digit   |

Location Detail

|                  |  |                    |           |
|------------------|--|--------------------|-----------|
| Location Name    | City of Arnold - UCaaS                         | Account Number     | 215941403 |
| Location Address | 15707 CHENAL PKWY , LITTLE ROCK, AR 72211-2035 | Service Order Type | New       |

Monthly Recurring Charges

| Product                      | Qty. | Unit Price | Total Price     |
|------------------------------|------|------------|-----------------|
| <b>Common Voice Features</b> |      |            |                 |
| 900/976 Block                | 1    | \$0.00     | \$0.00          |
| International Block          | 1    | \$0.00     | \$0.00          |
| <b>Dynamic IP</b>            |      |            | <b>\$220.80</b> |
| Call Paths - SIP             | 46   | Included   |                 |

|                           |    |              |                 |
|---------------------------|----|--------------|-----------------|
| MPLS VPN - Interstate     | 1  | Included     |                 |
| Quality of Service Charge | 1  | Included     |                 |
| Off Net Telephone Number  | 1  | \$0.35       | \$0.35          |
| FSLC Charge               | 10 | \$9.20       | \$92.00         |
|                           |    | <b>Total</b> | <b>\$313.15</b> |

Usage Rates\*\*

| Usage Type                                     | Product and Usage Rates       |                   |                      |           |
|--|-------------------------------|-------------------|----------------------|-----------|
|  | Rate                          | Initial Increment | Additional Increment | Precision |
| International Long Distance Charges (D)        | <i>Standard International</i> | 30 sec            | 6 sec                | 2 digit   |
| Caribbean Long Distance Charges                | <i>Standard International</i> | 30 sec            | 6 sec                | 2 digit   |
| Canadian Long Distance Charge (D)              | <i>Standard International</i> | 30 sec            | 6 sec                | 2 digit   |
| In State Long Distance Charges (D)             | 0.03                          | 6 sec             | 6 sec                | 2 digit   |
| Out of State Long Distance Charges (D)         | 0.03                          | 6 sec             | 6 sec                | 2 digit   |
| Regional Long Distance Charges (D)             | 0.03                          | 6 sec             | 6 sec                | 2 digit   |
| Long Distance Directory Assistance Charges (D) | 1.99                          |                   |                      |           |

**APPLICATION FOR CREDIT**

Representative: Thomas Fitzpatrick

Representative Phone: (913) 269-7983

| CUSTOMER INFORMATION                           |                           |                            |  |
|--|---------------------------|----------------------------|--|
| Customer Name: <u>City of Arnold, Missouri</u> | Tax Exempt Status: _____  |                            |  |
| Federal Tax ID or SS Number: _____             | EMR: _____                |                            |  |
| Notice Address: _____                          | Years In Operation: _____ |                            |  |
| City: _____                                    | State: _____              | Number Of Employees: _____ |  |
|  | Business Structure: _____ | Zip: _____                 |  |
|  | Nature of Business: _____ |                            |  |

| PARENT COMPANY (if applicable) |              |            |  |
|--------------------------------|--------------|------------|--|
| Company Name: _____            |              |            |  |
| Address: _____                 |              |            |  |
| City: _____                    | State: _____ | Zip: _____ |  |

| CUSTOMER CONTACT INFORMATION                             |                         |  |  |
|--|-------------------------|--|--|
| Contact Name: _____                                      | AP Contact Name: _____  |  |  |
| Contact Phone: _____                                     | AP Contact Phone: _____ |  |  |
| Contact Fax: _____                                       | AP Contact Fax: _____   |  |  |
| Contact Email: _____                                     | AP Contact Email: _____ |  |  |
| Principal/Partner/Officer Full Name: Contact Name: _____ |                         |  |  |
| Title: _____   |                         |  |  |

| BANK REFERENCE   |                           |  |  |
|------------------|---------------------------|--|--|
| Bank Name: _____ |                           |  |  |
| Address: _____   |                           |  |  |
| City: _____      | Bank Contact Name: _____  |  |  |
| State: _____     | Bank Contact Phone: _____ |  |  |
| Zip: _____       | Bank Contact Fax: _____   |  |  |
|                  | Account Number: _____     |  |  |

