

**VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2021-32**

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO
ENTER INTO A SERVICE AGREEMENT WITH VELECOR SERVICES RELATIVE
TO INFORMATION TECHNOLOGY SERVICES, AND DECLARING AN
EMERGENCY**

WHEREAS, the Village currently operates an onsite physical computer server necessary for the operation of the Village offices; and,

WHEREAS, the current Village computer server located at the 10 N. High Street building is beyond its useful life and needs replaced; and

WHEREAS, Velecor Services has submitted a proposal for the transition to a cloud-based server and provide computer support services for the Village's computer system; and,

WHEREAS, after reviewing the proposal, Village staff recommends the transition to a cloud-based server and entering into an agreement for guaranteed computer support services; and,

WHEREAS, immediate action is required in order to not delay the conversion from a physical computer server to a cloud based- computer server, and such action is necessary in order to preserve the public peace, health, safety or welfare of the Village.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, Ohio, at least two-thirds of all members elected thereto concurring:

Section 1. That the Council authorizes the Mayor and Fiscal Officer to enter into a service agreement with Velecor Services, 4355 Ferguson Road, Suite 250, Cincinnati, OH 45245 to provide a cloud-based server and computer support for the Village's computer system, as attached hereto.


Section 2. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

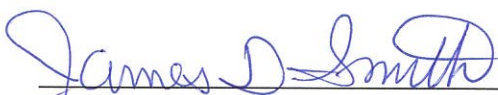
Section 3. That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of

the public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

Section 4. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 15th day of July, 2021.

Attest: 
Petrina D. Williams, Fiscal Officer/Clerk


James D. Smith, Mayor

Rules Suspended: / /2021 (if applicable)

Effective Date – / /2021

Vote - 5 Yeas
_____ Nays

First Reading – / /2021

Effective Date – / /2021


Second Reading – / /2021

Third Reading – / /2021

Vote - _____ Yeas
_____ Nays

Prepared by and approved as to form:

ANDREW P. MEIER
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: 
Date: 7/28/2021



VELECOR

We have prepared a quote for you

SouthLeb-Cloud Quote

Quote # 000416

Version 1

Prepared for:

Village of South Lebanon

Jerry Haddix

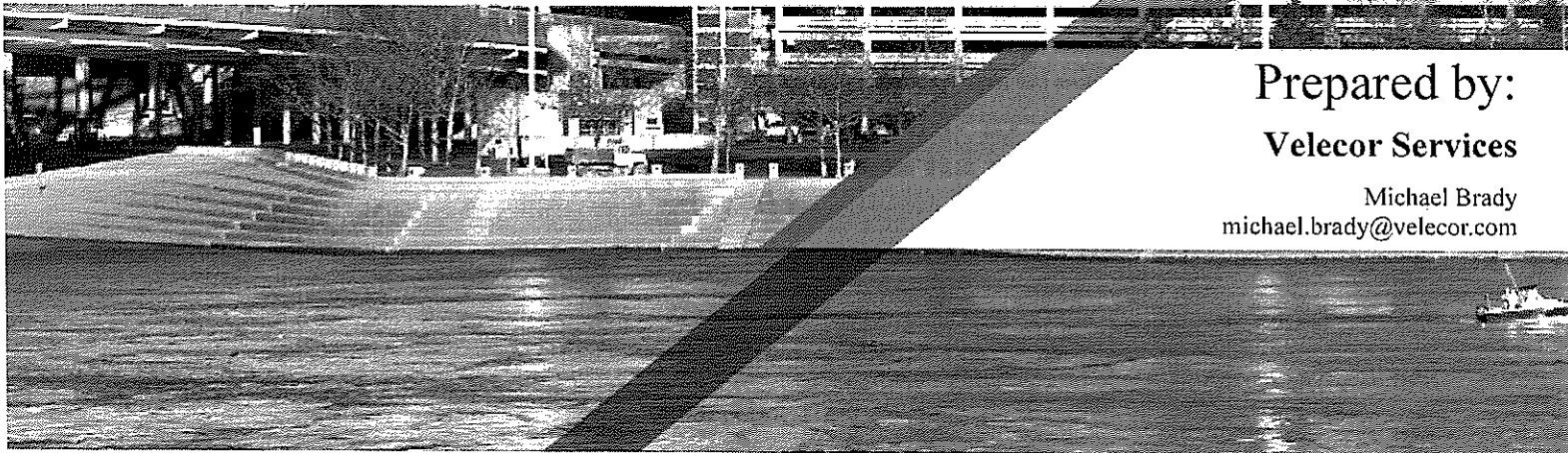
jhaddix@southlebanonohio.org

Prepared by:

