



MSA# 044552-MSA-2232

## MASTER SERVICE AGREEMENT GENERAL TERMS AND CONDITIONS

This Master Service Agreement (the "MSA" or "Agreement") by and between Northeast Ohio Network for Educational Technology ("NEOnet" or "Provider"), an Ohio ITC under Ohio Revised Code §3301.075 organized as a regional council of governments under ORC Chapter 167 and Norton City Schools ("Customer"), collectively referred to as the Parties, and is effective as of 07/01/2022, ("Effective Date")

In consideration of the promises and mutual covenants contained herein, and intending to be legally bound hereby, the Parties hereto agree that all applicable Services are provided according to the Definitions and General Terms and Conditions contained herein.

### ARTICLE 1. DEFINITIONS

**Agreement:** The Master Services Agreement General Terms and Conditions, all Service Orders, RFPs and Proposals and any other documents, or other written sources incorporated or referenced therein that, together, are intended by the Parties to constitute the agreement between them.

**Bandwidth Service Provider:** Third party vendor sub-contracted by Provider to provide transport for contracted bandwidth.

**Customer Demarcation Point:** The physical location at which Provider terminates its equipment and makes the Services available for use by the Customer.

**Effective Date:** The date this Agreement and/or Amendments become binding and enforceable is upon execution by both authorized representatives of the Parties as evidenced by the signatures and date on the Agreement below and any subsequent Amendment. If executed on different dates, then the latter date of execution becomes the Effective Date.

**Licensed Software:** Computer software or code provided by Provider or required to use the Services, including without limitation, associated documentation, and all updates thereto.

**Provider Equipment:** Any and all facilities, equipment or devices provided by Provider at the Service Location(s) that are used to deliver any of the Services including, but not limited to, third-party transport equipment, all terminals, wires, modems, lines, circuits, ports, routers, gateways, switches, channel service units, data service units, cabinets, and racks. Notwithstanding the above, inside wiring within the Service Location(s) shall not be considered Provider Equipment.

**Network:** Consists of the Provider Equipment, facilities, cable associated with electronics and other equipment used to provide the Services.

**Service or Services:** WAN service with or without Internet, Internet access service, Managed Internal Broadband Services ("MIBS"), internal connections equipment, BMIC or other communications services provided by Provider to Customer and described more fully in each Service Order.

**Service Order:** An agreement between the Parties to provide the Services to Service Location(s) submitted by Customer to Provider that includes Terms and Service Charges in addition to this MSA.

### ARTICLE 2. DELIVERY OF SERVICES

**2.1 Service Orders.** Customer shall execute and provide to Provider a Service Order to initiate Services to a Service Location(s), which will include scope, schedule and price. A Service Order shall become binding on the Parties when (i) it is specifically and explicitly accepted by Provider either by digital electronic signature or in writing by an authorized Provider representative, (ii) Provider begins providing the Services described in the Service Order or (iii) Provider begins Custom Installation for delivery of the Services described in the Service Order, whichever is earlier. When a Service Order becomes effective it shall be deemed part of, and shall be subject to, the Agreement.

**2.2 Access.** Customer, at no cost to Provider, shall secure and maintain all Site Access rights at all Service Location(s) for Provider to install and provide the Services. In addition, Customer shall provide an adequate environmentally controlled space and such electricity as may be required for installation, operation, and maintenance of the Provider Equipment used to provide the Services within the Service Location(s).

**2.3 Service Start Date.** Upon installation, connection, testing and acceptance of the necessary facilities and equipment to provide the Services, Provider shall provide electronic notification to Customer that the Services are available for use, which date of electronic notification shall be called the "Service Start Date." Any failure or refusal on the part of Customer to be ready to receive the Services on the Billing Date shall not relieve Customer of its obligation to pay applicable Service charges.

The Term of Services under the MSA commences upon the Service Start Date and not the Effective Date.

