



Heartland COG/North Central Ohio Computer Cooperative (NCOCC)

VoIP Service Contract
Contract Number: FI20-GALCS-VOIP

This agreement ("Agreement") for the provisions of Services is entered into on this 10th day of June, 2019 between the Heartland COG/North Central Ohio Computer Cooperative ("Provider") and Galion City Schools ("Customer"), as verified by the signatures on the signature page of this Agreement.

WHEREAS, Provider is an information technology center organized as a regional council of governments under Ohio law to provide communications and other technology services; and

WHEREAS, Customer is a public school district, community school, education service center, or other entity authorized to utilize the services of an information technology center such as Provider; and

WHEREAS, Provider through its information technology center desires to provide to Customer and Customer desires to secure from Provider the Services detailed in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agree as follows:

I. DEFINITIONS

A. The following terms shall be defined as follows:

1. "*Customer*" shall mean the undersigned entity that has agreed to the terms and conditions of this Agreement.
2. "*Provider*" shall mean the Heartland COG/North Central Ohio Computer Cooperative (NCOCC).
3. "*Services*" shall mean all of the duties and ministrations in accordance with the items specified on Exhibits, attached.
4. "*User*" shall mean a school or person accessing the VoIP services or equipment secured by Customer from Provider under this Agreement.
5. "*Third-Party Agreement*" shall mean an agreement between Provider and a third party or others to obtain service and otherwise facilitate the provisions of Providers' ("*Services*") to be provided to Customer under the ("*Agreement*").
6. "*VoIP Service*" shall mean the interconnected voice over Internet protocol as described in Exhibit A.

II. TERM AND RENEWAL OF AGREEMENT

This Agreement shall be for the period of 5 year(s) beginning July 1, 2019 and ending June 30, 2024.

III. PROVIDER'S GENERAL RIGHTS AND RESPONSIBILITIES

- A. Provider shall furnish Customer such Services as are described in the attached Exhibits. Provider will plan and coordinate all activities incidental to the implementation and provisions of the Services.
- B. Provider will be the point of contact for all service issues experienced by Customer related to the provision of Services.
- C. Provider may discontinue or limit Service upon thirty (30) days' written notice to Customer, to comply with a change in federal, state, or local law or regulatory requirements, or changes to any applicable Third-Party Agreement.
- D. Unless special arrangements are made and appended to this Agreement, Provider does not have a duty to monitor Customer or its User's usage of the Services. However, Provider shall not be prohibited from monitoring such usage.
- E. Provider reserves the right to discontinue Customer's access to Provider's Services and/or seek other legal or equitable relief for use of the Services by Customer or by its Users, if Customer has knowledge of such use and fails to address it, that Provider deems in violation of the rules and regulations of the State Board of Education; or in violation of this Agreement; or in violation of any applicable Third-Party Agreement; or violate state or federal law; or are uncivil.
- F. Customer agrees that Provider shall have no responsibility for the accessing or transmitting of offensive or unlawful information by Customer or Customer's Users.

IV. CUSTOMER'S GENERAL RIGHTS AND RESPONSIBILITIES

- A. Customer shall undertake its obligations set forth in the attached Exhibits.
- B. Customer shall make its personnel and records available to the extent necessary to facilitate the planning, training and installation of the Services.
- C. Customer shall not resell any Services provided by Provider.
- D. Customer may utilize the Provider's Services provided hereunder only for educational and educational administrative-related activities.
- E. Customer acknowledges that Services are provided by Provider subject to and pursuant to the terms of a Third-Party Agreement. Customer has had an opportunity to review any applicable Third-Party Agreement(s) as are applicable now or may be applicable during the term of this Agreement.
- F. Customer shall not upload, post, transmit or otherwise make available on or via the Services provided under this Agreement any material (including any messages or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law or regulation.
- G. Customer acknowledges that beginning with the 2019 Funding Year, VoIP services are not eligible for E-rate funding through the Schools and Libraries Program of the Universal Service Fund.

