



# BROADBAND FIBER OPTICS/INTERNET SYSTEMS SERVICES AGREEMENT

Project No: RFP # \_\_\_\_\_

Agreement No: \_\_\_\_\_

Commodity Code Number(s): \_\_\_\_\_

Location: \_\_\_\_\_



**Distribution to:**

- District Representative (original)
- Contractor (Original)
- PSFA BDCP Project Manager (copy)
- PSFA BDCP Manager (copy)
- PSFA Contracts Administrator (copy)
- Other \_\_\_\_\_

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by and between

(NAME) SCHOOL DISTRICT  
 (ADDRESS 1)  
 (ADDRESS 2)  
 (CITY/TOWN), NM (ZIP CODE)  
 Telephone: (505) (PHONE)  
 Fax: (505) (FAX NUMBER)

(NAME OF FIRM)  
 (ADDRESS 1)  
 (ADDRESS 2)  
 (CITY/TOWN), NM (ZIP CODE)  
 Telephone: (505) (PHONE)  
 Fax: (505) (FAX NUMBER)  
 Federal ID:  
 CRS Number:

**PRICING AND SERVICES  
 AGREEMENT  
 FOR:  
 School Broadband Connectivity/E-rate  
 Product & Services**



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*Services Contract/Agreement*

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THIS AGREEMENT is made and entered into by and between the

\_\_\_\_\_ ,  
hereinafter referred to as the "Agency or District," and

\_\_\_\_\_ ,  
hereinafter referred to as the "Contractor,"

and is effective as of the date set forth below upon which it is executed by the both parties.

**IT IS AGREED BETWEEN THE PARTIES:**

That the intent and purpose that this Agreement (inclusive of all associated pricing and services) is to establish an Agreement for E-rate Program/Services and Projects for use by, and benefit of the Agency, in support of the State of New Mexico’s E-rate Public Schools & Libraries Program for E-rate eligible educational entities of the State of New Mexico.

The Contractor has the experience, organization, human resources, financial and technical ability to provide the work/services.

This Agreement by this reference, incorporates to the same extent as if they were set out verbatim herein, the specifications and requirements of RFP #\_\_\_\_\_, its associated Addendums, Attachment #\_\_\_\_\_, and Volume II Cost Proposal submitted by the Contractor.

**This Services/Pricing Agreement shall be executed in Two (2) Parts which are as follows:**

1. **Part I: Consist of the Construction and Installment of Infrastructure for the Broadband/WAN Systems.** The services to be provided under Part One of this Agreement is set-forth in Article 1.0 Scope of Work herein-below.
2. **Part II: Deployment, Service and Access (Page #\_\_\_\_\_).** The commencement date of this Part of the Agreement shall be contingent upon, and shall not be effective until Part I is fully completed and accepted via Notice to Proceed by the Agency. All cost associated with this Part shall be billed and invoiced separately from Part I of this Agreement.

Services provided/performed under this Agreement shall be performed at:

\_\_\_\_\_, and, if applicable, at Contractor’s location at \_\_\_\_\_, between the hours of 8:00 a.m. and 5:00 p.m. Mountain Time Monday through Friday, excluding applicable State and Federal holidays.



# **PRICING AND SERVICES AGREEMENT PART I**

## **1.0 Scope of Work.**

The Contractor shall perform and provide the Services and Products contained in this Article, and such other services necessary for or incidental to the performance of Part I of this Agreement, in accordance with the Terms, Conditions, Requirements, Specifications, Standard of this Agreement, RFP No: \_\_\_\_\_ inclusive of Exhibit A, the applicable provisions of Part II of this Agreement, and the Contractor’s Proposal.

Any conflict between the contents of the Contractor’s Proposal, and the general or specific provisions of Part II of this Agreement, in regards to the services provided under this Article 1.0, the general or specific provision of Part I of this Agreement and RFP # \_\_\_\_\_ shall prevail.

The Contractor shall provide qualified personnel (*qualified by applicable education, knowledge, or experience*) skilled in performing and completing all the services required to be provided under this Agreement. The Contractor’s principal, on any project, shall possess at least 3 years of supervisory/management hands-on experience in the technical area being serviced.

Contractor shall provide a Single Point of Contact (Contractor Project Manager) to facilitate communication between the Agency and Contractor during project implementation, facility turn-up and subsequent ongoing service delivery. The Contractor Project Manager shall provide regular, documented status updates to the Agency’s Representative(s) on all project activities.

The Contractor shall provide all applicable and appropriate Certificates of Insurance, Licenses, and all other applicable Certification for the work/service before the commencement of the work.

**A.** The Contractor shall provide and perform all necessary, required components and services for the delivery of the services and products specified in this Article 1.0, for the effective implementation, integration, delivery or, as applicable, the establishment of the services intended to be provided by the products and services:

**ADD STATEMENT OF WORK (SOW) HERE**

Contractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as “laws”) applicable to the services provided under this Agreement

**B.** Extension of /or Additional Services

Any services exceeding the scope of work and cost of **Part I** of this Agreement and the approved initial **Purchase Order**, shall be mutually agreed to in advance by Agency and the Contractor, and shall be authorized by an approved **Amendment to this Agreement** prior to the Contractor proceeding with any additional work. Amendments to the Proposal may form the basis of an additional **Purchase Order** to cover additional services, or in an amendment to the existing purchase order, depending on circumstances



and approval by the Agency. It is the Contractor's responsibility to inform Agency in advance and in a timely manner when it is anticipated that any additional services will require modifications due to changes in the work. Agency is not responsible for work performed without the proper documentation and an approved amended purchase document.

