

## **Ontech Hosted Services Agreement**

This Hosted Services Agreement (the “Hosted Agreement”) is between Ontech Systems, Inc., a Wisconsin corporation (“ONTECH”), N85W16186 Appleton Avenue, Menomonee Falls, WI 53051, (262) 522-8560 and “CLIENT”.

**“CLIENT” Organization/DBA: City of Oelwein, IA**

**Street: 20 2nd Ave. SW**

**City: City of Oelwein**

**State: IA**

**Zip Code: 50662**

**Phone: 319-283-5440**

**Date: 11/16/22**

**Minimum # of Committed Named User for 36 Months: 6**

### **I. Purpose**

The purpose of this Hosted Agreement is to detail the understandings under which ONTECH will provide Hosted IT services (“Services”) to you. Additional Services to be provided will be mutually defined by ONTECH and you based upon your current need. Client desires to hire ONTECH and ONTECH agrees to provide CLIENT with certain Hosted Services within Microsoft Azure Data Centers. .

### **II. Terms Confidential**

The terms and conditions in this Hosted Agreement, the attachments hereto and Addendums are confidential, and shall not be used or disclosed, in whole or in part, for any purpose other than evaluation within your organization.

**EXHIBIT A**  
**Terms, Conditions and Definitions**

1) **General Terms. Exclusions, and Responsibilities.**

- a) **General Responsibilities; ONTECH** will provide:
  - i) Qualified personnel to perform all activities identified in this Statement of Work.
  - ii) Detailed time reporting and related expense information to support its billings in electronic documentation.
  - iii) Services in a professional manner and abide by the CLIENT's code of business conduct.
  - iv) Recommendations based upon its reasonable opinion, industry standards, and supported by manufacturer information that certain equipment, software or security systems are obsolete, defective or incapable of meeting CLIENT's needs.
- b) **General Responsibilities: Client** will provide:
  - i) Reliable Internet access.
  - ii) ONTECH with remote access to its computer systems and equipment.
  - iii) ONTECH with convenient and timely access to the computer systems and equipment covered under any Services Agreement,
  - iv) ONTECH with adequate workspace and facilities within a reasonable distance of the computer systems and equipment, access to and use of all information, internal resources, and facilities determined necessary by ONTECH to provide Services.
  - v) ONTECH with the results of preliminary diagnostic steps or additional information as requested by ONTECH related to any requested Services.
  - vi) An assigned employee to be a liaison or contact person in order to make communications between both parties effective.
  - vii) ONTECH with any network documentation updates made by CLIENT such as password changes, network reconfigurations that will affect ONTECH ability to support CLIENT network
- c) **General Responsibilities: Client** will agree:
  - i) To follow ONTECH's recommendations in respect to updates or upgrades of the security systems supporting Client's computer systems and equipment to protect against hacking, malware, and other unauthorized entries into CLIENT's computer systems.
- d) **Exclusions.** Client understands and agrees that Services required in order to recover from failures and/or incidents caused by any of the following circumstances may not be considered normal maintenance CLIENT further understands and agrees that ONTECH shall have no liability for the failures, incidents or work performed.
  - i) Service made necessary by the alteration or modification of hardware or software other than as authorized or recommended by ONTECH
  - ii) Service made necessary by hardware or software operation problems caused by neglect, malicious activity, or misuse including, without limitation, use of the system(s) for a purpose other than which it was designed, by Client, its employees, or third-party contractors.
  - iii) Service made necessary by failure to follow ONTECH recommendations in regard to equipment, software or security modifications or updates.
  - iv) Service made necessary due to acts of God, damage from fire originating outside of equipment, water, wind, earthquakes, lightning, terrorism, transporting equipment, vandalism, or burglary.
  - v) Service made necessary due to electrical damage caused by electrical wiring at the system location or resulting from electrical surges, sags, or spikes.
  - vi) Service made necessary by bugs or malware released by software installed by 3<sup>rd</sup> parties, adverse effects from CLIENT installing 3<sup>rd</sup> party software updates or CLIENT's industry specific software.
  - vii) Service made necessary by Internet or telephone service provider outages.
  - viii) Service made necessary due to outdated, out of support data backup solution(s) causing loss of data and/or slow data restore times.

