January 22, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

**Approval for a Lease Agreement with OneNeck IT Solutions LLC for rack space in a Bend Data Center. Total value is $37,900 over 5 years. Funding is through the Clackamas Broadband eXchange cable lease revenue. No County General Funds are involved.**

| Previous Board Action/Review | The Board has previously approved rack leases with data centers for CBX in 2021 with Denver Gas & Electric Building MMR, LLC. | | |
|---|---|---|---|
| Performance Clackamas | 1.  Which indicator of success does this item affect?<br>     a.  Build strong infrastructure<br>     b.  Grow a vibrant economy | | |
| Counsel Review | Yes | **Procurement Review** | No |
| Contact Person | Duke Dexter | **Contact Phone** | 503-722-6663 |

**EXECUTIVE SUMMARY:**
CBX is seeking authorization for a 5 year lease for 1/2 data rack at the OneNeck Data Center in Bend Oregon. This rack space in the OneNeck data center will host CBX network gear for Continuity of Operation Plan (COOP) equipment as well as a second Internet source for Clackamas County. OneNeck will provide the rack space, climate control, electricity and security for the CBX network equipment. The rack space will strengthen the CBX network in case of a seismic event that could render the Portland market inoperable yet is close enough for easy access by CBX staff.

**RECOMMENDATION:**
Staff respectfully recommends approval of the contract with OneNeck Data Center for the 1/2 data rack. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Respectfully submitted,

Linu Parappilly
CIO Director

For Filing Use Only

## MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT** ("**Agreement**") is hereby entered into as of the date of last signature below ("**Effective Date**") by and between OneNeck IT Solutions LLC d/b/a OneNeck IT Solutions, a Delaware limited liability company, with a principal place of business at 525 Junction Road, Madison, WI 53717 ("**Company**" or "**OneNeck**") and Clackamas County, whose principal place of business is located at 2051 Kaen Road, Oregon City, OR 97045 ("**Client**").  Company and Client may hereinafter be collectively referred to as the "**Parties**", each a "**Party**".

1.      **PERFORMANCE OF SERVICES**.

        1.1      **Executed Orders**.  The Parties shall negotiate and execute one or more **Executed Orders** (as defined below) under this Agreement containing terms and conditions agreed to by the Parties. The Parties agree that this Agreement applies to each Executed Order.  The Parties acknowledge and agree that an Executed Order shall also include a purchase order from Client which references a specific Company quote number.

        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 Executed Orders, 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 Executed Order.

        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 Executed Order, 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.

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 may be renewed, upon execution of an amendment on terms acceptable to both parties, for additional one (1) year terms (each a "**Renewal Term**").  Each Executed Order hereunder shall commence on the applicable commencement date set forth therein, and shall expire in accordance with the terms thereof.  Executed Orders shall be subject to termination in accordance with Section 5.  In the event that any Executed Order(s) have not been completed when the Agreement expires, the Agreement shall remain in effect until the completion of such Executed Order(s).

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 Executed Order, 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 Executed Order.

4.2     **Taxes**.  Unless Client provides documentation of exemption from taxes prior to invoicing, Client shall pay all sales, use, excise, and other similar taxes assessed as a result of the Services provided under this Agreement.  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 Executed Order.

4.4     **Due Date**.  Except as set forth in an applicable Executed Order, Client shall pay undisputed invoice amounts within thirty (30) 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.  Any late payment shall bear interest at the rate of one and one half percent (1½ %) per month or the maximum rate allowed under law, whichever is lower, or fraction thereof, from the due date until paid in full.  Disputed amounts, if the dispute is resolved in favor of Company, shall bear interest from the due date until paid.  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.

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

4.7     **Audit Rights**.  During the Term, Client will have the right, during normal business hours and upon at least ten (10) business days' prior notice, to cause a third-party professional auditing firm, subject to customary confidentiality obligations, to inspect and audit Company's records to the extent necessary to confirm the accuracy of the Fees charged to Client by Company.  Any such audit will be conducted at Client's expense.  Company will promptly credit to Client any amounts shown by any such audit to be owing.  Such audits will be conducted no more than once in any period of twelve (12) consecutive months.

5.     **TERMINATION**.

5.1     **For Cause**.  In the event either Party fails to perform any of its material obligations under an Executed Order, including paying any amount due under an Executed Order, 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 Executed Order 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 Executed Orders following Client's failure to cure the default within sixty (60) days of receiving written notice. Notwithstanding the foregoing, Client shall pay Company for Services already performed prior to the date of termination.

5.2     **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 Executed Orders as of the date specified in such notice of termination.

5.3     **Other**.  This Agreement may be terminated for the following reasons: (A) by mutual written agreement of the parties or (B) at any time Client fails to receive funding, appropriations, or other expenditure authority as solely determined by Client.

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

6.1     **LIMITATION OF LIABILITY**.  EXCEPT WITH RESPECT TO AMOUNTS CLIENT IS

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OBLIGATED TO PAY UNDER AN EXECUTED ORDER IN ACCORDANCE WITH <u>SECTION 4</u> OR AS ARISING OUT OF AN INTENTIONAL WRONGFUL ACT OF THE PARTY, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, 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 THE FEES PAID DURING THE PRECEDING TWELVE MONTHS BY CLIENT 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.

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, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, BE LIABLE TO THE OTHER 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**. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, 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) 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; (ii) 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 (iii) 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 <u>Section 7.2(i)</u> below. Client shall be responsible for any costs and expenses incurred by Company in connection with the enforcement of this <u>Section 7.1</u>, including, but not limited to, reasonable attorneys' fees.

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; (ii) work-related injury or death caused by Company or its Affiliates, subcontractors or service providers, or any of their employees or agents, while performing activities in connection with this Agreement; and (iii) tangible personal or real property damage caused by Company or its Affiliates, subcontractors or service providers, or any of their employees or agents, while performing activities in connection with this Agreement. Company shall be responsible for any costs and expenses incurred by Client in connection with the enforcement of this <u>Section 7.2</u>, including, but not limited to, reasonable attorneys' fees.

7.3 **Indemnity Procedures**. The indemnification obligations set forth in <u>Sections 7.1</u> and <u>7.2</u> 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

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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.

