

**AGREEMENT BETWEEN HUMBOLDT COUNTY LIBRARY AND CALIFA
GROUP FOR THE PROVISION, INSTALLATION AND MAINTENANCE
OF ADVANCED NETWORK (DATA)SERVICES**

This Agreement, hereinafter referred to as "Agreement", is entered into as of July 1, 2020 by and between Califa Group, a California public benefit corporation, hereinafter referred to as "Califa" and the Humboldt County Library, hereinafter referred to as "Library". Califa and Library are sometimes referred to in this Agreement individually as "Party" and collectively as "Parties". All written communications between the parties shall be addressed as follows unless and until amended in writing by the respective party.

Humboldt County Library
Chris Cooper
Acting Director Library of Services
1313 Third St.
Eureka, CA 95501

Califa Group
Paula MacKinnon
Executive Director
330 Townsend St. Suite 133
San Francisco, CA 94107

WITNESS THAT

WHEREAS, Califa, on behalf of the California State Library, has contracted with CENIC to provide high speed networking to libraries in California; and

WHEREAS, Library desires to contract with Califa to obtain one or more data circuits to connect Library to the CENIC high speed broadband fiber network, the California Research and Education Network ("CalREN"), and, if specified in Appendix #1, attached, to connect Library to other library sites as identified in said appendix for the purpose of connecting to CalREN.

NOW THEREFORE, Library and Califa enter into this Agreement:

1. Purpose.

It is the purpose of this Agreement to set forth the terms and conditions applicable to the provision of communications and related network services to Library.

2. Relationship between the Parties.

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that Califa shall not be entitled to any benefits to which Library employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. Califa shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

3. Services to be Provided

The primary communications infrastructure provided by CENIC is CalREN. Among the services that CENIC will provide to Library is use of CalREN and contracting for and

provision of data circuits supplied by network service providers.

Califa, on behalf of Library, will contract with CENIC for such data circuits. Specific circuits and their costs are included in the appendix attached. Califa will assure that CENIC notifies the Library of installation requirements and necessary maintenance instructions. Neither CENIC nor Califa shall be responsible for operating or maintaining software, equipment or cabling that connects equipment not provided by CENIC for the services unless specifically agreed to in writing by CENIC.

4. Term and Termination of this Agreement.

- A. **TERM OF THIS AGREEMENT.** This Agreement shall be in effect from July 1, 2020 until June 30, 2025, unless otherwise terminated by a Party pursuant to the terms of this Agreement.
- B. **TERMINATION.** Termination prior to the end date stated above shall result in Library having to pay any circuit telecommunications carrier termination charges resulting from early termination of the Service. Notwithstanding the above, upon a 60 day written notice prior to the second year and each following June 30 after a circuit is installed, Library may cancel a circuit without penalty if funding to pay for that circuit is not available, as determined solely by Library.
- C. Library may terminate this agreement if non-recurring, one-time costs for all circuits included in Appendix I are increased by the telecommunications carrier from the amount shown in Appendix 1. See footnote for non-recurring charges in appendix I for more information.

5. Payment.

Payment for services shall be due within thirty (30) days of receipt of a Califa invoice reflecting provision of the services for which the invoice is sent; or as otherwise agreed to by Library and Califa. Except for non-recurring costs, if any, costs in Appendix I shall only begin upon installation of circuit(s). Library will put forth reasonable efforts to make payments within thirty (30) days after receipt of invoice.

- A. **Maximum Amount Payable.** The maximum amount payable by Library for services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement is \$805,230.55 total over the term of this agreement, not to exceed \$107,552.45 in any fiscal year (notwithstanding non-recurring costs), as set forth in Appendix 1. Califa agrees to perform all services required by this Agreement for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding or allowance rates are reduced or eliminated, Library may, by amendment, reduce the maximum amount payable hereunder or terminate this Agreement as provided herein.
- B. **Schedule of Rates.** The specific rates and costs applicable to this Agreement are set forth in Appendix 1, which is attached hereto and incorporated herein by reference as if set forth in full.
- C. **Additional Services.** Any additional services not otherwise provided for herein shall not be provided by Califa, or compensated by Library, without written authorization by Library. Any and all unauthorized costs and expenses incurred above the maximum payable amount set forth herein shall be the responsibility of Califa. Califa shall notify Library, in writing, at least six (6) weeks prior to the date upon which Califa estimates that the maximum payable amount will be reached.

