



CITY OF PATASKALA

RESOLUTION 2021-051

Passed October 4, 2021

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ADMINISTRATOR TO EXECUTE A SUPPORT AGREEMENT WITH TOWN AND COUNTRY TECHNICAL SERVICES, INC. (DBA KEYTEL SYSTEMS) TO PROVIDE INFORMATION TECHNOLOGY AND NETWORK-RELATED COMPUTER SUPPORT SERVICES

WHEREAS, the City has a significant amount of desktop computer hardware and software, file servers, local area networks, an IP phone system and other miscellaneous technology which require regular and ongoing maintenance and support; and

WHEREAS, routine maintenance of the City of Pataskala's computer network (hardware and software) requires knowledge, experience, and skill of a particularized nature that City employees simply do not possess. The Administration determined it will be cost-effective, and provide a higher level of service, if the City retains the professional services of a third-party provider, such as Keytel Systems, to provide these important services; and

WHEREAS, the Administration recommends hiring Town and Country Technical Services, Inc. (d.b.a. Keytel systems) to provide information technology support.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PATASKALA, COUNTY OF LICKING, STATE OF OHIO, A MAJORITY OF MEMBERS PRESENT CONCURRING THAT:

Section 1: Council for the City of Pataskala hereby authorizes and directs the City Administrator to execute a Support Agreement, in substantially the same form and content as the Agreement attached hereto as Exhibit A and incorporated herein by reference, with Town and Country Technical Services, Inc. (d.b.a. Keytel Systems) to provide information technology and network-related computer support services.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of Council and that all deliberations of the Council and any of the decision-making bodies of the City of Pataskala which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

Section 3: This Resolution shall become effective from and after the earliest period allowed by the Charter of the City of Pataskala.

ATTEST:


Kathy M. Hoskinson, Clerk of Council


Michael W. Compton, Mayor

Approved as to form:


Brian M. Zets, Law Director

Support Agreement

This **Support Agreement** ("Agreement") is entered into by and between Town and Country Technical Services Inc., DBA Keytel Systems, hereinafter referred to as Keytel and The City of Pataskala, hereinafter referred to as "Client". Keytel and the Client shall be collectively referred to as the "Parties." Keytel will provide the Services contemplated under this Agreement to Client in accordance with the terms contained within this Agreement and those incorporated herein by reference. Therefore, the Parties agree as follows:

1. **Term** – The term of this Agreement shall commence on the date of execution of this Agreement and shall continue for **36 calendar months**.
 2. **Services** – Keytel agrees to provide Client with Computer Support Services (the "Services"). During the term of this Agreement, Keytel shall service the Client's Computer Equipment as follows:
 - a. **Managed Equipment and Services (monthly cost):**
 1. Office365 Licensing:
 - a. E1 @ \$8 per user
 - b. E3 @ \$20 per user
 2. Managed Workstations @ \$75 per workstation
 3. Hosted Phone System licensing and Support: See Attached
 4. Data Center Hosting: See Attached
 5. Managed Firewall with monitoring @ \$150 per Location
 - b. **Services:**
 - i. Respond to major system interruptions within Four (4) hours, seven days a week, 24 hours a day. A major system interruption exists when:
 1. Primary server is completely inoperative and/or;
 2. Core network is completely inoperative and/or;
 3. 50% of workstations or applications are inoperative.
 - ii. Respond to minor service interruptions within Two (2) Working Days after notification by Client that the system is inoperative. Response will be during normal business hours, between the hours of 8:00a.m. and 5:00p.m. daily EST, Monday thru Friday, excluding Federal holidays. Working Days are defined as Monday thru Friday, excluding Federal holidays.
 - c. During the term of this Agreement, Keytel will provide the Services for Client's Computer Equipment to ensure business continuity. The Services will be provided by Keytel during the hours of 8:00a.m. and 5:00p.m. daily EST Monday thru Friday, excluding Federal holidays ("Normal Business Hours"). Services performed outside of Normal Business Hours or on Federal Holidays that do not fit within the parameters outlined above in (i) will be conducted at a rate of 1.5 hours per hour.
3. **Service Charge and Payment Terms** – Client shall pay Keytel the amount due in Quarterly installment payments for the term of this Agreement. The initial quarterly installment payment is due on or before the execution date of this Agreement. Successive quarterly installment payments are due on or before the execution anniversary day of the; calendar month for each successive three calendar month period during the term of this Agreement.
4. **Standard Terms and Conditions** – This Agreement is subject to Keytel's Standard Terms and Conditions, which are incorporated by reference and made a part hereof. Such Standard Terms and Conditions may be found at <https://www.keytel.com/support/terms0221.html> and shall be provided to Client upon request. By accepting this Agreement, Client agrees to be bound by the terms of this Agreement and those contained in the Standard Terms and Conditions unless otherwise modified herein.

