

Memorandum of Understanding

**The Ohio State University on behalf of OARnet and the
OARnet Steering Committee (“OSTEER”)**

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Effective July 1, 2006

This Memorandum of Understanding (“MOU”) between The Ohio State University on behalf of OARnet (“OARnet”) and the Ohio institutions of higher education and research comprising the OARnet Steering Committee (“OSTEER”) exists, along with the supplemental “Term and Conditions” attached hereto as Exhibit A and incorporated herein by reference, to describe the terms under which OARnet provides services to academic institutions of higher education and research throughout Ohio. The MOU becomes effective beginning July 1, 2006 and will continue in effect until terminated in accordance with its terms.

OARnet

As the high-performance networking division of the Ohio Supercomputer Center (OSC), OARnet receives funding from the Ohio Board of Regents to support Network connectivity which includes commodity Internet, Internet 2, Intra Ohio and other network services for higher education in Ohio.

OSTEER

The OARnet Steering committee (OSTEER) is an advisory board that ensures OARnet’s policies and financial structure are consistent with member needs and reflect the ability and willingness of each institution to share the cost of a statewide network. OSTEER is responsible for interpreting the networking needs of its members to OARnet management.

1. OSTEER Activities

1.1. Governance; Control. It is understood that OSTEER and its member Institutions will be responsible for their ongoing governance and operations. OARnet does not have, and will not exercise, control over OSTEER meetings or operations. Each member institution has one voting member serve on the OSTEER committee.

1.2 Support Activities. OARnet will provide to OSTEER Institutions administrative support for meetings of OSTEER, as well as related committees that may be organized (such as the Executive Committee, OARtech, and the Internet2 Consortium). The specific services to be provided will be determined from time to time between OARnet and OSTEER, and the costs of providing such support will be included in calculating the OSTEER Basic Fee.

1.3 Reporting. OARnet will provide updates during the year which will include the following information:

- Accomplishments
- Financial Reports including:
 - Balance sheet and statement of cash flows for the previous Fiscal Year
 - Quarterly updates for the current and/or upcoming Fiscal Year
- Network Usage Statistics and Analysis
- Current traffic in total by state technology initiatives and commercial aggregate.
- Available additional services, the rates at which those services will be provided, the staff members providing such services, and related details
- Goals
- Projected traffic growth in total by state technology initiatives and commercial aggregate.
- Capacity plan for the following year and a forecast for the next two years, including the above components, input from member institutions, and other OARnet clients.
- Vision statement of the next five years

Services

2. Basic Services

The Basic Services provided by OARnet to the Institution are described in this Section 2.

2.1. Network Connectivity. OARnet will provide the Institution with single or multiple Internet connections, Intranet Ohio, Internet 2 and other network services with charges for each connection according to the current OSTEER rate schedule. Service will be provided between the Institution and OARnet hub which could include Internet-based access to the Internet and state technology initiatives.

2.1.1. Features of Basic Services – The following features are included with the Basic Services at no additional cost to the Institution or OSTEER:

- (a) OARnet will provide routine, reasonable network interface planning, engineering, and consulting support pursuant to guidelines negotiated by OARnet and OSTEER.
- (b) Unless otherwise agreed, OARnet will provide primary/secondary domain name service upon request, network time protocol (NTP), access to statistical reports for the Institution, and Internet addresses .
- (c) OARnet will assist in identifying and providing reasonable support to Institutions in connection with the preparation of grant applications or other initiatives by the Institution to seek third party funding for Basic Services, Service Upgrades or expanded uses of the Internet connection, or related communication services.
- (d) OARnet will maintain network operations support for the Institutions on a 7/24/365 basis (seven days a week, 24 hours a day, 365 days per year). The Institutions will comply with reasonable procedures established from time to time by OARnet to best assure the ability of OARnet to diagnose, maintain and correct disruptions in Internet services. A description of OARnet's operations support, procedures and related matters is available upon request to the OARnet Support Center (support@oar.net).