**C. Investigation of Site and Project Conditions**

Contractor represents that, prior to submittal of the Proposal for the RFP and this Agreement, it has/will take all steps reasonably necessary to ascertain the nature and location of the Work and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost. In the event that the Agency furnishes the Contractor with any information about such matters, Contractor acknowledges that any reliance on such information will be at its own risk and that the Agency does not warrant the correctness or accuracy of the information. Contractor represents that it has examined all Contract/Agreement Documents and familiarized itself with the Project, the laws, rules, and regulations relating to the Project; the environmental considerations affecting the Project and the Work; and the character of equipment and facilities needed preliminary to and during Work performance.

No allowance will be made to Contractor for not having made such examination and review, or for requirements which a reasonable examination, inquiry, or review would have disclosed. Except to the extent equitable adjustments may be made for differing site conditions if: (1) the contractor did not know, or could not have known about the actual condition found at the site; (2) the contractor could not reasonably have anticipated the actual condition at the site from inspection or general experience; (3) the actual condition varied from the norm in similar contracting work; (4) the contract indicated the conditions that the contractor could expect to find at the site; (5) the conditions indicated in the contract differed materially from the actual conditions; (6) the actual conditions were reasonably unforeseeable based upon all the information available to the contractor at the time of the proposal; (7) the contractor acted as a reasonably prudent contractor in interpreting the contract documents; and (8) the contractor incurred additional costs as a result of the difference between the expected conditions and the actual conditions.

Contractor will complete the work for the compensation stated in this Contract/Agreement and assume complete responsibility for the conditions (including subsurface or otherwise latent conditions) existing at the site and its surroundings.

Contractor's obligation hereunder may include but not be limited to the location of all utilities that may affect or interfere with Contractor's Work. Contractor shall obtain all utility locates for all areas of its work and shall fully protect, and as necessary or required, maintain in operation all utilities at all times.

**C.1. MATERIALS AND WORKMANSHIP**

Contractor expressly warrants that all items, materials, and work furnished by Contractor under this contract will strictly conform to the contract documents. All the Work shall be performed with workmanship consistent with sound construction/installation practice,



and all items and materials shall be new (unless otherwise provided in the contract documents), free from defects, of merchantable quality, and fit for the purposes intended. Contractor shall install or apply all materials in strict accordance with installation or application instructions and procedures set forth by the material manufacturer. Installation or application by any other method shall not be permitted or accepted, unless specifically allowed herein. If required by the Agency, Contractor shall supply satisfactory evidence of the kind and quality of the items and materials purchased or otherwise supplied by Contractor. In the event the scope of the Contract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to ensure a satisfactory and proper installation.

- a. All manufacturer or installer guarantees/warranties obtained by the Contractor for any materials, products, services, or equipment procured under this contract shall be obtained for use and benefit of the Agency.
- b. All materials, products, parts or equipment used to provide the services under this Contract shall be new and warranted by the manufacturer/installer standard warranty.
- c. Documentation for all warranted items shall be provided to the Agency either before or upon installation/use of the item(s). Warranty documentation for any and all items provided under this contract shall, at a minimum, contain the following information:
  1. Brief statement that a warranty exists.
  2. Substance of the warranty.
  3. Duration of the warranty.
  4. Person/Company to notify if the items are defective.

**D.** The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

**E.** The Contractor must be eligible to, and shall participate in the E-Rate Program and has the responsibility to educate itself about the Program requirements and timelines. The Schools and Libraries Division (SLD) of the Universal Service Administration (USAC) will hold the Contractor to statements made in applications, registrations, certifications and invoice forms. For more information on E-Rate participation and procedures go to [www.sl.universalservice.org](http://www.sl.universalservice.org).

**F.** Performance Measure/Deliverables.

Contractor shall provide the District with complete as-built documentation of the network components including all network route information and circuit identification numbers.

## **2.0 Compensation.**

- A. This is a Fixed-Prices Agreement.



The work to be performed under **Part I** of this Agreement will be funded/paid for in part by and through the Federal Communication Commission (FCC) E-rate Program by USAC, the Agency shall pay the non-discounted share for Contractor services satisfactorily rendered pursuant to the Scope of Work set-forth in this agreement, inclusive of all expenses, an amount not to exceed \_\_\_\_\_ (\$\_\_\_\_\_), excluding New Mexico gross receipts taxes.

A.1. The New Mexico Gross Receipts tax to be levied on the **Firm-Fixed-Price** total amount payable by the District under this Agreement shall be at the rate of \_\_\_\_\_% and shall be paid by Agency to the Contractor. The total **Firm-Fixed-Price** amount payable to the Contractor under this Agreement, including gross receipts tax shall not exceed \_\_\_\_\_ (\$\_\_\_\_\_).

The work performed under this **Part I** of this Agreement is to be directly funded/paid in part under FCC/USAC E-rate Funding, it shall be the Contractor's responsibility to submit invoices directly to USAC for the discount share of the approved eligible services. Contractor hereby affirms that it meets, is fully knowledgeable and capable of all applicable FCC/USAC E-rate billing/invoicing requirements.

