**Network Services Agreement 25-XXX**

**Addendum 04 - Broadband ISP Services**

This Addendum sets forth the terms governing all Broadband ISP services provided pursuant to an awarded Statement of Work (SOW). The Contractor represents that the Services provided under such SOW shall be performed in a manner consistent with the following terms. This Addendum incorporates by reference the Network Service Agreement (the “NSA”). Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to them in the NSA. Nothing in this Addendum shall be construed to impose any obligations on Contractor with respect to Broadband ISP services provided to third parties (i.e., parties other than WaTech and WaTech Users).

# Definition of Terms

**“Broadband”** provides internet access that is always on and faster than the traditional dial-up access. Broadband technology can support a wide range of frequencies; it is used to transmit data, voice and video over long distances simultaneously. Broadband will have a minimum connection with speeds of 25 megabits down and 3 megabits up. Types of broadband include: digital subscriber lines (DSL), such as the asymmetrical digital subscriber line and symmetrical digital subscriber line, cable modems, and fiber.

**“Broadband ISP**” shall mean any high-speed Internet access that is always on and faster than traditional dial-up access.

"**Service Interruption**" shall mean a break in transmission that renders the Service unusable for transmission and reception.

“**TLA Period**” shall mean the period remaining in a Service Term for which WaTech may be assessed a fee due to an early termination of an applicable Statement of Work not due to a termination by WaTech pursuant to Section 56, Section 58, Section 59 or Section 60 of the NSA.

# Statement of Work (“SOW”)

## All Services shall be performed pursuant to the terms of this Contract and shall be documented in an SOW or other order document established between WaTech and Contractor*.*

## No work shall be performed by Contractor until:

## A SOW is executed by Contractor and WaTech and

## The executed SOW is received by Contractor and

## WaTech electronically sends a Tech Order to the Contractor

## ASV will deliver all signed SOW documents electronically to WaTech.

## If the ASV fails to sign and electronically return the SOW for more than thirty (30) days from WaTech sending the SOW, the ASV may be cancelled with respect to such SOW. Multiple failures to timely return a signed SOW may consistute in a material breach and termination of this Technical Addendum in WaTech’s sole discretion. Without limiting the foregoing, the parties acknowledge and agree that a failure, or multiple failures, to return a signed SOW shall not constitute a material breach of the NSA or grant WaTech a right to terminate the NSA.

## A SOW’s initial Service Term shall be thirty six (36) months, commencing upon the Effective Date of the Service Acceptance unless otherwise set forth in the WaTech Procurement Document.

# Supplemental Bandwidth

WaTech may request potential upgrade options for service in addition to the initial request in the WaTech Procurement Document. WaTech Procurement Document responses shall include potential upgrade options listed as supplemental bandwidths.

# Termination Liability Assessment (“TLA”)

## TLA Assessment

## Termination Liability Assessment (“TLA”) for Services will be two thousand dollars ($2,000) per service location.

# Broadband ISP service requirements

## Modem

## Contractor must include Modem (DOCSIS 3.1 or better) when the proposed solution is delivered over cable as part of the offering included in the MRC.

## IP Address

## Contractor must include one static IP address as part of the solution.

## No Blocking

## Contractor shall not block lawful content, applications, services, or non-harmful devices subject to reasonable network management.

## No Throttling

## Contractor shall not impair or degrade lawful internet traffic on the basis of Internet content application, or service, or use a non-harmful device, subject to reasonable network management.

## No Paid Prioritization

## Contractor shall not engage in Paid Prioritization, defined as the management of a broadband provider’s network to directly or indirectly favor some traffic over the other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management either (a) in exchange for consideration (monetary or otherwise) from a third party or (b) to benefit an affiliated entity (as set forth in Section 5.6).

## No Affiliate Prioritization

## Vendor shall not engage in Affiliated Prioritization, defined as the management of a broadband provider’s network to directly or indirectly favors some traffic over the other traffic, including through use of  techniques such as traffic shaping, prioritization, or resource reservation, to benefit an affiliate.