| TRADE REFERENCES                                       |               |                       |              |            |                |
|--|---------------|-----------------------|--------------|------------|----------------|
|  | <u>Vendor</u> | <u>Account Number</u> | <u>Phone</u> | <u>Fax</u> | <u>Contact</u> |
| 1.   | _____         | _____                 | _____        | _____      | _____          |
| Address: _____   |               |                       |              |            |                |
| 2.   | _____         | _____                 | _____        | _____      | _____          |
| Address: _____   |               |                       |              |            |                |
| 3.   | _____         | _____                 | _____        | _____      | _____          |
| Address: _____   |               |                       |              |            |                |
| Current Local Telco: _____ Current I.D. Carrier: _____ |               |                       |              |            |                |

| <u>Authorization</u>  | <u>Accepted By Customer</u> |
|---|-----------------------------|
| <p>I hereby represent that I am authorized to submit this application on behalf of the Customer named above, and the information provided is for the purpose of obtaining credit and is warranted to be true. I/We hereby authorize Company, and its affiliates, to investigate the references listed pertaining to my/our credit and financial responsibility. I further represent that the Customer applying for credit has the financial ability and willingness to pay for all invoices with established terms.</p> | Signature: _____            |
|   | Printed Name: _____         |
|   | Title: _____                |
|   | Date: _____                 |

**Letter of Agency**

|                   |   |
|-------------------|---|
| Contact Name:     | Company Name:<br>City of Arnold, Missouri |
| Billing Address:  |   |
| City, State, Zip: |   |
| Current Carrier:  | Order Date:                               |

**Authorization to Change Service Provider(s)**

On behalf of the Company, I hereby authorized Windstream Communications ("Windstream") and its operating affiliates\* listed on Exhibit A to change my Company's provider(s) for the following services from my current telecommunications carrier(s) to Windstream for each of the telephone numbers listed below. Check all applicable services:

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | Local  |
| <input type="checkbox"/> | Intrastate, IntraLATA Long Distance Service (also known as local toll) |
| <input type="checkbox"/> | Interstate, InterLATA and International Long Distance                  |

I represent that I am at least eighteen years of age and that I have the authority to change telecommunications carriers for each of the telephone numbers identified below. I understand that I have the right to obtain telecommunications services individually. I also understand that I may designate only one local exchange carrier, one IntraLATA carrier, and one InterLATA carrier per telephone number.

I choose Windstream to act as my agent to carry out the change(s) and authorize Windstream to handle on my behalf all arrangements, including ordering, changing, and/or maintaining my service, with my local telephone company(s), interexchange carriers, equipment vendor(s), and consultant(s). By designating Windstream to act as my agent, I do not permit Windstream to change my service to a carrier other than Windstream. I understand, that there may be a fee to change from the Company's current telecommunications carrier(s) to Windstream.

**Telephone Numbers:**

|  |  |  |
|--|--|--|
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

I authorize Windstream to issue all necessary instructions on my behalf and confirm that my preferred provider for the telecommunications service(s) checked above will be changed for the telephone number(s) specified above. This agreement will remain in effect until revoked in writing by the Company.

