

AN ORDINANCE APPROVING AN AGREEMENT WITH TECH ELECTRONICS INC. FOR THE PURCHASE AND INSTALLATION OF A SECURITY SYSTEM.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:

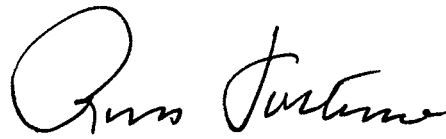
Section 1. The Board of Aldermen hereby approves the contract with Tech Electronics, Inc. for the purchase and installation of an intrusion detection/panic alarm system at Twin Oaks Bell House at a rate of Two Thousand, Seven Hundred Fifty-Eight Dollars (\$2,758.00), which Goods and Contractor Services Contract is attached hereto as Exhibit A (the "Agreement").

Section 2. The Mayor is hereby authorized to enter into the Agreement on behalf of the City of Twin Oaks with Tech Electronics, Inc. The Agreement shall be in substantially the form of Exhibit A.

Section 3. This Ordinance shall be in full force and effect on and after its passage and approval by the Mayor.

PASSED AFTER HAVING BEEN READ IN FULL OR BY TITLE TWO TIMES PRIOR TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, THIS 17th DAY OF APRIL 2019.

	<u>Yea</u>	<u>Nay</u>
Lisa Eisenhauer	X	
Tim Stoeckl	X	
April Milne	X	
Dennis Whitmore	X	



Russ Fortune

Russ Fortune, Mayor

Attest:



Kathy A. Runge

Kathy A. Runge, City Administrator/Clerk

Exhibit A

GOODS AND CONTRACTOR SERVICES CONTRACT

Twin Oaks, Missouri
GOODS AND CONTRACTOR SERVICES CONTRACT

THIS AGREEMENT, made and effective as of April ____, 2019, by and between the **City of Twin Oaks, Missouri**, a municipal corporation hereinafter referred to as the "City," and **Tech Electronics Inc.**, a Missouri corporation, hereinafter referred to as "Contractor," with a business mailing address of 6437 Manchester Ave., St. Louis, MO 63139;

WHEREAS, the Contractor provided the City with the proposal, attached hereto as **Exhibit A** and incorporated herein by reference, for certain services relating to parts and labor to install Intrusion Detection Alarm System at 50 Crescent Ave. (the "Proposal"), and the City wishes to engage the Contractor as provider of those services to the City, in accordance with the terms of this Agreement;

WITNESSETH: That the parties hereto for the considerations hereinafter set forth agree as follows:

I. SCOPE OF SERVICES

Contractor's services are necessary for the following Project of City: *Twin Oaks - Bell House - Alarm System*.

Except as expressly specified herein, Contractor hereby agrees to provide the expertise, goods, supplies, supervision, labor, skill, materials, equipment, and apparatus to supply all the equipment, perform all the services and do all the things necessary for the proper installation and completion of the scope of services for an intrusion detection/panic alarm system at Twin Oaks' Bell House as referenced above and as particularly described as the "Services" in the attached **Exhibit A** incorporated herein (hereinafter collectively referred to as the "Work")

The above-referenced Work shall be provided by the Contractor in accordance with all the provisions of the Proposal and the attached **Twin Oaks General Conditions** which are incorporated herein by reference, and the terms of the General Conditions shall prevail over any conflicting terms that may otherwise be adopted herein as part of any attachment, including the Proposal. If there is any conflict between this Agreement including the City's General Conditions (attached hereto and incorporated herein by reference) and the Proposal, this Agreement and its General Conditions shall prevail.

II. COMPENSATION

A. Basic Compensation.

(1) The City hereby agrees to pay the Contractor up to \$2,758.00, as full compensation for the complete and satisfactory performance of the Work, including all expenses and costs related thereto, as follows:

Due at execution of this Agreement:	\$1,379.00
Due at the City's final acceptance of the Work:	\$1,379.00

(2) The City is tax exempt. No taxes will be included in the compensation for the Work.

**GENERAL CONDITIONS
TWIN OAKS, MISSOURI
CONTRACTOR SERVICES AGREEMENT**

Independent Contractor. The Contractor shall be and operate as an independent contractor in the performance of this Contract. The Contractor shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.

