

RESOLUTION NO. 19-2570

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING THE CUSTOMER TERMS FOR CLOUD SERVICES AGREEMENT (U.S. PUBLIC SECTOR) AND MASTER SERVICES AGREEMENT WITH LIFTOFF, LLC FOR USE AND SUBSCRIPTION TO MICROSOFT OFFICE 365 EXCHANGE ONLINE (COLLECTIVELY, AGREEMENT) PROVIDING FOR CLOUD-BASED EMAIL SERVICES; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AGREEMENT; AUTHORIZING EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside ("Town") desires to transition and migrate email services to a cloud-based service, Microsoft Office 365 Exchange Online ("Services"), without depending on Town hardware and building resources, and for enhanced reliability, security and disaster recovery; and

WHEREAS, the Town solicited quotes from third party vendors for the Services, and finds that LiftOff, LLC ("LiftOff") is the preferred Microsoft vendor with experience in handling state and local government Microsoft Office 365 migrations, and wishes to accept the Quote provided by LiftOff for the Services attached hereto as Exhibit "A"; and

WHEREAS, LiftOff, LLC will provide for the use and subscription with Microsoft Office 365, as well as services in connection with migration and transition to the cloud-based system, at an annual cost of \$11,760.00 for hosting/storage, and a one-time migration cost estimated at \$12,000.00; and

WHEREAS, LiftOff, LLC has agreed to provide the deliverables and Services, and the parties desire to enter into the agreements attached as: (i) Customer Terms for Cloud Services Agreement attached hereto as Exhibit "B"; and (ii) Master Services Agreement attached hereto as Exhibit "C" (collectively, the "Agreement"); and

WHEREAS, the Town desires to enter into the Agreement, substantially in the form attached hereto as Exhibits "B" and "C" and finds that the Agreement is in the best interest and welfare of the Town.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AS FOLLOWS:

Section 1. Recitals. That the above and foregoing recitals are true and correct and are hereby incorporated by reference.

Section 2. Approval and Authorization. The Agreement, substantially in the form attached hereto as Exhibits "B" and "C", is approved, subject to such changes as may be acceptable to the Town Manager and the Town Attorney as to form and legality. The Town Commission authorizes the Town Manager to execute the Agreement on behalf of the Town.

Section 3. Implementation. The Town Manager is authorized to take any and all action necessary to implement the purposes of this Resolution and the Agreement.

Section 4. Authorization to Expend Funds. The Town Manager is authorized to expend the amount of \$11,760.00 for the Services, and a one-time migration cost estimated at \$12,000.00.

Section 5. Effective Date. This Resolution will become effective upon adoption.

PASSED AND ADOPTED this 12th day of March, 2019.

Motion by Commissioner Karukin.
Second by Commissioner Cohen.

FINAL VOTE ON ADOPTION

Commissioner Barry Cohen

yes

Commissioner Michael Karukin

yes

Commissioner Tina Paul

yes

Vice Mayor Daniel Gielchinsky

yes

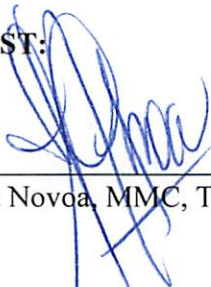
Mayor Daniel Dietch

yes



Daniel Dietch, Mayor

ATTEST:



Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney



QUOTE

as of 01/29/2019

Bill to:

Town of Surfside, FL
9293 Harding Avenue
Surfside, FL 33154

Ship to:

Town of Surfside, FL
9293 Harding Avenue
Surfside, FL 33154

Reseller (Remit To):

LiftOff LLC
Attn: Ron Braatz
1667 Patrice Circle
Crofton, MD 21114

Terms:

Due on Receipt

Payment Options:

Check

Quote Description

G SKU Item Name	Part Number	Term in Months	Price/User/Month	Licenses	Cost/Year
Exchange Online Plan 1 GOV	3MS-00001	12	4.00	140	\$6,720.00
ExchangeOnlineArchiving	4ES-00001	12	3.00	140	\$5,040.00

Total: \$11,760.00

Pricing Information:

- All prices are displayed in United States Dollars.
- Product and pricing data are updated frequently and may change without notice.
- Pricing is valid for 14 days.
- License orders are paid up front, are non-refundable, and are one-year licenses that renew each year.
- License reductions, upgrades, or cancellations may only occur at the annual renewal date.