     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 any court having competent jurisdiction in accordance with Section 8.4.

     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 Oregon.

     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 Clackamas County, Oregon, for the resolution of any disputes arising hereunder.

     8.5  **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

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; and (C) it shall comply with all applicable Federal, state and local laws and regulations applicable to the performance of the Services.

       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,

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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.

9.2 **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 of 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.

10.6 **Oregon Public Records Law.** Notwithstanding anything to the contrary, Client's obligations under this agreement are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter

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192 et. seq., and any other applicable state or federal law. While Client will make good faith efforts to perform under this agreement, Client's disclosure of Confidential Information, in whole or in part, will not be a breach of the agreement if such disclosure was pursuant to a request under the Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar processes.

If Client is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, Client shall notify Company within a reasonable period of time of the request. Company is exclusively responsible for defending Company's position concerning the confidentiality of the requested information. Client is not required to assist Company in opposing disclosure of Confidential Information, nor is Client required to provide a legal opinion as to whether the Confidential Information is protected under ORS Chapter 192, et. seq., or other applicable state or federal law.

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, provide to Client copies of Client Data in its possession or control, on media designated by Client, in the format on which it resides on the Company systems.  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, 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 Executed Orders.  Company shall own all scripts, methods, and processes developed for Client except to the extent the applicable Executed Order 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 an Executed Order, 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.

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 Executed Order.  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 Executed Order, 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 promptly 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, 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.

14.    **MISCELLANEOUS**.

14.1    **Entire Agreement**. This Agreement, together with the Executed Orders entered into hereunder and Company's Acceptable Use Policy (which may be amended by Company from time to time) located at 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 or Executed Order, the terms shall be controlling in this order: (i) amendment(s) in reverse chronological order, but solely with respect to the subject matter of such amendments, (ii) this Agreement and (iii) each Executed Order, provided, however, that an Executed Order 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 Executed Order that the Executed Order 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, provided, however, that either Party may freely assign this Agreement without the prior written consent of the other Party (i) in connection with a merger, corporate reorganization, or sale of all or substantially all of its assets, stock, or securities, or (ii) to any Entity which is a successor to all or substantially all of the assets or the business of the applicable Party. 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:

Clackamas County
2051 Kaen Road
Oregon City, OR 97045


Notices to Company shall be given as follows:

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


with a copy to:    John Kelsh, 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 Executed Order entered into by the Parties.

14.15    **Insurance**.  Each Party shall maintain insurance, or self-insurance, equivalent to 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.  Client shall maintain property/casualty insurance, or self-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. Company shall also maintain a Cyber Liability insurance policy to cover network security (including data breach), privacy, interruption of business, media liability, and errors and omissions with limits of not less than $1,000,000 per

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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; (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.

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 Executed Order.

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

15.10     "**Executed Order**" 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 Executed Order.

15.12     "**Services**" shall mean the services, functions, and responsibilities described in this Agreement or in any Executed Order 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]*

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**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**
**d/b/a OneNeck IT Solutions**

**Clackamas County**

**By:** _____

**By:** _____

**Name:** _____

**Name:** _____

**Title:** _____

**Title:** _____

**Date:** _____

**Date:** _____

**Approved as to Form:**

_____  01/23/2024
**County Counsel**            **Date**

# Statement of Work

......................................................

For Colocation 1/2 Cabinet - Bend

## Clackamas County

Order ID# 2023-27291

**Attention:**
Duke Dexter
IT Manager
Clackamas County
ddexter@clackamas.us

**Submitted By:**
Greg Egli
Senior Account Executive-Hybrid
OneNeck IT Solutions
480-315-3078
Greg.Egli@oneneck.com

**Submitted By:**
Jonathan Mierow
Associate Solutions Architect
OneNeck IT Solutions

jonathan.mierow@oneneck.com

CONFIDENTIAL
OneNeck IT Solutions LLC
1.855.ONE-NECK

DocVer #2019.02.26

525 Junction Road
Madison, WI 53717

# 1 Statement of Work Summary

This document defines the services, pricing, terms and conditions for the following categories of services provided by OneNeck IT Solutions LLC ("Company" or "OneNeck"):

- Data Center

## 1.1 Service Summary

| | |
|---|---|
| **Term** | 60 Months |
| **Estimated Monthly Invoice Fees** | **$600.00** |
| Fixed Monthly Fees | $600.00 |
| Estimated Metered Fees | $0.00 |
| **One Time Fees Due** | **$1,900.00** |

See section 2, Pricing Details for additional granularity.

# 2 Pricing Details

## 2.1 Monthly Recurring Service Fees

| # | ItemID | Service Description | Location | UoM | Unit Price | Qty | Total Price |
|---|--------|---------------------|----------|-----|-----------|-----|-------------|
| 2 | 600446 | Colocation 2.0 kW power and 21RU half-cabinet | BND | Each | $500.000000 | 1 | $500.00 |
| 4 | 112021 | Carrier Cross-Connection: Fiber Optic Cross-Connect | BND | Cable | $50.000000 | 2 | $100.00 |
| | | | | | | **Sub Total** | **$600.00** |

## 2.2 One-Time Fees - Implementation Services

| # | ItemID | Service Description | Location | UoM | Unit Price | Qty | Total Price |
|---|--------|---------------------|----------|-----|-----------|-----|-------------|
| 3 | 600429 | Standard Setup Bundle 2kW Half-Cabinet | BND | Each | $1,500.000000 | 1 | $1,500.00 |
| 5 | 112021-N | Setup For Carrier Cross-Connection: Fiber Optic Cross-Connect | BND | Cable | $200.000000 | 2 | $400.00 |
| | | | | | | **Sub Total** | **$1,900.00** |

## 2.3 Pricing Notes and Offers

- Prices listed do not contain applicable sales tax.
- Pricing reflects discounts for commitments to unit volume.  Modification to unit quantity / volume can affect unit prices.
- The offers, terms and prices of this Statement of Work expire 02-28-2024 unless executed by the Parties.

# 3 Project Definition

## 3.1 Service Delivery Scope

### Introduction
Client has selected OneNeck as their colocation provider and chosen a cabinet at the Bend, OR (BND) facility.

