

## Memorandum of Understanding

This Memorandum of Understanding ("**MOU**"), is made effective as of December 18, 2023 ("**Effective date**") by and between the City of Decatur, an Illinois Municipal Corporation, with an address of 1 Gary K. Anderson Plaza, Decatur, IL 62523 ("**CITY**") and Thinkwell Makerspace Innovations, NFP ("**Customer**"). Each may be referred to herein as a "**Party**" and collectively as the "**Parties**".

### ARTICLE 1 - GENERAL

**1.1 Agreement Structure.** The purpose of this MOU is to provide general terms, conditions and a framework within which Customer may from time to time purchase certain transport, dedicated internet access and colocation services ("**Services**") from CITY for the Customer's sole use. The MOU and Service Order(s) (as defined in Section 1.2 below) and any other attachments incorporated therein shall collectively be referred to as the "**Agreement**".

**1.2 Orders for Services.** Customer may request the CITY to provide Services by submitting a Service Order on a form provided by the CITY from time to time ("**Service Order**") in accordance with the procedures set forth in this Agreement. Customer acknowledges and agrees that they are solely responsible for the accuracy of all Service Orders and other information that it provides to the CITY. Each accepted Service Order shall incorporate by reference, and shall be subject to, the terms and conditions of this Agreement. Service Orders shall clearly set forth the term, pricing, service type and location(s), monthly recurring charge ("**MRC**"), non-recurring charge ("**NRC**"), and any additional specific terms for the Services. All Service Orders shall be subject to acceptance by the CITY.

**1.3 Order of Precedence.** In the event of an express conflict between a term(s) of this MOU and/or Service Order, precedence will be given in the following order: (a) the Service Order but solely with respect to the Service covered by that Service Order and provided that an authorized representative of the CITY has executed such Service Order; and (b) this MOU.

**1.4 Acceptable Use Policy.** Customer agrees to be bound by CITY's Acceptable Use Policy which is set forth in Exhibit A (attached hereto and incorporated as reference) when utilizing the CITY Fiber Network in fulfillment of active service orders from the Customer.

### ARTICLE 2 - TERM

**2.1 MOU Term.** This MOU shall be in effect for a period of one (1) year from the Effective Date ("**Initial Term**") unless terminated earlier as otherwise provided for in this MOU, and shall automatically renew for one (1) year periods thereafter (each a "**Renewal Term**" and together with the Initial Term, shall be referred to as the "**Term**") until either Party notifies the other Party of its intent not to renew the MOU at least sixty (60) days prior to the end of the Initial Term or any Renewal Term. Notwithstanding the foregoing, in the event that any Service Order remains in effect following such termination, this MOU shall govern and continue in effect with regard to such Service Order until the termination of such Service Order.

**2.2 Service Order Term.** The term of each Service Order shall commence on the Service Activation Date for such Service and continue for the period of time specified in that Service Order ("**Service**

**Term**”), unless terminated earlier as otherwise provided for in this Agreement. Thereafter, unless otherwise stated in the Service Order, the term of each such Service Order shall automatically renew for one (1) year periods (each a “**Service Renewal Term**”) pursuant to the terms of the Agreement until terminated by either Party upon thirty (30) days written notice prior to the end of the Service Term or the then current Service Renewal Term; provided, however, that Customer shall continue to be responsible for payment to the CITY for the Services to be terminated through the end of the thirty (30) day notice period plus any early termination charges which may apply. Customer will not receive notice of a Service Term or Service Renewal Term expiration date. After the Service Term and during any Service Renewal Term, the CITY reserves the right to increase rates for any services provided thereunder upon at least thirty (30) days’ notice.

### **ARTICLE 3 – SERVICE ORDER PROCEDURE**

**3.1** To order a Service, Customer must execute a Service Order provided by the CITY. Customer may order additional Services from time to time by executing additional Service Orders. Upon receipt of an executed Service Order, the CITY will either: (a) accept the Service Order by signing and returning it; or (b) request clarification of information on the Service Order; or (c) reject the Service Order. The CITY shall be under no obligation to accept a Service Order.

