THIS AGREEMENT is entered into by and between, Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas ("Customer"), and SmartCom Telephone, LLC ("SmartCom"), for the purpose of establishing the terms and conditions under which SmartCom will provide data service. SmartCom reserves the right to refuse service.

SERVICE TO BE PROVIDED. SmartCom, under the terms of this agreement will provide to Customer the selected application of services of the following type(s):

<table>
<thead>
<tr>
<th>Location Name</th>
<th>Service</th>
<th>Demarc Information</th>
<th>Monthly Recurring Cost (MRC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>McAllen - Tres Lagos PO # AB0338672</td>
<td>10 Gbps Metro-E</td>
<td>A: 6200 Tres Lagos Blvd, McAllen, TX (Fiber Handhole, FM 1925 &amp; Wallace Rd) B: 600 Ash Avenue, McAllen, TX</td>
<td>$799.00</td>
</tr>
</tbody>
</table>

Total Monthly Recurring*: $ 799.00
Installation fees (non-recurring): $ 0.00

*Plus any applicable Taxes or regulatory fees

TERMS OF THE AGREEMENT. This Agreement shall be in effect for an initial term of thirty-six (36) months, commencing on completion and handoff to customer. At the end of this initial term if a new term agreement is not entered into within 30 days, the service will revert to a “month-to-month” service agreement. The monthly service charges may increase to the then-current rate, unless prior to the end of the initial term either party notifies the other, in writing, of their intent to terminate the agreement. The term of this Agreement shall not exceed a total of five (5) years.

CHANGES TO SERVICE. A move of service will be considered as a “disconnect” and a new installation. Charges for new service will apply.

PAYMENT SCHEDULE. At the time of the first bill, the Customer will be billed Non-Recurring (Installation) charges, as well as the appropriate monthly recurring charges ("MRC") for the service(s) ordered. All billing for services is done in advance. Title to any premise equipment supplied by SmartCom shall remain the property of SmartCom. To the extent authorized under Texas law, Customer assumes the risk of loss or damage of the equipment upon delivery to Customer’s location.

Monthly service charges are due and payable upon receipt of statement. Failure to pay monthly service charges shall give SmartCom the right, without liability, to temporarily disconnect service. To restore service will require payment of any unpaid balance and a reconnect charge. The charge for reconnecting is $50.00 per site. If service is not
restored within ten (10) calendar days, the service will be permanently disconnected. To restore service after permanent disconnect, pre-payment of full unpaid balance, early termination charge, and new installation charges will apply.

**RETURNED CHECKS.** A returned check will be considered non-payment of the account. A $35.00 processing fee will be charged on all returned checks.

**APPROPRIATE USE.** Appropriate use of SmartCom Services. Customer agrees to maintain all passwords as private and confidential information. Customer agrees to use its SmartCom account in a way that conforms to all applicable laws and regulations. Customer understands that violation of certain generally accepted guidelines on Internet usage, such as restrictions on mass e-mailings (Spam) and advertising, or posting to inappropriate newsgroups, may cause severe operating difficulties for SmartCom, and would be a likely cause for the termination of Customer’s account. Customer specifically agrees not to make any attempt to gain unauthorized access to any other systems or networks. Customer agrees to abide by SmartCom’s Subscriber Acceptable Use Policy which can be located at: http://smartcomtelephone.com/aup/

**INTERNET CONTENT.** Customer understands that the information available through SmartCom or interconnecting networks may not be accurate, including the content displayed on the SmartCom Desktop. Customer understands that the some of the information available through SmartCom or interconnecting networks may be intended for adult audiences. Any filtering of internet content will be the sole responsibility of Customer.

**IP ADDRESS.** IP Blocks that are assigned by SmartCom are for Customer use only, and it is understood that SmartCom will not guarantee routing of any IP’s of any user other than those assigned to the Customer. IP addresses issued by SmartCom are not portable and remain the property of SmartCom. If the Customer discontinues service with SmartCom, SmartCom will bear no responsibility or liability for any actions or costs incurred by Customer in obtaining or reconfiguring its equipment with new IP addresses.

**SECURITY POLICY.** Customer understands that internetworking communications are not secure, and may be subject to interception or loss. SmartCom makes no warranties of any kind, either expressed, implied, or statutory concerning the data or information available through the use of its SmartCom network. Customer understands that the use of its SmartCom account, and any data or information accessed using that account, will be completely at its own risk. Customer is responsible for its network security. To the extent authorized under Texas law, SmartCom will not be liable for damages arising out of unauthorized access to Customer’s network.

**CUSTOMER PROVIDED EQUIPMENT (CPE).** SmartCom is not responsible for equipment purchased/installed by Customer. SmartCom will not work on, or open any Customer-owned or personal computers. Any equipment purchased from SmartCom becomes Customer Provided Equipment (CPE) upon installation.
INSTALLATION. Prior to installation, Customer is responsible for ensuring that their computers are configured for network connection. SmartCom will provide/install the service to the SmartCom-provided ethernet switch at the Customer's premises. Customer will provide any necessary 110vAC electrical power needed to operate premise equipment and will ensure that an uninterrupted power source ("battery backup") is available for said equipment. Interface to customer will be on a standard ethernet jack.