### Colocation

**Parameters**
Location(s):
Bend, OR (BND)
Cabinet type:
OneNeck supplied
Power Strips:
OneNeck supplied

### OneNeck Responsibilities
OneNeck will perform the following activities/tasks:
**Discovery and Design**
- Identify the power circuit type for cabinets.
- Review power strip requirements.
- Work with Client to define 3-digit code for cabinet combo locks, as applicable.
- Work with Client to define receptacle type for Client supplied power strips, as applicable.

**Implementation**
- Provision cabinet(s) at colocation facility.
- Install power strips.
- Configure 3-digit code for cabinet combo locks, as applicable.
- Secure keys in keywatcher system, as applicable.
- Provide and install blanking panel sections/strips/fasteners after Client has completed equipment migration.

### Client Responsibilities
- Client will perform the following activities/tasks:
- Migrate equipment into colocation cabinet.

# 4 Service Catalog

## 4.1 Introduction

The following section(s) detail the service definitions for standardized products elected for service within this Statement of Work.

## 4.2 Colocation Services

### 4.2.1 Cabinets

**ItemID:**  600446  **| Category:** Cabinets
**Description:**  Colocation 2.0 kW power and 21RU half-cabinet

Company's Responsibilities and Included Features
The colocation half-cabinet metered power service provides 21 RU of equipment space and power infrastructure to support 2kW of power consumption.  Service includes 2kW of power usage.  Company will deliver the following services:


Cabinet Compartment

- 21 RU secured cabinet compartment via locking front and back cabinets doors.  The compartment also includes top and bottom separating panels.

  - 1RU = 1.75 inches of equipment space
- A single cabinet approximately 28" wide by 48" deep
- Standard 19" mounting rails
- Top and bottom cable raceway
- Cabinet divider
- Vertical exhaust ducts
Power
- 2.5 kilowatts of power infrastructure.  Power usage up to 2kW is included.

- Power delivered to each Client cabinet via primary and redundant branch circuits.
- Delivery of primary and redundant branch circuit pairs per cabinet of the following circuit type 208v 20a.
Managment

- Notification to Client if power maximums are exceeded
- Validate compliance with applicable codes and zoning ordinances, proper airflow, proper security (locking front and rear doors and proper services clearances, and space compliance for height, depth and weight
- Provide Two (2) hours of remote hands services per Client per month, tracked in 15 minute increments. Remote hands services include:
  - Equipment power cycling
  - Secure patch cable connections
  - Observation of equipment, display indicators and general environment
  - Physical placement of hotplug components (i.e. placement of USB and CD/DVD media into equipment)
  - Escorts of Client's unbadged vendors, employees, and auditors

- Handling of Client's media (e.g. tapes) including shipping and receiving
- Provide 24/7 access to data center, and up to 3 access cards per Client

Client's Responsibilities and Out-of-Scope Notes (unless covered by another ItemID)
- Provide all in rack infrastructure IT infrastructure
- Rack and cable the equipment
- Specify the correct circuit and plug type as required by the manufacturer's specifications
- Utilize no more power than the maximum average power density as specified 2000 watts (2kW)
- Client may elect to provide their own power strips within the cabinet. Client provided power strips must be UL listed and meet all applicable local and national electric codes.

## 4.2.2 Cross Connections

**ItemID:**   112021   **| Category:** Cross Connections
**Description:**   Carrier Cross-Connection: Fiber Optic Cross-Connect

Company's Responsibilities and Included Features
The cross connection service delivers a physical connection from the Data Center Telecommunications rooms to the Client demarcation point.
- Single physical cable delivered structured cable plant to the Client demarcation point. Demarcation points are either the Client occupied colocation cabinet, or in the ReliaCloud Integration cabinet.
- Singlemode Fiber, UPC/LC
- Support of cable and terminations
- Maintain on-site inventory or replacement materials (cable and connectors)
- Maintenance and protection of cable fiber pathways

Client's Responsibilities and Out-of-Scope Notes (unless covered by another ItemID)
- Order and maintain circuit with vendor of choice
- Provide end termination equipment
- Provide circuit identification Numbers

# 5 Terms and Conditions

## 5.1 Service Descriptions

Upon execution of this Statement of Work ("SOW") by Clackamas County ("Client") and OneNeck IT Solutions LLC ("Company") (the "Effective Date"), the Parties shall begin working together to complete the logistical prerequisites for the delivery and use of the Services purchased by Client.

## 5.2 Billing Events

Client billing events include but are not limited to a) initial creation and hand-off to Client of the committed pool of resources, b) static monthly billing for the committed pool of resources, c) bandwidth, data transport, or use of other metered offerings, d) use of billable software licenses, e) changes or modifications to the environment such as expansions of committed resources or configuration of network services, f) change management requests and professional services requests not covered by the Statement of Work, and/or g) sign-off of the acceptance and commencement addendum.  The 'Commencement Date' for this SOW shall be the date on which the Services are turned over to Client as evidenced by a written notice of completion from Company.

## 5.3 Systems, Hardware and Software End of Support

Notwithstanding any other provision in this SOW, Company support for Client systems, hardware, or software managed by Company or reliant on Company Services (individually and collectively the "Affected Equipment") such as backup, monitoring or patching,  will change when the applicable original equipment manufacturer ("OEM") publishes an end of life, end of support, end of extended support or like date which reduces or eliminates OEM provided support (the "EOS Date").  Affected Equipment which is past its EOS Date is hereinafter referred to as "Unsupported Equipment".

Services provided to Unsupported Equipment will be limited, and no SLAs or SLOs will be applicable to Unsupported Equipment or Services related thereto.  Additionally, as Company can no longer maintain effective security for Unsupported Equipment, **Client hereby releases all claims against Company arising, directly or indirectly, from security incidents related to Unsupported Equipment and/or any Services performed on Unsupported Equipment.**

Company will endeavor to inform Client of pending EOS Dates of which it becomes aware.

Services for Unsupported Equipment will be limited to troubleshooting and working to resolve issues, including compatibility with supporting systems, due to lack of OEM support.

## 5.4 Co-administration

When Company provides self-service access to a system, device or application, in which Client has subscribed to Company's Managed Services, this will be deemed as co-administration.