6. Miscellaneous.

- A. **CONDITIONS OF USE.** Library agrees to conform to the CENIC Appropriate Use Policy

- (<https://cenic.org/network/policies/acceptable-use-policy>) and to any specific conditions of use imposed by subcontractors providing communications services to CENIC as may be in force at the time such services are made available per an Addendum to this Agreement. If such conditions of use are modified Library will be notified and if Library believes it can no longer conform to their requirements, Library shall have one hundred eighty (180) days to terminate the affected service without penalty. If Library does not elect to terminate the service, Library must conform to the revised conditions of use or be subject to termination of the service by CENIC.
- B. **CONFLICTING CLAUSES.** If any clause in this Master Agreement is in conflict with a clause in an Addendum to this Agreement, the language in the Addendum shall take precedence but only for the service defined in that Addendum.
 - C. **FORCE MAJEURE.** Neither party will be responsible for performance of its obligations hereunder where delayed or hindered by war, riots, embargoes, strikes involving third parties, acts of Local Access Providers or of its vendors, or suppliers, acts of unrelated third parties, accidents, cable cuts, act(s) of God or any other event beyond its reasonable control.
 - D. **GOVERNING LAW.** The laws of the State of California shall govern this Agreement.
 - E. **NON LIBRARY USES:** Library understands that this agreement covers only Library use of CalREN and of circuits provided hereunder and Library agrees that no other uses will be made of the services provided herein.

7. Entire Agreement.

This Agreement and any attachments contemporaneously or subsequently executed by the parties constitute the entire Agreement between the parties regarding the subject matter of this Agreement and supersede all prior written or oral agreements with respect to such. This Agreement may not be modified orally, and no modification shall be binding unless in writing and signed by authorized representatives of both parties.

8. General Provisions.

- A. **Nondiscrimination.** During the performance of this Contract, Califa and its subcontractors shall not deny the Contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Califa shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. It is expressly agreed and understood by the parties hereto that if any provision of this Agreement is held to be or invalid under any applicable statute or rule of law, it is deemed to that extent to be omitted. However, the balance of the Agreement shall remain in full force and effect.
- C. **Rights and Remedies:** The rights and remedies of Library provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law.
- D. **Accessibility Requirements.** Califa agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.

E. **Conflict of Interest Requirements.** Califa agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, Humboldt County's Conflict of Interest Code, all as may be amended from time to time.

9. Assignment.

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment by Califa in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

10. Indemnification. Library shall indemnify Califa, its trustees, officers, agents and employees harmless from and against any and all liability, loss, expenses (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Library its officers, agents, or employees.

Califa shall indemnify Library, its trustees, officers, agents and employees harmless from and against any and all liability, loss, expenses (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Califa, its officers, agents, or employees.

Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.

Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to either party's performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

11. Insurance Requirements.

General Insurance Requirements. Without limiting the parties' indemnification obligations hereunder, each party shall maintain in full force and effect, at its own expense, any and all appropriate comprehensive general liability insurance, comprehensive automobile insurance, workers' compensation and professional liability policies.

Insurance Notices. Any and all insurance notices required to be given hereunder shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

Library: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

Califa: CALIFA GROUP
ATTN: PAULA MACKINNON
330 TOWNSEND ST. SUITE 133
SAN FRANCISCO CA 94107

12. Nuclear-Free Humboldt County Ordinance Compliance.

By executing this Agreement, Califa certifies that it is not a Nuclear Weapons Contractor, in that Califa is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear-Free Humboldt County Ordinance. Califa agrees to notify Library immediately if it becomes a Nuclear Weapons Contractor as defined above. Library may immediately terminate this Agreement if it determines that the foregoing certification is false or if Califa subsequently becomes a Nuclear Weapons Contractor.

13. Reports.

Upon prior written request of Library, Califa agrees to provide Library with any and all reports that may be required by any local, state and/or federal agencies for compliance with this Agreement. Califa shall submit one (1) hard copy and one (1) electronic copy of any and all reports required hereunder in a format that complies with the Americans with Disabilities Act and any other applicable accessibility laws, regulations and standards. Any and all reports required hereunder shall be submitted in accordance with any and all applicable timeframes using the format required by the State of California as appropriate.

14. Record Retention and Inspection.

A. Maintenance and Preservation of Records. Califa agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided pursuant to the terms and conditions of this Agreement, and to maintain and preserve said records for at least three (3) years from the date of final payment hereunder, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. Such records shall be original entry books with a general ledger itemizing all debits and credits for the services provided pursuant to the terms and conditions of this Agreement.

B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of Califa, and its subcontractors, related to the services provided pursuant to the terms and conditions of this Agreement, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after the date of final payment hereunder. Califa hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by Library and any other duly authorized local, state and/or

federal agencies. Califa further agrees to allow interviews of any of its employees who might reasonably have information related to such records by Library and any other duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, without limitation, the costs of administering this Agreement.

- C. Audit Costs. In the event of an audit exception or exceptions related to the services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because Califa's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by Library.

15. Monitoring.

Califa agrees that Library has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor Califa's records, policies, procedures and overall business operations, at any time, in order to ensure compliance with the terms and conditions of this Agreement. Califa will cooperate with a corrective action plan, if deficiencies in Califa's records, programs or procedures are identified by Library. However, Library is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of Califa's performance hereunder.

16. Confidential Information.

A. Disclosure of Confidential Information. In the performance of this Agreement, Califa may receive information that is confidential under local, state or federal law. Califa hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, without limitation: California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act ("CMIA"); the United States Health Information Technology for Economic and Clinical Health Act ("HITECH Act"); the United States Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations ("C.F.R.") Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.