## Reasonable Network Management

## A reasonable network management practices means a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if its primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband internet access service. Contractor shall disclose its reasonable network management practices; provided, that, WaTech acknowledges and agrees that the disclosures made by Contractor pursuant to FCC rules, 47 C.F.R. § 8.1 and available on a Contractor webstie available to the public shall shall satisy such disclosure obligation.

# Equipment

## Equipment return

## Upon termination of a Service for any reason, Contractor, WaTech and the applicable WaTech User shall cooperate in the return and/or retrieval of the applicable Broadband ISP Equipment.

## Equipment capabilities

## If Contractor provides any hardware that allows a modem to be used as a wireless gateway or public access point (a “Wireless Function”). then, Contractor shall either:

## (i) ensure that the Wireless Function with respect to such modem is turned-off ; or (ii) provide WaTech and/or the WaTech User with access to a Contractor portal which will allow WaTech (A) to monitor whether the Wireless Function on any such modem is turned on or off and (B) to turn such Wireless Function on or off with respect to any such modem.

# Service Installation

## Service Installation – Commercially Reasonable Efforts

## Contractor shall use commercially reasonable efforts to provision the Services on or before the expiration of the Guaranteed Install Interval set forth in the applicable SOW (the “Guaranteed Install Interval”); provided, however, that Contractor’s failure to provision the applicable Services by the expiration of the Guaranteed Install Interval shall not constitute a breach of the NSA or this Addendum. The Guaranteed Install Interval shall commence when WaTech electronically sends the Tech Order to the Contractor. Tech Orders shall be provided to the Contractor within seven (7) days after receipt of the signed SOW.

## Remedies for Missed Guaranteed Install Interval

## Subject to Section 7.2(c), for every each 30 days past the expiration date of the Guaranteed Install Interval that the applicable Service is not delivered to WaTech, Contractor will credit WaTech’ss account one (1) months MRC for the applicable Service; provided, that, the maxium credit that Contractor shall be obligated to grant for failiure to install a Service within the Guaranteed Install Interval shall be three (3) months MRC applicable to such Service. The Parties acknowledge and agree that, because of the unique nature of the Services contemplated by this SOW, it is difficult or impossible to determine with precision the specific amount of damages that might be incurred by WaTech or any WaTech User as a result of a failure of Contractor to meet the Service Level Agreements.

## It is further understood and agreed by the Parties that WaTech shall be damaged by such failure of Contractor to meet the Guaranteed Install Interval and that any remedies that become payable under this section are not penalties, are fair and reasonable under the circumstances, and that such payments represent a reasonable estimate of fair compensation.

## Notwithstanding anything to the contary contained in Section 7.2, Contractor shall have no obligation to grant WaTech a credit for its failure to provision a Sevice within the Guaranteed Install Interval if such failure is related to, associated with, or caused by: WaTech or WaTech User actions or inactions; any third party not contracted through Contractor; reasons beyond Contactor’s reasonable control; or a Force Majeure Event.

## Without limitation to Section 7.2(a), if (i) Contractor fails to provision a Service prior to the expiraiton of the applicable Service Interval and (ii) such failure is not due to any of the causes set forth in Section 7.2(c), then, at anytime prior to the time that Contractor provisions such Service, WaTech may terminte such Service upon written notice to Contractor without penalty.

## Service Installation Fees

## Except as may be otherwise agreed by the Parties in the applicable Statement of Work, Contractor shall not charge fees for any re-performance made necessary because of Contractor’s error or breach of contract, or to remedy any non-conformity as may be designated by WaTech.

## Contractors are responsible for installation of service to the location specified in the WaTech Procurement Document and all costs associated with said installation must be included in the Contractor’s Response. Any additional costs not stated in its Response shall be borne by Contractor.

## Weekly Updates

## The Contractor will provide weekly updates detailing the progress made for service installation with estimated timeframes for major milestones. These updates will be delivered via email.