Company's SLA obligations will not apply to incidents caused by Client's co-administration activities. Company's remediation of Client's caused co-administration activities will be charged to Client based on time and materials basis.

# 6 Service Level Agreement - Company Services

The terms and conditions of this Section shall only apply to Company Services (as defined below) and are subject to and conditioned upon Client's compliance with the terms herein, the parties' Master Services Agreement, and any applicable Acceptable Use Policy.

Company will provide the Company Services in accordance with the service levels described in this Section (the "Company SLAs"). If Company fails to meet the Company SLAs, Client will be eligible for a Service Credit as outlined in the "Service Credits" below. The Service Credit represents an estimate of the costs associated with Company's failure to meet the Company SLAs and shall not be deemed or construed as a penalty.

Service Credits will be calculated from the time unavailability is reported to Company by Client or logged by Company and a "trouble-ticket" is generated by Company. Service Credits are determined and calculated on a per-occurrence basis, commencing upon the initial awareness (or automated recording) of an outage and ending when the Company Service has been restored.

## 6.1 Definitions

**Company Services:** Shall mean and include only such Services described in this SOW that the Client has purchased from Company and Company is performing directly for Client, and not through any third-party service provider.

**Compute:** A specific amount of RAM ('pool') made available to the client for provisioning of virtual machines within their organizational environment.

**Desktop Workstations:** A desktop computer, a laptop computer, or a tablet computer which is intended to be operated directly by an end user and is limited to Microsoft operating systems.

**Net Monthly Base Fees (Net MBF):** The monthly recurring charge for the services excluding any add-on or optional services which are not included as part of the base service plan but are included as part of such Client's monthly recurring charge.

**Network:** Virtual firewalls and/or load balancer services made available to the Client organizational environment and include only the Client's access ports (the ports on the Company devices within the Company facility upon which the Client's local circuit terminates).

**Scheduled Downtime:** The time during which the Services are not available due to planned Company maintenance.

**Service Credit:** The credit(s) provided to Client in accordance with "Service Credits" section below due to Company's failure to meet one or more Company SLA.

**SLAs:** On a collective basis the service level agreements described in this SLA.

**Storage:** The specific amount of disk space as measured in gigabytes made available to the Client for use by the virtual machines or backup processes within its organizational environment.

**ANY:** Client location, non-specified

**BND:** Company Data Center in Bend, OR. 20845 Sockeye Place Bend, OR

**CDF:** Company Data Center in Cedar Falls, IA. 1205 Technology Parkway Cedar Falls, IA

**DEN:** Company Data Center in Denver, CO. 8675 Concord Center Drive Englewood, CO

**DSM:** Company Data Center in Des Moines, IA. 390 N Alices Road Waukee, IA

**EDP:** Company Data Center in Minneapolis, MN. 10290 W 70th Street Eden Prairie, MN

**MSN:** Company Data Center in Madison, WI. 5515 Nobel Drive Fitchburg, WI

**PHX1:** Company Data Center in Gilbert, AZ. 1655 Sunrise Boulevard Gilbert, AZ

**SOM**: Company Data Center in Somerset, NJ   125 Belmont Dr.

# 6.2 Service Levels

## 6.2.1 Colocation Services

Internet Bandwidth Availability. Company will use commercially reasonable and good faith efforts to ensure that the entire quantity of Client's purchased Internet bandwidth will be available 100% of the time (except as part of Scheduled Downtime) on Client's access port (which is the port on the Company access router or switch within the Company facility upon which the Client's local circuit terminates), the Company designated routers, and the links between these routers.

    a)   Measurement - Unavailability is deemed to have commenced upon initial report to Company by Client and an incident ticket is generated by Company and ending when availability has been restored

Cross Connections Availability. Company will use commercially reasonable and good faith efforts to ensure that the entire quantity of Client's purchased Cross Connections that will be available 100% of the time.

    a)   Measurement - Unavailability is deemed to have commenced upon initial report to Company by Client and an incident ticket is generated by Company and ending when availability has been restored

Power Availability. Company will use commercially reasonable and good faith efforts to ensure that the entire quantity of Client's purchased electrical power will be delivered 100% of the time. This service level commitment requires that Client is actively utilizing the 2N configuration (primary AND secondary outlets) offered by Company. For example, if primary power is available and secondary power is not available, this is considered 100% available.

    a)   Measurement – Power usage is measured by the cabinet, cage or room, depending on the services purchased by Client. It is measured at the Power Distribution Unit or Transformer. Power is delivered and measured in a primary/secondary configuration with a specified per circuit, per phase limit.

    b)   Conditions – In the event Client's combined utilization of the A and B branch circuit is more than 80% of the amperage rating of either the A or B branch circuits supplying power to Client equipment, Client waives its rights to both the Power Availability SLA and the Power Availability Service Credit. Client utilizing more than 80% of the amperage rating of any branch circuit waives its rights to both the Power Availability SLA and the Power Availability Service Credit and will also be considered in violation of the National Electrical Code, allowing Company to take remedial action.

    c)   Remedies – A power outage which results in the loss of both primary and secondary power to the same equipment, and is not the direct result of Client equipment malfunctions which trips its circuit breakers, makes Client eligible for a Service Credit. Power outages are deemed to have commenced upon the initial awareness (or automated recording) of an outage and ending when the electrical service has been restored.

HVAC/Climate. Company will use commercially reasonable and good faith efforts to ensure that data room 30 minute average temperature and relative humidity or dew point will remain within data center climate thresholds applicable for each data center (see Table below). These service level metric commitments do not apply to local conditions within a particular Client cabinet, row, or other cage space.

    a)   Measurement - Measurement of ambient temperature and humidity shall be taken at a distance of no lower than 5 feet above the floor level, along the center line of the active cold aisles, and averaged across the room.

    b)   Conditions:
        i.   Company reserves the right to assist in and recommend the design of cabinet, cage or room layout, applying industry best practices as applicable. If Client's measured power density exceeds the facility rating as described above, spot cooling will be employed by Company at Client's expense. Spot cooling methods and equipment will be designed and installed by Company.

ii.   As stated above, all the SLA's are conditioned upon Client's compliance with, among other terms, the Colocation Applicable Use Policy, which includes, but is not limited to, the requirement that Client must use blanking panels and vent consistent with data center HVAC design. If Client fails to block the unabated direct flow, within its cabinet(s), of cooled supply air into the hot air return by neglecting to install blanking panels or the equivalent, blanking panels will be installed by Company at Client's expense and the HVAC/Environment obligations of Company and the SLAs applicable thereto shall be waived by Client.

c)   Remedies - If the temperature or humidity provided by Company does not comply with the following parameters, Client may be eligible for a Service Credit. HVAC/Climate violations are deemed to have commenced upon the initial awareness (or automated recording) of a metric infraction and ending when the environment has been returned to normal operating ranges.

