

State of New Mexico

Information Technology Agreement  
Statewide Price Agreement No. 70-000-16-00013AH  
Contractor's Service Provider Identification Number (SPIN): 143037369

THIS Information Technology Agreement ("Agreement" or "Contract") is made by and between the State of New Mexico acting through the State Purchasing Division (SPD) on behalf of the **Public Education Department (PED) as the Sponsoring entity and TDS Broadband Service, LLC**, 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**" and Contractor's response thereto are incorporated herein by reference, subject to Article 28, Paragraph B, herein; 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 to 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 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 are 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. **“Metro Areas”** or **“Metropolitan Areas”** means one city with a population of 50,000 or greater.
  18. **“Milestone”** means a significant event in a project, usually the completion of a major deliverable.
  19. **“Mobilization”** means all activities and associated costs associated to transportation of contractor’s personnel, equipment, and operating supplies to the site.
  20. **“MRC”** means a monthly recurring cost for internet access services that does not include fiber construction, special construction, and any nonrecurring costs.

21. **"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.
22. **"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.
23. **"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
24. **"Rural"** means located outside of a metropolitan area and is less than 2,500 in population.
25. **"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.
26. **"Splicing"** means creating a permanent joint between two fibers.
27. **"Sponsoring entity"** shall mean the Executive Branch Agency that spearheaded the execution of the Statewide Price Agreement.
28. **"Upstream"** refers to direction in which data can be transferred from client toward the global Internet and away from the state government. See "Downstream".
29. **"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.
30. **"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.
31. **"Urban Area"** means a population of 20,000 or more, and is near to a metropolitan area.
32. **"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 the incremental speed requested is available as part of the Contractor's then-current standard offering, 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 Educational Institution desires a speed of 750 Mbps, which is not included in Appendix C and Appendix C-3 - Part3, the Contractor, if such speed is available, will be required at a minimum to offer a cost per Mbps that is equal to the cost per Mbps 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. 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, if reasonably possible in light of Contractor's available infrastructure and systems, 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 and mutual agreement of the Parties. 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 contracted special construction services, if any, as outlined in Exhibit A of this Agreement and in support of Off-Net Internet Access Services (or in any agreed amendment), the Contractor shall comply with the following (including any revisions to applicable regulations):
  - 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 are outlined in Appendix R of this Agreement; in the event any such services are contracted for, the Parties will negotiate in good faith any necessary revisions to these terms. In the event of 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.
- D. License.  
Not Applicable. The Parties agree there is no License for the services outlined in Exhibit A of this Agreement.
- E. Source Code. Not Applicable. The Parties agree there is no Source Code for the services outlined in Exhibit A of this Agreement.
- F. 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 within the Contractor's custody. Nothing in this Agreement grants any rights to any Contractor data.

### ARTICLE 3 - COMPENSATION

- A. Compensation Schedule. The Agency shall pay to the Contractor based upon fixed prices for On-Net Internet Access Services, not to exceed the schedule outlined in Exhibit A.
- 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 the Services according to Article 4 and upon the receipt and Acceptance of a detailed, 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 sixty (60) days after the termination of this Agreement.

- 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. Not Applicable.
- 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." All service levels are subject to the terms of Exhibit B and its attachments.
- 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 to include the steps for provisioning internet access services.
- 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 a fixed Deliverable price for On-Net Internet Access Services as set forth in Article 2 and not to exceed pricing in Exhibit A.
- 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 will determine, at a minimum, that the Deliverable:
1. Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
  2. Meets the performance measures for the Deliverable(s) set forth in this Agreement;
  3. Meets or exceeds the standards and procedures for the Deliverables as set forth in this Agreement; and
  4. 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 invoice to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the invoice 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 under the terms of this Agreement and available at law or equity. Additionally, the Agency may terminate the impacted Services.

#### **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 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 or Services provided 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. 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.

- 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 performed 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**

The Agency and the State of New Mexico acknowledge that it has no rights in any software, hardware, systems, documentation, guidelines, procedures, methodologies, and similar related materials or processes, or any modifications thereof, provided by Contractor, or any Know How

(the “**Knowhow**”), except with respect to The Agency and the State of New Mexico’s use of the same during the Term as part of The Agency and the State of New Mexico’s access and use of the Services. Any intellectual property developed by Contractor in the course of performance of this Agreement shall be the proprietary property of Contractor and shall be owned exclusively by Contractor, and the Agency and the State of New Mexico shall receive a royalty-free, nonexclusive, irrevocable right and license to use such proprietary software during the term of this Agreement. The Agency and the State of New Mexico shall have ownership of, but Contractor shall have an irrevocable, fully paid up license to use and exploit, any Contractor Knowhow included in any software or documentation developed by Contractor specifically for and at the request of The Agency and the State of New Mexico and specifically noted as such in the applicable Scope of Work. Contractor shall own all scripts, methods, and processes developed for The Agency and the State of New Mexico except to the extent the applicable Scope of Work specifically identifies such script, process, or method to be specifically paid for by The Agency and the State of New Mexico.

#### **ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION**

- A. **Intellectual Property Indemnification.** Contractor shall defend, at its own expense, and indemnify and hold the Agency, the State of New Mexico and/or any other State of New Mexico body , and their directors, officers, employees and agents harmless from and against any claim by a Third Party or any Affiliate of Contractor to the extent based on: (i) the Services or Contractor’s software used to provide the Services are alleged to infringe upon any United States patent, copyright, United States trademark, or other proprietary right of a Third Party; provided, however, that Contractor shall not be obligated to indemnify the Agency, the State of New Mexico and/or any other State of New Mexico body , if such claim is caused by or arises out of (A) any intellectual property or materials provided by the Agency, the State of New Mexico and/or any other State of New Mexico body ; (B) any designs, or directions provided by the Agency, the State of New Mexico and/or any other State of New Mexico body ; (C) any hardware or software provided by an OEM or other Third Party; (D) the Agency, the State of New Mexico and/or any other State of New Mexico body ’s use of the Services or software other than in accordance with applicable documentation or instructions supplied by Contractor; (E) any combination, alteration, modification or revision of the Services or software not expressly authorized in writing by Contractor; or (F) the Agency, the State of New Mexico and/or any other State of New Mexico body ’s failure to use or implement corrections or enhancements to the Services or software made available free of charge to the Agency, the State of New Mexico and/or any other State of New Mexico body by the Contractor.

