



EDUCATION SERVICE CENTER, REGION 20  
INTERLOCAL PARTICIPATION AGREEMENT  
In the  
ESC 20 FIBER CONSORTIUM WITH ADDITIONAL SITE BUILDS

This Interlocal Participation Agreement is made and entered into by and between the EDUCATION SERVICE CENTER, REGION 20 (“Center”) as Administrative Agent and Lead Member of the ESC 20 Fiber Consortium (“Consortium”) and the undersigned Local Education Agency (“LEA”).

## **I. RECITALS**

**WHEREAS**, the Center is established under the authority of Chapter 8, Texas Education Code, for the purpose of: (1) assisting school districts in improving student performance; (2) enabling school districts to operate more efficiently and economically; and (3) implementing initiatives assigned by the legislature or the Commissioner of Education;

**WHEREAS**, Chapter 791, Texas Government Code, the Interlocal Cooperation Act, is for the purpose of increasing the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state;

**WHEREAS**, Section 791.011(e) of the Interlocal Cooperation Act provides that interlocal contractual payments must be in amounts that fairly compensate the performing party for services or functions performed under an interlocal contract;

**WHEREAS**, expenditures of federal grant and award funds made on or after December 26, 2014 must comply with the requirements of Education Department General Administrative Regulations (“EDGAR”) set out in 2 C.F.R. Part 200;

**WHEREAS**, 2 C.F.R §200.318(e) provides: “To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local inter-governmental agreements or inter-entity agreements where appropriated for procurement or use of common or shared goods and services”; and

**WHEREAS**, the purpose of this Agreement is to facilitate compliance with federal EDGAR requirements in addition to state procurement requirements;

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and obligations contained herein the Center and undersigned LEA agree as follows:

## **II. TERMS AND CONDITIONS**

**1. Adoption of Interlocal Cooperation Agreement.** The Contracting LEA by the execution or acceptance of this Agreement hereby formally confirms and approves its Letter of Agency dated \_\_\_\_\_ which is incorporated herein by reference. The Letter of Agency established the authority of the ESC 20 FIBER Consortium (by and through its Lead Member, ESC Region 20) as an administrative agency and representative of its collective participants for purposes of application for E-Rate funding in connection with construction and implementation of large-scale broadband dark fiber network among the LEAs within Region 20 which will provide internet and LEA connectivity to promote educational excellence in instruction, services and resources through a collaborative partnership of LEAs, (“Regional Fiber Network Project”).

## **2. Term.**

**2.1 Initial Term.** This Interlocal Participation Agreement shall be effective on the date of execution by an authorized signatory for both Parties. The Initial Agreement Term will be for four (4) years beginning on the Effective Date, and thereafter, shall automatically renew for successive one-year terms, unless the Agreement is sooner terminated in accordance with the provisions herein.

**2.2 Continuing Term.** If this Interlocal Agreement is not terminated during the Initial Term and successive renewals, it shall continue to automatically renew annually on July 1 of each successive year for up to six (6) additional one year terms, unless sooner terminated in accordance with the termination provisions of this Agreement. This Interlocal Agreement shall automatically terminate upon termination of the Service Agreement.

## **3. Termination.**

### **3.1 Prior to Expiration of Initial Term and Successive Initial Term Renewals.**

**3.1.1** Neither Party may terminate this Agreement prior to the expiration of the Initial Term and Initial Term Renewals of the Agreement, except for Cause pursuant to sub-paragraph 3.4 of this Article, by Law as described in sub-paragraph 3.5, or as the result of an event of non-appropriation as provided below in sub-paragraph 3.1.2.

**3.1.2 Non-appropriation.** The LEA shall have the continuing right to terminate this agreement without notice at the end of any budget period in which funds for this 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 withdrawal for lack of funding.

**3.1.3 Payment Due Upon Termination.** Service terminated during the Initial Term will be invoiced the balance due for the full 48 month Initial Term *LESS* any payments made through the date of termination notice to Region 20 by the LEA.

