

# TOWN OF DANVILLE

## Town Council Agenda

August 7, 2024

7:00 PM

- I. Establish Quorum, Call Meeting to Order**
- II. Pledge of Allegiance**
- III. Approval of Minutes (x2)**
- IV. Public Comment** – 3 minutes per person
- V. Public Meeting**

**A. IT Services Contract – Assistant Town Manager**

- VI. Staff and Council Comments**
- VII. Claim Docket**
- VIII. Payroll Docket**
- IX. Adjournment**

**NOTICE:** The public meetings of the Danville Town Council conducted within these chambers shall be video recorded. Said recording will be part of the public records of the Town of Danville and shall be published upon the Town of Danville's website for public access. All individuals attending public meetings hereby give to the Town of Danville, their permission for said publication, which may contain their image or statements.

## TOPIC SUMMARY

### **Approval of Minutes:**

**7/17/24: Work Study.** *Will require a Vote.*

**7/17/24: Council Meeting.** *Will require a Vote.*

- A. IT Services Contract** – Assistant Town Manager will present the IT Services Contract for the Town. This is a multi-year contract based on conversation and consensus of the Council on 6/19/24. *Will require a Vote.*

### **Staff and Council Comments**

**Claim Docket**

**Payroll Docket**

**Motion to Adjourn**

**\*\*\*Council Members are requested to stay and sign documents after the close of the meeting\*\*\***



We have prepared a quote for you

**2025-2027 Service Renewal**

Quote # CMC20222614  
Version 1

Prepared for:

**Town of Danville IN**

Mark Morgan  
wlacey@danvillein.gov



IT Services

Product Details	Qty	Price	Ext. Price	Recurring	Ext. Recurring	
Items in this section are subject to a 9% annual price increase.						
MSP Professional - PC	Per PC Charge For MSP Professional Coverage, Includes Essentials + Support Center Access (Contractual Baseline)	140	\$827.40	\$115,836.00	\$827.40	\$115,836.00
MSP Professional - Server	Per Server Charge For MSP Professional Server Coverage (Contractual Baseline)	7	\$1,442.16	\$10,095.12	\$1,442.16	\$10,095.12
Network Management	One Choice Managed Network Services	1	\$2,960.16	\$2,960.16	\$2,960.16	\$2,960.16

Annual Subtotal: **\$128,891.28**

Subtotal: **\$128,891.28**

Office 365 Licenses

Product Details	Qty	Price	Ext. Price	Recurring	Ext. Recurring	
Items in this section are subject to vendor pricing at time of invoicing.						
MST-OFC-EK1-C100	Microsoft Office 365 F3 is designed to enable frontline workers with tools for schedule and task management, communications and community, training and onboarding, and identity and access management.	72	\$57.60	\$4,147.20	\$57.60	\$4,147.20
MST-OFC-EE1-C100	Microsoft Office 365 E1 includes Office Online, hosted email with a 50 GB mailbox per user, team sites to promote collaboration, and Skype for Business conferencing.	11	\$144.00	\$1,584.00	\$144.00	\$1,584.00
MST-OFC-EE3-C100	Microsoft Office 365 E3 includes fully installed Office applications across multiple devices, email hosting, HD video conferencing, and features to support compliance.	51	\$331.20	\$16,891.20	\$331.20	\$16,891.20



### Office 365 Licenses

Product Details	Qty	Price	Ext. Price	Recurring	Ext. Recurring
MST-NCE-100-C100-ANN <b>Microsoft 365 Apps for Business includes fully installed, desktop versions of Office applications such as Word, PowerPoint, and Excel. These work across multiple devices plus you'll also get online file storage and sharing.</b>	1	\$119.52	\$119.52	\$119.52	\$119.52

Annual Subtotal: **\$22,741.92**

Subtotal: **\$22,741.92**

### Mail Filtering

Product Details	Qty	Price	Ext. Price	Recurring	Ext. Recurring
Items in this section are subject to vendor pricing at time of invoicing.					
PRF-SEC-ESS-C100 <b>Proofpoint Essentials protects small and medium-sized enterprises from today's advanced threats, compliance risks and digital fraud. It offers enterprise-grade security technology and infrastructure—used to protect some of the largest organizations in the</b>	149	\$36.36	\$5,417.64	\$36.36	\$5,417.64

Annual Subtotal: **\$5,417.64**

Subtotal: **\$5,417.64**

### Cisco Umbrella

Product Details	Qty	Price	Ext. Price	Recurring	Ext. Recurring
Items in this section are subject to vendor pricing at time of invoicing.					
Umbrella <b>Cisco Umbrella Internet Security Management</b> Cisco Umbrella Internet Security Management	140	\$45.00	\$6,300.00	\$45.00	\$6,300.00

Annual Subtotal: **\$6,300.00**

Subtotal: **\$6,300.00**

### Backup / Disaster Recovery

Product Details	Qty	Price	Ext. Price	Recurring	Ext. Recurring
Items in this section are subject to vendor pricing at time of invoicing.					
Acronis - <b>Acronis Backup / Disaster Recovery Professional (1-10)</b>	1	\$12,650.00	\$12,650.00	\$12,650.00	\$12,650.00
				<b>Annual Subtotal:</b>	<b>\$12,650.00</b>
				<b>Subtotal:</b>	<b>\$12,650.00</b>

### DUO Security MFA

Product Details	Qty	Price	Ext. Price	Recurring	Ext. Recurring
Items in this section are subject to vendor pricing at time of invoicing.					
Duo <b>Duo Security Multi-Factor Authentication (Per User)</b> Security MFA	49	\$45.00	\$2,205.00	\$45.00	\$2,205.00
				<b>Annual Subtotal:</b>	<b>\$2,205.00</b>
				<b>Subtotal:</b>	<b>\$2,205.00</b>

### Breach Secure Now

Product Details	Qty	Price	Ext. Price	Recurring	Ext. Recurring
Items in this section are subject to vendor pricing at time of invoicing.					
BSN-SEC- <b>Breach Secure Now Breach Prevention Platform</b> BPP-A100 -MON  Breach Secure Now - First year included as a thank you for your continued trust in One Choice Technology	1	\$0.00	\$0.00	\$2,185.00	\$2,185.00
				<b>Annual Subtotal:</b>	<b>\$2,185.00</b>
				<b>Subtotal:</b>	<b>\$0.00</b>



VoIP Telephone System

Product Details	Qty	Price	Ext. Price	Recurring	Ext. Recurring
Items in this section are subject to vendor pricing at time of invoicing.					
3CX Cloud Extension (SA) <b>3CX Extension Hosting - OCT Private Cloud (Per Extension)</b>	121	\$222.00	\$26,862.00	\$222.00	\$26,862.00
3CX PRO 32SC Annual <b>3CX Annual License - Professional Edition - 32 Simultaneous Calls (3CX Annual Renewal Required; Subject To 3CX Price List)</b>	1	\$1,690.00	\$1,690.00	\$1,690.00	\$1,690.00

Annual Subtotal: \$28,552.00

Subtotal: \$28,552.00



## 2025-2027 Service Renewal



**Prepared by:**  
**One Choice Technology**  
 Corey Caylor  
 317-563-0312  
 ccaylor@onechoice.tech

**Prepared for:**  
**Town of Danville IN**  
 Admin Office  
 49 North Wayne Street  
 Danville, IN 46122  
 Mark Morgan  
 13177454180  
 wlacey@danvillein.gov

**Quote Information:**  
**Quote #: CMC20222614**  
 Version: 1  
 Delivery Date: 07/30/2024  
 Expiration Date: 09/28/2024

### Due at Signing Summary

Description	Amount
IT Services	\$128,891.28
Office 365 Licenses	\$22,741.92
Mail Filtering	\$5,417.64
Cisco Umbrella	\$6,300.00
Backup / Disaster Recovery	\$12,650.00
DUO Security MFA	\$2,205.00
Breach Secure Now	\$0.00
VoIP Telephone System	\$28,552.00
<b>Total: \$206,757.84</b>	

### Annual Expenses Summary

Description	Amount
IT Services	\$128,891.28
Office 365 Licenses	\$22,741.92
Mail Filtering	\$5,417.64
Cisco Umbrella	\$6,300.00
Backup / Disaster Recovery	\$12,650.00
DUO Security MFA	\$2,205.00
Breach Secure Now	\$2,185.00
VoIP Telephone System	\$28,552.00
<b>Annual Total: \$208,942.84</b>	

## Payment Options

Description	Payments	Interval	Amount
Term Options			
3 Year Term	2	Annual	\$208,942.84
	1	Annual	\$206,757.84

This Quote ("Proposal" or "Service Order") is made and entered into by One Choice Technology and Customer in accordance with and subject to the Master Service Agreement contained herein.