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.

To the extent that Contractor is indemnified by the original equipment manufacturer(s) or third party supplier(s) ("Third Party Supplier(s)") of any Products furnished by Contractor hereunder, Contractor shall pass through to the State and take commercially reasonable steps to enforce such Third Party Supplier(s) indemnity with respect to any claim, suit, or proceeding brought or threatened by a third party against the Agency, the State of New Mexico and/or any other State of New Mexico body based on a claim that the Products or Deliverables furnished under this Agreement infringe a copyright, trademark or United States patent, or constitute misuse or misappropriation of a trade secret of a third party ("Claim"). The Agency, the State of New Mexico and/or any other State of New Mexico body shall provide Contractor with prompt written notice of any such claim, suit or proceeding.

#### **ARTICLE 11 - WARRANTIES**

- A. CONTRACTOR WARRANTS THAT THE SERVICES SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER AND COMPLIANT WITH APPLICABLE ACCEPTED SPECIFICATIONS PROVIDED BY CONTRACTOR, SUBJECT TO THE EXCEPTIONS BELOW AND IN EXHIBIT B AND ITS ATTACHMENTS. EXCEPT WITH RESPECT TO THE FOREGOING WARRANTY, CONTRACTOR IS PROVIDING ALL SERVICES TO THE AGENCY, THE STATE OF NEW MEXICO AND/OR ANY OTHER STATE OF NEW MEXICO BODY "AS IS" AND CONTRACTOR MAKES NO WARRANTY AS TO THE CONTINUOUS OPERATION OF THE SERVICE OR ANY SPECIFIC FEATURE OF THE SERVICE. ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE ARE DISCLAIMED. CONTRACTOR DOES NOT WARRANT THAT THE SERVICES OR RELATED PRODUCTS WILL MEET YOUR REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS TO YOUR COMPUTERS, NETWORK, SERVERS AND OTHER EQUIPMENT OR TO ANY DATA, INFORMATION OR FILES ON ANY OF THEM. CONNECTIONS (SYNCRATES) ARE RATE ADAPTIVE AND MAY BE LOWER DUE TO THE LENGTH AND CONDITION OF THE LINE. ACTUAL THROUGHPUT MAY BE LOWER DUE TO INTERNET CONGESTION, NETWORK UTILIZATION, PROTOCOL OVERHEADS OR OTHER FACTORS, WHICH CAN NOT BE CONTROLLED BY CONTRACTOR. IN THE EVENT OF A POWER OUTAGE AT THE AGENCY, THE STATE OF NEW MEXICO AND/OR ANY OTHER STATE OF

NEW MEXICO BODY 'S LOCATION OR IF THE AGENCY, THE STATE OF NEW MEXICO AND/OR ANY OTHER STATE OF NEW MEXICO BODY 'S BROADBAND SERVICE IS DOWN, SERVICES THAT ARE NOT LINEPOWERED (SUCH AS managedIP) WILL NOT OPERATE AND THE AGENCY, THE STATE OF NEW MEXICO AND/OR ANY OTHER STATE OF NEW MEXICO BODY WILL NOT HAVE ACCESS TO EMERGENCY SERVICES SUCH AS 911.

- C. 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. Personnel. The following personnel are anticipated to provide Services under this Agreement, subject to replacement from time to time by Contractor; provided, however, that in the event any of the following listed personnel are replaced, Contractor will use reasonable efforts to notify the Agency in advance.

#### **Account Management for this Account:**

1. Account Manager: Tonya Beauchamp, Commercial Account Executive, Located in Carlsbad, NM  
Phone#: 608 664-4444  
Email Address: Tonya.Beauchamp@tds.com
2. Account Manager Backup and Commercial Account Executive, Located in Hobbs, NM  
Renee Lopez,  
Phone#: 608 664-4444  
Email Address: Renee.Lopez@tds.com
3. Autumn Alexander, Commercial Account Executive, Located in Alamogordo, NM
4. Frank Garza, Commercial Account Executive, Located in Ruidoso, NM

#### **Technical Team for this Account:**

1. Jerry Valles, Maintain the network, Located in Ft. Stockton, TX
2. Lionel Navarro, Maintains the network, Located in Hobbs, NM
3. Johnny Rodriquez, Maintains the network, Located in Ruidoso, NM

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

### **ARTICLE 13 – STATUS OF CONTRACTOR**

- A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing 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**

**Not Applicable to the On-Net Services outlined in Exhibit A.**

#### **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 terminate the Agreement with Contractor and may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs or other direct 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.

**EACH PARTY SHALL NOT BE LIABLE IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

#### **ARTICLE 17 – EQUITABLE REMEDIES**

Each Party acknowledges that its failure to comply with any provision of this Agreement will cause the other Party irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the other Party. The other Party may seek from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce its rights. Each Party's rights to obtain equitable relief pursuant to this Agreement shall be in addition to,



and not in lieu of, any other remedy that the other Party 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, of and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor. 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 the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

THE PARTIES AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS PROVIDED ABOVE IN THIS ARTICLE 18, FOR ALL OTHER CLAIMS CONTRACTOR LIMITS LIABILITY RELATED TO THE PROVISION OF SERVICES TO THE AMOUNT PAID BY THE AGENCY AND THE STATE OF NEW MEXICO IN THE PREVIOUS TWELVE (12) MONTHS FOR SERVICES GIVING RISE TO, OR WHICH ARE THE SUBJECT OF, THE CLAIM WHETHER SUCH CLAIM ALLEGES BREACH OF CONTRACT, OR TORTIOUS CONDUCT INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR ANY OTHER THEORY.

#### **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**

Contractor shall provide an invoice to the State of New Mexico or each Agency, as applicable, designated as a “Final Invoice” for all amounts due under this Agreement. Payment of such final invoiced amount shall operate as a release of both the Contractor and the State of New Mexico or the applicable agency from all liabilities, claims, and obligations 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 the following order of control: (1) This Agreement, (2) the Exhibit A to the Agreement including appendices to Exhibit A, (3) the RFP, including RFP Amendments

(and subject to the accepted terms of Contractor's RFP response), and (4) other exhibits to this Agreement including Exhibit B.