Compliance with Laws. The Contractor shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract. Specifically, Contractor shall comply with the following state law requirements:

- *Work Authorization Program.* If the Contract is for services expected to cost more than \$5,000.00, the Contractor shall comply with Section 285.530 RSMo., pertaining to enrollment and participation in a federal work authorization program (as defined therein) and shall provide verification through an affidavit (attached as **Exhibit B**, if applicable) that the Contractor (1) does not knowingly employ any person who is an unauthorized alien in connection with the Contract and (2) is enrolled in a federal work authorization program and provide documentary proof thereof. The affidavit shall contain the notarized signature of the registered agent, legal representative or corporate officer of the business entity including but not limited to the human resources director or their equivalent.
- *Proof of Lawful Presence.* Section 208.009 RSMo., requires that all applicants *at the time of application* for any contract provided by a local government provide "affirmative proof that the applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States." Contractor's affirmative proof must be established through (i) a Missouri driver's license, (ii) any "documentary evidence recognized by the department of revenue when processing an application for a driver's license," or (iii) "any document issued by the federal government that confirms an alien's lawful presence in the United States." §208.009.3.
- Contractor further agrees to pay not less than the **prevailing hourly wage** of wages set out on the wage order attached hereto as **Exhibit C**, if applicable, and made part of the specification for Work under this Agreement, to all workers performing any work under this Contract. The Contractor will forfeit a penalty to the City of \$100 per day for each worker that is paid less than the prevailing rate for any Work done under the contract by the Contractor.

Subcontracts. The Contractor shall not subcontract any of the Work to be performed by it hereunder without the express written consent of the City. In addition, this Contract shall not be assigned by the Contractor.

Indemnification. To the fullest extent permitted by law, the Contractor agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from Contractor's breach of the Contract or out of services and operations performed hereunder by the Contractor, including the City's reliance on or use of the services or products provided by the Contractor under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required by law to enforce this provision, Contractor agrees that this indemnification requires Contractor to obtain insurance in amounts specified herein and that Contractor has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

Insurance. If applicable, Contractor shall furnish the City the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts specified by the City in the request for proposals, if any, otherwise in the amounts stated on **Exhibit D**, but unless otherwise provided shall be no less than the maximum amounts of liability set forth in Chapter 537.610 RSMo., applicable to political subdivisions. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the City. The City, and such additional persons and entities as may be deemed to have an exposure to liability as a result of the performance of the Contractor's work, as determined by the City, shall be named as additional insured and the applicable insurer shall owe the City a duty of defense on all insurance policies required hereunder. The Contractor shall provide an Additional Insured Endorsement to the City that shall be approved by the City prior to commencement of any Work.

In addition to the foregoing, the Contractor shall maintain Professional Liability "errors and omissions" insurance in the form for the coverages satisfactory to City as indicated in the request for proposals, if any, otherwise as stated on attached **Exhibit D**, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions. The City and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance; provided that nothing herein shall be deemed a waiver of the City's sovereign immunity relative to any claim against the City.

Nondisclosure. The Contractor agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Contract. Nothing herein shall preclude disclosure of information by the City.

Changes. No change in this Contract shall be made except in writing prior to the change in the Work or terms being performed. The Contractor shall make any and all changes in the Work without invalidating this Contract when specifically ordered to do so in writing by the City. The Contractor, prior to the commencement of such changed or revised Work, shall submit promptly to the City, a written cost or credit proposal for such revised Work. If the City and Contractor shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of Contractor, upon written notice from the City, to immediately proceed with such alteration or change, and Contractor shall be compensated the reasonable value of such Work. **No Work or change shall be undertaken or compensated for without prior written authorization from the City.**

Termination. The City shall have the right to terminate the Contract at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under the Contract an amount equal to the cost of all Work performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of the Contract Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

Multi-year contracts; Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached Contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

Accounting. During the period of this Contract, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

Other Contractors. The City reserves the right to employ other Contractors in connection with the Work.