Your signature below or herein, electronic or otherwise, indicates your acceptance. In the event of a conflict between the terms of this Service Order and the Master Service Agreement, the Service Order shall govern. By signing, the person signing on behalf of the Customer represents and warrants that he or she has the authority to sign on behalf of the Customer and to legally bind the Customer to this Service Order and to the Master Service Agreement.

### One Choice Technology

### Town of Danville IN

Signature: \_\_\_\_\_

 , President

Name: Corey Caylor

Title: President

Date: 07/30/2024

Signature: \_\_\_\_\_

Name: Mark Morgan

Date: \_\_\_\_\_

# MASTER SERVICE AGREEMENT / TERMS & CONDITIONS

This Master Service Agreement (“Agreement” or “MSA”) is made between you (“Customer”) and Caylor Communications, Inc. d/b/a One Choice Technology (“OCT”); an Indiana Corporation. OCT and Customer are sometimes referred to individually in this Agreement as a “Party” and collectively as the “Parties.” This Agreement states the terms and conditions pursuant to which customer will from time to time purchase services from OCT for:

(a) use by Customer and/or

(b) resale to Customer’s customers (“End User Customers”).

Customer may at any time request for OCT to provide a Service. Orders for specific Services are documented by the use of a Service Order, sometimes referred to as a Proposal, Quotation, or Quote, form each time Customer orders one or more Services and/or Products. Each Service Order submitted, accepted and executed by both Parties, including any addendums thereto, are hereby incorporated by reference herein and shall be governed by the terms and conditions of this Agreement. In the event of any conflict between this Agreement and the terms of any Service Order, precedence will be given to the terms of the Service Order. Unless otherwise agreed in writing by OCT, no terms and conditions endorsed upon, delivered with or contained in Customer’s purchase orders, or in any other similar document, will amend, or vary the provisions of this Agreement. Service Orders which have not been accepted by the expiration date listed therein or thereon may be rejected by OCT.

**1. DEFINITIONS.** The definitions identified in the attached Schedule 1 will apply when used in this Agreement, all schedules attached to this Agreement, and all Service Orders. If terms are not expressly defined in this Agreement, they shall have the meanings commonly attributed to them in the information technology and or telecommunications industry.

**2. TERM.** This Agreement shall commence upon its execution by both parties and continue in effect throughout the duration of the Service Term(s) of any and all Service Orders and until the expiration or other termination of the final existing Service Order entered into under this Agreement. Each Service Order shall state the Service Term for that Service Order. The Service Term of each Service Order shall apply to each Service included in the given Service Order. The Service Term of each Service Order will commence



upon complete installation and activation of all of the Services and/or Products provided pursuant to each Service Order. A single Service Order may include one Service or multiple Services ordered by Customer. In those instances, in which a Service Order includes one Service or Product, the date on which the Service and/or Product is installed or activated will be deemed the "Service Commencement Date" for that particular Service Order and will begin the Service Term for such Service Order. In those instances, in which a Service Order includes multiple Services and/or Products, all the Services and/or Products included in the Service Order are not always installed and activated on the same date. Rather, certain Services or Products may be installed and activated on one date, while other Services and Products contained in the same Service Order are installed and activated on a later date(s). When multiple Services and/or Products are included in a single Service Order, the Service Term of the entire Service Order (and of each Service included in the given Service Order) will commence as of the date on which the last or final Service and/or Product is installed or activated. Said date will be the "Service Commencement Date" for that particular Service Order and will begin the Service Term for such Service Order.

The Service Term of a Service Order, whether the Service Order includes one or multiple Services and/or Products, shall expire at the end of the Service Term stated in the Service Order. If a Service Order does not specify a term of service, the Service Term for such Service Order shall be two (2) years from the Service Commencement Date for that Service Order.

If customer wishes to disconnect, deactivate, and/or remove any Service(s) identified in the given Service Order upon the expiration of the Service Term of the Service Order, customer must send written notice at least ninety (90) days, but not more than one-hundred eighty (180) days, prior to [orders@onechoice.tech](mailto:orders@onechoice.tech). OCT must reply in acknowledgement of such notice and with confirmation of disconnection, deactivation, and/or removal of any Service(s). Customer may, at their discretion, satisfy the requirements of this paragraph by sending written notice in compliance with procedures described in a subsequent section of this agreement titled "NOTICES AND FACSIMILE SIGNATURES". If Customer fails to provide the written notice required by this paragraph, the Service Term of the Service Order in question will then continue for another term equal to one (1) calendar year commencing on the day following the day of expiration of the Service Term of the Service Order in question ("**Automatic Renewal**"). The Monthly Recurring Charges for the Service(s) identified in the Service Order will automatically increase by no more than 9% using the most previous term's Monthly Recurring Charges as the basis for calculation of the new term's Monthly Recurring Charges.

Nothing in this section shall limit or otherwise reduce Customer's obligation to pay an Early Termination Fee, if applicable

**3. CHARGES AND BILLING.** Within fifteen (15) days of the date on which Customer executes each Service Order, Customer shall pay OCT all of the non-recurring charges designated on such Service Order as Non-recurring Charges ("NRC").

Customer further agrees to pay OCT all charges associated with the Services and/or Products as stated in each Service Order, including without limitation the Monthly Recurring Charges ("MRC") and or Yearly Recurring Charges ("YRC") for each Service or Product. In the event that some, but not all, Products and/or Services associated with a Service Order are installed or activated, Customer agrees to pay OCT the MRCs, YRCs, and Additional Charges associated with those Services that are installed or activated even though the Service Commencement Date for the entire Service Order (as defined above) has not commenced. The MRC for the initial month of each Service shall be prorated from the start of that Service through the end of that calendar month.

In addition to MRCs and YRCs, Customer shall pay to OCT all usage charges, including without limitation charges for the use of OCT Equipment, maintenance and repair charges, and all federal, state or local use, excise, sales, privilege or other Taxes ("Additional Charges"). All Taxes, whether charged to or against OCT, shall be payable by Customer unless Customer provides proof of its specific tax-exempt status by execution and submission of the proper Tax-Exempt Certification or like form, for said Taxes. OCT shall not be held liable for payment or processing of any retroactive tax exemption.

End User Customers may incur charges from third-party service providers that are separate and apart from the amounts charged to Customer by OCT. These may include, without limitation, charges resulting from accessing on-line services, calls to parties who charge for their telephone-based services, and purchasing or subscribing to other offerings via the internet. OCT shall not be responsible for any such charges.

All MRCs and or YRCs for each Service will be billed based upon actual quantity used by the Customer or the amount on the associated Service Order whichever is greater. Actual usage of each service will be reviewed monthly and partial months will not be refunded.

**4. PAYMENT OF INVOICES.** Except as otherwise agreed, OCT shall invoice Customer on a monthly basis for all MRCs, and Additional Charges and Annually for YRCs. Payment of all MRCs, YRCs, and Additional Charges, Fees and Costs are due and must be RECEIVED by OCT at the address shown on the invoice not later than fifteen (15) calendar days after the date of the invoice ("Due Date"). Invoices shall be delivered via email

(regular mail only if customer requests), but the date of such delivery shall NOT affect the Invoice Date from which the Due Date is derived. Unless different treatment is required by applicable regulations, adjustments for billing errors will be limited to ninety (90) days from the date of the invoice.

THE FOREGOING SHALL GOVERN CUSTOMER ORDERS OF PRODUCTS AND/OR SERVICE(S) FROM OCT EITHER THROUGH THE [onechoice.tech](http://onechoice.tech) WEBSITE, API, PORTAL, OR BY CUSTOMER SUBMISSION OF AN ORDER VIA PHONE, FACSIMILE, EDI, EMAIL, MAIL, IN WRITING, OR OTHER MEANS.

## **5. BILLING DISPUTES.**

(a) Dispute Information. Customer may dispute charges invoiced by OCT by completing and submitting a dispute via email to [orders@onechoice.tech](mailto:orders@onechoice.tech) or via telephone line at 1-317-563-0300. All claims must be submitted within fifteen (15) calendar days of the date of the invoice associated with the disputed charges, or the invoice shall be deemed correct and all rights to dispute such charges are waived.

