

UCaaS Telephone System Agreement

This Agreement to provide Midvale City with a Unified Communications as a Service (UCaaS) telephone system is executed on [execution date], 2020, by Midvale City, a Utah municipal corporation, and [Entity Name], a [Entity Type].

Background

In March 2020, federal, state, and Midvale political leaders declared states of emergency due to COVID-19.

On March 27, 2020, United States Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Midvale received CARES funds to assist with expenses that directly relate to COVID-19 and are incurred during 2020.

In response to the dangers of COVID-19, Midvale required many of its employees to begin telecommuting in order to protect their health and the health of the public.

Midvale's current VOIP telephone system does not provide features that are conducive for Midvale employees to telecommute.

In September 2020, Midvale issued a Request for Proposals to Provide a UCaaS Telephone System (RFP) to replace its existing telephone system with a telephone system that would better serve remote employees.

[Entity Name] submitted a proposal expressing the willingness to provide a UCaaS system that met Midvale's RFP's minimum requirements.

Midvale determined that [Entity Name] was the responsive responsible bidder and awarded the UCaaS Telephone System Agreement to [Entity Name] in accordance with Midvale Municipal Code 3.02.130.

[Entity Name] accepted the award and is willing to provide Midvale with a UCaaS telephone system.

Therefore, in consideration of the mutual promises contained in this Agreement, it is agreed:

Agreement

1. Unified Communications as a Service Telephone System.

A. Phones.

I. Quantities. [Entity Name] agrees to provide Midvale with the following initial quantities of phones with UCaaS functionalities:

1. Standard user phones: 66
2. Contact center agent phones: 12
3. Conference room phones: 4

[Entity Name] agrees to provide additional phones with UCaaS functionalities upon Midvale's request for the price listed in Section 5(C).

II. Mandatory Features. Any phone provided by [Entity Name] must have the following features:

1. **Display.** Phones must display date, time, extension names, and extension number in idle state. The phones must provide a visual display on incoming call numbers/extension and activated features such as Do Not Disturb and Call Forward.
2. **Standard Buttons.** Phones must have Transfer/Conference, Hold, Speaker, and Redial buttons that perform their corresponding function.
3. **General Specifications.** Phones must meet or exceed the following standards:
 - a. Standard user phones: Yealink T42S
 - b. Contact center agent phones: Yealink T46S
 - c. Conference room phones: Yealink CP920
4. **Distinctive Ringtone.** Phones must allow Midvale staff to distinguish calls with different ringtones.
5. **Volume Control.** Users must be able to adjust the volume level on phones.
6. **Speakerphone.** Phones must have a speakerphone function.
7. **Voicemail.** Phones must have a light indicator on the phone to notify a user of a new message in the user's voice mailbox.

not answered, the caller must be given the option to leave a voice message.

2. After business hours, calls to all listed telephone numbers will be answered by the automated attendant. A caller must be given the option to leave a voice message.
3. The automated attendant must provide an option for callers experiencing an emergency. The subsequent menu must connect the caller with police, fire, or public works emergency lines.
4. The automated attendant must provide callers with a Midvale directory organized by the City's functions and by Midvale staff member's names.
5. The automated attendant must allow Midvale staff to pre-record multiple messages for different calendar dates, days of the weeks, and time of day announcements for the Midvale's business and holiday schedule with no requirement to record over standard greetings. Midvale staff must be able to remotely change or re-record these business and holiday messages.

- VIII. Call Pickup.** UCaaS must allow a user to pick up an external call, an internal call, or a call on-hold. UCaaS must allow a user to pick up a call from on-hold from any internal extension.
- IX. Group Pickup.** UCaaS must allow phones to be grouped together. When the main Midvale number, as designated by Midvale, is called, Midvale staff must be able to pick up the call from any other extension at the Midvale City Hall location.
- X. Call Transfer.** UCaaS must allow a call to be transferred to another internal extension or external phone number.
- XI. Call Forward.** UCaaS must allow a call to be auto-routed to another internal extension or an external phone number.
- XII. Call On Hold.** UCaaS must allow a call to put on hold and then be answered from an internal extension.
- XIII. Call Stack Option.** UCaaS must have a configurable call stack option that allows for two or more lines to be answered on an individual phone.
- XIV. Voicemail.** UCaaS must allow unified messaging and integrate with Office Outlook 365. UCaaS must be able to automate holiday, business, and open and closed greetings for voicemails. UCaaS must allow

voicemails to be forwarded from one voice mailbox to another internal voice mailbox with additional recorded comments from the sender. Each voice mailbox must be password-protected. Users must be able to remotely check their voice mailboxes using an access code.