2.2. Tiered Service – Member institutions will contract annually for a specified amount of bandwidth. Bandwidth will be capped at the contracted level by the OARnet network device that serves the institution. Usage will be billed annually in advance according to the current OARnet tiered fee structure.

3. Additional Services

3.1. Additional Services. OARnet shall endeavor to make additional optional services available to OSTEER Institutions. These services will be in support of Network access and related networking considerations and may involve additional fees depending on the cost and type of the each service.

3.1.1 List of Additional Services. Additional services available to OSTEER institutions include, but are not limited to, the following:

- Internet2 Connectivity: Connection to Internet2 as a Sponsored Educational Group Participant (SEGP).
- Seminars and Workshops: Topical workshops developed on an "as needed" basis.
- Co-location and Hosting: A secure, monitored, on-network environment for Web servers
- H.323 Video-Conferencing: Annual service of 30 conferences per month with 8 participants per conference
- Domain Name Services: OARnet will manage domain names

4. Service Upgrades

4.1. Upgrade Elections. The Institution may elect to increase the bandwidth of its connection to OARnet at any time. In electing a Service Upgrade, the Institution will cooperate with OARnet in coordinating the engineering, installation, testing and production use of the new circuit. If the Service Upgrade imposes different requirements for environmental conditions, supplemental Equipment or similar items, the Institution will comply with those requirements and acquire (either directly or through OARnet) the necessary Equipment.

5. Terms of Service

Please see the Terms of Service in Section 1 of the supplemental "Terms and Conditions" attached hereto and incorporated herein by reference.

6. Service Installation, Requirements, and Support

6.1. Installation and Support. Unless otherwise agreed, OARnet will be responsible for procuring the specified connection from a common carrier, will oversee the installation and maintenance of that connection on the Institution's behalf, and will provide circuit engineering and maintenance support during the installation of a Network connection. Unless otherwise agreed, the Institution is directly responsible for the payment of all recurring and non-recurring charges required to be paid to third parties with respect to that connection.

6.2. Required Equipment. For basic service, OARnet, at its expense will provide the required equipment items, which shall be installed at the Institutions's site and operated by OARnet, for use with the Network connection. Unless otherwise agreed in writing (upon the request of the Institution), the Institution will not adjust, repair or tamper with the equipment without OARnet's prior approval. From time to time, it may be necessary for OARnet to

upgrade its equipment due to changes in Internet engineering or networking protocols or for other good cause.

6.3. LAN Responsibility. The Institution is fully responsible for the operation and maintenance of its respective Local Area Network ("LAN"). Unless otherwise agreed in writing (upon the request of the Institution), the demarcation point of the Institution's responsibility is the LAN interface of the IP router, Ethernet Switch or Optical Transport Device included as part of the Equipment and the Institution's LAN.

6.4. Suspension of Service. OARnet may temporarily suspend the Institution's Internet service, or related communication services, under the circumstances described by this Section. In advance of any planned disruptions or suspensions of service, OARnet will notify the Institution whenever practicable. In the event of circumstances relating to fraudulent or illegal activity or security breaches or intrusions, OARnet shall endeavor to cooperate with the Institution to avoid or minimize the level of disruptions or suspensions of service. OARnet may temporarily suspend the Institution's Internet connection, or related communication services, if, and so long as necessary, (a) to prevent material network disruptions or interference or fraudulent or illegal activity, whether or not knowingly caused or permitted by the Institution, (b) to perform necessary maintenance or service, whether by OARnet or any other entity maintaining any portion of the Internet, or related communication services, or (c) for other reasonable reasons, including non-compliance with these Terms of Service or to respond to security breaches or intrusions, whether or not directly relating to an Institution's Internet connection, or related communication services. OARnet will notify the institution in writing within one business day of the start of the suspension, using registered or certified mail and e-mail, of the reasons for the suspension.

7. Maintenance

7.1. Basic Responsibilities. OARnet will be responsible for the maintenance of the Equipment which it provides to the Institution.