**2.4 Provider Equipment and Procedures.** Provider Equipment is and shall remain the property of Provider regardless of where installed and shall not be considered a fixture or an addition to the land or the Service Location(s). At any time, Provider may remove or change Provider Equipment, in its sole discretion, in connection with providing the Services. Customer shall not alter any Provider Equipment or permit others to do so and shall not use the Provider Equipment for any purpose other than that authorized by the Agreement. Customer is responsible for damage to, or loss of, Provider Equipment caused by its acts, omissions, fire, theft or other casualty unless caused by the gross negligence or willful misconduct of Provider. Customer agrees not to take any action that would directly or indirectly impair Provider's title to the Provider Equipment, or expose Provider to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Following Provider's discontinuance of the Services to the Service Location(s), Provider retains the right to remove the Provider Equipment at its own expense. To the extent Provider removes such Provider Equipment, it shall be responsible for returning the Service Location(s) to its prior condition, wear and tear excepted.

**2.5 Customer-Owned Equipment ("CE").** Provider shall have no obligation to install, operate, or maintain CE. Customer alone shall be responsible for providing maintenance, repair, operation and replacement of the CE. All CE and wiring that Customer uses in connection with the Services must be fully compatible with the Services, as defined by Provider. Neither Provider nor its employees, Affiliates, agents, or contractors will be liable for any damage, loss or destruction to CE, unless caused by the gross negligence or willful misconduct of Provider. Customer shall be responsible for the payment of all charges for troubleshooting, maintenance or repairs attempted or performed by Provider's employees or authorized contractors when the difficulty or trouble report results from Customer-Owned Equipment.

**2.6 Protection from Internet Vulnerabilities.** Customer understands and agrees that use of the Service provides no protection from vulnerabilities of the Internet, such as, but not limited to, viruses and theft of computer data. Customer is solely responsible for protecting Customer-Owned Equipment from these vulnerabilities through use of such software as firewalls and virus protection. Provider reserves the right to suspend Customer's Service should Provider detect virus or other activities emanating from CE and that degrade Provider's Service provision.

**2.7 Service Performance.**

**a) Responsibility:** Customer understands that Provider does not own or control other networks outside of the Service, nor is Provider responsible for performance (or nonperformance) within such other networks or within non-Provider operated interconnection points between the Service and other networks. However, Provider will work with the Customer to reasonably ensure that performance from the Customer's site to the Service is maximized.

**b) Network Availability (Uptime Service Level Agreement):** Provider is committed to providing Customer with maximum network service availability. Provider's Service Level Agreement ("SLA") is outlined in the Service Order(s). Provider reserves the right to modify the SLA from time to time.

**ARTICLE 3. TERM**

**3.1 Agreement Term.** The term of this Agreement (the "Term") shall commence on the Effective Date and terminate upon the expiration or other termination of the final existing Service Order entered into under this Agreement.

**3.2 Service Order Term and Renewal.** The term of a Service Order shall commence on the Billing Date (Service Start Date) and shall terminate at the end of the stated Service Term of such Service. The Parties agree that the Service Order may be voluntarily extended on a multi-year, annual or month-to-month basis as set forth in the Service Order(s).

**3.3 Changes to the Agreement Terms.** Provider may change or modify the Agreement from time to time, as mutually agreed upon by the Parties, which change(s) shall be in the form of an Amendment. Such modifications or changes may include changes to Service Location(s), addition of Service Location, removal of Service Locations, service upgrades, and partial termination of sites. The Customer may upgrade and add additional sites without rebidding this Agreement in accordance with the terms of the Agreement. New sites must be identified in the FCC Form 470 to be E-rate eligible. Any Amendment to this Agreement will have a term that is coterminous with the Initial Term or Renewal Term.

**ARTICLE 4. CHARGES, BILLING AND PAYMENT**

**4.1 Charges.** Customer agrees to pay all Service Charges and Other Charges associated with the Services, as set forth or referenced in the applicable Service Order(s) or invoiced by Provider. Customer agrees to be solely responsible to Provider for all charges set forth on the Service Order(s) for the duration of the Initial Term and any Renewal Term, as applicable. Services provided under this Agreement and Service Orders are not contingent upon the approval, denial and/or receipt of E-rate funding.