**3.2** After installing a Service, the CITY will email an order completion notification to Customer to the email address designated by Customer. If Customer does not notify the CITY in writing within seventy-two (72) hours following receipt of the order completion notification that the Services do not conform to the CITY’s specifications (with evidence of such non-conformance included in the notice), or if the CITY has not performed the testing ensuring compliance with service specifications listed in service order “**Acceptance Testing**” due to Customer’s failure to satisfy any of its obligations under this MOU related to installation, or if Customer begins using the Service for any purpose other than testing, the Service shall be deemed accepted, and such date shall constitute the “**Service Activation Date.**”

### **ARTICLE 4 – BILLING AND PAYMENT**

**4.1 Credit and Deposit.** If requested by the CITY, Customer shall complete and submit CITY’s standard credit application. The CITY may from time to time conduct a review of Customer’s credit rating and payment history. The CITY may require Customer to pay a deposit before acceptance of a Service Order. Additionally, for any existing Services, the CITY may require Customer to pay a deposit or an increase in the existing deposit, upon the failure of Customer to submit payment of any amount by the Due Date as a condition to the continued provision of such existing Services. The CITY shall refund any amount of deposit paid pursuant to this Section, less any amount for payments that Customer still owes to the CITY, when the CITY determines in good faith, based on Customer’s credit rating and payment history, that such deposit is no longer necessary to ensure payment, but in no event later than after the termination of all Services and termination of this Agreement.

**4.2 Billing Commencement.** The CITY will commence billing and Customer shall be liable for payment for Services upon the Service Activation Date.

**4.3 Invoicing and Payment Terms.** The CITY will provide Customer with an annual itemized invoice for the Services together with all other charges due. All amounts due to the CITY are payable in full within thirty (30) days from date of invoice (“**Due Date**”). Invoice amounts not paid on or before the

Due Date shall bear interest at the rate of one and one-half percent (1.5%) per month or the highest lawful rate, whichever is lower. Unless otherwise stated in the Service Order or Service Schedule, the CITY shall invoice Customer for any NRC upon acceptance of a Service Order.

**4.4 Invoice Disputes.** To the extent that Customer disputes any portion of an invoice, Customer shall notify the CITY in writing and provide detailed documentation supporting its dispute within thirty (30) days of the invoice date or the Customer's right to any billing adjustment shall be waived. In the event of a billing dispute, Customer shall pay all undisputed amounts by the invoice due date. If the dispute is resolved against the Customer, Customer shall pay such amounts due plus interest as set forth in Section 4.3 from the date the payment was originally due. A dispute may not be based upon a claim that all or a portion of the charges for the Services were incurred by unauthorized users.

## **ARTICLE 5 – CANCELLATION**

**5.1 Cancellation.** Customer may cancel a Service Order at any time prior to the date of Service Order Acceptance for such Service without any further liability. In the event Customer requests cancellation of a Service after Service Order Acceptance and prior to the date the CITY has sent a Service Activation Notice for such Service, Customer shall be obligated to pay the CITY for any costs the CITY has incurred in provisioning the Service prior to the date of cancellation, including, but not limited to, any contracts entered into by the CITY in connection with this Agreement and any completed or incomplete installation services rendered. If Customer requests cancellation at any time on or after the date the CITY has sent a Service Activation Notice to Customer with 30 days' notice, then Customer shall be liable for the early termination charges set forth in Article 6 below.

## **ARTICLE 6 – EARLY TERMINATION**

**6.1 Early Termination.** In the event that Customer terminates any Service after the Service Activation Date but prior to the end of the Service Term or Service Renewal Term, or the CITY terminates Services pursuant to a Customer Default, Customer shall be subject to early termination charges equal to 50% of the remaining reoccurring charges in the term; plus any and all installation charges, reasonable construction costs, charges from termination of Third Party Services, or other charges or costs which have been incurred by the CITY in providing Customer with Services. Customer may exercise such right to terminate for convenience by providing at least thirty (30) days prior written notice. The Parties agree that the charges in this Section are a genuine estimate of the CITY's actual damages in the event Customer terminates for convenience and are not a penalty.

