

State of New Mexico

Information Technology Agreement
Statewide Price Agreement No. 70-000-16-00013AA
Contractor's Service Provider Identification Number (SPIN): 143022745

THIS Information Technology Agreement ("Agreement" or "Contract") is made by and between the State of New Mexico acting through the Sate Purchasing Division (SPD) on behalf of the **Public Education Department (PED) as the Sponsoring entity** and **Baca Valley Telephone Co., Inc dba Sierra Communications, Inc.**, hereinafter referred to as the "Contractor". The "Parties" to this Agreement shall be the SPD and the Contractor.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq*; and Procurement Code Regulations, NMAC 1.4.1 *et. seq*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the SPD has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the **RFP#70-000-16-00013, "Internet Access Services for Educational Institutions"** are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A. "Acceptance" or "Accepted" shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the Agency.
- B. "Application Deployment Package" shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.
- C. "Business Days" shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.
- D. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.
- E. "Chief Information Officer ("CIO")" shall mean the Cabinet Secretary/CIO of the Department of Information Technology for the State of New Mexico or Designated Representative.
- F. "Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the Agency or any other State agency as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the

- Agency or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or maintained by the Agency, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.
- G. "Contract Manager" shall mean a qualified person from the Agency responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be New Mexico Public Education Department or his/her Designated Representative and will work in coordination with the New Mexico General Services Department-State Purchasing Division for any amendments to this Agreement.
- H. "Default" or "Breach" shall mean a violation of this Agreement by either failing to perform one's own contractual obligations or by interfering with another Party's performance of its obligations.
- I. "Deliverable" shall mean any verifiable outcome, result, service or product that **must** be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- J. "Designated Representative" shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.
- K. "DoIT" shall mean the Department of Information Technology.
- L. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration, Contracts Review Bureau.
- M. "Educational Institutions" means K-12 public schools, libraries, and charter schools within the State of New Mexico.
- N. "Escrow" shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the Agency receives the legal document, in this case, Source Code.
- O. "Enhancement" means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.
- P. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Agency's executives or his/her Designated Representative.
- Q. "GRT" shall mean New Mexico gross receipts tax.
- R. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- S. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a Project and the Project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Agency.
- T. "Know How" shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

- U. “Payment Invoice” shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the Agency. Payment Invoice(s) **must** contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.
- V. “Performance Bond” shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.
- W. “Project” shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the Executive Level Representative and verified by the Agency CIO.
- X. “Project Manager” shall mean a Qualified person from the Agency responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be New Mexico Public Education Department or his/her Designated Representative.
- Y. “Qualified” means demonstrated experience performing activities and tasks with Projects.
- Z. “Quality Assurance” shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.
- AA. “Services” shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.
- BB. “State Purchasing Agent (SPA)” shall mean the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.
- CC. “State Purchasing Division (SPD)” shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.
- DD. “Software” shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.
- EE. “Software Maintenance” shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.
- FF. “Source Code” shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.
- GG. “Turnover Plan” means the written plan developed by the Contractor and approved by the Agency in the event that the work described in this Agreement transfers to another vendor or the Agency.

Additional Terms:

1. **“Agency”** means each Educational Institution within the State of New Mexico also known as the Local Education Agency, as listed in Appendix C and Appendix C-3.Part1.
2. **“Buried Fiber with Conduit”** means placing conduit or HDPE in a trench directly buried into the ground. The fiber is pulled into the conduit and/or HDPE and encased seal out moisture and protect the fiber optic cable.
3. **“Combined Reporting System (CRS)”** means the New Mexico tax identification number assigned to anyone that registers with the Taxation and Revenue Department of New Mexico.

This id is used to report and pay state and local gross receipt tax, New Mexico withholding tax and compensation tax under CRS.

4. **“Customer Premise Equipment”** means any associated equipment located at the Educational Institutions premises and connected to the ISP’s network at the demarcation point.
5. **“Demarcation Point”** means the point where the Contractor’s network ends and connects with the Educational Institutions network. The Contractor’s will be responsible for its own equipment and the connection to the demarcation point. The Educational Institution contracting for services will be responsible for its own equipment and the connection to its demarcation point.
6. **“Demobilization”** means all activities and costs for transportation of contractor’s personnel, equipment and supplies not required or included in the contract from the site; including the disassembly, removal, and site cleanup of offices, buildings, and other facilities assembled on the site as a result of any services contracted as a result of this Agreement.
7. **“Direct Connection”** means internet service connection to the Contractor’s network and provided by the Contractor.
8. **“Distributed Denial of Service (DDoS) attack”** means a malicious attempt where multiple systems are used make a server or network resource unavailable to its intended users.
9. **“Educational Institutions”** means K-12 public schools, libraries, and charter schools that are located within the State of New Mexico.
10. **“Fiber Construction Services”** means special construction charges for Category 1 eligible services, per the E-Rate requirements for eligibility, necessary to bring broadband connections to and from eligible locations to ensure Internet access is available. Special construction charges can include project management, design, engineering, construction materials and construction labor for new infrastructure construction.
11. **“Gateway”** means the provided IP address, router, computer and/or key stopping point for data on its way to or from other networks that controls all the data traffic the Internet Service Provider takes and sends out.
12. **“HDPE”** or **“High Density Polyethylene pipe”** means a pipe and conduit is the preferred material to house and protect fiber and power cables. HDPE conduit is flexible and available in long reel lengths to reduce joints and installation time. HDPE is an inert thermoplastic, it offers corrosion and chemical resistance.
13. **“Internet Access Service Provider”** or **“ISP”** means any services proposed in this procurement by the ISP that is directly or indirectly associated to internet access that may include a range of technologies to connect the Educational Institutions to the internet.
14. **“Internet Access Services”** or **“Internet Services”** means eligible on-net and off-net internet services provided by the Internet access service provider (ISP) that may include features such as basic firewall protection, domain name service, and dynamic host configuration when the features are provided as a standard component of Contractor’s Internet access service. Items that are ineligible components of Internet access include applications, content, e-mail, and end-user devices and equipment such as computers, laptops, and tablets.
15. **“Labor Rates”** means the proposed rates that must include travel, per diem, fringe benefits, and any overhead costs for contractor personnel as well as subcontractor personnel, if appropriate. If the Contractor proposes for construction services, the labor rates must also include mobilization and demobilization.

16. **“Lead Time”** means the lead time in calendar days for provisioning internet access services using Contractor’s portal starting from the date customer requests service formally in writing with signature approval through the date customer receives service(s) successfully
17. **“Managed Services”** means that the Contractor is contracted by the Educational Institutions to manage the Educational Institutions network for Internet Access Services this includes but not limited to supporting any upgrades to the equipment owned by the Educational Institutions that is necessary and/or required and this also includes managed security.
18. **“Metro Areas” or “Metropolitan Areas”** means one city with a population of 50,000 or greater.
19. **“Milestone”** means a significant event in a project, usually the completion of a major deliverable.
20. **“Mobilization”** means all activities and associated costs associated to transportation of contractor’s personnel, equipment, and operating supplies to the site.
21. **“MRC”** means a monthly recurring cost for internet access services that does not include fiber construction, special construction, and any nonrecurring costs.
22. **“Off-Net”** means Educational Institutions in the defined districts within the State of New Mexico that the Primary Contractor will be proposing a direction connection to Off-Net Internet Access Services which is outside of the Primary Contractor’s service area. This may include fiber construction services and/or special construction, and to meet the applicant’s need, this may include the Contractor partnering with other providers.
23. **“On-Net”** means Educational Institutions in the defined districts within the State of New Mexico that the Primary Contractor will be proposing a direct connection to On-Net Internet Access Services which is in the Primary Contractor’s service area. This excludes any fiber construction services and/or special construction.
24. **“Peer” and “Peering”** means an agreement by two or more networks to peer by a physical interconnection of the networks, an exchange of routing information through the Border Gateway Protocol (BGP) routing protocol that supports the autonomous system numbers of the Contractor and the State of New Mexico
25. **“Rural”** means located outside of a metropolitan area and is less than 2,500 in population.
26. **“Service Area”** means the Educational Institutions in the defined districts within the State of New Mexico that the Primary Contractor will be proposing On-Net Internet Access Services.
27. **“Splicing”** means creating a permanent joint between two fibers.
28. **“Sponsoring entity”** shall mean the Executive Branch Agency that spearheaded the execution of the Statewide Price Agreement.
29. **“Upstream”** refers to direction in which data can be transferred from client toward the global Internet and away from the state government. See “Downstream”.
30. **“Universal Service Administrative Company” or “USAC”** means an independent, not-for-profit corporation designated by the Federal Communications Commission (FCC) as the administrator of universal service. USAC works to protect the integrity of universal service through informing and educating program audiences, collecting and distributing contributions, and promoting program compliance.
31. **“Underground Construction”** means fibers are pulled in existing conduits and/or pathways that run from vault to vault to customer premises. HDPE/Inner duct inside the conduit separates the cables/fiber and provides easier pulling of cables.
32. **“Urban Area”** means a population of 20,000 or more, and is near to a metropolitan area.

33. **“Wireless Broadband Internet Access Services” or “Wireless Services”** means the link between the educational institution location and the service provider facility. Any exclusions for this services are defined in the most current eligibility services listing for this type of service as explained in <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>.