**4.2 Payment of Bills.** Except as otherwise indicated herein or on the Service Order(s): (a) Provider may invoice Customer in advance on a monthly, quarterly, semi-annual, or annual basis for all monthly recurring Service charges and fees arising under the Service Order(s); and (b) all Other Charges will be billed monthly in arrears. Customer shall make payment to Provider for all invoiced amounts within 30 days after the date of the invoice. Any amounts not paid to Provider within such period will be considered past due. Customer is responsible for choosing SPI or BEAR invoicing methodology prior to the first invoice per E-rate requirements.

**4.3 Taxes and Fees.** Unless Customer provides Provider with certification of tax-exempt status, the Customer will pay all applicable local, state, and federal taxes or fees (however designated) assessed in connection with Customer's Services. Customer will be responsible to pay any Service fees, payment obligations and taxes that become applicable retroactively.

**4.4 Other Government-Related Costs and Fees.** Provider reserves the right to invoice Customer for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable franchise fees (if any), regardless of whether Provider pays the taxes directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Customer. These obligations may include those imposed on Provider by an order, rule, or regulation of a regulatory body or a court of competent jurisdiction as well as those that Provider is required to collect from Customer or to pay to others in support of statutory or regulatory programs.

**4.5 Disputed Invoice.** If Customer disputes any portion of an invoice, Customer must submit a written claim, including all documentation substantiating Customer's claim, to Provider for the disputed amount of the invoice by the invoice due date. The Parties shall negotiate in good faith to resolve the dispute. However, should the Parties fail to mutually resolve the dispute within 60 days after the dispute was submitted to Provider, all disputed amounts shall become immediately due and payable to Provider while negotiations or other permitted dispute resolution processes continue.

**4.6 Past-Due Amounts.** Late payments shall be subject to a service charge of one and one-half percent (1.5%) of any and all unpaid balance, unless expressly waived by the Provider in writing. Provider may at its sole discretion terminate or suspend the Services to any Customer whose payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights the Provider may have for full payment. If the Customer's Service is suspended, Provider may charge a reconnection fee to cover the administrative cost of reconnection. The reconnection charge shall be in addition to amounts due for unpaid balances and/or the above-described service charges.

**ARTICLE 5. TERMINATION OF AGREEMENT AND/OR A SERVICE ORDER(S)**

**5.1 Termination for Cause.** If Customer is in breach of a payment obligation (including failure to pay a required deposit) and fails to make payment in full within ten (10) days after receipt of written notice of default, Provider may, at its option, to terminate the Agreement; except that Provider will not take any such action as a result of Customer's non-payment of a charge subject to a timely billing dispute, unless Provider has reviewed the dispute and determined in good faith that the charge is correct. The Agreement may be terminated by either Party immediately upon written notice if the other Party has become insolvent or involved in liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors. The non-defaulting Party shall be entitled to all available legal and equitable remedies for such breach.

**5.2 Early Termination Charges and Liability.** If, after the Service Start Date, but prior to the end of the Initial Term or any Renewal Term, Customer terminates this Agreement in total or on a site-by-site basis for any reason other than Provider's material breach of this Agreement that remains uncured after written notice and a reasonable cure period of at least thirty (30) days, Customer shall pay immediately, in addition to all amounts payable by Customer in accordance with the applicable Service Order(s), to Provider one hundred percent (100%) of the remaining monthly fees all monthly recurring charges associated with the terminated Service(s) for the balance of the Initial Term or any Renewal Term and any outstanding non-recurring or special construction charges ("Termination Liability").