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 OR 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**

1. Name Matthew J. Loch  
Title VP-Sales  
E-Mail Address [matthew.loch@tdsmetro.com](mailto:matthew.loch@tdsmetro.com)  
Telephone Number 608 664-4444
2. Name William D. Shaw  
Title Manager-Sales  
E-Mail Address [William.Shaw@tdstelecom.com](mailto:William.Shaw@tdstelecom.com)  
Telephone Number 435 879-5220 ext 5220

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".

**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 scheduled 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 software on its network to monitor for 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 apply load balancing methods and failover solution(s) with its upstream providers, consistent with its current practice (which is to maintain multiple peering sites with diverse loan sharing connections to each).

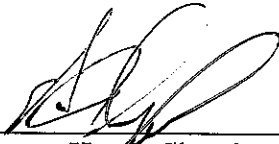
**12. Monitoring Capability.**

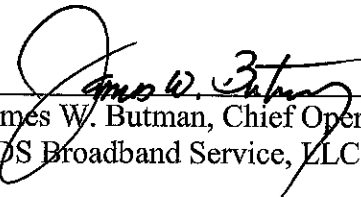
This requirement is at no added cost to the procuring entity based upon the Contractor's Price Listing for internet services at any of the locations as outlined in Exhibit A of this Agreement.

The Contractor must provide full time monitoring of core network elements 24 hours a day, 7 days a week, and 365 days a year.



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: 2/22/2017  
James W. Butman, Chief Operating Officer  
TDS Broadband Service, LLC

Approved as to facial legal sufficiency:

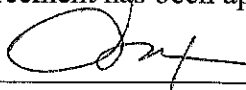
By:  Date: 2/24/2017  
Dawn Mastalir  
New Mexico Public Education Department, General Counsel

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: 03-272505-00-1

By:  Date: 2-24-2017  
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

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

## **I. 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. **Value Added Services. Not Applicable.**

## **II. Other Exhibit(s) to this Agreement**

1. **EXHIBIT B: TDS Broadband Service, LLC Service Level Agreement**

## APPENDIX C: On-Net Internet Access Services Cost Form

1. **See Separate Attachment MS Excel Workbook with Filename TDS-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 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.

<b>LABOR</b>	<b>UNIT</b>	<b>COST PER UNIT (\$)</b>
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		
<b>MATERIAL</b>		
12 count Fiber	Per foot	
Splice Cases	Per case	
Snowshoes (3 per mile)	Per pair	
<b>TOTAL MATERIAL</b>		
<b>TOTAL COST PER MILE</b>		

**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.

<b>LABOR</b>	<b>UNIT</b>	<b>COST PER UNIT (\$)</b>
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	
<b>TOTAL LABOR COST</b>		
<b>MATERIAL</b>		
2" Rolled Duct	Foot	
12 Count Fiber	Foot	
1" Inner Duct	Foot	
Vaults	Each	
Copper Tracer/Ground Wire	Foot	
Splice Case	Each	
<b>TOTAL MATERIAL COST</b>		
<b>TOTAL MATERIAL &amp; LABOR COST</b>		

**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.

<b>LABOR</b>	<b>UNIT</b>	<b>COST PER UNIT (\$)</b>
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	
<b>TOTAL LABOR COST</b>		
<b>MATERIAL</b>		
2" Rolled Duct	Foot	
12 Count Fiber	Foot	
1" Inner Duct	Foot	
Vaults	Each	
Copper Tracer/Ground Wire	Foot	
Splice Case	Each	
<b>TOTAL MATERIAL COST</b>		
<b>TOTAL MATERIAL &amp; LABOR COST</b>		

**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.

<b>LABOR</b>	<b>UNIT</b>	<b>COST PER UNIT (\$)</b>
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	
<b>TOTAL LABOR COST</b>		
<b>MATERIAL</b>		
2" Rolled Duct	Foot	
12 Count Fiber	Foot	
1" Inner Duct	Foot	
Vaults	Each	
Copper Tracer/Ground Wire	Foot	
Splice Case	Each	
<b>TOTAL MATERIAL COST</b>		
<b>TOTAL MATERIAL &amp; LABOR COST</b>		



**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.

<b>LABOR</b>	<b>UNIT</b>	<b>COST PER UNIT (\$)</b>
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		
<b>MATERIAL</b>		
12 count Fiber	Per foot	
Splice Cases	Per case	
Snowshoes (3 per mile)	Per pair	
<b>TOTAL MATERIAL</b>		
<b>TOTAL COST PER MILE</b>		

**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.

<b>LABOR</b>	<b>UNIT</b>	<b>COST PER UNIT (\$)</b>
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	
<b>TOTAL LABOR COST</b>		
<b>MATERIAL</b>		
2" Rolled Duct	Foot	
12 Count Fiber	Foot	
1" Inner Duct	Foot	
Vaults	Each	
Copper Tracer/Ground Wire	Foot	
Splice Case	Each	
<b>TOTAL MATERIAL COST</b>		
<b>TOTAL MATERIAL &amp; LABOR COST</b>		

**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 “TDS-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

For issues regarding Services outlined in this Agreement, the Contractor’s Customer Repair team can be contacted at 877-483-7142 both for reporting and for escalation purposes. The Customer Repair team is highly skilled, and is available to provide support 24x7x365.

If a reported issue is not resolved on first contact, it is dispatched to the appropriate team for advanced or field troubleshooting. These troubles are triaged and worked based on the severity of the issue that is reported. Severity level categories are:

<b>Severity Level</b>	<b>Target Resolution Times for Troubles Reported During Business Hours (Monday-Friday 8 a.m. -5 p.m. )</b>	<b>Troubles Reported Outside of Business Hours</b>	<b>Examples (not inclusive)</b>
Critical Severity	4 Hours	8 Hours	All services are unavailable
High Severity	8 Hours	16 Hours	Voice and/or Data service is in a degraded state (intermittent service or voice down or data down)
Medium Severity	24 Hours	36 Hours	Service impacting but not impacting call processing or IP stability
Low Severity	72 Hours	72 Hours	Single Station/line issue, calling features, loose wiring/jack
*Resolution commitment times are only if TDS is responsible for the trouble from end to end.			