Velecor Services

Michael Brady

michael.brady@velecor.com



TotalCare

Description	Recurring	Qty	Ext. Recurring
TotalCare - Workstation	\$39.00	15	\$585.00
TotalCare - Workstation			
TotalCare - Server	\$199.00	1	\$199.00
TotalCare - Server			
Monthly Subtotal:			\$784.00

TotalCloud

Description	Recurring	Qty	Ext. Recurring
Total Cloud Virtual Server	\$24.70	2	\$49.40
TotalCloudVirtual Server			
Total Cloud vCPU	\$14.21	6	\$85.26
TotalCloudvCPU			
Total Cloud Memory (RAM)	\$7.75	20	\$155.00
TotalCloudMemory(RAM)			
Total Cloud Storage Standard	\$0.53	370	\$196.10
TotalCloudStorageStd			
Total Cloud Backup per GB	\$0.14	370	\$51.80
TotalCloudBackup per GB			
Total Cloud Backup per VM	\$18.53	2	\$37.06
TotalCloudBackup per VM			
Software Microsoft (Cores X VMs)	\$4.03	12	\$48.36
Software MSCores X VMs			
TotalCloud Microsoft Remote Desktop Service (RDS) Software	\$4.60	8	\$36.80
TotalCloud Microsoft Remote Desktop Service (RDS) Software			
Monthly Subtotal:			\$659.78

Installation Fees

Description	Price	Qty	Ext. Price
TotalCloud Setup and Installation	\$125.00	5	\$625.00
Subtotal:			\$625.00



4355 Ferguson Drive
Suite 250
Cincinnati, OH 45245
www.velecor.com
(513) 984-3900

SouthLeb-Cloud Quote

Quote Information:

Quote #: 000416

Version: 1

Delivery Date: 07/01/2021

Expiration Date: 07/10/2021

Prepared for:

Village of South Lebanon

99 High Street

South Lebanon, OH 45065

Jerry Haddix

(513) 494-4147

jhaddix@southlebanonohio.org

Prepared by:

Velecor Services

Michael Brady

(513) 984-3900

michael.brady@velecor.com



Quote Summary

Description	Amount
Installation Fees	\$625.00
Total:	\$625.00

Monthly Expenses Summary

Description	Amount
TotalCare	\$784.00
TotalCloud	\$659.78
Monthly Total:	\$1,443.78

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

Velecor Services

Signature:

Name:

Michael Brady

Title:

President

Date:

07/01/2021

Village of South Lebanon

Signature:

Name:

Jerry Haddix

Date:

07/22/2021

TotalCloud-Statement Of Work

TotalCloud - General Provisions

Pursuant to this Statement of Work (SOW) Velecor will provide the following Services and/or Products to Customer.

Services

1. Two (2) Windows Server on our virtualization platform with 20 GB of RAM pooled.
2. Server storage up to 370 GB
3. 1 Mbps of Internet Bandwidth measured at the 95th percentile monthly
4. 30-day backups of data stored on above listed servers
5. One (1) IP Addresses
6. Managed Firewall
7. Windows Patch Management
8. Server Monitoring
9. Antivirus on server
10. Free Microsoft Windows Server License Upgrades (Labor additional Cost)
11. One (1) hour of Server Maintenance

Server Maintenance

Server Maintenance as provided in this SOW is defined as One (1) hour of service by Velecor staff to review and maintain Customer server installations in the Velecor data center. This time cannot be used for project work or any other service. It is strictly for the maintenance of existing Windows Servers as provided in this agreement.

Project Change Request (PCR)

A PCR is the method for communicating changes to the scope of the Services outlined in this SOW. For example: Adding or removing users and/or adding or removing additional services. Velecor will provide Customer with a procedure to submit a PCR. Velecor will review the PCR and follow up with Customer as necessary for further clarification or to discuss the impact that the change will have on the Services, deliverables, implementation schedule, terms and conditions, and pricing.

Both parties must agree in writing (email will be sufficient) before a PCR will be executed.

Data Center

Our data center is located in downtown Cincinnati. This is a Tier III data center offering physical security, environmental controls, fire suppression, redundant power circuits, battery backup, and generator backup. This facility is monitored 24x7x365 with automated alerts and periodic testing.

Standard Business Hours is defined as 8:00am to 6:00pm Eastern Time, Monday through Friday, excluding Velecor official holidays.

