

INTERNET ACCESS AGREEMENT (E-RATE)

This Internet Access Agreement (“Agreement”) is accepted by and between Metropolitan Educational Technology Association (“META”), an Ohio ITC under Ohio Revised Code §3301.075 organized as a regional council of governments under ORC Chapter 167 and Olentangy Local Schools (“Customer”). Herein, the above shall be collectively referred to as the “Parties” and individually as “Party”.

META will render a minimum of 500 MB of basic conduit access to the Internet for the period of the Agreement as indicated below. Customer may seek increased support, via a written request to META, in accordance with Chart A. The minimum charges and service levels for basic conduit access to the Internet for the period of the Agreement are as follows:

Services provided by META: Digital Transmission/Internet Access---For up to 10 Gb/s from ISP to Shanahan Middle School (NOC) to serve all 27 buildings in the district.	
Digital Transmission/Internet Access---1, 2, 3, 5, and 10 Gb/s from NOC to Orange MS, Freedom Trail, Walnut Creek, Alum Creek, Glen Oak, Olentangy Meadows, Oak Creek, Arrowhead, Johnny Cake Corners, Cheshire, Liberty HS, Hyatts MS, Scioto Ridge, Tyler Run, and Liberty MS.	
Annual Charges: \$413,865.27/yr.	
Monthly Recurring Charges (“MRC”): 16 buildings @ \$2155.55/building/month	Service Start Date: July 1, 2015 Service End Date: June 30, 2020
Non-Recurring Charges (“NRC”): \$0.00	Service Term: Sixty (60) Months
Ineligible Services: \$0.00	
META Contact: Tim Snyder	Tel: (740) 389-4798 Email: tsnyder@treca.org
Customer Contact: Jeff Gordon	Tel: (740) 657-4027 Email: jeffrey_gordon@olsd.us

Connection costs on increased bandwidth speeds are shown below in Chart A.

CHART A

Service up to	Monthly Cost	Annual Cost
Speed 750M	16 buildings @ \$2194.61/building/month	\$421,365.27
Speed 1G	16 buildings @ \$2233.67/building/month	\$428,865.27

Note to Chart A: The cost of transport from the Bandwidth Service Provider may vary. Any changes to the transport cost will be passed through directly to the Customer.

This Agreement sets forth the terms and conditions under which META will provide basic conduit access to the Internet (“Services”) to the above Customer. This Agreement consists of this document (“Service Agreement Cover

Page”) and the META General Terms and Conditions for E-Rate (“General Terms and Conditions”) collectively referred to as the “Agreement”. In the event of an explicit inconsistency among these documents, precedence will be as follows: 1) General Terms and Conditions; and 2) this Service Agreement Cover Page. This Agreement shall commence and become a legally binding agreement upon the mutual execution of this Service Agreement Cover Page by the Parties. The Agreement shall terminate as set forth in the General Terms and Conditions. All capitalized terms not defined on this Service Agreement Cover Page shall have the definitions given to them in the General Terms and Conditions.

By signing below, the Parties agree to and accept the terms and conditions of this Agreement.

Metropolitan Educational Technology Association

Signature:		Signature:	
Printed Name:		Printed Name:	
Title:		Title:	
Date:		Date:	

GENERAL TERMS AND CONDITIONS FOR E-RATE

I. Definitions

- A. **Agreement, Service Agreement or SA:** Consists of the Services Agreement Cover Page executed by both Parties and these General Terms and Conditions for E-Rate.
- B. **Bandwidth Service Provider:** Third party vendor sub-contracted by META to provide transport for contracted bandwidth.
- C. **Confidential Information:** All information regarding either Party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential" or which reasonably should be known by the receiving Party to be proprietary or confidential information even if not marked. It is understood that the Parties may be subject to open records or other "sunshine laws" and requirements.
- D. **Customer Provided Equipment:** Any and all facilities, equipment or devices supplied by Customer for use in connection with the Services.
- E. **Customer's Users:** Any and all employees, students and/or guests of Customer.
- F. **Demarcation Point:** The point of interconnection between the Network and Customer's provided equipment located at the Service Location(s), as defined below.
- G. **General Terms and Conditions:** These General Terms and Conditions for E-Rate.
- H. **Licensed Software:** Computer software or code provided by META or required to use the Services, including without limitation, associated documentation, and all updates thereto.
- I. **Network:** Consists of the META Equipment, facilities, cable associated with electronics and other equipment used to provide the Services.
- J. **Party:** A reference to META or the Customer; and in the plural a reference to both.
- K. **Enterprise Services Product Specific Attachment(s) ("PSA"):** The additional terms and conditions applicable to Services ordered by Customer under the Agreement.
- L. **Service(s):** A service provided by META pursuant to the Agreement.
- M. **Service Commencement Date:** The date(s) on which META first makes Service(s) available for use by the Customer.
- N. **Service Location(s):** The Customer on-premise location(s) where META provides the Service(s).
- O. **Service Term:** The duration of time (commencing on the Service Commencement Date) for which services are ordered, as specified on the Service Agreement Cover Page.
- P. **META:** The operating entity, affiliate, contractors, providers, assigns, or successor of any merger or organizational realignment of Metropolitan Educational Technology Association that provides the Services under the Service Agreement. References to META in the Limitation of Liability, Disclaimer of Warranties and Indemnification sections of this Agreement shall also include its directors, officers, employees, agents, licensors, successors, and assigns, as the case may be.
- Q. **META Equipment:** Any and all facilities, equipment or devices provided by META at the Service Location(s) that are used to deliver any of the Services including, but not limited to, 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 META Equipment.