## **APPENDIX M – Steps for Provisioning On Net Internet Access Services by Location**

### **Provisioning Internet Services by Location:**

The standard interval between fiber order placement and installation is 90 to 120 days depending on construction requirements.

### **Upgrading Internet Services that Include Hardware upgrades by Location:**

Bandwidth upgrades associated with Internet services do not require new customer premise equipment when deployed via fiber. This may require an augmentation to Contractor's backhaul to the Internet, at no additional cost to the customer. Standard interval is approximately 15 to 30 days.

**APPENDIX I – CUSTOMER REPORTING**  
**NOT APPLICABLE: TDS IS UNABLE TO PROVIDE THESE REPORTS**

No.	a. Customer Report Name	b.Customer Report Description	c.Identify methods reports are accessed by customer	d.Frequency (daily, weekly, biweekly, monthly, quarterly, other)	Online Access to Real-Time Data (Yes, No)
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) of downtime.		Monthly	
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.		Monthly	
3	Packet Delivery and Loss of Service	Reports when the internet traffic is delayed for reasons other than excused/scheduled outage.		Monthly	
4	Bandwidth utilization	Reports the percentage of bandwidth used off the total bandwidth available.		Monthly	

**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.

**A. Availability Service Level:** The Educational Institutions require Available Service Level for high speed IP service at 99.99%. The Educational Institutions require 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:

Subject to the terms of Exhibit B and its attachments, each cumulative hour of Network Downtime or Circuit Downtime during a calendar month qualifies the Customer for one day's charges pro-rated from the monthly recurring charge of the affected service.

Table 1:

<b>Service Level Description: Cumulative Unavailability (hrs:mins:secs)</b>	<b>Service Level Credit Based on Service Level as a (%)</b>
00:00:01 – 00:10:00	Refer to Exhibit B – Attachment 1 - SLA
00:10:01 – 00:45:00	Refer to Exhibit B – Attachment 1 - SLA
00:45:00 – 04:00:00	Refer to Exhibit B – Attachment 1 - SLA
04:00:01 – 08:00:00	Refer to Exhibit B – Attachment 1 - SLA
08:00:01 – 12:00:00	Refer to Exhibit B – Attachment 1 - SLA
12:00:01 – 16:00:00	Refer to Exhibit B – Attachment 1 - SLA
16:00:01 – 24:00:00	Refer to Exhibit B – Attachment 1 - SLA
24:00:01 or greater	Refer to Exhibit B – Attachment 1 - SLA

**B. 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 Contractor's network between Gateways, excluding scheduled and/or excused outage(s). The service credits are outlined in Table 2 below and are subject to the terms of Exhibit B, including all attachments:

Table 1:

No.	Route	Delay Service Level
1	Within the United States for Fiber Services	40 ms
2	Within the U.S. for Satellite-based services	N/A

Table 2:

Amount of Delay in Excess of Service Level	Service Level Credit (%)
0.1 – 5 ms	Refer to Exhibit B – Attachment 1 - SLA
5.1 – 10 ms	Refer to Exhibit B – Attachment 1 - SLA
10.1 – 15 ms	Refer to Exhibit B – Attachment 1 - SLA
15.1 – 20 ms	Refer to Exhibit B – Attachment 1 - SLA
20.1 – 25 ms	Refer to Exhibit B – Attachment 1 - SLA
25.1 ms or greater	Refer to Exhibit B – Attachment 1 - SLA



- a. **Packet Delivery Service Level:** The Educational Institutions requires Packet Delivery Service Level for high speed IP service at 99.50% 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 Contractor does not meet the Packet Delivery Service Level outlines in Table 1 below. This excludes scheduled and/or excused outage(s).

Table 1:

<b>Packet Delivery</b>	<b>Service Level Credit (%)</b>
99.5 – 99.949%	Refer to Exhibit B – Attachment 1 - SLA
99 – 99.49%	Refer to Exhibit B – Attachment 1 - SLA
98 – 98.99%	Refer to Exhibit B – Attachment 1 - SLA
97 – 97.99%	Refer to Exhibit B – Attachment 1 - SLA
96 – 96.99%	Refer to Exhibit B – Attachment 1 - SLA
95.99% or less	Refer to Exhibit B – Attachment 1 - SLA

**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. 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-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-473-Instructions.pdf) , [http://www.usac.org/\\_res/documents/sl/pdf/forms/FCC-Form-474-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](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](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. 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.

