

## MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT (“Agreement”)** is hereby entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, (“**Effective Date**”) by and between OneNeck IT Solutions LLC, a Delaware limited liability company, with a principal place of business at 525 Junction Road, Madison, WI 53717 (“**Company**”) and Milwaukee County, whose principal place of business is located at 633 West Wisconsin Avenue, Suite 1100, Milwaukee, WI 53203 (“**Client**”). Company and Client may hereinafter be collectively referred to as the “**Parties**”, each a “**Party**”.

### 1. PERFORMANCE OF SERVICES.

1.1 **Statements of Work.** The Parties shall negotiate and execute one or more **Statements of Work** (as defined below) under this Agreement containing terms and conditions agreed to by the Parties. The Parties agree that this Agreement applies to each Statement of Work.

1.2 **Specifications and Requirements.** Company shall perform the Services in accordance with the terms and conditions as set forth herein and in the applicable Statement(s) of Work, provided, however, that Company shall have the authority to determine the manner in which any such Services are to be provided, except to the extent otherwise set forth in an applicable Statement of Work.

1.3 **Communications.** All communications, both written and verbal, in connection with this Agreement or the Services shall be communicated in the English language, unless otherwise agreed upon in a signed writing by the Parties.

1.4 **Nature of Relationship.** The Parties’ relationship is non-exclusive. Client may obtain similar services from any Third Party, and Company may perform any service for any Third Party without any restriction hereunder.

1.5 **Performance by Company’s Affiliates and Subcontractors.** Client agrees, acknowledges, and understands that actual performance of the Services may be made by Affiliates of Company and that Company has the right from time to time to subcontract certain of the Services to Third Party providers. For purposes of this Agreement, performance of the Services by any Affiliate of Company or by any Third Party provider engaged by Company shall be deemed performance by Company itself.

1.6 **Receipt of Services by Client’s Affiliates.** To the extent set forth in an applicable Statement of Work, Company shall provide applicable Services to an identified Affiliate of Client. Client shall remain liable for the performance and obligations of any Affiliate receiving Services hereunder, and, in the event of any dispute, controversy, overdue payment or outstanding obligation due hereunder, Company may enforce such obligation or bring such claim against Client or the applicable Affiliate, in Company’s sole discretion.

1.7 **Receipt of Services by Other Government Agencies.** Except as provided herein, Company agrees to offer the terms and conditions of this Agreement to other government agencies who participate in a cooperative purchase program with Milwaukee County. Other such agencies must enter into separate master services agreements and Statements of Work with Company on the same terms as this Agreement, except that the Limitation of Liability as provided in Section 6.1 below shall be limited to the fees paid during the preceding twelve months by such agency to Company under the Executed Order pursuant to which such claim arose, regardless of the form in which any legal or equitable action may be brought.

2. **TERM.** The Term of this Agreement shall commence upon the execution of this Agreement and shall continue for five (5) years (“**Initial Term**”). The Agreement shall automatically renew for recurring one (1) year terms (each a “**Renewal Term**”) unless either Party provides notice at least 90 days before the commencement of any Renewal Term. Each Statement of Work hereunder shall commence on the applicable commencement date set forth therein, and shall expire in accordance with the terms thereof. Statements of Work shall be subject to termination in accordance with Section 5.

### 3. CHANGE ORDER.

3.1 **Change Orders.** Either Party may request changes to the Services by submitting to the other Party a completed Change Order during the Term of this Agreement. No Change Order will be binding on the Parties unless agreed upon in writing by each Party.

3.2 **Pending Change Orders.** Except to the extent changed by the Change Order, the scope of Services and Service Fees, as provided herein and in the then-current Statement of Work, shall remain in full force and effect.

4. **SERVICE FEES.**

4.1 **Fees.** Client shall pay for the Services invoiced under this Agreement in accordance with the "Fees" set forth in each applicable Statement of Work.

4.2 **Taxes.** Company will use commercially reasonable methods to work with Client to utilize Client's tax exempt status to Client's best advantage consistent with applicable law. In the event Client's tax exempt status is not applicable to taxes incurred in the provision of Services hereunder, Company shall pass along and client shall pay any such applicable taxes through to Client. Notwithstanding the foregoing, Client shall not be responsible for paying any taxes upon the real, personal, or intangible property of Company, its employees, or upon the net income or profits of Company or similar taxes.

4.3 **Invoicing Address.** Invoices to Client shall be sent to the address set forth on the Statement of Work.

4.4 **Due Date.** Except as set forth in an applicable Statement of Work, Client shall pay undisputed invoice amounts within forty-five (45) days of receipt of the invoice. It is the intention of the Parties that all Fees payable by Client under this Agreement shall be, and continue to be, payable throughout the term hereof. The Company reserves the right to terminate or suspend Services if a payment is past due.