- XV. Direct Inward Dialing.** UCaaS must allow external callers to dial directly to individual phone numbers without the intervention of a live operator or the automated attendant.
- XVI. Do Not Disturb.** UCaaS must allow a user to activate and deactivate a feature to prevent disruptions on any phone.
- XVII. Internal Dialing.** UCaaS must allow a user to dial a four-digit extension on an internal phone to reach another internal line.
- XVIII. Caller ID.** UCaaS must allow users to view the phone number and associated staff name for all internal calls. UCaaS must allow users to view the phone number of the caller for inbound calls.
- XIX. 911 and E911 Compliance.** UCaaS must support placing calls to 911 from any phone within a Midvale building. UCaaS must be E911 compliant. Dialing 911 from any Midvale phone must allow a 911 dispatcher to identify the location (floor/room/area) where the call originated. UCaaS must notify designated Midvale staff (via email or phone) of the phone extension and location from which the 911 call originated.
- XX. Paging.** UCaaS must allow simultaneous paging announcements on phones.
- XXI. Unified Messaging.** UCaaS must allow voicemails to be automatically converted into an audio or text file and sent to a user's email account.
- XXII. Conference Call.** UCaaS must allow a user to establish a telephone conference with three or more parties including the original user.
- XXIII. Music On-Hold.** UCaaS must offer or support Music On-Hold. Record messages must be able to be played over music while external callers are on hold.
- XXIV. Web-based Administration and Programming Capability.** UCaaS must allow multiple, designated Midvale staff members to use a web interface for phone programming, account management, and setting changes. UCaaS must allow multiple, designated Midvale staff members to record and manage the automated attendant and business and holiday greetings.

- XXV. **Statistics Reporting.** UCaaS must allow multiple, designated Midvale staff members to view basic historic call reporting for phone extensions, hunt groups, and mailboxes. UCaaS must have detailed and functional reports for agent queues in contact center areas allowing supervisors to view call handling.
 - XXVI. **Governmental Compliance.** UCaaS must be compliant with the Freedom of Information Act, Payment Card Industry Data Security Standard (PCI DSS), Criminal Justice Information Service (CJIS FBI Standard), Utah Bureau of Criminal Identification (Utah BCI), and Health Information Portability and Accountability Act (HIPAA).
 - XXVII. **Hosting Uptime.** [Entity Name] must ensure that the company hosting UCaaS must have an uptime of at least 99%.
 - XXVIII. **Manuals.** [Entity Name] must provide manuals and documentation for Midvale to train its employees how to manage and use UCaaS, the phones, and their associated features.
- C. **Maintenance and Support.** [Entity Name] must provide maintenance and technical support services for UCaaS. This include providing remote and on-site assistance as needed by the City. During an emergency, remote and on-site assistance must be available after regular business hours. [Specific details added from Entity Name’s proposal].
 - D. **Additional Features.** [Entity Name] agrees to provide the following UCaaS features:
 - I. **Fax Machines.** [Description of fax machine solution.]
 - II. **[List of Additional Features.]** [Description of additional features.]