## **ARTICLE 7 - EQUIPMENT AND INSTALLATION**

**7.1 CITY Equipment.** The CITY, or its agent, may provide, install, maintain, repair, operate and control the CITY's equipment including but not limited to fiber, conduit, manholes, hand holes, ducts, electrical and optical equipment ("CITY's Equipment"). CITY's Equipment shall remain the sole and exclusive property of the CITY, and nothing contained herein shall give or convey to Customer, or any other person, any right, title, or interest whatsoever in the CITY's Equipment, notwithstanding that it may be, or become, attached to, or embedded in, realty. Customer shall not tamper with, remove, or conceal any identifying plates, tags or labels identifying the CITY's ownership interest in the CITY's Equipment. Customer shall not adjust, align, attempt to repair, relocate, or remove the CITY's Equipment, except as expressly authorized in writing by the CITY. Customer shall be liable for any loss of

or damage to the CITY's Equipment caused by Customer's negligence, intentional acts, or unauthorized maintenance and shall reimburse the CITY for the same, within thirty (30) days after receipt by Customer of a request for reimbursement.

**7.2 CITY Access to Customer Premises.** Where applicable, Customer shall provide the CITY with access to all Customer locations for purposes of installation, maintenance, and repair of CITY Equipment on Customer premises. The CITY shall provide reasonable notice under the circumstance to Customer prior to entering Customer's point of presence to install, maintain or repair any of the CITY Equipment. Customer will provide a safe place to work and comply with all applicable laws regarding the working conditions on the Customer premises.

**7.3 Customer Equipment.** Equipment and service beyond the point of demarcation and/or interconnection between CITY facilities and terminal equipment and the wiring at the point of demarcation shall be the responsibility of Customer. If Customer provides its own equipment, the CITY shall have no obligation to install, maintain or repair the equipment. If, on responding to a Customer initiated service call, the CITY and Customer jointly determine that the cause of the service deficiency was a failure, malfunction, or the inadequacy of equipment other than the CITY's Equipment, Customer shall compensate the CITY for actual time and materials expended during the service call.

## **ARTICLE 8 - MAINTENANCE**

**8.1 Maintenance.** The CITY holds a contract with a third-party service vendor and has agreements in place to maintain 24 hours, 7 days a week, 365 days per year (24x7x365) Network Operations Center (NOC) and Communications Management Center (CMC) who monitors the network, responds to customer requests, performs network troubleshooting, and engages network engineers to resolve network issues and incidences. The CITY IT Help Desk will provide the first level of support and utilize a trouble ticketing program to track progress. CITY IT Help Desk can be reached 24x7x365 by dialing (217)424-2703. The CITY shall perform regular and emergency maintenance on the network including upgrades to hardware and software, configuration changes or enhancements, or to increase network capacity and performance. The CITY, in conjunction with its third-party vendors, has established a six-hour maintenance window on Saturday morning beginning at 12:01 AM and concluding at 6:00 AM Central Time. The CITY will perform emergency network maintenance outside of this maintenance window based on the urgency of the maintenance. Customers of the network will be notified by email at least five business days in advance of planned maintenance and the CITY will attempt, when reasonably possible, to notify customers by email of emergency maintenance outside the maintenance window.

## **ARTICLE 9 - DEFAULT; SUSPENSION OF SERVICE**

### **9.1 Customer Default.**

9.1.1 Customer is in default of this MOU if Customer (a) fails to cure any monetary breach within five (5) days of receiving notice of the breach from the CITY; (b) fails to cure any non-monetary breach of any terms of the agreement within thirty (30) days of receiving notice of the breach from the CITY; or (c) files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or such other

official) under any bankruptcy, insolvency, or other similar law (each such event shall be a **"Customer Default"**).