**5.3 Effect of Expiration or Termination of the Agreement or a Service Order.** Upon the expiration or termination of a Service Order for any reason: (i) Provider may disconnect the applicable Service; (ii) Provider may delete all applicable data, files, electronic messages, voicemail or other information stored on Provider's servers or systems; (iii) if Provider has terminated the Service Order prior to the expiration of the Service Term as a result of material breach by Customer, Provider may assess and collect from Customer applicable Termination Charges; (iv) Customer shall, permit Provider access to retrieve from the applicable Service Locations any and all Provider Equipment (however, if Customer fails to permit access, or if the retrieved Provider Equipment has been damaged and/or destroyed other than by Provider or its agents, normal wear and tear excepted, Provider may invoice Customer for the full replacement cost of the relevant Provider Equipment; and (v) if used in conjunction with the terminated Service, Customer's right to use applicable Licensed Software shall automatically terminate, and Customer shall be obligated to return the Licensed Software to Provider.

## **ARTICLE 6. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES; DISRUPTION OF SERVICES**

**6.1.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT, WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT, PROVIDED, HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT CUSTOMER'S LIABILITY FOR AMOUNTS OWED FOR THE SERVICES, FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY PROVIDER OR FOR EARLY TERMINATION CHARGES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. THE ENTIRE LIABILITY OF PROVIDER FOR LOSS, DAMAGES AND CLAIMS ARISING OUT OF THE DELIVERY OF THE SERVICES INCLUDING, BUT NOT LIMITED TO, DELAY IN THE INSTALLATION OF SERVICES OR THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR THE PROVIDER EQUIPMENT SHALL IN NO EVENT EXCEED SIX (6) MONTHS OF THE MONTHLY RECURRING COST UNDER THE APPLICABLE SERVICE ORDER AT ISSUE. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

**6.2.** THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON- INFRINGEMENT WITH RESPECT TO THE SERVICES, PROVIDER EQUIPMENT, OR LICENSED SOFTWARE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVIDER DOES NOT WARRANT THAT THE SERVICES, PROVIDER EQUIPMENT, OR LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF LATENCY OR DELAY, OR THAT THE SERVICES,

PROVIDER EQUIPMENT, OR LICENSED SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE SERVICES, PROVIDER EQUIPMENT, OR LICENSED SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.

**6.3.** PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SERVICES, PROVIDER EQUIPMENT, OR LICENSED SOFTWARE FOR USE BY THIRD PARTIES.

**6.4.** IN NO EVENT SHALL PROVIDER, SUPPLIERS, CONTRACTORS OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO: (i) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (ii) ANY ACT OR OMISSION OF CUSTOMER, ITS USERS OR THIRD PARTIES; (iii) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR (iv) LOSS OR DESTRUCTION OF ANY CUSTOMER HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS, THEFT, OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

**6.5 Disruption of Service.** The Services are not infallible and are not designed or intended for use in situations requiring uninterruptible performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or environment ("High Risk Activities"). Customer expressly assumes the risks of any damages resulting from High Risk Activities. Provider shall not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Services, directly or indirectly caused by, or proximately resulting from, any circumstances.

**6.6.** Customer's sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Certain of the above exclusions may not apply if the state in which a Service is provided does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of Provider and its Affiliates and agents is limited to the maximum extent permitted by law.

**6.7.** Provider reserves the right to discontinue Customer's access to Provider's Service and/or seek other legal or equitable relief for use of the Services that provider deems to be in violation of the rules and regulations of the Ohio State Board of Education or any other state or federal agency; or in violation of this Agreement; or state or federal law; or are uncivil. For purposes of this Agreement, uncivil conduct includes, but is not limited to: (1) transmitting offensive or harassing statements; (2) developing and/or transmitting offensive or unlawful graphics; (3) transmitting sexual or ethnic slurs explicitly or as part of a joke; (4) soliciting or encouraging others to engage in sexual, offensive or unlawful acts; or (5) permitting or encouraging unauthorized access to Provider's network and public networks including unauthorized access to the Internet.

**6.8.** Customer will make no claim against Provider for the internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Any filters or screening devices are limited to those in existence at the Effective Date of this Agreement or for which Provider subsequently installs. Provider is not under any duty to install or modify filters or screening programs. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems.

## **ARTICLE 7. INDEMNIFICATION**

**7.1.** To the extent allowed by Ohio law, Customer agrees to indemnify and hold Provider, its governing Board Members, Employees and/or Agents harmless from any claims, suits, liability, loss, expenses and/or damages sustained by any person for any reason of any act of Customer or its Users in their activities involving use of Provider's network.