KEYTEL SYSTEMS

CLIENT

By: _____
Its: Authorized Representative

Date: _____

By: _____
Its: Authorized Representative

Address: 6200 Eastgreen Blvd.

Address: _____

Reynoldsburg, Ohio 43068

Address: _____

Email: helpdesk@keytel.com

Email: _____

Addendum to Standard Terms and Conditions

The Parties agree to modify the following terms and conditions contained within Keytel's Standard Terms and Conditions:

14. Indemnification – Paragraph is removed in its entirety.

Keytel Systems

Appendix A

For Client: City of Pataskala *As of: 8/1/21*

The purpose of this document is to serve as an aide in explanation of item 2(a) from the Support Agreement. The information contained herein is based on the quantities, pricing, and services utilized as of the date above and is subject to change.

1. Office365 Licensing. Current Usage Details:
 - a. E1 Licenses Used: 59
 - b. E3 Licenses Used: 38
2. Managed Workstations Current Count: 35
3. Hosted Phone System Current Phone Count (includes PD): 53
4. Data Center Hosting (assumes addition of PAT-COURT server which has been approved and is in progress) Pricing based on Utilization of resources:
 - a. PAT-DC1 (domain controller): \$250.17
 - b. PAT-FS1 (file server): \$725.97
 - c. PAT-SQLSERVER (finance): \$684.03
 - d. PAT-COURT: \$437.07

**Keytel Systems
Standard Terms and Conditions
Updated 02/01/2020**

1. Incorporated of Support Agreement

These Standard Terms and Conditions are incorporated by reference into any Support Agreement between Keytel Systems DBA Keytel and its Client(s).

2. Provision of Services

Keytel will provide the Services to Client as identified in the Support Agreement(s).

3. Price and Payment Terms

- a) The price for Services is provided in the Support Agreement. Keytel may, after the initial term of a Support Agreement, increase charges for Services by giving the Client thirty (30) days written notice which may be sent via electronic mail to known/established email address(es) of Client.
- b) Payment terms are net 30 days, unless otherwise specified in the Support Agreement. Failure to pay within specified terms may at the option of Keytel result in the suspension of the Services, imposition of interest charges at the rate of a 1.5% per month or the highest allowed by law, and may result in the termination of the Support Agreement by Keytel.
- c) The Support Agreement will specify whether the contract is based on a fixed price or per-piece-price rate.
- d) Sales tax will be added to each invoice. In the event Client claims exemption from sales and use taxes, Client must provide Keytel with the appropriate tax exemption certificate from the taxing authority.

4. Proprietary Rights

Except as set forth in the Support Agreement, Keytel does not convey or transfer nor does Client obtain any right or interest in any of the software programs, systems, tools, data or materials or process utilized or provided by Keytel in connection with the performance of the Support Agreement. /p>

5. Client Representations

Client represents and warrants to Keytel that Client has the right to authorize Keytel to perform the Services (as defined within the Support Agreement) including but not limited to computer products, phones, or hardware or software.

6. Client Responsibilities

Client, at its expense, shall:

- a) Allow employees or agents of Keytel reasonable access to the premises and facilities where the Service is to be provided, and Client shall not require Keytel's personnel to sign any document that has not been approved in advance by Keytel.
- b) Provide appropriate electric current for any necessary purpose with suitable outlets.
- c) Provide safe, suitable and easily accessible floor space, adjacent to where Service will be provided.

- d) Provide reasonable assistance to Keytel as requested.
- e) Use the Services only on equipment identified by Client. Upon the failure of Client to comply with the responsibilities set forth in this Section ("Non-compliance"), Keytel may, at its option, refuse to perform any Service where Non-compliance has occurred until such Non-compliance has been cured to the reasonable satisfaction of Keytel without any liability or obligation under this Agreement or any applicable law; provided however, that Keytel may charge Client at its then current labor rates for any Service call at which no Service was performed by Keytel as a result of Non-compliance.
- f) Maintain the appropriate cyber insurance coverage to protect Client's risks associated with loss of privacy, loss of cyber security/cyber incidents, loss of data/data breaches, and loss of operational capability/business interruption (collectively "Cybersecurity").