Maintenance Window

To minimize any impact on Customer's computing environment within a Velecor data center, all maintenance work on Velecor data center infrastructure equipment that is expected to cause out-of-service time will be performed during prescheduled maintenance windows, except for emergency repairs that cannot wait for a scheduled maintenance window. The Standard Maintenance Window is from 11:30pm to 6:00am Eastern Time.

Customer Requirements

Customer must participate in quality assurance testing of the Services as reasonably requested by Velecor.

Customer will not use, or permit use of, the Services in a manner which is (i) illegal; (ii) infringes the patent, copyright, trademark, confidential information, or intellectual property rights of a third party; or (iii) violates general standards of behavior on the Internet, collectively "Service Misuse". Customer shall be responsible for any such Service Misuse and indemnify Velecor, its employees, affiliates, agents, licensors, suppliers, and subcontractors against any liabilities arising from or relating to any such Service Misuse.

Velecor provides no casualty insurance coverage on Customer's equipment or data residing in a Velecor data center. All risk of damage to or loss of Customer's equipment and data remains with Customer unless such damage or loss results from Velecor's gross negligence or willful misconduct. Therefore, Customer shall ensure its equipment and data against damage or loss as it deems appropriate. Velecor will only be responsible for damage to or loss of Customer equipment due to the gross negligence or willful misconduct of Velecor, its employees or agents.

Customer shall provide a contact list with correct telephone and email information for problem escalation that indicates who to contact and the precedent of the contact order.

Customer shall provide a contact list for Change Management authorization and keep the contact list up to date.

Software Upgrades

Customer will be provided access to the latest versions of Microsoft products listed above. Upon successful PCR submission, Velecor will discuss and outline with Customer the upgrade of requested software. Labor will be billed at the Standard Rate for the time required for these upgrades. *Except for TotalCare Customers.

Hardware Upgrades

Velecor will periodically need to upgrade infrastructure hardware within the data center. Some of these upgrades will affect Customer use. If possible, these upgrades will be scheduled during a Standard Maintenance Window.

Mailing List

Velecor requires that all Customers consent to the addition of their email to our Cloud Services mailing list. This mailing list is used strictly for communicating the status of data center conditions, activities, outages, and other information related to the Services provided in this SOW.

Disclaimer

Customer's system will have potential security vulnerabilities, even with the Services, including, but not limited to, the vulnerability of Customer's network or systems to (i) access by persons within Customer's organization which exceeds the authority granted to such persons; (ii) snooper attacks by persons granted access by Customer to its network to obtain and misuse access codes, passwords and other data; (iii) physical access to equipment at Customer sites; and (iv) access to passwords and similar information that is written down or otherwise not afforded an appropriate level of protection by Customer. Velecor does not guarantee that the Services will eliminate all risk or prevent damage from network or system security breaches such as the above.

Service outages are possible and cannot be prevented completely at this service level. Any equipment failures will be handled appropriate and as quickly as possible.

Termination

If this SOW is terminated by Customer without cause, i.e., for convenience, during the Term of this SOW, or if Velecor terminates this Agreement due to any uncured default by Customer, Customer shall be liable for the following fees: 1) all amounts owed for Services provided by Velecor up to and including the date of termination; 2) one hundred percent (100%) of all deferred payments; 3) a pro-rata portion of any charges or fees previously waived by Velecor; and 4) an early termination charge equal to fifty percent (50%) of the Monthly Recurring Charges identified in this SOW multiplied by the number of months remaining in the Term. Customer will pay all such amounts

owed within thirty (30) days following the termination date.

Each additional user added to this Statement of Work (SOW) through a Project Change Request (PCR) will increase the MRC by \$71.

Any applicable taxes not included.

Any Services outside the scope of this SOW performed outside the Standard Business Hours will be billed at 150% unless those Services are covered under another service contract with Velecor such as our TotalCare unlimited support option.

Optional Services (price listed is additional MRC as defined above)

- Additional IP addresses: \$1.50 p/month
- Additional 1Mbps B/W: \$100 p/month

Invoicing

Velecor will invoice Customer on the first of every month for the previous month Services. Invoices will be sent via email. Full payment is due within Fifteen (15) days of invoice. Delinquent accounts shall bear service charges at 1.5 percent per month, or the maximum rate allowed by law. Services provided in this SOW shall be suspended if payment is not received within Thirty (30) days of invoice. No dispute as to payments due to Velecor here under shall relieve Customer of the obligation to pay the amounts due to Velecor. Disputes must be submitted within 120 days of the invoice date. If the parties are unable to resolve a payment dispute, Customer may submit the dispute to a reputable firm of independent certified public accountants selected by Customer and approved by Velecor, such approval not to be unreasonably withheld or delayed. The decision of independent certified public accountants shall be conclusive and binding upon the parties. If such accountant decides there was an error, Customer shall make payment or Velecor shall provide a service credit as applicable. The certified public accountant's fees shall be paid by Customer, unless the review indicates that Velecor erred more than 5%, in which case Velecor shall pay the certified public accountant fees.