4.5 **Late Payments.** Client's payment for Services shall be deemed late when Client fails to remit payment, which is not being disputed in good faith, within thirty (30) days of receipt of the invoice. Notwithstanding any other provision under this Agreement, any undisputed invoice, or undisputed portion thereof, not paid within sixty (60) days may result in an interruption of Services. Such interruption shall not relieve Client from its obligation to pay the undisputed amounts due and owing. Client agrees to reimburse Company its reasonable expenses, including attorney and other fees, incurred in collecting any amounts due and owing to Company.

4.6 **Expenses.** Client shall reimburse Company for reasonable, actual, documented expenses incurred by Company associated with the Services and identified in an applicable Statement of Work.

5. **TERMINATION.**

5.1 **For Cause.** In the event either Party fails to perform any of its material obligations under an Statement of Work, including paying any amount due under an Statement of Work, and the defaulting Party fails to substantially cure such default within sixty (60) days after receiving written notice from the non-defaulting Party specifying the nature of the default, then the non-defaulting Party may, by giving written notice to the other Party, terminate the applicable Statement of Work as of the date specified in such notice of termination. If Client is the defaulting Party, Company may, upon written notice to Client, terminate this Agreement and all outstanding Statements of Work as of the date specified in such notice of termination. Notwithstanding the foregoing, Client shall pay Company for Services already performed prior to the date of termination.

5.2 **For Convenience.** There shall be no termination for convenience through the first eighteen (18) months following the commencement date of the Statement of Work as identified in the Acceptance and Commencement Addendum executed by Company and Client ("Commencement Date"). In the event Client terminates an Statement of Work prior to completion of the first 18 months following the Commencement Date Client shall pay a Termination Fee of 100% of the Estimated Remaining Value of the applicable Statement of Work together with any Third-Party Amounts as defined below. Following completion of the first eighteen (18) months following the Commencement Date, Client may terminate an Statement of Work for any reason or no reason, at its convenience, by providing Company a minimum three (3) months prior written notice; provided, Client shall pay to Company the early termination fee ("Termination Fee") set forth below. Except as otherwise set forth in an applicable Statement of Work, the Termination Fee shall apply to any termination of an Statement of Work other than pursuant to termination of an Statement of Work by Client for cause pursuant to Section 5.1, above.

5.2.1 Termination Fee.

- **Lump Sum Payment.** If terminated after the eighteenth (18<sup>th</sup>) month following the Commencement Date, as part of the Termination Fee, Client shall pay to Company a one-time lump sum payment in an amount equal to fifteen percent (15%) of the Estimated Remaining Value.
- **Estimated Remaining Value** shall mean the number of calendar months remaining between the Effective Date of Termination and the last day of the Term of the applicable Statement(s) of Work multiplied by the greater of: i) the Net Monthly Base Fees as defined in the Statement of Work; or ii) the average monthly Fees payable by Client during the six- month period prior to the event giving rise to termination rights under the applicable Statement(s) of Work.
- **Third-Party Amounts.** As part of the Termination Fee, Client shall pay to Company all obligations to third parties owed by Company which are attributable to the termination of the applicable Statement of Work (i.e. early termination fees incurred by Company for circuits obtained on behalf of Client).

5.3 **For Insolvency.** Subject to the provisions of Title XI, United States Code, if either Party becomes or is declared insolvent or bankrupt, is subject to any proceedings relating to its liquidation, insolvency, or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, renewal, or readjustment of all or substantially all of its obligations, then the other Party, by giving written notice to such Party, may terminate this Agreement and all outstanding Statements of Work as of the date specified in such notice of termination.

6. **LIMITATION OF LIABILITY AND NATURE OF AVAILABLE DAMAGES.**

6.1 **LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO AMOUNTS CLIENT IS OBLIGATED TO PAY UNDER AN EXECUTED ORDER IN ACCORDANCE WITH SECTION 4 OR AS ARISING OUT OF AN INTENTIONAL WRONGFUL ACT OF THE PARTY, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, OR THEIR SECURITY SERVICE PROVIDERS OR SUBCONTRACTORS, THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, AND ALL PERSONS AND ENTITIES AFFILIATED OR ASSOCIATED WITH ITS SECURITY SERVICE PROVIDERS, BE LIABLE TO THE OTHER PARTY FOR ANY REASON, WHETHER IN CONTRACT OR IN TORT, FOR ANY DAMAGES ARISING OUT OF OR BASED UPON THIS AGREEMENT IN AN AMOUNT EXCEEDING FIVE MILLION DOLLARS (\$5,000,000).

6.2 **NATURE OF AVAILABLE DAMAGES.** EXCEPT AS ARISING OUT OF AN INTENTIONAL WRONGFUL ACT OF THE PARTY, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, SECURITY SERVICE PROVIDERS, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, BE LIABLE TO THE OTHER PARTY OR ANY PERSON OR ENTITY AFFILIATED OR ASSOCIATED WITH SUCH PARTY UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR EXEMPLARY, PUNITIVE, INDIRECT, SPECIAL, LOST PROFITS, CONSEQUENTIAL OR SIMILAR DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. **INDEMNITY.**