Contractor shall be responsible for paying any and all taxes levied on amounts payable under this Agreement. For those taxes enumerated on Contractor invoices payable by District, the Contractor will pay the taxing governmental agencies with funds received from Agency for tax payment of said invoices. If an applicable Governmental Authority Tax Rate changes, during the life of this Agreement, Agency shall amend this Agreement to cover government taxing authority's changes in applicable Tax Rates costs.

The amount set forth in Paragraph A.1 of this Article 2.0 is the maximum amounts and not a guarantee that the work assigned to be performed by Contractor under Part I of this Agreement shall equal the amount stated. The parties do not intend for 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 shall Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. Agency shall receive all invoices no later than 30 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date CANNOT BE PAID.

B. Contractor shall be responsible for paying any taxes levied on amounts payable under this Agreement.

C. **INVOICING/COMPENSATION SCHEDULE:**

Subject to the condition precedent set forth in Part I of this Agreement, Agency will make progress payments to Contractor. The progress payment amounts shall be based on the





Agency and Contractor agreed upon Work Breakdown Structure (WBS) with assigned Schedules of Value (SOV) submitted by the Contractor within two (2) weeks after award of this Agreement. The maximum monthly compensation amount under this Agreement shall not exceed the value established under the submitted WBS/SOV, *including New Mexico Gross Receipts Tax*, for the portion of the Work performed and completed in the preceding month in accordance with monthly invoices prepared by Contractor and as approved by Agency.

The specified payable amount shall be based on and paid for satisfactory completion of services under this agreement. For services contained in the WBS/SOV that are not satisfactorily completed, payment shall be payable for the portion satisfactorily completed.

Contractor must submit detailed statements accounting for all services performed, goods obtained, and expenses incurred. Invoices must be supported by approved purchase order or equivalent document and invoice by the supplier, evidencing the propriety of each claim for payment. Contractor shall certify that labor charges to the contract are direct charges and shall maintain records of wages, dates worked, and hours worked to support the certifications. If the Agency finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from the Contractor that payment is requested, and (ii) all supporting documentation, the Agency shall provide the Contractor a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the Contractor may take to provide remedial action. Upon the Agency's certification that the statement, supporting documentation, services, goods, or expenses have been received and accepted, Agency shall tender payment to the Contractor within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the Agency shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein.

It is anticipated that some or all of the District's costs under this Agreement shall be eligible for the "E-Rate" discount under the Federal Communications Commission (FCC) Universal Service Provision. Accordingly, contingent upon the District's receipt of a funding commitment decision letter (FCDL) from SLD/USAC and both District's and Contractor's compliance with all the SLD/USAC guidelines, vendor shall offer an SLD/USAC discounted invoice payment option. In providing the two-tier billing system or discounted invoice payment option, Contractor will be required to recover its compensation for the approved E-Rate eligible discounted services, which can be from twenty percent (20%) up to eighty five percent (85%), directly from the Schools and Libraries Division ("SLD") of the Universal Service Administration Company ("USAC") in accordance with procedures established by the FCC and SLD/ USAC. The Contractor's invoices will itemize/breakdown the costs of all E-Rate eligible products and/or services from all non-E-Rate eligible products and /or services. To determine which items are eligible, visit the SLD/ USAC E-Rate eligible services list <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>.



**C-1. Exclusion of Liability for E-Rate Funding**

The District shall have no liability for the E-Rate Portion of any costs incurred by the Contractor's invoice if one of the following occurs:

- a. Products or services billed to the SLD are deemed ineligible pursuant to any event, including but not limited to an audit, after the SLD has reimbursed the Offeror for products or services that were previously considered eligible.
  
- b. The vendor fails to adhere properly to SLD guidelines (e.g., missing a filing deadline for invoicing to the SLD), or is subject to the FCC "Red Light Rule" and subsequently is not paid by the SLD.

**3.0 Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY Agency. This Part I of the Agreement shall terminate on the date of \_\_\_\_\_ unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

Contractor under this **Part I of the Agreement** is awarded a \_\_\_\_\_ month Term. The District reserves the right to extend the terms and conditions of Part I this Agreement for an additional Two (2) years in one (1) year increments based on need for continuation of services, the performance and services rendered under the original term of the Agreement.

If the Primary Contractor/principal providers of all services associated with the work, services, or products assigned/specified in this Agreement is released from its obligations by the District for any reason (prior to the expiration of its tenure), the Second Ranked finalist in the RFP process may be moved to the vacated position, to complete the contractual term as outlined in its proposal.

The District reserves the right to review any Contractor's performance at any time as it relates to reliability, service, delivery, or invoice discrepancies and possibly elevate the "Secondary Ranked" RFP Contractor to the "Primary" position if deemed in the best interest of the District. In the event the District is compelled to replace the "Primary" provider with the "Secondary" due to default on the part of the "Primary", The District shall have the absolute right to deduct from any monies due the vendor or that may thereafter become due to the contact, the difference between the amount due and the actual cost of services to be replaced or substituted.

Failure by a Contractor to provide or perform the services as specified in the Agreement may result in the Contractor being prohibited from doing business with District or the State of New Mexico for a period up to two years.



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**SURVIVAL CLAUSE:** All duties and responsibilities of the Contractor under this Agreement which, either expressly or by their nature, extend into the future, shall extend beyond and survive the end of the contract term or cancellation of this Agreement.

#### **4.0 Termination/Suspension.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; 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. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

C. Agreement Suspension. Agency may order the Contractor in writing to suspend, delay or interrupt all or any part of the Contract Work for such period of time as may be determined to be appropriate. If such suspension, delay or interruption is unreasonable, then Contractor may be entitled to an equitable adjustment. The short/incidental/reasonable stoppage of the Contract Work shall not be deemed suspension, delay, or interruption of work.