2. **Schedule.**

- A. **Term.** The Agreement will become effective on the execution date at the top of Agreement. The Agreement will expire, unless terminated earlier under Subsection 5(E) or Section 9 of the Agreement, three years from its execution date.
- B. **Renewal.** After the initial term, the Parties may mutually agree to renew this Agreement in one-year extensions up to seven times. Any renewal must be agreed by both parties prior to the expiration of the Agreement.
- C. **Implementation.**

- I. **Downtime.** [Entity Name] will implement UCaaS in a manner that will prevent any downtime during the transition from Midvale's current telephone system to UCaaS.
- II. **Completion.** Because this project is funded in-part by CARES funding, [Entity Name] recognizes that Midvale may lose its funding if the implementation of UCaaS is not completed and an invoice submitted prior to December 30, 2020. [Entity Name] agrees to complete implementation of UCaaS, deploy its phones, and invoice Midvale for the Initial Costs under Section 5(A) and the first year of service under Section 5(B) before December 30, 2020.
- D. **Acts of God.** In the event that a Party is unable to perform any of its obligations under this Agreement due to events beyond its reasonable control, the Party must notify the other Party of its inability to meet its obligations and identify the events beyond its reasonable control. The other Party may either modify the schedule under Section 2 of the Agreement to reasonably accommodate the unforeseen event, or it may terminate the Agreement under Subsection 9(A) of this Agreement. Events beyond a Party's reasonable control include, but are not limited to, fires, floods, accidents, strikes, riots, acts or threats of terrorism, epidemics, and natural disasters.
- E. **Midvale-caused Delay.** Both Parties recognize that Midvale's cooperation is necessary for [Entity Name] to successfully provide and implement UCaaS in accordance with the schedule in Section 2(C). In the event that Midvale unreasonably delays [Entity Name]'s performance under Section 2(C), the schedule in Section 2(C) will be extended by the number of days [Entity Name]'s performance was unreasonably delayed by Midvale.
- F. **Time.** Time is of the essence.

3. Acceptance.

- A. **Testing and Inspections.** Midvale may perform tests and inspections on UCaaS and its phones to verify that UCaaS and its phones are performing in accordance with this Agreement. If requested, [Entity Name] will reasonably assist Midvale in any tests and inspections.
- B. **Cure.** In the event that Midvale determines that a feature of UCaaS is not performing in accordance with this Agreement, [Entity Name] agrees to cure any identified deficiencies prior to Midvale's acceptance.
- C. **Acceptance.** Midvale will accept UCaaS when it has determined that UCaaS has been successfully implemented completed and is performing in accordance with this Agreement.

4. Warranty.

A. Quality. [Entity Name] warrants to Midvale that:

- I. UCaaS and the provided phones are new;
- II. UCaaS and the provided phones are merchantable;
- III. UCaaS and the provided phones are from defects in materials and workmanship;
- IV. UCaaS is free from code that may damage or limit the City's access to or use of the City's data, network, equipment, or property;
- V. UCaaS and the provided phones do not infringe on any third-party's intellectual property rights; and
- VI. UCaaS conforms to the requirements of Section 1 of this Agreement.

B. Performance. For the term of this Agreement, [Entity Name] warrants to Midvale that UCaaS will substantially perform in accordance with Section 1 so long as UCaaS is operated in accordance with [Entity Name]'s instructions.

C. [Other Warranty Provisions]

5. Compensation.

A. Initial Costs.

- I. Amount.** Midvale agrees to pay [Entity Name] \$[one-time initial cost amount] for one-time initial costs to implement UCaaS and provide phones.
- II. Payment Limit.** The total payments to [Entity Name] for initial costs may not exceed 90% of the total amount in Subsection 5(A)(I) of this Agreement prior to acceptance of UCaaS and the provided phones.
- III. Acceptance.** Upon acceptance of UCaaS and the provided phones, Midvale will pay [Entity Name] the amount in Subsection 5(A)(I) minus any payments made under Subsection 5(A)(II).

B. Annual Costs.

- I. Amount.** Midvale agrees to pay [Entity Name] \$[annual cost] for UCaaS and maintenance and support services.