- 9.1.2 In the event of a Customer Default, the CITY may suspend Services to Customer until Customer remedies the Customer Default, or the CITY may terminate this MOU and/or any or all the Services being provided hereunder. The CITY may at its sole option, but without any obligation, cure a non-monetary breach at Customer's expense at any point and invoice Customer for the same. These remedies are in addition to and not a substitute for all other remedies contained in this MOU or available to the CITY at law or in equity.

## **9.2 CITY Default.**

- 9.2.1 CITY is in default of this MOU if the CITY fails to cure any non-monetary breach of any material term of this MOU within thirty (30) days of receiving written notice of the breach from Customer (**"CITY Default"**).
- 9.2.2 Customer recognizes that the CITY is sharing the same communication infrastructure and connectivity (**"Network"**) that the Customer is using under this agreement. The CITY has a vested interest in maintaining high reliability in the network and will use its best resources and efforts to maintain a goal of 100% network availability with the core components of the network. In the event the CITY is unable to resolve an outage within a 24-hour period, the CITY will be found to be in Default and the Customer may terminate the Services and this Agreement upon written notice to the CITY. Any termination shall not relieve Customer of its obligations to pay all charges incurred hereunder prior to such termination.

## **ARTICLE 10 - IMPOSITIONS**

**10.1** All charges for the Services are exclusive of any Impositions (as defined below). Except for taxes based on CITY's net income, Customer shall be responsible for payment of all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise fees, rights of way fees or charges, license or permit fees, or other taxes, duties, fees, charges or surcharges (including regulatory fees), however designated, imposed on incident to, or based upon the provision, sale, or use of the Services (**"Impositions"**). Such Impositions may be shown on invoices as cost recovery fees. If Customer is entitled to an exemption from any Impositions, Customer is responsible for presenting the CITY with a valid exemption certificate in a form reasonably acceptable to the CITY. The CITY will give effect to any valid exemption certificate provided in accordance with the foregoing sentence to the extent it applies to any Service billed by the CITY to Customer following the CITY's receipt of such exemption certificate. Customer shall indemnify, defend, and hold the CITY harmless from payment and reporting of all such Impositions, including costs, expenses, and penalties incurred by the CITY in settling, defending, or appealing any claims or actions brought against the CITY related to, or arising from, the non-payment of Impositions.

## **ARTICLE 11 – CONFIDENTIALITY**

**11.1** Each party, including its agents and subcontractors, to this Agreement may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this Agreement. Each party recognizes and acknowledges that the Parties are each subject to the laws of the State of Illinois and the Freedom of Information Act and, as such, will comply with the provisions of the Act as required by law. Customer information, unless clearly marked as confidential and exempt from disclosure under the Illinois Freedom of Information Act, shall be considered public. Any request for documents related to this Agreement shall be provided to the other Party in sufficient time for an objection to disclosure of the requested documents to be made. No confidential data collected, maintained, or used in the course of performance of the Agreement shall be disseminated except as authorized by law, either during the period of the contract or thereafter. The Parties must return any and all confidential data collected, maintained, created, or used in the course of the performance of the Agreement, in whatever form it is maintained, promptly at the end of the Agreement, or earlier at the request of either Party, or notify the Party of its destruction. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party, received in good faith from a third-party not subject to any confidentiality obligation to the disclosing Party, now is or later becomes publicly known through no breach of confidentiality obligation by the receiving Party, or is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.

## **ARTICLE 12 – CUSTOMER'S REPRESENTATIONS AND WARRANTIES**

**12.1** Customer both represents and warrants each of the following:

- It has all necessary power and authority to enter this Agreement and to perform all of its obligations hereunder and to manage and control and ensure each individual or entity that Customer authorizes, permits, or allows to access to the related services and equipment, or facilities also complies with the terms of this Agreement in exercising such individual's access.
- This Agreement has been duly and validly authorized, executed and delivered by Customer and constitutes its valid and binding obligation.
- In performing its obligations hereunder, Customer will comply with all laws, rules and regulations of all governmental bodies having jurisdiction. Customer acknowledges that it is solely responsible for being aware of, and in compliance with, these applicable laws, rules, and regulations, and that the CITY shall not be liable or responsible for Customer's failure to comply.
- Customer holds all required regulatory authorizations and permits to perform this Agreement according to its terms.
- Customer's obligations under this Agreement do not conflict with any other agreement.