**7.2.** Provider shall defend, indemnify, and hold harmless Customer and its officers, agents, employees and volunteers, from and against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as 'Claims'), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any act, error, omission or gross negligence of Provider or its officers, employees, agents, contractors, subcontractors, licensees or servants, including, without limitation, Claims caused by the concurrent negligent act, error or omission, of Customer. However, Provider shall have no obligation to defend or indemnify Customer against Claims caused by the active negligence, sole negligence, or willful misconduct of Customer.

## **ARTICLE 8. SOFTWARE & SERVICES**

**8.1 License.** If and to the extent Customer requires the use of Licensed Software in order to use the Services supplied under any Service Order(s), Customer shall have a personal, nonexclusive, nontransferable, and limited license to use the Licensed Software solely to the extent necessary to use the applicable Service during the Service Term. Provider and its suppliers shall retain ownership of the Licensed Software, and no rights are granted to Customer other than a license to use the Licensed Software under the terms expressly set forth in this Agreement.

**8.2 Restrictions.** Customer agrees that it shall not: (i) copy the Licensed Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of Provider; or (ii) sell, lease, license, or sublicense the Licensed Software.

## **ARTICLE 9. CONFIDENTIAL INFORMATION AND PRIVACY**

**9.1 Disclosure and Use.** All Confidential Information shall be kept by the receiving Party in strict confidence and shall not be disclosed to any third party without the disclosing Party's express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving Party's employees, affiliates, and agents who have a need to know for the purpose of performing this Agreement, using the Services, or (ii) as otherwise authorized by this Agreement. Each Party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using a degree of care less than a reasonable degree of care.

**9.2 Exceptions.** Notwithstanding the foregoing, each Party's confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving Party without a pre-existing restriction as to disclosure; (ii) is or becomes publicly available without fault of the receiving Party; (iii) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure, or is approved for release by written authorization of the disclosing Party; (iv) is developed independently by the receiving Party without use of the disclosing Party's Confidential Information; or (v) is required to be disclosed by law or regulation.

**9.3 Monitoring.** Provider assumes no obligation to pre-screen or monitor Customer's use of the Service, including without limitation posting and/or transmission. However, Customer acknowledges and agrees that Provider and its agents shall have the right to pre-screen and monitor such use from time to time and to use and disclose such results to the extent necessary to operate the Service properly, to ensure compliance with applicable use policies, to protect the rights and/or property of Provider, or in emergencies when physical safety is at issue, and that Provider may disclose the same to the extent necessary to satisfy any law, regulation, or governmental request. Provider shall have no liability or responsibility for content received or distributed by Customer or its users through the Service, and Customer shall

indemnify, defend, and hold Provider and its directors, officers, employees, agents, subsidiaries, affiliates, successors, and assigns harmless from any and all claims, damages, and expenses whatsoever (including reasonable attorneys' fees) arising from such content attributable to Customer or its users.

## **ARTICLE 10. PROHIBITED USES**

**10.1 Resale.** Except as otherwise provided in this Agreement, Customer may not sell, resell, sublease, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the Services or any component thereof.

**10.2 Use Policies.** Customer agrees to ensure that all uses of the Provider Equipment and/or the Services installed at its premises are legal and appropriate. Specifically, Customer agrees to ensure that all uses by Customer or by any other person ("User"), whether authorized by Customer or not, comply with all applicable laws, regulations, and written and electronic instructions for use. Provider reserves the right to act immediately and without notice to terminate or suspend the Services and/or to remove from the Services any information transmitted by or to Customer or any User, if Provider (i) determines that such use or information does not conform with the requirements set forth in this Agreement, (ii) determines that such use or information interferes with Provider's ability to provide the Services to Customer or others, (iii) reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use, or (iv) reasonably believe that Customer's use of the Service interferes with or endangers the health and/or safety of Provider personnel or third parties. Furthermore, the Services shall be subject to one or more Acceptable Use Policies ("AUP") that may limit use. The AUP and other policies concerning the Services are posted on Provider's web site(s) at [www.neonet.org](http://www.neonet.org) and are incorporated into this Agreement by reference. Provider's action or inaction in enforcing acceptable use shall not constitute review or approval of Customer's or any other User's use or information. Customer understands and agrees that the Internet, by its nature, is an open portal of content and material, some of which may be inappropriate for school-aged students. Customer, therefore, will make no claim against Provider, regarding the use of the Service by Customer or Customer's Users, including transmission, accessing, downloading or uploading of information that is offensive, inappropriate for minors, a violation of local, state, federal, or international law or regulation or the violation of the rights, including but not limited to copyright, patent or trademark, of a third party.