Microsoft Licensing requires all Customers or End Users agreement to their Terms and Conditions for Microsoft Software Use.

Terms and Conditions

Veleanor Agreement ("Agreement") made between Veleanor, LLC ("VELECOR"), and the Customer stated on the Agreement ("Customer").

The terms and conditions of sale set forth below apply to all sales of services, products or materials by Veleanor, LLC (referred to as "VELECOR") to any buyer ("Customer") as set forth in any work order, purchase order, proposal or sales agreement under which such sale is being conducted or service rendered, except to the extent otherwise specifically agreed to by VELECOR in writing. Customer's delivery of an order to VELECOR, in whatever form, and whether verbally or in writing, shall constitute assent to and acceptance of these terms and conditions. Any terms in a work order, purchase order or other document of Customer which terms are either different from or additional to these terms and conditions of sale are objected to and are excluded unless specifically agreed to in writing by VELECOR. No course of dealing or performance shall be effective to change, amend or modify in any manner whatsoever VELECOR's terms and conditions of sale. Any sale or provision of services agreement shall not constitute a requirements contract with regard to the subject of any purchase order or any parts of such subject, unless VELECOR expressly agrees to enter into a requirements contract with BUYER, as evidenced by a separate writing signed by VELECOR.

1. SERVICES, WORK ORDERS.

1.1 Services. VELECOR will provide services to Customer in accordance with these terms and conditions ("Services") as the parties may from time to time agree and specify in purchase orders ("Purchase Orders") or work orders ("Work Orders") issued or signed by Customer. The definition of Work Order includes Purchase Orders unless otherwise specified. Any affiliate of Customer will have the right to enter into Work Orders with VELECOR under this Agreement, and with respect to such Work Orders, such affiliate becomes a party to this Agreement and references to Customer in this Agreement are deemed to be references to such affiliate. VELECOR will provide Customer with information for all equipment, software and supplies required to perform the Services and VELECOR will separately invoice these. Services under a particular Work Order are sometimes called a "Project." Customer makes no promises or representations whatsoever as to the amount of business VELECOR can expect at any time from Customer.

1.2 Work Orders. This Agreement of Terms and Conditions governs each Work Order, except that any conflict between the terms of this Agreement and a Work Order will be resolved in favor of the Work Order if the Work Order explicitly states that it is intended to modify the conflicting terms of this Agreement. This Agreement does not obligate VELECOR to perform any Services until both parties have signed a Work Order and then only for the Project specified in the Work Order. Both parties must sign a Work Order for it to be effective. However, a Work Order is binding on both parties if VELECOR: (a) signs and returns it to Customer; (b) begins performance; or (c) acknowledges it by email, facsimile or any other commercially reasonable means. If VELECOR commences Services for Customer in the absence of a Work Order (or a Purchase Order) and Customer accepts such Services or allows such Services to continue to be rendered, this Agreement will

nevertheless apply, unless the parties otherwise mutually agree in writing. VELECOR will, at no cost to Customer, promptly and satisfactorily correct any Services or Work Product found to be defective or not in conformity with the requirements of this Agreement and the applicable Work Order.

1.3 On-Site Services. If VELECOR provides Services on Customer premises, VELECOR will (a) abide by all Customer's rules, policies, and procedures regarding such matters as safety, security, health, environmental and hazardous material management, misconduct, physical aggression harassment and theft (collectively, "Rules"); and (b) at Customer's request, remove and promptly replace any Personnel (defined in Section 6 below) performing Services who behave in a manner that is unlawful or inconsistent with any Rule.

1.4 Payment Terms. Customer will pay VELECOR such amounts at such times as provided in the Work Order on the payment terms provided therein. Payment is to be made according to the terms stated in the Agreement. Customer agrees that this Agreement shall remain in effect for the full period stated in the Agreement and may not be terminated by Customer prior to that time, except in accordance with the terms of Provision (2 TERM). Payment terms allowing Customer to pay the costs of this Agreement in more than one payment over the course of the term of this Agreement does not alter the terms of this Agreement. If any amount owed under this Agreement is not paid when due, VELECOR may add a service charge of 1-1/2% per month on unpaid amounts. Customer agrees to pay all costs of collection, including attorney's fees, made necessary by nonpayment by Customer. VELECOR reserves the right to discontinue service, if account is not current.