The Contract price shall not be adjusted for any suspension, delay or interruption to the extent that the performance of the Contract is, was or would have been so suspended, delayed or interrupted by the fault or neglect of the Contractor, by a cause for which the Contractor is responsible, or by a cause for which the Contractor is entitled only to a time extension under this Contract.

D. Curing a Breach. Either Party who receives a written Notice of Termination, of this



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Agreement, for a material breach by the other Party, the breaching Party will have the opportunity to cure such breach or breaches within the Thirty (30) day period specified in the notice. In the event a cure is not made within the Thirty (30) day period, this Agreement will terminate.

## **5.0 Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico or a Funding Commitment Decision Letter (FCDL) from Universal Service Administration (USAC) for this Agreement. If sufficient appropriations and authorization are not made by the Legislature or USAC, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

## **6.0 Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services or labor for the Agency and are not employees of the District or 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 District or the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the District or the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

*Certification.* Contractor shall furnish to Agency(s), upon request, any certification required to be furnished by any provision of this Agreement or Order issued hereunder, including any clauses incorporated by reference herein, and any certificate required by this Agreement, any law, ordinance or regulation with respect to contractor's compliance with the terms and provisions of such law, ordinance, regulation, or this Agreement.

## **7.0 Subcontracting and Assignment.**

Contractor shall not subcontract any portion of the Work without the prior written approval of the Agency of the lower-tier subcontractor and the form, terms and conditions of the lower-tier subcontract. Contractor's request for subcontracting shall not be unreasonably withheld. Contractor shall not assign this Contract, or any of its rights hereunder, without the prior written approval of the Agency. No assignment or subcontracting, even with the Agency's approval, shall relieve Contractor of any obligations hereunder, or create any contractual relationship between such lower-tier subcontractor and the Agency. Any lower-tier subcontractor shall assume unto Agency all of the obligations of Contractor as they relate to such portion of the sublet Work.

If the Contractor wishes to assign any of its rights (e.g., assign payment to another entity) whether internal or external to its organization, any such assignment shall be effectuated via a



Deed of Assignment, and if Contractor is to be, may be/or will be acquired either in part, substantially, or entirely by an outside entity, Contractor shall effectuate such an action via a Deed of Novation. Contractor submission of either of the stated Deeds for approval, will not be unreasonably denied by the Agency.

## **8.0 Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

## **9.0 Confidentiality.**

Any confidential information provided to or developed by the Contractor 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.

Contractor shall be responsible for ensuring that all reports and analysis of any type which are developed by or communicated to Contractor or any of its affiliates in performing the Work and all information, oral, electronic or written, obtained by Contractor in connection with this Contract from the Agency shall not be disclosed unless prior written approval from the Agency is obtained. This obligation of Contractor shall survive the expiration, suspension, or termination of this Contract. This obligation of confidentiality shall not apply to information: (a) that is previously known, or available, to Contractor on an unrestricted and non-confidential basis; (b) that is, or becomes a part, of the public domain through a third party; (c) that is any obligation of confidentiality; or (d) that must be disclosed pursuant to legal requirements to which Contractor is subject if such disclosure is mandatory upon Contractor and failure to so disclose would subject Contractor to civil or criminal penalties.

## **10. Product of Service -- Copyright.**

RESERVED

## **11. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, 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.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;



2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 11(B).



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OCI Attachment 2014 is attached to this Contract and is incorporated herein to the same extent as if it has been set out verbatim in this Article 11.

## **12. Amendment.**

A. This Part I of this Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

Agency may at any time, by written notice, and without in any way invalidating this Agreement, make changes within the general scope of this Agreement in any one or more of the following: (i) description of services to be performed; (ii) time of performance; (iii) place of performance of the services; (iv) drawings, designs or specifications; or (v) method of delivery or packaging of Deliverables.

## **13. Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

## **14. Penalties for violation of law.**

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.

## **15. 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 assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or 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.



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## **16. Governing Law and Venue.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. 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 lawsuits arising under or out of any term of this Agreement.

## **17. 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.

## **18. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the 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, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

## **19. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, 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, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any 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) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

## **20. 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://www.hsd.state.nm.us/LookingForAssistance/centennial-care-overview.aspx>.

## 21. Employee Pay Equity Reporting

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 contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts 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 contracts up to one (1) year in duration. For contracts 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 contract 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 contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award 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. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award 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 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. Notwithstanding the foregoing, if this Contract 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.



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## 22. Insurance Requirements:

Prior to any work/services to be performed for any project under this agreement, the Contractor shall submit Contractor's proof of insurance via Certificate of Insurance.

The Contractor will, at its sole expense, secure and maintain and will file with the Agency proper and acceptable evidence of the following described insurance, which coverage shall (1) be secured with an insurance company acceptable to the Agency, (2) be issued as a primary policy not contributing with and not in excess of any primary and/or excess coverages carried by the Agency and (3) contain loss payable clauses satisfactory to the Agency for applicable coverages.

Such coverage shall be provided without interruption or lapse of any kind regardless of the reason for the same. Subcontractor shall ensure that the policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Agency shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or Contractor gives written notice to the Agency, whichever period is longer.