ARTICLE 2 – SCOPE OF WORK

- A. **Scope of Work.** The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference. Nothing in this Section shall be construed to prevent the Agency or SPD from exercising its rights pursuant to Article 6 or Article 16.
1. The Contractor shall be limited to the Internet Access Services awarded in this Agreement as outlined in Exhibit A, attached hereto and incorporated herein by reference to include any future amendments. There are no volume or purchase commitments as to any specific dollar amount which will be contracted by SPD, the State as a whole, or any Agency. The Internet Access Services in this Agreement **must** be available to the Educational Institutions should they elect to make any purchases.
 2. The Price Listings as outlined in Exhibit A of this Agreement shall not increase for the term of the awarded Agreement. The pricing of the awarded agreements shall not increase for the term of the awarded agreements to include any renewal options. Any changes to the Agency agreement(s) to include pricing reductions shall be submitted to New Mexico Public Education Department for review and approval may be negotiated at any point throughout the duration of the agreement.
 3. The Educational Institutions will not be limited to only the speeds listed in Appendix C for On-Net Internet Access Services and in Appendix C-3 - Part3 for Off-Net Internet Access Services, they may seek quotes after the awards for any incremental speed between the minimum and maximum speeds listed. If incremental pricing is required, the Contractors will be obligated to quote a price that has a lower cost per Mbps than the previous speed awarded for On-Net and Off-Net Internet Access Services, see cost forms Appendix C and C-3.Part3. For example, if the Education Institution desires a speed of 750 Mbps, which is not included in Appendix C and Appendix C-3 - Part3, the Contractor will be required at a minimum to offer a cost per Mbps that is equal to the cost of a 500 Mbps connection.
 4. The statewide price agreement(s) resulting from this procurement for Internet Access Services will provide the procuring method made available to the Educational Institutions. The terms and conditions of this agreement shall be the baseline for the any contracted Internet Access Services.
 5. The Educational Institutions within the State of New Mexico reserve the right to add and/or change new or existing eligible locations to the list of locations included in the awarded statewide price agreements, subject to SPD agreement. If additional locations are added, the Educational Institutions will require related pricing for the new location(s). If a Contractor’s service area changes, the Contractor may submit its changes to the procuring

Educational Institution with its related pricing for any new eligible locations in its service area. The pricing for new locations must be consistent with existing pricing and offer a cost-effective solution. The E-Rate eligible internet access connection types or other types of technology used to provide Internet Access Services are included in this Agreement, may change per the updated Eligibility Listing published by the E-Rate Program (See <http://usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>), these are items that may be updated in this Agreement per the State of NM's amendment process. For any changes requested to the statewide price agreements, they must be reviewed by the Educational Institutions that will work in coordination with NMPED's E-Rate Coordinator for signature approval of the changes to the Agreement through the State's amendment process, subject to SPD agreement.

6. For any contracted special construction services as outlined in Exhibit A of this Agreement and in support of Off-Net Internet Access Services, the Contractor shall comply with the following to include any changes made by the State of New Mexico or the Department of Information Technology:
 - 1) Applicable provisions NMSA Article 4 Public Works and the Public Works requirements in the RFP, including but not limited to Section 13-4-10 through 13-4-17 NMSA 1978 "Public Works Minimum Wage Act" and 13-4-18 NMSA 1978 Construction contract performance and payment bonds.
 - 2) When applicable, subcontractors shall be required to provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more. (Reference 13-1-148.1 NMSA 1978).
 - 3) Bid security shall be required for construction contracts when the price is estimated to exceed twenty-five thousand dollars (\$25,000). Bid security in an amount equal to at least five percent of the amount of the bid shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the State Agency, District or a local public body.
 - 4) Project Works State of New Mexico Project Requirements outlined in Appendix Q of this Agreement.
 - 5) Department of Information Technology Standards for Construction Services outlined in Appendix R of this Agreement.

Any contract or project resulting from the services outlined in Exhibit A, the Contractor shall comply with the additional provisions in Article 34 of this Agreement.

- B. Performance Measures. The Contractor shall substantially perform the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the Agency may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Agency from exercising its rights pursuant to Article 6 or Article 16.

- C. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit A, which due dates shall not be altered or waived by the Agency without prior written approval, through the Amendment process, as defined in Article 25.

License.

Not Applicable. The Parties agree there is no License for the services outlined in Exhibit A of this Agreement.

Source Code. Not Applicable. The Parties agree there is no Source Code for the services outlined in Exhibit A of this Agreement.

D. The Agency's Rights.

1. Rights to Software. Not Applicable. The Parties agree the Agency does not have rights to the Software that support the services outlined in Exhibit A of this Agreement.
2. Proprietary Rights. The Contractor will reproduce and include the State of New Mexico's copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.
3. Rights to Data. Not Applicable. The Parties agree the Agency will not be storing data on the Contractor's servers or with the Contractor's custody.

ARTICLE 3 - COMPENSATION

- A. Compensation Schedule. The Agency shall pay to the Contractor based upon fixed prices for each Deliverable, not to exceed the schedule outlined in Exhibit A, less retainage, if any, as identified in Paragraph D.
- B. Payment. The total compensation under this Agreement shall not exceed the cost to be paid for ISP Services rendered and accepted, per the schedule outlined in Exhibit A which excludes New Mexico gross receipts tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-

1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices **MUST BE** received by the Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date **WILL NOT BE PAID**.

C. Taxes.

The Contractor shall be reimbursed by the Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. For any work made for hire, the Agency shall retain twenty percent (20%) of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.

E. Performance Bond. Not Applicable.

F. Waiving of Installation Fees.

The Contractor shall waive any installation fees, any other nonrecurring costs, and cross connect charges for On-Net Internet Access Services as a direct connection. This requirement does not include Off-Net Internet Access Services.

G. Service Levels Resulting in Service Credits.

The Contractor shall provide service level credits. See Appendix N, "Contractor Service Credits for IP Services"

H. Provisioning and Upgrading Timeframe by Location.

This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listing for internet services at any of the locations as outlined in Exhibit A of this Agreement.

- a. The Contractor's steps for Provisioning Internet Services by location is outlined in Exhibit A. Appendix M "Steps for Provisioning Internet Services".
- b. The Contractor's lead time in calendar days for provisioning internet services including any hardware updates using its portal starting from the date customer requests service formally in writing with signature approval through the date the

customer receives services successfully for the locations outlined in Appendix C and C-3.Part3 worksheets.

ARTICLE 4 – ACCEPTANCE

- A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Agency. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and not to exceed pricing in Exhibit A, less retainage as set forth in Article 3(D).
- B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:
1. Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
 2. Complies with the terms and conditions of the **RFP#70-000-16-00013**. Meets the performance measures for the Deliverable(s) and this Agreement;
 4. Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
 5. Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or their Designated Representative, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

- C. Rejection. Unless the Executive Level Representative gives notice of rejection within the fifteen (15) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) Business Days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) Business Days of receipt of the revised or amended

Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable **must** be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Agency may terminate this Agreement.

ARTICLE 5 – TERM

This Agreement shall terminate on **February 29, 2021**, or four years from the date on which it is executed by all Parties, unless terminated pursuant to Article 6. The Agreement shall be for four calendar years in duration with no option to renew. The contract term, including extensions and renewals, shall not exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

- A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.
- B. Appropriations. By the Agency or SPD, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Agency's or SPD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency or SPD terminates this Agreement pursuant to this subsection, the Agency or SPD shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.
- C. Notice; Agency Opportunity to Cure.
 - 1. Except as otherwise provided in Paragraph (3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
 - 2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency **must** do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.
- D. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

ARTICLE 7 – TERMINATION MANAGEMENT

- A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
1. Transfer, deliver, and/or make readily available to the Agency property in which the Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Agency;
 2. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the Agency;
 3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Agency may direct, for orderly completion and transition;
 4. Take such action as the Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
 5. Agree that the Agency is not liable for any costs arising out of termination and that the Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
 6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Agency's programs;
 7. In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Agency the full amount of the reduction;
 8. Should this Agreement terminate due to the Contractor's Default, the Contractor shall reimburse the Agency for all costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred;

9. In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall develop and submit to the Agency for approval an Agreement Turnover Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor's policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the Agency and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Agency or created by the Contractor under this Agreement, to the Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Agency, the Contractor shall provide to the Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Agency or created by the Contractor under this Agreement.
- B. Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Agency shall:
1. Retain ownership of all work products and documentation created pursuant to this Agreement; and
 2. Pay the Contractor all amounts due for Services Accepted prior to the effective date of such termination or expiration.

ARTICLE 8 – INDEMNIFICATION

- A. General. The Contractor shall defend, indemnify and hold harmless the Agency, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, during the time when the Contractor, its officer, agent, employee, servant or subcontractor thereof has or is performing Services pursuant to this Agreement. In the event that any action, suit or proceeding related to the Services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but no later than two (2) Business Days after it receives notice thereof, notify, by certified mail, the legal counsel of the Agency, the Risk Management Division of the New Mexico General Services Department, and the DoIT.
- B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages,

compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the Agency, as necessary, to satisfy any outstanding claim that the Agency may have against the Contractor.