In order to proceed, send a Purchase Order to rbraatz@liftoffonline.com. Once we have the Purchase Order, we will order the licenses from Microsoft. We will immediately invoice the full amount when we place the order.

Customer Terms for Cloud Services Agreement US Public Sector

This agreement is between **LiftOff LLC** (“we”, “us”, and “our”) and **Town of Surfside, FL** (“you” and “your”). It is effective when we accept it. Key terms are defined in 8.

1. General.

Right to use. You may access and use Office 365, and install and use a Client (if any) included with your Subscription, only as described in this agreement. All other rights are reserved.

Acceptable use. You will use Office 365 only per the AUP. You will not use Office 365 in any way that infringes a third party’s patent, copyright, or trademark or misappropriates its trade secret. You may not reverse engineer, decompile, work around technical limits in, or disassemble Office 365, except if applicable law permits despite this limit. You may not rent, lease, lend, resell, transfer, or host Office 365 to or for third parties.

Compliance. You will comply with all laws and regulations applicable to your use of Office 365. In providing Office 365, we and our Providers will comply with all laws and regulations (including applicable security breach notification law) that generally apply to IT service providers. You will obtain any consents required: (1) to allow you to access, monitor, use, and disclose user data; and (2) for us to provide Office 365. If you are an educational institution, you will obtain any parental consent for end users’ use of Office 365 as required by applicable law.

Customer Data. Customer Data is used only to provide you Office 365. This use may include troubleshooting to prevent, find and fix problems with Office 365’s operation. It may also include improving features for finding and protecting against threats to users. Neither we nor our Providers will derive information from Customer Data for any advertising or other commercial purposes. We will enable you to keep Customer Data separate from consumer services. Customer Data will not be disclosed unless required by law or allowed by this agreement. Your contact information may be provided so that a requestor can contact you. If law requires disclosure, we will use commercially reasonable efforts to notify you, if permitted. Customer Data may be transferred to, and stored and processed in, any country we or our Providers maintain facilities, unless you provision your tenant in the United States. If you do, Microsoft will provide Office 365 from data centers in the United States, and storage of the following customer data at rest will be located in data centers only in the United States: (i) Exchange Online mailbox content (e-mail body, calendar entries, and the content of e-mail attachments), and (ii) SharePoint Online site content and the files stored within that site.

Changes. Office 365 may be changed periodically, after which you may need to agree to new terms. You may be required to run a client software upgrade on devices using Office 365 after a change to maintain full functionality.

Use rights. Use rights specific to Office 365 are posted online at the link to the AUP.

2. Confidentiality and Security.

We and our Providers will (a) maintain appropriate technical and organizational measures, internal controls, and data security routines intended to protect Customer Data against accidental loss or change, unauthorized disclosure or access, or unlawful destruction and (b) not disclose Customer Data, except as required by law or expressly allowed. Neither party will make any public statement about this agreement’s terms without the other’s prior written consent.

3. Term, Termination, and Suspension.

Term and termination. This agreement will remain in effect for three years subject to your right under applicable law to terminate for convenience.

Customer Data. You may extract Customer Data at any time. If your Subscription expires or terminates, we will keep your Customer Data in a limited account for at least 90 days so you may extract it. We may delete your Customer Data after that.

Regulatory. If a government rule or regulation applies to us or our Providers, but not generally to other businesses, and makes it difficult to operate Office 365 without change, or we or our Providers believe this agreement or Office 365 may conflict with the rule or regulation, we may change Office 365 or terminate the agreement. If we change Office 365 to come into compliance, and you do not like the change, you may terminate.