7.2. Institution Election. In the event the Institution elects to acquire directly some or all of the Equipment, the Institution is directly responsible for purchasing equivalent to OARnet's maintenance coverage from the manufacturer, though OARnet shall still manage that Equipment (unless otherwise agreed).

7.3. Costs of Service. Maintenance costs are included as part of the OARnet service for all OARnet-provided equipment.

7.4. Damages. The Institution will be responsible for any damages to or loss of Equipment provided by OARnet while located at the Institution's site.

8. Equipment Recommendations

8.1. T1, DS3 and OC3, GIG, 10GIG 10X100 Ethernet connections: The campus border network device will be supplied, owned, and operated by OARnet unless otherwise agreed. Equipment will be housed in accordance to the "Environmental Recommendations" provided by OARnet in the supplemental "Terms and Conditions" document.

9. Exceptions

Please see Section 2, Exceptions, of the supplemental "Terms and Conditions".

10. OSTEER Basic Fee; Institution Basic Fees

10.1. OSTEER Basic Fee

10.1.1. The OSTEER Basic Fee will be calculated by OARnet on a cost-recovery basis for each Fiscal Year. This fee will include OARnet's aggregate cost for performing the Basic Services as well as previously installed Service Upgrades. The OSTEER Basic Fee will be divided equally among the institutions comprising OSTEER to determine the Institution Basic Fee to be invoiced to each institution. The OSTEER Basic Fee may be reduced by payments received from state technology initiatives, the Ohio Board of Regents, or from other sources in support of OARnet's activities on behalf of higher educations in Ohio.

OARnet shall notify OSTEER of the amount of the OSTEER Basic Fee for each Institution for the succeeding Fiscal Year. In the event an Institution elects to terminate its Basic Services during a Fiscal Year for any reason other than OARnet's breach of this Agreement, OARnet shall not be required to provide any credit or adjustment for amounts of the OSTEER Basic Fee that have been previously paid.

The "OSTEER Basic Fee" does not include amounts due for:

- (a) the extension of Basic Services to additional Institutions during a Fiscal Year;
- (b) the Upgrade Fees (as defined below) payable when an Institution elects during a Fiscal Year to upgrade its existing capacity of (defined below as a "Service Upgrade");
- (c) the performance by OARnet of any maintenance services not covered by the Maintenance Coverage, including the replacement or upgrade of any Equipment provided by OARnet, the replacement or upgrade of which is not subject to Maintenance Coverage; or
- (d) the performance by OARnet of Additional Services.

10.1.2. OARnet shall cooperate with OSTEER and the OSTEER Finance Committee in the preparation of the Basic fee and any other fees to OSTEER institutions. OARnet shall provide its proposed calculation of the OSTEER Basic Fee and any other fees to OSTEER for approval.

10.1.3 OARnet and OSTEER (acting through its Finance Committee) will charge the entire OSTEER Basic Fee within the Fiscal Year for any Institution joining OSTEER within that Fiscal Year.

11. Upgrade Fees

11.1. Upgrade Fee. When a Service Upgrade is elected, OARnet will inform the Institution of the Upgrade Fee (including non-recurring charges relating to installation or de-installation, new equipment, etc.) associated with providing the additional service. OARnet will invoice the Institution for the Service Upgrade upon installation, with any payments being due and

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payable upon the Institution's receipt of the invoice. OARnet may decline to install a Service Upgrade if an Institution is delinquent in payments to OARnet for Basic Services.

12. Invoicing and Payment

12.1. Invoices.

12.1.1. OARnet will send a statement containing estimated fees for the next fiscal year to the Institution on or about May 1 of the then current year. The Institution will issue a purchase order to OARnet for the fees no later than June 30. OARnet will invoice the institution for the fees using the purchase order number no later than July 15. All Institution fees shall be due upon receipt of the invoice. Unless otherwise requested by the Institution, the invoice will be sent to the attention of the voting OSTEER representative.