**i. Worker's Compensation Insurance and Employer's Liability Insurance.**

Worker's compensation insurance and employer's liability insurance in compliance with the laws of all applicable jurisdictions and any other coverages that may apply where the work is performed covering all employees engaged in the performance of the Work associated in this Agreement and any project hereunder, including coverage for Employer's Liability for:

- a. Bodily Injury by Accident - \$500,000 each accident
- b. Bodily Injury by Disease - \$500,000 each employee
- c. Bodily Injury by Disease - \$500,000 policy limit

**ii. Commercial Liability Insurance.** with minimum limits as follows:

- a. Each Occurrence Limit - \$1,000,000 combined single limit for bodily injury and property damage liability.
- b. Med Expense (Any one person) - \$10,000.
- c. Personal and advertising injury limit - \$1,000,000.
- d. Products-Completed Operations Aggregate Limit - \$2,000,000
- e. General Aggregate Limit (other than Products-Completed Operations) - \$2,000,000. This policy shall be endorsed to have the General Aggregate limit apply on a "per project basis".

**iii. Automobile Liability Insurance.** (Note: May be a Combined Insurance Policy) Automobile liability insurance covering any auto (owned, non-owned and hired vehicles) with limits of not less than \$1,000,000 (each occurrence), for bodily injury (per person) not less than \$1,000,000, bodily injury (per accident) not less than \$1,000,000, and property damage liability resulting from any one accident not less than \$1,000,000.



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- iv. **Excess/Umbrella Liability Insurance.** Excess/Umbrella insurance in an amount not less than \$3,000,000 combined single limit for any one occurrence, and \$3,000,000 aggregate. This policy is to provide no less than the same coverage described in Paragraphs i, ii, and iii above, and is to be in excess of required primary limits of liability.
- v. **Pollution Insurance** (*this policy shall be applicable only to services/work involving hazardous materials*). Pollution insurance in an amount not less than \$2,000,000 combined single limit for any one occurrence, and \$5,000,000 annual aggregate. The policy shall include endorsements for abatement of all hazardous materials including, but not limited to, asbestos and lead containing materials.
- vi. **Professional Liability Insurance.** Professional liability insurance in an amount not less than \$1,000,000 per claim with a \$2,000,000 annual aggregate. Insurance will be maintained in force for a period of three (3) years after substantial completion of the project.
- vii. All liability insurance shall insure performance by the Contractor of the indemnification provisions under Article 19 of the Agreement.
- viii. The minimum policy limits required in this Article are exclusive of costs of defense. The Contractor's obligation to procure and maintain the insurance required in this Article 22, subparagraphs i-viii above is not in derogation of, nor in substitution for Contractor's obligation to protect, defend, indemnify and save the Agency harmless under those provisions or under the Indemnification clause, it being understood that Contractor's obligation to protect, defend, indemnify and save the Agency harmless are not dependent upon nor limited to the amount or availability of insurance proceeds.
- ix. **Additional Insured.** The Agency shall be listed as additional insured on the Contractor's policies for **all liability insurance, except worker compensation and professional liability**, required under the terms of this Agreement, and such liability insurance policies, including all primary policies and any excess/umbrella policies shall be primary to any primary and/or excess/umbrella liability insurance carried by the Agency.
- x. **Waiver of Subrogation.** All policies shall be endorsed to provide that underwriters and insurance companies of the Contractor shall not have any rights to subrogate against the Agency or the State of New Mexico.
- xi. **Certificates and Policies.** The Subcontractor shall furnish certificates of insurance evidencing compliance with the foregoing requirements, including the per project general aggregate, as a condition of initial prequalification as well as a condition of continued prequalification for the Contract period. Each Certificate will provide that:





**26. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last executed by either party hereto as indicated below.**

**Contractor:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Agency: \_\_\_\_\_

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

**Agency/District:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Agency: \_\_\_\_\_

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

**Public School Facilities Authority:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

NM CRS Number: \_\_\_\_\_



## OCI Attachment 2014

### New Mexico Public School Facilities Authority

#### ORGANIZATIONAL CONFLICTS OF INTEREST - SPECIAL CLAUSE (January 2014)

- (a) Purpose. The Public School Facilities Authority's (PSFA) primary purpose of this clause is to aid in ensuring that the Contractor (1) is not biased because of its past, present, or currently planned interests (financial, sub-contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, Contractor, cosponsor, joint venturer, consultant, or in any similar capacity.
- (i) The Contractor shall be ineligible to participate in any capacity in PSFA contracts, subcontracts, or proposals (solicited or unsolicited) which stem directly from the Contractor's performance of work under this contract. Furthermore, unless so directed in writing by the PSFA Authorized Representative, the Contractor shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing
  - (ii) If the Contractor under this contract prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort that is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by PSFA, in which case the restriction in this subparagraph shall not apply.
  - (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard commercial items to PSFA.
- (1) Access to and use of information.
- (i) If the Contractor, in the performance of this contract, obtains access to information, such as PSFA plans, policies, reports, studies, financial plans, confidential internal data, or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the PSFA it shall not: (a) use such information for any private purpose unless the information has been released



or otherwise made available to the public; (b) compete for work for the PSFA based on such information for a period of one (1) year after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal to PSFA which is based on such information until one year after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the PSFA.

- (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by state or federal law, or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The Contractor shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produced after the requirements of the instant subcontract have been met.

(c) Disclosure after award.

- (1) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this made in writing to PSFA that shall include a description of the action, which the Contractor has taken or proposes to take to avoid or mitigate such conflicts.