7.1 **Indemnity by Client.** Client shall defend, at its own expense, and indemnify and hold Company, Company's Affiliates, and Company's directors, officers, employees, and agents harmless from and against any claim by a Third Party to the extent based on: (i) a violation by Client or its Affiliates of Federal, state, or other laws or regulations; (ii) work-related injury or death caused by Client or its Affiliates, subcontractors or service providers or any of their employees or agents, while performing activities in connection with this Agreement; (iii) tangible personal or real property damage caused by Client or its Affiliates, subcontractors or service providers (other than Company and its subcontractors and service providers), or any of their employees or agents, while performing activities in connection with this Agreement; and (iv) any claims brought by Third Parties against Company for infringement that is alleged to be related to intellectual property other than claims for which Company provides

indemnification under Section 7.2(i) below. Milwaukee County's liability for claims based on torts, except for claims based on intentional wrongdoing or gross negligence, is limited by Wisconsin State Statute sections §893.80(3) for general liability and §345.03(3) for automobile liability. Nothing in this Agreement shall be construed as a waiver of these limits of liability

7.2 **Indemnity by Company.** Company shall defend, at its own expense, and indemnify and hold Client, Client's Affiliates, and their directors, officers, employees and agents harmless from and against any claim by a Third Party or any Affiliate of Company to the extent based on: (i) the Services or Company's software used to provide the Services are alleged to infringe upon any United States patent, copyright, United States trademark, or other proprietary right of a Third Party; provided, however, that Company shall not be obligated to indemnify Client, if such claim is caused by or arises out of (A) any intellectual property or materials provided by Client; (B) any designs, or directions provided by Client; (C) any software provided by an OEM or other Third Party; (D) Client's use of the Services or software other than in accordance with applicable documentation or instructions supplied by Company; (E) any combination, alteration, modification or revision of the Services or software not expressly authorized in writing by Company; or (F) Client's failure to use or implement corrections or enhancements to the Services or software made available free of charge to Client by Company. This indemnification shall survive the termination or cancellation of this agreement.

7.3 **Indemnity Procedures.** The indemnification obligations set forth in Sections 7.1 and 7.2 are subject to the following conditions:

7.3.1 the indemnitee Party shall promptly notify the indemnifying Party in writing of the claim of which it has notice, provided that the failure or delay to so notify the indemnifying Party shall not relieve the indemnifying Party from any liability that it may have to the indemnitee Party hereunder so long as the failure or delay shall not have prejudiced the defense of such claim and then only to the extent that the indemnifying Party actually is prejudiced;

7.3.2 the indemnitee Party allows the indemnifying Party to have sole control of the defense of the claim and any settlement negotiations arising out of that claim provided, however, the indemnifying Party may not, without the indemnitee Party's prior written consent, settle or compromise any claim in a manner that: (A) does not unconditionally release the indemnitee Party and its directors, officers, employees or agents or (B) requires the indemnitee Party or any of its directors, officers, employees or agents to contribute to any settlement of the claim; and

7.3.3 the indemnitee Party shall, at the indemnifying Party's reasonable request and expense, cooperate with the indemnifying Party. The indemnitee Party may participate in the defense and retain counsel of its own choice and expense.

## 8. **DISPUTE RESOLUTION.**

8.1 **Equitable Relief.** Either Party may seek equitable remedies, including specific performance and injunctive relief, for a breach of the other Party's obligations under this Agreement. The Parties further agree that violation by one Party of the provisions contained in Section 10 would cause irreparable harm to the other Party not adequately compensable by monetary damages. Thus, in addition to other relief, the Parties agree that temporary and permanent injunctive relief is an appropriate remedy to prevent any actual or threatened violation of such provisions or to enforce such provisions according to their terms. The prevailing party in an action for injunctive relief under this Section shall be entitled to recover its costs of enforcement, including reasonable attorneys' fees.

8.2 **Party Representatives.** Except for certain emergency judicial relief authorized in accordance with applicable law, which may be brought at any time, the Parties agree that upon receipt of a written notice from either Party of the existence of a dispute between them, the Parties shall submit the dispute for informal resolution to their designated senior management who are not legal personnel. Any dispute remaining unresolved after a period of thirty (30) days after the receipt of such written notice of a dispute by the other Party may be submitted to arbitration by three (3) arbitrators, administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The award shall be in writing, shall be signed by a majority of the arbitrators, and shall include a statement setting forth the reasons for the disposition of any claim..

8.3 **Choice of Law.** The validity, construction, and interpretation of this Agreement and the rights, duties, and obligations of the Parties hereto shall be governed by the laws of the State of Wisconsin.

8.4 **Venue and Jurisdiction.** The Parties hereby irrevocably consent to venue and the personal jurisdiction (to the fullest extent permitted by applicable law) of the state and federal courts located in Milwaukee, Wisconsin for the resolution of any disputes arising hereunder.

9. **REPRESENTATIONS and WARRANTIES.**

9.1 **By Company.**

9.1.1 **Authority and Validity.** Company represents and warrants that: (A) it is an Entity existing and in good standing under applicable state law; (B) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement; (C) no approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement; and (D) the entering into and performance of this Agreement will not violate any judgment, order, law, or regulation applicable to Company, or any provision of Company's organizational documents.