Suspension. We may suspend use of Office 365: (1) if reasonably needed to prevent unauthorized Customer Data access; (2) if you do not promptly respond under §5 to intellectual property claims; or (3) for non-payment; or (4) if you violate the AUP. A suspension will be in effect only while the condition or need exists and, if under clause (1) or (2), will apply to the minimum extent necessary. We will notify you before we suspend, unless doing so may increase damages. We will notify you at least 30 days before suspending for non-payment. If you do not fully address the reasons for suspension within 60 days after we suspend, we may terminate your Subscription.

4. Limited warranty; disclaimer.

We warrant that Office 365 will meet the SLA terms during the Subscription; your only remedy for breach of warranty is stated in the SLA. *We provide no (and disclaim to the extent permitted by law any) other warranties, express, implied, or statutory, including warranties of merchantability or fitness for a particular purpose.*

5. Duty to protect.

Defense. We or our Providers will defend you against any claims made by an unaffiliated third party that Office 365 infringes its patent, copyright, or trademark or misappropriates its trade secret.

Remedies. If we or our Providers reasonably believe that a claim under §5 may bar your use of Office 365, we or our Providers will seek to: (1) obtain the right for you to keep using it; or (2) modify or replace it with a functional equivalent and notify you to stop use of the prior version. If these options are not commercially reasonable, we or our Providers may terminate your rights to Office 365 and refund any payments for unused Subscription rights.

Other obligations. To the extent permitted by law, you will (1) notify us promptly of a claim under this §5 and (2) allow us or our Providers to assist in your defense or settlement. You will provide reasonable help to defend. We or our Providers will reimburse you for reasonable out-of-pocket expenses incurred in giving that help and pay the amount of any resulting adverse final judgment (or settlement the protecting party consents to). Neither we nor our Providers will be bound by any settlement to which we do not agree in writing, this § 5 provides the exclusive remedy for these claims.

Limits. The obligations of us and our Providers in this §5 won't apply to a claim or award based on: (1) Customer Data; (2) software not provided by us or our Providers; (3) modifications you make to Office 365, or materials you provide or make available as part of using Office 365; (4) your combination of Office 365 with, or damages based on the value of, a product, data, or business process not provided by us or our Providers; or (5) your use of a Microsoft trademark without their express, written consent, or your use of Office 365 after being notified to stop due to a third-party claim.

6. Limited liability.

Each party's (and our Providers') maximum aggregate liability for any claim related to this agreement is limited to direct damages up to the fees that you paid for Office 365 during the 12 months before the claim arose (or \$5,000.00 if you paid no fees). *Neither party nor our Providers will be liable for lost revenues or indirect, special, incidental, consequential, punitive, or exemplary damages, even if the party knew they were possible.* The limits and exclusions in this §6 apply to the extent permitted by law, but do not apply to (1) obligations under §5; or (2) intellectual property infringement or misappropriation.

7. Agreement mechanics.

You must send notice by regular mail, return receipt requested, to the address on the Portal (effective when delivered). We may email notice to your account administrators (effective when sent). You may not assign this agreement, or any right or duty under it. If part of this agreement is held unenforceable, the rest remains in force. Failure to enforce this agreement is not a waiver. The parties are independent contractors. This agreement does not create an agency, partnership, or joint venture. This agreement is governed by the laws applicable to Customer, without regard to conflict of laws. This agreement (including the SLA and AUP) and our price sheet are the parties' entire agreement on this subject and supersedes any concurrent or prior communications. Agreement terms that require performance, or apply to events that may occur, after termination or expiration will survive, including §5. Office 365 and the Client are subject to U.S. export jurisdiction. You must comply with the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use, and destination restrictions. For more information, see <http://www.microsoft.com/exporting/>. Our Providers may deliver Office 365, and the rights granted to us also apply to them.

8. Definitions.

"AUP" means the acceptable use policy at <http://www.microsoftvolumelicensing.com/Downloader.aspx?DocumentId=5502>.

"Client" means device software that we or our Providers provide you with Office 365.

"Customer Data" means all data, including all text, sound, or image files that are provided to us or our Providers by, or on behalf of, you through your use of Office 365.