2) **Definitions.** The following definitions apply to this Agreement:

**“Addendum”** are attachments to this Agreement that contain the specific scope of services that the Client has requested and ONTECH has agreed to provide in exchange for the payment of fees described therein. An Addendum that has been signed by the parties is incorporated into and subject to the terms of this Agreement.

**“Affiliate”** is any legal entity owned by one of the parties, that owns one of the parties, or is under common ownership with one of the parties.

**“Confidential Information”** is information marked or otherwise identified in writing by a party to this Agreement as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. Confidential Information includes non-public information regarding either party’s products, features, marketing and promotions, and the negotiated terms of our agreements, except as otherwise required by action of law. All beta products are confidential unless accepted in the section regarding Confidential Information later in this Agreement. Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it under the relevant agreement; or (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality.

**“Client”** is defined as the company, organization, board, or agency that has signed this Agreement with ONTECH. “Client” also refers to any subdivision or parent of the signatory to this Agreement.

**“Delivery” or “Delivered”** means by hand, U.S. mail properly addressed and bearing adequate postage, courier service, including expedited courier service, or by electronic transmission by email addressed to the party that signed this Agreement at the last known address or email address of the other party.

**“ONTECH”** refers to the Corporation that has agreed to provide Services under this Agreement.

**“You”** means the CLIENT and **“Your”** means the request, facilities or operations of the CLIENT.

**“Receipt”** in the case of hand delivery means actual receipt, in the case of delivery by mail, means the date 3 days after the date of mailing, in the case of electronic mail shall mean the date of transmission, and in all other cases, shall mean the date of actual receipt by the party to which delivery was intended.

**“Services”** are the professional services provided by ONTECH under this Agreement which may include development, product support, or consulting services.

**“Scope of Services”** is the description of the Services to be provided by ONTECH to the CLIENT under the terms of this Agreement and is included in an Addendum entered into by ONTECH and CLIENT.

**“Signed”** means the insertion of an original signature, a scanned original signature, or electronic signature into a Quote or Proposal, an Agreement, Addendum or an Amendment and the delivery of the signed document to the other party by hand, via U.S. mail, by courier service, or by electronic mail (e-mail”).

**“Subscription”** means service, licensing, software, or hosted solutions in which CLIENT pays a monthly, annual, or multi year subscription fee for those products and solutions.

Certain other terms are defined as set forth elsewhere in this Agreement.

**3) Fees.** As compensation for the Hourly Services provided by ONTECH, CLIENT agrees to pay ONTECH the fees and charges for the Services selected by CLIENT under an Hourly Services Addendum entered into by and between ONTECH and CLIENT (together with any sales or use tax that may be applicable). ONTECH reserves the right to raise its hourly fees and charges upon forty-five (45) days written notice of amended terms delivered to CLIENT; provided however fees and charges shall not be increased during the first one year from the date of this Agreement or the date of any subsequent Hourly Services Addendum. CLIENT understands and agrees that the following third-party costs are not covered by the fees set forth in ONTECH Services Agreements and shall be charged by ONTECH to CLIENT:

- Parts, hardware, and software not covered by warranties
- Software licenses, subscription, or upgrade fees
- Manufacturer or vendor support fees, whether by annual contract or per incident
- Consumable materials, such as printer cartridges and removable storage tapes/disks
- Shipping costs

CLIENT shall also pay ONTECH for the one-way travel time between ONTECH's office and the CLIENT's location at one hundred percent (100%) of the applicable rates. Emergency Services rates shall be as agreed upon under an Hourly Services Addendum. There shall be a fifteen minute minimum charge for any Service request.

CLIENT further agrees to reimburse ONTECH for all direct costs incurred by ONTECH in providing Services including, without limitation, travel expenses from ONTECH's office to CLIENT's location. Upon CLIENT's request, ONTECH shall provide CLIENT with itemization and documentation concerning such direct costs. Travel in excess of 1.5 hours is subject to an additional charge which will be included within proposals approved by CLIENT.