9.1.2 **Services.** Company represents and warrants that: (A) each of its employees or other personnel providing Services hereunder shall have commercially reasonable training, skill and background; (B) Company shall perform all Services hereunder in a professional and workmanlike manner consistent with industry standards and practices applicable to businesses rendering services of a similar nature to the Services; (C) it shall comply with all applicable Federal, state and local laws and regulations applicable to the performance of the Services; (D) Company will maintain its data centers in Madison, Wisconsin and Eden Prairie, Minnesota to Concurrently Maintainable Standards during the Term; and (E) all Client data will be stored in the United States of America.

9.1.3 **Exception with Respect to Reliance on Data and Information Supplied by Client.** Company will perform the Services set forth in this Agreement on the basis of data, information, and instructions furnished by Client. Company shall be entitled to rely upon any such data, information, or instructions provided by Client. If any error results from incorrect data, information, or instructions supplied by Client, Company shall not be liable for any damages or delays arising therefrom and Client shall be responsible for discovering and reporting such error and supplying the data, information, or instructions necessary to correct such error. Client is ultimately responsible for the adequacy and accuracy of all Client Data provided to Company by Client.

9.1.4 **Background Checks.** Current Company policy requires pre-employment drug testing and background checks of all Company employees using the Company's approved background screening vendor. All background checks include verification of an applicant's highest level of education, employment verification of the last 7 years, criminal (national and county) checks for all places the applicant resided in the past 7 years, and SSN check. All offers of employment are contingent upon clear results of a thorough background check, consistent with both company policy and the law.

9.2 **By Client.** Client represents and warrants that: (i) Client is an Entity validly existing and in good standing under the laws applicable to it; (ii) Client has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement; (iii) no approval, authorization, or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement; (iv) the entering into and performance of this Agreement will not violate any judgment, order, law, or regulation applicable to Client, or any provision of Client's Articles of Incorporation, by-laws or similar document; and (v) there are no actions, suits, or proceedings pending, or to the knowledge of Client, threatened, before any court or administrative agency, arbitrator or governmental body which will, if determined adversely to Client, materially adversely affect its ability to perform its obligations under this Agreement or any related agreement to which it is a party.

9.3 **Disclaimer of Warranties.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF COMPANY AND CLIENT, RESPECTIVELY, SET FORTH IN SECTIONS 9.1 AND 9.2 OF THIS AGREEMENT, COMPANY AND CLIENT HEREBY EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESSED, OR IMPLIED INCLUDING, WITHOUT LIMITING THE

GENERALITY OF THE FOREGOING, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. IN ADDITION, COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE ENTIRELY FREE FROM ERROR OR DEFECT.

## 10. **CONFIDENTIALITY.**

10.1 **Nondisclosure of Confidential Information.** All Confidential Information supplied by a Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) shall remain solely and exclusively the property of the Disclosing Party. Except as expressly authorized herein, as may reasonably be required to perform the Services or by prior written consent of the Disclosing Party, which consent may be withheld in the Disclosing Party’s sole discretion, the Receiving Party shall not use or disclose to any Third Party any of the Disclosing Party’s Confidential Information. The Receiving Party shall only disclose the Disclosing Party’s Confidential Information to those of its Affiliates, employees and their respective contractors who have a need to know it for the purposes of this Agreement and who have agreed to terms substantially similar to this Section 10 regarding such Confidential Information. Each Party shall be responsible for any unauthorized use or disclosure of any the other Party’s Confidential Information received by it and its Affiliates and their respective employees, agents, representatives and consultants.

10.2 **Required Disclosures.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party’s Confidential Information to the extent that the Receiving Party is required by any applicable governmental authority to do so; provided, however, that in such event, to the extent permitted by applicable law, the Receiving Party shall notify the Disclosing Party and shall cooperate with the Disclosing Party in any attempt to contest or limit such required disclosure, at the Disclosing Party’s sole expense.

10.3 **Explicitly-Included Information.** Without limiting the generality of Confidential Information, Company’s information, including computer programs and software, documentation, methodologies, training aids and manuals, and procedures, belonging exclusively to Company shall be treated as Confidential Information and Client shall not disclose, sell, assign, lease, or otherwise make available any such information to any third party or entity, other than its employees who require such information to perform their duties, and shall remain the property of Company, eligible for reuse/resale.

10.4 **Ownership.** Confidential Information will remain the property of the Disclosing Party, eligible for reuse/resale by the Disclosing Party.

10.5 **Degree of Care.** Each Party shall use at least the same degree of care in safeguarding the other Party’s Confidential Information as it uses in safeguarding its own Confidential Information, but in no event less than reasonable due diligence and reasonable care shall be exercised.