### **3.2 Termination Following Expiration of Initial Term.**

**3.2.1** This 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 this 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.

3.2.2 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.

3.2.3 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 as provided in Paragraph 3.2 of this Section.

3.2.4 The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

**3.3 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 this 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 this Agreement in whole or in part as it deems appropriate.

**3.4 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 this Agreement, Contracting LEA may immediately terminate this Contract, in whole or in part, "for cause":

3.4.1 Center makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to LEA in connection with this Agreement or its performance hereunder; or

3.4.2 Center violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

3.4.3 Center fails to cure, or initiate steps reasonably calculated to cure, a default as required by this Agreement, within the time period required for cure; or

3.4.4 Center violates any rule, regulation or law to which Center is bound or shall be bound under the terms of this Agreement; or

3.4.5 Center attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of this Agreement.

3.4.6 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.

**3.5 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, this Agreement shall automatically terminate as of the effective date of such prohibition.

**3.6 Orderly Transfer Following Termination.** Regardless of how this Agreement is terminated, Center shall effect an orderly transfer to Contracting LEA or to such person(s) or firm(s) as the Contracting LEA may designate, at a reasonable cost to Contracting LEA. Upon the effective date of expiration or termination of this Agreement, Center shall cease all operations of work being performed by Center, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Center, in connection with the services rendered by Center under this Agreement, regardless of storage medium, shall be transferred to Contracting LEA. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at the expense of the terminating Party.

#### **4. Center's Obligations**

4.1 Coordination and filing of application for upfront, non-recurring costs of deploying new fiber or upgraded network facilities to eligible LEAs, Category One support, including construction of network facilities, design and engineering and project management costs ("Special Construction E-Rate Funding") for large-scale broadband dark fiber network ("ESC 20 Fiber Consortium") on behalf of Contracting LEAs within Region 20 designed to provide internet and connectivity for Contracting LEAs, including but not limited to:

4.1.1 100 Gigabit backbone network between hub sites;

4.1.2 10 Gigabit network among the connected edge sites;

4.1.3 Center will allow bandwidth flexibility such that a Contracting LEA can exceed their subscribed services within a reasonable limit without penalty;

4.1.4 Center will provide Contracting LEA an opportunity to participate in shared network services (e.g., internet access, disaster recovery, shared application environment, etc.)

4.1.5 Center will provide Contracting LEA with direct connectivity to multiple educational resource data centers.

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

4.1.7 Provide and guarantee service level objectives as specified in Paragraph 5.4 of this Section.

4.1.8 Implement and provide 24x7x365 support and management via the leased lit service provider of the network to include:

A. Proactively monitor and maintain broadband connections

B. Proactively monitor internet access service from ISP

C. Guarantee the LEA purchased bandwidth to the Internet by monitoring usage.

D. Provide alerts concerning network maintenance and/or unplanned outages.

E. Notification will be given according to the contracted Service Level Agreement terms

F. Affected LEAs will be notified via email of any emergency network impairments within a reasonable time after the problem is determined.

4.1.9 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

4.1.10 Proactively monitor and report the use of services to ensure usage is within the terms of the agreement.

4.1.11 Provide technical assistance to LEAs for connectivity, upon request.

**4.2 Administrative Handling.** Center, by and through ESC 20 FIBER CONSORTIUM, during the Term of this Agreement, will comply with all applicable laws, and the FCC, USAC, and TEA rules, as well as, state and local procurement requirements, throughout each annual E-rate application cycle and will adopt and maintain internal controls and policies to ensure such compliance, including but not limited to the following:

**4.2.1 Goods and Services.** The Center, by and through the ESC 20 FIBER Consortium, provides goods and services to LEAs in accordance with Chapter 8, Texas Education Code. Prices or fees for goods and services may be on a unit-price, per-participant basis, or district average daily attendance basis based upon the total cost to provide the service to all participating LEAs. This agreement is limited to the goods and services as provided herein. Additional goods and services may only be added to this agreement in writing.