**10.3 Violation.** Any breach of this Article 10 shall be deemed a material breach of this Agreement. In the event of such material breach, Provider shall have the right to restrict, suspend, or terminate immediately any or all Service Orders, without liability on the part of Provider, and then to notify Customer of the action that Provider has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement.

## **ARTICLE 11. MISCELLANEOUS TERMS**

**11.1 Force Majeure.** Neither Party shall be liable to the other Party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, cable cut, adverse weather conditions, pandemics, vandalism, acts of terror, labor difficulties, supply failures, acts of regulatory or governmental agencies, unavailability of right-of-way, unavailability of materials, or other causes beyond the Party's reasonable control. Either Party's invocation of this clause shall not relieve Customer of its obligations to pay for any Services actually provided. In the event such failure continues for 45 days, the other Party may terminate the affected Service(s), upon no less than 30 days prior written notice. A Force Majeure Event will not include an increase in prices or the denial, in whole or in part, of E-Rate Program funding for any Service.

**11.2 Assignment and Transfer.** Neither Party shall assign any right, obligation or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of the other Party, which shall not be unreasonably withheld.

**11.3 Governmental Authorization.** This Agreement is subject to all applicable federal, state, and local laws, and regulations, rulings, orders and other actions of any governmental entity or agency (collectively, "Rules"), including, but not limited to, the Communications Act of 1934, as amended, the rules and regulations of the Federal Communications Commission and the Public Utilities Commission of Ohio. If any such Rule adversely affects the Services or requires Provider to provide such Services in a manner other than in accordance with the terms of this Agreement, then Provider may, without liability to Customer, terminate the affected Service upon prior written notice to Customer.

**11.4 Notices.** All such notices, requests, consents and other communications shall be deemed to be properly given if delivered personally or, if sent by U.S. Mail, registered or certified, return receipt requested, three (3) business days after the same have been deposited in the United States Mail, addressed and postage prepaid as set forth above or, if sent by Federal Express (or other nationally recognized overnight carrier), the day after delivery to Federal Express (or other nationally recognized overnight carrier) or, if sent electronically, upon verification of receipt in each case as follows: (i) with respect to Customer, to the address set forth on the Service Order; or (ii) with respect to Provider to: Attn: Matthew Gdovin, Executive Director, NEOnet, 700 Graham Road, Cuyahoga Falls, Ohio 44221, or by email at [gdovin@neonet.org](mailto:gdovin@neonet.org). Each Party shall notify the other Party in writing of any changes in its address listed on the Service Order within 10 business days.

**11.5 Entire Agreement and Understanding.** The Agreement constitutes the entire understanding of the Parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Services or the Parties' rights or obligations relating to the Services. Only specifically authorized representatives of Provider and Customer may agree to modifications to this Agreement or this Agreement's form. No subsequent agreement among the Parties concerning the Services shall be effective or binding unless it is executed in writing by authorized representatives of both Parties.

**11.6 Construction.** In the event that any portion of this Agreement is held to be invalid or unenforceable, the Parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the Parties, and the remainder of this Agreement shall remain in full force and effect.

**11.7 Survival.** The rights and obligations of either Party that by their nature would continue beyond the expiration or termination of this Agreement or any Service Order, including without limitation confidential information and data, representations and warranties, indemnifications, and limitations of liability, shall survive termination or expiration of this Agreement or any Service Order.

