

# Education Service Center Region 13

## Internet Service Agreement TERMS AND CONDITIONS

Education Service Center Region 13 (hereinafter "ESC13") and \_\_\_\_\_ (hereinafter, "Customer"), as named on the Internet Service Agreement and Proposal hereby agree to the following terms and conditions for ESC13 services to Customer. Services are as described on the Proposal ("Services").

### 1. Initial Term:

The Proposal/Service Agreement, along with any Proposal addendums comprise the entire agreement between the parties ("Agreement") for each service described in the Proposal (the "Proposal"). The Agreement supersedes any and all prior discussions, representations, memoranda, or agreements; oral or written, between the parties related hereto. ESC13 reserves the right, in its sole reasonable discretion, to reject any request for services received prior to the execution of the Agreement by all parties. The Agreement is fully binding and enforceable as of the date this Agreement(s) is/are signed by both parties ("Effective Date"). ESC13 agrees to provide to Customer (subject to availability and adequacy of underlying service) and Customer agrees to procure from ESC13, the Services, at the locations set forth for the number of months set forth ("Services Term") as detailed on the Proposal incorporated as part of the Agreement. The Services Term commences upon installation of the Services by ESC13 ("Installation Date"). Installation of Services occurs at the delivery of operating circuits to the demarcation terminal at the Customer's premise ("Installation of Service"). ESC13 will use reasonable efforts to install Services on the date agreed upon by the parties.

ESC13 does not guarantee that Services will be installed and provisioned on Customer's desired due date.

### 2. Continuing Term:

The initial Term of the Agreement can be extended for up to two (2) additional one-year term periods with the voluntary and mutual consent of both parties.

### 3. Termination Prior to Expiration of Initial:

- a. Neither Party may terminate the Agreement prior to the expiration of the Initial Term and Initial Term Renewals of the Agreement, except for Cause pursuant to sub-paragraph.
- b. Of this Article, by Law, or as the result of an event of non-appropriation as provided below in sub-paragraph 3-c.
- c. Non-appropriation: The LEA shall have the continuing right to terminate the Agreement without notice at the end of any budget period in which funds for the Agreement are not available or appropriated. Provided, however, that neither Party

will be entitled to a refund of amounts previously contributed in the event of a withdrawal for lack of funding.

- d. **Payment Due Upon Termination:** Service terminated during the Initial Term will be invoiced the balance due for the full Initial Term *LESS* any payments made through the date of termination notice to Region 13 by the LEA.
- e. **Termination Following Expiration of Initial Term.**
- f. The Agreement may be terminated at any time following the expiration of the Initial Term by either Party for convenience, or because of the other's failure to fulfill the contract obligations. Notice and an opportunity to cure shall be given in accordance with the provisions contained in the Agreement. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Center.
- g. If the termination is for convenience and the other Party's obligations have been properly performed prior to the effective date of termination, the Center will be paid for services actually provided prior to notification of termination by the LEA.
- h. If, after notice of termination for failure to fulfill contract obligations after the Initial Term, it is determined that the terminated Party had not so failed, the termination shall be deemed to have been affected for convenience. In such event, payment shall be made by the terminating party.
- i. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under the Agreement.

#### **4. Defaults With Opportunity for Cure:**

Should either Party fail, as determined by the other's representative, to satisfactorily comply with or perform the obligations set out herein; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the non-defaulting Party shall deliver written notice of said default, in accordance with the notice provisions contained in the Agreement, specifying the specific Events of Default and the action necessary to cure such default. The defaulting Party shall have thirty (30) calendar days after receipt of the written notice to cure such default. If the defaulting Party fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, the non-defaulting Party shall have the right, without further notice, to terminate the Agreement in whole or in part as it deems appropriate.

#### **5. Termination For Cause:**

Upon the occurrence of one (1) or more of the following events, and following written

notice to the Center given in accordance with the notice provisions contained in the Agreement, Contracting LEA may immediately terminate the Contract, in whole or in part, “for cause”:

- a. Center makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to LEA in connection with the Agreement or its performance hereunder; or
- b. Center violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in the Agreement, except those events of default for which an opportunity to cure is provided herein; or
- c. Center fails to cure, or initiate steps reasonably calculated to cure, a default as required by the Agreement, within the time period required for cure; or
- d. Center violates any rule, regulation or law to which Center is bound or shall be bound under the terms of the Agreement; or
- e. Center attempts the sale, transfer, pledge, conveyance or assignment of the Agreement contrary to the terms of the Agreement.
- f. Center ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Center’s assets or properties.

#### **6. Termination By Law:**

If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, the Agreement shall automatically terminate as of the effective date of such prohibition.

## **II. CENTER’S OBLIGATIONS**

1. Center will provide adequate staff necessary for efficient operation of the network.

Provide and guarantee service level objectives as specified in Paragraph 2 of this Section.