**Company  
Signature:** \_\_\_\_\_

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

\*Business Telecom of Virginia, Business Telecom, Cavalier Telephone Mid-Atlantic, Cavalier Telephone, Choice One Communications (of Connecticut, Maine, Massachusetts, New Hampshire, New York, Ohio, Pennsylvania, or Rhode Island), Connecticut Broadband, Connecticut Telephone & Communication Systems, Conversent Communications (of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, or Vermont), CTC Communications, CTC Communications of Virginia, DeltaCom Business Solutions, DeltaCom, Windstream New Edge, LLC, Windstream FiberNet, LLC, Georgia Windstream, Intellifiber Networks, LDMI Telecommunications, Lightship Telecom, McLeodUSA Telecommunications Services, Nebraska Windstream, Network Telephone, NuVox (Arkansas or Indiana), Oklahoma Windstream, PAETEC Communications of Virginia, PAETEC Communications, Talk America of Virginia, Talk America, Texas Windstream, The Other Phone Company, US LEC Communications, US LEC (of Alabama, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Tennessee, or Virginia), US Xchange (of Illinois, Indiana, Michigan, or Wisconsin), Windstream (Communications Southwest, Accucomm Telecommunications, Alabama, Arkansas, Buffalo Valley, Communications Kerrville, Communications Telecom, Communications, Concord Telephone, Conestoga, D&E Systems, D&E, Direct, EN-TEL, Florida, Georgia Communications, Georgia Telephone, Georgia, Iowa Communications, Iowa-Comm, IT-Comm, KDL, KDL-VA, Kentucky (East or West), Kerrville Long Distance, Lakedale Link, Lakedale, Lexcom Communications, Lexcom Long Distance, Mississippi, Missouri, Montezuma, Norlight, North Carolina, NorthStar, NTI, Windstream of the Midwest, Ohio, Oklahoma, Pennsylvania, South Carolina, Southwest Long Distance, Standard, Sugar Land, Systems of the Midwest, or Western Reserve), or Windstream NuVox (of Indiana, Kansas, Missouri, Ohio, and Oklahoma)

### Windstream VoIP 911 Disclosure

Windstream and its affiliates (collectively, "WIN") are subject to an FCC requirement to provide notification of any E911 limitations that may be associated with the service provided to your company. There are critical differences between traditional telephone service and WIN VoIP Services:

- 911 emergency services will not be available in the event of a power failure.
- 911 emergency services will not be available in the event of an internet failure.
- There are severe limitations (details below) to 911 emergency services if you move your phone from its registered location.

#### Loss of 911 services due to power failure or Internet connection failure:

Historically, telephone service has been powered by electrical power within the telephone network. If you subscribe to WIN VoIP Services, power is supplied directly from the premise in which you are operating the telephone.

- In the event of a commercial power outage, and if your building does not have a back-up power system, your telephone service, including 911, will not function until power is restored.
- Loss of power to your broadband gateway (through which your service is provided) will cause a loss of telephone and 911 services.
- Any internet connection failure, including a suspension for nonpayment, will cause a loss of telephone and 911 services.

WIN recommends that you always have an alternative means of accessing 911 during a power failure or internet connection failure such as a basic business or copper line (non-VoIP line) for elevator, alarm, and other critical functions.

#### To ensure that 911 calls are properly routed:

- Do not move the equipment installed at your premise to another location. Use of the telephone service at another location will prevent E911 service (the ability of the 911 operator to automatically determine your location) from working. If you move equipment provided as part of the WIN VoIP Service to another location, you must update your service address with WIN prior to using the service from a different location. Use of your equipment at a location other than the registered physical location may route 911 calls to an incorrect 911 dispatch center, potentially delaying or preventing emergency services.
- If you have users that will be using devices such as software telephones that are installed on mobile personal computers, laptops, smart phones, netbooks and any other mobile VoIP supported device that is intended to be mobile with WIN service, you must update your service address prior to using the service from a different location in order for your current location to be transmitted automatically and accurately to emergency services. Use of your software telephone at a location other than the registered physical location may route 911 calls to an incorrect 911 dispatch center, potentially delaying or preventing emergency services.
- Always state the telephone number and address that you are calling from to the 911 operator. The 911 operator receiving the emergency call may not be able to automatically identify your phone number and physical location and be able to call you back if the call is disconnected, therefore you must specify the exact location of the emergency and the telephone number from which you are calling.
- Contact WIN when you plan to move your service address: WIN customers should contact the WIN Business Center at 1-800-600-5050, Windstream New Edge (formerly EarthLink Business) customers should contact Customer Care at 1-800-239-3000 and Broadview customers should contact the OfficeSuite® Support Center at 1-800-623-VOIP (8647). Since your WIN VoIP Services will not provide 911 services from another location, you must notify WIN before you move the registered location of your service.