- II. **Annual Increase.** The annual cost in Subsection 5(B)(I) will increase by [percent increase]% every year.
- C. **Additional Phones.** In the event that Midvale acquires additional phones from [Entity Name], Midvale agrees to pay [Entity Name] the price of the acquired phones found on [Entity Name]'s existing price sheet. The price sheet can be found at: [website address].
- D. **Invoices.** In order to receive payment, [Entity Name] will submit invoices to Midvale. The invoice must be itemized, describe the work performed, and have sufficient documentation of the work performed. Within 30 days of receiving the invoice, Midvale will pay [Entity Name] for any uncontested charges. The Parties will resolve any disputed charges under Section 11 of this Agreement.
- E. **Non-Funding.** The Parties acknowledge that funds are not presently available for Midvale's performance under this Agreement beyond June 30, 2021. Midvale's ability to pay compensation under this Section beyond June 30, 2021, is contingent upon funds being appropriated in future fiscal years. In the event that insufficient funds are appropriated, the Agreement will terminate and become null and void on the first day of the City fiscal year for which funds were not sufficiently appropriated. In the event of a reduction in appropriations, the Agreement will terminate and become null and void on the last day before the reduction becomes effective. Termination of this Agreement under this Section will not be considered a breach of this Agreement. Such termination will be without any penalty or liability.

6. **Party Responsibilities.**

A. **Midvale.**

- I. **Cooperation.** Midvale will reasonably cooperate with [Entity Name].
- II. **Software/Equipment/Connections.** Midvale is responsible for providing the following software, equipment, and connections:
 - 1. [List of required software, equipment, and connections]

B. **[Entity Name].**

- I. **Performance.** [Entity Name] is solely responsible for providing all services, labor, materials, software, and equipment necessary for performance under this Agreement except as provided in Section 8(a)(ii).
- II. **Supervision.** [Entity Name] is solely responsible for using its best skill and attention to supervise and direct its employees and agents in the performance of this Agreement.

III. Standard of Care. [Entity Name] represents that its performance under this Agreement will be completed in a manner consistent with the level of care and skill ordinarily exercised by the members of [Entity Name]'s profession currently practicing in the same locality and under similar conditions.

IV. Cooperation. [Entity Name] understands that its performance under this Agreement will require physical and electronic access to Midvale's facilities and network. [Entity Name] agrees to cooperate with Midvale to coordinate scheduling, access, and security.

7. Insurance.

A. Coverage Amounts. [Entity Name] must retain, at a minimum, the following insurance coverages for the term of this Agreement:

I. Commercial General Liability: \$2,000,000 combined single limit per occurrence and \$3,000,000 in the aggregate;

II. Automobile Liability: \$1,000,000 combined single limit; and

III. Worker's Compensation Insurance at statutory limits.

B. Additional Insured. Except for its Worker's Compensation Insurance policy, [Entity Name] must list Midvale City as an additional insured on the insurance policies required under Subsections 7(A) of this Agreement.

C. Primary Insurance. Insurance under this Section is required to be primary, non-contributory, and not in excess of any insurance or self-insurance policies available to or maintained by Midvale.

8. Indemnification.

A. [Entity Name]. [Entity Name] agrees to indemnify, defend, and hold harmless Midvale City and its officials, officers, employees, volunteers, and agents from and against all damages, liabilities, and claims (including legal fees) arising from [Entity Name]'s performance under this Agreement.

B. Midvale. Midvale City agrees to indemnify, defend, and hold harmless [Entity Name] and its officers, employees, and agents from and against all damages, liabilities, and claims (including legal fees) arising from Midvale City's performance under this Agreement.

9. Intellectual Property.

[Entity Name] is the sole owner of any intellectual property including, but not limited to, documentation, code, and data used to provide UCaaS to Midvale. Any work product that is the result of providing UCaaS to Midvale remains the intellectual property of [Entity Name]. [Entity Name] grants Midvale a non-exclusive license to use [Entity Name]'s intellectual property during the term of this Agreement.