## **ARTICLE 13 – CITY REPRESENTATIONS AND WARRANTIES**

**13.1** The CITY represents and warrants the following:

- The CITY has all necessary power and authority to enter this Agreement and to perform all of its obligations hereunder.
- This Agreement has been duly and validly authorized, executed and delivered by the CITY and constitutes its valid and binding obligation.
- In performing its obligations hereunder, the CITY will comply with all laws, rules and regulations of all governmental bodies having jurisdiction.
- The CITY holds all required regulatory authorizations and permits to provide the Services identified herein.

#### **ARTICLE 14 – DISCLAIMER OF WARRANTY**

**14.1** Except for express warranties set forth in the Agreement the CITY disclaim all express or implied warranties, including without limitation, warranties of title, non-infringement, merchantability, or fitness for a particular purpose. Except as expressly set forth in the Agreement, customer assumes total responsibility for use of the services. In addition to any other disclaimers of warranty stated in the Agreement, the CITY makes no warranty, guarantee, or representation, express or implied, that all security threats and vulnerabilities will be detected or that the performance of the services will render Customer's systems invulnerable to security breaches. Customer is responsible for Customer's own network security policy (including applicable firewall and Network Address Translation (NAT) policies) and security response procedures.

#### **ARTICLE 15 – LIMITATION OF LIABILITY**

**15.1** Neither Party, their affiliates, agents, or contractors shall be liable for any indirect, incidental, special, reliance, punitive, or consequential damages or for any loss of, or cost to recover, data, use, business, revenues, profits, or goodwill relating to the services performed under this Agreement, or any action or omission relating to third parties, regardless of the legal theory under which such liability is asserted. Neither Party shall be liable for loss or damage or deemed to be in breach of this Agreement due to such Party's failure or delay of performance, wholly or in part, under this Agreement. Any Customer claims relating to this Agreement must be brought within sixty (60) days following the end of the term or termination.

#### **ARTICLE 16 – LIMITATION OF SERVICE**

**16.1** Notwithstanding any other provision in this Agreement, this Agreement applies only to services provided directly to the Customer for the Customer's use. These provisions shall not apply to offerings by the Customer for services to third parties. This Agreement does not constitute a joint undertaking for the furnishing of any service to customers or other third parties of the Customer. Services provided to the Customer under this Agreement may be connected to other facilities between certain locations and thereby constitute a portion of end-to-end service furnished by the Customer to its customers or third parties. The CITY does not undertake to offer any services to any person or entity other than the Customer.

## **ARTICLE 17 - INDEMNIFICATION**

**17.1** To the extent permitted by law, Customer shall indemnify and hold harmless the CITY, its agencies, officers, employees, agents and volunteers from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, arising out of: (a) any breach or violation by the Customer of any of its certifications, representations, warranties, covenants or agreements; (b) any actual or alleged death or injury to any person, damage to any property or any other damage or loss claimed to result in whole or in part from Customer's negligent performance; or (c) any act, activity or omission of the Customer or any of its employees, representatives, or agents. Neither Party shall be liable for incidental, special, consequential, or punitive damages. The CITY agrees to reasonably cooperate with Customer in the defense of any third-party claim and agrees that the Customer will have full control and authority over the defense and any settlements.