ARTICLE 9 – INTELLECTUAL PROPERTY

A. Contractor hereby acknowledges and grants to the Agency and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

- A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Agency based upon Contractor's trade secret infringement relating to any product or Services provided under this Agreement, the Contractor agrees to reimburse the Agency for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Agency shall:
1. Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
 2. Work with the Contractor to control the defense and settlement of the claim; and
 3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.
- B. Agency Rights. If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:
1. Provide the Agency the right to continue using the product or service and fully indemnify the Agency against all claims that may arise out of the Agency's use of the product or service;
 2. Replace or modify the product or service so that it becomes non-infringing; or
 3. Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Agency to the extent such modification is the cause of the claim.

ARTICLE 11 - WARRANTIES

- A. General. The Contractor hereby expressly warrants the Deliverable(s) as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.
- B. Software. Not Applicable. The Parties agree there is no Software to be purchased or developed for the Services outlined in Exhibit A of this Agreement.

ARTICLE 12 – CONTRACTOR PERSONNEL

- A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Agency. Key personnel are those individuals considered by the Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

Account Management and Technical Team for this Account:

1. Account Manager/General Manager, Paul Briesch
2. Security Admin/ Broadband Technician, Brad Atwater
3. Account Manager Backup/Network Administrator, Kim Atwater
4. IT Specialist, Scott Warner

No sub-contractors will be used in the performance of this Agreement.

- B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Agency. For all personnel, the Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Agency approval. The Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Agency, meeting the Agency's expectations.

ARTICLE 13 – STATUS OF CONTRACTOR

- A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional Services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.
- B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Agency.

ARTICLE 14 - CHANGE MANAGEMENT

- A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:
1. Deliverable requirements, as outlined in Exhibit A;
 2. Due date of any Deliverable, as outlined in Exhibit A;
 3. Compensation of any Deliverable, as outlined in Exhibit A;
 4. Agreement compensation, as outlined in Article 3; or
 5. Agreement termination, as outlined in Article 5.
- B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:
1. The Project Manager shall draft a written Change Request for review and approval by the Executive Level Representative to include:
 - (a) the name of the person requesting the change;
 - (b) a summary of the required change;
 - (c) the start date for the change;
 - (d) the reason and necessity for change;
 - (e) the elements to be altered; and

- (f) the impact of the change.
2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

NOT APPLICABLE

ARTICLE 16 – DEFAULT/BREACH

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

ARTICLE 17 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Agency, and the Contractor consents to the Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 18 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the

Agency to any equipment or its installation or for losses caused by the Agency's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and/or employees of the Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture or installation of the equipment, or the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

ARTICLE 19 – ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement's approval authorities.

ARTICLE 20 – SUBCONTRACTING

- A. General Provision. The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Agency.
- B. Responsibility for subcontractors. The Contractor **must** not disclose Confidential Information of the Agency or of the State of New Mexico to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement.

ARTICLE 21 – RELEASE

The Contractor's Acceptance of final payment of the amount due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

ARTICLE 22 – CONFIDENTIALITY

Any Confidential Information provided to the Contractor by the Agency or, developed by the Contractor based on information provided by the Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to

deliver such Confidential Information to the Agency will result in direct, special and incidental damages.

ARTICLE 23 –CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or Services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 24 - RECORDS AND AUDIT

- A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of Services rendered during this Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, CIO, SPA, and DFA and the New Mexico State Auditor's Office. The Agency shall have the right to audit billings both before and after payment. Payment for Services under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

ARTICLE 25 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities. Amendments are required for the following:

1. Deliverable requirements, as outlined in Exhibit A;
2. Due Date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement Compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and

offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

- B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

ARTICLE 27 – NEW MEXICO EMPLOYEES PAY EQUITY REPORTING

- A. The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. If Contractor has (250) or more employees Contractor **must** complete and submit the PE250 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. For Agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual Agreements anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreements, whichever comes first. Should Contractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.
- B. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of this Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting,

Contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

- C. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

ARTICLE 28 – MERGER, SCOPE, ORDER OF PRECEDENCE

- A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

- B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

In the event of any inconsistencies between various documents comprising this Agreement, or any Agreement entered into between an Educational Institution purchasing pursuant to the terms of this Agreement, including, but not limited to the Contractor's Service Level Agreement, the order of precedence will apply in ascending order of control: (1) This Agreement, (2) the Exhibit A to the Agreement, (3) other exhibits to this Agreement, (4) the RFP, including RFP Amendments, and (5) the Contractor's Service Level Agreement.

Contractor agrees all purchases made under or resulting from this Price Agreement shall be controlled and governed by the terms and conditions as set forth in this Agreement regardless of type of purchase or language in subsequent agreements including but not limited to end user licenses, leases, scopes of work, other license agreements, or quotes provided by the Contractor or a third party. This Agreement will be the controlling and governing document for any claims questions or differences between the parties arising from purchases made from this Agreement.

ARTICLE 29 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

For AGENCY AND SPD

To SPA:
State Purchasing Agent
Purchasing Division
Joseph M. Montoya State Building, Room 2016
1100 St. Francis Drive
Phone: (505) 827-0472

With a copy to New Mexico Public Education Department:
Ben Naranjo
Purchasing Bureau Chief, Public Education Department
300 Don Gaspar
Santa Fe, New Mexico 87501–2786
505-827-6645

For CONTRACTOR

Paul Briesch, General Manager
Baca Valley Telephone Co., Inc. dba Sierra Communications, Inc,
paulbvt@bacavalley.net
(575) 278-2101
PO Box 67
Des Moines, NM 88418

Karen Lusk, Customer Service Representative
Kim Atwater, Information Systems Technician
Baca Valley Telephone Co., Inc. dba Sierra Communications, Inc,
karenbvt@bacavalley.net or kimbvt@bacavalley.net
(575) 278-2101
PO Box 67
Des Moines, NM 88418.

Any change to the Notice individual or the address, shall be effective only in writing.

ARTICLE 30 – GENERAL PROVISIONS

- A. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, including but not limited to:
1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
 2. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
 3. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.
- B. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.
- C. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.
- D. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

ARTICLE 31 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE 32 - TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 33 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

ARTICLE 34 – ADDITIONAL PROVISIONS

1. Lowest Corresponding Price (LCP).

The Contractor must provide the lowest corresponding price (LCP) that it charges to nonresidential customers that are similarly situated to a particular applicant (Educational Institutions) for similar services within the Contractor's service area for the particular location. For more details, refer to <http://www.usac.org/sl/service-providers/step02/lowest-corresponding-price.aspx> . This requirement includes any type of existing contracts the Educational Institutions have with the Contractor in addition to this Agreement.

2. E-Rate Program Process, Appendix P.

The Contractor must comply with the E-Rate Program process and terms and conditions as described by the Universal Service Administrative Company (USAC) in Appendix P and as defined within the USAC website <http://www.usac.org/sl/> and any other E-Rate Program federal requirements.

3. Internet Access Services Support.

This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listings and the locations as outlined in Exhibit A of this Agreement for internet access services. The Contractor must provide a dedicated toll-free/1-800 number and support staff dedicated to the service support for the entire path of the internet access services and any related services provided by the Contractor for this procurement to include requesting and providing internet access services,

trouble reporting and resolution to be available 24 hours a day, 7 days a week, 365 days a year.

4. Standard Escalation Procedures in Support of Problem Resolution.

The Contractor's must maintain and support their Standard Escalation Procedures to fully support the procuring entity in resolving problems in the most efficient method as outlined in Appendix L, "Escalation Procedures in Support of Problem Resolution".

Each level of the account team involved in the escalation procedures.

5. Outages and Escalation Procedures.

This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listings and the locations as outlined in Exhibit A of this Agreement for internet access services.

The Contractor must provide a **notification response** for outages is at least five (5) calendar days and for unscheduled outages/emergency maintenance to be reported within two (2) hours upon discovery with an estimated restore time to include hourly updates until outage is repaired.

6. Internet Service as a Direct Connection.

This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listings for internet access services at any of the locations as outlined in Exhibit A of this Agreement. The Contractor must provide internet access services as a direct connection for the location(s) as outlined in Exhibit A of this Agreement.

7. Establish Internet Connection.

This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listing for internet access services at any of the locations as outlined in Exhibit A of this Agreement. The Contractor **must** provide a separate topology drawing and description of how connection will be established to any of the proposed location(s) as part of any quote request from the Educational Institutions prior to contracting for Internet Access Services and prior to any fully executed contract. The topology drawing must include the listed items: 1) hardware, 2) internet connection, 3) types of interfaces, and 4) types of upstream interfaces.

8. Customer Reporting, Appendix I.

This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listing for internet services at any of the locations as outlined in Exhibit A of this Agreement. The Contractor must provide the customer reports listed on Appendix I, "Customer Reports".

9. Security Level.

This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listing for internet services at any of the locations as outlined in Exhibit A of this Agreement. The Contractor must maintain its own internal security policy to protect its own network.

10. Prevention Solutions to Stop DDoS attacks.

This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listing for internet services at any of the locations as outlined in Exhibit A of this Agreement. The Contractor must support and maintain prevention solution(s) on its network to stop a DDoS attack.

11. Load Balancing and Failover.

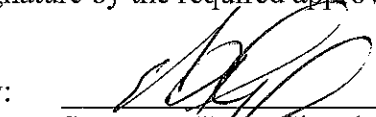
This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listing for internet services at any of the locations as outlined in Exhibit A of this Agreement. The Contractor must support and manage its load balancing methods and failover solution(s) with its upstream providers.