**OTHER EXHIBITS**

**EXHIBIT B**

**ATTACHMENT 1: SERVICE LEVEL AGREEMENT**



## Terms and Conditions

1. **Agreement.** This Commercial Service Agreement (“Agreement”), made on , (“Agreement Date”) is between TDS Broadband Service LLC (“TDS”) and (“Customer”). The Customer hereby agrees to purchase from TDS and TDS agrees to sell the Services (“Services”) identified in this Agreement or any future Amendments agreed to by the parties pursuant to the terms and conditions set forth herein. Amendments and addenda are included herein by reference as integral parts of this Agreement. If Customer wishes to change the Services or add additional Services, Customer and TDS shall execute an Amendment describing such changes or additions. Unless specifically set forth on any Amendment, if the terms of any documents incorporated by reference are inconsistent with this Agreement, the terms of this Agreement will control. Customer agrees that the TDS Broadband Internet Service Disclosures (including the Acceptable Use Policy for Internet Services and the other documents referenced therein) and Privacy Notice [together referred to as the “TDS Internet Terms of Service”] as stated on [www.HelloTDS.com](http://www.HelloTDS.com) will apply to any Internet Services provided under this Agreement. The TDS Internet Terms of Service are included herein by reference as integral parts of this Agreement. Further, Customer also agrees to accept the Google Terms of Service if Customer chooses to use TDS - provided email service. Customer acknowledges certain duties and obligations of TDS under this Agreement may be performed by certain affiliates of TDS.
2. **Service Period.** The Term commences on the Agreement Date and continues for the number of months specified on page 1 of this Agreement for such Service following the Service Commencement Date. Upon expiration of any Service Term, this Agreement shall automatically renew with respect to the Service for the number of months of the original Service Term at TDS’s then-current applicable rates, unless either party terminates the Agreement by giving thirty (30) days prior written notice to the other party before the expiration of the current term.
3. **Billing.** Compensation to be paid by Customer to TDS for Services provided under this Agreement shall be established at the rate and terms provided in this Agreement. The Customer agrees to pay TDS the contract amount committed to under this Agreement. All invoices are due within 30 days from date of invoice. A late charge of 1-1/2% per month, or the highest permissible amount chargeable by law, whichever is less, may be charged on any unpaid balance owed to TDS which remains unpaid for 30 days or more after the date of the invoice. TDS may adjust the Base Rate once in each calendar year. Notwithstanding the above, TDS may also periodically adjust rates due to increases in programming, copyright, and retransmission costs. The Base Rate shall be exclusive of taxes and external fees including, but not limited to, retransmission fees and franchise or other governmental fees. In the event that any action taken by any legislative, judicial or regulatory body directly or indirectly causes a reduction in revenue or an increase in expenses with respect to the provision of the Services, TDS shall have the right to increase the amount of Recurring Charges set forth in this Agreement upon 30 days’ notice. Customer agrees that any unlimited service is being provided based on reasonable usage, and that use of the service for auto dialers, long distance dialup access to the Internet or other information services, call centers, certain switching applications or other high volume calling applications is not permitted and will entitle TDS to terminate the Service upon written notice of the violation. TDS reserves the right to monitor Customer’s usage to determine compliance with these limitations. Bundled prices represented on this Agreement may be billed separately on Customer’s bill. The separate pricing may not be used with any other product or bundled products. It is the Customer’s responsibility to review the monthly invoices for accurate representation of charges. Disputes concerning the accuracy of any invoice that has been paid must be brought in writing within three (3) months of the due date of the invoice.
4. **Subsequent Additions/Deletions.** For each new product or service added to this Agreement after a 60-day grace period, installation charges will apply. Installation charges for advanced business products will be quoted at the time of request on an individual case basis. Subsequent feature deletions, after a 60-day grace period, will be assessed a service order charge per account. Any preferred customer discounts, volume discounts or promotional discounts are subject to change if Customer deletes Services from the original service agreement. Any adjustments in special discounts will be quoted at the time of the request on an individual case basis.
5. **Special Construction.** Where facilities are not available or if equipment, new facilities or changes to existing facilities are required for the provision of additional Services, a special construction charge will apply in addition to the monthly service charge. Customer may be required to pay additional charges or to contract for Services beyond the normal service term, or both.
6. **Service Installation / Equipment; Customer Requirements and Responsibilities.** TDS shall only be responsible for bringing the lines ordered by Customer to the Customer designated demarcation point at Customer’s premises where TDS equipment terminates. In no event shall TDS be responsible for connecting, installing or wiring past the demarcation point. Customer agrees and acknowledges that it shall be Customer’s sole responsibility to provide and arrange for all necessary wiring and equipment. At the time of service installation and during maintenance and repair, Customer agrees to provide at no charge, access to any equipment, right to make use of all existing poles, conduits, wiring and other facilities on the premises which Customer owns or

controls (the "Premises"), a safe working environment and adequate storage space for a reasonable quantity of replacement parts, electrical power to operate the Services and adequate space in Customer's Premises to house any equipment used in connection with provision of the Services, and shall take all other actions reasonably required for the performance of Services by TDS under this Agreement. Neither Customer nor the owner or any resident of the Premises shall have any right, title or interest in the equipment. The equipment shall always be owned by TDS and shall not be a fixture of the Premises. Upon the expiration or termination of this Agreement, or the expiration of TDS's legal right to provide service to the Premises, TDS shall remove reasonably accessible equipment from the Premises within a reasonable time. If TDS installs wiring on the Premises, the following clause applies: Upon the expiration or termination of this Agreement, or the expiration of TDS's legal right to provide Service to the Premises, at TDS's option upon notice to Customer, TDS may: (i) remove the wiring from the Premises within a reasonable time; or (ii) Customer shall purchase from TDS the wiring on the Premises at the fair market value for the full replacement of such wiring, including labor. Customer is responsible for the security of all passwords, equipment or systems that allow access to the Services provided by TDS. Customer acknowledges that they are responsible for actions on their account performed by others who have acquired Customer's passwords or access to Customer's equipment or systems with or without Customer's knowledge and Customer agrees to pay any charges that are incurred regardless of any claim the Customer may have against third parties based on unauthorized access to Customer's passwords, equipment or systems. Customer is also responsible for providing to TDS accurate, specific address and location information for all TDS telephone numbers provided (including any and all changes to such information) so that 911 calls can be properly directed to the appropriate PSAP (public safety answering point). If Customer moves the location of its voice service without the approval of TDS, then 911 calls may not transmit any information, or may otherwise send incorrect address information and/or be directed to the incorrect emergency services provider, which may result in a delay or failure of emergency services being dispatched to Customer's location.