## Contractor Demarcation Point

## If WaTech requests an extended Contractor Demarcation Point – Contractor is responsible for installing, maintaining, and servicing of the extended demarc including but not limited to cabling, telecommunications equipment, and any work done by a Subcontractor.

## Circuit Handoff

## Unless otherwise stated in the WaTech Procurement Document, all tail Broadband circuits will be deliveredvia RJ-45 connector .

## Upload/Download Speeds

## If WaTech determines, in good faith, that the upload/download speeds of a given Service are not materially meeting the speeds ordered, it may notify Contractor thereof and the parties shall cooperate in good faith in an attempt to resolve the issue. If (i) Contractor and WaTech are unable to resolve the issue within two (2) weeks of WaTech notifying Contractor of the same and (ii) the failure of the Service to provide the ordered upload/download speeds is not due to actions or inactions of WaTech, a WaTech User or their respective users, WaTech may terminate the applicbale Service upon ten (10) days written notice to Contractor without penalty. For the avoidance of doubt, the parties ackowledge that (A) actual upload/download speeds will vary depending on the amount of users using the service and the type and quanity of data they are downloading and/or transmitting and (B) the failure of the upload/download speeds to meet the quoted speeds due to any such use shall be considered “due to the actions or inactions of WaTech, a WaTech User or their respective users.”

# Invoices

## In addition to the requirements addressed in Section 10 of the NSA, Invoice and Payment, Contractor agrees to the following provisions related to invoices:

## Contractor shall itemize all charges, taxes, and fees per circuit. In the event of multiple sites, the Contractor must itemize fees per circuit. This information may be itemized directly on the invoice or provided as supplemental documentation attached to the invoice as long as the requirements are met.

## All invoices must be delivered as an "E" bill in a standard paper (.pdf) format

## All invoices must include all applicable taxes.

## Billing shall commence after the circuit has been delivered to the location specified by WaTech in the applicable SOW.

## Contractor shall calculate applicable disconnect date and associated billing, Termination Liability and other allowable fees based on the date the disconnection is requested by WaTech.

# Technical Requirements

The parties acknowledge and agree that it is the intent of the parties that a Service will be provided and available 24/7/365, it being understood that there may be Service Interruptions and that the remedies for the same shall be as set forth herein.

# Service Repair and Trouble Reporting

The following applies to the provisioning of Services to WaTech and WaTech Users provided under this Addendum:

## Response to Trouble Reports

## Contractor must provide a toll-free trouble reporting number to WaTech.

## Contractor must provide support for the Services delivered including twenty four (24) hours a day, seven (7) days a week, three hundred sixty five (365) days per year call center.

# Service Level Remedies

In addition to the terms set forth in this Contract, Contractor shall use best efforts to perform the Services in accordance with the Service Level Agreements, as set forth in herein.

In the event a Service experiences a Service Interruption, WaTech shall be entitled to Service Level Credits as required by the “Service Level Credits” section below which WaTech may apply against payment of the fees and charges payable by the WaTech to Contractor in a subsequent calendar month.

In the event that this Contract expires or terminates, Contractor shall pay an amount equal to any unused credits to WaTech within thirty (30) days after such termination or expiration.

The Parties acknowledge and agree that, because of the unique nature of the Services contemplated by this Contract, it is difficult or impossible to determine with precision the specific amount of damages that might be incurred by WaTech or any WaTech User as a result of a Service Interruption.

It is further understood and agreed by the Parties that WaTech shall be damaged by Service Interruptions, and that any credits that become payable in the nature of Service Level Credits are not penalties, are fair and reasonable under the circumstances, and that such payments represent a reasonable estimate of fair compensation.

Service Level Credits shall be applied to the account within two billing cycles from which the month that applicable Service Interruption occurred. Award of the credit in no way relieves the Contractor of responsibility to correct any Service Interruption.

Service Level Credits shall constitute the sole remedy for WaTech with respect to Service Interruptions, outage, unavailability, delay or other degradation in the Services or any Contractor failure to meet the objectives of the Services; provided, that, the foregoing shall not limit WaTech’ss right to terminate a Chronic Service pursuant to Section Titled “*Termination for Default*” of the NSA.