12.1.2. Unless otherwise agreed, OARnet shall invoice the Institution as needed for Additional Service Fees or other charges (including non-recurring charges and fees for Additional Services), with the amounts due and payable following receipt of invoice. OARnet may assess a 10% administrative service fee for billing and collecting any common carrier or other third party charges.

12.2. Non-payment. The failure by the Institution to make payment of any amounts due for Basic Services or Additional Services may entitle OARnet to suspend or terminate Basic Services for that Institution, as provided in Section 7 of the supplemental Terms and Conditions.

12.3. Invoicing for upgrades. OARnet will adjust invoices relating to Service Upgrades to take account of any need to pro-rate for partial Fiscal Years (based on the date of installation), the termination of service for which pre-payment has occurred or similar factors. OARnet will notify an Institution of these adjustments when informing an Institution of the added costs of the Service Upgrade.

13. Fees and Calculations - FY 2007 Institution

The Institution Basic Fees and Upgrade Fees are set forth in Attachment B.

14. Dedicated Access Service Level Agreement

14.1 Policy

OARnet is committed to providing a reliable, high quality network. If an Eligible OARnet Client experiences an unplanned Network Outage for a period of time and the Network Outage is due to a cause in the OARnet Network, OARnet will provide the Client with credit for Internet Service as described herein.

14.2 Definitions

"Network" means the OARnet high speed dense wave division multiplexing fiber optic network, which is comprised of all equipment within each active OARnet Point of Presence (POP), all wiring within each active POP, and all telecommunications circuits between active POPs. The OARnet Network does not include equipment located at Client's premises whether or not provided by OARnet, telecommunications circuits or networks between a

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POP and Client's location, inactive POPs, or any networks, network equipment, or telecommunications circuits not owned or controlled by OARnet.

"Eligible OARnet Client" means any Client who has a valid current sales agreement, but excludes any Client whose account is not in good financial standing with OARnet.

"Network Outage" means an unplanned period of time during which (i) Client is unable to connect all other Internet destinations from Client's location, due to a problem or failure of the OARnet Network, (ii) Client's sustained packet loss on the OARnet Network is greater than ten percent (10%), or (iii) Client experiences average round-trip ping latency (64-byte ping packets) of greater than 75 milliseconds for traffic between OARnet and POPs in the contiguous United States. Service disruptions occurring during planned outage intervals do not constitute a Network Outage. A list of all OARnet Points of Presence (POPs) is available upon request.

"Filing Period" means within one week of the event, which caused the Network Outage.

14.3 Service Credit

In the event of a Network Outage, Client must file a claim within the Filing Period and pursuant to the Service Credit Process. Client shall be entitled to receive a credit against the amount invoiced for Services provided during the month in which the Network Outage occurred. Credits are available on a per-outage basis, subject to a maximum credit of 50% in any given calendar month.

Network Outage	Credit Against the Appropriate Month's Bill
Less than 10 minutes	0%
10 minutes or more	3.33% of the monthly bill

14.4 Service Credit Process

Filing Period: All claims under this policy must be submitted to OARnet (support@oar.net) within one week of the event that caused the Network Outage.

Required Information: The claim must be filed by client 's technical, administrative, or billing contact and should include as much information as is available regarding the service outage. Helpful information to send with the claim includes:

- a) Organization name
- b) Administrative Contact's name and contact information
- c) Date and beginning/end time of outage
- d) Source and destination IP addresses or DNS site names
- e) A trace route from the source address to the destination address (must be run during the same time interval corresponding to the Network Outage claim)

14.5 Claim Process: Client must submit the required information by electronic mail to support@oar.net. OARnet will acknowledge all claims within two business days and will review all claims within ten business days of receipt. Client will be informed by electronic mail whether the appropriate service credit claim will be granted or rejected. If rejected, the notification will specify the basis for rejection.

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Please contact the Support Center first to initiate a claim or for service support. Additional points of contact are listed below:

14.6 Problem Reporting Process: Additional information regarding reporting service issues, or the process for escalating service issues, is located in the support section of the OARnet Web site at www.oar.net.