## **ARTICLE 18 – FORCE MAJEURE**

**18.1** Notwithstanding anything to the contrary contained in this Agreement neither Party shall be liable for loss or damage or deemed to be in breach of this Agreement due to such Party's failure or delay of performance, wholly or in part, under this Agreement if such failure or delay of performance is due to causes beyond such Party's reasonable control ("**Force Majeure Event**"), including but not limited to: acts of God, fire, flood, explosion, storm or other catastrophic event; strikes or work stoppages; lockouts; acts of any government authority or of any civil or military authority including regulatory mandates; national emergencies; cable cut(s); sabotage; insurrections; riots; wars; and unforeseen acts of third Parties that cannot be avoided by acts of due care. Any delay resulting from a Force Majeure Event shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

## **ARTICLE 19 – MISCELLANEOUS PROVISIONS**

**19.1 IP Address Allocation Policy.** CITY shall provide all Internet Protocol ("IP") addresses needed for Customer and its equipment to use for the sole purpose of using the CITY Fiber Network to access the Internet and Intranet, provided that CITY retains sole and absolute administrative control of each IP address provided, including without limitation, determining system requirements and deployment of each IP address, monitoring system use, and denying assignment of or revoking assignments of addresses. Use of CITY addresses on other provider networks without CITY's written consent is prohibited.

**19.2 Applicable Law.** This Agreement will be governed by the laws of the State of Illinois, without reference to its choice of law rules.

**19.3 Right and Authority.** Each of the Parties hereto represents and warrants to the other that this Agreement shall be binding upon and insure to the benefit of each of the Parties hereto and their respective agents, servants, employees, representatives, affiliates, heirs, executors, transferees, successors, and assigns, as the case may be.

**19.4 Notices.** If to CITY: All inquiries and notices shall be addressed to City of Decatur, Attn: IT Director at 1 Gary K. Anderson Plaza, Decatur, Illinois 62723, by telephone at 217-424-2703 or by email at [HelpDesk@decaturil.gov](mailto:HelpDesk@decaturil.gov).



**If to Customer:**

For Administrative and Maintenance Notices:

Name: Jesse Blunt  
Address: 120 North Franklin Street, Suite D  
City/State/Zip: Decatur, IL 62523  
Phone #: (217) 521-5941  
Email Address: thinkwellmakerspace@gmail.com

For Legal Notices:

Name: Jesse Blunt  
Address: 120 North Franklin Street, Suite D  
City/State/Zip: Decatur, IL 62523  
Phone #: (217) 521-5941  
Email Address: thinkwellmakerspace@gmail.com

**19.5 Severability.** If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, the Parties shall negotiate in good faith to agree on a substitute provision that is legal and enforceable and is as near as possible consistent with the intentions underlying the original provision. If the remainder of this Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

**19.6 Interpretation.** The construction of this Agreement shall not be construed against the Party causing its preparation but shall be interpreted on the basis of the plain meaning of the terms used which have been reviewed by both Parties in consultation with their respective counsel. Any provision of this Agreement officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive termination.

**19.7 Modifications.** The CITY may have the need to modify the service or business aspects of this Agreement from time to time due to changes in service or availability and reserves the right to do so. The CITY shall provide 30 days prior written notice to Customer of any modification adopted by the CITY. The CITY will not change any legal terms and conditions in this agreement without the prior approval of Customer.

**19.8 Assignability.** Customer may not assign this Agreement or any of its obligations, duties or burdens arising hereunder, without the CITY's consent. A transfer or assignment in violation of this

Section 19.8 shall constitute a material breach of this Agreement. CITY will not assign this Agreement, in whole or in part, to a private entity without the prior written consent of Customer.

**19.9 Remedies.** The rights and remedies of the CITY hereunder shall not be mutually exclusive, i.e., the exercise of one (1) or more of the provisions hereof shall not preclude the exercise of any other provision hereof. Customer acknowledges, confirms, and agrees that damages may be inadequate for a breach or a threatened breach of this Agreement and, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy. Nothing contained in this Agreement shall limit or affect any rights at law or by statute or otherwise for a breach or threatened breach of any provision hereof, it being the intent of this provision to clarify that the respective rights and obligations of the Parties shall be enforceable in equity as well as at law or otherwise.

**19.10 Entire Agreement.** This Agreement and all applicable Service Orders consists of all the terms and conditions contained herein which articulate the full and complete understanding of the Parties pertaining to the subject matter of this Agreement. This Agreement supersedes any prior or subsequent understandings, proposals, representations, discussions, and/or agreements (oral or written), absent a specific reference therein superseding this Agreement.