(b) Investigation and Resolution. OCT will use commercially reasonable efforts to respond within thirty days to a billing dispute submitted by Customer. If the dispute is resolved in favor of Customer, OCT will apply a credit to Customer's account in the amount of the dispute. If the dispute is resolved in OCT's favor and Customer has withheld the disputed amount, Customer must pay the disputed amount within ten (10) business days following notice of the resolution of the dispute.

**6. COLLECTION FROM END USER CUSTOMERS.** Customer is solely responsible for determining the creditworthiness of its End User Customers and billing and collecting amounts owed by its End User Customers.

**7. PAYMENT BY CREDIT CARD OR ACH.** Upon Customer's written request and OCT's acceptance of such request, OCT will accept certain credit card and or Automated Clearing House ("ACH") payments for charges incurred under this Agreement. By providing OCT with a credit card number and or ACH information, Customer authorizes OCT to charge the account for all charges incurred under this Agreement, until:

(a) this Agreement is terminated, or

(b) Customer provides written notice to OCT that OCT is to stop charging the account.



If OCT is unable to charge Customer's account for any reason, Customer agrees to pay all amounts due upon demand by OCT. OCT may limit the option to pay by credit card or ACH to specific Services or may discontinue acceptance of such payments in whole or in part upon thirty (30) days prior notice to Customer.

**8. CREDIT APPROVAL.** Initial and ongoing delivery of Services may be subject to credit approval. Customer shall provide OCT with credit information requested by OCT. Customer authorizes OCT to make inquiries and to receive information about Customer's credit history from others and to enter this information in Customer's records. Customer represents and warrants that all credit information that it provides to OCT will be true and correct. OCT, at its sole discretion, may deny the Services based on unsatisfactory credit history.

**9. DEFAULT.** An event of default ("Default") shall occur:

(a) if Customer fails to pay any amount due and payable under this Agreement or any Service Order by its Due Date, and such failure remains uncorrected after written notification from OCT for a period of fifteen (15) days;

(b) if Customer or OCT breaches a material term, other than making payment, contained in this Agreement, and such failure remains uncorrected thirty (30) days after receipt of written notification from the other party of said breach;

(c) upon the institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings, by or against Customer under any section or chapter of the United States Bankruptcy Code, and such proceedings have not been dismissed or discharged within thirty (30) days of documented proceeding initiation;

(d) upon the making of an assignment for the benefit of creditors, adjudication of insolvency, or institution of any reorganization arrangement or other readjustment of debt plan, of or by Customer, and such proceedings do not involve the United States Bankruptcy Code; or

(e) upon the appointment of a receiver for all or substantially all of Customer's assets.

## **10. REMEDIES UPON DEFAULT**

(a) Upon Default by Customer, OCT may:

(i) subject to applicable government rules and regulations, suspend or disconnect some or all the Services, and/or

(ii) terminate this Agreement and any Service Orders without liability or further obligation upon written notification of termination to Customer.

The suspension of Services pursuant to this paragraph shall not relieve Customer of its obligation to pay Charges during the time period in which Services are suspended.

(b) OCT has established the prices it charges Customer under this Agreement based, in part, on Customer's promise to utilize and pay for the Services through the expiration of the entire Service Term of each Service Order. OCT has also made, and will continue to make, substantial investments and incurred significant expenses in order to provide the Services to Customer. If OCT terminates this Agreement or any Service Order due to Customer's Default, or if Customer Terminates this Agreement or any Service Order at any time prior to the expiration of any Service Term of any Service Order for convenience, then Customer shall pay an Early Termination Fee to OCT.

The amount of the Early Termination Fee is calculated pursuant to the definition of "Early Termination Fee" set forth in Schedule 1. Customer agrees that the amount of the Early Termination Fee is a genuine estimate of and is proportionate to OCT's actual damages resulting from an early termination of the Services, and therefore, for the sake of efficiency, economy and convenience, the Early Termination Fee set forth herein constitutes liquidated damages, is reasonable, and is not intended as a penalty or to be punitive in nature.

(c) Upon Default by OCT, Customer may terminate any Service affected by the Default. A termination by customer following a Default by OCT shall not result in Customer's liability for an Early Termination Fee. Termination by either party of a Service Order does not waive any other rights or remedies that it may have under this Agreement or any other Service Order.

(d) With respect to any Default that can be cured by the payment of money, at least fifteen (15) calendar days (or such greater time period as may be required by applicable law from time to time) prior to disconnecting any Service, OCT will issue a DISCONNECT NOTICE to Customer via email demanding full payment be RECEIVED within seven (7) calendar days or Services will be disconnected on or shortly after 11:59 PM on the last day of the disconnect warning period.

(e) OCT may suspend and/or reroute Services without notice:

(i) if necessary to protect OCT's Network from imminent harm and/or to protect the technical integrity of OCT's Network;

(ii) if required by legal or regulatory authority or

(iii) upon Customer's fraudulent or illegal use of the Services.

**11. SERVICE OUTAGES/TERMINATION OF AFFECTED SERVICE.** Customer must report any Service Outage in writing to OCT by opening a Trouble Ticket by way of e-mail to [support@onechoice.tech](mailto:support@onechoice.tech) or via OCT's website at [onechoice.tech](http://onechoice.tech) within twenty-four (24) hours of the Service Outage ("Outage Notice"). Customers may open Trouble Tickets in the Support Ticketing System 24x7x365 without the assistance of OCT. Failure to provide OCT with an Outage Notice will result in the Customer waiving all rights associated with termination of the Affected Service. If Customer provides OCT with the Outage Notice and the Service Outage for an Affected Service lasts more than one-hundred eighty (180) cumulative minutes per month and occurs over a period of three (3) consecutive months, the Service Outage for the Affected Service will be deemed "Chronic."

If a Service Outage for an Affected Service is Chronic, as defined herein, Customer may terminate only the Affected Service without paying an Early Termination Fee for that Service. Customer must also provide OCT with written notice of its intent to terminate the Affected Service ("Notice of Termination of Affected Service") no later than thirty (30) days following the most recent Service Outage for the Affected Service. Customer shall be responsible for charges accrued prior to the termination of the Affected Service, less any applicable Service Outage credits.

If the forgoing conditions are not met and Customer terminates an Affected Service, Customer shall remain responsible for paying the Early Termination Fee associated with said Affected Service. Customer MAY NOT terminate any Service(s) if a Service Outage arose out of the Customer's or any End User Customer's negligence or wrongful misappropriation of their network resources, the network, or management of the network.

If Customer is receiving multiple Services from OCT, a Service Outage for a particular Affected Service, regardless of the duration or frequency of the Service Outage, shall not be considered a breach by OCT of a material term of this Agreement or of any Service Order. If Customer chooses to terminate an Affected Service that is deemed Chronic, Customer will remain liable for all charges relating to all other Services that client receives from OCT, including any Early Termination Fee owed with regard to any other Service.



**12. PAYMENT THROUGH DISCONNECTION DATE.** Customer is responsible for paying the MRCs and or YRCs through the date that the Services are disconnected by OCT. OCT has forty-five (45) days to complete the disconnection of Services.

**13. SERVICE SUSPENSION FOR MAINTENANCE.** OCT may from time to time suspend service for routine maintenance or rearrangement for a short period of time. Whenever possible OCT will give Customer advance notification, and, to the best of their ability will perform such maintenance during “off hours” (6:00 PM to 6:00 AM local time).

**14. RECONNECTION FEE.** If Customer’s Services are terminated due to breach or violation by Customer of any of the terms and conditions contained in this Agreement or any policy adopted by OCT relating to the Services, in the event OCT subsequently agrees to reconnect Services, the Customer agrees to pay a \$200.00 reconnection fee.

**15. RETURN OF OCT EQUIPMENT.** Upon termination of this Agreement, Customer shall permit OCT access to retrieve from any Service Location any and all OCT Equipment. If Customer fails to permit access, or if the retrieved OCT equipment has been damaged and/or destroyed other than by OCT, normal wear and tear excepted, OCT may invoice, and Customer shall immediately pay for the full replacement or repair costs of said OCT Equipment.

**16. ACCESS.** Customer, at no cost to OCT, shall secure and maintain all necessary rights of access to the location(s) where OCT provides the Services (“Service Location(s)”). In addition, Customer or the End User Customer shall provide an adequate environmentally and temperature-controlled space and such electricity as may be required for installation, operation, and maintenance of the Equipment used to provide the Services within the Service Location(s). OCT and its employees and authorized contractors will require free ingress and egress into and out of the Service Location(s) in connection with the provision of Services. Upon reasonable notice from OCT, Customer shall provide all required access to OCT and its authorized personnel.