## 11. **PROPRIETARY RIGHTS.**

11.1 **Client Data.** As between the Parties, Client shall remain the sole and exclusive owner of all Client Data and other Confidential Information (as herein defined below) including passwords provided to Client. Following the provision of the applicable Services, Client shall be and remain responsible for changing any password provided to or provided by Company. Upon any termination or expiration of this Agreement, or earlier upon Client’s request, Company shall promptly, and at Client’s expense as agreed to by the Parties in an Statement of Work, provide to Client copies of Client Data in its possession or control, on commercially reasonable media designated by Client, in the format on which it resides on the Company systems. Company shall charge for its time at its then current standard hourly rates. In any event, Company’s charges for such services will not exceed \$250,000. Alternatively, Client may choose to retain a third party provider to copy and/or transfer Client Data. Company will have no right to use the Client Data after the termination or expiration of this Agreement.

11.2 **Use of Client Data.** Subject to Company’s obligation in accordance with applicable law, Client Data shall not be: (i) used by Company other than in connection with providing the Services; (ii) disclosed, sold, assigned, leased, or otherwise provided to third parties by Company or its employees or agents, Company’s Affiliates or Company’s subcontractors, except to the extent required to perform the Services in accordance with the terms hereof; or (iii) commercially exploited by or on behalf of Company, Company’s Affiliates or Company’s subcontractors. Company shall not obscure or remove any notices or labels identifying the Client Data as Client’s property.

11.3 **Company Knowhow.** Client acknowledges that Company, in the normal conduct of its business, may use concepts, skills and know-how developed while performing other contracts. Client acknowledges the benefit which may accrue to it through this practice, and accordingly agrees that anything in this Agreement notwithstanding Company may continue, without payment of a royalty, this practice of using concepts, skills and know-how developed while performing this Agreement. Client acknowledges that it has no rights in any software, hardware, systems, documentation, guidelines, procedures, methodologies, and similar related materials or processes, or any modifications thereof, provided by Company (the “**Knowhow**”), except with respect to Client’s use of the same during the Term as part of Client’s access and use of the Services. Any intellectual property developed by Company in the course of performance of this Agreement shall be the proprietary property of Company and shall be owned exclusively by Company, and Client shall receive a royalty-free, nonexclusive, irrevocable right and license to use such proprietary software during the term of this Agreement. Client shall have ownership of, but Company shall have an irrevocable, fully paid up license to use and exploit, any Company Knowhow included in any software or documentation developed by Company specifically for and at the request of Client and specifically noted as a deliverable in the applicable Statements of Work. Company shall own all scripts, methods, and processes developed for Client except to the extent the applicable Statement of Work specifically identifies such script, process, or method to be specifically paid for by Client and owned by Client.

11.4 **Client Equipment.** Company acknowledges that it has no rights in any software, hardware, systems, documentation, guidelines, procedures, and similar related materials or processes, or any modifications thereof, provided by Client, except with respect to Company’s use of the same in providing the Services during the Term. Client shall, at Client’s sole cost, take whatever action is necessary for Company to be provided with nonexclusive rights and/or licenses to use software provided by Client for use by Company in providing the Services.

## 12. **BUSINESS CONTINUITY.**

12.1 **Disaster Recovery.** Except as set forth in a Statement of Work, Client is responsible for all backup, nonstandard data protection, hot site, disaster recovery and other similar services designed to protect Client’s systems, software or data.

12.2 **Force Majeure.** Notwithstanding any provision contained in this Agreement, neither Party shall be liable to the other to the extent fulfillment or performance of any terms or provisions of this Agreement is delayed or prevented by revolution or other civil disorders; wars; acts of enemies; strikes; labor disputes; electrical equipment or availability failure; fires; floods; acts of God; federal, state or municipal action; statute; ordinance or regulation; or, without limiting the foregoing, any other causes not within its control, and which by the exercise of reasonable diligence it is unable to prevent, whether of the class of causes hereinbefore enumerated or not (each, a “**Force Majeure Event**”). This clause shall not apply to the payment of any sums due under this Agreement by either Party to the other.

## 13. **SECURITY AND PRIVACY.**

13.1 **Transmission of Data.** The expense and risk of loss associated with transportation and transmission of data and media between Company and Client shall be borne by Client. Client shall be responsible for submitting Client Data to Company and Company shall be responsible for transmitting the processed Client Data to Client.

13.2 **Security Procedures.** Company agrees that it shall establish and perform security procedures with respect to Client Data provided to Company by Client under the terms of this Agreement in accordance with accepted industry practices or processes, practices and procedures, which shall be no less comprehensive than those set forth in the security policies developed and enhanced by Company from time to time to maintain currency with technology security practices. Subject to the confidentiality obligations as provided herein, Company shall provide Client with Company’s annual SSAE-16 SOC1 audit report.

13.3 **Additional Requirements under Applicable Law.** If required by applicable law, Company shall implement additional procedures or other requirements, and the Parties agree that they will negotiate an equitable adjustment to the contract to compensate Company for additional costs it may incur thereby. Company further agrees that, if otherwise reasonably requested by Client or otherwise recommended by a third party auditor (but not required by law), that Company implement additional procedures or other security measures or requirements, then Company will implement, at Client’s cost and expense, and will assist Client and its third party contractors, as necessary, to implement, such additional procedures or other requirements.