**19.11 Headings.** The section headings in this Agreement are inserted as a matter of convenience and in no way define, limit, or describe the scope of extent of such section, or affect the interpretation of this Agreement.

**19.12 No Third-Party Rights.** This agreement is made only between the Parties hereof and shall not establish rights in any third party as a third-party beneficiary or otherwise.

Thinkwell Makerspace Innovations, NFP

City of Decatur – An Illinois Municipality

**Signature:**



**Signature:**

**Name:** Jesse Blunt

**Name:** Julie Moore Wolfe

**Date:** December 12, 2023

**Date:** 12/18/2023

**Title:** Executive Director

**Title:** Mayor

## EXHIBIT A

### Acceptable Use Policy

#### **Definitions**

1. Email "**bombing**" is characterized by abusers repeatedly sending an identical email message to a particular address.
2. Email "**spamming**" is a variant of bombing; it refers to sending email to hundreds or thousands of users (or to lists that expand to that many users). It may also occur innocently, as a result of sending a message to mail lists and not realizing that the list explodes to thousands of users, or as a result of an incorrectly setup responder message.
3. "**Flooding**" occurs when a target machine is flooded with TCP connection requests. The target system host becomes extremely slow, crashes or hangs. Broadcast or "**smurf**" attacks causes network links to become overloaded. The "**smurf**" attack sends a constant stream of echo requests "pings" to the broadcast address of a subnet.

#### **Acceptable Use Policy**

This Acceptable Use Policy (hereafter referred to as 'AUP') specifies certain actions prohibited by the CITY for users of the City Fiber Network. The CITY reserves the right to modify this Policy at any time to stay in compliance with all known laws, regulations, policies, and security requirements that may be established by appropriate legislative or regulatory authorities or enacted by CITY management or Legal Counsel. Customer unconditionally accepts the terms of this policy.

#### **Authorized Use**

CITY Fiber services are for the use of authorized users only and are subject to routine network monitoring by CITY staff to audit network security and performance. The city reserves the right to deny IP addresses or revoke IP addresses and/or deny service to any Customer violating the AUP.

#### **Illegal Use**

The CITY Fiber may be used only for lawful purposes. Transmission, distribution, or storage of any material in violation of any applicable law or regulation coming through the City Fiber Network is prohibited. Illegal use includes, but is not limited to, material protected by copyright, trademark, trade secret or other intellectual property rights which is being used without proper authorization; government and military data protected by law and applicable national security policies and concerns; Customer data protected by public policy; and material that, in the CITY's sole discretion, is obscene, defamatory, constitutes an illegal threat, or violates export control laws or any other laws or applicable regulations, or any use which compromises the integrity of the City Fiber Network or any other network connected to the City Fiber Network.

#### **System and Network Security**

Violations of system or network security are prohibited and may result in criminal and/or civil liability. Customer use of CITY Fiber Network constitutes consent to the CITY's routine network monitoring.

Should any violations of the law or this AUP be discovered during monitoring, the CITY will involve and cooperate with local, Illinois, and Federal law enforcement authorities for resolution. Examples of unlawful acts and system or network security violations include, but are not limited to, the following:

1. Unauthorized access to or use of data, systems, or networks, including any attempt to probe, damage, scan or test the vulnerability of a system or network or to breach security or authentication measures

without express authorization of the CITY. The CITY may scan or test the vulnerability of CITY Fiber Networks that it is responsible for or manages.

2. Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the network or system.

3. Interference with service to any user, host or network including, without limitation, email "**bombing**", email "**spamming**", flooding, deliberate attempts to overload the network or system. Broadcast or "**smurf**" attacks are prohibited.

4. Unauthorized access to any data, network, or system from a network or system for any purpose which is not lawful, or which is intended to do harm.

5. Forging any part of TCP-Internet Protocol packet header or header information in an email or a newsgroup posting. Electronic forging of any kind to include, but not limited to, IP addresses, domains, and business names.