7. **Insecurity of the Internet. CONNECTION TO THE INTERNET CREATES INSECURITY.** Security and disruption problems are inherent in the Internet. The very openness of the Internet creates risks that the Internet is insecure, and vulnerable to both intentional and unintentional disruption. Security breaches can occur for technical and other reasons, and, despite the implementation of security measures, we cannot guarantee that our networks are not vulnerable to unauthorized and illegal access, computer viruses and other disruptive problems. Our ability to provide our services depends in part on the reliability of the Internet and the networks of our partners, and our services can also be negatively affected by limitations inherent in the technology infrastructure supporting the Internet and the internal networks of Internet users. Customer must provide adequate information security for their own networks by using appropriately complex passwords, firewalls, and updated anti-virus and anti-spyware software. Availability of Internet service varies and speeds advertised may not be available at all service addresses. Certain speeds are only offered in areas served by TDS Fiber. Actual speeds experienced by customers vary and are not guaranteed. Speed ranges advertised are expressed as "up to" to represent network capabilities between customer location and the TDS network. Speeds vary due to factors, including: distance from switching locations and external/internal network conditions.
8. **Term and Termination.** TDS will provide Customer with the Services pursuant to the rates, terms and conditions specified herein, commencing on the latter of the requested service date or the day following the date in which TDS notifies Customer that the Service is ready for use (the "Service Commencement Date"). Upon any termination of the Services herein, Customer shall return all TDS-owned equipment in good working condition to TDS, or Customer will be responsible for the full cost of the equipment. Customer is responsible for any damage to equipment provided by TDS. Customers who terminate their Service prior to the expiration of the Term shall be liable for the repayment of any promotional credits, discounts or fee waivers including but not limited to installation fee waivers and for reimbursement of any special construction or non-recurring charges for Services or related facilities requested by Customer. If the Customer terminates this Agreement or disconnects Services before the end of the committed Term, Customer shall pay TDS an early termination charge equal to: (a) fifty percent (50%) of the unpaid balance of the Base Rate that would have been due throughout the remainder of the Term plus one hundred percent (100%) of the outstanding balance; plus (b) the full purchase price of any equipment as shown above, minus the amounts already paid on a per month basis up to the date of termination; plus (c) any and all one-time charges. Customer agrees that the forgoing early termination fees are fair and reasonable and that TDS's provision of the Services would not be commercially viable but for these Customer commitments. This Agreement shall remain effective until terminated in accordance with the provisions set forth herein.
9. **Customer's Representations and Agreements.** Customer represents to TDS that Customer is the legal owner or tenant of the Premises, and that no other person has any rights in the Premises that conflict with TDS's rights under this Agreement. Customer shall not attach to or use, and shall not allow anyone else to attach to or use, the Equipment for any purpose without TDS's prior written consent. Customer shall use its best efforts to comply with all applicable theft of service laws. At TDS's request, Customer, or a representative designated by Customer, shall accompany TDS's employees or agents into any part of the Premises for the purpose of installing Equipment. The person signing this Agreement on behalf of Customer represents that he/she is Customer's authorized agent and has full authority to bind Customer to the terms and conditions of this Agreement. If Customer is not the owner of the premises, Customer represents that he/she has obtained all necessary permissions from the owner to enter into this Agreement.



10. **Warranty.** TDS WARRANTS THAT THE SERVICES SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT WITH RESPECT TO THE FOREGOING WARRANTY, TDS IS PROVIDING ALL SERVICES TO THE CUSTOMER "AS IS" AND TDS MAKES NO WARRANTY AS TO THE CONTINUOUS OPERATION OF THE SERVICE OR ANY SPECIFIC FEATURE OF THE SERVICE. ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE ARE DISCLAIMED. TDS DOES NOT WARRANT THAT THE SERVICES OR RELATED PRODUCTS WILL MEET YOUR REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS TO YOUR COMPUTERS, NETWORK, SERVERS AND OTHER EQUIPMENT OR TO ANY DATA, INFORMATION OR FILES ON ANY OF THEM. CONNECTIONS (SYNC-RATES) ARE RATE ADAPTIVE AND MAY BE LOWER DUE TO THE LENGTH AND CONDITION OF THE LINE. ACTUAL THROUGHPUT MAY BE LOWER DUE TO INTERNET CONGESTION, NETWORK UTILIZATION, PROTOCOL OVERHEADS OR OTHER FACTORS, WHICH CAN NOT BE CONTROLLED BY TDS. IN THE EVENT OF A POWER OUTAGE AT CUSTOMER'S LOCATION OR IF CUSTOMER'S BROADBAND SERVICE IS DOWN, SERVICES THAT ARE NOT LINE-POWERED (SUCH AS managedIP) WILL NOT OPERATE AND CUSTOMER WILL NOT HAVE ACCESS TO EMERGENCY SERVICES SUCH AS 911.
11. **Limitation of Liability.** TDS SHALL NOT BE LIABLE IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF THE USE OF THE SERVICE, LOSS OF DATA, CUSTOMER'S INABILITY TO USE THE SERVICE, INTERRUPTIONS OR CLAIMS BY THIRD PARTIES. THE PARTIES AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, FOR DISPUTES RELATED TO THE ACCURACY OF INVOICES, THE MAXIMUM CREDIT OR REFUND A CUSTOMER MAY RECEIVE SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO TDS OVER THE MOST RECENT THREE MONTH PERIOD FOR THE SPECIFIC SERVICES IN DISPUTE; FOR ALL OTHER CLAIMS TDS LIMITS LIABILITY RELATED TO THE PROVISION OF SERVICES TO THE AMOUNT PAID BY CUSTOMER IN THE PREVIOUS TWELVE (12) MONTHS FOR SERVICES GIVING RISE TO, OR WHICH ARE THE SUBJECT OF, THE CLAIM WHETHER SUCH CLAIM ALLEGES BREACH OF CONTRACT, OR TORTIOUS CONDUCT INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR ANY OTHER THEORY. TDS SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO CUSTOMER FOR ANY OMISSION OR ERROR WITH RESPECT TO CUSTOMER'S TELEPHONE DIRECTORY LISTINGS. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE PROVISION OF SERVICES OR ITS PERFORMANCE MAY BE BROUGHT BY CUSTOMER MORE THAN SIX (6) MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED.
12. **Default.** An event of default ("Event of Default") shall occur upon the occurrence of all or any one of the following events: (a) the Customer does not pay when due any invoice; (b) the Customer ceases doing business as a going concern; (c) the Customer makes an assignment for the benefit of its creditors or admits in writing to its inability to pay its debts as they become due; (d) the Customer files, or has filed against it, a petition in bankruptcy or for its reorganization, arrangement, composition or readjustment under any state insolvency law or the Customer liquidates all or a substantial part of its assets not in the ordinary course of its business, dissolves or takes other similar action; or (e) the Customer shall default in the performance of any of its obligations to TDS or any assignee arising under this Agreement, or any other agreement between the Customer and TDS and such default is not cured within 30 days of TDS providing notice of same, unless prohibited by relevant federal, state or local law.
13. **Remedies.** Upon the occurrence of an Event of Default, unless prohibited by relevant federal, state or local law, TDS may, at its option and without notice or demand, exercise all or any one or more of the following remedies: (a) declare immediately due and payable all invoices and all other sums due, including termination charges, or to become due hereunder or under any other agreement between the Customer and TDS; (b) terminate all of its obligations arising under this Agreement, and any other agreement between Customer and TDS; (c) enter the premises where any of TDS's equipment is located and repossess all or any part of the equipment; (d) offset any amounts due TDS under this Agreement against any amounts TDS or any of its affiliates owes the Customer (or the Customer's affiliates) under any other agreement; or (e) exercise all other legal and equitable remedies which TDS may have. The foregoing remedies shall be deemed cumulative and may be exercised successively or concurrently as permitted by law.
14. **Interruption of Services.** For any interruption of Service that is not due to negligence or non-compliance with any term or condition of this Agreement by Customer or the failure of operation or malfunction of facilities, power or equipment provided by the Customer, Customer will be entitled to a credit against the monthly Recurring Charge for such Service. Service will be deemed to be interrupted from the time TDS receives notice from Customer that the Service is not working until the time the Service is working. Unless provided otherwise by law, credits shall be calculated on the basis of a 30-day month and shall be credited upon Customer request against the monthly Recurring Charge for such Service as follows:

- First 30 minutes: none
- 30 minutes to 3 hours: 1/10 day
- Each additional 3 hour period (or fraction thereof): 1/5 day

If the duration of the outage is more than 24 hours, then the credit shall be the daily pro-rated amount of the Customer's monthly Recurring Charge for the applicable Service for each day thereafter, in an aggregate amount not to exceed the monthly Recurring Charge for such Service. Credits under this provision shall be the Customer's sole remedy and TDS's sole liability for any Service outage.

15. **Support.** The following outlines TDS support boundaries and procedures for TDS Internet connectivity and access.

15.1 **Warranty.** Internet access equipment and/or Polycom<sup>®</sup> telephone sets purchased or leased from TDS is fully supported per the manufacturer's warranty period (individual manufacturer's warranties vary; check specific manufacturer for the warranty period). Extended warranty support programs may be available through TDS. Equipment leased or purchased from third party vendors, including vendors recommended by, are *not* supported by TDS.

15.2 **Boundaries**

15.2.1 Purchased Equipment from TDS – The boundary is the Ethernet port on the router. Please note that the inside wiring between the Network Interface Device and the equipment is not supported.

15.2.2 Customer Provided Equipment – The boundary is the Network Interface Device. When TDS is able to verify circuit integrity the support boundary is met.

15.2.3 NOTE: Firewalls, Virtual Private Networks (VPN) and network management are beyond the support boundaries provided by TDS for dedicated Internet services.

15.3 **Activation**

15.3.1 Equipment Purchased from TDS – Customer is responsible for the configuration of equipment purchased from TDS.

15.3.2 Customer Provided Equipment – Configuration and installation of equipment not purchased or leased from TDS is the Customer's responsibility. TDS will provide the Customer with a list of relevant IP addresses for use in the configuration of the Customer's equipment. However, it is the Customer's responsibility to configure the equipment.

15.4 **Unsupported Routers.** Routers not purchased through TDS are unsupported. **TDS will not provide support services for unsupported routers.**

16. **Insurance.** Each party shall maintain Commercial Workers' Compensation Insurance as required by law and Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 per occurrence covering personal injury and property damage.

17. **Miscellaneous**

17.1 **Confidentiality:** The parties will hold the terms and conditions of this Agreement in confidence, and will not reveal the same to any person or entity except with the written consent of the other party; to the extent necessary to comply with the valid order of a court of competent jurisdiction (in which case the party making the disclosure shall notify the other party and shall seek confidential treatment of such information); as part of either party's standard reporting or review procedures to members, parent or affiliate corporations, auditors, financial and lending institutions, attorneys; or in order to enforce its rights pursuant to this Agreement.

17.2 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State where the Services are performed (without giving effect to conflicts of law).

17.3 **Attorney's Fees and Costs:** In any action by a party to enforce its rights hereunder, the non-prevailing party shall pay the prevailing party's cost and expenses (including reasonable attorney's fees).

17.4 **Extraordinary Circumstances:** TDS shall not be liable for any failure to perform its obligations under this Agreement to the extent such failure is due to "Force Majeure". Force Majeure includes, but is not limited to, acts of God, strike, lockout or other interference with work, war, declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, network or other telecommunications failures, including suppliers, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licenses and any other cause whether of the kind specified above or otherwise which is not reasonably within the control of TDS.

17.5 **Entire Agreement:** This Agreement, and any Amendments, Addenda, and Statements of Work shall constitute the entire

Agreement between Customer and TDS notwithstanding inconsistent or additional terms and conditions in Customer's purchase orders or other documents submitted to TDS. Any and all representations, promises, warranties or statements by TDS's agent(s) that differ in any way from the terms and conditions of this Agreement shall have no force or effect. This Agreement shall at all times be subject to such modifications as the FCC may, from time to time, require under their respective jurisdictions and otherwise, this Agreement may be amended only by a written instrument executed by both parties.

- 17.6 **Severability and Survival of Terms:** Any term or condition of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating any of the remaining terms or conditions of the Agreement. The following provisions shall survive any termination or expiration of this Agreement: Disclaimer of Warranties (in Section 10), Limitation of Liability (Section 11) and the Miscellaneous provisions (Section 17).
- 17.7 **Assignment** This Agreement may be assigned by either party without the consent of the other party. An assignment by TDS shall release TDS from any and all obligations arising after the latter occurrence of the effective date of such assignment and the date Customer is first notified of the assignment or pending assignment. This Agreement shall be automatically assigned by Customer to the transferee in the event of the sale, assignment or transfer of all or any part of the Premises or upon the assignment or transfer of any management contract that may exist for the Premises. Customer shall provide TDS with at least thirty (30) days' prior written notice of any sale, assignment or transfer of Customer's interest in the Premises, including any assignment or transfer of any management agreement existing on the Premises. Such notice shall include the name and address of the prospective transferee and the anticipated effective date of the sale, assignment or transfer. Customer further agrees to provide a copy of this Agreement to any prospective transferee.
- 17.8 **Taxes:** In addition to the payments required hereunder, Customer shall pay all sales, use, transfer and other taxes whether federal, state or local, however designated which are levied or imposed by reason of the transactions contemplated by this Agreement excluding, however, any income taxes on fees paid to TDS by Customer.
- 17.9 **Waiver:** A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder.
- 17.10 **Electronic Documents:** TDS hereby gives notice of its right to convert this Agreement to electronic format and retain this Agreement solely in an electronic format. TDS may provide this Agreement in electronic form or may provide a reproduction of this Agreement from its electronic copy in the event of any dispute regarding the rights and obligations of the parties under this Agreement. The parties agree that any document in electronic format or any document reproduced from an electronic format shall not be denied legal effect, validity, or enforceability and shall meet any requirement to provide an original or hard copy.
- 17.11 **Notices:** Any notice to be given by Customer to TDS under this Agreement shall be in writing and shall be delivered personally, sent postage prepaid by U.S. certified mail, or by facsimile with electronic confirmation to the local TDS office or to such other address as TDS may designate in writing. Delivery of any notice shall be effective five days after mailing for U.S. certified mail, on the facsimile confirmation date for facsimile, or on the date delivered for personal delivery.