## Table - Data Center Climate Thresholds

| Data Center | 30 Minute Average Temperature | 30 Minute Relative Humidity | 30 Minute Dew Point |
|---|---|---|---|
| BND | will not exceed 83.0°F | | 28.0 to 62.0°F |
| CDF | will not exceed 77.0°F | 40% and 55% | |
| DEN | will not exceed 83.0°F | | 28.0 to 62.0°F |
| DSM | will not exceed 83.0°F | 40% and 55% (data rooms 1 - 2) | 28.0 to 62.0°F (data rooms 3-6) |
| EDP | will not exceed 83.0°F | 20% and 60% | |
| MSN | will not exceed 83.0°F | 40% and 55% (data rooms 1 - 2) | 28.0 to 62.0°F (data rooms 3-6) |
| PHX1 | will not exceed 85.0°F | 20% and 55% | |

# 6.3 Service Credits

Failure to meet the Company SLAs, as measured by Company, during any one calendar month period, will result in a Service Credit in the amount of five percent (5%) of the Net Monthly Base Fees for the affected Company Services for every whole one (1) hour period of Company Service disruption.

The total Service Credit due to Client for failure to meet the Company SLAs in any calendar month shall not exceed the Net Monthly Base Fees for the affected Company Services for that calendar month. Notwithstanding anything else herein, if Client is eligible for multiple measures of Service Credits during any calendar month, the total Service Credit issued to Client for that month shall be limited to the largest single Service Credit available.

Service Credits shall be applied within sixty (60) days of Client's request.

# 6.4 Limitations

a)   Notwithstanding anything herein to the contrary, no otherwise applicable Company SLA, including any remedies thereunder, shall apply with respect to any Excluded Event. "Excluded Event" means any event that adversely impacts the Service to the extent caused by: (a) the acts or omissions of Client, its employees, consultants, agents or subcontractors; (b) Scheduled Downtime, and testing for which Client has been provided notice; (c) the failure or malfunction of Client-provided equipment; or (d) an event beyond Company's reasonable control. Company SLAs and Service Credits described herein apply only to Company and Client; they do not apply to clients of Client.

b)  No Service Credits shall be due if Client fails to notify Company in writing of a failure to meet the Company SLAs within ten (10) days of any such failure. Client's notice of a failure to meet the Company SLAs must contain Client's invoice number as shown on its invoice, the dates and times of the unavailability of the Company Service, and such other information reasonably requested by Company.

c)  Under no circumstances will any tests performed by Client or any other party be recognized by Company as a valid metric for outage determination for the purposes of establishing a Service Credit herein.

d)  **EXCEPT FOR THE TERMINATION PROVISION SET FORTH IN THE "COMPANY SERVICE LEVEL TERMINATION EVENT" SECTION BELOW, THE SERVICE CREDITS SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OF THE COMPANY SERVICES TO OPERATE IN ACCORDANCE WITH THE COMPANY SLAs.  ANY DISPUTES OR CLAIMS ARISING OUT OF OR RELATING TO THIS SECTION MUST BE BROUGHT WITHIN SIX MONTHS OF THE OCCURRENCE OF ANY SUCH DISPUTE OR ACCRUAL OF ANY SUCH CLAIM.**

## 6.5 Company Service Level Termination Event

Client has the right, but not the obligation, to terminate all or any portion of the applicable Company Services for cause upon written notice to Company and without further opportunity for cure if Company fails to meet the Company SLAs contained herein on more than three (3) unrelated occurrences (i.e., separated by time and not arising out of the same root cause) during any consecutive nine (9) month period, and which reasonably represents a material degradation in Services; any such right to terminate must be exercised within three (3) months or is deemed waived.

# 7 Term & Termination

## 7.1.1 Term

The Term of this SOW shall commence on the Commencement Date and continue to be in effect for this SOW until the expiration or termination of this SOW or any related Executed Order according to its terms.  Any applicable Executed Order will automatically renew for twelve (12) months unless either Party provides notice at least 90 days prior to the commencement of a renewal term.

## 7.1.2 Termination For Convenience

Client may terminate an Executed Order 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 Executed Order, the Termination Fee shall apply to any termination of an Executed Order other than pursuant to termination of an Executed Order by Client for cause pursuant to Section 5.1 of the Master Services Agreement.

   1.   Lump Sum Payment. As part of the Termination Fee, Client shall pay to Company a one-time lump sum payment in an amount equal to 100% of the Estimated Remaining Value.

   2.   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 Executed Order(s) multiplied by the greater of: i) the Monthly Base Fees; 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 Executed Order(s).

   3.   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 Executed Order.

By its signature below, Client certifies that it has read and agrees to the provisions set forth in this SOW and to the terms and conditions of the Master Services Agreement executed by Company and Client.

IN WITNESS WHEREOF, the parties hereto have executed this Statement of Work the day and year first written below.

**OneNeck IT Solutions LLC**                                      **Clackamas County**

By: _____                    By: _____

*Signature - Authorized Representative*                        *Signature - Authorized Representative*

Print Name _____                    Print Name _____

Title _____                      Title _____

Date _____                      Date _____

# Attachment - Colocation Acceptable Use Policy

## 1. Restrictions

### 1.1 Lawful Purpose

Client may use the Services only in compliance with all applicable laws and regulations, and shall not directly or indirectly use the Services for unlawful purposes or otherwise in violation of this Section 1. Client may not use the Services: (a) to disseminate or transmit bots, spiders, crawlers, or other repetitive information collection or distribution devices; (b) to create a false identity or otherwise attempt to mislead any party as to the identity of the sender or the origin of any communication, information or other material;(c) to attempt to discover, use, copy or modify the information or materials of others or in any way violate their privacy or security; or (d) to use Company's networks to access or monitor other computation, information or communication devices or resources of Company or any third party without that party's express written consent, including but not limited to, engaging in any unauthorized security probing activities or other attempts to evaluate Company's networks or host system.