1.5 Taxes. In addition to the amounts owed under a Work Order, VELECOR may charge and Customer will pay applicable federal, state or local sales or use taxes or value added taxes that VELECOR is legally obligated to charge in connection with the Services or the purchase of materials ("Taxes"). Customer may provide VELECOR an exemption certificate or equivalent information acceptable to the relevant taxing authority, in which case, VELECOR will not charge or collect the Taxes covered by such certificate. VELECOR will be responsible for all other taxes or fees (including interest and penalties) arising from transactions and the documentation of transactions under this Agreement.

2. TERM AND TERMINATION

The Initial Term of this Agreement shall commence on August 1, 2021 and shall continue in force for a duration of one (1) year or until termination according to the terms of this Agreement listed below. Renewal Date is defined as one year following Initial Term or most recent Renewal Date. After the initial Term is completed the Agreement will automatically renew for each successive year under the same terms and conditions unless notice is given by either party within thirty (30) days of Renewal Date.

This Agreement may be terminated immediately, upon notice in writing:

- By either party if the other party is in material breach of any of its obligations hereunder and fails to remedy such breach within thirty (30) days of receipt of a written notice by the other party which specifies the material breach.

- By either party if the other party has a receiver appointed, or an assignee for the benefit of creditors, or in the event of any insolvency or inability to pay debts as they become due by the other party, except as may be prohibited by applicable bankruptcy laws.
- Either party may terminate this Agreement for convenience upon thirty (60) days prior written notice to the other party. Any termination of this Agreement shall not relieve either party of its obligations in effect on the date of termination of this Agreement, unless otherwise mutually agreed to in writing.
- VELECOR may terminate an Agreement or any portion of the Services not then performed immediately upon written notice for Customer's material breach of the Agreement, including but not limited to, any breach of Section 7 below.
- VELECOR will provide reasonable assistance to Customer in order to enable and facilitate an orderly transition of the Services to Customer or to another vendor.

3. REPRESENTATIONS AND WARRANTIES. VELECOR represents and warrants that: (a) it will perform the Services in a competent and workmanlike manner in accordance with the level of professional care customarily observed by professionals rendering similar services; (b) the Services, Work Product and other products and materials provided by or on behalf of VELECOR will not violate, misappropriate or infringe any third party's copyrights, patents, trade secrets, trademarks or other proprietary rights; (c) all Work Product and other products and materials provided by or on behalf of VELECOR will not contain any copy protection, automatic shut-down, lockout, "time bomb" or similar mechanisms that could interfere with Customer's exercise of its business or its rights under this Agreement; (d) all Work Product and other materials provided by or on behalf of VELECOR will not contain any viruses, "Trojan horses" or other harmful code; (e) all Work Product and other products and materials provided by or on behalf of VELECOR are not subject to any license or other terms that require that other software, documentation, information or other materials incorporating or used with the Work Product or other materials provided by or on behalf of VELECOR, in whole or in part, be disclosed or distributed in source code form, to be licensed for the purpose of making derivative works, or be redistributable at no charge (f) VELECOR and its Personnel will comply, at VELECOR's sole cost, with all applicable ordinances, codes, standards, laws, rules, regulations and orders of any governmental authority having jurisdiction over VELECOR's performance of the Services ("Laws"), and will hold and fully comply with all required licenses, permits and approvals; (g) it has, or will have in a timely manner, all rights necessary for (and is not subject to any restriction, penalty, agreement, commitment, law, rule, regulation or order which is violated by) its execution and delivery of this Agreement and performance of its obligations under this Agreement; (h) all personnel are authorized to lawfully perform the Services pursuant to applicable immigration and work status Laws; and (i) to the best of VELECOR's knowledge, none of the VELECOR Personnel has been convicted of a felony in the previous seven years, or, if he/she has, VELECOR has (to the extent in accordance with Laws) provided information to Customer regarding the nature, severity, and date of each such conviction.

This Agreement is limited to the services listed in the Work Order. It is the responsibility of Customer to ensure that all of its files are adequately backed up and that all necessary materials are available, including manufacturer recovery media for software and other software to be reloaded. VELECOR is not liable for defects or "bugs" in software, or for correcting errors introduced into the data, programs, or any other software due to hardware failure, or for any cost of reconstructing software or lost data. Any technical support required to restore data integrity or to make the system function, such as, but not limited to, rebuilding corrupted records, examining files, re-installation of

O/S or Software, or re-indexing databases, will be billed separately on a time and materials basis, unless covered under Work Order addressing "Business Disruption Avoidance & Disaster Planning & Preparation." Customer's system will have potential security vulnerabilities, even with the Services, including, but not limited to, the vulnerability of Customer's network or systems to (i) access by persons within Customer's organization which exceeds the authority granted to such persons; (ii) snooper attacks by persons granted access by Customer to its network to obtain and misuse access codes, passwords and other data; (iii) physical access to equipment at Customer sites; and (iv) access to passwords and similar information that is written down or otherwise not afforded an appropriate level of protection by Customer. VELECOR does not guarantee that the Services will eliminate all risk or prevent damage from network or system security breaches such as the above.