- If switching to TDS Long Distance, Customer is responsible for cancellation of current long distance carrier service.  
Customer initials \_\_\_\_\_
- If switching to TDS provided data service, Customer is responsible for cancellation of current data service.  
Customer initials \_\_\_\_\_

**Authorization:**

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

\_\_\_\_\_  
**Customer Name**

By: \_\_\_\_\_  
*Signature – Authorized Representative*

\_\_\_\_\_  
*Print Name*

**TDS BROADBAND SERVICE LLC**

By: \_\_\_\_\_  
*Signature – Authorized Representative*

\_\_\_\_\_  
*Print Name*

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*Title*

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*Title*

---

*Date*

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*Date*

**ADDENDUM NUMBER**

**to the**

**COMMERCIAL SERVICE AGREEMENT**

**between**

**TDS BROADBAND SERVICE LLC AND**

**DATED**

This Addendum Number (‘‘Addendum’’), is made and entered into , by and between TDS Broadband Service LLC (‘‘TDS’’) and (‘‘Customer’’). In the event of any conflict between the terms of this Addendum and the Commercial Service Agreement (‘‘Agreement’’) between TDS and Customer dated , the terms of this Addendum will supersede the terms of the Agreement and will be controlling. Except as expressly modified herein, the Agreement shall otherwise remain unmodified and in full force and effect. Except as otherwise set forth herein, capitalized terms shall have the definitions assigned to them in the Agreement.

The Addendum is effective as of the first day of the second month after initial installation of Internet Service, and is only applicable to Customer’s Internet Service.

Customer and TDS agree to modify the Agreement as set forth below:

AVAILABILITY			
Goal	Availability/Remedy		
99.999%	Each cumulative hour of Network Downtime or Circuit Downtime during a calendar month qualifies the Customer for one day’s charges pro-rated from the MRC of the Affected Service.		
LATENCY			
Goal	Actual Latency/Remedy		
40 ms	41-50 ms = 10% of MRC	51-70 ms = 25% of MRC	Greater than 70 ms = 50% of MRC
PACKET DELIVERY			
Goal	Actual Packet Delivery/Remedy		
99.50%	99.49% - 99.01% =10% of MRC	99.00% - 90.00% =25% of MRC	Less than 90.00% = 50% of MRC

COMPONENTS INCLUDED: Network Availability, latency, and packet delivery are 15 minute average measurements taken between head end routers.

**MEASUREMENT:**

**Availability:** Circuit Downtime: exists when a particular Customer circuit (the "Affected Service") is unable to transmit and receive data and TDS records such failure in the TDS trouble ticket system. Circuit Downtime is measured from the time the trouble ticket is opened to the time the Affected Service is again able to transmit and receive data. Network Downtime: exists when the TDS IP Network is not available to route customer packets to the TDS edge routers. Network Downtime will be measured on an ongoing basis every 15 minutes to adequately determine a consistent average monthly performance level for availability.

**Latency:** The average roundtrip network delay ("Latency") will be measured on an ongoing basis every 15 minutes to adequately determine a consistent average monthly performance level for Latency at the head end router.

**Packet Delivery:** Packet Delivery will be measured on an ongoing basis every 15 minutes to adequately determine a consistent average monthly performance level for packets actually delivered between head end routers.

**REMEDIES:** Upon Customer's request to TDS Repair made within five (5) business days of the last day of the month in which the relevant SLA was not met, and TDS's confirmation that the relevant SLA was not met, Customer shall be entitled to service credits as set forth herein. A credit shall be applied only to charges for the month in which the event giving rise to the credit occurred. The maximum, cumulative SLA credits issued in any one calendar month shall not exceed: (i) seven (7) days' charges pro-rated from the MRC of the Affected Service with respect to Availability; or (ii) 50% of the MRCs of the Affected Service with respect to Latency and Packet Delivery. In no event shall the total credits, in the aggregate for all SLAs issued in one month, exceed the equivalent of 50% of the relevant MRCs for the Affected Service. These credits shall be TDS's sole liability and the Customer's exclusive remedy under this service level agreement Addendum and shall be in lieu of, and not in addition to, the remedy set forth in Section 14 of the Agreement (Interruption of Services).

**SERVICE CREDIT EXCEPTIONS:**

Service credits shall not be issued where the Service is unavailable as a result of: (i) the acts or omissions of Customer, its employees, contractors or agents or its End Users; (ii) the failure or malfunction of equipment, applications or systems not owned or controlled by TDS; (iii) Force Majeure events; or (iv) scheduled service maintenance, alteration, or implementation.

**MAINTENANCE:**

**Normal Maintenance.** "Normal Maintenance" refers to upgrades of hardware or software or upgrades to increase capacity. Normal Maintenance may temporarily degrade the quality of the Service, including possible outages. Such effects related to Normal Maintenance shall not give rise to service credits under this Addendum. Normal Maintenance shall be undertaken only on mornings between the hours of 10:00 PM and 6:00 AM Local Time.

**Urgent Maintenance.** "Urgent Maintenance" refers to efforts to correct network conditions that are likely to cause a material Service outage. Such effects related to Urgent Maintenance shall not entitle Customer to service credits as set forth in this Addendum. TDS may undertake Urgent Maintenance at any time deemed necessary and shall provide notice of Urgent Maintenance to Customer as soon as is commercially practicable under the circumstances.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date set forth above duly authorized to execute this Addendum.

**TDS BROADBAND SERVICE LLC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date