### 1.2 Security

Client will comply with all Company security policies related to the Services, including, but not limited to, requirements set forth in any Service Order. Company will provide such security policies to Client in conjunction with the signed Service Order.

### 1.3 E-mail

Client shall comply with the CAN-SPAM Act of 2003, and shall not use the Services to engage in activities that are likely to cause IP addresses assigned to Client to become blocked or listed as likely sources of unsolicited bulk email (a/k/a spam) by anti-spam organizations such as SpamHaus (http://www.spamhaus.org) due to violations of the anti- spam organization's policy for acceptance of inbound email.

### 1.4 Client Data

Client will ensure that any materials and information transmitted through, or stored on, Client's servers or equipment located in Company's facilities, or derived from or in any way related to use of the Services ("Client Data"): (a) will not contain any illegal or otherwise inappropriate material, including material that is threatening, abusive, harassing, defamatory, libelous, fraudulent, obscene, invasive of another's privacy, violates or infringes the intellectual property or privacy rights of any person or entity; and (b) will not include or utilize any "Self-Help Code" or "Unauthorized Code" as defined in this section. "Self-Help Code" means any back door, time bomb, drop dead device, or other routine, algorithm, routine or code designed or used to: (i) disable, erase, alter or harm Company, its Clients, or any of their respective computer systems, programs, databases, data, hardware or communication systems, automatically with the passage of time, or under the control of, or through some affirmative action by, a person other than Company, or (ii) access any computer system, program, database, data, hardware or communication system of Company or its other Clients. "Unauthorized Code" means any virus, Trojan horse, worm, or other routines, code, algorithm or component designed or used to disable, erase, alter, or otherwise harm any computer system, program, database, data, hardware or communication system, or to consume, use, allocate or disrupt any computer resources, in a manner which is malicious or intended to damage or inconvenience.

### 1.5 Client Compliance

If Company reasonably believes that the Client has violated any of the restrictions set forth in this Section 1, and such violation may cause material harm or interference with Company's rights or property, or the rights or property of others, Company may suspend the Services affected by Client's violation, provided, where practicable, Company will give Client ten (10) days written notice of a violation and an opportunity for Client to cure such violation within such 10-day window.   Notwithstanding the foregoing, if Company reasonably determines that a suspension on shorter or contemporaneous notice is required to prevent damage to Company or its Clients, Company will provide Client prior written notice of any such suspension. Company shall restore suspended Services promptly upon Client's cure of any such violation of this Section 1.

## 2. Data Center Physical Access

**2.1**      Company reserves the right to exclude or expel from the data center any person who, in Company's sole judgment, is under the influence of alcohol or drugs or who, in Company's sole judgment, poses a risk to persons or property in a data center.

**2.2** Company may, at its discretion, require any or all authorized persons of Client to have a full face photograph taken at the data center for purposes of secure identification.

**2.3** All persons entering Company's data centers are classified under *unescorted, escorted, or visitor*. A valid government-issued photo ID is required for all persons entering a Company data center. Identification information for all persons is kept by Company to log data center access.

> **2.3.1** Unescorted persons must sign a complete and correct security access request form prior to gaining access to Company facilities, authorized by the proper personnel, and they must follow facility rules as outlined herein.

> **2.3.2** Escorted persons must be authorized by proper personnel and accompanied at all times by a person with unescorted access privileges. Escorted persons must be at minimum eighteen years of age.

> **2.3.3** Visitors are accompanied at all times by a person with unescorted access. Individuals on tours are classified as *visitors*.

## 3. Vendor Access

**3.1** Company's Vendor Access Policy (as described herein) is to establish the rules for vendor access to Company's data center. Vendors play an important role in the support of hardware and software management, and operations for clients. The Company Vendor Access Policy applies to all clients wishing to allow access to their equipment located in Company's data center for any vendor they currently use.

**3.2** Any Client granting access to its equipment located in Company's data center to a vendor or subcontractor agrees to the following stipulations in full and without hesitation:

> **3.2.1** Client accepts responsibility for all actions of the Client-approved vendor while he/she is in the Company data center, whether the ramifications are financial or otherwise.

> **3.2.2** Client agrees that Company shall be held harmless for any loss to Client data or equipment whether financial or otherwise, due to the actions of the Client- approved vendor.

> **3.2.3** Client agrees that the Client-approved vendor shall be held to the same standards as the Company in regard to safety and security policies and procedures while they are in the data center. It is the responsibility of the Client to educate the vendor of the above-mentioned safety and security policies and procedures.

> **3.2.4** Client agrees that it will be Client's responsibility to notify Company if and when a Client-approved vendor's access should be revoked. Notifications of this kind shall be made via the Company ticket system. Company reserves the right to take up to forty-eight (48) hours to process the vendor access removal request.

**3.3** Client-approved vendor must provide a valid government issued identification in exchange for access to the data center.

**3.4** For those vendors who have multiple representatives that could be dispatched to the Company data center to work on Client equipment, Client must select one of the following four ways of confirming the employment status of the individual accessing the data center:

> **3.4.1** Provide a list of vendor employees that are authorized to do work on the specified Client equipment.

> **3.4.2** Provide a 24x7 phone number for a vendor representative which can be utilized by the Company security personnel to confirm that the vendor employee trying to gain access to the data center is authorized to do work on the specified Client equipment.

> **3.4.3** Create a ticket that provides the vendor name and mentions this Company Vendor Access Policy within the ticket. Additionally, the vendor employee needing access will need to reference the ticket number at the time they are requesting access. Each ticket will provide access for up to twenty-four (24) hours from the time it is created.

> **3.4.4** Using Company's Security Access Request Form(s), Client may designate (with appropriate signatures) one or more NAMED vendor employees as agents of the Client, and Company will issue access badges as if they were Client's employees.