Request for Proposals. If the City issued a request for proposals in connection with the Work, such request for proposals and the proposal of the Contractor in response thereto are incorporated herein by reference and made a part of this Contract. In case of any conflicts between the request for proposals and the executed Contractor Services Contract or proposal of the Contractor, the requirements of the City's Request for Proposal and this executed Contract shall control and supersede unless a change thereto is specifically stated in this Contract (including Exhibit A, "Scope of Work").

Project Records and Work Product. The Contractor shall provide the City with copies of all documents pertinent to the Work which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Contract. Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product.

Site Operations. Where appropriate, the City will arrange for right of entry to any property at the request of the Contractor for the purpose of performing studies, tests and evaluations in connection with the Work.

Personnel. The Work shall be performed exclusively by the personnel of the Contractor identified in the Contractor's proposal and no other personnel of the Contractor shall perform any of the Work without the express written approval of the City.

Representations. Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Contract. The parties agree the Contract represents the entire agreement between the parties.

Governing/Choice of Law. This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws.

Other Special Provisions. The special provisions set forth on Exhibit A are incorporated herein by reference, and made a part hereof.

**EXHIBIT A
Proposal**

Twin Oaks Parks & Recreation
Intrusion Detection Alarm System - new
50 Crescent Av.
Twin Oaks, MO 63088

Twin Oaks Municipal Center
Kathy Runge
1381 Big Bend Blvd.
Twin Oaks, MO 63021

Prepared by:
Pete Sahn, Sales System Specialist
Tech Electronics, Inc.
6437 Manchester Ave.
St. Louis, MO 63139
Phone: (314) 951-7719
Email: Pete.Sahn@techelectronics.com
Fax: (314) 951-6719

1.0 Scope of Work by Tech Electronics

Herein referred to as the "Services"

- 1.1 Tech will provide labor, material, and professional services to install an intrusion detection/panic alarm system as described in this Submission.
- 1.2 Provide Project Management services as required to perform the following:
 - Coordinate the purchase, receipt and delivery of all Tech provided materials
 - Coordinate the scheduling of all technician services and training personnel services.
- 1.3 System Devices/Components:
 - Furnish and install the following alarm system equipment;
 - One (1) alarm control panel/communicator in closet in back corner office
 - Two (2) system keypad/annunciators, one (1) near the front entrance and one (1) in basement near garage door
 - Five(5) motion sensors
 - Front living room
 - Front middle office
 - Front corner office
 - Back corner office
 - Basemen by stairs
 - One (1) door contact switch on front door
 - Alarm system cable
- 1.4 Provide one (1) hour of system training for up to four (4) people. On-site training may include additional charges, depending on site conditions. Additional or repeat training sessions are available at an additional cost and will be invoiced on an hourly basis.
- 1.5 Provide programming and testing of the new/added field devices and system operation. .

2.0 Material Required

Quantity	Description
1	Ademco Vista-21IP Alarm Control Panel
2	Ademco White Keypad/Annunciator
5	Bosch 40 x 40 Motion Sensors
1	Surface Mount Door Contact Switch
1 Lot	2-Pair 18 AWG Cable

3.0 Twin Oaks Municipal Center Responsibilities

Twin Oaks Municipal Center herein referred to as the "Customer"

- 3.1 Provide access to all work areas as required by Tech between the hours of 7:00am and 5:00pm Monday through Friday in a continuous eight (8) hour shift. Customer to inform Tech, prior job start up, of any times when work cannot be performed due to conflicts.
- 3.2 Furnish, install and terminate 120VAC in accordance with National Electrical Code at alarm control panel location.
- 3.3 Work areas shall be defined and scheduled by the Customer and Tech's Project Manager. If applicable, provide access to all areas to allow for efficient device installation per the implementation plan.
- 3.4 Contract with an Electrical Contractor for all high voltage (greater than 48VAC) work as required and to install all system equipment as shown on Tech's design drawings per Tech's direction.
- 3.5 Provide painting and patching as required.
- 3.6 Provide documentation in accordance with current requirements of the State Prevailing Wage Laws.
- 3.7 Provide a static IP network connection at the alarm control panel location in the closet of the back corner office