13.4 **Physical and Logical Security.**

13.4.1 **At Company Site.** Company shall use commercially reasonable efforts to restrict logical access to equipment and/or media on Company's site containing Client Data to authorized individuals as required in the applicable Statement of Work. Company shall perform commercially reasonable measures to limit physical access to Client Data in its custody or control, which may include use of electronic access control, CCTV, and intrusion detection systems; implementing visitor entry control procedures; securing offices, rooms, and facilities; protecting against external and environmental threats; and controlling all access points including delivery and loading areas.

13.4.2 **At Client Site.** Except as stated in an Statement of Work, Client shall be responsible for using commercially reasonable efforts to restrict physical and logical access to equipment and/or media on Client's site.

13.5 **Software and Virus Protection.** Each Party shall regularly review and update, as necessary, all software, firmware, firewalls and hardware used on such Party's systems in accordance with industry practice. Each Party shall notify the other Party as soon as practicable in the event of becoming aware of the actual or potential transmission of any identified computer virus by such Party to the other Party. Each Party shall install and maintain commercially reasonable anti-virus software on its systems and update such anti-virus software on a regular basis in accordance with relevant industry practice.

13.6 **Data Security Breaches.** Company shall, within twenty-four (24) hours of discovery of a suspected Data Security Breach or as soon as practicable upon a confirmed Data Security Breach, notify Client of any Data Security Breach or any other unauthorized access, disclosure, acquisition, or use of the Client Data provided to it by Client or Client' customers. As soon as possible thereafter, Company shall provide Client full details of the unauthorized access, disclosure, acquisition, and/or use. Company will cooperate with Client in a commercially reasonable manner to investigate the incident and will exert commercially reasonable efforts to (i) terminate the unauthorized access, disclosure, acquisition, and/or use and (ii) prevent the reoccurrence thereof. Company shall provide reasonable assistance to Client to regain possession of and terminate any unauthorized access, disclosure, acquisition, and/or use of the Client Data. Company shall reasonably cooperate with Client in the conduct of any investigation of or litigation involving third parties related to said incident. Company shall assist and cooperate with Client concerning any disclosures to affected parties, government or regulatory bodies, and other remedial measures as reasonably requested by Client or as required under any applicable privacy or data protection law. If the Data Security Breach was caused by Company's negligence or fault, Company shall discharge all responsibilities set forth herein at Company's cost and expense.

13.7 **Client Acknowledgment.** Client acknowledges that: (a) Company does not guarantee the licensed Services will detect all security weaknesses, potential security problems or potential breaches; (b) certain types of licensed Services may cause equipment, software or communications failures or otherwise interrupt or disrupt network services; (c) adequate backups and disaster preparedness should be completed prior to the performance of any licensed Services.

14. **MISCELLANEOUS.**

14.1 **Entire Agreement.** This Agreement, together with the Statements of Work entered into hereunder, the Milwaukee County Data Center Operations Professional Services RFP dated November 2015 ("RFP"), Company's response to the RFP ("Company's Response"), and Company's Acceptable Use Policy (which may be amended by Company from time to time) located at [www.oneneck.com](http://www.oneneck.com) and incorporated herein by reference, constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiations, agreements, and undertakings, whether written or oral, between the Parties with respect to such matter. This Agreement may be amended only by an instrument in writing referencing this Agreement and executed by the Parties or their permitted assignees. Notwithstanding anything to the contrary, any additional purchase orders provided by Client hereunder shall have no cause and effect other than for the price and quantity set forth therein.

14.2 **References.** In this Agreement, "include" and "including" shall mean respectively, "includes, without limitation" and "including, without limitation."



14.3 **Interpretation.** In the event of a conflict between this Agreement and the terms of any amendment, Statement of Work, Company's Response, or the RFP, the terms shall be controlling in this order: (i) amendment(s) to this Agreement in reverse chronological order, but solely with respect to the subject matter of such amendments, (ii) this Agreement (iii) each Statement of Work, (iv) Company's Response, and (v) the RFP provided, however, that an Statement of Work shall control to the extent the Parties explicitly reference this Section of the Agreement by title (i.e. "Interpretation" or "Section 14.3") in such Statement of Work and state therein that the Statement of Work shall control over this Agreement in such instance.

14.4 **Assignment.** Except as otherwise set forth by the applicable OEM terms or end user license agreements, neither Party may assign this Agreement or any rights, obligations, or benefits under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment in contravention of this Section 14.4 shall be void. This Agreement shall bind, benefit and be enforceable by and against the Parties and their respective successors and assigns. No third party shall be considered a beneficiary of this Agreement or entitled to any rights under this Agreement.

14.5 **Relationship of Parties.** The Parties intend to create an independent contractor relationship and nothing contained in this Agreement shall be construed to make either Client or Company joint venturers, principals, partners, agents, or employees of the other. No officer, director, employee, agent, affiliate, or contractor retained by Company to perform work on Client's behalf under this Agreement shall be deemed to be an employee, agent, or contractor of Client. Neither Party shall have any right, power or authority, express or implied, to bind the other. Each Party shall remain responsible, and shall indemnify and hold harmless the other Party, for the withholding and payment of all Federal, state, and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies, or employee benefit requirements (under ERISA, state law, or otherwise) now existing or hereafter enacted and attributable to themselves and their respective employees.