PSFA may, however, terminate the contract for convenience if it deems such termination to be in the best interest of PSFA.

- (2) In the event that the Contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict, PSFA may terminate the contract for default.

(d) Lower-tier subcontracts.

- (1) The Contractor shall include this clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms "subcontract", "Contractor" and "PSFA Authorized Representative" shall be appropriately modified to preserve the PSFA/Government's rights.
- (2) If a lower-tier subcontract is to be issued for evaluation services or activities, technical consulting or management support services work, the Contractor shall obtain for the PSFA a disclosure statement or representation from each intended Contractor or consultant. The Contractor shall not enter into any lower-tier subcontract nor engage any consultant unless the PSFA shall have first notified the Contractor that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of PSFA.



- (e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, PSFA may terminate the subcontract for default, disqualify the Contractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.
- (f) Waiver. Requests for waiver under this clause shall be directed in writing to the PSFA and shall include a full description of the requested waive and the reasons in support thereof. If it is determined to be in the best interests of PSFA, the PSFA may grant such a waiver in writing.

Modifications. Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the subcontract are changed, PSFA will request and Contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.





**BROADBAND FIBER OPTICS/INTERNET SYSTEMS**  
**SERVICES LEASE AGREEMENT**

Project No: RFP # \_\_\_\_\_

Agreement No: \_\_\_\_\_



**PRICING AND SERVICES LEASE AGREEMENT**  
**PART II**

**School Broadband Connectivity/E-rate**  
**Product & Services**





THIS PART II OF THE AGREEMENT is the Telecommunications Service and \_\_\_\_\_ Lease Agreement portion of this Agreement and is made and entered into by and between the \_\_\_\_\_ hereinafter referred to as the "Agency, District, Or Lessee" and \_\_\_\_\_, hereinafter referred to as the "\_\_\_\_\_", **Contractor, or Lessor**" and is effective as of the date set forth below upon which it is executed by the both parties.

That the intent and purpose that this Lease Agreement (inclusive of all associated pricing and services) is to establish a Lease Agreement (Agreement) for \_\_\_\_\_ and related services described herein (the "Services") for use by, and benefit of the Agency for E-rate eligible services.

The Contractor has the experience, organization, human resources, financial and technical ability to provide the work/services.

This Agreement by this reference, incorporates to the same extent as if they were set out verbatim herein, the specifications and requirements of RFP # \_\_\_\_\_, its associated Addendums, Attachments, Volume II Cost Proposal submitted by the Contractor, Article 1.0 Sections B through D, and Articles 4.0 through 25 of Part I of this Agreement.

**DEFINITIONS:**

Words, Phrases, and Terminology with unique and specific meaning within Contractor's operational environment may be incorporated herein, via an Attachment, by way of this reference: Said Attachment is hereby designated/titled as \_\_\_\_\_.

**1.0 Scope of Work.**

The Contractor shall perform and provide the Services and Products contained in this Article, and such other services necessary for or incidental to the performance of Part II of this Agreement, in accordance with the Terms, Conditions, Requirements, Specifications, Standard of this Agreement, RFP No: \_\_\_\_\_ inclusive of Exhibit A, the applicable provisions of Part I of this Agreement, and the Contractor's Proposal.

Any conflict between the contents of the Contractor's Proposal, and the general or specific provisions of Part II of this Agreement, in regards to the services provided under this Article 1.0, the general or specific provision of Part I of this Agreement and RFP #|\_\_\_\_\_ shall prevail.

The Contractor shall provide qualified personnel (*qualified by applicable education, knowledge, or experience*) skilled in performing and completing all the services required to be provided under this Agreement. The Contractor's principal, on any project, shall possess at least 3 years of supervisory/management hands-on experience in the technical area being serviced.

The Contractor shall provide all applicable and appropriate Certificates of Insurance, Licenses, and all other applicable Certification for the work/service before the commencement of the work.



A. Contractor shall provide and perform all necessary, required components and services for the delivery of the services and products specified in this Article 1.0, for the effective implementation, integration, delivery or, as applicable, the establishment of the services intended to be provided by the products and services:

Contractor shall commence provisioning of the services listed herein as agreed upon in the Work Breakdown Structure (WBS) to be submitted by the Contractor as outlined in Article 2.0 paragraph C of this Agreement.

Contractor has proposed and Los Lunas Schools has accepted a 20-Year Indefeasible Right of Use ( ) of four (4) strands of fiber between Twelve (12) Designated End Points.

All applicable provisions of Contractor's Technical Proposal dated January 10, 2017, specifically commencing with Section 5.2 through Section 6, and Section 8 inclusive, are adopted herein and made a part of this Article 1 in same manner as it was set-forth herein verbatim. Nothing in this paragraph is intended, and shall not be interpreted to exclude or diminish the applicability of any Provision of the Technical Proposal not specifically mention herein.

Lessor intends to construct or is currently constructing a multi-conduit fiber optic communications system (the "Lessor System") as generally described and depicted herein this Agreement.

Lessor further intends to install within the conduits of the Lessor System \_\_\_\_\_ (0) Strands count of fiber optic cable (the "Cable").

Fibers will be terminated at the points/locations identified in \_\_\_\_\_.

Lessor desires to grant to Lessee a \_\_\_\_\_ right to use the stated fibers and other facilities described herein, all upon and subject to the terms and conditions set forth in this Agreement.