II. Delivery of Service(s)

- A. **Access.** In order to deliver certain Service to Customer, META may require access, right-of-way, conduit, and/or other common room space ("Access"), both within and/or outside each Service Location. Customer shall provide an adequate environmentally controlled space and such electricity as may be required for installation, operation and maintenance of the META Equipment used to provide the Services within the Service Location. Customer shall be responsible for securing, and maintaining on an initial and ongoing basis during the applicable Service Term, such Access within a particular Service Location. In the event that Customer fails to secure or maintain such Access within a particular Service Location, META may cancel or terminate Service at such particular Service Location, without further liability, upon written notice to Customer. In such event, if META has incurred any costs or expense in installing or preparing to install the Service that it otherwise would not have incurred, a charge equal to those costs and expenses shall apply to Customer's final invoice for that particular Service Location. If META is unable to secure or maintain Access outside a particular Service Location, Customer or META may cancel or terminate Service at such particular Service Location, without further liability beyond the termination date, upon a minimum thirty (30) days' prior written notice to the other Party. In such event, META will be liable for any costs or expense for installing or preparing the Service. Any other failure on the part of Customer to be ready to receive Service, or any refusal on the part of Customer to receive Service, shall not relieve Customer of its obligation to pay charges for any Service that is otherwise available for use.
- B. **Hazardous Materials.** If the presence of asbestos or other hazardous materials exists or is detected at a Service Location or within the building where the Service Location is located, META may immediately stop providing Services until such time as such materials are removed. Alternatively Customer may notify META to install the applicable portion of the Service in areas of any such Service Location not containing such hazardous material. Any additional expense incurred by META as a result of encountering hazardous materials, including but not limited to, any additional equipment, shall be borne by Customer. Customer shall use reasonable efforts to maintain its property and Service Locations in a manner that preserved the integrity of the Services.
- C. **META Equipment.** At any time META may remove or change META Equipment in its sole discretion in connection with providing the Services. Customer shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any META Equipment or permit others to do so, and shall not use the META Equipment for any purpose other than that authorized by the Agreement. Customer is responsible for damage to, or loss of, META Equipment caused by its acts or omissions, and its noncompliance with this section, or by fire, theft or other casualty at the Service Location(s), unless caused by the gross negligence or willful misconduct of META.
- D. **Customer Provided Equipment ("CE").** META shall have no obligation to install, operate, or maintain CE. Customer shall have sole responsibility for providing maintenance, repair, operation and replacement of all CE, inside wiring and other Customer equipment and facilities on the Customer's side of the Demarcation Point. Neither META nor its employees, Affiliates, agents, contractors, or assigns, will be liable for any damage, loss or destruction to CE, unless cause by the gross negligence or willful misconduct of META. CE shall at all times be compatible with the Network as determined by META, in its sole discretion. In addition to any other service charges that may be imposed from time to time, Customer shall be responsible for the payment of services charges for visits by META's employees or agents to a Service Location when the service difficulty or trouble report results from the use of CE or Customer facilities.