"Office 365" means (1) Exchange Online, Exchange Online Archiving, SharePoint Online, Lync Online, and Office Web Apps included in Office 365 Enterprise Plans E1, E2, E3, E4, K1, and K2; and Office 365 Government Plans G1, G2, G3, G4, K1, and K2; and (2) Exchange Online Archiving; Exchange Online Protection; Exchange Online Plans 1, 2, Basic, and Kiosk; SharePoint Online Plans 1, 2, and Kiosk; Office Web Apps Plans 1 and 2; and Lync Online Plans 1, 2, and 3.

"Portal" means the Online Services Portal for Office 365 (see <http://www.microsoft.com/online>).

"Providers" means our affiliates, licensors, and suppliers, including Microsoft and its applicable affiliates.

"SLA" means the service level commitments we or our Providers make regarding delivery and performance of Office 365 (see <http://www.microsoft.com/licensing/contracts>).

"Subscription" means an order for a quantity of Office 365.

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is made effective as of January 29, 2019, by and between LiftOff, LLC of 1667 Patrice Circle, Crofton, MD 21114 and Town of Surfside, FL ("Client") of 9293 Harding Ave., Surfside, FL 33154. Therefore, the parties agree as follows:

1. Background, Intent, and Relationship

The purpose of this Agreement is to establish the terms and conditions governing the contractual relationship between the parties. Nothing in this Agreement shall be interpreted or construed as (1) creating or establishing a partnership, joint venture or similar business relationship between the parties; (2) creating or establishing an exclusive relationship between the parties, or (3) creating or establishing any employment relationship between the parties, which hereby acknowledge that LIFTOFF is an independent contractor under this Agreement.

2. Statements of Work

All services performed under this Agreement will be specified in a Statement of Work ("SOW") to be prepared for each engagement and signed by the parties. The initial SOW is incorporated in this Agreement as Exhibit A, attached hereto. To the extent that any term contained in the SOW may be contradictory to any term contained in this Agreement, the parties agree that the SOW shall govern.

It is agreed that the terms and conditions of this Master Agreement shall govern with respect to the services to be provided to Client by LIFTOFF, in accordance with each SOW executed by the parties. Each SOW shall become an Addendum to this Master Agreement. The terms of this Master Agreement will be incorporated into each SOW by reference.

3. Professional Services Agreement

This Agreement is for the performance of professional services only. LIFTOFF reserves the right to incorporate any techniques, skills, and/or procedures known or acquired from this or any other project into this or any future professional services engagements. Any such techniques, skills, or procedures remain the sole intellectual property of LIFTOFF, and may be used in any contemporaneous or future professional services engagements for this or any other Client, without limitation.

This is not a Work for Hire agreement. LIFTOFF does not sell, assign or transfer ownership of any intellectual property used or developed by LIFTOFF in the performance of any services for the Client pursuant to this Agreement. Nothing contained herein or in any SOW hereunder shall be construed or interpreted as any such sale, transfer, conveyance or assignment of any right, title or interest by LIFTOFF in any of its intellectual property.

4. Invoice Remittance

Invoice payments must be sent to the LIFTOFF main office: 1667 Patrice Circle, Crofton, MD 21114. The LIFTOFF Federal ID number is: 27-1914176.

Payment terms are specified on the SOW. Payments are considered late on the 30th day after the due date. Late payments will incur a 2% late payment fee for each block of 30 or fewer days overdue (payments 30-60 days overdue will be assessed a 2% fee, payments 60-90 days overdue will be assessed a 4% fee, etc...)

5. Expenses

In addition to the charges for services as described above and with prior approval of the Client, the Client shall reimburse LIFTOFF for all reasonable and necessary expenses (including travel, lodging, travel meals, and other related costs) incurred in the course of performing services under this Agreement.

6. Confidentiality

Customer and Client acknowledge that, by reason of this Agreement, each may have access to certain information and materials concerning the others business, plans, customers, technology and products that are confidential. Such information and materials are of substantial value to each party, which value would be impaired if such information were disclosed to third parties. Neither party shall disclose to third parties, or use in any way for its own account or for the account of any third party, any such confidential information disclosed as a result of this Agreement.