To help remind you about the availability of 911 emergency service and its limitations with WIN VoIP Services, we will provide stickers to be placed on or near all of your telephones and devices.

#### To Report a Change to Your Service Location:

- WIN Customers - Contact Customer Service at 1-855-361-7792.
- Windstream New Edge Customers - Contact Customer Care at 1-800-239-3000.
- Legacy Broadview Customers - Contact the OfficeSuite® Support Center at 1-800-623- VOIP (8647). For Broadview customers with PC/Softphone service, you may also update your address when prompted upon login.
- For Customers with Windstream Hosted Communications - Contact WHC Repair at 1- 855-759-7420. Customers using Windstream Hosted Communications on a smart phone may also access the Windstream Hosted Communications Client Software application to update.
- Legacy MassComm Customers - Contact your Account Manager directly or use 1-866- 791-6277.

#### Customer Affirmation of Notification

I have read the above notice and understand that there are critical differences between 911 service with WIN VoIP Services and traditional telephone service. I assume all responsibility and risk of harm, loss, or damage in the event that 911 service fails as a result of a power outage or internet outage, in the event I fail to update my service address with WIN if I use the service from a different location or in the event I do not provide the address, correct address, extension or other information to emergency authorities.

Printed Name

215674021

Account Number

Signature

Date



## CITY COUNCIL AGENDA ITEM STAFF REPORT

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|                          |  |
|--------------------------|--|
| <b>MEETING DATE:</b>     | January 20, 2022   |
| <b>TITLE:</b>            | PC-2021-39 A&W MVOE (Conditional Use Permit)   |
| <b>DEPARTMENT:</b>       | Community Development  |
| <b>PROJECT MANAGER:</b>  | Sarah Turner, Senior Planner   |
| <b>REQUESTED ACTION:</b> | No Action, Conditional Use Permit stands approved  |
| <b>ATTACHMENTS:</b>      | (1) Conditional Use Permit Document (C.U.P. 2021-39); (2) Draft Planning Commission Minutes (January 11, 2022) |

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### **EXECUTIVE SUMMARY:**

Pinnacle Eateries d.b.a. A&W Restaurants requested approval of a Conditional Use Permit (CUP) for "Motor Vehicle-Oriented Establishments" to allow for a restaurant with drive-through and carry out facilities to be located at 3996 Jeffco Blvd. within a "C-2" Commercial District.

### **REVIEW & ANALYSIS:**

At its January 11, 2022 meeting, the Planning Commission held a public hearing for the CUP application. Staff found the request consistent with the CUP review criteria contained in the Zoning Ordinance subject to five conditions of approval. No members of the public were present at the advertised public hearing. The Planning Commission had a few questions for the applicant and for Staff related to traffic during peak hours and parking. Jim Sill, a representative from Pinnacle Eateries, was present alongside Steve Hollander, of SJ Hollander Architects, to provide clarification.

### **RECOMMENDATION:**

On January 11, 2022, the Planning Commission, by a vote of 7 to 1, voted to recommend approval of the Conditional Use Permit subject to the five (5) conditions contained in the attached Conditional Use Permit Document 2021-39. Two of the conditions of approval are specific to this site. The other three are general requirements of all CUPs.



**CONDITIONAL USE PERMIT 2021-39**

**WHEREAS**, Pinnacle Eateries d.b.a. A&W Restaurants has approval for a Conditional Use Permit for "Motor Vehicle-Oriented Establishments" to allow for restaurant with drive-through and carry out facilities at 3996 Jeffco Blvd., within the "C-2" Commercial District, as provided in the Arnold Zoning Ordinance.

**WHEREAS**, on January 11, 2022, the Planning Commission has held a Public Hearing pursuant to the laws of the City of Arnold, and

**WHEREAS**, on January 20, 2022, the City Council found the proposed land use not detrimental to the surrounding land uses.

