

RESOLUTION #19-0617-05

Approving Short Term Contract with Clarity for IT Services

Whereas, Liberty Township currently has a monthly contract with Clarity Technology Solutions for IT services, and

Whereas, it is necessary to enter into a short term contract with Clarity in order to ensure IT Services are continuous and uninterrupted during the switchover to Delaware County IT Services.

Now, Therefore Be it Resolved, that the Liberty Township Board of Trustees, Delaware County, Ohio, approve the attached short term, thru December 31, 2019, month, contract for IT services with Clarity Technology Services, 12020 Watkins Road, Marysville, OH 43040, in the amount of \$3920.56 per month, for routine services and service/trouble calls.

as detailed in the Master Service Agreement Termination clause

Motion made by Melanie Leneghan and seconded by Mike Gemperline

Vote: 4/0 Mrs. Eichhorn yes Mrs. Leneghan 4/0 Mr. Gemperline

This Resolution shall be in force and become effective immediately upon its execution.

June 17, 2019

Date

Melanie Leneghan
Melanie Leneghan, Trustee

Mike Gemperline
Mike Gemperline, Trustee

Shyra Eichhorn
Shyra Eichhorn, Trustee

CERTIFIED BY:

Nancy Denutte
Nancy Denutte, Fiscal Officer

THIS MASTER SERVICE AGREEMENT ("Agreement") is made this 17th of June, 2019 ("Effective Date") by and between Clarity Technology Solutions, LLC ("Master Service Provider" or "MSP"), 12020 Watkins Road, Marysville, Ohio 43040 and Liberty Township - Delaware County ("Customer").

1. SCOPE OF AGREEMENT. This Agreement serves as a master agreement and applies to Customer's purchases from MSP, of services ("Services"), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, "Product"). Customer hereby engages and retains MSP to render Services as more particularly set forth in **Addendum A** (the "Statement of Work") attached hereto and incorporated herein by reference. No Product or Services will be provided under this Agreement alone, but may require the execution of a written or electronic purchase order form, or other mutually acceptable order documentation, which contains terms relating to this Agreement, each of which must be executed by both parties and, upon such execution, is deemed incorporated in this Agreement for all purposes. The parties hereby further agree that the parties may execute multiple Orders and Statements of Work under this Agreement. In the event of any conflict between the terms of the Purchase Order and Statement of Work and those of this Agreement, the terms of the Purchase Order or Statement of Work will prevail.

2. TERM AND TERMINATION. This Agreement will begin on the Effective Date and will continue until each Order expires or is terminated. MSP may: (a) terminate a specific Order if Customer fails to pay any applicable fees due for that Order within 30 days after receipt of written notice from MSP of non-payment; (b) by either party without cause, after sixty days (60) with written notice. Services that include a Clarity provided firewall or Datto unit carry terms set when those devices are provided and are excluded from this termination policy. Any project outstanding at the time of termination may continue to be governed by this Agreement as if it had not been terminated; and/or (c) terminate this Agreement or an Order if Customer commits any other material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice from MSP. If an Order for Services is terminated, Customer will promptly pay MSP for Services rendered, and expenses incurred through the termination date.

3. PAYMENT. Customer will pay MSP all fees within thirty (30) days upon receipt of an invoice specifying the amounts due ("Fees"). All Fees payable under this Agreement are exclusive of sales, use, excise, and any other applicable transaction taxes, which Customer will pay (excluding taxes based upon the net income of MSP). If payment is not received on or before any invoice due date, interest shall begin to accrue and be payable at the lesser of the maximum rate permitted under applicable law or at the rate of one and one-half percent (1.5%) (or any other interest rate in accordance with the state's law) per month from the date due until paid in full. Customer shall pay all expenses, including actual attorneys' fees, incurred by MSP or its representatives in enforcing its rights under this Agreement, provided that MSP is successful on the merits. Customer's obligation to pay undisputed amounts due for Services and MSP's right to all such amounts are absolute and unconditional. Customer is not entitled to setoff of such amounts. All Fees will be detailed in an Order. Unless otherwise stated in a Purchase Order, Customer agrees to pay or reimburse MSP for all actual, necessary, and reasonable expenses incurred by MSP in performance of such Purchase Order, which are capable of verification by receipt. MSP will submit invoices to Customer for such fees and expenses either upon completion of the Services, or at stated intervals, in accordance with the applicable Purchase Order.