7. Termination of Agreement

This Agreement shall be in effect until such time as all services have been fully performed by LIFTOFF and all invoices have been fully paid by the Client. This agreement may be terminated by either party for convenience upon sixty (60) days prior written notice. Termination by client for convenience will result in charges for all in-process work. Upon termination of this Agreement for any reason, Sections 3, 6, 8, 9 will survive and bind the parties in their entirety.

8. Indemnity, Disclaimers, Limitation of Liability

In no event shall LIFTOFF's aggregate liability arising from or relating to the agreement or the services rendered (regardless of the form or action, whether by contract, warranty, tort, malpractice, fraud, and/or otherwise) exceed the amount actually paid by the client to LIFTOFF for services rendered under the agreement.

In no event shall LIFTOFF be liable for any consequential, special, indirect, incidental, or punitive damages, or for any loss of profits, revenue or business opportunities, regardless of the form of action and even if LIFTOFF has been advised of the possibility thereof.

9. Non-Solicitation of Employees

During the term of this Agreement and for twelve (12) months thereafter, neither party will, either directly or indirectly, solicit for employment by itself (or any of its affiliates) any employee of the other party (or any of its affiliates), unless the hiring party obtains the written consent of the other party.

10. Governing Law/Jurisdiction

This contract will be governed by and construed in accordance with the laws of the State of Maryland, excluding its conflict of laws provisions.

Exhibit A – Initial Statement of Work

1. Work to be Performed:

LIFTOFF will provide **Office 365 Guided Deployment Services (GDS)** focused on the migration to the Microsoft Office 365 solution. The GDS consulting is delivered using a “**Coach/Mentor**” approach in which your IT team will be heavily involved throughout the entire process and will work directly with the LiftOff consultants. Together, we will work through a series of appointments (typically 1-2 hours each) as we work through project milestones to deploy the system efficiently and successfully. We have found this approach of keeping your IT team invested in the project to be an extremely effective training mechanism; once the project is complete, your IT staff is fully capable of managing and maintaining the system in the future.

LiftOff's expertise is laser focused on the Office 365 systems. If you require integration with other third-party applications, you will be responsible for working with your other vendors to remedy issues. For example, phone systems, firewalls, fax systems, custom code environments, and accounting systems can integrate with Office 365. We will do our best to facilitate, but these integrations may require the vendor.

Specifically, LiftOff's GDS work will:

- 1.1. Consist of an **Office 365 Assessment Workshop** where we will complete an analysis of the current email environment and ensure that requirements are captured, core functionality is reviewed, and details for the migration are discussed and reviewed. This planning session will be conducted via phone and typically takes two hours to complete.
- 1.2. Consist of **Setup and Pre-Staging** in the Office 365 Admin Console where we will access your portal together and begin the initial configuration the new Office 365 tenant. This will include:
 - 1.2.1. Adjusting Microsoft initial, default policies to meet your specifications.
 - 1.2.2. Adding and verifying your email domains in Office 365 to show ownership.
 - 1.2.3. Adding and licensing users.
 - 1.2.4. Creating administrators of the system.
 - 1.2.5. Identifying, testing, and configuring the optimal email migration tools and strategies. This will include the configuration of email migration tools using third-party, PSTs, or Microsoft tools.
NOTE: This does NOT include the setup or configuration of ADFS.
- 1.3. This is an **Exchange 2013 to Office 365 migration** and we intend to perform a **Microsoft HYBRID migration**. This utilizes the free migration tool included with Office 365. There are many advantages of using the hybrid migration path and we will make every attempt to make this work. In the rare event that the hybrid (Microsoft) wizard cannot be used for email or Public Folders, we will switch to a third-party migration tool (MigrationWiz). Client is responsible for the cost of the migration tool. Migration Configuration will include the following:
 - 1.3.1. Assess, update and optimize the on-premise environment and Exchange server so that it is ready for migration.
 - 1.3.2. Set up connection between on-premise and cloud migration tools using the Microsoft hybrid wizard.
 - 1.3.3. Test the migration process and confirm that it's working as expected.
 - 1.3.4. Work with Client on migration steps and process for migrating all users.
- 1.4. **Office 365 IT Admin Training.** These training workshops are usually conducted over several days and encompass 4-5 hours. Specifically, the training sessions include overviews of:
 - 1.4.1. Office 365 Admin Center – onboarding and offboarding users; resetting passwords; creating groups; creating resources; etc.