4. DEFENSE AND INDEMNITY.

VELECOR will hold harmless, and indemnify Customer, and/or its subsidiaries, affiliates, directors, officers, employees, agents, successors and assigns ("Customer Indemnified Parties"), from and against any allegation or claim based on, or any loss, damage, settlement, cost, expense and any other liability (including but not limited to reasonable attorneys' fees incurred and/or those necessary to successfully establish the right to indemnification) (collectively, "Claims"), arising from or related to (a) any negligent act or omission by VELECOR or its personnel, including, without limitation any breach of this Agreement or allegation or claim of negligence, strict liability, willful misconduct or fraud of VELECOR or its Personnel; or (b) any Claim that the Services or Work Product violate, misappropriate or infringe any third party's copyrights, patents, trade secrets, trademarks or other proprietary rights. However, the foregoing does not apply to the extent such Claim results from Customer's negligence or willful misconduct, misappropriation or infringement.

5. INSURANCE. VELECOR will obtain and maintain the following: (a) "Commercial General Liability" insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate, (b) "Business Automobile Liability" insurance (including coverage for all owned, non-owned and hired autos, and no fault coverage where applicable) with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage combined, unless VELECOR only uses private passenger automobiles on Customer's premises, in which case not less than \$1,000,000 per occurrence is acceptable, (c) "Workers' Compensation" insurance, including but not limited to coverage for all costs, benefits and liabilities under workers' compensation and similar laws that may accrue in favor of any person employed by VELECOR in all states where VELECOR performs Services, (d) a "Fidelity Bond" or similar policy covering employee dishonesty with limits of not less than \$1,000,000 per loss. VELECOR will also maintain "Professional Liability" or "Errors and Omissions" insurance with limits of not less than \$1,000,000 per claim. VELECOR will also obtain and maintain a Technology Professional Liability/Cyber Security with limits of not less than \$1,000,000 per occurrence and \$3,000,000 general aggregate. VELECOR may satisfy the foregoing minimum limits by any combination of primary liability and umbrella excess liability coverage that result in the same protection to VELECOR and the Customer insured parties. All of the foregoing insurance policies must have a retroactive date no later than the date that Services commenced. VELECOR will provide certificates of all insurance coverage to Customer at Customer's request.

6. PERSONNEL; INDEPENDENT CONTRACTOR. VELECOR and Customer are independent contractors. VELECOR has exclusive control over its employees, representatives, agents and subcontractors (collectively, "Personnel") and over its labor and employee relations and its policies relating to wages, hours, working conditions and other employment conditions. VELECOR has the exclusive right to hire, transfer, suspend, terminate, recall, promote, discipline,

discharge and adjust grievances with its Personnel. VELECOR is solely responsible for all salaries and other compensation of its Personnel who provide Services and for making all deductions and withholdings from its employees' salaries and other compensation and paying all contributions, taxes and assessments. VELECOR's Personnel are not eligible to participate in any employment benefit plans or other benefits available to Customer employees. VELECOR has no authority to bind Customer to any agreement or obligation. VELECOR will be solely responsible for all theft, damage and/or misconduct related to its Personnel.

7. CONFIDENTIALITY/PUBLICITY. VELECOR and its representatives (a) will protect and keep confidential the existence of all Work Orders, their terms and conditions and any other information obtained from Customer in connection with a Work Order or related to the Services that is identified as confidential or proprietary or that, given the nature of such information or the manner of its disclosure, reasonably should be considered confidential or proprietary (including but not limited to all information relating to Customer's technology, customers, business plans, marketing activities and finances), (b) will use such information only for the purpose(s) for which it was originally disclosed and in any case only for the purpose of fulfilling its obligations under this Agreement, and (c) will return all such information to Customer promptly upon the termination of this Agreement. All such information will remain Customer's exclusive property, and VELECOR will have no rights to use such information except as expressly provided herein. VELECOR will not use any trade name, trademark, service mark, logo or commercial symbol, or any other proprietary rights of Customer or any of its affiliates in any manner without prior written authorization of such use by Customer. VELECOR will not issue press releases or publicity relating to Customer or any Work Order or reference Customer or its affiliates in any brochures, advertisements, client lists or other promotional materials.