V. CUSTOMER PAYMENTS

- A. Customer agrees to be solely responsible to Provider for all charges billed by Provider for Services provided to Customer under this Agreement. Charges for the Services provided under this Agreement will be billed to Customer on an annual basis. Payment of all invoices sent shall be due within thirty (30) days of the invoice date on the Customer's invoice.
- B. Customer agrees to pay all taxes, charges, surcharges and other similar amounts due in regard to the Services provided by this Agreement.
- C. Customer agrees to pay all costs incurred by Provider on behalf of Customer to provide Services through any applicable Third-Party Agreements, including increased charges, fees, collection costs, late fees, service charges, termination charges and any other costs imposed on the Provider under the Third-Party Agreement that relate to the provision of the Services to Customer and which are a result of Customer's actions.
- D. Customer agrees to pay for any installation costs if any such costs are incurred as a result of providing Services to Customer.
- E. Provider may at its sole discretion terminate or suspend the Services to Customer if any invoice payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights Provider may have for full payment. If Customer's Services are suspended, there may be a reconnection fee to cover the administrative cost of reconnection. The reconnection charge shall be in addition to amounts due for unpaid balances and/or the above-described charges due by way of any Third-Party Agreement.

VI. FAILURE TO APPROPRIATE OR PAY FUNDS

- A. In the event the Customer shall fail to appropriate sufficient funds or to pay any or all obligations under this Agreement when due, then Customer agrees to be responsible for the following current and future charges:
 - 1. The contracted annual amount in full for the balance of the current fiscal year (July 1 – June 30), less the amount already paid by Customer for such fiscal year; and
 - 2. 100 percent (100%) of the monthly charges to Provider by any Third-Party Agreement on account of this Agreement for all remaining months and years of this Agreement.

VII. WARRANTIES AND LIMITATIONS ON LIABILITY AND INDEMNIFICATION

- A. CUSTOMER EXPRESSLY AGREES THAT USE OF PROVIDER'S SERVICES UNDER THIS AGREEMENT IS AT CUSTOMER'S SOLE RISK. THESE SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY, NONINFRINGEMENT, OR WARRANTIES ARISING FROM ANY EMPLOYEES OR PROVIDER'S AGENTS OR INDEPENDENT CONTRACTORS, SHALL CREATE ANY WARRANTY OF ANY KIND. .
- B. PROVIDER DOES NOT WARRANT THAT THE FUNCTIONS OF THE SERVICES WILL MEET ANY SPECIFIC CUSTOMER OR USER REQUIREMENTS, OR THAT SERVICE LIABLE FOR ANY ACTUAL DAMAGES OR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, A RESULT OF LOSS OF OPERATION, OR INABILITY TO USE PROVIDER'S SERVICES BY CUSTOMER OR ITS USERS. THE CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCTS LIABILITY) SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES.

- C. Customer understands and agrees that Provider will exercise no control over the Services. Customer will make no claim against Provider for the use of Services, including transmission of information that is offensive, a violation of the law, or the actionable violation of others' rights. Customer assumes full responsibility for any and all access to, transmission and usage of the Services by it or its Users.
- D. Customer understands and agrees that Provider shall have no responsibility for Customer's or its Users' accessing or transmitting offensive or unlawful information, interference or unlawful access to other's information, or other offensive or unlawful activity for which Provider's Services are used.
- E. Customer agrees that Provider shall not be liable for failure to provide Services if such failure is caused by acts of God, epidemics, lightning, winds, fires, landslides, floods, earthquakes, droughts, famines, acts of public enemies, explosions, insurrection, military action, sabotage, riots, civil disturbances, failure of a utility or utility-type services which is essential for Provider to provide the Services, or other event(s) not reasonable within the control of Provider.
- F. Customer agrees that Provider shall not be liable as a result of the actions, errors, omissions, or negligence of Customer or its personnel, employees, agents or Users.
- G. Customer agrees that Provider shall not be liable with regards to Third-Parties for any action, error, omission, or negligence of Customer and/or its Users.
- H. CUSTOMER AGREES TO INDEMNIFY AND HOLD PROVIDER, ITS GOVERNING BOARD MEMBERS, OFFICERS, MEMBERS, EMPLOYEES AND/OR AGENTS HARMLESS FROM ANY CLAIMS, SUITS, LIABILITY, LOSS, EXPENSE AND/OR DAMAGES, INCLUDING ALLEGED COPYRIGHT AND OTHER INTELLECTUAL PROPERTY CLAIMS SUSTAINED BY ANY PERSON OF ANY ACT OF CUSTOMER OR ITS USERS IN THEIR ACTIVITIES INVOLVING USE OF PROVIDER'S SERVICES TO THE EXTENT PERMITTED BY LAW.