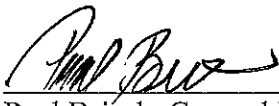
12. Monitoring Capability.

This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listing for internet services at any of the locations as outlined in Exhibit A of this Agreement.

The Contractor must provide full time monitoring of internet services 24 hours a day, 7 days a week, and 365 days a year for the locations contracted for internet access services for the locations outlined in Exhibit A.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By:  Date: 2/24/17
Secretary Hanna Skandera, Cabinet Secretary
New Mexico Public Education Department as Sponsoring Entity

By:  Date: 1-11-17
Paul Briesh, General Manager
Baca Valley Telephone Co., Inc dba Sierra Communications, Inc.

Approved as to facial legal sufficiency:

By:  Date: 2/24/2017
Dawn Mastalir
New Mexico Public Education Department, General Counsel

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

CRS ID Number: 02-409520-00-6

Taxation and Revenue is only verifying the registration and will not confirm or deny any taxability statements contained in this contract.

By:  Rocky J. Narvaz Date: 1-20-2017
Taxation & Revenue Department

This Agreement has been approved by the State Purchasing Agent:

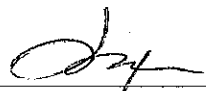
By:  Date: 2/24/2017
Lawrence O. Maxwell
Purchasing Agent for the State of New Mexico

EXHIBIT A – SCOPE OF WORK

This section will consist of the Price Listings for Internet Access Services and other Related Services.

1. **Appendix C:** On-Net Internet Access Services Price Listing for Educational Institutions.
2. **Appendix C-2:** Highest Percentage (%) Discount for On-Net Internet Access Services for Two (2) or More District Hub Site Locations for Educational Institutions.
3. **Appendix C-3 – Part1:** Not Applicable.
Off-Net Internet Access Construction Services Price Listing.
4. **Appendix C-3 – Part 2:** Not Applicable.
Off-Net Internet Access Construction Services Added Fees and Charges Price Listing.
5. **Appendix C-3 - Part3:** Not Applicable.
Off-Net Internet Access Services Price Listing for Educational Institutions.
6. **Added Value Added Services.** Not Applicable.

II. EXHIBIT B – Other Exhibit(s) to this Agreement

1. **Sierra Communications, Inc. - Service Level Agreement**

APPENDIX C: On-Net Internet Access Services Cost Form

1. **See Separate Attachment MS Excel Workbook with Filename BacaV-AppendixC.OnNetMRC**
 - 1) Worksheet 1 named "BIESchools (MRC-\$)"
 - 2) Worksheet 2 named "Public-CharterSchools (MRC-\$)"
 - 3) Worksheet 3 named "Libraries (MRC-\$)"

2. **Costs that do NOT apply to Monthly Recurring Costs (MRC) for On-Net Internet Access Services include the following:**
 - 1) Installation charges/fees
 - 2) Non-recurring charges/fees
 - 3) Cross connect charges/fee
 - 4) Fiber Construction and Special Construction charges/fees

**APPENDIX C-2: Highest Percentage (%) Discount Form for On-Net Internet
Access Services for Two (2) or More District Hub Site Locations for
Educational Institutions**

HIGHEST DISCOUNTED RATE: *0%

*The Contractor does not have any sites that have two (2) or more district hub site locations within the State of New Mexico. The percentage discount will be taken off the Monthly Recurring Cost (MRC) for On-Net Internet Access Services found in Appendix C.

**APPENDIX C-3 - Part1: Off-Net Internet Access Special Construction Services
Cost Form#001 Includes Table (1 thru 7)**

NOT APPLICABLE

City Name: _____

a. Table 1-Rural Aerial Special Construction Cost:

This construction approach is possible where the Contractor is providing communication cable in a rural area.

LABOR	UNIT	COST PER UNIT (\$)
Design	Per mile	
Cable Placement	Per foot	
Splicing	Per splice	
Engineering: Project Management, Quality Control (QC)	Single location	
Mobilization	Single location	
Demobilization	Single location	
Total Labor		
MATERIAL		
12 count Fiber	Per foot	
Splice Cases	Per case	
Snowshoes (3 per mile)	Per pair	
TOTAL MATERIAL		
TOTAL COST PER MILE		

b. Table 2: Rural Underground – Existing Conduit Construction Cost:

This construction approach is possible where the Contractor is providing communication cable in a rural area.

LABOR	UNIT	COST PER UNIT (\$)
Design	Mile	
Conduit Plow/Trench	Foot	
Conduit Boring	Foot	
Pull Inner Duct	Foot	
Pull Vault	Each	
Rod and Rope Conduit	Foot	
Pull Fiber	Foot	
Pull Splice Case	Each	
Splicing	Each	
Engineering: Project Management, Quality Control (QC)	Single Location	
Mobilization	Single Location	
Demobilization	Single Location	
TOTAL LABOR COST		
MATERIAL		
2" Rolled Duct	Foot	
12 Count Fiber	Foot	
1" Inner Duct	Foot	
Vaults	Each	
Copper Tracer/Ground Wire	Foot	
Splice Case	Each	
TOTAL MATERIAL COST		
TOTAL MATERIAL & LABOR COST		

c. **Table 3: Rural Buried Fiber with Conduit Construction Cost:**

This construction approach is possible where the Contractor is providing communication cable in a rural area.

LABOR	UNIT	COST PER UNIT (\$)
Design	Mile	
Conduit Plow/Trench	Foot	
Conduit Boring	Foot	
Pull Inner Duct	Foot	
Pull Vault	Each	
Rod and Rope Conduit	Foot	
Pull Fiber	Foot	
Pull Splice Case	Each	
Splicing	Each	
Engineering: Project Management, Quality Control (QC)	Single Location	
Mobilization	Single Location	
Demobilization	Single Location	
TOTAL LABOR COST		
MATERIAL		
2" Rolled Duct	Foot	
12 Count Fiber	Foot	
1" Inner Duct	Foot	
Vaults	Each	
Copper Tracer/Ground Wire	Foot	
Splice Case	Each	
TOTAL MATERIAL COST		
TOTAL MATERIAL & LABOR COST		

d. Table 4: New Mountain Underground Construction Cost :

This construction approach is for the most challenging part of the mountain, where conventional directional boring cannot be done. Different drilling bits and equipment must be used (or example, an air hammer is used to break up solid rock and a rail head is attached to a directional drilling machine to break through scattered rock). In addition to the specialized equipment, it is more time consuming than standard boring. The majority of the mountain construction is aerial, and the majority of underground construction is typical underground meaning new construction.

LABOR	UNIT	COST PER UNIT (\$)
Design	Mile	
Conduit Plow/Trench	Foot	
Conduit Boring	Foot	
Pull Inner Duct	Foot	
Pull Vault	Each	
Rod and Rope Conduit	Foot	
Pull Fiber	Foot	
Pull Splice Case	Each	
Splicing	Each	
Engineering: Project Management, Quality Control (QC)	Single Location	
Mobilization	Single Location	
Demobilization	Single Location	
TOTAL LABOR COST		
MATERIAL		
2" Rolled Duct	Foot	
12 Count Fiber	Foot	
1" Inner Duct	Foot	
Vaults	Each	
Copper Tracer/Ground Wire	Foot	
Splice Case	Each	
TOTAL MATERIAL COST		
TOTAL MATERIAL & LABOR COST		

e. Table 5-Metro/Urban Aerial Special Construction Cost:

This construction approach is possible where the Contractor is providing communication cable in a metro/urban area.

LABOR	UNIT	COST PER UNIT (\$)
Design	Per mile	
Cable Placement	Per foot	
Splicing	Per splice	
Engineering: Project Management, Quality Control (QC)	Single Location	
Mobilization	Single Location	
Demobilization	Single Location	
Total Labor		
MATERIAL		
12 count Fiber	Per foot	
Splice Cases	Per case	
Snowshoes (3 per mile)	Per pair	
TOTAL MATERIAL		
TOTAL COST PER MILE		

f. Table 7-Metro/Urban Buried Fiber with Conduit Special Construction Cost:

This construction approach is possible where the Contractor is providing communication cable in a metro/urban area.

LABOR	UNIT	COST PER UNIT (\$)
Design	Mile	
Conduit Plow/Trench	Foot	
Conduit Boring	Foot	
Pull Inner Duct	Foot	
Pull Vault	Each	
Rod and Rope Conduit	Foot	
Pull Fiber	Foot	
Pull Splice Case	Each	
Splicing	Each	
Engineering: Project Management, Quality Control (QC)	Single Location	
Mobilization	Single Location	
Demobilization	Single Location	
TOTAL LABOR COST		
MATERIAL		
2" Rolled Duct	Foot	
12 Count Fiber	Foot	
1" Inner Duct	Foot	
Vaults	Each	
Copper Tracer/Ground Wire	Foot	
Splice Case	Each	
TOTAL MATERIAL COST		
TOTAL MATERIAL & LABOR COST		

**APPENDIX C-3- Part2: Off-Net Internet Access Services Added Fees and Charges
NOT APPLICABLE**

No.	*Name of Added Fees and Charges	Description of Added Fees and Charges	Maximum Fee and Charge (% or \$)
1	Change Fee		
2	Contingency Fees are eligible if they are reasonable and a regular business practice of the service provider. Contingency fees will be reimbursed only if the work is performed.		
3	Freight assurance fees		
4	Lease or rental fees on eligible equipment		
5	Per diem and/or travel time costs are eligible only if a contract with a vendor for the eligible product or services specifically provides for these costs		
6	Shipping charges		
7	Taxes, surcharges, and other similar, reasonable charges incurred in obtaining an eligible product or service are eligible. This includes customer charges for universal service fees, but does not include additional charges for universal service administration.		