**4.2.2 Procurement.** Handle procurement of goods and services on behalf of LEA in strict and consistent compliance with the FCC, USAC, TEA and state and local procurement rules.

A. Enter proposals for tabulation and evaluation, including assuring bidding process occurs with each procurement and that no bidder is given preferential treatment over others at any point in the process accurately evaluating and scoring responsive proposals and maintaining adequate documentation of such procurement for purposes of compliance with e-rate auditor requests for procurement process documentation.

B. Establish an Evaluation Committee to test, evaluate and award proposals, for any required procurement, to include at least six representatives of Region 20 School Districts, the E-Rate Consultant, and Region 20 Purchasing and Technology Representatives.

C. Develop system for gathering evaluation information from members on vendor performance, and product quality and use of products and services.

D. Perform annual critical review of the existing e-rate procedures with particular focus on staff involved, transparency, fairness and checks and balances in the procurement process, evaluation methods, tools and procedures and document retention strategies.

**4.2.3 Confirmation of Certifications.** Maintain a procedure for confirming LEA certifications including LEA's ability to fund the local share of E-rate services and projects, availability of necessary resources to make effective use of the products and services for

which it requests E-rate discounts, certifications regarding LEA compliance with the Children's Internet Protection Act (CIPA) and adoption of Internet Safety Procedure, if required, and other certifications required by E-Rate which may not be within the personal knowledge of the Consortium Lead Member or E-Rate Consultant as applicant.

**4.2.4 Pre-Funding Commitment Communications.** Timely and accurately respond to any special requests for information from SLD during the application review process and any selective review processes.

**4.2.5 Post Funding Commitment Communications.** Upon issuance of Funding Commitment Decision Letter, file Form 486 or other notification to SLD regarding service or construction start date. Monitor the timeframe for filing all Forms 486 and ensure deadlines are met.

**4.2.6 Service Substitutions Service Start Date Changes and SPIN Changes.** Accurately and timely handle all service substitutions, Service Start Date changes and Service Provider Identification Number ("SPIN") Changes (corrective and operational), if any, related to the procurement goods and services procured on behalf of the LEAs in strict compliance with FCC rules.

**4.2.7 Disbursement Process.** Timely and accurately handle the Disbursement Process and associated accounting for all funding including receiving and reviewing discounted bills from service providers or seeking reimbursement from USAC or such other processes required as appropriate to access all funds awarded in the Funding Commitment Decision Letters received.

**4.2.8 Billing Accuracy Monitoring.** Confirm accurate billing by the service provider of both the LEA and USAC as required, including preparation of accurate cost sheets and all FCC Forms 472 (BEAR Forms) and complete and timely return any Service Certifications, where applicable, and ensure that only eligible services approved on the correct Form 471 and delivered consistent with the (FCDL) Funding Commitment Letter and contract agreements are billed. Confirmation shall include follow-up with service providers and/or USAC in the event of discovered discrepancy,

**4.2.9 Document Retention.** Comply with current FCC document retention requirements (currently ten years from the last date to receive service or equipment delivery date, whichever is later), including documentation related to pre-commitment, contracting, post-commitment, invoicing, all backup data that supports the certifications made on any E-rate application and documentation regarding equipment funded through E-Rate.

**4.2.10 Audit Compliance.**

A. In the event of an Audit by USAC, (including one conducted by a private contractor) the Center will provide notice to the LEA of the initiation of a USAC Audit not later than three (3) days after receipt of the first notice from USAC or its Contactor; shall collect and provide all documentation requested by auditors at the first notice of an audit and provide any information and documentation by the deadlines established; and accommodate the auditors' needs for information -- consulting with the individual LEA when required. The LEA shall be entitled, but not required to participate in the Audit.