4.0 Clarifications

- 4.1 Any changes to this Submission will be communicated and approved in writing (by an authorized Customer representative) and signed by both Tech and the Customer prior to commencing work.
- 4.2 Delays incurred by Tech's employees due to inability to enter workspace, and other factors beyond our control will be invoiced at our current labor rates.
- 4.3 Upon project completion, Tech will provide Customer or Customer's agents with a System documentation package, including operating manuals, for the system as installed.
- 4.4 Pricing does not include applicable state, city or local tax unless otherwise noted.
- 4.5 This quotation assumes a standard installation schedule. Any expedited deliveries or installations are not included, unless specifically identified by Tech.
- 4.6 This proposal includes travel to and from the site to perform our stated scope of work. Additional or duplicate site visits required due to factors beyond our control will be invoiced to the Customer at our current labor rates.
- 4.7 Please note that any and all of Tech' Services are based on a SINGLE PHASE COMPLETION of the entire project. If for any reason the Services referenced in this Submission are to be delivered in multiple phases, the additional costs incurred to Tech will be invoiced to the Customer on a time and material basis at Tech's current time and material rate and be added as an extra to this Submission.

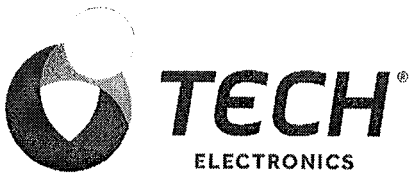
- 4.8 Unless otherwise stated in this Submission, the Customer will be responsible for the costs of any permits, fees and/or drawings required by law. Tech will secure all permits, fees and/or plans, but all costs will be in addition to the material and labor prices stated in this submission.
- 4.9 Tech employs IBEW Local One technicians and installers. If for any reason Tech cannot perform any of the labor listed herein due to union jurisdiction, the Customer agrees to release Tech from such obligation and it also agrees to accept a cost deduct as determined by Tech for the portion of the work that Tech cannot perform.
- 4.10 In connection with the installation of the Systems, controls, and devices specified under this agreement should Tech be requested by the Customer or the Customer's agents to provide flexibility in the System as designed for changes and modifications as directed by the Customer or the Customer's agents. In such cases, Customer or the Customer's agents assumes full responsibility and liability for any controversies, claims, or litigation instituted by local or federal entities or agencies and further agrees to indemnify Tech, its agents, officers, and employees from any and all liabilities, which are the result of the direction from the Customer or the Customer's agents to Tech or its agents to modify or install capacities in the System covered by this agreement which are or might be considered a deviation from the requirements of local or federal agencies, by way of codes, ordinances or other regulations.

5.0 Warranty

- 5.1 This Submission includes a one (1) year material warranty from the date of first beneficial use by the Customer.
- 5.2 All warranty work will be performed Monday through Friday between the hours of 8:00 am and 4:30 pm. If work needs to be performed outside of these hours and/or during holidays it will be performed on a time and materials basis as an addition to this Submission and will be billed at Tech's current rate differential between the normal and overtime labor rates plus the minimum service call-out charges.
- 5.3 Warranty includes all equipment, parts and labor for Tech provided items. This warranty does not apply to any products that have been installed incorrectly by the Customer's agents or any existing systems or devices unless specifically identified within this Submission.

6.0 Safety Precaution

- 6.1 In the event Tech encounters on site material reasonably believed to be asbestos or Polychlorinated Biphenyl (PCB), which has been considered harmful, Tech will immediately stop work in the area and report the condition to the customer in writing.
- 6.2 The work in the affected area shall not be resumed if the material is asbestos or PCB until the areas is declared NOT harmful. The work to remove the asbestos or PCB is to be performed by the Customer at no cost to Tech.

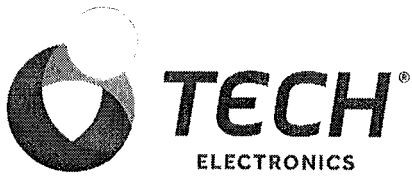


7.0 Unknown or Concealed Conditions

- 7.1 If unknown or concealed conditions affect the operation of the System, Tech will promptly notify the customer. The contract price will be adjusted for such unknown or concealed conditions by adding material and/or labor.