***Fees and Charges that are a necessary component of an eligible product or service are eligible.**

APPENDIX C-3 – Part3: Off-Net Internet Access Services Cost Form

NOT APPLICABLE

1. **See Separate Attachment MS Excel Workbook with Filename “BacaV-AppendixC-3.OffNetMRC”**
 - 1) Worksheet 1 named “BIESchools (MRC-\$)”
 - 2) Worksheet 2 named “Public-CharterSchools (MRC-\$)”
 - 3) Worksheet 3 named “Libraries (MRC-\$)”

2. **Costs that do NOT apply to the Monthly Recurring Cost (MRC) for Off-Net Internet Access Services include the following:**
 - 1) Installation charges/fees
 - 2) Non-recurring charges/fees
 - 3) Cross connect charges/fee
 - 4) Fiber Construction and Special Construction charges/fees

3. **If the following costs exist for Off-Net Internet Access Services, they are separate costs by the Contractor identified in the following appendices:**
 - 1) Installation charges/fees, if any: See Appendix C-3.Part2 above
 - 2) Non-recurring charges/fees, if any: See Appendix C-3.Part2 above
 - 3) Cross connect charges/fee, if any: See Appendix C-3.Part2 above
 - 4) Fiber Construction and Special Construction charges/fees, if any:
See Appendix C-3.Part1 above

APPENDIX L – Escalation Procedure in Support of Problem Resolution

Call our 24x7x365 NOC at one of the numbers listed below to report internet connection troubles. Toll Free: 1-888-682-2101

Des Moines: 575-278-2101

Maxwell: 575-375-2101

Raton/Cimarron: 575-245-2101 Email: techsupport@bacavalley.net

- A) Trained NOC Technicians check and verify all alarms and troubleshoot over the phone to resolve problem.**
- B) If the problem cannot be resolved with our NOC, they will escalate the trouble to the Account Team Technician on call.**
- C) Technician re-checks alarms, connections, etc., and troubleshoots in-house or travels to customer site to resolve trouble.**

APPENDIX M – Steps for Provisioning Internet Access Services by Location

- a. For **ALL** locations, the following steps apply:
 - 1) All provisioning is done at the Central Office;
 - 2) Notify Sierra Communications of services requested by calling our NOC @888-682-2101 or email techsupport@bacavalley.com;
 - 3) An application will be sent to the customer;
 - 4) When application is completed and returned, a network technician will schedule a site visit to ascertain installation and equipment needs, and schedule installation with customer;
 - 5) A service order is opened and staged accordingly;
 - 6) Installation is completed;
 - 7) Testing is completed and service is delivered to customer.

- b. For **ALL** locations, the following steps apply:
 - 1) All provisioning is done at the Central Office;
 - 2) Notify Sierra Communications of upgrade to services requested by calling our NOC at 888-682-2101 and emailing request in writing to techsupport@bacavalley.com;
 - 3) Verification of Service Upgrade Request will be sent to the customer;
 - 4) A Service Order is opened and upgrade scheduled (Lead Time (in Calendar Days) will be 21 Business Days;
 - 5) Upgrade is completed;
 - 6) Testing is completed and customer notified of completed upgrade.

APPENDIX I – CUSTOMER REPORTING

NO.	a. Customer Report Name	b. Customer Report Description	c. Identify methods reports are accessed by customer	d. Frequency	Online access to real-time data
1.	Availability of Service	Reports when internet services are unavailable (unable to send or receive traffic) for reasons other than excused/scheduled outage by date (mm/dd/yy), time (hrs:mins:secs) or downtime.	Customer will be emailed a report consisting of a continuous graph generated by our monitoring system showing the uptime for the month.	Monthly	No
2.	Delay Service Levels	Reports when internet services are delayed (in excess of service levels) for reasons other than excused/scheduled outage by date (mm/dd/yy), time (hrs:mins:secs:ms) of delayed service.	Customer will be emailed a report consisting of a continuous graph generated by our monitoring system showing the values for the round-trip latencies of the test packets for the month.	Monthly	No
3.	Packet Delivery and Loss of Service	Reports when the internet traffic is delayed for reasons other than excused/scheduled outage.	Customer will be emailed a report consisting of a continuous graph generated by our monitoring system showing the number of dropped test packets for the month.	Monthly	No
4.	Bandwidth Utilization	Reports the percentage of bandwidth used off the total bandwidth available.	Customer will be emailed a report consisting of a continuous graph generated by our monitoring system showing the upstream and downstream traffic utilization for the month measured at the demarcation port at the school.	Monthly	No

APPENDIX N – SERVICE CREDITS for INTERNET ACCESS SERVICES

The Educational Institutions procuring entity will be entitled to receive a service credit off the actual usage charges for the particular month affected, to be applied within ninety calendar days starting the day after the affected month.

- **Availability Service Level:** The Educational Institutions require Available Service Level for high speed IP service at 99.98%. The Department of Information Technology requires a service level credit off the actual usage charges for that specific month when the availability of high speed IP service is unavailable (unable to send or receive traffic), excluding scheduled and/or excused outage(s). The credits are based on the cumulative unavailability in a given calendar month as outlined in the following table:

Table 1:

Service Level Description: Cumulative Unavailability (hrs:mins:secs)	Service Level Credit Based on Service Level as a (%)
00:00:01 – 00:10:00	10% of 1 Calendar Day of Service
00:10:01 – 00:45:00	20% of 1 Calendar Day of Service
00:45:00 – 04:00:00	30% of 1 Calendar Day of Service
04:00:01 – 08:00:00	100% of 1 Calendar Day of Service
08:00:01 – 12:00:00	100% of 1 Calendar Day of Service
12:00:01 – 16:00:00	100% of 1 Calendar Day of Service
16:00:01 – 24:00:00	100% of 1 Calendar Day of Service
24:00:01 or greater	100% of 1 Calendar Day of Service

- **Delay Service Level:** The Delay Service Level for high speed IP Service, See Table 1 below. The Educational Institutions require a service credit off of the actual usage charges if there is a delay in excess of Table 1 below over a twenty-four (24) hour period in any calendar month for traffic on the Offeror's network between Gateways, excluding scheduled and/or excused outage(s). The service credits are outlined in Table 2 below:

Table 1: AMENDMENT#002

No.	Route	Delay Service Level
1	Within the United States for Fiber Services	25 ms
2	Within the U.S. for Satellite-based services	

Table 2:

Amount of Delay in Excess of Service Level	Service Level Credit (%)
0.1 – 5 ms	5% of 1 Calendar Day of Service
5.1 – 10 ms	5% of 1 Calendar Day of Service
10.1 – 15 ms	10% of 1 Calendar Day of Service
15.1 – 20 ms	15% of 1 Calendar Day of Service
20.1 – 25 ms	20% of 1 Calendar Day of Service
25.1 ms or greater	25% of 1 Calendar Day of Service

- c. **Packet Delivery Service Level:** The Educational Institutions requires Packet Delivery Service Level for high speed IP service at 99.95% for On-Net traffic between Gateways. The Educational Institutions requires a service credit off of the actual usage charges if there is a delay in excess of Table 1 below over a twenty-four (24) hour period in any given calendar month, in the event the Offeror does not meet the Packet Delivery Service Level outlines in Table 1 below. This excludes scheduled and/or excused outage(s).

Table 1:

Packet Delivery	Service Level Credit (%)
99.5 – 99.949%	5% of 1 Calendar Day of Service
99 – 99.49%	10% of 1 Calendar Day of Service
98 – 98.99%	20% of 1 Calendar Day of Service
97 – 97.99%	30% of 1 Calendar Day of Service
96 – 96.99%	40% of 1 Calendar Day of Service
95.99% or less	50% of 1 Calendar Day of Service

APPENDIX O – Value Added Related Services plus Cost Model(s)

NOT APPLICABLE

APPENDIX P – E-RATE TERMS AND CONDITIONS

This RFP does contain E-Rate eligible services and/or products. The required Universal Service Administrative Company (USAC) Description of Services Requested and Certification Form, numerically known as a Form 470, has been filed by the **New Mexico Public Education (NMPED)** to include certain categories of E-Rate eligible products within the services for which this Request for Proposal is seeking contracts. The application number for Form 470 for this RFP is “**170046897**” available to the Local Education Authority also known as the Educational Institutions. The resulting contract(s) are intended to be in compliance with USAC’s definition of a State Master Contract and also known as Statewide Price Agreements for those services that contain E-Rate-eligible services and/or equipment. E-Rate ineligible services and products offered by the awarded Contractor(s) must be clearly labeled as such. It is the responsibility of each of the E-Rate eligible individual members of the Local Education Agency (LEA) Group and the awarded vendor and/or sales contacts for the awarded contract to follow all of the rules of the E-Rate Program including strict adherence to the most current Eligible Services List, as explained at <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx> . In the event a sales contact, internal or external, of the awarded contract misrepresents the eligibility of the service and/or products to the eligible E-Rate LEA Group Member, then that sales contact must be responsible to the applicant and E-Rate program concerning further financial retribution. If the sales contact providing misrepresentation is listed by the specific Contract Holder as an Authorized Reseller or subcontractor (external), then the Contract Holder will be held accountable and may be required to remove the provider from the authorized list. The New Mexico Educational Institutions has provided and will continue to provide guidance and assistance with E-Rate for individual LEAs and in statewide training opportunities.