B. In the event of an Audit finding, Consortium, by and through Center, will implement all corrective actions required by USAC, to verify that it has implemented measures to comply

with the E-Rate Program Rules and will assert any and all defenses legally warranted and appropriate appeal points to USAC and/or the FCC on behalf of the Consortium and at the joint expense of the LEAs. Individual LEAs will have the right, but will not be required, to participate in the appellate process.

#### 4.2.11 E-Rate Consultant.

A. Contract with competent and experienced E-Rate Consultant to provide services to the Consortium and its Contracting LEAs, and to assist Region 20 in meeting the compliance requirements of this Agreement, and applicable the FCC, USAC, and TEA rules, as well as, state and local procurement requirements, throughout each annual E-rate application cycle.

B. Require E-Rate Consultant by contract to:

(i) Provide and maintain in effect during the performance of the Agreement professional errors and omissions insurance coverage of at least One Million Dollars (\$1,000,000.00).

(ii) Indemnify, defend, and hold Contracting LEAs, their respective Boards of Trustees, officers, agents, and employees harmless from any injury (and any resulting or related claim, action, loss, liability, or reasonable expense, including attorney's fees and other fees and court and other costs) arising directly or indirectly, in whole or in part from negligent actions or inactions of the E-Rate Consultant, its agents, employees, and suppliers, or arising, in whole or in part, out of a defective product, negligent operations or services of provider, its agents, employees, and suppliers, under this agreement.

(iii) E-Rate Consultant shall be a "Certified E-Rate Management Professional" as per the E-Rate Management Professionals Association Certification Process.

**4.3 Service Level Objectives.** All Service Level Objectives provided by the Service Provider, shall pass through to each ESC 20 Fiber Consortium LEA as listed in this Section. LEA understands that Service Level Objectives are best estimates, and actual service provision may vary.

#### 4.3.1 Service Availability Objectives for Ethernet and IP Services

Service Element	Description	Measurement Timeframe
Service Availability 99.99%	Time that Service is available (i.e. unaffected by a Service Outage)	One (1) Month

#### 4.3.2 Additional Service Element Objectives for IP and Ethernet Services

Service Element	Measurement	Measurement Timeframe
Packet Loss	<p>Not to exceed the following values, as applicable to the affected QoS Classes, for a sustained period of two (2) or more hours:</p> <p>IP Transit or Basic QoS: 0.50% Enhanced QoS: 0.40% Preferred QoS: 0.30%</p>	Per Incident
Latency	<p>Not to exceed the following values for a one way, sustained period of two (2) or more hours:</p> <p>North America Metro (&lt;300 fiber miles): 15 ms State of Texas, WAN Only (&lt;750 fiber miles): 20 ms North America Intercity (&gt;300 fiber miles): 45 ms Europe: 15 ms</p>	Per Incident
Packet Jitter	Not to exceed 5 milliseconds when averaged over a 20 minute period.	Per Incident
Packet Loss	Across the link from the customer to Zayo: 0.0001%	Minutes not met by the SLA divided by total minutes per month multiplied by the billing cycle charge.
Subscribed Bandwidth SLA	Contracted bandwidth guaranteed through the Vendors network to its Peering Sites to other Tier 1 Providers.	Per Incident
Network Management/ Monitoring SLA	Zayo Tranzact - Network Management available and working 365 days and 24 hours per day.	Minutes not met by the SLA divided by total minutes per month multiplied by the billing cycle charge.



Billing SLA	Provide ESC 20 Consortium an accurate and easy-to-understand invoice within one month of the billing cycle.	One Month of the Billing Cycle
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#### 4.3.3 Response Time and Mean Time to Repair

Service/Repair Response Time
>30 Minutes remote response (email/phone)
>2 hrs. on-site response

Mean Time to Repair
>4 Hours for network equipment failure
>8 Hours for cable degradation/failure, not including fiber cuts

### 5. Contracting LEA Obligations.

5.1 In order to maintain its eligibility to make purchases under this Agreement, the LEA agrees to timely pay any and all membership fees required, if any, of it as a member in accordance with the terms of this Agreement.