Title. \_\_\_\_\_

**B. Scope of Grant**

\_\_\_\_\_



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## 2.0 Compensation.

A. This is a \_\_\_\_\_-Year Fixed-Prices Lease Agreement. The work to be performed under **Part II** of this Agreement will be funded/paid for in part by and through the Federal Communication Commission (FCC) E-rate Program by USAC, the Agency shall pay the non-discounted share for Contractor services satisfactorily rendered pursuant to the Scope of Work set-forth in this agreement, inclusive of all expenses.

The total monthly recurring cost, inclusive of the non-discounted amount, of this Agreement shall not to exceed \_\_\_\_\_ ( \$ \_\_\_\_\_ ), excluding New Mexico gross receipts taxes.

The total yearly/annual recurring cost, inclusive of the non-discounted amount, of this Agreement shall not to exceed \_\_\_\_\_ ( \$ \_\_\_\_\_ ), excluding New Mexico gross receipts taxes.

A.1. The New Mexico Gross Receipts tax to be levied on the **Firm-Fixed-Price** total amount payable by the District under this Agreement shall be at the rate of \_\_\_\_\_ % and shall be paid by Agency to the Contractor. The total **Annual Firm-Fixed-Price** amount payable to the Contractor under this Agreement, including gross receipts tax shall not exceed \_\_\_\_\_ ( \$ \_\_\_\_\_ ).

The work performed under this **Part II** of this Agreement is to be directly funded/paid in part under FCC/USAC E-rate Funding, it shall be the Contractor's responsibility to submit invoices directly to USAC for the discount share of the approved eligible services. Contractor hereby affirms that it meets, is fully knowledgeable and capable of all applicable FCC/USAC E-rate billing/invoicing requirements.

Contractor shall be responsible for paying any and all taxes levied on amounts payable under this Agreement. For those taxes enumerated on Contractor invoices payable by District, the Contractor will pay the taxing governmental agencies with funds received from Agency for tax payment of said invoices. If an applicable Governmental Authority Tax Rate changes, during the life of this Agreement, Agency shall amend this Agreement to cover government taxing authority's changes in applicable Tax Rates costs.

The amount set forth in Paragraph A.1 of this Article 2.0 is the maximum amounts and not a guarantee that the work assigned to be performed by Contractor under Part I of this Agreement shall equal the amount stated. The parties do not intend for 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 shall Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those



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services in excess of the total compensation amount being provided. Agency shall receive all invoices no later than 30 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date CANNOT BE PAID.

B. Contractor shall be responsible for paying any taxes levied on amounts payable under this Agreement.

**C. INVOICING/COMPENSATION SCHEDULE:**

Subject to the condition precedent set forth in Part II of this Agreement, Agency will make progress payments to Contractor. The progress payment amounts shall be based on the Agency and Contractor agreed upon Work Breakdown Structure (WBS) with assigned Schedules of Value (SOV) submitted by the Contractor within two (2) weeks after award of this Agreement. The maximum monthly compensation amount under this Agreement shall not exceed the value established under the submitted WBS/SOV, *including New Mexico Gross Receipts Tax*, for the portion of the Work performed and completed in the preceding month in accordance with monthly invoices prepared by Contractor and as approved by Agency.

The specified payable amount shall be based on and paid for satisfactory completion of services under this agreement. For services contained in the WBS/SOV that are not satisfactorily completed, payment shall be payable for the portion satisfactorily completed.

Contractor must submit detailed statements accounting for all services performed, goods obtained, and expenses incurred. Invoices must be supported by approved purchase order or equivalent document and invoice by the supplier, evidencing the propriety of each claim for payment. Contractor shall certify that labor charges to the contract are direct charges and shall maintain records of wages, dates worked, and hours worked to support the certifications. If the Agency finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from the Contractor that payment is requested, and (ii) all supporting documentation, the Agency shall provide the Contractor a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the Contractor may take to provide remedial action. Upon the Agency's certification that the statement, supporting documentation, services, goods, or expenses have been received and accepted, Agency shall tender payment to the Contractor within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the Agency shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein.

It is anticipated that some or all of the District's costs under this Agreement shall be eligible for the "E-Rate" discount under the Federal Communications Commission (FCC) Universal Service Provision. Accordingly, contingent upon the District's receipt of a funding commitment decision letter (FCDL) from SLD/USAC and both District's and Contractor's compliance with all the SLD/USAC guidelines, vendor shall offer an



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SLD/USAC discounted invoice payment option. In providing the two-tier billing system or discounted invoice payment option, Contractor will be required to recover its compensation for the approved E-Rate eligible discounted services, which can be from twenty percent (20%) up to eighty five percent (85%), directly from the Schools and Libraries Division (“SLD”) of the Universal Service Administration Company (“USAC”) in accordance with procedures established by the FCC and SLD/ USAC. The Contractor’s invoices will itemize/breakdown the costs of all E-Rate eligible products and/or services from all non-E-Rate eligible products and /or services. To determine which items are eligible, visit the SLD/ USAC E-Rate eligible services list <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>.

**C-1. Exclusion of Liability for E-Rate Funding**

The Agency shall have no liability for the E-Rate Portion of any costs incurred by the Contractor’s invoice if one of the following occurs:

- a. Products or services billed to the SLD are deemed ineligible pursuant to any event, including but not limited to an audit, after the SLD has reimbursed the Offeror for products or services that were previously considered eligible.