8. WORK FOR HIRE AND PROPRIETARY RIGHTS.

8.1 Work for Hire. The Work Product has been specially ordered and commissioned by Customer. VELECOR agrees that the Work Product is a "work made for hire" for copyright purposes, with all copyrights in the Work Product owned by Customer.

8.2 Assignment of Work Product. To the extent that the Work Product does not qualify as a work made for hire under applicable law, and to the extent that the Work Product includes material subject to copyright, patent, trade secret, or any Proprietary Rights protection, VELECOR hereby assigns to Customer (or to such of its affiliates as it may designate), its successors and assigns, all right, title and interest in and to the Work Product, including, but not limited to, all rights in and to any inventions, designs and Proprietary Rights embodied in the Work Product or developed in the course of VELECOR's creation of the Work Product. The foregoing assignment includes a license under any current and future patents owned or licensable by VELECOR to the extent necessary to combine the Work Product or any derivative works or modifications thereof with any product, service, offering, software or intellectual property of Customer. VELECOR will cooperate as may reasonably be necessary for Customer to perfect title to any Work Product, including, without limitation, executing any documents in connection with such assignment that Customer may reasonably request. VELECOR will enter into agreements with its Personnel or any other party as necessary to establish Customer's sole ownership in Work Product, and upon Customer's request, VELECOR will provide Customer with copies of such agreements. VELECOR appoints Customer as its attorney-in-fact to execute assignments of, and register all rights to, the Work Product and the Proprietary Rights in Work Product. This

appointment is coupled with an interest. At any time upon request from Customer and upon termination or expiration of this Agreement, VELECOR will deliver to Customer in tangible form all materials containing Work Product, whether complete or in process.

8.3 License to Pre-Existing Work. To the extent Pre-Existing Work of VELECOR is embodied in any Work Product, deliverables or Proprietary Rights, if Customer is not in breach of this Agreement or any Work Order, VELECOR hereby grants Customer a non-exclusive, worldwide, perpetual, irrevocable, fully paid up license to (a) use, make, have made, reproduce, perform, display, and import such Pre-Existing Work, (b) adapt, modify, and create derivative works of such Pre-Existing Work. Customer will not sell or license any Pre-Existing Work without the written consent of VELECOR.

9. INSPECTION AND ACCEPTANCE.

9.1 Customer will have 10 days from Customer's receipt of any Deliverables (as defined below) from VELECOR to accept or reject any Deliverable if the Deliverable does not conform to the related Work Order under which the Deliverable was produced. Any rejection shall be in a writing delivered to VELECOR by electronic mail or an express mail service, such as FedEx or US Postal service express mail, within such 30 day period and the specific reason for such rejection. If Customer determines that any Deliverable is not acceptable, Customer may (a) may reject the item, in which case VELECOR will return any payments it has received relating to the applicable Deliverable within 10 days and Customer will have no further obligation with respect to the rejected Deliverable, or (b) direct VELECOR to correct the noncompliance or defects, in which case VELECOR (at its cost) will correct the noncompliance or defects and redeliver the Deliverable within 30 days. This process will be repeated until Customer finally rejects the Deliverable or notifies VELECOR in writing of its acceptance. Failure to reject a Deliverable within the time set forth above shall be deemed an acceptance by Customer of the Deliverable. A "Deliverable" is any service, item, products or materials, including any Work Product, delivered by VELECOR to Customer.

10. GENERAL.

10.1 Subcontract and Assignment. VELECOR may subcontract part of the duties required of it under any Work Order without Customer's prior written consent. Notwithstanding any other provision in this Agreement or a Work Order to the contrary, VELECOR may assign this Agreement and any Work Order to an affiliate of VELECOR at any time if the assignee is wholly owned by the owner of VELECOR (the "Assignee").

10.2 Governing Law/Venue. This Agreement is governed by Ohio law, excluding its conflicts of law rules. Customer irrevocably submits to venue and exclusive personal jurisdiction in the federal and state courts in the county where VELECOR or Assignee, as the case may be, has its principle office, for any dispute arising out of this Agreement, and waives all objections to jurisdiction and venue of such courts.

10.3 Notices. Notices under this Agreement are sufficient if given by nationally recognized overnight courier

service, certified mail (return receipt requested), and facsimile with electronic confirmation or personal delivery to the other party at the address below the party's signature line below. If no address is listed for VELECOR, notice to VELECOR will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) three business days after sending by certified mail, (c) on the business day after sending by a nationally recognized courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. A party may change its notice address by giving notice in accordance with this section.