8.0 Central Monitoring

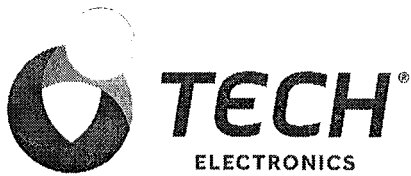
- 8.1 Cellular central monitoring can be provided for a monthly fee of \$33.00.



INVESTMENT SUMMARY

The investment for the materials and labor described in this Submission is as follows:

Purchase Price:	Material and Professional Services Estimated Sales Tax not included in price	\$2,758.00
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SUBMISSION ACCEPTANCE

Payment: 50% Down; Progress Billing, Due Upon Receipt F.O.B. Project Site

This Submission and any resulting contract shall be subject to the terms and conditions listed in this Submission and on "ATTACHMENT A, SUBMISSION TERMS AND CONDITIONS," which is incorporated by reference herein.

CUSTOMER ACCEPTANCE

Tech Electronics, Inc.

Authorized Signature Date

Pete Sahn Date

Printed Name

Headquarters Acceptance Date

Title

Title

This submission shall be void unless accepted within 30 days hereof. Unless indicated otherwise on this submission, the prices quoted herein do not include any sales tax, duties, excise or other similar taxes.

Bill to Information

Company Name

Standard Address/P.O. Box

Suite Number/Mail Stop

City State Zip

Attention

Purchase Order Number

ATTACHMENT A

SUBMISSION TERMS AND CONDITIONS

These Terms and Conditions are provided in connection with a Submission from Tech Electronics, Inc. ("Tech") to Customer (as defined in the Submission). The Submission is intended as an offer by Tech, and is subject to acceptance by Customer, which shall be indicated by Customer's signature on the Submission. These Terms and Condition consist of nine (9) Sections, some of which have multiple subsections, the last of which is section 9.13. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Submission.

1. Services.

1.1. Type of Services. Tech agrees to provide goods and/or services as described in the Submission (the "Goods" and the "Services") in connection with the system(s) (as described in the Submission, the "System"). If Customer desires Tech to provide any additional services other than as set forth in the Submission, then any such additional services shall only be furnished pursuant to a separate agreement.

1.2. Warranty Limitations. If warranty service is requested because of causes other than breach of a warranty provided by Tech, the service will be provided at Tech's per call rates and terms then in effect. Some examples of causes other breach of warranty include: normal wear and tear; unauthorized attempts by other than Tech personnel to repair, maintain or modify the System or its component parts; catastrophe; failure of equipment not maintained by Tech or of equipment not covered by the Submission; fault or negligence of Customer; operator error, improper use or misuse of the equipment; causes external to the equipment such as, but not limited to, transportation or fluctuations of humidity, temperature, power surges and lightning. Warranty service does not include (i) operating supplies or accessories, cleaning supplies necessary for Customer preventive maintenance, paint, or refinishing the equipment or furnishing materials for this purposes; (ii) electrical work external to the machines or maintenance of accessories; (iii) batteries or lamps; (iv) alterations, attachments or other devices not furnished by Tech unless specifically noted herein; or (v) moves, adds or changes of software and/or System hardware not related to maintenance of the System.

1.3. Movement of Equipment. To permit continuity of service while the System is covered under warranty, Customer shall give Tech at least thirty (30) days prior written notice of its intent to move any equipment comprising part of the System. Tech personnel shall supervise the dismantling and packing/unpacking of the equipment and shall inspect and reinstall the equipment at the new location, and charge Customer for all such labor and materials provided at its then-current rates and terms. Tech shall be under no obligation to furnish continued services or warranty services if any part of the System is moved from its location of initial installation and/or reinstalled without the prior written approval of Tech.

1.4. Authorization of Tech. Customer hereby authorizes and empowers Tech, its agents or assigns, if required by the Submission, to: (i) to perform any necessary Services as required to be performed by Tech hereunder; and (ii) enter Customer's premises in the event of an emergency occurring during periods of Customer's apparent or actual absence for the purpose of making emergency repairs to the System, but only if Customer has furnished Tech with a key to its premises. Tech assumes no liability for any delay, however caused, in the installation of the System or for interruption of services, due to strikes, fires, power failures, interruptions or unavailability of telephone service, acts of God, or any other cause beyond the control of Tech. Notwithstanding the foregoing, Tech shall have no obligation to enter Customer's premises without being asked to do so by Customer.