Customer grants permission to OCT and its employees and authorized contractors to take and retain photographs and video on and within Customer's premises including but not limited to: customer equipment, wiring, wiring closets, and panel boards. Customer acknowledges and agrees that such photographs and videos are the property of OCT and may be used as marketing collateral or in any other manner deemed appropriate at the sole discretion of OCT.

**17. CUSTOMER PREPARATION.** Customer, the Service Location(s), and any Customer-Provided Equipment shall be ready and prepared to use the Services by the Firm Order of Completion Date (“FOC Date”) for the specified service, which OCT Project Management provides to Customer. If Customer will not be ready or prepared to use the Services on the FOC Date, for any reason, including but not limited to, power or interconnecting facilities at the Customer site being unavailable, the unavailability of services or other products provided by a party other than OCT, or Customer not providing the necessary access to the Service Location(s), Customer will provide OCT with written notice to [orders@onechoice.tech](mailto:orders@onechoice.tech) at least five (5) business days prior to the FOC Date. Upon receipt of timely notice from Customer, OCT will attempt to change or delay the Order. Customer will be liable for payment of any applicable change fees. If OCT is unable to change or delay the Order or if Customer fails to provide the required notice and is not ready to accept Service on the FOC Date, Customer will be liable for payment of all NRCs, any third-party termination charges, and the MRC and or YRC for the Service(s). Customer will be liable for payment of the MRC and or YRC until such time that Customer is ready to accept Service. If Customer does not satisfy the requirements of this section, OCT reserves the right to cancel the Service at any time after the FOC Date and charge Customer an Early Termination Fee for the Service(s).

**18. CUSTOMER-PROVIDED EQUIPMENT.** Unless specific Installation, Operation, and or Maintenance Services are listed on a Service Order, executed by both parties, OCT shall have no obligation to install, operate, or maintain any facilities, equipment or devices supplied by Customer for use in connection with the Services (“Customer-Provided Equipment”). Customer alone shall be responsible for providing maintenance, repair, operation and replacement of all inside telephone wiring and equipment and facilities on the Customer’s or End User Customer’s side of the cable modem, router, or other input connection. All Customer-Provided Equipment and wiring that Customer uses in connection with the Services must be fully compatible with the Services. Customer shall be responsible for the payment of all charges for troubleshooting, maintenance, or repairs attempted or performed by OCT’s employees or authorized contractors when the difficulty or trouble report results from Customer-Provided Equipment.

**19. RESPONSIBILITY FOR CUSTOMER NETWORK.**

(a) Unless specific Information Technology Services are listed on a Service Order, executed by both parties, Customer is responsible for the design, management, performance and on-going service and support of their corporate and/or remote office local area networks, including the physical station-level cabling, network IP subnetting, configuration of VLANs, or establishing VPNs supporting the desktop computers, corporate applications, and peripheral IP equipment.

(b) OCT does not warrant or guarantee connectivity, performance, or quality of service for IP Telephony and VoIP applications over non OCT provided or approved network and/or PBX services.

(c) Customer understands that it is Customer's responsibility to administer and maintain quality of service levels within its LAN/WAN/VPN infrastructure.

(d) Customer acknowledges its local area network and/or wide area network user elements may need to be upgraded, redesigned, or reconfigured at Customer's sole expense in order to support OCT's provided solutions.

(e) Customer understands that any future LAN modifications or data applications may negatively impact quality of service and LAN-connected applications and in those instances, Customer may require troubleshooting, repair and possibly a network assessment at Customer's expense.

(f) Customer is responsible for the installation and deployment of the VPN clients for IP hard and soft telephones.

**20. SERVICES OVER THE PUBLIC INTERNET.** Customers and End User Customers who choose to use the public Internet as a means to carry data, do so at their own risk and further understand and acknowledge the following caveats:

(a) The Services, when transmitted over the public internet, may experience delays, disruptions, outages, or other such annoyances. Customer understands and acknowledges that, as the Service is transmitted over the public Internet and or public switched telephone network, there may be any number of outages, service disruptions, or issues which may result in packet loss, reduced speed, latency, decreased voice quality, etc. over which OCT has no control. Customer also understands and acknowledges that data may not be encrypted and are therefore subject to the possibility of eavesdropping over the public Internet. OCT will not be liable for any disruption, delays, outages, eavesdropping, or other unforeseen calamities with respect to any Services utilizing the public Internet.

(b) Customer understands and acknowledges that by choosing to use the public Internet for communication, Services are subject to the limitations of Internet communication. These limitations include, but are not limited to breaks in connectivity, slow speeds, and other overall annoyances which may negatively affect Customer's experience with the OCT Services.

(c) As noted under the sections above, OCT does not control the Internet. Customer connections from one end to the other are affected by many things, including local Customer connectivity, the many



interconnections in between, and the recipient's local connectivity. Problems at any point could negatively affect the quality of the Customer experience. Customer acknowledges and understands that OCT is not responsible for any portion of the Internet over which OCT has no direct control and which may affect the quality of Customer Services.

## **21. LIMITATIONS OF SERVICES.**

(a) Outages due to Electrical, Internet or other General Failures. Customer acknowledges that the Services will not function in the absence of electrical power, access to the Internet or other general failures associated with the network. Customer acknowledges that the Services will not function if there is an interruption of Customer's or the End User Customer's broadband or high-speed Internet access service.

(b) Non-IP Systems. Customer acknowledges that the Services are not set up to function without-dialing systems including security systems, fire alarm systems, medical monitoring equipment, satellite television systems and some facsimile systems. By consenting to these terms and conditions, Customer waives any claim against OCT for interruption or disruption of such systems by the Services.

**22. INTELLECTUAL PROPERTY RIGHTS IN THE SERVICES.** Title and intellectual property rights to the Services are owned by OCT, its agents, suppliers, or their licensors or otherwise by the owners of such material. The copying, redistribution, reselling, bundling, or publication of the Services, in whole or in part, without the express prior written approval of OCT, or other owner of such material, is prohibited. Nothing in this Agreement shall be deemed, by implication or otherwise, to convey any right under any patent, patent application, invention, copyright, trademark, or other proprietary right.

**23. SOFTWARE LICENSE.** If and to the extent Customer requires the use of licensed software in order to use the Services supplied under any Service Order, Customer shall have a personal, nonexclusive, nontransferable, and limited license to use the licensed software in object code only and solely to the extent necessary to use the applicable Service during the corresponding Service Term. Customer may not claim title to, or an ownership interest in, any licensed software (or any derivations or improvements thereto) and Customer shall execute any documentation reasonably required by OCT, including, without limitation, end-user license agreements for the licensed software. OCT and its suppliers shall retain ownership of the licensed software, and no rights are granted to Customer other than a license to use the licensed software under the terms expressly set forth in this Agreement.

**24. SOFTWARE RESTRICTIONS.** Customer agrees that it shall not:

- (a) copy any licensed software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of OCT;
- (b) reverse engineer, decompile, or disassemble the licensed software;
- (c) sell, lease, license, or sublicense the licensed software; or
- (d) create, write, or develop any derivative software or any other software program based on the licensed software.

**25. SOFTWARE UPDATES.** Customer acknowledges that the use of the Services may periodically require updates and/or changes to certain licensed software resident in the OCT Equipment or Customer-Provided Equipment. If OCT has agreed to provide updates and changes, OCT may perform such updates and changes remotely or on-site, at OCT's sole option. Customer hereby consents to, and shall provide free access for, such updates deemed reasonably necessary by OCT.

**26. OWNERSHIP OF IP ADDRESSES.** Customer acknowledges that use of the Services does not give it any ownership or other rights in any Internet/on-line addresses provided by OCT, including but not limited to Internet Protocol ("IP") addresses, email addresses and web addresses.

**27. CONFIDENTIALITY.** Each Party may disclose Confidential Information to the other Party in connection with this Agreement. Confidential Information may only be used by the receiving Party in connection with its performance under this Agreement. Confidential Information may not be disclosed except to those officers, directors, employees, consultants or subcontractors of the receiving party who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein.