Annual rate increase. It is understood that the MSP per hour rate may increase up to 5% annually to cover cost of living adjustments, rising costs of skilled labor, and inflation. It is also understood that MSP products such as per-user fees, per-workstation fees, per-server fees, per-firewall fees may increase up to 5% annually to cover the ongoing improvements invested into MSP's products and services. Annual rate increases are calculated in October

and will adjust automatically in January the following year. If your contract for services with MSP started in December or later, you will not be subjected to the Annual rate increase until the following year.

4. CONFIDENTIALITY AND NON-DISCLOSURE. Both Parties to this Agreement recognize that, from time to time, they may come into contact with information that the other Party considers confidential. Confidential Information is defined for this Agreement as all information (whether written or oral) that comes into a Party's possession under or in connection with this Agreement that is reasonably considered by the disclosing Party to be confidential and is clearly identified as confidential. The Parties shall keep all Confidential Information in strict confidence.

The recipient will use a reasonable standard of care in protecting Confidential Information, which will not be less than the standard of care the recipient uses to protect its own confidential information; only use Confidential Information to perform its obligations and exercise its rights under this Agreement; not disclose Confidential Information to any third party; when requested by the disclosing Party, return or destroy the Confidential Information.

5. PROVISION OF MATERIALS AND SERVICES TO MSP. Customer agrees to timely furnish, at its own expense, all personnel, all necessary computer hardware, software and related materials and appropriate and safe work spaces for purposes of MSP performing the services. Customer will also provide MSP with access to all information, passwords and facilities requested by MSP that is necessary for MSP to perform the services. Access may be denied for any reason at any time, however if access to information, passwords or facilities is denied, Customer understands that the MSP may be unable to perform their duties adequately and if such a situation should exist, the MSP will be held harmless.

6. WORKING ENVIRONMENT. Customer shall provide a suitable working environment for any Equipment located at Customer's facility. Such environment includes, but is not limited to the appropriate temperature, static electricity and humidity controls and properly conditioned electrical supply for each piece of Equipment. Customer shall bear the risk of loss of any Equipment located at Customer's facility.

7. CUSTOMER RESPONSIBILITY FOR EQUIPMENT. Customer acknowledges that from time to time (a) MSP may identify additional items that need to be purchased by Customer, and (b) changes in Customer's systems may be required in order for MSP to meet Customer's requirements. In connection therewith, Customer agrees to work in good faith with MSP to effectuate such purchases or changes. In the event that MSP is required to purchase any assets, including computer hardware and/or software, in connection with MSP providing the services, all such assets will remain the sole property of MSP unless specifically stated otherwise in writing. Customer will be responsible for the quality, completeness and workmanship of any item or service furnished by it and for ensuring that the materials provided to MSP do not infringe or violate the rights of any third party. Customer will maintain adequate backup for all data and other items furnished to MSP.

It is the Customers responsibility for any failure or malfunction of electrical or telecommunications infrastructure or services that causes damage to MSP's products or services and MSP disclaims all responsibility for any loss including data.

8. CUSTOMER DATA OWNERSHIP AND RESPONSIBILITY. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of any data, information or material proprietary submitted by Customer to MSP.

8.1. Software Installation or Replication. If MSP is required to install or replicate Customer software as part of the Services, Customer will independently verify that all such software is properly licensed. Customer's act of providing any software to MSP will be deemed Customer's affirmative acknowledgement to MSP that Customer has a valid license that permits MSP to perform the Services related thereto. In addition, Customer will retain the duty and obligation to monitor Customer's equipment for the installation of unlicensed software unless MSP in a written statement of work ("SOW") expressly agrees to conduct such monitoring. Customer will indemnify and hold harmless MSP against all damages and expenses it may incur (including reasonable

attorney's fees and disbursements) related to Customer providing infringing materials to MSP or any Customer breach of this Section.

9. INTELLECTUAL PROPERTY. MSP retains all intellectual property rights in any property invented or composed in the course of or incident to the performance of this Agreement and shall not be considered Works Made for Hire, as well as any software, materials, or methods created prior to or after conclusion of any work. Customer acquires no right or interest in any such intellectual property, by virtue of this Agreement or the work performed under this Agreement.