2. Payment Terms.

2.1. Fees; Payment. The purchase price and the payment terms for the Goods and Services are set forth in the Submission. All sums not paid when due shall bear interest at the rate of 1-1/2% per month or the maximum legal rate permitted by law, whichever is less. All costs of collection of amounts owed hereunder, including reasonable attorney's fees, shall be paid by Customer.

2.2. Expansion of System. If, during the term of the warranty period, Customer expands the System, Tech may, in its sole discretion, increase the warranty service charge commensurate with the expansion of the System, in which case Tech shall send Customer an additional invoice with such fee prorated over the remaining term of this warranty period. Customer agrees to pay such fee, as increased hereunder, for the remainder of the term of the warranty period set forth in the Submission.

2.3. Additional Charges to Customer. Customer acknowledges and agrees that Customer is responsible for the following additional costs: (i) discontinued or obsolete hardware and software. In the event the hardware and/or software components on the System are discontinued or rendered obsolete by the manufacturer, then Customer agrees to pay the additional costs to modify and/or purchase the replacement hardware and/or software necessary for the System to function properly as reasonably determined by Tech; (ii) increased service charges of software or System manufacturer. In the event such manufacturer increases service charges to Tech after the effective date of the Submission, Customer agrees to pay the additional costs; (iii) additional charges, imposed at the discretion of Tech, in the event that Customer's software is not maintained at the current manufacturer's software version; (iv) any taxes or fees

imposed by local ordinances on the System or the maintenance thereof; and (v) costs to maintain all Customer provided hardware and software in order to maintain compatibility with the System as the System hardware and/or software is upgraded throughout the term of the Submission. In such cases, Tech reserves the right to add a special processing fee as well.

3. Software Sublicense.

3.1. Right To Distribute and Sublicense; Restrictions. Tech has acquired from one or more third parties (each a "Third Party") the right to distribute and sublicense certain Third Party software (the "Software") for use in conjunction with the System. Tech hereby grants to Customer a non-exclusive, non-transferable sublicense to use the Software in the System. Customer acknowledges that Tech is only a licensed distributor, and not the creator, owner or manufacturer, of the Software. Tech shall assign to Customer all of its rights and interests in and to any warranty or indemnity offered in connection with the Third Party Software that are assignable by Tech.

3.2. Third Party Software Terms and Conditions. Customer shall comply with all Third Party terms and conditions applicable to the maintenance of the Software, including but not limited to any requirements to enter into a separate software support and/or maintenance agreement with the applicable Third Party manufacturer, creator or owner and paying all associated maintenance and/or service fees associated therewith. In the event Customer fails to comply with any provisions of the Third Party maintenance terms and conditions, then (i) Tech may terminate the Submission immediately and (ii) any additional Services provided by Tech that are requested by Customer shall be on a time-and-materials basis at Tech's then-current services rates.

3.3. Third Party Beneficiary. Customer acknowledges that the provisions contained in this Section 2.3 are intended to protect the Third Party manufacturers, creators and/or owners of the Software; accordingly, each Third Party shall be deemed a third party beneficiary with respect to this Section 2.3 and shall have the right to enforce this Section as appropriate against Customer.

3.4. Software Release Levels. Customer shall, at Customer's sole cost and expense, maintain the Software at the then-current version or release of the Software; otherwise (i) Customer may not be eligible to receive Goods and Services hereunder, (ii) Tech may terminate the Submission immediately and (iii) any additional Services provided by Tech that are requested by Customer shall be on a time-and-materials basis at Tech's then-current services rates.

4. Termination. In addition to Tech's rights under Section 8.2, Tech's obligations under the Submission may be terminated pursuant to Sections 3.2, 3.4 and 9.4 of these Terms and Conditions.