5.2 In addition to membership fees, the Contracting LEA will make timely payments for any goods, materials and services received in accordance with the provisions set out in Paragraph 5.3 of this Section and Exhibit A attached.

5.3 ESC 20 Fiber Network pricing is based on student enrollment count per consortium member.

A. Contracting LEA further understands:

- (i) Prices are already E-rate discounted as shown in the table below.
- (ii) There is no additional “transport” cost.
- (iii) Pricing shown includes all transmitted and received traffic.

- (iv) Pricing for each additional circuit is the same as the first circuit, or as specified in Exhibit A
- (v) Payments are due within 30 days of receipt of invoice.
- (vi) Payments can be made on an annual or quarterly basis.
- (vii) Each LEA's service shall consist of a minimum of 10 Gbps fiber ethernet connectivity to the Region 20 Network Operations Center
- (viii) Each LEA's service shall include up to 10 Gbps Internet Access service via the 10 Gbps fiber ethernet connectivity as noted in the previous bullet point.

**B. Pricing Details:**

<b>Type of Charge</b>	<b>Cost(s)</b>	<b>Frequency</b>
<b>Special Construction Cost (SCC) (Billed for first 48 months)</b>	<b>Identified in per District in Exhibit A</b>	<b>Monthly/Quarterly/Annual</b>
<b>Monthly Recurring Circuit Charge (MRC)</b>	<b>Identified in per District in Exhibit A</b>	<b>Monthly</b>
<b>Total Monthly cost for circuit/Construction: (Billed for first 48 months)</b>	<b>Identified in per District in Exhibit A</b>	<b>Monthly</b>

*\*\*\*Note: Circuit rate is tied to Consortium E-Rate percentage. If there is a change in Consortium E-Rate percentage, circuit fees will be recalculated not to exceed 10% in any given year.*

### **III. GENERAL PROVISIONS**

**1.1 Amendment by Notice.** The Board of the ESC 20 FIBER Consortium may amend this 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 and provided that the Contracting LEA does not terminate its participation in the ESC 20 FIBER Consortium before the expiration of said 60 days.

#### **1.2 Assignment Of Rights Or Duties**

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

1.2.2. Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Center assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, LEA may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consortium shall thereupon cease and terminate, notwithstanding any other remedy available to LEA under this Agreement.

1.2.3 Center agrees to notify LEA's representative of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to LEA under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement.

1.2.4 Authorization to Participate and Compliance with Local Policies. The Contracting LEA represents and warrants that its governing body has duly authorized its participation in the ESC 20 FIBER Consortium and that the Contracting LEA will comply with all state and local laws and policies, as well as E-Rate Requirements pertaining to purchasing of goods and services through its membership in the ESC 20 FIBER Consortium.

**1.3 Cooperation and Access.** The Contracting LEA agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the ESC 20 FIBER Consortium by and through Center.

**1.4 Coordinator.** The Contracting LEA agrees to appoint a program coordinator who shall have express authority to represent and bind the Contracting LEA, and the Center will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Contracting LEA. The Contracting LEA reserves the right to change the coordinator as needed by giving written notice to the Center.

**1.5 Conflicts Of Interest.** No representative of either 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.

**1.6 Current Revenue.** The Contracting LEA hereby warrants that all payments, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the LEA, or required by any other agreements, contracts and documents executed, adopted, or approved pursuant to this Agreement, which shall include any exhibit, attachment, addendum or associated document, shall be paid from current revenues available to the paying Party.

**1.7. Jurisdiction/Venue.** This 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 this Agreement shall lie in the home county of the LEA.

**1.8 Legal Authority.** The LEA represents and warrants to the ESC 20 FIBER Consortium by and through Center the following:

1.8.1 It meets the definition of “Local Government” or “State Agency” under the Interlocal Cooperation Act (“Act”), Chapter 791 of the Texas Government Code.