## 4. Power, Cooling and Space Utilization

**4.1**  All installations or modifications to a Client's cabinets, private cage, or room, equipment and cross connects must be reviewed and pre-approved in writing by Company.  Clients are allowed to deploy or redeploy equipment within an allocated cabinet only to the extent that power deployed to the cabinet can support such equipment.

**4.2**  Client shall submit to Company equipment power utilization information for review to ensure power and cooling delivery is adequate for each space. A review will be performed by Company during initial cabinet or cage planning, and for subsequent SOWs for additional power in an existing space.

**4.3**  Power utilization guidelines are hereby defined for each deployed circuit, whereby 80% utilization of a primary circuit (or 80% of the aggregate of a primary/redundant circuit pair) is considered within an acceptable limit for power delivery. Utilization is calculated based on observed ampere utilization, and represents Company's method for monitoring power delivery and utilization to Client.  Client will be advised to review power consumption if Client is exceeding the 80% circuit utilization guideline. Company will notify Client to either A) normalize power consumption or B) notify Company that additional power is necessary to maintain acceptable power delivery levels per cabinet, row or cage.

**4.4**  Company will monitor power utilization and consult with Client in such cases where power consumption per cabinet, row or cage exceeds acceptable limits, or where modifications to Client's cabinet or cage utilization is recommended to ensure consistent power delivery.

**4.5**  Company requires Client to utilize a primary/redundant power delivery service within the data center, where available.

**4.6**  Company requires that Client fills all unused portions of a cabinet with blanking panels to assure that an adequate flow of cooling air passes through active components within that same cabinet, and to assure that energy costs to cool are not inappropriately higher than required.

## 5. Cable Trays and Cabling

**5.1**  Company cable trays are reserved for Company use only. These trays are typically the highest in a room or also under the floor in data centers with raised floors.

**5.2**  Clients with private cage or suite space may install Company approved cable trays within their space for their own exclusive use with prior approval of Company.

**5.3**  Clients with cross connect requirements between cabinets in shared space may submit SOWs with Company's service center and/or Company's account representative.

    **5.3.1**

        Clients may place cables between adjacent and same row contiguous cabinets currently leased by the same Client by placing cables through cable openings located on the top of the cabinet without an Executed Order.

**5.4**  Service orders for cross connects between Client spaces and authorized ISP/carrier demarcation points must be ordered from Company's service center and/or Company account representative.

## 6. Network

**6.1**  Company shall have final design approval on any network installations and integrations which interface directly with the Company's network.

**6.2**  Clients may directly connect, or peer, with any Company-approved carrier or other Client within the data center. Clients and carriers must submit their Executed Orders for cross-connects to Company for these connections.

## 7. Data Center Tours

**7.1**  Tours must be scheduled no later than 5:00 p.m. on the business day before the requested tour. The following data must be provided

    **7.1.1**    visitor's organization name

    **7.1.2**    purpose of tour

7.1.3     date/time of tour

7.1.4     names of visitors

7.1.5     special requests associated with the tour

**7.2**     Company may reject or require rescheduling of a tour at its discretion should the requested tour time conflict with any maintenance, safety, or other operational issue.

**7.3**     Tour size is limited to a maximum of five guests and one (or more) authorized tour guide(s) on all tours unless Company agrees to accommodate more guests.

**7.4**     Any tour requesting access to restricted areas in the data center must obtain special clearance from Company. A Company representative must obtain prior tour approval for restricted Client or stakeholder areas. Tours in these rooms require that a Company employee and tour guide are present with no more than 5 guests in the area at once per guide.

**7.5**     Client personnel with "unescorted" privileges are responsible for the registration of tour visitors and ensuring that visitors comply with posted policies and procedures.

**7.6**     Company reserves the right to exclude any area of a data center from tours at any time without advanced notice.

**7.7**     Unescorted personnel access privileges will be revoked either due to notification from authorized personnel with Client for any reason or by Company due to non- compliance.

**7.8**     Restricted Areas

7.8.1     Access by all non-Company personnel is prohibited to the telecommunications areas, power rooms and other critical areas defined by Company. If access is required to such areas by non-Company personnel, they must be escorted by a Company employee with "unescorted" privileges.

7.8.2     Access by all non-Company personnel is prohibited to the shipping/receiving area. If access is required to this area by non-Company personnel, they must be escorted by a Company employee with "unescorted" privileges. At his or her discretion, the facility manager may assign "unescorted" privileges for this area to non-Company personnel on a case by case basis.

7.8.3     Escorted access in non-emergency situations to telecommunications areas, power rooms and other critical areas defined by Company for non-Company personnel may be requested under the following criteria:

The request for access must be submitted a minimum of 5 business days before access is needed.

Company may reject or require rescheduling of an access request at its discretion should the requested date and time conflict with any maintenance, safety, or other operational issue.

## 8. Client Guidelines
**8.1 Client will**

8.1.1     ensure that when entering the data center they do not allow other, non- authorized individuals to enter secure areas with them.

8.1.2     follow security measures that do not allow for others to enter the data center by holding open a door or allowing a door to be held open.

8.1.3     notify Company of the addition or removal of personnel allowed to access the data center on behalf of Client.

8.1.4     notify Company of vendor visitors to the data center to authorize access to their respective cabinet(s), cage or suite a minimum of 5 business days prior to the visit if a Company escort is needed.

8.1.5     ensure registration of tour guests, and Client is solely responsible for ensuring that all guests comply with Company policies.

8.1.6     immediately notify Company of all risk and security concerns and security breaches of Client, vendor or Company equipment or Company's facility.

8.1.7     immediately notify Company of all damage to Client, vendor, or Company equipment or Company's facility.

8.1.8     deposit unwanted materials in designated trash receptacles or in appropriate locations outside Company's facility.

8.1.9     be responsible for security within their cabinet(s), cage or suite. Company will lock all un-attended cabinets if found un-secured and notify Client.

8.1.10    maintain their cabinet(s) in an orderly and clean manner.

8.1.11    dual cord all equipment to primary and redundant power circuits.

8.1.12    ensure all equipment and cabling is located inside of the cabinet(s) only and not in aisles or other areas of Company's facility.

8.1.13    follow all posted guidelines and rules.