15. Entire Agreement; Amendments

This agreement and the supplemental "Terms and Conditions" document constitutes the entire agreement between the parties and supersedes all prior agreements and understandings with respect to the same subject matter. This agreement may not be modified by, and shall supersede any additional or contradictory term or condition of, any current or future purchase order from OSTEER, unless OARnet expressly agrees otherwise in writing. No amendment or modification of this agreement shall be effective unless in writing and signed by both parties.

This Memorandum of Understanding has been approved by OSTEER, and the effective date is July 1, 2006.

Ohio Supercomputer Center
OARnet

The Ohio State University,
on behalf of OARnet

By _____

By: _____

Date: _____

Date: _____

OSTEER

By: _____

By: _____

Effective July 1, 2006

Date: _____

Date: _____

Effective July 1, 2006

Attachment A: OARnet Member Institutions (As of 7/1/2006)

Attachment B: Fees and Calculations - FY 2007 and Disaster Recovery Policy

OARnet membership Fee: \$3,000 yr.

Internet 1 Fee: \$40 per mb/mo.

Port Fee		
Tiers	Mbps	MonthlyFee
Tier 1	Up to 44	\$22.00
Tier 2	45-89	\$18.00
Tier 3	90-154	\$15.00
Tier 4	155-309	\$12.50
Tier 5	310-464	\$10.00
Tier 6	465-621	\$8.00
Tier 7	622-1000+	\$6.50

| IntraOhio Fee: \$5 per mb/mo

Disaster Recovery Policy

This policy applies to all institutions for which OARnet is *not* the primary provider, that is, the provider of 50% or more Internet 1 bandwidth to the institution. The institution will be responsible for a base yearly fee of 30% of the prevailing Internet 1 fee. This will allow the institution to fail over to OARnet for up to 15 days during the year. If the 15 days is exceeded, any additional days will be billed at the monthly prevailing rate. If necessary, the port fee will be increased for the month that the disaster recovery bandwidth is use. If any institution does not subscribe to the service but subsequently requires the service, the fee will be retroactive to the beginning of the fiscal year at 60% of prevailing Internet 1 rate.

Attachment C – Supplemental Terms and Conditions

1. Delivery of Services; Terms of Service

1.1. Delivery of Services. OARnet will be fully responsible for planning, installing and maintaining Services with each Institution pursuant to the Terms of Service; OSTEER will have no responsibilities in that regard.

1.2. Terms of Service. OARnet will invoice each Institution for the Institution Basic Fee and other appropriate amounts due and payable for the Services to be provided during each Fiscal Year. The invoices will be due and payable the first day (July 15) of each Fiscal Year. Payment by an Institution of an invoice will affirm that Institution's agreement for the Services to be provided and received under the Services and Terms of Service outlined in this agreement.

1.3. Modified Terms of Service. OARnet may propose to modify the Terms of Service on an annual basis. Any proposed modifications will be provided with the calculation of the OSTEER Basic Fee under Section 13 and, if acceptable, approved by OSTEER and the Ohio Supercomputer Center Governing Board in approving the OSTEER Basic Fee under Section 13.

2. Exceptions. OARnet shall not be required to provide Basic Services to the Institution:

2.1. In the event the Institution has not paid the "OSTEER" Basic Institution Fee when due and payable, any fees payable for Additional Services that have been performed or any other properly due amounts and such failure has continued for 60 days after written notice of non-payment has been provided to the Institution.

2.2. In the event the Institution notifies OARnet to discontinue Basic Services during a Fiscal Year (provided any termination of Basic Services shall not entitle an Institution to receive any credit or refund for previously paid Basic Institution Fees, unless such termination is a result of a material breach by OARnet).

2.3. In the event the Institution's failure to comply with Environmental Requirements, as shown in Attachment D, other terms of this Memorandum or other similar circumstances materially disrupts the ability of OARnet to provide the Basic Services, and such failure has continued for 15 days after written notice has been provided to the Institution.