1.8.2 The functions and services to be performed under the Agreement will be limited to “Administrative Functions” as defined in the Act, which includes purchasing.

1.8.3 It possesses the legal authority to enter into this Agreement and can allow this Agreement to automatically renew without subsequent action of its governing body.

1.8.4 All state, local or third-party requirements to approve, record or authorize the Agreement have been met.

**1.9 Merger/Entirety.** This Agreement, together with the Consortium’s Bylaws and Organizational Agreement, represents the complete understanding of the ESC 20 FIBER Consortium by and through Center and Contracting LEA. To the extent there exists any conflict between the terms of this Agreement and that of prior agreements, the terms of this Agreement shall control and take precedence over all prior participation agreements.

**1.10. Notice.** Unless otherwise expressly provided elsewhere in the Agreement, any election, notice or communication required or permitted to be given under the Agreement shall be given in writing, at the addresses shown in the signature blocks of the Agreement, and will be deemed to have been duly given if and when delivered, personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt requested with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the “Mailbox Rule”), or when sent by a national commercial courier service such as Federal Express) for expedited delivery to be confirmed in writing by such courier.

**13.5 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 this Agreement and the performance of the covenants contained herein. Nothing herein shall be a consent to suit.

**1.11 No Third Party Beneficiary.** This Agreement inures to the benefit of and obligates only the Parties executing it. No term or provision of this 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 this Agreement.

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

**1.13 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 this 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.

**1.14 Waiver:** No waiver, change, modification or discharge by either party hereto of any provision of this 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 this 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 this 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.

**1.15 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 this 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.

**1.16 Right To Audit:** The LEA, or its authorized representative (including Texas Education Agency and the Comptroller General), shall be given reasonable rights to perform audits by the LEA's own personnel and/or an outside firm of Providers/auditors, in order to investigate the LEA's claims administration and services, and/or evaluate the performance of the Consortium. The Consortium agrees to provide full cooperation during this process. Performance of these functions shall be conducted with proper notification per customary industry standards. Consortium agrees to maintain all required records for five (5) years after the LEA makes final payment and all other pending matters are closed, or such longer period as may be required by applicable law.

**1.17 Attorney's Fees.** In the event that either Party to this Agreement brings an action to enforce or interpret any provision of this 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.

1.18 **Warranty.** By the execution and delivery of this 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 this Agreement.

1.19 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 this Interlocal Agreement and the performance of the covenants contained herein.

1.20 In case any one or more of the provisions contained in this Interlocal 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 this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the Agreement.

1.21 This 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.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, accept this Agreement

EDUCATION SERVICE CENTER, REGION 20	LEA: _____
By: _____ Dr. Jeff Goldhorn, Executive Director	By: _____ Name: _____ Title: _____
Date: _____	Date: _____
Address: 1314 Hines Avenue San Antonio, Texas 78208	Address: _____ _____

[Exhibit A Follows on Next Page]

**Exhibit A**

**SUBSCRIPTION DETAILS AND SIGNATURES FOR SPECIAL CONSTRUCTION AND LOCAL WAN CIRCUITS**

Subscribed Services and Service Termination Address

Service Building Name NEW BRAUNFELS PUBLIC LIBRARY

Service Address(es)

NEW BRAUNFELS PUBLIC LIBRARY	700 E. COMMON ST	NEW BRAUNFELS	TX	78130
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Service Start Date TBD

Number of Internet Access Circuits 1 Circuit

Monthly Recurring Charges \$170

*By signing below, I acknowledge that I have read the Service Agreement, I accept this Agreement, and that I am authorized to sign on behalf of the LEA.*

Authorized LEA Representative

\_\_\_\_\_  
Signature

Printed Name \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized LEA Representative Title

ESC Region 20 Executive Director

\_\_\_\_\_  
Signature

Dr. Jeff Goldhorn

\_\_\_\_\_  
Date