8.1.14    maintain all equipment colocated at Company. Such maintenance is the sole responsibility of Client. All equipment colocated at Company must be within weight, size and power limitations established by Company. All such equipment, furnishings and supplies also must meet all applicable codes and zoning ordinances

## 8.2 Client will not

8.2.1     attempt to gain or allow fraudulent access to Company's data center or any Company equipment.

8.2.2     bring materials, devices, or products that are explosive, volatile, compressed, poisonous, radioactive, caustic, corrosive, irritant, oxidant, create electromagnetic interference, sparks, or cause any other danger to others or equipment within Company's data center areas unless approved in advance by Company's change advisory board.

8.2.3     alter, tamper with, interfere with, breach the security of, adjust, or repair any equipment or property not belonging to Client.

8.2.4     store flammable materials in their cabinets, or in the data room (e.g. cardboard).

8.2.5     leave litter, cartons, packaging or other unnecessary items in or around Company's facility.

8.2.6     eat, drink, or use tobacco products within the data center.

8.2.7     take pictures or recordings without prior permission from Company.

8.2.8     block any exit route or aisle way or create a fire hazard.

8.2.9     impair or block the minimum setback distances (required by prevailing laws and codes) for electrical distribution and high voltage power cabinets.

## 8.3 Client must notify Company if they

8.3.1     will be conducting a tour.

8.3.2     require the use of Company's conference room.

8.3.3     require Company to provide an escort inside Company's data center.


8.3.4     require photos or videos within Company's data center.

8.3.5     require the addition or removal of personnel authorized to access the Company data center on behalf of Client.


## 9. Enforcement

9.1     Violation of this policy may result in suspended or revoked unescorted access to Company's data center, voiding of Company's Service Level Agreement obligations, or an alternate action deemed appropriate by Company and within the terms and conditions of the Master Services Agreement.

9.2     Company employs measures to safe guard data center doors from being held or propped open. Client agrees not to hold open or prop open a door. Any door that is held or propped open for a period of time will signal an alarm and initiate an

investigation of the cause. Client personnel who are found to have held or propped doors open will be removed from the site, and further access denied. Clients responsible for holding or propping doors open, may, at the discretion of Company, have their contract terminated.

## 10.  Shipping / Delivery

10.1     Company facility personnel will accept delivery of and store Client's equipment in accordance with the guidelines set forth below. Due to limited storage space, Company, at its sole discretion, has the right to deny or limit the amount of storage space and storage time to Clients.

10.2     Delivery Scheduling

10.2.1     Due to building requirements, all Client deliveries must be scheduled in advance with Company's Facilities Command Center (FCC). Client shall notify the Company FCC of the scheduled delivery date and if any of the items will require the use of the freight elevator. In the event a loading dock is required for the delivery of the equipment, Client shall be responsible for any applicable charges imposed by the landlord or building manager, if any. If Company has not been notified of equipment arrival, Company will deny acceptance of shipment.

10.2.2     Shipments will only be accepted between the hours of 8:00 A.M. to 5:00 P.M. Monday through Friday, unless other arrangements have been made between the Client and Company's FCC.

10.3     Return of Client Equipment - Clients wishing to receive equipment shipped back to them must include a prepaid shipping label, including the cost of pickup, and Company will return the item in the packaging it was originally sent in. Alternatively, Clients may arrange for a courier to pick up their equipment at their own expense. Professional service charges may apply.

10.4     Third Party Equipment Delivery - If the equipment is delivered by a third party, Company facility personnel will receive it on behalf of Client, provided that Client pre- scheduled the delivery with Company's FCC. If any such delivery to Company has not been so scheduled, Company will not accept delivery of the shipment.

10.5     Include the following packing and shipping information:
    Client Name
    c/o Company
    Data Center Address
    Special Instructions

10.6     Client shall prepay all shipments, freight, packages, etc. Company will not accept shipments that require any payment, whatsoever. Client is responsible for all shipping and/or freight claims.

10.7     Large shipments that require specialized handling to enter Company's data center are the responsibility of the Client to contract special handling or have a Client representative(s) onsite to bring the equipment into the data center from the building loading dock

10.8     Upon receipt of Client's equipment, Company will make commercially reasonable efforts to do the following:

10.8.1     Verify that the shipment is for the correct colocation facility.

10.8.2     Place the equipment in a secured area until Client's space is ready or available.

10.8.3     Notify Client via email of receipt of all shipments or shortages, if any.

10.9

Company facility personnel will not open or verify the contents of any shipment; nor will they be responsible for any equipment difficulties due to shipping or other actions. While Company facility personnel will not inspect each package for damage, in the event of extremely obvious damaged external packaging, Company will accept the package and indicate, "damaged shipment/freight" on the shipping receipt and request the delivery driver to countersign acknowledging delivery of "damaged shipment/freight." In the event of any other discrepancy identified by delivery personnel, Company will accept the shipment and indicate "short shipment/ freight" on the shipping receipt and request the delivery driver to countersign acknowledging delivery of "short shipment/freight."

**10.10** To the extent that the Client equipment is received by Company and Client does not pick it up the same day, Company will temporarily store Client's equipment in a secure storage area if there is space to do so at the discretion of the Company facility personnel and the Company FCC. To the extent that the Client fails to place or install their equipment in the services area designated by Company when available, Client will have ten (10) business days from the date that the equipment was first delivered in which to collect its equipment from the Company temporary storage area, after which Company shall charge Client a storage fee of $10 per cubic foot per day, with a one cubic foot minimum.  All equipment left in a Company storage area for more than forty-five (45) days will be shipped to the Client's billing address, unless an alternative address has been identified, at Client's sole cost and expense.

**Company is not responsible for loss or damage to Client equipment occurring in route to the Company data center, stored in Company facilities or in transit if returned to Client**

## 11. Safety

**11.1** Client will follow all safety and emergency exit procedures posted in Company's data center.

**11.2** First aid kits are located at designated locations in the facility. All injuries should be reported to a Company employee

**11.3** In the event of an emergency situation (e.g., fire, building evacuation, medical emergency, etc.), or drill, Clients present at Company's data center will be required to follow instructions given by on-site Company employees. Clients must leave the data center if an alarm is triggered.