**4) Invoices.** Client will be invoiced on the effective date and semi-annually thereafter. Invoices are sent in December for services rendered in the subsequent six (6) months for January through June. Invoices are sent in June for Hosted services rendered in the subsequent six (6) months for July through December. New clients added in the middle of the semi annual billing cycle will have a prorated fee for the remaining months of that billing cycle.

All invoices are due within 30 days of the invoice date. Invoices not paid within 30 days are subject to 1.5% interest per month or an annual interest rate of 18% per year. ONTECH has the right to increase Hosted charges at each anniversary or the effective date. Written notice of such increases shall be given to Client not less than thirty (30) days before the anniversary of the effective date.

**5) Suspension/Termination of Services.** ONTECH reserves the right to suspend the delivery of Services if the CLIENT's account becomes 60 days or more past due effective upon CLIENT's receipt of written notice of Suspension. Services will not be resumed until the CLIENT's past due balance is paid in full. ONTECH further reserves the right to terminate Services for non-payment effective upon CLIENT's receipt of written notice of termination for non-payment. In the event that ONTECH elects to terminate the delivery of Services due to non-payment ONTECH's engagement will be deemed to have been completed even if ONTECH has not completed the services described in the Scope of Services referred to in any Addendum and this Hosted Agreement. In such event CLIENT remains obligated to compensate ONTECH for all time expended and to reimburse ONTECH for all out-of-pocket expenditures through the effective date of termination. CLIENT shall still be financially responsible for any remaining contracted services and subscriptions.

**6) Hosted Agreement Term.** This Agreement shall be effective as of the go live date and shall continue in effect for a period of thirty-six (36) months (the "initial term") from the hosted go live date unless canceled by either party upon sixty (60) days' written notice. Early termination by CLIENT will result in full payment of the monthly contracted hosted services as defined in the signed Hosted Agreement.

**7) Relationship.** The relationship of ONTECH and CLIENT shall be that of independent contractors, not that of employer/employee, partnership or joint venture. ONTECH shall be free to exercise independent judgment as to the time, place and manner of performing the Services under this Agreement subject to the mutual agreement of CLIENT.

**8) Limited Warranties; Disclaimers.** ONTECH represents and warrants that any Services that it provides to CLIENT under this Agreement will be performed in accordance with generally accepted industry standards of care and competence. CLIENT's sole and exclusive remedy for a breach of ONTECH's warranty relating to Services shall be that ONTECH will, in its sole discretion, either (i) use reasonable efforts to re-perform the Services, or (ii) refund the fee CLIENT paid for the Services that are alleged to be in breach of ONTECH's warranty. A claim for breach of ONTECH's warranty relating to Services must be made by CLIENT in writing delivered to ONTECH within fifteen (15) days of CLIENT's discovery of the alleged breach. If CLIENT does not notify ONTECH of a breach of ONTECH's warranty relating to Services during such period, CLIENT shall be deemed to have irrevocably accepted the Services.

ONTECH does not provide any warranty relating to any Products sold to CLIENT pursuant to this Agreement. CLIENT shall pursue any warranty claim under such warranty as may be available from the manufacturer of the Product. All Products are provided to CLIENT by ONTECH "AS IS." ONTECH shall, to the extent it is allowed by its vendors, pass through any warranties provided by the manufacturer of the Product. In the event such warranties are not assignable to CLIENT, ONTECH agrees to take commercially reasonable efforts to assist CLIENT's efforts to obtain warranty coverage. ONTECH is not compensated by manufacturers for Services performed as they relate to the Manufacturer's Warranty. Those services will be billed to the CLIENT in accordance with the Hourly Services Addendum agreed upon rates. CLIENT acknowledges that no employee of ONTECH or any other party is authorized to make any representations or warranties on behalf of ONTECH that are not in this Agreement. **ONTECH EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES RELATED TO THE SERVICES AND/OR PRODUCTS, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF ACCURACY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR OTHER PERFORMANCE.**

**9) Insurance.** ONTECH shall, at its sole expense, maintain in effect at all times during the performance of Services, insurance coverage as set forth below:

- (a) Worker's Compensation in accordance with the law in the State of Wisconsin.
- (b) Commercial General Liability, Professional Liability (Errors and Omissions) and Automobile Liability Insurance.
- (c) Evidences of Insurance – Upon execution of this Agreement, ONTECH will, if requested by CLIENT, provide CLIENT with a certificate of insurance confirming the existence of the above described coverages.