**NOW THEREFORE**, the City Council hereby issues a Conditional Use Permit to operate a Motor Vehicle-Oriented Establishment at 3996 Jeffco Blvd.

This Conditional Use Permit shall be identified as C.U.P. 2021-39 and shall be developed in general conformance with City of Arnold Ordinances and with the following five (5) conditions:

1. The granting of this Conditional Use Permit is to bring the existing Motor Vehicle-Oriented Establishment (MVOE) into conformance. Should the structure or any portion of structure be destroyed by any means to an extent that more than fifty percent (50%) of the structure's replacement cost at the time of destruction, it shall not be reconstructed except in full compliance with all provisions of the Code of Ordinances, including all MVOE Use Standards.
2. Parking stalls shall be for the exclusive use of patrons of establishments located on the subject property during those establishments' hours of operation.
3. This Conditional Use Permit may be revoked by the City Council if the terms of the permit have been found to have been violated. The procedure for revocation shall require a hearing before the City Council.
4. Revocation of this Conditional Use Permit shall constitute grounds for the revocation of all other City licenses and/or permits associated with this business establishment.
5. Approval for Conditional Use Permit does not supersede other local, state, or federal requirements.

\_\_\_\_\_  
Andrew Sutton  
Planning Commission Chairman

\_\_\_\_\_  
Date

*Before me personally appeared, Andrew Sutton known to be the Chairman of the Planning Commission for the City of Arnold, who executed the same on the City of Arnold's behalf.*

\_\_\_\_\_  
Notary

\_\_\_\_\_  
Date



**PLANNING COMMISSION MEETING  
COUNCIL CHAMBERS, CITY HALL, 2101 JEFFCO BLVD.  
JANUARY 11, 2022**

**MINUTES**

**REGULAR SESSION**

1. **CALL TO ORDER:** The regular meeting of the Arnold Planning Commission was called to order by Chairman Andrew Sutton at 7:00 p.m.
2. **PLEDGE OF ALLEGIANCE:** The Commission, Staff and public stood and spoke the Pledge of Allegiance.
3. **ROLL CALL OF COMMISSIONERS:** Andrew Sutton (Zoom), Alan Bess (Zoom), Brian McArthur, Del Williams (Zoom), Frank Kutilek (Zoom), Steve Buss (Excused), Justin Lurk (Zoom, logged in during Public Comment), Phil Hogan, Chad Miller. **STAFF:** David Bookless-Community Development Director, Robert Sweeney-City Attorney (Zoom), Christie Hull Bettale-Engineer/Planner (Zoom), Sarah Turner-Senior Planner.
4. **APPROVAL OF MINUTES:** Motion by Hogan to approve the minutes from the December 14, 2021 meeting. Second by Miller. *Voice vote:* Approved 7-0.
5. **PUBLIC COMMENT:** No members of the public present in-person or on Zoom.
6. **PUBLIC HEARINGS:**
  - a. **PC-2020-24 Building and Site Design Standards (Zoning Text Amendment):** Not being discussed – will remain open.
  - b. **PC-2021-39 A&W MVOE (Conditional Use Permit):** Motion by Hogan to open the public hearing. Second by Kutilek. Chairman Sutton introduced the project. Ms. Turner presented the Staff's report, recommending approval with conditions. Steve Hollander (SJ Hollander Architects) introduced himself as a representative of the applicant and stated he had no issues with the parking configuration or conditions. Jim Sill (Pinnacle Eateries) introduced himself and his request. Lurk and McArthur asked about the applicant's plans for the site during peak hours/heavy traffic. Mr. Sill said that A&W will have a window time of less than 2 minutes with people outside directing traffic and managing the drive-through lane similar to other fast food restaurants. Williams and Sutton shared concerns regarding the parking situation at The Local House Restaurant and Bar. Mr. Sweeney clarified the scope of the current request. Ms. Turner reminded the Commissioners of recommended conditions. Sutton asked the proposed hours for A&W and Mr. Sill stated 10:00AM to 10:00PM. The Commissioners had no further questions for Staff or the applicant. Motion by Kutilek to close the public hearing. Second by Williams.
7. **OTHER BUSINESS:** None.
8. **ADJOURNMENT OF REGULAR SESSION:** Motion by Hogan to adjourn the regular session and move into executive session. Second by Kutilek. *Voice vote:* Approved 8-0. Session adjourned at 7:22 p.m.