5. Warranties, Indemnification, and Restricted Phones Waiver.

5.1. General Warranty. The scope and coverage of Tech's warranty is set forth in the Submission. The warranty will commence on the date of Customer's First Beneficial Use of the System or on such other date as mutually agreed by Tech and Customer in the Submission or Specifications. "First Beneficial Use" means the point in time when Customer first uses all or any part of the System in its business. If any failure to conform to such warranty be found during the term of the warranty, Tech will correct such nonconformity by replacement of defective material and parts or by making other suitable repairs. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED AND DISCLAIMED BY TECH. Tech does not represent or warrant that the System will not be compromised or circumvented, that the System will prevent any loss by burglary, hold-up, fire or otherwise, or that the System will in all cases provide the protection for which it is installed or intended or protect Customer from all losses. Customer acknowledges that (i) Customer assumes all risks for loss or damage to Customer's premises and to its contents, (ii) Tech has made no representation or warranties nor has Customer relied on any representations or warranties, express or implied, except as set forth herein and (iii) Customer has read and understands the Submission and these Terms and Conditions, including Section 1 and Section 5.3 setting forth Tech's obligations and maximum liability in the event of any loss or damage to Customer. Customer acknowledges and agrees that Tech is not an insurer and that these Terms and Conditions are not intended to be an insurance policy or a substitute for an insurance policy. Insurance, if any, will be maintained by Customer. Tech's charges are based solely upon the value of the services provided and are unrelated to the value of Customer's property or the property of others located on Customer's premises.

5.2. Disclaimer of Warranties as to Software. TECH MAKES, AND CUSTOMER RECEIVES, NO WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY ASPECT OF THE SOFTWARE, AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TECH MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE PERFORMANCE OF THE SOFTWARE OR THE RESULTS THAT MAY BE OBTAINED BY USING THE SOFTWARE. ACCORDINGLY, WITH THE EXCEPTION OF ANY WARRANTIES THAT TECH IS AUTHORIZED TO PASS THROUGH TO CUSTOMER DIRECTLY FROM THE APPLICABLE THIRD PARTY, THE SOFTWARE IS LICENSED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE.

5.3. Indemnification. Intentionally deleted.

6. LIMITATION OF LIABILITY. Intentionally deleted.

7. WAIVER OF SUBROGATION. Intentionally deleted.

8. Default and Remedies.

8.1. Default. The happening of any one of the following shall be an “Event of Default” under the Submission: (i) failure by Customer to pay any amount within 30 days after the same is due and payable; (ii) failure by Customer or Tech to observe, keep or perform any agreement required of it herein and to correct such breach within 10 days after written notice of same; (iii) abuse of the System; (iv) dissolution, termination of existence, discontinuance of the business, insolvency or business failure of Customer or Tech; (v) initiation of any bankruptcy, reorganization, assignment of the benefit of creditors, or like proceeding by or against Customer or Tech; (vi) excessive false alarms caused by Customer; or (vii) to allow other vendors to work on the System during Tech’s performance of Services or the term of the warranty (except for Tech’s failure to perform).

8.2. Remedies. Upon the occurrence of an Event of Default, then at any time thereafter the non-defaulting party may pursue one or more of the following remedies: (i) by written notice to Customer, declare the balance of all unpaid amounts due and to become due under the Submission to be immediately due and payable, provided that all past due amounts shall bear interest at the rate of 1-1/2% per month (18% per year) or the maximum rate permitted by law from the first occurring Event of Default; (ii) receive immediate possession of any Tech owned portion of the System, and for such purpose enter Customer’s premises and remove said portion of the System and Customer hereby waives any further rights to the Tech owned portion of the System and any claims resulting from said repossession, including any claim or restoration of the premises to its former condition; (iii) proceed at law or in equity to enforce performance the non-defaulting party of the provisions of the Submission, or to recover damages for the breach of the Submission; (iv) discontinue furnishing the Goods and Services, including, without limitation, disabling communication software, hardware and/or firmware contained within the System from the any monitoring facility, and terminate the Submission by written notice to Customer; and (v) recover any other costs the non-defaulting party is required to bear in respect to the System and/or services provided under the Submission. Furthermore, if there are any other agreements in effect between Tech and Customer, then Tech, at its option, may deem Customer’s default under any other agreement to be a default under any or all the agreements and Tech shall be entitled to exercise any or all of its remedies upon default with respect to any or all of such agreements. The above remedies are cumulative and exercise of one does not preclude the exercise of another.