If the receiving Party is legally compelled by any means (including deposition, interrogatory, request for documents, subpoena, civil investigative demand, etc.), or is required under federal securities laws or regulations to disclose Confidential Information, the receiving Party must make reasonable efforts to provide the disclosing Party with prompt notice of such legal requirement prior to disclosure so that the disclosing Party may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, receiving Party will disclose only that portion of the Confidential Information which it is advised by written opinion of its counsel, it is legally required to disclose and shall exercise all reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded such Confidential Information.

Upon termination or expiration of this Agreement, the receiving Party will either return the Confidential Information to the disclosing Party or destroy it and certify such destruction to the disclosing Party. The obligations of this provision will survive for three (3) years after any termination or expiration of this Agreement.

**28. WORK PRODUCT.** Customer and or End User Customer acknowledges that all discoveries, concepts, ideas, inventions, innovations, improvements, developments, methods, processes, programs, designs, analyses, drawings, reports, patent applications, copyrightable work and mask work (whether or not including any confidential information) and all registrations or applications related thereto, all other proprietary information and all similar or related information (whether or not patentable) that relate to OCT or its Affiliates' actual or anticipated business, research and development, or existing or future products or services and that are conceived, developed, contributed to, made, or reduced to practice by Customer, End User Customer, OCT, its officers, directors, employees, consultants or subcontractors, (either solely or jointly with others) within the term of this Agreement (including any of the foregoing that constitutes any proprietary information or records) ("Work Product") belong to OCT or its Affiliates, as applicable, and Customer hereby assigns, and agrees to assign, all of the above Work Product to OCT or its Affiliates, as applicable. OCT, its officers, directors, employees, consultants or subcontractors have no obligation, under this agreement, to provide, or otherwise disclose, Work Product to Customer or End User Customer.

#### **PHONE SPECIFIC TERMS AND CONDITIONS**

**29. VoIP.** All Voice and Fax services provided by OCT utilize VoIP technology. VoIP service is not a telecommunications service. This service is subject to different regulatory treatment than telecommunications service. This service is a best effort service that relies upon the internet, which is out of the control of OCT. Under normal circumstances the service will provide a reliable and good quality communication path; however, the overall reliability of the circuit to always be available cannot be guaranteed.

**30. DIRECTORY LISTING.** Upon Customer request, Customer shall provide its and/or its End User Customer's name, address, phone numbers and any other information requested by OCT to OCT, and it is understood and agreed Customer's and/or End User Customer's white page directory listing will appear using that information. It is Customer's sole responsibility to inform OCT in writing of any change in the information, including telephone number and address, at least ninety (90) days prior to the local telephone



directory issue date, which will be provided to Customer upon request. OCT assumes no liability whatsoever for errors in the listing and Customer releases OCT from any damages for any error in the directory listing.

CUSTOMER SHALL HOLD OCT HARMLESS AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY ANY ERRORS OR OMISSIONS RELATING TO ANY DIRECTORY LISTINGS.

**31. 911/SERVICE ADDRESS.** It is the sole responsibility of Customer to notify OCT if Customer's or any of its End User Customer's 911 addresses are not to be the same as the address provided to OCT in the Service Orders. Verification of this address will ensure emergency personnel are directed to the correct location when dispatched. Customer acknowledges and understands that phone services use electrical power in Customer's or End User Customer's Service Location. If there is an electrical power outage, 911 calling may be interrupted if a battery backup is not installed or fails. Calls, including 911 calls, may not be completed if Customer or End User Customer exceeds their calling capacity or if there is a problem with the network facilities.

CUSTOMER ACKNOWLEDGES AND AGREES THAT OCT WILL NOT BE LIABLE FOR ANY INABILITY TO DIAL 911 USING THE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL

**32. MINIMUM SYSTEM REQUIREMENTS AND WIRING.** Customer hereby acknowledges that any system must meet minimum system requirements in order to access the Services. Customer also agrees and acknowledges that certain inside wiring and/or equipment may be necessary in order to complete installation for the Services. Any fees for such wiring and/or equipment will be billed to Customer based on OCT's prevailing hourly rate, available from OCT upon request, for OCT technicians and the cost of such equipment.

**33. CUSTOMER EQUIPMENT.** OCT is not responsible for any telephone system, computer or network malfunctions and/or damage to Customer's hardware or software (specific to systems that OCT didn't sell, provision, or install). If any of Customer's equipment requires modification or reprogramming to make it compatible with any service, OCT shall not be liable for any applicable costs associated with modification or reprogramming.

**34. PORTING OF TELEPHONE NUMBERS.** It shall be the sole responsibility of Customer to provide OCT with all telephone numbers that Customer or any End User Customer wants ported from their existing telecommunications carrier to OCT. Customer agrees that OCT shall not have any liability to Customer or any other person or entity and disclaims any such liability for telephone numbers that are not ported over

to OCT and which are subsequently disconnected by Customer's or any End User Customer's previous carrier.

**35. CUSTOMER OBLIGATIONS TO TERMINATE SERVICES WITH EXISTING CARRIER.** It shall be the sole responsibility of Customer or End User Customer to terminate any services with Customer's or End User Customer's existing and/or previous telecommunications carrier. In no event shall OCT have any obligation to terminate such services on behalf of Customer or End User Customer and Customer agrees that OCT shall have no liability to Customer or any other person or entity as a result of such services not being terminated and for any charges incurred for continued or overlapping billing periods for any services from Customer's or End User Customer's existing and/or previous carriers.

**36. NUMBER OWNERSHIP.** Customer understands and agrees that they are not the owner of any toll-free or local telephone number or facsimile number assigned by OCT. Ownership of all phone numbers and facsimile numbers is vested solely in OCT (who will assign or re-assign such numbers for use during the term of this Agreement). Customer understands and agrees that:

- (a) OCT may from time to time need to change the telephone or facsimile number assigned to Customer (due to an area code split or for any other reason) and
- (b) following the termination of Customer's OCT Account for any reason, they will no longer have access to or use of such telephone or facsimile number. In either case, such telephone phone and/or facsimile number may be re-assigned immediately to another customer and Customer agrees that OCT will not be liable for any damages (including consequential or special damages) arising out of any such re-assignment.

Customer hereby waives any claims with respect to any such telephone or facsimile number re-assignment, whether based on contract, tort or other grounds, even if Customer has advised OCT of the possibility of any such damages. Prior to termination of Customer's Account, and provided Customer's account is in good standing, Customer may request in writing that OCT transfer number(s) assigned to their Account to another carrier. If such transfer request is granted, a \$100.00 transfer-service fee may apply.

**37. LOCAL MINUTES OF USE (MOU).** Unless a Service Order expressly provides otherwise, Customer shall receive one-thousand (1,000) Local MOU per BTN and three-hundred (300) Local MOU for each additional extension associated with a BTN; Local MOU usage that exceeds calculated amount of Local MOU shall be billed at current prevailing per minute rate.

**38. RESTRICTIONS:** Local and Domestic Long Distance Service is a business service provided for use with a phone system and is designed for business use. Local and Domestic Long Distance Service may be used only for lawful, proper and appropriate purposes and may not be used in any way that is illegal, improper or inappropriate. Inappropriate and/or prohibited uses of Local and Domestic Long Distance Service include, but are not limited to: resale or transfer of the service; auto-dialing; continuous or extensive call forwarding; continuous connectivity; fax broadcast/blasting; telemarketing; predictive dialing; or any other use or activity that is inconsistent with normal business usage. OCT reserves the right to measure for inappropriate use and, at its sole discretion, may determine that the Service has been subject to prohibited or inappropriate use. In the event inappropriate use is determined, OCT may require that Customer change or modify its use of the Service and/or its Service plan. Local and Domestic Long Distance does not include inbound Toll-Free service.

**39. BILLING TELEPHONE NUMBER "BTN".** Each Customer and/or End User Customer is eligible for one (1) BTN per physical address. Customers and/or End User Customers who have multiple geographic locations are eligible for one (1) BTN per physical address. In no event shall Customer or any End User Customer receive more than one (1) BTN per physical address.

**40. TOLL FRAUD.** IT IS THE SOLE RESPONSIBILITY OF CUSTOMER TO MAINTAIN SECURE SYSTEMS AND PASSWORDS AT ALL TIMES AND CUSTOMER IS EXCLUSIVELY LIABLE FOR ANY AND ALL TOLL FRAUD ARISING FROM OR ASSOCIATED WITH ITS ASSIGNED IP ADDRESSES, CUSTOMER PREMISE EQUIPMENT, OR OTHER DEVICES FOR WHICH CONNECT TO THE OCT NETWORK. ADDITIONALLY, CUSTOMER IS RESPONSIBLE FOR PAYMENT OF ANY CHARGES INCURRED DUE TO FRAUD (INCLUDING TOLL FRAUD), ABUSE, OR MISUSE OF THE SERVICES, WHETHER KNOWN OR UNKNOWN TO CUSTOMER, AND WHETHER OR NOT OCT TAKES ANY ACTIONS TO STOP OR BLOCK SUCH FRAUD.