**EXECUTIVE SESSION**

9. **OLD BUSINESS:** *None*
10. **NEW BUSINESS:**
  - a. **PC-2021-39 A&W MVOE (Conditional Use Permit):** Kutilek made a motion to approve the request with the conditions as recommended by Staff. Second by Miller. There was no further discussion. *Roll call vote:* Alan Bess, yes; Brian McArthur, yes; Del Williams, yes; Frank Kutilek, yes; Justin Lurk, yes; Phil Hogan, yes; Chad Miller, yes; Andrew Sutton, no. 7 yeas, 1 nay – **Motion Passes.**
11. **DIRECTOR'S REPORT:** Mr. Bookless announced the next scheduled meeting of the Planning Commission is January 25<sup>th</sup>, 2022.

**12. COUNCIL LIAISON'S REPORT:** Councilman McArthur had no report.

**13. ANNOUNCEMENTS:** There were no other announcements from Staff or the Commission.

**14. ADJOURNMENT:** Motion by Hogan to adjourn. Second by Miller. *Voice vote:* Approved 8-0. Meeting adjourned at 7:24 p.m.

Respectfully Submitted,

Sarah Turner  
Acting Planning Commission Secretary

### VOTE RECORD

|                              | Roll Call | Minutes             | PH 39 Open          | PH 39 Close         | Close Reg. Open Exec. | Vote PC-2021-39     | Adjourn             |
|------------------------------|-----------|---------------------|---------------------|---------------------|-----------------------|---------------------|---------------------|
| <b>Andrew Sutton</b>         | P (Z)     | Y                   | Y                   | Y                   | Y                     | N                   | Y                   |
| <b>Alan Bess</b>             | P (Z)     | Y                   | Y                   | Y                   | Y                     | Y                   | Y                   |
| <b>Brian McArthur</b>        | P         | Y                   | Y                   | Y                   | Y                     | Y                   | Y                   |
| <b>Del Williams</b>          | P (Z)     | Y                   | Y                   | 2 <sup>nd</sup> - Y | Y                     | Y                   | Y                   |
| <b>Frank Kutilek</b>         | P (Z)     | Y                   | 2 <sup>nd</sup> - Y | 1 <sup>st</sup> - Y | 2 <sup>nd</sup> - Y   | 1 <sup>st</sup> - Y | Y                   |
| <b>Steve Buss</b>            | E         | -                   | -                   | -                   | -                     | -                   | -                   |
| <b>Justin Lurk</b>           | P (Z)     | Y                   | -                   | Y                   | Y                     | Y                   | Y                   |
| <b>Phil Hogan</b>            | P         | 1 <sup>st</sup> - Y | 1 <sup>st</sup> - Y | Y                   | 1 <sup>st</sup> - Y   | Y                   | 1 <sup>st</sup> - Y |
| <b>Chad Miller</b>           | P         | 2 <sup>nd</sup> - Y | Y                   | Y                   | Y                     | 2 <sup>nd</sup> - Y | 2 <sup>nd</sup> - Y |
| <i>David Bookless</i>        | P         |                     |                     |                     |                       |                     |                     |
| <i>Robert Sweeney</i>        | P (Z)     |                     |                     |                     |                       |                     |                     |
| <i>Christie Hull-Bettale</i> | P (Z)     |                     |                     |                     |                       |                     |                     |
| <i>Sarah Turner</i>          | P         |                     |                     |                     |                       |                     |                     |

**CALL TO ORDER:** 7:00 pm

**EXECUTIVE:** 7:22 pm

**ADJOURNMENT:** 7:24 pm