III. Billing & Payment.

- A. **Charges.** Customer agrees to pay all charges associated with the Services. META purchases transport through a Bandwidth Service Provider. The cost of the transport from the Bandwidth Service Provider may vary and will be passed through directly to the Customer.
- B. **Taxes and Fees.** Except to the extent Customer provides a valid tax exemption certificate prior to the delivery of Service, Customer shall be responsible for the payment of any and all applicable taxes or fees.
- C. **Fraudulent Use of Services.** Customer is responsible for all charges attributable to Customer with respect to the Service(s), even if incurred as the result of fraudulent or unauthorized use of the Service. META may, but is not obligated to, detect or report unauthorized or fraudulent use of Service to Customer. META reserves the right to restrict, suspend or discontinue providing any Service in the event of fraudulent use of Customer's Service.
- D. **E-Rate Funding.** META makes no representations or warranties with respect to the eligibility or ineligibility of the Services or any Service component for federal e-rate support or for other governmental and quasi-governmental telecommunications/internet discounts or entitlements (collectively, "E-Rate Funding"). Customer expressly understands and agrees that it shall pay META one hundred percent (100%) of all non-recurring charges ("NRCs"), monthly recurring Service charges ("MRCs") and other amounts required under this Agreement in accordance with the payment intervals specified therein. Customer may not withhold or offset any such amounts on the basis of its actual or anticipated receipt of E-Rate Funding, except as otherwise set forth below. In the event that the Customer has received, or has been designated as a recipient of, E-Rate Funding for the Services, Customer will utilize the application customer-initiated reimbursement process relative to such E-Rate Funding. META shall have no obligation to discount or prorate its invoices or to take other action to process such E-Rate Funding, except to the extent specifically required by law and regulation, or except as otherwise set forth above or below. Notwithstanding this, META will reasonably assist Customer in the completion of those portions of the FCC Form 472 which, as a matter of law or regulation, are required to be completed by the service provider. In the event that the Parties have expressly agreed in writing to permit E-Rate Funding to be applied in the form of discounts to, or pro-ration of, Customer's invoices, META shall have no obligations under this agreement until Customer provides META the copy of the Notification and Acceptance of Form(s) 486 from the Universal Services Administrative Company, Schools and Libraries Division ("SLD"), approving Customer's eligibility for E-Rate Funding. If during the term of this Agreement Customer fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of the Agreement succeeding the first fiscal period, Customer may elect to (i) continue to receive Services under this Agreement, in which Customer shall remain bound by the terms and conditions set forth hereunder and remain responsible for all NRC and MRC for the remaining term of the Agreement, irrespective of E-Rate Funding status, or, (ii) terminate this Agreement upon written notice as of the beginning of the fiscal year for which funds are not appropriated or otherwise made available. The effect of termination of the Agreement hereunder will be to discharge both META and the Customer from future performance of the Agreement. However, META shall be reimbursed for any and all unpaid non-recurring charges, any unpaid past due balance(s), any remaining contractual obligations incurred by META on Customer's behalf including the for transport fees from the Bandwidth Service Provider. Customer shall notify META in writing within thirty (30) days of fiscal budget denial indicating funds may not be available for the continuation of the Agreement for each succeeding fiscal period beyond the first year. In no event shall META initiate construction of the Network until proof of funding has been received, in whole or in part, based on 100% Customer-furnished funds or partially reimbursed funds by the SLD.

IV. Term

Service Term. The applicable Service Term shall be set forth on the Service Agreement Cover Page.

V. Termination Without Fault; Default

- A. 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, META may, as its option, terminate the Agreement; except that META will not take any such action as a result of Customer's non-payment of a charge subject to a timely billing dispute, unless META 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.
- B. Effect of Expiration/Termination of the Agreement. Upon the expiration or termination of the Agreement for any reason:
1. META shall disconnect the Service;
 2. META may delete all applicable data, files, electronic messages, or other information stored on META's servers or systems;
 3. Customer shall permit META to retrieve from the Service Location any and all META Equipment. If Customer fails to permit such retrieval or if the retrieved META Equipment has been damaged and/or destroyed other than by META or its agents, normal wear and tear expected, META may invoice Customer for the manufacturer's list price of the relevant META Equipment, or in the event of minor damage to the retrieved META Equipment, the cost of the repair, which amounts shall be immediately due and payable; and
 4. Customer's right to use applicable Licensed Software shall automatically terminate, and Customer shall be obligated to return all Licensed Software to META.
- C. Resumption of Service. If a Service has been discontinued by META for cause and Customer requests that the Service be restored, META shall have the sole and absolute discretion to restore such Service. At META's option, deposits, advanced payments, and/or nonrecurring charges may apply to restoration of Service.
- D. Regulatory and Legal Changes. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement upon its execution are based on applicable law and regulations as they exist on the date of execution of this Agreement.