# Service Level Credits

## Contractor will provide a pro-rata credit against future payment of the net monthly recurring charge for a Service Interruption, except as specified below or as may otherwise be legally required (a “Service Level Credit”). For the purposes of calculating a Service Level Credit allowance, the Service Interruption period begins when WaTech reports an interruption in the portion of the Service to Contractor, a trouble ticket is opened, and the Service is released to Contractor for testing and repair. The Service Interruption ends when the affected portion of the Service has been restored and Contractor has closed the trouble ticket. Service Interruption time does not include interruptions of less than thirty (30) minutes’ duration. Service Level Credits will be as follows:

|  |  |
| --- | --- |
| **Length of Service Interupption**  | **Amount of Service Level Credit** |
| At least 4 hours and up to and including 24 hours | 1 full day |

## The total number of Service Level Credit allowances per month shall not exceed the total monthly recurring charge for the affected Service. Credit allowances will not be made for less than $1.00, unless required under applicable law.

## Nothwithstanding anything to the contrary contained in Section 11.1 or this Addendum, a Service Interruption shall not qualify for Service Level Credits if such Service Interruption is related to, associated with, or caused by: scheduled maintenance events; WaTech or WaTech User(s) actions or inactions; WaTech or WaTech User provided power or equipment; any third party not contracted through Contractor, including, without limitation, WaTech’ss or WaTech Users’ users, third-party network providers; any power, equipment or services provided by third parties; or an event of force majeure as defined in the NSA, unless otherwise provided under applicable law.

# Proprietary or Confidential Information

Any information contained in the Contractor’s Response to a WaTech Procurement Document that is proprietary or confidential must be clearly designated as such. Marking of the entire Response or entire sections of the Response as proprietary or confidential will not be accepted nor honored. WaTech will not accept Responses in which pricing is marked proprietary or confidential, and the Response will be rejected.

To the extent consistent with chapter 42.56 RCW, the Public Disclosure Act, WaTech shall maintain the confidentiality of the Contractor’s information marked confidential or proprietary. If a request is made to view Contractor’s proprietary information, WaTech will notify the Contractor of the request and of the date that the records will be released to the requester unless the Contractor obtains a court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, WaTech will release the requested information on the date specified.

The State’s sole responsibility shall be limited to maintaining the above data in a secure area and to notify the Contractor of any request(s) for disclosure for so long as WaTech retains the Contractor’s information in WaTech records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by the Contractor of any claim that such materials are exempt from disclosure.

# Privacy Protections

At a minimum, Contractor shall adhere to any applicable privacy, transparency and security laws designed to protect the privacy of customer information and deploy measures that both directly protect consumers from harm and minimize the consumer concerns about using the Internet that could deter broadband deployment. Contractor shall adopt practices appropriately calibrated to the nature and scope of its activities, the sensitivity of the underlying data, the size of the provider and the technical feasibility.

# Prohibited Uses and Privacy Policy.

## Resale

## WaTech and WaTech User 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. For purposes of this addendum, use and provisioning of the Services consistent with WaTech’s provider status in accordance with RCW 43.105 do not breach any term of this agreement or this subsection.

# Limitation of Liability; Disclaimer of Warranties

## NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE NSA OR THIS ADDENDUM, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY LOSS, DAMAGE OR CLAIM ARISING OUT OF OR RELATED TO: (1) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (2) ANY ACT OR OMISSION OF WaTech, WaTech USERS, THEIR RESPECTIVE USERS OR THIRD PARTIES; (3) INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY WaTech, WaTech USERS OR THIRD PARTIES; OR (4) LOSS OR DESTRUCTION OF ANY WaTech OR WaTech USERS HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT. WaTech AND WaTech USERS ARE SOLELY RESPONSIBLE FOR BACKING UP THEIR RESPECTIVE DATA, FILES, AND SOFTWARE PRIOR TO THE INSTALLATION OF SERVICE AND AT REGULAR INTERVALS THEREAFTER.

## THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT WITH RESPECT TO THE SERVICES, CONTRACTOR EQUIPMENT, OR CONTRACTOR SOFTWARE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONTRACTOR DOES NOT WARRANT THAT THE SERVICES, CONTRACTOR EQUIPMENT OR SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF LATENCY OR DELAY, OR THAT THE SERVICES, CONTRACTOR EQUIPMENT, OR CONTRACTOR SOFTWARE WILL MEET WaTech REQUIREMENTS, OR THAT THE SERVICES, CONTRACTOR EQUIPMENT, OR CONTRACTOR SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES. Customer acknowledges and agrees that the Services are not fail-safe and are not designed or intended for use in situations requiring failsafe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property or environment.

The Effective Date of this Technical Addendum shall be the date of last signature below.

|  |  |  |
| --- | --- | --- |
| **Approved** |  | **Approved** |
| State of WashingtonWashington Technology Solutions |  |  Vendor |
|   |  |  |
| *Signature* |  | *Signature* |
|  |  |  |
| *Print or Type Name Date* |  | *Print or Type Name Date* |
|  |  |  |
| *Title* |  | *Title*  |

***Broadband ISP Addendum Statement of Work Template***

This Statement of Work (SOW) 04-25-XXX is made and entered by and between the State of Washington, Washington Technology Solutions (“WaTech”), and *xxxxxxxxxx xxxxxxxx*(“Contractor”), collectively referred to as “Parties” pursuant to Section xxxxxxx of that certain contract No. xxxxxxxxxxxx for Broadband ISP Services.

**Recitals**

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows. Unless otherwise defined, capitalized terms in this Amendment have the meanings ascribed to them in the Contract. The terms and conditions of the Network Services Agreement, and Broadband ISP Addendum are hereby restated and incorporated by reference in their entirety.

1. **Term:**

The Service Term shall be thirty six (36) months, commencing upon the date of the Service Acceptance. (delete and replace with the shorter term if stated on the WaTech Procurement Document document.)

For any period shorter than thirty six (36) months, WaTech will specify a superseding period in the WaTech Procurement Document (example is six [6] months).

This SOW shall be effective as of the date executed by WaTech (the “Effective Date”) and continue in full force and effect for the duration of the Service Term measured from the Service Acceptance for each site covered by this SOW.

1. **Service Delivery Locations.**

Contractor agrees to provide, at all times during the Term of this SOW, Broadband ISP Services at the throughput, price, and between the endpoints specified in Exhibit 1 unless otherwise agreed upon by the Parties in an amendment to this SOW.

1. **Special Terms:**
	1. (Special Instructions from the RFP, Special Handoff – if requested, background check if required, etc.)
2. **Contractor’s Response.**
	1. A copy of Xxxxx’s response to the WaTech’s Procurement resulting in this award is attached as Exhibit 2 as is incorporated by reference as if fully set forth herein.
	2. In the event the Parties need to exercise any options available on the procurement but not accepted in this SOW, the Parties will execute an amendment reflecting the exercise of said options.
	3. In the event of a conflict between the Response and this SOW, the SOW prevails.

***In Witness Whereof***, the Parties hereto, having read this Statement of Work to Contract Number *xxxxxxxxxxxxxxxxxx* in its entirety, do agree thereto in each and every particular.

|  |  |  |
| --- | --- | --- |
| **Approved** |  |  |
|  |  |  |
|  |  |
|  | *Signature* |
|  |  |
|  | *Print or Type Name* |
|  | *Title Date* |

Exhibit 1

SOW Site Purchases

**Current Example:**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **WaTech User Site** | **Address** | **City** | **Upload Speed Mb** | **Download Speed Mb** | **Guaranteed Install Interval** | **MRC** | **NRC** |
| AgencyXXXX | 1234 W 1st Street | City Name | 100 | 100 | 30 days | $750.00 | $0 |

Exhibit 2

Contractor Response to WaTech Procurement Number ------------

**Exhibit 3**

**Broadband ISP Tech Order**