VIII. PROPERTY

- A. Any hardware installed by Provider, including but not limited to routers and switches necessary for the provision of Services to Customer and all related software and documentation ("Service Equipment") shall irrevocably and under all circumstances remain with Provider and its designee, and Customer will protect Provider's rights, title and interest therein against all persons. Customer's interest in the Services and Service Equipment is limited to possession and use thereof on the premises.
- B. Any hardware installed by a Third-Party, including but not limited to routers and switches necessary for the provision of Services to Customer and all related software and documentation remain the property of the Third-Party.

IX. CONFIDENTIALITY OF INFORMATION

- A. Provider shall exercise ordinary care in preserving and protecting the confidentiality of information and materials furnished by Customer, to the extent required by law.
- B. Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.
- C. Except as required by law, Customer agrees not to disclose any information or documentation obtained from Provider.

X. NOTICES

A. All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate address set forth below (or to such other addresses as the party may designate by notice to the other party hereto):

1. If to Customer:

Name: Galion City Schools
Attention: James Grubbs
Address: 470 Portland Way North
City, ST Zip: Galion, OH 44833
Phone: 419-468-3432
Email: grubbs.james@galionschools.org

2. If to Provider:

Name: Heartland COG/North Central Ohio Computer Cooperative (NCOCC)
Attention: Brent Winand, ITC Director
Address: 1495 W Longview Ave. Suite 100
City, ST Zip: Mansfield, OH 44906
Phone: 419-747-8660
Email: winand.brent@ncocc.net

XI. GENERAL PROVISIONS

- A. **Successors.** This Agreement shall be binding upon and shall inure the benefit of parties hereto and their respective successors and assigns.
- B. **Assignments.** This Agreement and the rights, duties, and/or responsibilities herein may not be assigned to another individual or entity without the written consent of the non-assigning party to this Agreement.
- C. **Modification, Waiver, Discharge, etc.** This Agreement may not be discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part here of or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other subsequent breach. Furthermore, the term of any purchase order, invoice or like document issued in conjunction with the Service to be provided herein shall not serve to add to or modify the terms of this Agreement.
- D. **Captions.** The captions in the Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope of intent of this Agreement or any of the provisions hereof.
- E. **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto, including Users as defined by this Agreement.
- F. **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

- G. **Entire Agreement.** This Agreement, together with the documents referred to herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings with respect to such subject matter.
- H. **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
- I. **Construction.** This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio, without regard to conflict of laws and provisions. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in the Agreement, the terms "include" or "including" shall mean including without limitation. Unless the context requires otherwise, any reference to the masculine, feminine and neuter genders include one another.
- J. **Compliance with Law.** Each party agrees to comply with all governmental laws and regulations applicable to the Services. Customer agrees to provide such written evidence of the approval of this Agreement as may be required by law.
- K. **Fully Understand and Freely Enter.** The undersigned hereby acknowledge that they have read and understand the foregoing, including the sections regarding warranties and limitations on liability. The parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.

By signing this Agreement, the individual signing ("Signatory") certifies:

- A. They are authorized to sign on behalf of Customer; and
- B. Customer's ability to enter into and legally be bound by the Agreement in accordance with local and/or state law, and
- C. They are not affiliated with the Heartland COG/North Central Ohio Computer Cooperative in any capacity including the position of NCOCC Board Member; and
- D. If Customer is a Board of Education of a school district (a political subdivision of the State of Ohio), Signatory certifies that this Agreement has been approved by formal resolution of its Board of Education; and
- E. If Customer is another educational entity, Signatory certifies that this Agreement has been approved by formal action of its Board; and
- F. That they have read, understand and agree to the terms of this Agreement, including the provisions of the attached Exhibits which are hereby incorporated into this Agreement by reference, on behalf of their respective entities; and
- G. All information provided in connection with this Agreement is true and accurate.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