The New Mexico Educational Institutions may elect to further E-Rate involvement through a consortium application process and may use E-Rate eligible services and/or equipment properly procured via this initiating RFP and related Form 470, to the extent the law allows. A contract(s) resulting from this RFP may be available to E-Rate eligible members for E-Rate FY2017 - FY2020 depending on program availability, rules and changes within State Law concerning bidding. Additional extensions may be available to the extent the law allows.

SERVICE PROVIDER IDENTIFICATION NUMBER (SPIN), FCC FORM 498

All sales contacts and/or authorized New Mexico Educational Institutions Resellers/Subcontractors interested in providing E-Rate eligible products from an awarded

contract must obtain a Service Provider Identification Number (SPIN) through USAC by completing FCC Form 498 and maintain a proper standing in the E-Rate Program, as explained at <http://www.usac.org/sl/service-providers/step01/default.aspx> . Vendors must demonstrate that they have not been disbarred from the E-rate program and that they are not in a “Red Light” status, as explained at <http://usac.org/cont/late-payments/default.aspx> . The SPIN should be included in the seller’s contact information.

E-RATE MINI BID/ MINI QUOTE

The competitive responses for internet access services for the New Mexico Educational Institutions may result in awards to multiple vendors. Based on this allowance, the New Mexico Educational Institutions reserves the right to award multiple contracts for any one service, if deemed necessary. However, it should be noted that if an individual LEA Group member(s) is purchasing a specific service that is eligible for E-Rate discounts and plans to request such discounts, they must choose the vendor that provides the most cost effective, with price being the most heavily weighted factor, means for providing the product or equivalent product across all Services awarded. If multiple sales contacts are available to provide the eligible service and/or product within the area, then the participant must follow the “mini-bid” procedures, as explained at <http://www.usac.org/sl/applicants/step02/state-master-contracts.aspx>, as required by Universal Service Administrative Company (USAC)/Federal Communications Commission (FCC). Failure to do so will jeopardize the individual LEA Group member’s E-Rate request. The individual LEA Group members must follow the FCC’s record retention rules as codified in Part 47 Section 54.516 of the Code of Federal Regulations. While the applicants are required to meet and be responsible for the E-Rate mini-bid process, the New Mexico Educational Institutions will provide access to an online tool that will be available for these applicants to post these mini-bid. The New Mexico Educational Institutions chooses to use the term “mini-quote” in lieu the term “mini-bid”. These terms may be used synonymously within this RFP and the New Mexico Educational Institutions. All contract sales contacts and/or New Mexico Educational Institutions Authorized Resellers/Subcontractors will be required to follow instructions and participate. The MiniQuote system is to become a requirement during the 2017 funding year. The miniquote system is not comprehensive of the vendor offerings, it is a sampling for comparison. Vendors should maintain a comprehensive web site of offerings. All submissions for the miniquote system must use a template supplied by NMPED to assist with this process and for the evaluation process of this RFP, a list of current schools and school systems with address and other demographic information is provided, See Appendix C and Appendix C-3.Part3-if applicable. The Qualified Responder will indicate which of these addresses that their submitted services and pricing will be available for orders and purchasing in the event an award is made to the Qualified

Responder. E-rate does not allow vendors to change prices over the term of a contract. E-rate allows the vendor to quote bandwidth tiers above what the applicant requires for the first year of service on a multi-year contract and allows the applicant to upgrade tiers after between years without conducting a competitive bid. The awarded agreements resulting from the RFP requirements will provide more details regarding prices/cost. All prices quoted must be in place for the term of the contract. The mini quote process is not required for all other non-“E-Rate” purchases but is considered a form of a best practice to obtaining the most cost effective means of providing the service or contract products.

E-RATE CONTINGENCY

Contract(s) resulting from this RFP are not contingent upon E-Rate Discounts awarded through the E-Rate Program. The New Mexico Educational Institutions are responsible for filing their own Form 471 and reference the Form 470 that NMPED filed. If the schools want to work with their public library or form a consortium, NMPED will work with those schools and libraries on a case by case basis. This may require assistance from the service provider(s). Quotes and pricing offers, based on the awarded contract, given to the eligible LEA Group member by the Contract holder’s identified Sales Contact may be contingent upon E-Rate awarded discount for the given E-Rate Funding Year at the discretion of the applying eligible LEA Group Member.

E-RATE PAYMENT PLANS

In the event a product or service from the awarded service contract has successfully been awarded, the E-Rate discounts applicable by USAC and the Service Provider Invoice method of discounts are to be applied. Then the service provider (contract Sales Contact) must bill the applicant for their share of the transaction at the same time any such invoice is sent to USAC for payment in accordance with FCC rules. In accordance with the FCC rules, the applicant must pay their share within 90 days of payment due date, as explained at <http://www.usac.org/sl/applicants/step06/obligation-to-pay.aspx> . The exception is if there is any special construction involved, the applicant has the option to request the service provider accept payments of the non-discount share of special construction charges in installments up to 4 years. Special construction charges are the engineering, design, project management and construction costs related to new fiber or microwave builds. The service provider will be responsible for filing the appropriate Service Provider required E-Rate forms, including but not limited to the following FCC Form 473, Form 474, Form 498, and Form 499. Service Providers are required to have a completed Form 473, service provider annual certification, for each relevant year before a Billed Entity Applicant Reimbursement (BEAR) Form known as the FCC Form 472 or

the service provider (SPI) form known as the (FCC Form 474) will be paid. Additional information regarding forms instructions can be found at <http://www.usac.org/res/documents/sl/pdf/forms/FCC-Form-472-Instructions.pdf>), <http://www.usac.org/res/documents/sl/pdf/forms/FCC-Form-473-Instructions.pdf> , <http://www.usac.org/res/documents/sl/pdf/forms/FCC-Form-474-Instructions.pdf>, http://www.usac.org/res/documents/cont/pdf/forms/2013/FCC_498_Form-Instructions.pdf, and <http://www.usac.org/cont/tools/forms/default.aspx> .

E-RATE DISCOUNT INVOICING METHOD

The awarded contract holder providing E-Rate funded discounts on services must also work with the eligible LEA Group member to determine the best method of discount provisions allowed by the E-Rate program. In accordance with FCC rules the LEA will decide whether it prefers to invoice USAC via an FCC Form 472 or Form 474. The contract holder and applicant must work together to determine the best method to be used in the interest of the LEA Group member. The Service Provider(s) will follow the methods of invoicing as defined at link <http://usac.org/sl/service-providers/step05/default.aspx> to avoid nonpayment for services.

E-RATE SERVICE PROVIDER STATUS

Any contract holder, sales contact (company) or authorized New Mexico Educational Institutions Reseller that provides E-Rate eligible products within an awarded service contract must maintain a positive standing with the E-Rate program. They must maintain and provide upon request a Service Provider Identification Number (SPIN) that will correctly identify their business operations with the E-Rate program. In the event an eligible Telecommunications Service is offered as a product within the awarded service contract, the contract holder, as a sales contact or designated and the FCC to provide those services under the Telecommunications category of service.

Any contract holder, sales contact (company) or authorized New Mexico Educational Institutions Resellers that provides an E-Rate eligible product within an awarded service contract must avoid a "Red Light" status' with the FCC.

E-RATE SUMMARY

All E-Rate purchases from the resulting agreements of this RFP by the LEA Group members should comply with E-Rate rules and regulations available at <http://www.usac.org/sl/>. Should the

LEA Group member request assistance in the determination of E-Rate eligibility, they should refer to the USAC Web site and then contact the New Mexico Educational Institutions State E-Rate Coordinator's office at the New Mexico Public Education Department if additional clarification is needed.

APPENDIX Q – PROJECT WORKS STATE OF NEW MEXICO PROJECT REQUIREMENTS

PUBLIC WORKS PROJECT REQUIREMENTS

As a participant in a Public Works project valued at more than \$60,000 in the State of New Mexico, the following list addresses many of the responsibilities that are defined by statute or regulation to each project stakeholder.

Contracting Agency

- Ensure that all Contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> (Contractor Registration) prior to bidding.
- Please submit Notice of Award (NOA) and Subcontractor List(s) to the PWAA website promptly after the project is awarded.
- Please update the Subcontractor List(s) on the PWAA website whenever changes occur.

General Contractor

- Provide a complete Subcontractor List and Statements of Intent (SOI) to Pay Prevailing Wages for each Contractor to the Contracting Agency within 3 (three) days of award.
- Ensure that all Subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Submit bi-weekly certified payrolls to the Contracting Agency.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- Confirm the Wage Rate poster, provided in PWAA, is displayed at the job site in an easily accessible place.
- Make sure, when a project has been completed, the Affidavits of Wages Paid (AWP) are sent to the Contracting Agency.

Subcontractor

- Ensure that all Subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Submit bi-weekly certified payrolls to the General Contractor(s).

Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.

Additional Information

Reference material and forms may be found at New Mexico Department of Workforce Solutions Public Works web pages at: http://www.dws.state.nm.us/new/Labor_Relations/publicworks.html.