**11.8 Choice of Law.** The domestic law of the State of Ohio, without regard for its conflicts of laws provisions, shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law.

**11.9 No Third-Party Beneficiaries.** This Agreement does not expressly or implicitly provide any third party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

**11.10 No Waiver.** No failure by either Party to enforce any rights hereunder shall constitute a waiver of such right(s).

**11.11 Article Headings.** The article headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof.

**11.12 Compliance with Laws.** Each of the Parties agrees to comply with all applicable local, state, and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement and Service Order(s).

**11.13 Counterparts; Digital Signatures.** This Agreement, Service Orders, and any amendments may be executed in any number of counterparts, each counterpart will constitute an original, and all counterparts together will constitute one agreement. This Agreement may be signed by any means producing a reasonably legible signature, a digital electronic signature, or digital copy of a signed signature page will be effective as an original.

IN WITNESS WHEREOF, by signing below, signatory of Customer ("Signatory") certifies authorization to sign on behalf of and legally bind Customer and certifies having read, understood, and agreed to the terms of this Agreement, including Service Order(s), which are hereby incorporated herein by reference. If Customer is a Board of Education of a school district (a political subdivision of the State of Ohio), Signatory certifies that this Agreement has been approved by formal resolution of its Board of Education; if Customer is another educational entity, Signatory certifies that the Agreement has been approved by formal action of its Board.

**NEOnet**

Signature: \_\_\_\_\_

Name (printed) \_\_\_\_\_

Title: \_\_\_\_\_

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

**Norton City Schools**

Signature: \_\_\_\_\_

Name (printed) \_\_\_\_\_

Title: \_\_\_\_\_

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



## INTERNET ACCESS SERVICE ORDER

Customer: Norton City Schools		
Service Start Date: 07/01/2022		
MSA#: 044552-MSA-2232		
Service Order#: 044552-ISP-2227		
Provider Contact: Matt Gdovin	Email: gdovin@neonet.org	Phone: +13309263901
Customer Contact: Angie Wagler	Email: AWagler@nortonschools.org	Phone: +13307062746

	Internet Access Only
X	Bundled Internet Access and Transport

Product name	Product or service description	Price	Quantity	Sum
<b>Norton City High School</b>				
ISP - 1Gbit	Annual ISP Service	28,680.00	1	28,680.00
Transport - 1Gbit	Annual lit fiber transport	11,160.00	1	11,160.00
<b>Norton Elementary School</b>				
Transport - 1Gbit	Annual lit fiber transport	11,160.00	1	11,160.00
<b>Norton Middle School</b>				
Transport - 1Gbit	Annual lit fiber transport	11,160.00	1	11,160.00
<b>Total (USD):</b>				<b>62,160.00</b>

### UPGRADE CHARGES PER LOCATION

SPEED	TRANSPORT CHARGES	INTERNET CHARGES	TOTAL ANNUAL CHARGES
1G	\$11,160	\$28,680	\$39,840
2G	\$14,400	\$28,680	\$43,080
5G	\$14,400	\$28,680	\$43,080
10G	\$14,400	\$28,680	\$43,080

## **TERM**

1. This Service Order is effective for all bundled Internet Access services covered herein for the period of **07/01/2022 through 06/30/2027**, subject to voluntary extensions. The Services provided may be extended for up to 2 voluntary extension terms of 60 months each (each an "Renewal Term"), at Customer's sole option, by written notice from the Customer prior to the expiration of the Initial Term or Renewal Term. Notwithstanding, the Customer may extend the Initial Term or any Renewal Term on a month-to-month basis, at Customer's sole option, to facilitate the transition of services.

## **CHARGES AND PAYMENTS**

1. Charges for the e-rate non-discounted Services provided under this Agreement will be billed to Customer on an annual basis.