VI. Limitation of Liability; Disclaimer of Warranties; Warnings**A. Limitation of Liability.**

1. THE AGGREGATE LIABILITY OF META FOR ANY AND ALL LOSSES, DAMAGES AND CAUSES ARISING OUT OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE PERFORMANCE OF SERVICE, AND NOT OTHERWISE LIMITED HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED DIRECT DAMAGES EQUAL TO THE SUM TOTAL OF PAYMENTS MADE BY CUSTOMER TO META DURING THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT FOR WHICH DAMAGES ARE CLAIMED. THIS LIMITATION SHALL NOT APPLY TO META'S INDEMNIFICATION OBLIGATIONS AND CLAIMS FOR DAMAGE TO PROPERTY AND/OR PERSONAL INJURIES (INCLUDING DEATH) ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF META WHILE ON THE CUSTOMER SERVICE LOCATION.
2. CUSTOMER AGREES TO INDEMNIFY AND HOLD META, ITS GOVERNING BOARD MEMBERS, OFFICERS, MEMBERS, EMPLOYEES AND/OR AGENTS HARMLESS FROM ANY

CLAIMS, SUITS, LIABILITY, LOSS, EXPENSES AND/OR DAMAGES, INCLUDING ALLEGED COPYRIGHT, TRADEMARK, PATENT, DATA AND OTHER INTELLECTUAL PROPERTY CLAIMS, SUSTAINED BY ANY PERSON BY REASON OF ANY ACT OF CUSTOMER OR ITS USERS IN THEIR ACTIVITIES INVOLVING USE OF META'S NETWORK.

B. Disclaimer of Warranties.

1. Services shall be provided pursuant to the terms and conditions in the Service Agreement Cover Page, and are in lieu of all other warranties, express, implied or statutory, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. To the maximum extent allowed by law, META expressly disclaims all such express, implied and statutory warranties.
2. Without limiting the generality of the foregoing, META does not warrant that the Services, META Equipment, or Licensed Software will be uninterrupted, error-free, or free of latency or delay, or that the Services, META Equipment, or Licensed Software will prevent unauthorized access by third parties.
3. In no event shall META, 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 or other harmful feature or from any attempt to remove it. Customer is advised to back up all data, files and software prior to the installation of Service and at regular intervals thereafter.

C. Disruption of Service.

1. Notwithstanding any identified performance standards, the Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe 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"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required.
2. Customer's sole and exclusive remedies are expressly set forth in the 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 META is limited to the maximum extent permitted by law.

VII. Software & Services

- A. License. If and to the extent that Customer requires the use of Licensed Software in order to use the Services, Customer shall have a personal, nonexclusive, nontransferable, and limited license to use such Licensed Software in object code only and solely to the extent necessary to use the applicable Service during the corresponding Service Term. All Licensed Software provided to Customer, and each revised version thereof, is licensed (not sold) to Customer by META only for use in conjunction with the Service. Customer may not claim title to, or an ownership interest in, any Licensed Software (or any derivations or improvements thereto), and Customer shall execute any documentation reasonably required by META, including, without limitation, end-user license agreements for the Licensed Software. META 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.
- B. 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 META; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.

- C. Updates. Customer acknowledges that the use of Service may periodically require updates and/or changes to certain Licensed Software resident in the META Equipment or CE. If META has agreed to provide updates and changes, such updates and changes may be performed remotely or onsite by META, at META's sole option. Customer hereby consents to, and shall provide free access for, such updates deemed reasonably necessary by META. If Customer fails to agree to such updates, META will be excused from and any and all liability and indemnification obligations regarding the applicable Service.
- D. Export Law and Regulation. Customer acknowledges that any products, software, and technical information (including, but not limited to, services and training) provided pursuant to the Agreement may be subject to U.S. export laws and regulations. Customer agrees that it will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by META, Customer also agrees to sign written assurances and other export-related documents as may be required for META to comply with U.S. export regulations.
- E. Ownership of Telephone Numbers and Addresses. Customer acknowledges that use of certain Services does not give it any ownership or other rights in any telephone number or Internet/on-line addresses provided, including but not limited to Internet Protocol ("IP") addresses, e-mail addresses and web address.
- F. Intellectual Property Rights in the Services. Title and intellectual property rights to the Services are owned by META, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material. The copying, redistribution, bundling or publication of the Services, in whole or in part, without express prior written consent from META or other owner of such material is prohibited.

VIII. Confidential Information and Privacy

- A. Disclosure and Use. All Confidential Information disclosed by either Party 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, rendering the Services, and marketing related products and services (provided that in all cases the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure); 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. The Parties agree that, while not preventing compliance with applicable regulations, the Customer will not share confidential information subject to open records or other "sunshine laws" without a valid records request. Confidential information not subject to open records or other "sunshine laws" shall not be shared without prior written consent of the other Party.
- B. 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.
- C. Publicity. The Agreement provides no right to use any Party's or its affiliates trademarks, service marks, or trade names, or to otherwise refer to the other Party in any marketing, promotional, or advertising materials

or activities. Neither Party shall issue any publication or press release relating to, or otherwise disclose the existence of, the terms and conditions of any contractual relationship between META and Customer, except as permitted by the Agreement or otherwise consented to in writing by the other Party. Notwithstanding the foregoing, META may include Customer's name on META's customer lists together with a description of Services purchased (financial terms not to be disclosed). If Customer wishes to remove Customer's name from such list or to limit the foregoing use of Customer's name, Customer may contact META as set forth in the Section titled "Notices" of these General Terms and Conditions and META will effect such removal.