**41. DELETION OF VOICE DATA.** OCT reserves the right, upon termination of this Agreement, to delete Customer's and/or any End User Customer's voicemail, call detail, data, and files that are stored on OCT's servers or systems. Customer understands and acknowledges that OCT shall have no liability as a result of the loss or removal of any such voicemail, call detail, data, or files.

#### **MANAGED IT SPECIFIC TERMS AND CONDITIONS**

**42. SERVICES.** OCT will provide, and Customer will purchase IT Managed Service Provider ("MSP") Services on the terms and conditions set forth in this Agreement. The Customer will be responsible for obtaining



any equipment needed to access, connect to, or use the Services, at its cost and expense, and for insuring that equipment is compatible with the Services.

**43. MINIMUM HARDWARE REQUIREMENTS.** Customer agrees to minimum hardware specifications ("Minimum Specs") when purchasing PCs, Servers, Switches, and or other IT equipment not sourced through or from OCT. Minimum Specs are available from One Choice Technology by emailing [orders@onechoice.tech](mailto:orders@onechoice.tech) and will be updated from time to time at OCT's sole discretion without notice. Equipment which does not meet Minimum Specs may not be eligible for or compatible with Services.

**44. SERVICE AVAILABILITY.** Based on staff and or sub-contractor availability, MSP services are a "best efforts" service, which can provide timely service levels and availability selected by the Customer. The actual response, level of service, or availability of support experienced by the Customer may vary and depend on several factors including, but not limited to, Customer location, time of day, other critical issues, and/or other factors not controllable by OCT. No minimum level of service is guaranteed without a specific service level agreement.

#### MISCELLANEOUS TERMS

**45. LIMITATION OF LIABILITY/DISCLAIMER OF WARRANTIES.** CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT CUSTOMER'S AND ITS END USER CUSTOMERS' SOLE RISK. NEITHER OCT NOR ANY OF ITS OFFICERS, OWNERS, AFFILIATES, LICENSERS, EMPLOYEES, DIRECTORS, OR AGENTS WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE AND NO WARRANTY IS MADE AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN

THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT.

NEITHER OCT, NOR IT'S OWNERS, EMPLOYEES, DIRECTORS, OR AGENTS SHALL HAVE ANY LIABILITY FOR THE CONTENT OF INFORMATION THAT CUSTOMER PASSES THROUGH OCT'S NETWORK, CUSTOMER'S TRANSMISSION ERRORS, OR ANY FAILURE TO ESTABLISH CONNECTIONS OUTSIDE OF THE OCT NETWORK. NEITHER OCT, NOR IT'S OWNERS, EMPLOYEES, DIRECTORS, OR AGENTS SHALL BE RESPONSIBLE FOR

TELEPHONE NUMBERS PUBLISHED PRIOR TO CONFIRMATION THAT THE NUMBER IS INSTALLED AND THAT CALLS ARE TERMINATING PROPERLY OR FOR WRONG NUMBER CALLS MADE TO CUSTOMER'S TOLL-FREE NUMBERS.

NEITHER OCT, NOR IT'S OWNERS, EMPLOYEES, DIRECTORS, OR AGENTS SHALL BE LIABLE TO CUSTOMER OR ITS END USER CUSTOMERS FOR ANY CLAIMS OR DAMAGES RESULTING FROM OR CAUSED BY:

- (a) UNAUTHORIZED ACCESS TO TRANSMISSION FACILITIES OR PREMISE EQUIPMENT, OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT, OR DESTRUCTION OF DATA FILES, PROGRAMS, PROCEDURE, OR INFORMATION THROUGH ACCIDENT, WRONGFUL MEANS OR DEVICES, OR ANY OTHER METHOD;
- (b) CUSTOMER'S OR END USER CUSTOMER'S FAULT, NEGLIGENCE OR FAILURE TO PERFORM CUSTOMER'S RESPONSIBILITIES;
- (c) CLAIMS AGAINST CUSTOMER BY ANY OTHER PARTY, INCLUDING WITHOUT LIMITATION ANY END USER CUSTOMER (EXCEPT FOR CLAIMS FOR WHICH OCT HAS AGREED HEREIN TO INDEMNIFY CUSTOMER);
- (d) ANY ACT OR OMISSION OF ANY OTHER PARTY, INCLUDING END USER CUSTOMERS; OR
- (e) EQUIPMENT OR SERVICES FURNISHED BY A THIRD PARTY, INCLUDING END USER CUSTOMERS. NEITHER OCT, NOR IT'S OWNERS, EMPLOYEES, OR AGENTS SHALL BE RESPONSIBLE FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH THE SERVICES.

**46. LIMITATION OF DAMAGES.** NEITHER OCT, NOR IT'S OWNERS, EMPLOYEES, DIRECTORS, OR AGENTS SHALL BE LIABLE TO CUSTOMER OR ANY END USER CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST OPPORTUNITY OR HARM TO BUSINESS), WHETHER OR NOT FORESEEABLE, WHETHER OR NOT OCT IT'S OWNERS, EMPLOYEES, DIRECTORS, OR AGENTS HAD OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, THAT SUCH DAMAGES MIGHT BE INCURRED, AND REGARDLESS OF THE FORM OF ACTION, NATURE OF THE CLAIM ASSERTED, OR THE FRUSTRATION OF CUSTOMER'S PURPOSE. INDIRECT DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, DAMAGES OF THE KINDS SPECIFIED IN THE PRECEDING SENTENCE THAT ARE INCURRED BY A THIRD-PARTY, INCLUDING WITHOUT LIMITATION END USER CUSTOMERS, AND ARE ASSERTED AGAINST CUSTOMER (INCLUDING ATTORNEYS' FEES AND EXPENSES).

OCT's LIABILITY TO CUSTOMER FOR DIRECT DAMAGES MAY NOT EXCEED ONE MONTH'S CALCULATION OF THE APPLICABLE MRC REGARDLESS OF THE FORM OF ACTION, NATURE OF THE CLAIM ASSERTED OR THE FRUSTRATION OF CUSTOMER'S PURPOSE. CUSTOMER'S REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT. NOTHING IN THIS AGREEMENT IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR ANY AMOUNTS OWED UNDER THIS AGREEMENT.

IN NO EVENT SHALL OCT, IT'S OWNERS, EMPLOYEES, DIRECTORS, OR AGENTS BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO:

- (A) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE;
- (B) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS OR THIRD PARTIES;
- (C) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICES WITH APPLILICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR
- (D) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

**47. GOVERNMENTAL REGULATION.** Services provided under this Agreement are subject to all applicable federal, state and local laws, and regulations, rulings, orders and other actions of governmental agencies including, but not limited to, the Communications Act of 1934, as amended.

**48. INDEMNIFICATION.** Customer will defend, indemnify and hold harmless OCT and its employees, officers, directors and agents from and against any and all claims, actions, damages, liabilities, costs, fees and expenses (including without limitation reasonable attorneys' fees) made, asserted, or sought by any End User Customer, or any other third-parties, arising or resulting from or relating to:

- (a) a violation of any law by Customer or any End User Customer;
- (b) Customer's or any End User Customer's negligence or willful misconduct, including without limitation, physical damage to tangible property or bodily injury; and/or
- (c) relating in any way to the Services, this Agreement, or any Service Order, not including claims arising out of OCT's negligence or willful misconduct.

Customer will also defend, indemnify and hold OCT, and its employees, officers, directors and agents harmless from and against all third-party claims, actions, damages, liabilities, costs, fees and expenses,



including without limitation reasonable attorneys' fees, arising from violation of any third-party intellectual property right, claims of any kind by Customer's negligent, willful, improper or illegal use, misuse, abuse, modification, or resale of the Services.

OCT will defend, indemnify and hold Customer harmless from and against all third-party claims, actions, damages, liabilities, costs, fees and expenses, including without limitation reasonable attorneys' fees, arising from OCT's violation of any third-party intellectual property right due to the configuration of OCT's Network.