Customer acknowledges that if the installation address is not currently serviced by SmartCom-owned facilities, construction may be required which can take up to one hundred twenty (120) days even without any construction hindrance due to rights-of-way issues, permit acquisition, and other factors beyond the control of SmartCom. Installation dates and times will be determined and communicated to Customer. If technician is on site and access cannot be provided, Customer may be charged a $45.00 “no show” fee and rescheduling may result in a delay of service.

SERVICE DELIVERY. Actual data transmission or throughput may be lower due to Internet congestion, server or router speeds, protocol overheads, and other factors which SmartCom cannot control.

SERVICE CALLS. If SmartCom is called to the Customer site and it is determined that the problem is other than the SmartCom network or SmartCom-Provided interface device, a service fee of $85 will be charged for the first hour or any fraction thereof, and $25.00 for each additional half hour increment. The stated rates apply during regular business hours, out-of-hours; weekend and holiday rates will be higher.

EQUIPMENT WARRANTY: SmartCom-provided new modem/router equipment will be covered by the by the manufacturer’s warranty. During the one-year warranty period, SmartCom will support the modem/router for problems covered by the manufacturer’s warranty to include full replacement of the router, if necessary. Once the one-year warranty period has expired, SmartCom will no longer support problems with the T-1 or DSL modem/router. Any equipment furnished by SmartCom will be maintained at no cost to the Customer throughout the duration of this Agreement.

DELAY. SmartCom will not be liable for any delay in the delivery or installation of any service or for any damages suffered by Customer by reason of such delay is directly or indirectly caused by, or any manner arises from transportation delays or any other cause beyond the control of SmartCom.

CONSEQUENTIAL DAMAGES. To the extent authorized under Texas law, SmartCom is not responsible for any consequential damages resulting from failure of or suspension of services.

RIGHT TO MODIFY. SmartCom reserves the right to increase the monthly charge to customer if SmartCom's underlying carrier raises the cost it charges SmartCom to deliver the service to Customer's premise. Should such increase in monthly charges exceed 10% of the MRC, Customer may choose not to pay such increase in monthly charges and have service terminated at that time, abrogating this agreement and
releasing both parties from the terms set herein. This document supersedes any or all previous agreements, verbal or written. Periodic amendments to this agreement may be allowed and can be sent via electronic mail ("e-mail"). Should the parties agree to an amendment, such amendments shall be effective upon written execution of both parties.

**EARLY TERMINATION.** This Agreement may be terminated by a non-breaching party upon fourteen (14) days written notice to the breaching party which outlines the areas in which the breaching party is in default under The Agreement. If the breaching party fails to remedy the areas of default, the termination shall be effective fourteen (14) days after the receipt of the termination notice.

**ATTORNEY’S FEES.** To the extent authorized under Texas law, if either party commences an action against the other party to force the provisions of this Agreement, the prevailing party shall be entitled to recover from the losing party, reasonable attorney’s fees and cost of suit.

**SEVERABILITY.** If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**NO IMPLIED WARRANTIES.** The customer acknowledges that the services of the company are of such a nature that the services can be interrupted for many reasons other than the negligence of SmartCom, and that damages resulting from any interruption of the services are difficult to ascertain. To the extent authorized under Texas law, therefore, the customer agrees that SmartCom shall not be liable for any damages arising from the customer’s use of the system or the services. SmartCom makes no warranties of any kind, express or implied, with respect to the system or the services. SmartCom disclaims any warrant of merchantability, fitness for a particular purpose, or non-infringement with respect to the system and the services. To the extent authorized under Texas law, SmartCom shall not be liable to the user, or to any third party, for any loss or damage as a result of the use of the system or the services. This includes but is not limited to the loss of data resulting from delays, non-deliveries, mis-deliveries or service interruptions, whether caused by SmartCom’s own negligence, errors, omissions or otherwise.

To the extent authorized under Texas law, the liability of SmartCom for mistakes, omissions, interruptions, delays, errors, or defects in transmission shall not exceed an amount equivalent to the proportionate monthly recurring charge to the Customer for the period of service during which such events occur. No credit shall be allowed for an interruption of a continuous duration of less than two (2) hours. For purposes of determining service credits, a month shall be deemed to have seven hundred twenty (720) hours. Any credits will be offset against charges billed during the next month. Additional limitations on liability can be found in SmartCom’s current End-User tariff on file with the Public Utility Commission of Texas. Customer agrees to the additional limitations on liability to the extent authorized under Texas law.
FORCE MAJEURE. Neither party is liable for failure to perform their obligations if such failure is a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. Neither party is entitled to terminate this Agreement due to such circumstances.

VENUE. Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against Customer shall be in Brazos County, Texas. This Agreement shall be construed according to the laws of the State of Texas.