7. Client Network Limitations

In the event Keytel provides services to manage the Client's Data Network (hereinafter "Managed Services"), the Client agrees to obtain prior written approval from Keytel prior to attaching any device, system, or computer of any kind onto the Client's private Data Network. Keytel does not permit unauthorized access to Keytel's servers and/or Services. Keytel makes no representations, warranties, or assurances that Client's devices, systems, or computers will be compatible with Keytel's Services. The Client is authorized to utilize any public access point designated as such by Keytel for non-Client owned systems or third-party systems internet access. Client is prohibited from violating or attempting to violate the security of the network by attaching unauthorized systems to the network. Unauthorized access or attempted access may violate the Client's system and/or network integrity and could cause catastrophic failure of Client's Data Network. Violations of system of network security may result in civil or criminal liability in addition to immediate termination of any Services provided by Keytel. Keytel will investigate occurrences, which may include cooperation with the appropriate law enforcement authorities in prosecuting Clients who are involved in such violations. These violations include, without limitation:

- a) Accessing data not intended for the Client or logging into a server or account that the Client is not authorized to access; or
- b) Attempting to probe, scan, or test the vulnerability of a system or network, or to breach security or authentication measures without proper authorization; or
- c) Attempting to interfere with service to any Client, network, or Keytel, including, without limitation, via means of overloading, "flooding", "mail bombing", or "crashing"; or
- d) Forging any TCP/IP packet header or any part of the header information in any email or newsgroup posting; or
- e) Taking any action in order to obtain services to which the Client is not entitled; or
- f) Allowing any network access by non-Client owned or systems which have not been expressly approved by Keytel; or
- g) Any use of the Services for any unlawful purpose.

8. Limited Warranty

Keytel shall provide computer and/or other technical Services in a good workmanlike and professional manner consistent with current industry standards. The foregoing limited warranty is contingent upon Client fulfilling the Client responsibilities specified in any Support Agreement and these Standard Terms

and Conditions. In the event Client finds any Services to be defective or nonconforming during the term defined in the Support Agreement, subject to the limitations set forth above, Keytel shall promptly correct such Services to the reasonable satisfaction of Client in accordance with the Support Agreement. In the event such corrected Services fail to comply with the Support Agreement, then at Client's option, Keytel shall again promptly correct such Services or shall reimburse to Client the payments made to Keytel for such Services. The foregoing constitutes Client's sole remedy for Service warranty claims relating to computer and technical Services. To the extent Keytel is supplying third-party hardware or software as part of the Services to Client, such hardware and software shall be provided with the manufacturers or publishers' standard end user warranties, if any. Keytel makes no independent warranties with regards to third-party hardware or software.

9. Disclaimer of All Other Warranties

WITH THE EXCEPTION OF THE LIMITED WARRANTIES EXPRESSLY SET FORTH IN ANY SUPPORT AGREEMENT OR THESE STANDARD TERMS AND CONDITIONS, KEYTEL DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED UNDER LAW, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. KEYTEL DOES NOT PROMISE THAT THE PRODUCTS OR SERVICES PROVIDED WILL BE ERROR-FREE OR THAT CLIENT'S COMPUTER PRODUCTS, HARDWARE OR SOFTWARE WILL OPERATE WITHOUT INTERRUPTION. KEYTEL EXPRESSLY DISCLAIMS ALL WARRANTIES OR GUARANTEES REGARDING COMPLIANCE WITH ANY REGULATION(S) OR GUIDELINES OF ANY KIND.

10. Limitations of Liability

KEYTEL WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO, PROPERTY DAMAGE, LOSS OF PROFIT, LOST TIME, LOSS OF DATA, LOSS OF USE OF ANY SUCH EQUIPMENT, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS, TECHNOLOGY OR SERVICES, OR ANY OTHER DAMAGES RESULTING FROM THE BREAKDOWN OR FAILURE OF ANY COMPUTER PRODUCTS, HARDWARE OR SOFTWARE, OR FROM DELAYS IN SERVICING OR THE INABILITY TO RENDER SERVICE ON ANY COMPUTER PRODUCTS, HARDWARE OR SOFTWARE EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY SUPPORT AGREEMENT OR THESE STANDARD TERMS AND CONDITIONS, KEYTEL'S LIABILITY FOR DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO KEYTEL'S NEGLIGENCE OR INSTALLATION OF DEFECTIVE PARTS OR COMPONENTS, WHETHER OR NOT SUCH DEFECT WAS KNOWN OR DISCOVERABLE, SHALL NOT EXCEED THE ACTUAL PRICE PAID TO KEYTEL BY CLIENT UNDER THE SUPPORT AGREEMENT FOR THE COMPUTER PRODUCTS, HARDWARE OR SOFTWARE, OR SERVICE, WHICHEVER IS LESS.