9. Miscellaneous Provisions.

9.1. Subcontracting; Assignment. Tech shall have the right to subcontract any of the Services which it may be obligated to perform. The Submission and its benefits are not assignable by Customer except upon the prior written consent of Tech. Customer acknowledges that the Submission, and particularly those Sections relating to Tech’s maximum liability and third party indemnification, inure to the benefit of, and are applicable to any assignees or subcontractors of, Tech.

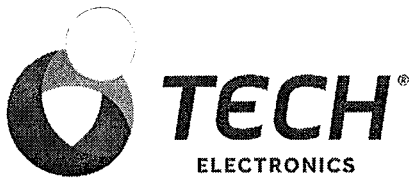
9.2. Subcontracting. The parties recognize that Tech intends to comply with the applicable labor agreement and any Subcontractors to Tech which perform work covered by Tech’s labor agreement will provide its employees wages and benefits equal to or better than the wages and benefits contained in the applicable Tech labor agreement. The parties agree that this is a material term and that Tech will rely on the Subcontractor’s compliance with this provision.

9.3. Nonsolicitation. Neither party may solicit to hire, employ or otherwise receive the services of (except for services provided pursuant to the Submission), any individual who was employed by the other party at the time of such solicitation or employment or at any time during the one year period immediately preceding such solicitation or employment, without the prior written consent of the party employing the individual. Each party acknowledges that in the event it breaches its agreement in this Section 9.2, the non-breaching party would incur costs to recruit and hire a new employee (including, but not limited to, expenses for advertising and other recruiting sources and administrative time in reviewing and selecting candidates). In addition, there would be costs with recruiting and orienting the replacement, including lost productivity and/or efficiency in the handling of other assignments. The parties agree that these costs and expenses may well be difficult, if not impossible, to ascertain with specificity. As a result, the parties have agreed upon a liquidated amount to reasonably compensate the non-breaching party, at a minimum, for the types of damages noted above; that liquidated amount shall be equal to 50% of the annualized compensation (including benefits) of the individual who is solicited, representing the equivalent of six months of pay (including benefits). The parties agree that this is a reasonable estimate of damages and not included as a penalty.

9.4. Third-Party Beneficiary. Except as provided in Section 3.3, these Terms and Conditions and the Submission are solely for the benefit of the parties and their respective successors and permitted assigns, and no other person has any right, benefit, priority or interest under or because of the existence of this Agreement. The parties hereby expressly disclaim any intention to create any third party beneficiaries of these Terms and Conditions or the Submission or the Goods and Services.

9.5. Force Majeure. Tech shall not be liable for nonperformance or delay in performance due wholly or partially to any cause beyond its control, including action or failure of the government to act where action is required, strikes or other labor troubles, riots, power failures, interruption or unavailability of telephone service fire, flood, lightning, earthquakes, or other acts of God. Replacement of the System necessitated by any such event will be at Customer’s expense. The Submission may be suspended or terminated, at the option of Tech or Customer, if Customer’s premises or the System or any part thereof is destroyed by fire, lightning or other catastrophe or so substantially damaged that it is impractical to continue to provide Goods and Services. Upon such suspension or termination, an equitable refund of the service charges paid, but not yet earned, shall be made. Notice of termination shall be given upon written notice given within ten (10) days of such event.

9.6. Amendments. The Submission may only be amended in a writing signed by both parties. No waiver of any of the terms and conditions contained herein shall be effective unless such waiver is in writing and signed by an authorized representative of the party waiving such condition.



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

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

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

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

9.11. Binding Effect. The Submission shall not be binding upon Tech unless approved in writing by an authorized representative of Tech. In the event of failure of such written approval, the sole liability of Tech shall be to refund to Customer the amount paid to Tech upon the signing of the Submission.

9.12. Disclaimers and Waivers. These Terms and Conditions contain certain exculpatory clauses, disclaimers and waivers to which Customer has agreed. Those clauses are set forth in Sections 5.1, 5.2, 6, 7 and 9.9. Customer's signature on the Submission indicates its acceptance of and assent to such provisions.