14.6 **Notices.** Except as otherwise specified in the Agreement, all notices, requests, approvals, consents, and other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by i) first class U.S. mail, registered or certified, return receipt requested, postage pre-paid; or ii) U.S. express mail, or other, similar overnight courier service to the address of the other Party as stated below. Notices shall be deemed given on the day actually received by the Party to whom the notice is addressed.

Notices to Client shall be given as follows:

Milwaukee County  
Attn: Laurie Panella  
633 West Wisconsin Avenue, Suite 1100  
Milwaukee, WI 53203

Notices to Company shall be given as follows:

OneNeck IT Solutions  
525 Junction Road  
Madison, WI 53717  
Attn: Legal Department

with a copy to: Stephen P. Fitzell, Esq.  
Sidley Austin LLP  
One South Dearborn St.  
Chicago, IL 60603  
Fax #: 312.853.7036

14.7 **Publicity.** Neither Party shall be entitled to use the other Party's name and/or tradename(s) in promotional or marketing materials, or on any listing of its customers, partners, vendors, and/or business affiliations, including but not limited to press releases or other public statements regarding the relationship between the Parties or this Agreement without the prior written consent of the other Party. Any such publicity shall not negatively impact or reflect upon such other Party or reveal any proprietary information of such other Party.

14.8 **Section Headings.** Section headings in this Agreement are for reference purposes only and shall not affect the interpretation or meaning of this Agreement nor be construed as part of this Agreement.

14.9 **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original document but all such counterparts together shall constitute one binding agreement.

14.10 **Waiver.** No delay or omission by either Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the Party waiving its rights.

14.11 **Severability.** If any provision of this Agreement is held for any reason by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect and the provision found to be contrary to law shall be deemed modified to the most limited extent required in order to cause such provision to be in accordance with applicable law while most fully carrying out the intent of the applicable provision as set forth herein.

14.12 **Survival.** Any Section of this Agreement shall survive to the extent required for the performance of such provision in accordance with the terms hereof.

14.13 **No Third Party Beneficiaries.** Each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Client and Company.

14.14 **Construction.** Company and Client each acknowledge that the limitations and exclusions contained in this Agreement have been the subject of active and complete negotiation between the Parties and represent the Parties' agreement based upon the level of risk to Client and Company associated with their respective obligations under this Agreement and the payments to be made to Company and the obligations to be incurred by the Parties pursuant to this Agreement. The Parties agree that the terms and conditions of this Agreement shall not be construed in favor of or against either Party because each Party had the opportunity to review and negotiate the terms hereof. For the avoidance of doubt, Client agrees that the terms set forth in this Agreement constitute reasonable terms applicable to each Statement of Work entered into by the Parties.

14.15 **Insurance.** Each Party shall maintain a "Commercial General Liability Insurance" policy with limits of not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate covering injuries or damage to any person or property which results from their operations or activities under this Agreement. Self-insurance as permitted for a municipal body corporate under §893.80, §895.461, and §102.28(2)(b) of the Wisconsin Statutes satisfies this requirement. Client shall maintain property/casualty insurance with limits not less than the replacement value of any equipment or assets in the facilities, or under the control, of Company, covering damage to any such equipment or assets. Company shall also maintain a "Professional Liability" insurance policy to cover its errors and omissions with limits of not less than \$1,000,000 each occurrence/claim, \$2,000,000 in the aggregate. If Company will be conducting any of its activities onsite at a Client location, Company shall also maintain the following coverage: (A) "Workers' Compensation Insurance" to fully comply with all applicable laws of the state(s) where such work or services is to be performed and provide a waiver of subrogation in favor of Client; (B) "Employer's Liability Insurance" with a limit of not less than \$1,000,000 each accident; and (C) "Automobile Liability Insurance" covering all owned, non-owned and hired automobiles with a combined single limit of not less than \$1,000,000 each accident. Insurance procured by Company shall be with an insurer with an AM Best rating of at least A- IX or AM Best equivalent in foreign jurisdictions. A certificate of insurance evidencing these coverages shall be provided to Client prior to the commencement of services under this agreement. Company shall endeavor to provide County with thirty-day written notice of any cancellation or non-renewal.

14.16 **Milwaukee County Standard Terms and Conditions.**

14.16.1 **Independent Contractor.** Nothing contained in this Contract shall constitute or be construed to create a partnership or joint venture between the County or its successors or assigns and Contractor or its successors or assigns. In entering into this Contract, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor duly authorized to perform the acts required of it hereunder.

14.16.2 **Affirmative Action.** The Company agrees that it will strive to implement the principles of equal employment opportunities through an effective affirmative action program, and will so

certify prior to the award of the contract, which program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment in all divisions of the contractor's workforce, where these groups may have been previously under-utilized and under-represented. The Company also agrees that in the event of any dispute as to compliance with the aforesaid requirements, it shall be his/her responsibility to show that he/she has met all such requirements.