Keytel shall not be responsible for damages caused by (i) accidents, misuse, misapplication, or neglect of Client or any of its agents or employees or as result of Service by any person other than a Keytel representative; (ii) placement or operation of computer products in an area that does not comply with manufacturer's published space or environmental requirements; or (iii) improper storage, use, and movement of any computer products to be serviced.

Internet/Transmission Disclaimer. Keytel does not and cannot control the flow of data over the Internet or the integrity of the Internet. Therefore, Keytel disclaims all liability for loss of data, corruption of data, or inability to provide Services, as a result of disruptions, slowdowns, breakdowns, or other technical issues affecting the Internet.

Cybersecurity Disclaimer. Although no Cybersecurity solution is 100% effective, Keytel provides Services that compliment Client's overall Cybersecurity solution and Keytel cannot control Client's access to,

introduction of, or activation of cyber threats to Client. Therefore, Keytel disclaims all liability for Client's loss of privacy, loss or corruption of data, or Client's business interruption or disruptions resulting from cyber threats,

11. Termination

Client may terminate any Support Agreement upon sixty (60) days written notice to Keytel which shall be by certified mail to the address on the Support Agreement. Upon receipt of the termination letter, Keytel will invoice Client for all outstanding fees and costs due under the remaining term of the Support Agreement. Keytel may terminate any Support Agreement at any time with-cause by providing written notice to Client to the address on the Support Agreement or by electronic mail to an email address previously established by the Parties. After the initial term, either Party may terminate any month-to-month Support Agreement by providing notice to the other party prior to any payments made by Client. Termination of a month-to-month term shall be effective after notification and thirty calendar days after Client's last payment. Either party may terminate any Support Agreement at any time if the other party breaches any material provision and fails within fourteen (14) days after receipt of notice of default to correct such default promptly or to commence corrective action reasonably acceptable to the aggrieved party and proceed with diligence to completion.

12. Personal Information

Keytel represents and warrants to Client that in connection with the receipt, storage, use and/or transfer of Personal Information, it shall (a) at all times maintain the confidentiality of Personal Information provided Keytel or otherwise disclosed to Keytel in connection with the provisions of Services under any Support Agreement, and (b) maintain appropriate security measures that are in compliance with data protection regulations promulgated under applicable state and federal laws of the United States. For the purposes of this section "Personal Information" means the first and last name or first initial and last name of an individual together with one or more of the following relating to such individual: (i) Social Security number; (ii) driver's license number/state-issued identification number; or (iii) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number, or password, that would permit access to the account. Keytel will notify Client within twenty-four (24) hours of any disclosure or suspected disclosure of confidential information.

13. Patents, Copyrights, Trademarks, and other Intellectual and Proprietary Rights

Except for rights expressly granted to Client by Keytel in any Support Agreement, the use of Keytel services does not transfer any intellectual or other property or proprietary right to Client. Client agrees that all rights, title, and interest in any product or Service provided to Client belongs to Keytel. Any products or services are only for Client's use in connection with Services provided to Client. Client expressly warrants to Keytel that Client has the right to use any patented, copyrighted, or trademarked material which Client uses, posts, or otherwise transfers to Keytel's servers.

14. Indemnification

Client agrees to defend, indemnify, and hold Keytel harmless, from any and all demands, liabilities, losses, costs, and claims, including reasonable attorney's fees, against liabilities arising out of:

- a) Any liability to Keytel arising by virtue of any use of Keytel's Services by Client, including but not limited to Client's employees, agents, or contractors for any unlawful purpose, or any violations of any federal, state, or local law or regulation governing use of e-mail or the internet; or

- b) Any software or other products or goods supplied by Client infringing or allegedly infringing on the property or proprietary rights of a third-party;
- c) Any copyright or trademark infringement, or any violation of intellectual property rights of any third-party by Client, including but not limited to Client's employees, agents, or contractors; or
- d) Cyber threat activations or cybersecurity breaches caused by Client or Client's employees, agents, or contractors

15. Binding Agreement and Assignments

These Standard Terms and Conditions and any Support Agreements shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

16. Waiver

No waiver of any provision or breach shall be implied by failure to enforce any rights or remedies herein provided, and no express waiver shall affect any provision or breach other than that to which the waiver is applicable and only for that occurrence.