10. Termination.

- A. **Convenience.** Either Party, by providing written notice, may terminate this Agreement at its convenience at any time prior to [Entity Name] installing any software, hardware, or phones in performance of this Agreement. Termination under this Section will not be considered a default by the terminating Party. If Midvale terminates the Agreement, Midvale agrees to pay [Entity Name] for any work performed under this Agreement prior to the termination. [Entity Name] must provide reasonable, detailed documentation to Midvale for any work performed prior to the termination.
- B. **Cause.**
 - I. **[Entity Name].** In the event that [Entity Name] terminates this Agreement because of Midvale's default, Midvale will pay [Entity Name] for any completed work within 30 days of the termination of this Agreement.
 - II. **Midvale.** In the event that Midvale terminates this Agreement because of [Entity Name]'s default, Midvale will pay [Entity Name] for any completed work within 30 days of the termination of this Agreement. If [Entity Name] has collected payment for work that was not completed, [Entity Name] agrees to reimburse Midvale's payment for the uncompleted work to Midvale within 30 days of the termination of the Agreement.

11. Default.

- A. **[Entity Name].** In the event that Midvale defaults under this Agreement, [Entity Name] may pursue the following remedies upon written notice of the default and the remedy to Midvale.
 - I. **Stop Performance.** [Entity Name] may stop performance under this Agreement until Midvale has cured the default.
 - II. **Interest.** [Entity Name] may charge Midvale 1.5% interest, compounded monthly, on any unpaid amount owed by Midvale.
 - III. **Termination.** If Midvale has not cured the default within a reasonable amount of time, [Entity Name] may terminate this agreement in accordance with Subsection 9(B)(I) of this Agreement.

- B. Midvale.** In the event that [Entity Name] defaults under this Agreement, Midvale may pursue the following remedies upon written notice of the default and the remedy to [Entity Name].
- I. Suspend Performance.** Midvale may suspend [Entity Name]’s performance under this Agreement until [Entity Name] has cured the default.
 - II. Withhold Payment.** Midvale may withhold payment until [Entity Name] has cured the default.
 - III. Reimbursement.** If [Entity Name] fails to cure the default within a reasonable amount of time, Midvale may cure the default and may charge [Entity Name] with any costs Midvale incurs in curing the default.
 - IV. Termination.** If [Entity Name] has not cured the default within a reasonable amount of time, Midvale may terminate this Agreement in accordance with Subsection 9(B)(II) of this Agreement.
- C. Other Legal Remedies.** The list of remedies under this Section is not exhaustive. Either Party may pursue any other right or remedy available to it, either in law or equity, on account of the other Party’s default.
- D. Nonexclusive.** The remedies available to the Parties are nonexclusive. Either Party may use any combination of remedies available.

12. Dispute Resolution.

Any dispute arising under or relating to this Agreement will be resolved in the following order:

- a. Good faith negotiations between the Parties;
- b. Good faith mediation with a mutually agreed upon mediator and with each Party paying one half of the mediation costs; and
- c. Litigation. If a Party incurs any legal or attorney’s fees in litigation to resolve a dispute arising under or relating to this Agreement, the prevailing Party may recover such fees.

13. Applicable Laws.

[Entity Name] agrees to comply with all applicable laws, rules, and regulations. This includes, but is not limited to, not discriminating against any individual in an employment decision because of the individual’s race, color, sex, age, religion, national

origin, disability, pregnancy, familial status, veteran status, genetic information, sexual orientation, or gender identity.

14. Notice.

Any notice required or permitted under this Agreement will be deemed sufficiently given or served if personally delivered or sent by United States Certified Mail, return receipt requested, addressed as follows:

Midvale City	[Entity Name]
Attn: Network Administrator	Attn: [Entity Representative or Position]
7505 S. Holden Street	[Entity Street Address or PO Box]
Midvale, Utah 84047	[City], [State] [ZIP Code]

The Parties each have the right, from time to time, to change their respective notice addresses under this Section by written notice to the other Party.

15. Relationship of Parties.

[Entity Name] is an independent contractor. The Parties have not created any other legal relationship with each other including, but not limited to, that of employee or agent of the other Party. Neither Party has the authority or power to bind the other Party.

16. Modification.

The Parties may not modify this Agreement without prior written consent by both Parties.

17. Assignment and Delegation.

A Party may not assign or delegate any part of this Agreement without the other Party's prior written consent. A Party may not unreasonably withhold its consent.