**10) Limitations of Liability; Indemnification. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE SERVICES TO BE PERFORMED BY ONTECH THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT AGREES TO LIMIT THE LIABILITY OF ONTECH FOR ANY AND ALL CLAIMS, LOSSES, COSTS, OR DAMAGES OF ANY NATURE SUCH THAT THE TOTAL AGGREGATE LIABILITY OF ONTECH ON ANY CLAIM SHALL NOT EXCEED THE GREATER OF: (a) THE TOTAL FEE PAID BY CLIENT TO ONTECH FOR THE SERVICES RENDERED TO CLIENT THAT ARE ALLEGED TO BE THE CAUSE OF THE EVENT OR OCCURRENCE GIVING RISE TO CLIENT'S CLAIM; OR (b) THE TOTAL FEE PAID BY CLIENT TO ONTECH FOR SERVICES RENDERED TO CLIENT OVER THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT OR OCCURRENCE GIVING RISE TO CLIENT'S CLAIM. IT IS INTENDED THAT THIS LIMITATION SHALL APPLY TO ANY AND ALL LIABILITY OR CAUSE OF ACTION HOWEVER ALLEGED OR ARISING. NOTWITHSTANDING THE FOREGOING LIMITATIONS ONTECH SHALL IN NO EVENT BE LIABLE FOR DAMAGES IN EXCESS OF PAYMENTS, IF ANY, MADE BY ONTECH'S INSURANCE CARRIER TO CLIENT.**

**EXCEPT AS PROVIDED IN PARAGRAPH EIGHT (8) IT IS FURTHER AGREED THAT ONTECH SHALL NOT BE LIABLE FOR CLAIMS ASSERTING OR ARISING OUT OF AN ALLEGED BREACH OF EXPRESS OR IMPLIED WARRANTY OR FOR DAMAGES RELATING TO INTERRUPTION OF BUSINESS, CONSEQUENTIAL DAMAGES OR PUNITIVE DAMAGES. CLIENT WILL INDEMNIFY, DEFEND AND HOLD ONTECH HARMLESS FROM AND AGAINST ANY CLAIM, LOSS, COST AND DAMAGE OF ANY NATURE, INCLUDING CLAIMS OF THIRD PARTIES, THAT WOULD BE ABOVE, BEYOND OR OUTSIDE THE SCOPE OF THE TERMS OF THE "LIMITATIONS OF LIABILITY" OR THE "LIMITED WARRANTIES DISCLAIMERS" PROVISIONS SET FORTH IN THE AGREEMENT BY AND BETWEEN ONTECH AND CLIENT.**

**11) Confidentiality.** The Parties acknowledge and agree that during the course of the performance of the parties' respective obligations under this Agreement, each party may make available to the other Confidential Information that is of value to the party disclosing the information. Each party agrees to maintain the confidentiality of the Confidential Information of the other party and not to disclose or disseminate such Confidential Information to third parties. The party receiving Confidential Information agrees to use the same standard of care in maintaining the confidentiality of the Confidential Information as it uses to avoid disclosure of its most sensitive Confidential Information. Nothing in this Section shall preclude a party from disclosing Confidential Information to the extent that the disclosure thereof is required by law. Upon termination or expiration of this Agreement, the parties shall destroy or return all Confidential Information of the other and shall not use any Confidential Information of the other in its business. ONTECH further acknowledges that CLIENT owns all proprietary data, files and information maintained, within the files, records and electronic data systems of CLIENT (other than software copyright protected or software licensed by third parties). ONTECH will protect and not release any of CLIENT's data, files or information to any party except upon the express written direction of CLIENT.