APPENDIX R – DEPARTMENT OF INFORMATION TECHNOLOGY STANDARDS FOR CONSTRUCTION SERVICES

OUTSIDE PLANT CONSTRUCTION (OSP) INSTALLATION SPECIFICATIONS

Material Requirements

- Material will comply with those standards as established by UL or NEMA and shall be commercial grade. All materials will be new and free from defects.
- Selected contractor and its subcontractors will provide all material management to ensure that the project remains on track according to the project milestones,
- All due caution will be exercised in transporting and off-loading all materials to prevent any damage during shipping or placement. Any damage to any materials after their initial receipt and inspection by the respondent will be the sole responsibility of the respondent, who will replace such damaged hand holes at no additional expense to the district.
- Buried conduit shall be EMT (Electrical Metallic Tubing) multiduct with at least three innerducts.s. EMT fitting shall be gland or set screw type, and each conduit shall be equipped with a graduated pull tape or rope.
- Unless specified by right-of-way owner, crossings will be two conduits, PVC-Sch 40 or better.
- The exact requirements for location and type of conduit within the building shall be verified with building owner.
- All Hand Holes shall be (State) DOT approved, 45,000 lb. load rated CDR or comparable enclosures on roadways and railways, and pedestrian rated hand holes for non-roadways and railways.
- Large-radius sweeps shall be provided where required for offset or change in direction of conduit. Bend radius rating of the cable must be adhered to for all conduit bends, pull boxes, and hand holes.
- Fiber must be Single Mode with the following specifications:
 - TU- T G.652.C/D compliant
 - Maximum Attenuation @ 1310nm 0.34 dB/km
 - Maximum Attenuation @ 1385nm 0.31 dB/km
 - Maximum Attenuation @ 1550nm 0.22 dB/km
- Connector Types should be LC unless otherwise specified by the district.
- Any warranties associated with the fiber and any other outside plant materials must revert to the district as the fiber owner upon completion of construction,

Specifications:

Survey

- Comply with all ordinances and regulations. Where required, secure permits before placing or

excavating on private property, crossing streams, pushing pipe or boring under streets and railways. Pre-survey shall be done prior to each job.

- Respondent will locate underground lines of third parties in cable route area

Permits and Traffic Control

- The respondent must adhere to all applicable laws, rules and requirements and must apply for permits to place infrastructure per specification per county or city ordinance applicable to where the infrastructure is being placed.
- All traffic control, in accordance with local, state, county, or permitting agency laws, regulations, and requirements, will be the respondent's responsibility. The respondent's construction schedule will take into consideration sufficient time for the development and approval of a traffic control plan.

Tracer Wire Installation

- Tracer wire shall be placed with all conduit installed unless armored or traceable cable is used. The respondent will provide the tracer wire and shall install, splice and test (for continuity) the tracer wire. If the tracer wire is broken during installation, the wire should be repaired and tested for continuity after repair.
- For multi-duct installation, install a 5/8" X 8" copper clad ground rod in the hand-hole located on public right-of-way. Place a #12 insulated copper locate wire from the ground rod to the fiber optic termination room or to the outside of the building directly below the pull box and terminate on one side of an insulated indoor/outdoor terminal block to the master ground bar in the fiber optic termination room or place a ground rod on the outside of the building. Locate block in an accessible location. This is for "locate purposes only," not for grounding purposes. Note on as-built where ground is placed and tag located wire as "locate wire."

Depth of Burial

Except where otherwise specified, the cable shall be placed to a minimum depth of 36" along roadways and 24" on private property. Greater cable depth will be required at the follow locations.

- Where cable route crosses roads, the cable shall be placed at a minimum depth of 48" below the pavement or 36" below the parallel drainage ditch, whichever is greater, unless the controlling authority required additional depth, in which case the greatest depth will be maintained.
- Where cable crosses existing sub-surface pipes, cables, or other structures: at foreign object crossings, the cable will be placed to maintain a minimum of 12" clearance from the object or the minimum clearance required by the object's owner, whichever is greater.

Highway, Railroad, and Other Bored Crossings

- All crossings of state or federal highways and railroads right-of-way shall be made by boring and placing a pipe casing. The cable shall be placed through the pipe casing. Country road and other roadways shall be bored, trenched, or plowed as approved by the appropriate local authority.
- All work performed on public right-of-way or railroad right-of-way shall be done in accordance with requirements and regulations of the authority having jurisdiction there under.
- Respondent shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn.
- Where the cable route crosses railroad right-of-way, the cable shall be placed at a minimum depth of 60" below the railroad surface or 36" below the parallel drainage ditch, whichever is greater, unless the controlling authority requires additional depth, in which case the greatest depth will be maintained.

Cable Markers

- Cable markers shall be placed within 48 hours of cable installation. Unless the right-of-way or property owner specifies otherwise, cable markers shall be placed at all change in directions, splices, fence line crossings, at road and stream crossings, and other points on the route not more than 1,000 feet apart.
- In addition, on highway right-of-way, the markers shall be located at the highway right-of-way line. Markers shall always be located so that they can be seen from the location of the cable.

Hand Holes

- Hand holes will be placed in accordance with standard industry practice following the specifications provided in the construction plans, typical drawings, and detail drawings. Special attention and planning must be exercised to ensure accessibility by other groups after construction has been completed.
- All hand holes unless otherwise stipulated by the drawings will be buried with 12" to 18" of cover at final grade.
- Immediately after placement, the soil around and over the hand hole will be tamped and compacted. Should any washouts occur, the respondent will be responsible for correcting the problem immediately without additional cost to the district.
- After cable placement all ducts will be sealed.
- All splice hand holes/manholes will be grounded
 - A minimum of 100' coil of cable shall be left in each hand hole/building for splicing use.

Splicing

- Fiber to fiber fusion splicing of optical fibers at each point including head ends is required.
 - Complete testing services, such as end to end, reel testing, and splice loss testing, ORL, power meter/laser source testing and WDM testing is required.
 - Individual splice loss will be 0.10 dB for single-mode unless after 3 attempts these values cannot be achieved, then the fibers will be re-spliced until a splice loss within 0.05 dB of the lowest previous attempts is achieved. Splice loss acceptance testing will be based on the fusion splicer's splice loss estimator.
 - All cables to buildings shall be fusion spliced within a minimum of 50' of entering a building at a location to be determined by the owner with an existing single mode fiber and terminated at customer's rack.

Aerial Plant

District is open to aerial fiber runs using existing utility poles, but Respondent must adhere to pole owners' requirements for clearances, spans, grounding, guys and attachments.

Testing Cable

- The respondent shall be responsible for on-reel verification of cable quality prior to placement.
- Completed test forms on each reel shall be submitted to the district.
- Respondent assumes responsibility for the cable after testing. This responsibility covers all fibers in the cable.
- The respondent shall supply all tools, test equipment, consumables, and incidentals necessary to perform quality testing.
- The cable ends shall be sealed upon completion of testing.
 - In addition to splice loss testing, selected respondent will perform end-to-end insertion loss testing of single-mode fibers at 1310 nm and 1550 nm from one direction for each terminated

fiber span in accordance with TIA/EIA-526-7 (OFSTP 7). For spans greater than 300 feet, each tested span must test to a value less than or equal to the value determined by calculating a link loss budget.

Restoration

- All work sites will be restored to as near their original undisturbed condition as possible, all cleanup will be to the satisfaction of the district and any permitting agencies.
- Respondent shall provide a brief description of restoration plan in the response, with the expectation that a more detailed restoration plan will be delivered prior to construction begins.
- Work site restoration will include the placement of seed, mulch, sod, water, gravel, soil, sand, and all other materials as warranted.
- Backfill material will consist of clean fill. Backfilling, tamping, and compaction will be performed to the satisfaction of the district, the representative of any interested permitting agency, and/or the railroad representative.
- Respondent will be responsible for any restoration complaints arising within one year after the district's final acceptance.
- Excess material will be disposed of properly.
- Debris from clearing operations will be properly disposed of by the respondent/subcontractors as required by permitting agencies or the railroad. Railroad ties, trees, stumps or any foreign debris will be removed, stacked, or disposed of by the respondent as per requirements by other interested permitting agencies, and/or the district.
- Road shoulders, roadbeds, and railroad property will be dressed up at the end of each day. No payment for installation will be permitted until cleanup has been completed to the satisfaction of the any permitting agencies, and/or the district.
- Site clean-up will include the restoration of all concrete, asphalt, or other paving materials to the satisfaction of the other interested permitting agencies, and/or the district.

Documentation

- As Built Drawing will include:
 - Fiber Cable Route
 - Drawings, site drawings, permit drawings, and computerize design maps and electronically stored consolidated field notes for the entire route must be included in the documentation. The method of installation will dictate the additional types of documentation that should be provided. For example, documentation of aerial installation should include pole attachment inventories, pole attachment applications, pole attachment agreements between respondent and other utilities, GPS points of reference for utility poles, and photo images of poles to which fiber is attached. Documentation of underground installation should include conduit design, conduit detailing, manhole detailing, preparation of all forms and documentation for approval of conduit construction and/or installation, verification of as-built and computerized maps.
 - Splicing locations
 - Optical Fiber assignments at Patch Panels
 - Optical fiber assignments at splice locations.
 - Installed cable length
 - Date of Installation
- Fiber Optic details will include:
 - Manufacturer

- Cable Type, Diameter
 - Jacket Type: Single Mode
 - Fiber core and cladding diameter
 - Fiber attenuation per Kilometer
 - Fiber bandwidth and dispersion
 - Index of refraction
- OTDR documentation will include:

Each span shall be tested bi-directionally from endpoint to endpoint. Each span's traces shall be recorded and mapped. Each splice loss from each direction and the optical length between splices as well as any of the information required by Span Map.