- a. Implement and provide 24x7x365 support and management via the service provider of the network to include:
  - Proactively monitor and maintain broadband connections
  - Proactively monitor internet access service from ISP
  - Guarantee the LEA purchased bandwidth to the Internet by monitoring usage.
  - Provide alerts concerning network maintenance and/or unplanned outages.
  - Affected LEAs will be notified via email of any emergency network impairments within a reasonable time after the problem is determined.

Troubleshoot Service Interruptions via the leased lit service provider to the point of demarcation:

- a. For the primary connection, the point of demarcation is inclusive of the leased lit service provider router
- b. Proactively monitor and report the use of services to ensure usage is within the terms of the agreement.
- c. Provide technical assistance to LEAs for connectivity, upon request.

## 2. **Service Level Objectives:**

All Service Level Objectives provided by the Service Provider, shall pass through to each LEA. LEA understands that Service Level Objectives are best estimates, and actual service provision may vary.

## 3. **Contracting LEA Obligations:**

LEA will make timely payments for any goods, materials and services received. ESC 13 Service pricing is based on the cost of Transport, Bandwidth, and maintenance costs.

- Contracting LEA further understands.
- Prices are not already E-rate discounted as shown in the Proposal.
- Transport costs, applicable fees and taxes are included.
- Pricing shown includes all transmitted and received traffic.
- Payments are due within 30 days of receipt of invoice.
- Billing will occur on a quarterly basis.

## **III. GENERAL PROVISIONS**

**1. Amendment by Notice:**

ESC 13 may amend the Agreement, provided that prior written notice is sent to the Contracting LEA at least 60 days prior to the effective date of any change described in such amendment. An amendment to this contract will become effective on the date of signature of both parties. Performing Party is required to report deviations from budget or project scope or objective, and request prior approvals from the ESC 13 project manager for budget and program plan revisions.

**2. Assignment Of Rights Or Duties:**

Except as otherwise required herein, Center may not sell, assign, pledge, transfer or convey any interest in the Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of LEA.

**3. Conflicts Of Interest:**

No representative of neither Party nor any of their respective officers, agents, employees, contractors or consultants may accept any gifts (including meals) from prospective or actual service providers *at any time*, in order to avoid any appearance of conflict of interest. Conflict of interest Questionnaires must be maintained by the Consortium, as required by statute.

**4. Jurisdiction/Venue:**

The Agreement shall be governed by and construed in accordance with the laws of the State of Texas and, to the extent permitted by law; venue for all disputes arising under the Agreement shall lie in the home county of the LEA.

- It possesses the legal authority to enter into the Agreement and can allow the Agreement to automatically renew without subsequent action of its governing body.
- All state, local or third-party requirements to approve, record or authorize the Agreement have been met.

**5. No Waiver of Immunity:**

No Party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of the execution of the Agreement and the performance of the covenants contained herein. Nothing herein shall be a consent to suit.

**6. No Third Party Beneficiary:**

The Agreement inures to the benefit of and obligates only the Parties executing it. No term or provision of the Agreement shall benefit or obligate any person or entity not a party to it. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under the Agreement.

**7. Severability:**

If any portion of the Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.

**8. Signatures/Counterparts:**

The failure of a party to provide an original, manually executed signature to the other party will not affect the validity, enforceability or binding effect of the Agreement because either party may rely upon a facsimile signature as if it were an original. Furthermore, this Agreement may be executed in several separate counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

**9. Waiver:**

No waiver, change, modification or discharge by either party hereto of any provision of the Agreement shall be deemed to have been made, nor shall such change, modification or discharge be effective, unless expressed in writing and signed by both parties.

- A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of the Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist, in any one or more cases, upon the strict performance of any of the covenants of the Agreement, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such obligation. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

**10. Force Majeure:**

If by reason of Force Majeure (i.e. acts of God, strikes, lockouts, or other industrial disturbances, etc.), either Party hereto shall be rendered unable, wholly or in part, to carry out its obligations under the Agreement then such Party shall give notice and full particulars of the Force Majeure event, in writing, to the other Party, within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

**11. Attorney's Fees:**

In the event that either Party to the Agreement brings an action to enforce or interpret any provision of the Agreement, the prevailing party, will be entitled to recover reasonable attorney's fees, costs, and necessary disbursements, in an amount determined by the trier of fact in such dispute.

**12. Warranty:**

By the execution and delivery of the Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of the Agreement.

13. No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of the execution of the Agreement and the performance of the covenants contained herein.

14. In case any one or more of the provisions contained in the Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the Agreement.

15. The Agreement may be executed in multiple originals. The parties agree that it is not necessary for each or every party to execute the same physical document. The Agreement binds the Center and each individual LEA upon execution of the Agreement by an authorized representative of the Center and that LEA.

**16. Indemnification**

Performing party, to the extent permitted by law, shall hold ESC 13 harmless from and shall indemnify ESC 13 against any and all claims, demands, and causes of action of whatever kind of nature asserted by any third party and occurring or in any way incident to, arising from, or in connections with, any acts of Performing Party in performance of the Contract.

17. **Boycott Israel**

Performing Party represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Performing Party does not boycott Israel and will not boycott Israel during the term of the contract.