18. Subcontractors.

A. Prior Consent. If [Entity Name] subcontracts with any entity for performance under this Agreement, it must first receive written consent from Midvale. Midvale may not withhold its consent unreasonably.

B. Responsibility. [Entity Name] is responsible for the acts or omissions of any of its subcontractors in the performance of this Agreement. Any subcontractor retained by [Entity Name] to perform work under this Agreement is subject to the requirements of this Agreement.

C. Indemnification. If [Entity Name] subcontracts with any entity for performance under this Agreement, [Entity Name] agrees to indemnify, defend, and hold harmless Midvale City and its officials, officers, employees, volunteers, and

agents from and against all damages, liabilities, and claims (including legal fees) arising from [Entity Name]'s subcontractor's performance under this Agreement.

- D. Status Verification.** If [Entity Name] subcontract with an entity that performs on-site work at any Midvale location, the subcontractor must be compliant with Section 20 of this Agreement. Prior to performing any work, the subcontractor must provide certification of its compliance prior to performing any work under this Agreement.

19. Conflict of Interest.

- A. Relationship.** [Entity Name] represents and warrants that none of its officers, employees, or immediate family members of its officers or employees is or has been an elected official, employee, board member, commission member, or agent of Midvale or its affiliates who influences Midvale's procurement process. This includes, but is not limited to, anyone involved in the Midvale's drafting of procurement and project documents or Midvale's selection of a bidder.
- B. Gift.** [Entity Name] represents and warrants that is has not provided any compensation or gift in any form, whether directly or indirectly, to an elected official, employee, board member, commission member, or agent of Midvale or its affiliates who influences Midvale's procurement process. This includes, but is not limited to, anyone involved in the Midvale's drafting of procurement and project documents or Midvale's selection of a bidder.

20. Government Records Access and Management Act.

Midvale is a governmental entity that is subject to Utah's Government and Records Access and Management Act, Utah Code Ann. §§ 63G-2-101 to 901. Any documents produced or collected under this Agreement may be subject to public access. If [Entity Name] believes that a document should be protected under Utah Code Ann. §§ 63G-2-305(1) or (2), [Entity Name] must provide a written claim of business confidentiality to Midvale that complies with Utah Code Ann. § 63G-2-309(1). [Entity Name] agrees to cooperate with and to supply any requested records to Midvale with any public records request. This obligation will survive any suspension or termination this Agreement.

21. Status Verification.

Under the Utah Immigration Accountability and Enforcement Act, Utah Code Ann. §§ 63G-12-101 to 402, any entity contracting with a public employer is required to participate in Utah's Status Verification System. [Entity Name] will provide Midvale a certification of its compliance with this requirement prior to performing work under this Agreement.

22. Waiver.

Failure by either Party to insist upon the strict performance of any condition of this Agreement or to exercise any right or remedy found under the Agreement does not constitute a waiver. Either Party may waive any of its rights or any conditions by written notice to the other Party. No waiver may affect or alter the remainder of this Agreement. Every other condition in the Agreement will remain in full force with respect to any existing or subsequently occurring default.

23. Severability.

In the event that any provision of the Agreement is held to be void, the voided provision will be considered severable from the remainder of the Agreement and will not affect any other provision in the Agreement. If the provision is invalid due to its scope or breadth, the provision will be considered valid to the extent of the scope or breadth permitted by law.

24. Governing Law.

This Agreement is governed, construed, and interpreted under the laws of the State of Utah. Any suit arising from this Agreement must be brought within the appropriate court in Salt Lake County, Utah.

25. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior understandings or agreements between the Parties.

Signature Page to Follow.

Midvale City and [Entity Name] have read and understand the terms of this UCaaS Telephone System Agreement. Both Parties have demonstrated their willingness to enter into the Agreement as of the date above by having their Authorized representatives sign below.

MIDVALE CITY

Robert M. Hale, Mayor

ATTEST:

Rori L. Andreason, City Recorder

[Entity Name]

[Name], [Title]