D. The vendor fails to adhere properly to SLD guidelines (e.g., missing a filing deadline for invoicing to the SLD), or is subject to the FCC “Red Light Rule” and subsequently is not paid by the SLD.

E. *Monthly Service Fee.* Lessor shall invoice Lessee each month for its portion of the monthly recurring charges as delineated in Attachment A of this Agreement. Lessee shall pay the non-discounted monthly portion of the Monthly Service Fee (i.e., the portion of the Monthly Service Fee not covered by USAC) within thirty (30) days of receipt the invoice.

F. *Failure To Pay.* If Lessee fails to pay the Monthly Service Fee within thirty (30) calendar days of the date received, Lessor may impose a late fee. The late payment fee shall be one and one half percent (1-1/2%) of the unpaid balance due.

G. Notwithstanding the foregoing, if Lessee’s failure to pay is due to the inability, through no fault of its own, to collect the matching payments from the state of New Mexico or from USAC, then Lessee shall be exempt from any such late fee(s) for such period of time, however long, that corresponds to the delay in collecting such payments.

H. E-Rate Applications. Lessee shall make every reasonable effort obtain and maintain E-Rate Funding throughout the Term of this Agreement. Failure of Lessee to file all appropriate paperwork within established USAC deadlines and perform all administrative tasks to obtain and maintain E-Rate Funding may result in Lessee becoming liable to Lessor for the discounted services actually delivered.



**3.0 Term.**

THIS LEASE AGREEMENT SHALL BECOME EFFECTIVE AFTER APPROVAL BY ALL PARTIES (Lessor and Lessee), ON THE (FIRST DAY OF THE MONTH FOLLOWING THE SUBMITTAL DATE OF THE WRITTEN NOTICE OF ACCEPTANCE FROM THE LESSEE (which is defined as, all circuits are turned over, accepted). This \_\_\_\_\_ Lease Agreement shall terminate \_\_\_\_\_ after the commencement of the Services, unless terminated pursuant to Part I of this Agreement Article 4 (Termination), or Article 5 (Appropriations).

**Force Majeure.** Neither Party shall be liable to the other Party, and each Party’s performance under this Agreement shall be excused, if and to the extent that any failure or delay in such Party’s performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party’s performance of such obligations shall be excused and extended for and during the period of any such delay: act of God; fire, flood, shortages or unavailability or other delay in material delivery not resulting from the responsible Party’s failure to timely place orders therefor; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; strikes or other labor disputes; failure of a third party to grant or recognize an Underlying Right; inability of a Party to obtain rights of way, easements, building access or other rights from private property owners; inability of Lessor to obtain access to the Lessor System; or any other cause beyond the reasonable control of such Party (each a “**Force Majeure Event**”). The Party claiming relief under this Article shall notify the other in writing of the existence of the event relied on, the estimated duration and the cessation or termination of said event, and the Party claiming relief shall exercise all reasonable efforts to minimize the time of any such delay.

**4.0 ACCEPTANCE AND DOCUMENTATION.**

**1. Acceptance.** Lessee shall be deemed to have accepted and to be in possession of the \_\_\_\_ Fibers upon the Effective Date pursuant to the procedures set forth below.

(a) **Installation and Delivery.** Lessor will install and deliver the Fibers on or before the Ready for Service Date provided in the WBS (see Article 2 Compensation, Section C, supra.).

(b) **Acceptance Process.** Upon completion of the installation and delivery of the Fibers, Lessor will notify Lessee that the Lessee Fibers are ready for acceptance testing (“Completion Notice”). Lessor’s notice must include with the Completion Notice the results of Lessor testing. Within ten (10) business days of receipt of a Completion Notice, Lessee shall provide Grantor with a written notice accepting or rejecting the Fibers. Lessee shall have the right to independently test the Fibers during the ten (10) business day period; provided that Lessor shall have the right to be present at any such independent testing. Acceptance of the \_\_\_\_ Fiber shall be accomplished by a written Notice of Acceptance from the Lessee.

Issuance of an Acceptance Notice or failure to issue an Acceptance/Rejection Notice within the ten (10) day period shall constitute unconditional and irrevocable Acceptance of the \_\_\_\_\_ Fibers for all purposes under this Agreement by \_\_\_\_\_ Lessee as of the 11th day.





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Lessee may reject the Buyer Fibers only if they do not conform to the Specifications and Performance Standards, in which case Lessor will promptly undertake to investigate and correct any deficiency or non-conformity in the \_\_\_\_\_ Fibers. Thereafter, Lessor shall again conduct testing of the \_\_\_\_\_ Fibers from Access Point to Access Point. The foregoing procedure shall apply again and successively thereafter until Lessor has remedied all defects or failures and Lessor has received written notice from \_\_\_\_\_ Lessee that the \_\_\_\_\_ Fiber conforms to the Specifications and Performance Standards, provided. However if \_\_\_\_\_ Lessee delivers to Lessor any subsequent Rejection Notices after the initial ten (10) day period within ten (10) business days after receipt of the relevant test results from Lessor, the \_\_\_\_\_ Lessee shall be deemed to have Accepted the \_\_\_\_\_ Fibers.

If \_\_\_\_\_ Lessee issues a Rejection Notice where Lessor reasonably believes the \_\_\_\_\_ Fiber test results conform to the Testing and Acceptance Standards, the parties shall work together to do cooperative testing to determine whether the test results conform to specifications. The date of Acceptance shall constitute the “**Effective Date.**”