- D. Remedies. Notwithstanding any other Section of this Agreement, the non-breaching Party shall be entitled to seek equitable relief to protect its interests pursuant to this Section including but not limited to injunctive relief.
- E. Monitoring of Services. META 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 META 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 META, or in emergencies when physical safety is at issue, and that META may disclose the same to the extent necessary to satisfy any law, regulation, or governmental request. META 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 META 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.
- F. Survival of Confidentiality Obligations. The obligations of confidentiality and limitation of use described in this Section shall survive the expiration and termination of the Agreement for a period of two (2) years (or such longer period as may be required by law).

IX. Use of Service; Use and Privacy Policies

- A. Prohibited Uses and META Use Policies. Customer and Customer's Users are prohibited from using, or permitting the use of, any Service (i) for any purpose in violation of any law, rule, regulation, or policy of any government authority; (ii) in violation of any Use Policy (as defined below); (iii) for any use as to which Customer has not obtained all required government approvals, authorizations, licenses, consents, and permits; or (iv) to interfere unreasonably with the use of META service by others or the operation of the Network. Customer is responsible for assuring that any and all of Customer's Users comply with the provisions of the Agreement. META 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 Customer's Users, if META determines that such use is prohibited as identified herein, or information does not conform with the requirements set or META reasonably believes that such use or information may violate any laws, regulations, or written and electronic instructions for use.
- B. 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.
- C. Privacy Note Regarding Information Provided to Third Parties. META is not responsible for any information provided by Customer to third parties. Such information is not subject to privacy provisions of this Agreement. Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services.

- D. Prohibition on Resale. 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.
- E. Violation. Any breach of this Section Use of Service; Use and Privacy Policies shall be deemed a material breach of this Agreement. In the event of such material breach, META shall have the right to restrict, suspend, or terminate immediately this Agreement without liability on the part of META, and then to notify Customer of the action that META has taken and the reason for such action, in addition to any and all other rights and remedies under this Agreement.

X. Miscellaneous Terms

- A. Force Majeure. Neither Party (and in the case of META, META affiliates and subsidiaries) 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, acts of regulatory or governmental agencies, unavailability of right-of-way, unavailability of right-of-way or materials, of other causes beyond the Party's reasonable control, except that Customer's obligation to pay for Services provided under the Agreement shall not be excused. Changes in economic, business or competitive condition shall not be considered force majeure events.
- B. Assignment or Transfer. Customer shall not 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. All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Nothing herein is intended to limit META's use of third-party consultants and contractors to perform the Service.
- C. Notices. Any notice sent pursuant to the Agreement shall be deemed given and effective when sent by facsimile (confirmed by first-class mail), or when delivered by overnight express or other express delivery service, in each case as follows: (i) with respect to Customer, to the address set forth on the Service Agreement Cover Page; or (ii) with respect to META to: Attn: Tim Snyder, META, 100 Executive Drive, Marion, Ohio 43302. Each Party shall notify the other Party in writing of any changes in its address listed on the Service Agreement Cover Page.
- D. Entire Understanding. The Agreement, together with any applicable Tariffs, 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 Services. Any prior representations, promises, inducements, or statements of intent regarding the Services that are not embodied in the Agreement are of no effect. No subsequent agreement among the Parties concerning Service shall be effective or binding unless it is made in writing by authorized representatives of the Parties. Terms or conditions or restrictive endorsements or other statements on any form of payment, shall be void and of no force or effect.
- E. Construction. In the event that any portion of the 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 the Agreement shall remain in full force and effect.
- F. Survival. The rights and obligations of either Party that by their nature would continue beyond the expiration or Agreement shall survive termination or expiration of the Agreement.
- G. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

- H. 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.
- I. Parties' Authority to Contract. The persons whose signatures appear below are duly authorized to enter into the Agreement on behalf of the Parties name therein.
- J. No Waiver, Etc. No failure by either Party to enforce any rights hereunder shall constitute a waiver of such right(s). This Agreement may be executed in counterpart copies.
- K. Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.
- L. 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.
- M. 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.