2.4. Services for Others. OSTEER Institutions have authorized OARnet to provide services to government, to businesses, to libraries and other non-Institution entities. OARnet may continue to offer and perform those services, provided that the performance of those services does not interfere in a material manner with OARnet's capacity to perform the Basic Services for the OSTEER Institutions.

2.5. Quality of Service. In the event that OSTEER concludes, based on performance statistics as provided by OARnet and by actual members' experience, that OARnet's manner of operations is interfering with its obligations under this Memorandum, OSTEER shall so notify OARnet and, in cooperation with OARnet's Executive Committee, OARnet will modify its operations.

3. Connection Performance

3.1. Risks and Responsibilities. The Institution uses the Internet connection, or related communication services, and any information obtained from the resources available through the Internet connection, or related communication services, at its risk. OARnet shall not be responsible for the accuracy or quality of information obtained from the Internet connection, or related communication services. OARnet shall not be responsible for maintaining the security of the Institution's LAN or for implementing any security protocols or procedures unless otherwise agreed. The Institution shall be solely responsible for determining its rules and procedures relating to access and use of the Internet connection, or related communication services, by others as well as issues relating to intellectual property, lawful conduct or related matters arising in connection with its Internet connection, or related communication services. Unless otherwise agreed, OARnet shall not be responsible for Services that the Institution provides to any sites such as hospitals, civic associations, community information networks, businesses or government offices.

3.2. Warranties. OARnet will endeavor to provide to the Institution a stable, quality connection to the Internet and to maintain the availability of that connection (and related Internet network access) on a constant basis (subject to disruptions or suspensions of service relating to routine maintenance or events outside the control of OARnet). However, OARnet MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE OR PROVISION OF THE INTERNET CONNECTION OR ANY ADDITIONAL SERVICES.

3.3. Cooperation. The Institution shall cooperate (a) with OARnet in coordinating and planning the delivery of Basic Services and Additional Services as well as general planning for the capacity and levels of service to be provided by OARnet in the future and (b) with OARnet and other users of the Internet in the investigation of any security breaches or similar incidents which occur, in accordance with prevailing network management practices.

4. Acceptable Connections Policy

(Adopted by OARnet Steering Committee, February 1, 1996)

OARnet provides the Services for the benefit of the Institutions in support of their academic, research and service missions. OSTEER fully recognizes the high demand throughout Ohio for quality access to the Internet, or related communication services, and acknowledges the demands upon individual Institutions to cooperate with sites such as hospitals, civic associations, community information networks, businesses, schools (K-12), non-profit institutions and government offices in extending the availability of OARnet's resources and network to those organizations, in furtherance of community networking. Accordingly, OSTEER has adopted an Acceptable Connections Policy, as described below. An institution is allowed to provide Internet connections to any constituents consistent with the institution's mission and goals and contractual agreements. Commercial customers requiring permanent connections shall be referred to OARnet.

If OARnet cannot negotiate a contract with a commercial customer, OARnet will allow the institution to service the customer and pay OARnet a surcharge for providing that connection. The Finance Subcommittee of OSTEER shall determine the surcharge and present the surcharge rates to OSTEER for ratification. This policy is not intended to rule out unique situations that may be negotiated between OARnet and other parties.

The Finance Subcommittee has determined the surcharge to be the difference between the school's subsidized academic rate and the commercial reseller rate based on OARnet's fee schedule.

5. State of Ohio Multi-Agency Communications System (SOMACS)

SOMACS CIRCUITS AND PRICES ARE THROUGH A STATE OF OHIO CONTRACT AND THE LINES ARE NOT FOR COMMERCIAL USE. The lines can, however, be used for data services, voice and/or video applications. All users of this State of Ohio contract must be approved by the appropriate State agency. OARnet is coordinating this effort for higher education.

6. Use of the Internet Connection

OSTEER shall not knowingly cause or engage in, or knowingly permit its clients and users to cause or engage in, (a) material disruptions of or interference with network systems, users, services, or equipment; (b) use of the Internet connection, or related communication services, for fraudulent or illegal purposes; or (c) violations of any policy applicable to use of the network or other systems or services accessed by means of the Internet connection, or related communication services, including, without limitation, the acceptable use policies of OARnet's upstream providers.