9.1. Customer may only use and disclose Product in accordance with the terms of this Agreement and applicable Order. MSP reserves all rights in and to the Product not expressly granted in this Agreement. Customer may not disassemble or reverse engineer any software Product, or decompile or otherwise attempt to derive any software Product's source code from executable code, except to the extent expressly permitted by applicable law despite this limitation, or provide a third party with the results of any functional evaluation, or benchmarking or performance tests on the Products, without MSP's prior written approval. Except as expressly authorized in this Agreement or an Order, Customer may not (a) distribute the Product to any third party (whether by rental, lease, sublicense or other transfer), or (b) operate the Product in an outsourcing or MSP business to process the data of third parties. Additional usage restrictions may apply to certain third-party files or programs embedded in the Product - applicable installation instructions or release notes will contain the relevant details.

9.2. License Agreements.

(a) License. Subject to the terms of this Agreement, MSP grants Customer a perpetual, non-exclusive, non-transferable license to use and modify all programming, documentation, reports, and any other product provided as part of the Services solely for its own internal use.

(b) Pre-Existing License Agreements. Any software product provided to Customer by MSP as a reseller for a third party, which is licensed to Customer under a separate software license agreement with such third party, will continue to be governed by the third party license agreement.

9.3. Third-Party Products. Product warranties for third party products, if any, are provided by the manufacturers thereof and not by MSP. MSP'S sole obligation is to act on behalf of Customer to assist in the satisfaction of any such warranty.

10. WARRANTY.

MSP warrants that it will perform the Services substantially in accordance with the specifications set forth whether under this Agreement, a purchase order, other work order or otherwise in connection with any of them. For any breach of the foregoing warranty, MSP will exercise commercially reasonable efforts to re-perform any non-conforming services that were performed within the ten (10) business day period immediately preceding the date of Customer's written notice to MSP specifying in reasonable detail such non-conformance. If MSP concludes that conformance is impracticable, then MSP will refund all fees paid by Customer to MSP hereunder, if any, allocable to such nonconforming Services.

MSP does not warrant its products or services beyond a reasonable standard or skill consistent with industry standards. MSP does not warrant against any promises of cost savings, profits, returns on investment, delay in delivery of performance (unless delay was a consequence of a negligent act or omission)

11. SOFTWARE HARDWARE & SECURITY. Customer understands and agrees that data loss or network failures may occur, whether or not foreseeable, if the Customer fails to maintain proper security for its computer and information system including software and hardware updates. Customer therefore warrants that it will follow software and hardware updates and maintain specific security standards, policies, procedures set forth in **Addendum B** (the "Network Security") attached hereto and incorporated herein by reference.

12. CYBER TERRORISM. In no event, including the negligent act or omission on its part, shall MSP, whether under this Agreement, a purchase order, other work order or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses including (without limitation) if and to the extent that they might otherwise not constitute indirect or consequential losses or expenses, loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable if such loss was the result or arose from any act of terrorism, strike or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations, civil war, rebellion, revolution, insurrection, civil commotion or assuming the proportions of or amounting to an uprising, or any action taken in controlling, preventing or suppressing any of these things. Cyber Terrorism shall mean an act or series of acts of any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious or ideological purposes including but not limited to the intention to influence any government and/or to put the public in fear for such purposes by using activities perpetrated electronic ally that are directed towards the destruction, disruption or subversion of communication and information systems, infrastructure, computers, telecommunications or electronic networks and/or its content thereof or sabotage and or threat there from.

13. TELEMARKETING & UNSOLICITED EMAILS. In no event, including the negligent act or omission on its part, shall MSP, whether under this Agreement, a purchase order, other work order or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses including (without limitation) if and to the extent that they might otherwise not constitute indirect or consequential losses or expenses, loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable if the Customer's data is breached because of the distribution of unsolicited email, direct mail, facsimiles, telemarketing or because of the collection of information by means of electronic "spiders", "spybots", "spyware", wiretapping, bugging, video cameras or identification tags.