**49. INDEMNIFICATION PROCEDURES.** Each Party shall promptly, and in writing, notify the other Party of any claim as to which it intends to seek indemnification under this Agreement, and shall take such action as may be necessary to avoid default or other adverse consequences. The indemnifying party shall have the right to select counsel and to control the defense; provided, that the indemnified party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of the claim. The indemnified party shall provide cooperation and participation of its personnel as required for the defense at the cost and expense of the indemnifying party.

**50. PUBLICITY.** Except for those service marks or trademarks that are affixed by OCT to physical products that Customer purchases from OCT, Customer will not use OCT's name, logo, service marks, or trademarks, for any purpose, including, but not limited to, the resale of Services, marketing, or press releases, without OCT's prior written consent. Without limiting the generality of the foregoing, Customer shall not promote or advertise OCT's name or capabilities to any End User Customer or prospective End User Customer, attempt to sell its service using the OCT name, or represent to any End User Customer or prospective End User Customer that they will be OCT customers or that they may obtain OCT services from Customer. Notwithstanding the foregoing, OCT may include Customer's name in its customer list.

**51. NON-DISPARAGEMENT.** Customer will not disparage OCT or any Service offered by OCT. Customer will not engage in activities that might injure the goodwill of OCT or its products or services. Customer's failure to comply with the terms of this provision will entitle OCT to immediately terminate this Agreement and to recover any and all damages arising from or relating to Customer's disparagement of OCT or its Services.

**52. ASSIGNMENT.** Customer may not assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of OCT, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, Customer may assign this Agreement on written notice to OCT no less than sixty days prior to assignment, but without OCT's consent, if to a subsidiary, affiliate or successor

in interest of the Customer's business ("Assignee") so long as Customer provides OCT with evidence satisfactory to OCT, in its reasonable discretion, that Assignee's financial condition and credit history is at least as favorable as Customer's at the time of the proposed Assignment, Assignee agrees in a signed writing provided to OCT to be bound by the terms of this Agreement, and either:

(a) Customer is not in breach of this Agreement at the time of assignment and has fully paid for all Services through the date of the assignment; or

(b) Assignee agrees in a writing that is provided to OCT prior to the assignment to be bound by all past obligations of Customer and cures all of Customer's payment defaults prior to the assignment.

If Customer purchases or merges with another entity that has an existing services agreement with OCT, the other entity's services will continue to be governed by its existing agreement unless otherwise agreed to in writing by Customer and OCT. OCT may assign this Agreement to a purchaser of either a controlling interest in its common stock or all or substantially all of its assets, to its parent company, or to a successor company resulting from an internal restructuring. Upon such assignment, OCT will have no further liability for any obligations arising after the date of such assignment. OCT also may designate its Local Entities that own and/or operate telecommunications facilities in various geographical areas to provide Services under this Agreement. Such Local Entities will perform the Services in accordance with, and subject to, the terms and conditions of this Agreement. If any of the Local Entities fail to perform the Services as required hereunder, OCT will remain responsible to Customer for such obligations in accordance with the terms of this Agreement. OCT will continue to invoice Customer for Services rendered, shall manage Service Order acceptance and Service delivery processes hereunder and may exercise and enforce other rights on behalf of such Local Entities.

**53. FORCE MAJEURE.** If OCT's performance of any obligation under this agreement is prevented, restricted or interfered with by causes including failure or malfunction of Customer-supplied equipment, acts of God, explosions, vandalism, cable cuts, storms, fires, flood or other catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, work stoppages or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency instrumentality, or of any civil or military authority, then OCT shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. OCT shall use reasonable efforts under the circumstances to avoid or remove such causes of nonperformance with reasonable dispatch.

**54. COMPLIANCE.** Customer agrees to comply with all applicable federal, state, and local laws, rules, and regulations in connection with its use of the Services. Customer agrees to adhere to OCT's Acceptable Use policy ("AUP"), as the same may be amended from time to time. Customer shall also require all of its End User Customers to comply with an acceptable use policy that contains at least the same provisions as OCT's AUP. A constant and live copy of the OCT AUP can be found at <http://onechoice.tech/customer-docs/>.

**55. GOVERNING LAW AND FORUM.** All rights and obligations of OCT and Customer with respect to the provision of Services shall be governed by and construed in accordance with the laws of the State of Indiana. All questions or controversies arising out of or in any way relating to any Service, Service Order, invoice, this Agreement or any other aspect of the relationship between OCT and Customer shall be submitted to the courts of the State of Indiana having subject matter jurisdiction, and the parties submit themselves and waive any objection to the personal jurisdiction of all such District Courts and/or Indiana courts, as the case may be. Customer further agrees that venue for any legal action brought by either party shall be proper in Hendricks County and Customer waives any right to challenge venue in such county.

In the event that legal action is commenced, attorney's fees shall be awarded to the prevailing Party.

**56. WAIVER OF JURY TRIAL.** CUSTOMER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY LEGAL ACTION INVOLVING THE PARTIES.

**57. LIMITATION OF ACTIONS.** The Parties agree that any claim or cause of action it may hereafter have against the other Party shall be brought and commenced within one year of the expiration or termination of this Agreement. The Parties waive their right to bring any claims or causes of action in any court, whether based in tort or contract, against the other Party beyond one year after the expiration or termination of this Agreement.

**58. REMEDIES CUMULATIVE.** The rights and remedies herein are cumulative and not exclusive of other rights and remedies which may be granted or provided by law, and nothing herein contained shall be construed to preclude or in any way prohibit OCT from instituting and otherwise prosecuting to judgment a lawsuit in any court of competent jurisdiction to effect the collection of any sums due it or to enforce any right or remedy arising hereunder or otherwise.

**59. NOTICES AND FACSIMILE SIGNATURES.**

(a) Unless otherwise provided in this Agreement or a Service Order, any notice to OCT required under this Agreement must be in writing and be delivered to the receiving Party by one of the following means:

- (i) in person,
  - (ii) by certified mail with return receipt requested, or
  - (iii) by overnight courier to the addresses below.
- (b) A notice is deemed given:
- (i) when delivered, if personally delivered,
  - (ii) at the time indicated on the return receipt, if delivered by certified mail, or
  - (iii) at the time the Party or its representative executes the delivery receipt, if delivered via courier.

**OCT Delivery Address:**

<b>Company</b>	One Choice Technology
<b>Address</b>	594 West Main Street
<b>City, State, Zip Code</b>	Danville, IN 46122
<b>Attention</b>	President

(c) Any notice to Customer required under this agreement may be provided by use of electronic communications. This includes but is not limited to: required notices, agreements, and other information concerning OCT, including changes to this agreement. OCT may give Customer notice by posting on the OCT website (<http://onechoice.tech/>), on Customer's account webpage, by email to an e-mail address on file, or by other permitted communication. Such notice will be considered given and effective on the date posted or sent.

(d) The delivery of any Party to the other of a telecopy, electronic, or facsimile signature to this Agreement or any notice hereunder shall have the same effect as the delivery of an original signature; provided, however, that the Customer thereafter shall promptly deliver an original signature page to the other (although any failure or delay in the delivery of an original signature shall not vitiate or impair the legally binding effect of a telecopy, electronic, or facsimile signature).

**60. REFORMATION AND SEVERABILITY.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be declared invalid or unenforceable,



such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, and the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those declared invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**61. SURVIVAL.** The terms and conditions of this Agreement will survive the expiration or other termination of this Agreement to the fullest extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate.

**62. USE OF CUSTOMER INFORMATION.** From time to time OCT is able to provide the Customer with product marketing or education information based on existing or presumed use of one or more Services. This information is called Customer Proprietary Network Information ("CPNI"). OCT may use CPNI to advise the Customer on utilizing existing or new related products. OCT does not sell or provide this information to any third parties, other than the E911 records required by law if Customer is a telephone customer. Customer has a right to restrict OCT's access to CPNI. If Customer chooses to opt-out of OCT's use of CPNI, please contact our business office to be placed on a list where we will not use your CPNI. Further, the Customer hereby gives OCT permission to contact them at the about future services that OCT will be offering that may be of interest to customer.

**63. ENTIRE AGREEMENT.** This Agreement, including any and all Service Orders and addendums to all Service Orders, contains the entire agreement and understanding concerning the Services and supersedes all prior negotiations and all other agreements, whether electronic, written or oral.

**64. NO THIRD-PARTY BENEFICIARIES.** This Agreement does not expressly or implicitly provide any third party (including End User Customers) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

**65. INDEPENDENT CONTRACTORS.** The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

**66. NO WAIVER.** No failure by either Party to enforce any rights under this Agreement shall constitute a waiver of any such right or another right.