7. Termination

7.1. Termination by Institutions. The Institution may terminate OARnet's commitment to offer Services to it in the next Fiscal Year by providing written notice to OARnet at least 90 days prior to the beginning of each Fiscal Year. OARnet may terminate Services as otherwise provided herein in these Terms of Service. Thereafter, an Institution will not participate in OSTEER for the purposes of this MOU. Refer to the current Terms of Service in section 19.

Other Terminations. This MOU, and the ongoing arrangements to coordinate and price Services with OSTEER, may be terminated by the mutual consent of OSTEER and OARnet. In all other events, OARnet will endeavor to provide Services to all OSTEER Institutions in the manner contemplated by this MOU.

Termination at Biennium. As the current General Assembly cannot commit a future General Assembly to an expenditure, this Agreement will expire on June 30, 2007. OSTEER may renew this Agreement on the same terms and conditions by giving written notice to OARnet prior to June 30, 2007. In no event may any renewal extend beyond the expiration of a biennium.

7.4 Termination for Lack of State Funds. It is further understood that any and all expenditures of State funds are contingent on the availability of lawful appropriations by

the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments and/or other obligations that may be due hereunder, then the obligations under this Contract for each Institution that is an instrumentality of the State of Ohio (the "State Institutions") shall terminate as of the date that the funding expires without further obligation of the State. In the event that all of the State Institutions terminate pursuant to this Section 7.4, all other Institutions shall have the option of terminating by giving OARnet 30 days written notice.

8. Limitation of Liability

Neither OARnet nor its network service suppliers shall be liable to OSTEER or OSTEER's end users for any damage arising out of any event that is beyond the control of OARnet or its network service suppliers. Neither OARnet nor its network service suppliers shall be liable to OSTEER or OSTEER's end users for any indirect, special, incidental, exemplary, consequential or other form of money damages, including but not limited to lost profits or damages for the loss, delay, nondelivery, or misdelivery of data or information or service interruption of any kind, however caused, arising out of or in connection with the use or provision of the Internet connection, or related communication services, whether based in contract, tort or any other legal theory, and whether or not OARnet or its network service suppliers have been made aware of the possibility of those damages. In no event shall OARnet be liable to OSTEER or OSTEER's end users for any amount in excess of a refund of amounts actually paid by OSTEER to OARnet.

9. Exclusion of Warranties

OSTEER uses the Internet connection, or related communication services, and any information obtained by using the Internet connection, or related communication services, at OSTEER's risk. OARnet and its network service suppliers MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE OR PROVISION OF THE INTERNET CONNECTION, OR RELATED COMMUNICATION SERVICES. Neither OARnet nor its network service suppliers shall be liable for unauthorized access to OSTEER's or OSTEER's end users' transmission facilities or premise equipment or for unauthorized access to or alteration, theft, or destruction of OSTEER's or OSTEER's end users' data files, programs, procedures, or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of OARnet's or its network service suppliers' negligence. OSTEER understands that neither OARnet nor its network service suppliers are responsible for the content of the transmissions that may pass through the Internet and/or the Internet connection, or related communication services. Neither OARnet nor its network service suppliers shall be liable for the accuracy or quality of information obtained or data transmitted through use of the Internet connection, or related communication services.

10. Indemnification

Each Institution, OARnet and OSTEER agree to be responsible for any negligent acts or negligent omissions by or through itself or its agents, employees and contracted servants and each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or negligent omissions, and

nothing in this Agreement shall impute or transfer any such responsibility from one to the other.

In no event OARnet's liability under any claim made by OSTEER or its end users exceed the limits set forth in Section 8 of this Agreement. No action, regardless of form, arising out of or in connection with this Agreement may be brought more than one (1) year after the termination of this Agreement.