**12) Non-solicitation of Ontech employees.** CLIENT recognizes that ONTECH has invested valuable time and resources in the selection, hiring, training and retention of employees that will be assigned to perform Services on behalf of CLIENT. As a result, CLIENT agrees that it will not, during the term of this Agreement or for a period of one (1) year following the termination of this Agreement, solicit for employment or offer employment to any employee of ONTECH. If CLIENT violates this provision ONTECH may immediately terminate this Agreement irrespective of any notice otherwise required herein and CLIENT agrees to pay ONTECH a fee equal to 100% of the yearly wages of the employee or employees that CLIENT hires or attempts to hire as liquidated damages, which amount CLIENT agrees to be a fair and reasonable amount.

**13) Integration; merger.** This Agreement, and the Addendums attached hereto and incorporated herein, supersede all previous agreements whether oral or written between the parties with respect to the subject matter hereof. This Agreement is expressly agreed to contain all of the terms, conditions and understandings of the parties. This Agreement further contains all of the terms, conditions and understandings of the parties as may be subsequently provided by ONTECH to CLIENT in a written notice of "amendment" electronically delivered to CLIENT provided no written objection to any amended term is received by ONTECH within 45 days from the date of the delivery of the notice of amendment to CLIENT.

**14) Binding effect.** This Agreement shall be binding upon the parties, their respective successors, merger partners, assigns, subsidiaries, affiliates, legal representatives and administrators. This Agreement is also binding by and between the parties if CLIENT requests ONTECH to provide services to a third party as a sub-contractor of CLIENT.

**15) Governing law.** This Agreement shall be governed by the laws of the state of Wisconsin and any claims or actions arising under this Agreement shall be filed and heard in the Circuit Court of Washington County, Wisconsin.

**16) No modifications.** Except as provided in paragraph 13, no modification, amendment or waiver of any provision of this Agreement shall be effective unless approved in writing by both parties. The failure of either party at any time to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions.

**17) No assignments without consent.** This Agreement may not be assigned without the written consent of the other party.

**18) Counter-parts.** This Agreement may be executed by the parties hereto in counter-parts provided it shall not be effective if not signed by both parties with an executed copy provided to the other party. Signatures on a copy of this Agreement or on copies of any other documents provided pursuant to this Agreement delivered by hand, U.S. Mail, courier service or by electronic mail shall be binding upon the parties and of the same legal effect as original signatures.

**19) Authority.** The person executing and attesting to this Agreement on behalf of CLIENT hereby personally represents and warrants that: they have full power, authority and right to execute this Agreement; the execution and delivery of this Agreement has been duly authorized by all Managers, Members or owners of CLIENT whose consent or approval may be required; and the execution of this Agreement by the below signatory is sufficient and legally binding on CLIENT without the signature of any other Manager, Member, owner or party.

Upon receipt of this fully executed document, ONTECH will be available to schedule Services and will proceed in a manner consistent with both organizations' needs. If this meets with your approval, please return a signed copy of this Hosted Agreement and all applicable Addendums. We look forward to being of service to your organization (CLIENT).

**Ontech Systems, Inc.**

**City of Oelwein, IA**

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

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

Mark P. Dohnal

Name: \_\_\_\_\_

President

Title: \_\_\_\_\_

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

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

Civic Systems, LLC  
4807 Innovate Ln  
P.O. Box 7398  
Madison, WI 53707-7398

City of Oelwein  
20 2nd Ave. SW  
Oelwein, IA 50662

**1. Investment Summary**

The following Investment Summary reflects the monthly costs related to the Software and Services. This payment agreement takes place of the payment agreement previously agreed upon for Hosting through ISCorp. The below dollar amount is the same as it is with IS Corp so there is no change in the amount paid by the City.

	<u>Investment</u>
<i>Upfront Investment</i>	<u>\$ 0</u>
<i>Monthly Hosting Fee (6 Total Named Hosted Users) 36 Month Commitment</i>	<u>\$ 650</u>

\*Client will pay semi-annual for Services in advance of the service period in conjunction with the semi-annual support billings.

\*\*Additional Concurrent Connect Users will have an upfront cost along with an annual maintenance fee. Additional Hosted Users will have an additional monthly hosting fee.

**2. Contract Agreement Execution**

The parties hereto have executed this Contract Agreement to agree on costs and to get on the scheduled for implementation. A separate agreement will need to take place before go live.

**CITY OF OELWEIN, IA**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**CIVIC SYSTEMS, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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