14.16.3 **Americans With Disabilities Act.** Company agrees to comply with the nondiscrimination requirements of Title II and III and other provisions of the Americans with Disabilities Act of 1990, Pub. Law 101-336, as amended and currently cited as 42 USC 12101, et seq.

14.16.4 **Audit and Inspection of Records.** For a period up to three years after completion of the Agreement, Company shall permit the authorized representatives of Client, after reasonable notice, to inspect and audit all data and records of Company related to this Agreement. Company must obtain prior written Client approval for all subcontractors and/or associates to be used in performing any of the obligations described in this Contract. There must be a written Contractual agreement between Company and its County-approved subcontractors and/or associates, which binds the subcontractor to the same audit Agreement terms and conditions as the Company.

14.16.5 **Non-Conviction for Bribery.** Company hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

14.16.6 **Code of Ethics.** Company hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part: "No person may offer to give to any County Officer or employee or his/her immediate family, and no County Officer or his/her immediate family may solicit or receive anything of value pursuant to an understanding that such officers or employees vote, official action or judgment would be influenced thereby."

Company during the period of this Agreement shall not hire, retain or use for compensation any member, officer, or employee of the County or any person who, to the knowledge of Contractor, has a conflict of interest.

15. **DEFINITIONS.** As used in this Agreement and the attachments hereto (collectively, the "**Documents**"), the following terms shall have the following meanings with such definitions to be applicable to both the singular and plural use of the terms.

15.1 "**Affiliate**" shall mean, with respect to a Party, any Entity at any time Controlling, Controlled by, or under common Control with, such Party, but only as long as such Entity meets these requirements.

15.2 "**Change Order**" shall mean a written request by either Party, in a form mutually agreed by the Parties, seeking a change to the Services, in accordance with the procedures described in Section 3.

15.3 "**Client Data**" shall mean any and all data and information of any kind or nature submitted to Company by Client, or received by Company on behalf of Client, in connection with the Services or otherwise.

15.4 "**Confidential Information**" shall mean, with respect to either Party, this Agreement, together with all confidential business or technical information or materials of such Party; provided, however, that Confidential Information shall not include information or materials that the Receiving Party can demonstrate: (i) was known to the Receiving Party prior to the Effective Date free of any obligation of nondisclosure; (ii) was generally known or available to the public prior to the date of disclosure to the Receiving Party or subsequently became generally known or available to the public through no fault of the Receiving Party; (iii) was lawfully received by the Receiving Party from a Third Party free of any obligation of nondisclosure; or (iv) is or was independently developed by the Receiving Party without use of or reference to any Confidential Information of the Disclosing Party.

15.5 "**Control**" shall mean the direct or indirect ownership of 50% or more of the capital stock, or other ownership interest if not a corporation, of any Entity or the possession, directly or indirectly, of the power to direct the management and policies of such Entity by ownership of voting securities, by contract, or otherwise.

“Controlling” shall mean having Control of any Entity and “Controlled” shall mean being the subject of Control by another Entity.

15.6 “**Data Security Breach**” shall mean an unauthorized act or occurrence that bypasses or contravenes security policies, practices, or procedures and which could reasonably be expected to have a material impact on the Services.

15.7 “**Effective Date**” shall mean the date first set forth herein above.

15.8 “**Effective Date of Termination**” shall mean the last day on which Company provides Services to Client, pursuant to an applicable Statement of Work.

15.9 “**Entity**” means a corporation, partnership, sole proprietorship, limited liability company, joint venture, or other form of organization, and includes the Parties hereto.

15.10 “**Executed Order**” or “**Statement of Work**” means a written order, including by executed quote, purchase order, statement of work, email or by other written agreement as executed or agreed to by the Parties, for Services that references this Agreement and is executed by the Parties.

15.11 “**Monthly Base Fee**” shall mean the monthly fees payable by Client to Company as set forth in an applicable Statement of Work.

15.12 “**Services**” shall mean the services, functions, and responsibilities described in this Agreement or in any Statement of Work to be performed by Company during the Term hereof.

15.13 “**Third Party**” shall mean any Entity other than the Parties or any Affiliates of the Parties and shall include any subcontractors of the Parties.

*[signature page follows]*

**THE PARTIES HEREBY ACKNOWLEDGE that they have read and understand this Agreement and any Exhibits, and agree to be bound by all of the provisions, terms and conditions specified herein.**

**IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives.**

**OneNeck IT Solutions LLC:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_ (Date)  
Title: \_\_\_\_\_

**Milwaukee County:**

By: \_\_\_\_\_  
Laurie Panella, CIO (Date)  
Information Management Services Division

**Reviewed by Milwaukee County Risk Management and Corporation Counsel:**

By: \_\_\_\_\_  
Risk Manager (Date)  
Office of Risk Management

By: \_\_\_\_\_  
Corporation Counsel (Date)

**Approved by Milwaukee County Department of Administrative Services, Procurement Division:**

By: \_\_\_\_\_  
Patrick Lee, Director (Date)  
Procurement Division