11. Compliance with Applicable Law and Other Obligations

OSTEER and its end users must comply with all laws, regulations, and policies applicable to their use of the Internet connection, or related communication services, including, without limitation, U.S. export laws concerning the transmission of technical data and other regulated materials by means of the Internet connection, or related communication services.

12. Successors and Assigns

This agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. Neither party may assign its rights or delegate its obligations under this agreement without the consent of the other party, which shall not be unreasonably withheld.

13. Waiver

No waiver of any default in the performance of this agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular default in the performance of this agreement shall not constitute a waiver of any other or subsequent default. The resort to a particular remedy upon a default shall not constitute a waiver of any other available remedies.

14. Severability

If any provision of this agreement is determined to be invalid or unenforceable, the remainder of the agreement shall not be affected and shall remain in effect.

15. Governing Law and Jurisdiction

This agreement shall be subject to and construed in accordance with Ohio law. Any action based in whole or in part on this agreement must be brought in an Ohio court of competent jurisdiction.

16. Confidentiality.

OSTEER acknowledges the information provided by OARnet may be considered confidential and/or proprietary. However, if an Institution that is a public entity of the State of Ohio, receives request for a public record, as such term is defined by the laws of the State of Ohio, that includes information designated by OARnet as confidential or proprietary, and not otherwise protected by the laws of intellectual property of the State of Ohio, such Institution shall first notify OARnet of the request. If OARnet wishes to seek to block the release of the requested public record document believed to contain

proprietary or trade secret information the Institution will allow a reasonable time for such actions to proceed prior to releasing the requested document.

17. Notices

17.1. Notices to Institution. OARnet shall provide all routine notices, announcements and other related communications electronically to the Institution, to the electronic mail address specified by each Institution. In the event these Terms of Service expressly requires written notice, that notice shall be delivered in writing to the OSTEER representative at the Institution with a copy to the Office of the President or similar officer at the addresses specified by the Institution for such purposes, and shall be considered effective if sent by registered or certified mail, return receipt requested, or by any commercial courier service providing a record of receipt to OARnet. From time to time, the Institution may change the addresses specified, by giving written notice to OARnet.

17.2. Notices to OARnet. The Institution may provide all notices or other communications electronically to OARnet, to the electronic mail address of the Director or to the address of any other staff member specified by OARnet to receive particular notices or communications. In the event this Memorandum expressly requires written notice, that notice shall be delivered in writing to OARnet, Attention: Director, 2455 North Star Road, Columbus, Ohio 43221, and shall be considered effective if sent by registered or certified mail, return receipt requested, or by any national commercial courier service providing a record of receipt to the Institution. From time to time, OARnet may change the addresses specified, by giving written notice to the institution.

Attachment D: Environmental Requirements

A. Power

A.1 General

- a. Where a UPS is specified, unless denoted further, runtime is: ≥ 8 hours.
- b. Where a generator is specified, unless denoted further, runtime is: ≥ 24 hours.
- c. Power switching between UPS, generator and mains to the OARnet racks is synchronized, redundant, intelligent and automatic.

A.2 If AC power to equipment:

- a. Minimum 20A 120VAC per rack supplied via a dedicated breaker.
- b. Backed by UPS and/or generator.

A.3 Power to facility subcomponents

- a. HVAC, fire, lighting, access, monitoring backed by generator.

A.4 Power regulation and quality, EMI/RFI

- a. Meet, with or without conditioning, recognized industry standards applicable to the racked equipment.

B. HVAC

B.1 Temperature maintained at: 70 +/- 5 F.

B.2 Humidity maintained at: 30-60% non-condensing

B.3 n+1 HVAC redundancy

B.3 Air filtration to industry standards

C. Lighting

C.1 Full room lighting. Supplement with portable if full room coverage is insufficient.

D. Monitoring, response and reporting

D.1 Ability to detect and respond to situations where environmental parameters go outside normal operating parameters. Resolution occurs before service is affected.

D.2 Planned or unplanned environmental outages that may affect or have affected operation of the service are communicated to OARnet via the usual contact procedures specified elsewhere.