14. LIMITATIONS OF LIABILITY. EXCEPT AS OTHERWISE NOTED IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL MSP BE LIABLE TO CUSTOMER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR FOR ANY AMOUNT IN EXCESS OF THE LICENSE FEE OR FOR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES, EXCEPT WITH RESPECT TO INDEMNITIES ARISING OUT OF IP CLAIMS, UNDER NO CIRCUMSTANCES, SHALL MSP'S AGGREGATE LIABILITY ARISING FROM OR OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE FEES PAID UNDER THIS AGREEMENT.

15. INSURANCE. MSP agrees to maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law. Without limiting the foregoing, to the extend this Agreement creates exposure generally covered by the following insurance policies, MSP will maintain at its own sole cost and expense at least the following insurance covering its obligations under this Agreement: (a) Commercial General Liability including (i) bodily injury, (ii) property damage, (iii) contractual liability coverage, and (iv) personal injury, in an amount not less than One Million Dollars (\$1,000,000) per occurrence; (b) Business Automobile Liability for owned, hired and non-owned vehicles in an amount of not less than One Million Dollars (\$1,000,000) for each accident; (c) Workers Compensation at statutory limits; and (d) Professional Liability Insurance covering errors and omissions and wrongful acts in the performance of the Services. Such insurance will bear a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000).

16. DISCLAIMERS. The express remedies set forth in this Agreement will constitute Customer's exclusive remedies, and MSP's sole obligation and liability, for any claim (a) that a Service or deliverable provided

hereunder does not conform to specifications or is otherwise defective, or (b) that the Services were performed improperly.

MSP shall not be responsible for impairments to the Services caused by acts within the control of Customer or its employees, agents, contractors, suppliers or licenses, the interoperability of Customer applications, or other cause reasonably within Customer's control and not reasonably related to services provided under this Agreement.

EXCEPT FOR THE WARRANTIES MADE BY MSP IN SECTION 10, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CUSTOMER, THE SERVICES AND DELIVERABLES ARE PROVIDED STRICTLY "AS-IS." MSP DOES NOT MAKE ANY ADDITIONAL WARRANTIES, EXPRESSED, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE DELIVERABLES OR SERVICES PROVIDED HEREUNDER, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT.

MSP DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY CUSTOMER REQUIREMENTS NOT SET FORTH HEREIN, THAT ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT CUSTOMER MAY SELECT FOR USE, THAT THE OPERATION OF ANY DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF PRE-PRODUCTION (E.G., "ALPHA" OR "BETA") RELEASES OF SOFTWARE ARE PROVIDED TO CUSTOMER, SUCH COPIES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.

No statement by any MSP employee or agent, orally or in writing, will serve to create any warranty or obligation not set forth herein or to otherwise modify this Agreement in any way whatsoever.

17. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be automatically reformed and construed so as to be valid, operative and enforceable, to the maximum extent permitted by law or equity while preserving its original intent. The invalidity of any part of this Agreement shall not render invalid the remainder of this Agreement.

18. AMENDMENT. This Agreement may not be amended except by a writing executed by an authorized individual MSP.

19. RELATIONSHIP. The Parties are independent parties; and this Agreement does not make the Parties principal and agent, partners, employer and employee; nor does it create a joint venture.

20. NO HIRE. Each party agrees that, for a period of six (6) months following completion of the most current SOW, it shall not employ or tender any offer of employment to any employee of the other party without first obtaining that party's prior written consent, which may be withheld for any reason. For purposes of this paragraph, the term "employee" extends to all present and future employees of each party (or its parent or affiliates) during the period of their employment and continues for a period of six (6) months after any such employee leaves the employ of the party.

21. LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without reference to principles of conflicts of laws. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Ohio.

22. WAIVER. Failure by either Party to insist upon strict performance of any provision herein shall not be deemed a waiver by such Party of its rights or remedies, or a waiver by it of any subsequent default by the other Party.

23. FORCE MAJEURE. With the exception of Customer payment for service rendered, neither party shall be responsible for any failure to perform or delay caused where such failure or delay is due to circumstances reasonably beyond the party's control. This includes fire, flood, earthquake, volcanic eruption, explosion, lightening, wind, hail, tidal wave, landslide, act of God or any other physical event.

24. ASSIGNMENT. Customer may not assign its rights or obligations under this Agreement without MSP's prior written consent which shall not be unreasonably withheld.

25. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement by and between the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous undertakings and agreement of the Parties, whether written or oral, with respect to such subject matter.

Customer

By: Melanie Leneghan chair, Melanie Leneghan
Title: Chair - Board of Trustees

Date: June 17, 2019

Clarity Technology Solutions, LLC

By: _____

Date: _____

Clarity Technology Support Addendum

Pursuant to Clarity Technology Solutions' Master Service Agreement, Clarity shall provide Technology Support Services to the Customer for the purpose of maintaining their computing and networking infrastructure. Services delivery shall include:

Server

- 24 x 7 x 365 Remote monitoring
- 24 x 7 x 365 Remote remediation for supported Microsoft Operating Systems
- Regular updates to best practices templates
- Remote application of Critical and Security patches
- Management of supported backup solutions, including updates of software
- Management of security elements – supported firewalls and desktop security
- Remote and onsite troubleshooting of server issues
- Monthly assessment of network health – firewall, server(s), backup systems
- Quarterly test restore of onsite and offsite backup sets (if offsite is utilized by customer)
- Additional services per managed IT services description

Fees for services are:

Monthly Recurring

- \$1,350 Server, network, firewall, backup, security management and interface to 3rd parties on behalf of township
- \$1,800 Managed User (60 users)
- Office 365 licensing, based on active mailboxes
- Datto backup services, based on number of protected servers

One Time fees are waived

\$495 per site setup fee (includes network assessment and documentation of environment)

\$195 server normalization – per unit (upgrade to current service pack)

\$55 PC normalization – per unit (upgrade to current service pack)



With prior written consent of the Customer or Customer's authorized representative, Clarity may perform and bill for the following items as exclusions to the service plan:

- Data recovery on PCs or Servers
- Major configuration changes to servers, firewall, backup devices
- Virus removal
- Network troubleshooting with ISP
- System rebuilds (PC or Server)
- PC or printer install
- User caused system errors
- Other service issues noted on managed IT services description
- 3rd party audits

Service Fulfillment

- Ongoing support will be provided through either onsite or remote assistance services to best serve the needs of the Customer. Clarity will respond to Customer's request for service based on the following priorities:

Priority 1 defined as outage of critical systems or security violation on multiple machines	Same business day
Priority 2 defined as inability to use a given PC, features; such as printing from one system or a low-risk security violation on one machine	2 business days
Priority 3 defined as installation of new software, application of non-critical updates and general questions	5 business days

Payment and Terms

The Customer elects to secure these services from Clarity Technology Solutions based on the selection below.

The term of the Agreement and renewal shall be as provided in the Agreement.

The Customer shall be invoiced and shall pay such invoices as provided in the Agreement.



Service Plan Elections (enter number for selected services)

1 – Core network management

60 – Managed Users

Excluded services will be billed as follows:

- Billed at Clarity's currently hourly rate (8am – 6pm) Monday – Friday and 1.5 X billable rate (6pm – 8am).
- Work performed on a weekend or legally observed holiday will bill at 1.5 X billable rate.

Hardware older than five years is not supported by Clarity. Operating systems and applications not supported by vendor are not supported by Clarity.

The foregoing is agreed to by:

Clarity Technology Solutions, LLC

Jason T. Comstock
President
Contact:
Jason T. Comstock

Date

Address:
Clarity Technology Solutions, LLC
8188 Business Way
Plain City OH, 43064

Telephone:
(937) 303-4033, ext. 501 (Office)
(614) 306-0535 (Mobile)

Facsimile:
(937) 303-5934

Email:
jcomstock@clarityts.com

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

**Board of Trustees
Liberty Township
Delaware County, Ohio**



Shyra Eichhorn
Shyra Eichhorn
Trustee

6-17-19
Date

Mike Gemperline
Mike Gemperline
Trustee

6-17-19
Date

Melanie Leneghan
Melanie Leneghan
Trustee

6-17-19
Date

Address:
Liberty Township Government Office
c/o Mike Schuiling Township Administrator
10104 Brewster Ln., Ste. 125
Powell, Ohio 43065

Telephone:
(740) 938-2000

Facsimile:
(740) 938-2001

Email:
mschuiling@libertytwp.org

Approved as to Form:

Delaware County Prosecuting Attorney

Date