- Reel acceptance
 - Individual fiber traces for complete fiber length
 - Paper and computer disk records of all traces.
 - Losses of individual splices
 - Anomalies
 - Wavelength tests and measurement directions
 - Manufacturer, model, and serial number of OTDR
 - Date of last calibration.
- Power Meter documentation will include:
- Total link loss of each fiber
 - Wavelengths tested and measurement directions
 - Manufacturer, model, and serial number of test equipment
 - Date of last calibration

REFERENCES, STANDARDS, AND CODES

Specifications in this document are not meant to supersede state law or industry standards. Respondents shall note in their response where their proposal does not follow the requested specification to comply with state law or industry standard. The following standards are based upon the *Customer-Owned Outside Plant Design Manual (CO-OSP)* produced by BICSI, the *Telecommunications Distribution Methods Manual (TDMM)* also produced by BICSI, ANSI/TIA/EIA and ISO/IEC standards, and NEC codes, among others.

It is required that the respondent be thoroughly familiar with the content and intent of these references, standards, and codes and that the respondent be capable of applying the content and intent of these references, standards, and codes to all outside plant communications system designs executed on the behalf of the district.

Listed in the table below are references, standards, and codes applicable to outside plant communications systems design. If questions arise as to which reference, standard, or code should apply in a given situation, the more stringent shall prevail. As each of these documents are modified over time, the latest edition and addenda to each of these documents is considered to be definitive.

Table 1 — References, Standards, and Codes

Standard/Reference	Name/Description
BICSI CO-OSP	BICSI Customer-Owned Outside Plant Design Manual
BICSI TDMM	BICSI Telecommunications Distribution Methods Manual
BICSI TCIM	BICSI Telecommunications Cabling Installation Manual
	Customer-Owned Outside Plant Telecommunications Cabling Standard
TIA/EIA - 568	Commercial Building Telecommunications Cabling Standard
TIA/EIA - 569	Commercial Building Standard for Telecommunication Pathways and Spaces
TIA/EIA - 606	The Administration Standard for the Telecommunications Infrastructure of Commercial Buildings
TIA/EIA - 607	Commercial Building Grounding and Bonding Requirements for Telecommunications
TIA/EIA - 455	Fiber Optic Test Standards
TIA/EIA - 526	Optical Fiber Systems Test Procedures
IEEE 802.3 (series)	Local Area Network Ethernet Standard, including the IEEE 802.3z Gigabit Ethernet Standard
NEC	National Electric Code, NFPA
NESC	National Electrical Safety Code, IEEE
OSHA Codes	Occupational Safety and Health Administration, Code of Federal Regulations (CFR) Parts 1910 - General Industry, and 1926 - Construction Industry, et al.

EXHIBIT B - Attachment 1
Sierra Communications, Inc. -
Service Level Agreement

This summary page describes the Service Level Agreement (hereinafter referred to as "SLA") applicable to Sierra Communications, Inc. (hereinafter referred to as "SCI") Broadband Internet Services (hereinafter referred to as "Broadband").

A. General

SCI will be the only party to determine (in its sole discretion) whether SCI has not met any of the SLAs specified herein. SCI reserves the right to change or discontinue any or all of the SLAs detailed below at any time. Customer must at all times cooperate with SCI in testing, determining and verifying that a qualifying Service Outage (hereinafter referred to as "Outage") has occurred.

The length of each Outage shall be calculated in full minutes for the purposes of determining SLA Credits (hereinafter referred to as "Credits"). The existence and end of each Outage will be determined by SCI in good faith based on network tests performed by SCI. Under no circumstances will network tests performed by the Customer be considered valid, measurable criterion for Outage determination for the purposes of establishing Credits.

B. SLA Credit Request Process

In order to receive any of the Credits (specified herein) for Broadband, the Customer's Point of Contact (CPOC) must immediately notify the SCI Network Operations Center (hereinafter referred to as "SCI NOC") at 575-278-2101, 575-245-2101 or 888-682-2101 of an occurrence within the Broadband Network that results in the inability of Customer to transmit IP packets over the Broadband Network resulting in an Outage.

The SCI NOC will investigate the reported outage and assign a Trouble Ticket Number. Once SCI determines that the substantiated Outage that could qualify Customer for a Credit occurred (hereinafter referred to as "Verifiable Trouble Ticket"), then Customer may request a Credit within 30 days after the event giving rise to the Credit by contacting SCI NOC at 575-278-2101, 575-245-2101 or 888-682-2101. A Verifiable Trouble Ticket Number must accompany Customer's request for any Credit regarding the Broadband purchased by Customer. Credit will

appear on Customer's Broadband Statement within two (2) billing cycles after such Credit has been approved by the SCI Management. Credits are exclusive of any applicable taxes charged to the Customer or collected by SCI.

C. SLA Limitations

In any calendar month Customer's aggregated Credits may not exceed, for any Broadband Service, one month's worth of the monthly service fee for the affected Broadband. For the purpose of calculating Credits, this monthly service fee shall mean the monthly recurring charge for customers Broadband, but excluding, in all cases, (i) any monthly recurring fees for additional Broadband Service features (e.g., domain name hosting or email service) and (ii) all one-time charges.

D. SLA Exclusions

An Outage does not include outages that occur during scheduled periods of maintenance or upgrades.

SLAs do not apply, and SCI is not responsible, for failure to meet an SLA resulting from:

- The misconduct or accident of Customer behavior or users of service;
- The failure or deficient performance of power, equipment, services or systems not provided by SCI;
- Delay caused or requested by Customer;
- Service interruptions, deficiencies, degradations or delays due to any access lines (i.e. POTS line) whether provided by SCI or by third parties, or Customer Premises Equipment (CPE) when provided by third parties;
- Service interruptions, deficiencies, degradations or delays during any period in which SCI or its representatives are not afforded access to the premises where access lines associated with Broadband Service are terminated or SCI CPE is located;
- Service interruptions, deficiencies, degradations or delays during any period when a Service Component is removed from Service for maintenance, replacement, or rearrangement purposes or for the implementation of a Customer order;
- Customer's election to not release a Service Component for testing and/or repair and to continue using the Service Component;
- Disconnection due to customer's failure to pay for service;
- Fiber Optic Cable damage caused by gross negligence of others; and/or
- Force Majeure conditions including, but not limited to events such as

fire, explosion, lightning, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, terrorism, acts of civil or military authorities, fuel or energy shortages, acts or omissions of suppliers or other causes beyond SCI's control, whether or not similar to the foregoing.

- Failure of non-service impacting equipment or systems responsible for network measurements.

In addition, SLAs do not apply (a) if Customer is entitled to any other available credits, compensation or remedies under Customer's Service Agreement for the same service interruption, deficiency, degradation or delay, (b) for service interruptions, deficiencies, degradations or delays not reported by Customer to SCI within a reasonable period of time, (c) where Customer reports an SLA failure, but SCI does not find any SLA failure, (d) any wholesale customer with access provided by SCI for resell to their end users and/or (e) to Broadband Sites that are not directly connected to the SCI Network.

E. Use of Alternate Service

If Customer elects to use another means of communications during the period of interruption, Customer must pay the charges for the alternative service used.

F. Network Availability-Availability Service Level- 99.98%

SCI Points of Presence (POPs) on the IP/DSL Backbone Network shall be "Available" 99.98% of the time in delivering traffic to/from SCI Upstream Providers/Edge Router over a calendar month. Customer shall be entitled to Credits based on Appendix N: Table 1 - Availability Service Level in RFP# 70-000-16-00013 from the Customer's monthly recurring service fees if SCI fails to meet the aggregate Network Availability SLA during any calendar month.

Any calculation of Network Availability shall not include any unavailability resulting from Section D - SLA Exclusions in this document.

G. Network Latency - Delay Service Level in Excess of 25 milliseconds (ms)

SCI's aggregate monthly average roundtrip latency on the IP/DSL Backbone Network shall be 25.0 ms or less between the Edge Router and locations on the SCI IP/DSL Backbone. Customer shall be entitled to Credits based on Appendix N: Table 2

- Delay Service Level in RFP# 70-000- 16-00013 from the Customer's monthly recurring service fees if SCI fails to meet the aggregate Network Latency SLA during any calendar month.

Any calculation of Network Latency shall not include any delay resulting from Section D- SLA Exclusions in this document.

H. Data Delivery (Packet Loss) - Packet Delivery Service Level - 99.95%

SCI's aggregate monthly average packet loss between SCI POPs on the IP/DSL Backbone shall not exceed 0.05%. Customer shall be entitled to Credits based on Appendix N: Table I - Packet Delivery Service Level in RFP# 70-000-16-00013 from the Customer's monthly recurring service fees if SCI fails to meet the aggregate Data Delivery (Packet Loss) SLA during any calendar month.

Any calculation of Data Delivery (Packet Loss) shall not include any loss resulting from Section D - SLA Exclusions in this document.