## **PROVIDER'S OBLIGATION**

1. Provider will plan and coordinate all activities incidental to the implementation of the internet access.
2. Provider shall furnish Customer bundled Internet access services on a 24/7 per-week basis. Provider does not own or control other networks outside of the Service, nor is Provider responsible for performance (or non-performance) within such other networks or within non-Provider operated interconnection points between the Service and other networks. Provider will not be held liable for any delay in the Service Start Date as a result of third-party or other network provider services or Customer delays. However, Provider will work with the Customer to reasonably ensure that performance from the Customer's site to the Service is maximized.
3. Provider shall be responsible for the maintenance of the Service and any Provider Equipment located on Customer premises ("Provider Equipment"). Provider shall have the right to charge the Customer costs and expenses incurred in identifying and correcting any failure in Customer's facilities or equipment, or in repairing or replacing Provider's Equipment which has been damaged or rendered inoperable by reason of the Customer's actions or omissions, or the failure or inadequacy of Customer's equipment.

## **CUSTOMER'S OBLIGATION**

1. Customer will assume all responsibilities for all local area networks (LAN). These responsibilities include, but are not limited to, Customer-owned communications equipment/cabling, LAN software, and LAN hardware.
2. Customer agrees to comply with equipment specifications defined by the Provider for all components integral to the Internet Access.
3. Customer will supply Provider with appropriate and sufficient space and electrical power to facilitate the hosted managed wireless service.
4. Customer agrees not to connect any of its local area networks to alternative network providers without Provider approval.
5. Customer agrees not to resell any network services provided by Provider. Provider agrees not to lease, sell or transfer Equipment to Customer.

## SERVICE LEVEL AGREEMENT

### NETWORK PERFORMANCE SERVICE LEVELS

<b>NETWORK UPTIME</b>	<b>DESCRIPTION:</b> The SLA for uptime is defined as the amount of time a <u>Subscriber</u> has service as measured over the course of the year. Planned or Emergency Maintenance events are not factored into the Service Uptime Calculation. <u>NEOnet</u> calculates network uptime during a calendar month as follows: Availability (within calendar month) = (total min in month)-(total min of unavailability in month)	
	<b>Our basic Service Level Agreement for Network uptime for managed Ethernet, MPLS, VPN and Internet Service Delivery</b>	<b>99.99%</b>
	<b>Other Services</b>	<b>99.90%</b>
<b>MEAN TIME TO REPAIR</b>	<b>DESCRIPTION:</b> Mean Time to Repair (MTTR) SLA are based upon the amount of time it takes to restore <u>Services</u> measured from the time the ticket is opened to the time the ticket is closed. MTTR times vary based on whether the problem being addressed physically resides on the <u>NEOnet Network</u> (On-Net) or on a third-party provider <u>Subscriber</u> network (Off-Net).	
	<b>NEOnet ISP Service</b>	<b>Four (4) Hrs.</b>
	<b>Note:</b> <u>Force Majeure</u> acts are not covered under <u>NEOnet's</u> MTTR SLA. <u>Force Majeure</u> includes, without limitation: fire, flood, lightning, explosion, war, act of terrorism, strike, riots, embargo, labor dispute, government requirement, civil or military authority, act of God or nature, acts or failure to act of any governmental authority.	



IN WITNESS WHEREOF, by signing below, signatory of Customer ("Signatory") certifies authorization to sign on behalf of and legally bind Customer and certifies having read, understood and agreed to the terms of this Service Order, including the Master Services Agreement, which is hereby incorporated herein by reference. If Customer is a Board of Education of a school district (a political subdivision of the State of Ohio), Signatory certifies that this Agreement has been approved by formal resolution of its Board of Education; if Customer is another educational entity, Signatory certifies that the Agreement has been approved by formal action of its Board, if required.

<b><u>CUSTOMER</u></b>	<b><u>PROVIDER</u></b>
_____ Printed Name of Customer	<u>Northeast Ohio Network for Educational Technology</u> Printed Name of Provider
_____ Signature of Authorized Customer Representative	_____ Signature of Authorized Provider Representative
_____ Printed Name and Title of Authorized Customer Representative	_____ Printed Name and Title of Authorized Provider Representative
_____ Date	_____ Date