17. Force Majeure

Neither Party shall be liable for any failure, inability or delay to perform hereunder (except the payment of money), if such failure, inability or delay is due to circumstances beyond its reasonable control, including, but not limited to, acts of God, war, terrorism, strike, lockout, labor disturbance, social conflict, fire, explosion, earthquake or sabotage.

18. Notices

All notices which may be given in connection with any Support Agreement shall be by certified mail with postage prepaid and return receipt requested, or personal delivery, or electronic mail, or facsimile. Any notice sent to either party shall be sent to the address specified on the Support Agreement, or if non listed or the address is obsolete, to the Party's Statutory Agent as listed with the Ohio Secretary of State. Any such addresses stated on a Support Agreement may be changed at any time upon written notice of such change sent by the means stated above, to the other party by the party effecting the change.

19. Dispute Resolution

The parties shall attempt in good faith to resolve any dispute arising out of or relating to any Support Agreement promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and the response shall include (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the disputing party's notice, the executives of both parties shall meet at a mutually acceptable time and place to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. In the event the parties cannot reach a satisfactory settlement under the aforementioned process, they each agree to present the dispute to non-binding mediation before a mutually agreeable neutral mediator

at a mutually agreeable neutral site. If mediation is not successful, the parties may proceed to binding arbitration or litigation.

20. Governing Law

These Standard Terms and Conditions and any Support Agreements shall be construed and enforced in accordance with the substantive laws of the State of Ohio, without regard to conflict of interest principles. Exclusive venue for any action, whether at law or in equity, shall be Franklin County, Ohio.

21. Independent Contractor

Nothing in these Standard Terms and Conditions or any Support Agreements, and no course of dealing between the parties, shall be construed to create an employment or agency relationship or a partnership between a party and the other party. Each party shall be solely responsible for payment of its employees' salaries (including withholding of income taxes and social security), workers' compensation, and all other employment benefits.

22. Entire Agreement

The Support Agreement and these Standard Terms and Conditions sets forth the entire Agreement and understanding between the Parties with respect to Services provided by Keytel to Client and replaces any prior oral or written communications. The Support Agreement(s) executed by Keytel and Client are made a part of these Standard Terms and Conditions. These Standard Terms and Conditions shall not be supplemented, modified or amended except by a written instrument signed by duly authorized representatives of Client and Keytel, respectively, and no other person has or shall have the authority to supplement, modify or amend this Agreement in another manner.

23 Severability

In the event any term or provision of any Support Agreement or these Standard Terms and Conditions is determined to be invalid, illegal or unenforceable, the remaining terms and provisions will continue in full force and effect.

24. Headings and Interpretations

The headings of the Sections of any Support Agreement or these Standard Terms and Conditions are intended solely for convenience or reference and shall be given no effect in the construction or interpretation of the document. The use of the masculine pronoun herein shall, where the context so indicates, be deemed to include the feminine and the neuter and vice versa, and the use of the singular shall be deemed to include the plural and vice versa.

25. Order of Precedence

In the event of any conflict or inconsistency of terms among these Standard Terms and Conditions or any Support Agreement, the order of precedence that shall apply is as follows, with each listed document or type of document superseding and prevailing over any subsequently listed document or type of document, and with later executed documents prevailing over earlier documents of the same type, each solely to the extent of any irreconcilable conflict or inconsistency of the terms and conditions thereof: (i) these Standard Terms and Conditions; (ii) any Support Agreement; (iii) Service change authorizations executed by the parties; and (iv) purchase orders and/or modifications to Support Agreements executed by the parties. However, the Parties may exclude paragraphs or portions thereof from these Standard Terms and Conditions by specifically stating such excluded paragraphs or portions thereof on any Support

Agreement. Any preprinted terms and conditions in any Client purchase orders shall be void and of no effect.

26. Counterparts

Any Support Agreement(s) may be executed in duplicate counterparts. Each such counterpart, if executed by both parties, shall be an original and all such counterparts together shall constitute but one and the same document. Any Support Agreement shall not be deemed executed unless and until at least one counterpart bears the signature of each party's duly authorized signatory.