10.4 Severability. If any provision of this Agreement is determined by any court or governmental authority to be unenforceable, the parties intend that this Agreement be enforced as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced to the extent that they are enforceable.

10.5 No Waiver. A party does not waive any right under this Agreement by failing to insist on compliance with any of the terms of this Agreement or by failing to exercise any right hereunder. Any waivers granted hereunder are effective only if recorded in a writing signed by the party granting such waiver.

10.6 Cumulative Rights/Construction. The rights and remedies of the parties under this Agreement are cumulative, and either party may enforce any of its rights or remedies under this Agreement or other rights and remedies available to it at law or in equity. The section headings of this Agreement are for convenience only and have no interpretive value.

10.7 Survival. The following provisions survive termination or expiration of this Agreement: the records provision in Section 1.4; Defense and Indemnification (Section 4); Confidentiality/Publicity (Section 7); Work for Hire (Section 8) and General (Section 10), including without limitation, Limitation of Liability (Section 10.9).

10.8 Injunctive Relief. VELECOR acknowledges that any material breach of Section 7, or Section 8, by VELECOR would cause Customer irreparable harm for which Customer has no adequate remedies at law. Accordingly, Customer is entitled to specific performance or injunctive relief for any such breach.

10.9 Limitation on Liability: VELECOR's maximum liability for any breach of its obligations under this Agreement shall be the maximum insurance limit with regard to the insurance policy which pertains to such breach required to be purchased by VELECOR under section 5. VELECOR shall in no event have any liability for any special, incidental, or consequential damages including but not limited to, loss of profits or revenue, loss of use of equipment, lost data, cost of substitute equipment, services, down-time, or claims of Customer for such damages, whether the claims be in contract, tort, strict liability, negligence, indemnification or otherwise, even if VELECOR had been advised of such potential damages.

With respect to "Offsite Backup" Services, VELECOR will in no way be held responsible for data integrity or availability. "Offsite Backup" Services are resold and provided by third party vendor(s). Any warranties or liabilities may or may not be held with said vendor(s). Upon request from Customer, VELECOR will provide any known information about the vendor in use for that Customer.

With respect to "Proactive Maintenance" Services, customer acknowledges that there is no such thing as a

totally secure, impenetrable network, but that VELECOR's "Proactive Maintenance" services (according to specific service(s) contracted for) provides a reasonable level of proactive protection as well as ongoing security monitoring and reporting. VELECOR will in no way be held responsible and/or liable for damages, monetary or otherwise, by customer, or any other affected party, in the event of a security breach or network security-related outages, damages, losses, etc.

WARRANTY DISCLAIMER: EXCEPT AS TO THOSE EXPRESSED WARRANTIES SET FORTH HEREIN, THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY FOR A PARTICULAR PURPOSE, RESPECTING SERVICES PERFORMED OR EQUIPMENT AND MATERIALS FURNISHED UNDER THIS AGREEMENT. In all events not provided for in this Agreement and where permitted by law, VELECOR's liability (regardless of the form of action) will be limited to Customer's direct damages in an amount up to the cumulative annual amount of charges paid to VELECOR for the services hereunder. VELECOR's entire liability and Customer's exclusive remedies for VELECOR's liability of any kind (including liability for negligence) for performance, nonperformance or delays in performance by VELECOR under this Agreement are limited to those contained in this Agreement where permitted by law.

Under "Service Level & Warranty" services, certain operability outlined in Appendix A will be remedied by VELECOR at no additional cost to Customer according to provisions also set forth in Appendix A.

10.10 Entire Agreement. This Agreement and the Work Orders, together with all associated exhibits and schedules, which are incorporated by this reference, constitute the complete and final agreement of the parties pertaining to the Services and supersede the parties' prior agreements, understandings and discussions relating to the Services. No modification of this Agreement or any Work Order is binding unless it is in writing and signed by Customer and VELECOR.

This Agreement may be executed by facsimile and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument. The parties may use standard business forms or other communications, but use of such forms is for convenience only and does not alter the provisions of this Agreement. *NEITHER PARTY WILL BE BOUND BY, AND EACH SPECIFICALLY OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THIS AGREEMENT (WHETHER PROFFERED VERBALLY OR IN ANY QUOTATION, INVOICE, SHIPPING DOCUMENT, ACCEPTANCE, CONFIRMATION, CORRESPONDENCE, OR OTHERWISE), UNLESS SUCH PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY BOTH PARTIES.*