STATE CONTRACTING REQUIREMENTS.
Delinquent Child Support Obligations. Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, SmartCom agrees that any payments owing to SmartCom under this Agreement may be applied directly toward certain debts or delinquencies that SmartCom owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Prohibited Bids and Agreements. Under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Products and Materials Produced in Texas. SmartCom agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Agreement, SmartCom will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

Public Information. SmartCom acknowledges that Customer is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Customer's written request, SmartCom will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to Customer in a non-proprietary format acceptable to Customer. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which Customer has a right of access. SmartCom acknowledges that Customer may be required
to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

**Dispute Resolution.** The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and SmartCom to attempt to resolve any claim for breach of contract made by SmartCom that cannot be resolved in the ordinary course of business. SmartCom shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Customer, who shall examine SmartCom's claim and any counterclaim and negotiate with SmartCom in an effort to resolve the claim.

**Conflict of Interest.** By executing and/or accepting this Agreement, SmartCom and each person signing on behalf of SmartCom certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by Customer or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

**Certification regarding Boycoting Israel.** Pursuant to Chapter 2270, Texas Government Code, SmartCom certifies SmartCom (1) does not currently boycott Israel; and (b) will not boycott Israel during the term of this Agreement. SmartCom acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, SmartCom certifies SmartCom (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. SmartCom acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Franchise Tax Certification.** If SmartCom is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then SmartCom certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that SmartCom is exempt from the payment of franchise (margin) taxes.

**State Auditor's Office.** SmartCom understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. SmartCom agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. SmartCom will include this provision in all contracts with permitted subcontractors.

**Non-Waiver.** SmartCom expressly acknowledges that Customer is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Customer of its right to claim such exemptions, privileges, and immunities as may be provided by law.

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Customer's Initials: [Signature]
Independent Contractor. For the purposes of this Agreement and all services to be provided hereunder, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statement, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing.

Representations & Warranties. If SmartCom is a business entity, SmartCom warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of SmartCom has been duly authorized to act for and bind SmartCom.

Notices. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonably means and will be effective when actually received. Customer and SmartCom can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

Customer: Texas A&M University
Department of Procurement Services
1477 TAMU
College Station, TX 77843-1477
Attention: Director
Phone: (979) 845-4570
Fax: (979) 845-3800

With a copy to: Texas A&M University
Department of Contract Administration
1182 TAMU
College Station, TX 77843-1182
Attention: Executive Director
Phone: (979) 845-0099
Fax: (979) 862-7130
Email: contracts@tamu.edu

SmartCom: SmartCom Telephone, LLC
600 Ash Avenue
McAllen, TX 78501
Phone: (956) 687-7070
Fax: (956) 213-1247
Insurance. SmartCom shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Customer. By requiring such minimum insurance, Customer shall not be deemed or construed to have assessed the risk that may be applicable to SmartCom under this Agreement. SmartCom shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. SmartCom is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to Customer at least ten (10) days before the effective date of the cancellation.

Coverage

A. **Worker's Compensation**
   Statutory Benefits (Coverage A)
   Employers Liability (Coverage B)
   $1,000,000 Disease/Employee
   $1,000,000 Disease/Policy Limit
   
   Workers’ Compensation policy must include under Item 3.A. on the information page of the workers’ compensation policy the state in which work is to be performed for Customer. Workers’ compensation insurance is required, and no “alternative” forms of insurance will be permitted.

B. **Automobile Liability**
   Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than $1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

C. **Commercial General Liability**
   Each Occurrence Limit $1,000,000
   General Aggregate Limit $2,000,000
   Products / Completed Operations $1,000,000
   Personal / Advertising Injury $1,000,000
   Damage to rented Premises $300,000
   Medical Payments $5,000

   The required commercial general liability policy will be issued on a form that insures SmartCom’s or its subcontractors’ liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.
Additional Endorsements

The Auto and Commercial General Liability Policies shall name The Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and Texas A&M University as additional insured's.

D. SMARTCOM will deliver to Customer:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by SmartCom under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation and employer's liability, will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and Texas A&M University as Additional Insureds up to the actual liability limits of the policies maintained by SmartCom. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and Texas A&M University. No policy will be canceled without unconditional written notice to Texas A&M University at least ten days before the effective date of the cancellation. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to Customer ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any required insurance policy.

Any deductible or self-insured retention must be declared to and approved by Customer prior to the performance of any services by SmartCom under this Agreement. SmartCom is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following Customer contact:

Department of Contract Administration
Texas A&M University
1182 TAMU
College Station, Texas 77843-1182
Facsimile: (979) 862-7130
Email: contracts@tamu.edu

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The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by Customer in writing.

EXECUTED this 7th day of November, 2018.

Signature

For Texas A&M University
Dean K. Endler
University Contracts Officer

Printed Name

Billing Address
Texas A&M University
750 Agronomy Road, Suite 1617
4481 TAMU
College Station, TX 77843-4481

Signature

For SmartCom Telephone, LLC

Printed Name

Installation Address
A: 6200 Tres Lagos Blvd., McAllen
(TAMU Fiber Handhole, FM 1925 & Wallace Rd)
B: 600 Ash Avenue, McAllen, TX

Contact Info
Rudy Supak
Associate Director - Networking
rsupak@tamu.edu
979-458-9800