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- 1.4.2. Exchange Admin Center – configuring the EOP Spam Management System; configuring SMTP relay; creating mail transport rules; conducting mail traces; etc.
 - 1.4.3. Security and Compliance Center – creating and maintaining retention policies; conducting content searches; conducting eDiscovery searches; etc.
 - 1.4.4. Administering Office 365 through Azure PowerShell.
 - 1.4.5. OneDrive for Business/SharePoint Admin Center (if applicable) – how to control external sharing, quotas, and local syncing. LiftOff can offer suggestions for the BASIC configuration and admin settings/best practices for SharePoint Online, but it's important to understand this is NOT our area of expertise. "Advanced" SharePoint consulting is outside the scope of this GDS and would need to be contracted separately with LiftOff or with a third-party.

- 1.5. **Workstation Configuration.** LiftOff will offer guidance and tools for the workstation configuration for Outlook, Office Professional Plus (via "click to run or the Office Deployment Tool), and Skype for Business.

NOTE: Although LiftOff will provide guidance regarding workstation configuration and assist with troubleshooting, LiftOff will NOT be directly responsible for the configuration of the workstations. Your IT staff is on-premise and will complete this configuration.

- 1.6. Provide consulting on **synchronizing your Active Directory to Office 365**, if desired:

- 1.6.1. LiftOff has installed the **Azure AD Connect** sync tool hundreds of times. This process involves several planning sessions to prepare for this process, install the tool and train your IT staff on managing Office 365 while syncing with AD.

- 1.7. Setting up **SMTP Relay** options for the various devices and apps that relay email.

- 1.8. One week prior to activating the new system, LiftOff will provide a **pre-GO LIVE planning session called the "T minus 7 session"** to ensure we're ready to cutover to the new system.

- 1.9. **GO LIVE!** Together, we will change all internal and external DNS records to point to Office 365 and verify mail flow.

- 1.10. **Post Deployment.** With you, we will lead a post GO LIVE call to ensure the system meets your expectations and you understand how to utilize Office 365 support.

- 1.11. **Other Notes**

- 1.11.1. Client is required to assign LiftOff, LLC as the Partner of Record for a period of 24 months once the solution is purchased. Instructions for this will be provided. LiftOff's Partner ID number is 2823664.

- 1.11.2. Thirty days of post deployment support will be provided by LIFTOFF. Any additional consulting/support/training can be billed hourly or through a separate contract.

- 1.12. This Statement of Work will commence upon acceptance of documents on dates negotiated between LIFTOFF and Client.

2. Investment & Payment Structure

- 2.1. The cost of the services outlined in Section 1 above is **\$12,000.00**. This is the client cost and has already factored in any incentives or promotions. The discounted consulting price requires the Client to purchase AOS-G annual licensing through LIFTOFF for a period of three years. The AOS-G licensing includes a "price-lock" protection for three years. This pricing is valid for 30 days past the date identified in section 3.1. Invoicing is done after the Assessment Process (1.1) and terms are Net 30.

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- 2.2. The client acknowledges that the Office 365 Microsoft Partner, LiftOff LLC, may receive payments from Microsoft as a result of the consulting done with LIFTOFF.
- 2.3. Migration Wiz Premium multi-pass licenses may be recommended for the project. If Client agrees to use Migration Wiz, Client will be responsible for purchasing licenses for all users. Migration Wiz licenses are typically \$15 per mailbox. All migration licenses are purchased directly through LIFTOFF.

3. General Terms and Conditions

- 3.1. This Statement of Work will be bound by the terms of the Master Services Agreement between LIFTOFF & Client dated January 29, 2019, to which this Initial Statement of Work is attached as Exhibit A.

4. Signature

Agreed and Accepted by:

LiftOff, LLC

Town of Surfside, FL

By:

Ron Braatz
President

Date

By:

Name:
Title:

Date