**67. NON-SOLICITATION OF OCT EMPLOYEES.** During the term of this Agreement and any Service Order, and for a period of one (1) year after the Termination of this Agreement, Customer will not, directly or indirectly, solicit, encourage or induce any person who provides services to OCT, whether as an employee, consultant, independent contractor or agent to terminate his or her relationship with or services for OCT and shall not, directly or indirectly, either individually or as owner, agent, employee, consultant or otherwise, employ or offer employment to any person who is or was employed by OCT unless such person shall have ceased to provide services to OCT for a period of at least six (6) months.

**68. CHANGES TO AGREEMENT.** OCT reserves the right to change the terms and conditions of this agreement and or the Acceptable Use Policy at any time. By subscribing to OCT's Service, Customer agrees that we may provide, by use of electronic communications, required notices, agreements, and other information concerning OCT, including changes to this agreement and or the Acceptable Use Policy. OCT may give Customer notice of changes by posting on the OCT website (<http://onechoice.tech/>), on Customer's account webpage, by email to an e-mail address on file, or by other permitted communication. Such notice will be considered given and effective on the date posted or sent. These changes will become binding on the date they are posted and OCT is not required to give further notice in order for Customer to continue using OCT's service. By continuing to use the service after revisions are in effect, Customer accepts and agrees to all revisions. If Customer does not agree to the changes, Customer must terminate service immediately. If Customer wants to withdraw consent to receive notices electronically, Customer must discontinue use of OCT's Services. If Customer continues to use OCT's Services, OCT will consider this acceptance of any changes. OCT reserves the right to update this MSA at any time.

OCT reserves the right to update the Acceptable Use Policy at any time. The most recent version of these documents will always be found <http://onechoice.tech/customer-docs/>.

Customer may not amend or otherwise modify this agreement without the approval and signature of both OCT and Customer.

**69. E-VERIFY.** Pursuant to Indiana Code § 22-5-1.7-11, OCT, by entering into the Contract with Customer, may be required to enroll in and verify the work eligibility status of all of its newly hired employees through the E-Verify program. OCT is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists. Statutory requirements

notwithstanding, OCT hereby states that it does not knowingly employ an unauthorized alien. OCT further affirms that it will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

**70. NON-APPROPRIATION.** This section only applies if this agreement is between OCT and a Governmental Entity. The Parties acknowledge that Customer is a Governmental Entity whose funds are subject to appropriation by its fiscal body. Therefore, if at any time during the initial term or subsequent term of this Contract, Customer's fiscal body should fail to appropriate sufficient funds to continue this Contract, it will become null and void. Customer shall not be obligated to perform unless and until sufficient funds are appropriated. Customer agrees to seek funding for the continuation of the Contract during each budget cycle during the initial term or subsequent term of this Contract. Customer agrees to inform OCT in writing of any such non-allocation of funds at the earliest possible date, and shall pay for all services provided prior to exhaustion of the appropriated funds.

**71. NON-DISCRIMINATION.** OCT agrees that it, and its subcontractors, will not discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to the employee's hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of the employee's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Contract.

## SCHEDULE 1: DEFINITIONS

**"Account"** means, collectively, all services provided to, and information and contacts related to, Customer under this agreement.

**"Affected Service(s)"** means any OCT product or service being used by Customer for which Customer has experienced a Service Outage for which Customer opened a Trouble Ticket via OCT Technical Support.

**"OCT's Equipment"** means the telecommunications equipment, cable, and facilities installed, operated and controlled by OCT or its Carrier Partners for provision of the Services to Customer which have not been purchased by Customer.

**"OCT's Network" or "Network"** means those telecommunications facilities operated by OCT or its Carrier Partners and excludes any telecommunications facilities that are operated by other telecommunications providers.

**"Billing Telephone Number"** means the primary number used to identify the account to which usage for a particular telephone number, or series of telephone numbers, belongs.

**"Carrier Partners"** means any telecommunications carrier that OCT engages or contracts with to deliver, supply, or support OCT's products or services. Carrier Partners are not employees or agents of OCT, but rather are independent contractors. OCT assumes no liability, and shall not be held liable by Customer, for any damages caused by the acts or omissions of any Carrier Partner.

**"Charges"** means all NRCs, MRCs, Additional Charges, Fees and Costs and any and all other amounts payable by OCT unless such person shall have ceased to provide services to OCT for a period of at least six (6) months.

**"Confidential Information"** means any and all information of or concerning a Party obtained by the other Party or to which such other Party has direct or indirect access, whether marked as confidential or not, in any form, format or media, including information obtained from oral or other transitory means, unless expressly and specifically indicated at the time of disclosure to be non-confidential. Confidential Information shall include but is not limited to:

- (a) pricing and cost information;
- (b) business methods and processes;
- (c) patentable subject matter and patent applications;



- (d) trade secrets;
- (e) the terms of any agreement between the Parties, except to the extent otherwise stated in such agreement;
- (f) any information that is marked confidential, restricted, proprietary, or with a similar designation; and
- (g) proprietary information such as IP addressing data, routing protocols and tables, router configuration syntax, specifications, processes, methods, ideas, techniques, drawings, works of authorship, inventions, know-how, software, algorithms and formulae related to the current, future, and proposed products and services of each of the Parties, including without limitation information concerning research, development, financials, procurement, customer lists, investors, employees, third party relationships, prospective customers, products and services, forecasts and marketing plans.

**"Early Termination Fee"** means, with respect to each existing Service Order, an amount equal to:

- (a) the number of months remaining in the Service Term of the applicable Service Order from the Termination Date through the end of the applicable Service Term, multiplied by the MRCs with respect to each Service that is terminated; plus
- (b) the number of years remaining in the Service Term of the applicable Service Order from the Termination Date through the end of the applicable Service Term, multiplied by the YRCs with respect to each Service that is terminated; plus
- (c) all Charges that are unpaid as of the Termination Date; plus
- (d) all costs and expenses incurred by OCT in disconnecting such Service; plus
- (e) any other amounts required to be paid by Customer pursuant to the applicable Service Order.

**"Governmental Entity"** means any federal, state, local or foreign government or any court of competent jurisdiction, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign.

**"Local Entities"** means the partnership, corporation, or other legal entity in which OCT has a controlling interest and such legal entity is certified to provide Services in the particular geographic area.

**"Local MOU"** means the total aggregate amount of local minutes of usage; calculated as outbound local minutes of use (outbound calls to a customer's local calling area) plus inbound minutes of use (non toll-free calls to the customer's local numbers) plus outbound minutes of use to domestic toll free numbers (outbound calls to toll free numbers within the continental United States).

"MRC" means the monthly recurring charges associated with a Service.

"NRC" means the non-recurring charges associated with a Service or a hardware purchase.

"Service(s)" means telecommunications products and/or services provided by OCT or its Carrier Partners in the form of physical or virtual circuit(s) and other hardware and/or software connecting individual locations to one another or to a network pursuant to this Agreement, any Service Orders, and any attached schedules.

"Service Order" means the order from the Customer identifying the Service being requested, type of service, quantity of circuits, A & Z locations, protocols, Service Term, requested start of service date and any other information reasonably necessary to describe the requested Service.

"Service Outage" means either;

(a) a complete loss of transmit or receive capability or the inability to make inbound or outbound calls for a Service and such inoperability is caused by OCT's Equipment or Network, or

(b) a material non-compliance with a specific performance metric in a service level agreement and such non-compliance is caused by OCT's Equipment or Network.

"Service Term" means the duration for a particular Service Order and any renewal periods, during which Customer is responsible for all Charges.

"Tax" or "Taxes" mean any federal, state or local excise, gross receipts, value added, sales, use or other similar tax, fee, tax- like fee or surcharge of whatever nature and however designated imposed, or sought to be imposed, on or with respect to purchases by Customer from OCT for consideration under this Agreement or for OCT's use of public streets or rights of way, which OCT is required or permitted by law or a tariff to collect from Customer; *provided, however*, that the term "Tax" will not include any tax on OCT's corporate existence, status, income, corporate property or payroll taxes.

"Term" means the duration of this Master Services Agreement as specified in the Term Section above and any renewal periods.

"Termination Date" means, with respect to any Service, the date on which such Service is disconnected.

"VoIP" is an acronym that stands for Voice over Internet Protocol.

"YRC" means the yearly recurring charges associated with a service.