FOR CUSTOMER:

Printed name of Customer

Signature of Authorized Customer Representative

Date

Printed name of Authorized Customer Representative

FOR PROVIDER:

Heartland COG/North Central Ohio Computer Cooperative

Printed name of Provider



Signature of Authorized Provider Representative

June 10, 2019

Date

Brent Winand

Printed name of Authorized Provider Representative

Exhibit A

This Exhibit is hereby made part of the Agreement entered into between the Provider and the Customer, as defined in the Agreement for the contract beginning July 1, 2019 and ending June 30, 2024. The following additional terms and conditions apply to the Agreement for the period beginning July 1, 2019 and ending June 30, 2020.

Customer may choose to upgrade or add services per the attached Schedule 1 and Charts A and B by providing a written request. Delivery of upgraded Service is anticipated no earlier than 30 business days after acceptance of the written upgrade request. The corresponding rates will be prorated and adjusted based on current rates. If Customer seeks a downgrade of Service, Provider will pass through any termination fees or Third-Party fees associated with the downgrade request and Customer shall be responsible for such fees.

A. SERVICES

1. The Service provided and their attendant costs are set forth on Schedule 1 attached hereto and incorporated herein by reference.
2. Provider will provide VoIP Service to the following service location(s):

Galion City Schools 470 Portland Way North Galion, OH 44833

B. PROVIDER'S OBLIGATIONS

1. Provider will provide VoIP Services as specified on Schedule 1.
2. Provider shall provide technical support during Provider's established business hours.
3. Provider shall provide VoIP Service using established connectivity standards.
4. Provider shall plan and coordinate all activities incidental to the implementation of the VoIP Service.
5. Provider shall provide configuration, maintenance, and upgrades of the VoIP System.
6. Provider shall provide configuration, maintenance, and upgrades of VoIP gateways.
7. Provider shall provide VoIP handset configurations (adds, moves, and changes).
8. Provider shall provide support for VoIP issues related to the service under the Provider's control.
9. Provider shall provide training for 1 or 2 local trainers.

C. CUSTOMER'S OBLIGATIONS

1. Customer shall provide Provider with appropriate and sufficient rack space, climate control and electrical power to facilitate the installation and operation of any VoIP equipment.
2. Customer shall provide surge suppression for all devices either directly or indirectly connected to the VoIP Service.
3. Customer shall provide physical access to locations and telecommunication closets as needed by Provider.

4. Customer agrees to comply with equipment specifications defined by the Provider for all components integral to the VoIP Service.
5. Customer shall provide Power Over Ethernet ("PoE") LAN equipment needed for the distribution of the VoIP Service.
6. Customer shall provide PoE LAN equipment replacement from hardware failure or acts of God.
7. Customer shall provide all VoIP handsets compatible for use under NCOCC's established connectivity standards.
8. Customer shall provide all VoIP handset replacements from hardware failures or acts of God.
9. Customer shall be responsible for any issues with 3rd party applications and/or equipment that may intersect or interfere with the VoIP Service.
10. Customer shall be responsible for Plain Old Telephone System ("POTS") or Public Switch Telephone Network ("PSTN") interconnects via analog, Primary Rate Interface ("PRI") or Session Initiation Protocol ("SIP") technologies.

Schedule 1

This Schedule is hereby made part of the Agreement entered into between the Provider and the Customer, as defined in the Agreement for the contract beginning July 1, 2019 and ending June 30, 2024. The following additional terms and conditions apply to the Agreement for the period beginning July 1, 2019 and ending June 30, 2020.

CHART A

DESCRIPTION	QUANTITY	PRICE	AMOUNT
Cisco FLEX Collaboration License	232	\$54.00	\$12,528.00
NCOCC Hosted VoIP Service	232	\$54.00	\$12,528.00
	Total		\$25,056.00

CHART B

DESCRIPTION	PRICE
Additional Cisco FLEX Collaboration License per phone/user	\$54.00
Additional NCOCC Hosted VoIP Service per phone/user	\$54.00