B. Continuing Compliance with Confidentiality Requirements. The parties acknowledge that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations or standards.

17. Non-Liability of County Officials and Employees.

No official or employee of Humboldt County shall be personally liable for any default or liability under this Agreement.

18. Standard of Practice.

Califa warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. Califa's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

19. Interpretation.

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

20. Independent Construction.

The titles of the sections and subsections set forth herein are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

21. Force Majeure.

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

22. Counterpart Execution.

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

23. Authority to Execute.

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

For County of Humboldt

Estelle Fennell
Signature

Estelle Fennell
Name

Chair Board of Supervisors
Title

7/28/2020
Date

For Califa

Paula MacKinnon
Signature 1

Paula MacKinnon
Name

Executive Director
Title

7/14/20
Date

Sara F. Jones
Signature 2
Sara F. Jones

Name
Board President

Title
Date 7/14/20

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: [Signature]

Date: 7/14/2020

List of Exhibits:

Appendix #1: Provision, Installation and Maintenance of Advanced Network (Data) Services: Reimbursment of Circuit Costs

Appendix #1
Provision, Installation and Maintenance Of
Advanced Network (Data) Services: Reimbursement
of Circuit Costs

This Appendix lists the circuits contracted for by CENIC on behalf of Califa and the Library for connecting CENIC's fiber optic backbone to Library and for library connections that are not direct connections to CENIC's fiber optic backbone, e.g. direct connections between libraries. Library understands that CENIC will bill Califa, and Califa will bill Library, for actual costs of circuits charged by network service providers, including taxes and surcharges and without markup. Prior to approval of CENIC's Library consortium E-rate application by the FCC's E-rate contractor, not all applicable E-rate and CTF discounts will be reflected on invoices. After the E-rate application for any given year is approved, the network service provider will coordinate with CENIC to provide appropriate credits and such credits will be passed from CENIC to Califa and from Califa to the Library. Such credits are typically issued sometime during the fiscal year after the year in which the circuits are installed and services are first provided. In subsequent years, credits continue to be issued in the fiscal year after the year for which services have been provided. Library further understands that the exact discounted cost of circuits will not be known until after the E-rate consortium application is approved. The actual start date of the service, and therefore of circuit costs, will be dependent on coordination among CENIC, the Library and the network service provider. Any one-time (Non-recurring or NRC) costs included below are typically invoiced by carriers prior to circuit installation and will be invoiced to Library upon receipt of invoice to CENIC from carrier.

CENIC

Customer: Humboldt County Library

Budget Summary Description: 1 Gbps to CalREN, 500 Mbps New Branches- AT&T

Line Item	NRC Non-Recurring Cost	MRC Monthly Recurring Cost	ARC Annual Recurring Cost
1 Equipment	\$0.00	\$0.00	\$0.00
2 Maintenance	\$0.00	\$0.00	\$0.00
3 Installation	\$0.00	\$0.00	\$0.00
4 Circuit	\$268,468.31	\$7,468.92	-
Total	\$268,468.31	\$7,468.92	\$0.00

Annual Cost	\$89,627.04
E-rated Annual Cost†	\$8,962.70
Total for Year 1	\$358,095.35
E-rated Total for Year 1†	\$62,656.37

*Pricing does not include applicable taxes, surcharges, and fees. These costs may vary and will be included in invoices at CENIC's actual cost.

*If an Out of Band line is required, customer must provide a phone line for OOB or allow CENIC to order one and be reimbursed for both the one-time installation and ongoing monthly recurring costs.

*NRC items are one-time costs billed upon execution of contract.

*MRC items are billed quarterly.

†E-rate discount: percent discount indicated is an estimate based on data available at the time the quote was generated. Actual discount percentage will be identified by the E-rate authorities at a later point

†E-rate and CTF reimbursements are dependent upon the continued funding of these programs. CENIC/Califa cannot guarantee the E-rate and CTF discounts, and these discounts are subject to change.

†E-rate Costs may take up to 18 months to activate due to USAC processing time

CENIC		*Pricing does not include applicable taxes, surcharges, and fees. These costs may vary and will be included in invoices at CENIC's actual cost.					E-rate discount: percent discount indicated is an estimate based on data available at the time the quote was generated. Actual discount percentage will be identified by the E-rate authorities at a later point			
LOC A**	Carrier Info						E-rate Discount	80.00%	Total Discounted MRC	Total Discounted NRC
Site Name	Site Name	Service Provider	Requested Bandwidth	Est Contract End Date	Non Recurring Cost	Monthly Recurring Costs for 5 year term	Discounted NRC	Discounted MRC	\$746.89	\$53,693.66
Humboldt County Library - Eureka Main Library	CENIC Hubsite	AT&T	1Gbps	7/1/2025	\$0.00	\$1,108.80	\$0.00	\$110.88		
Humboldt County Library - Arcata Humboldt	Humboldt County Library - Eureka Main Library	AT&T	500Mbps	7/1/2025	\$0.00	\$895.34	\$0.00	\$89.53		
County Library - Blue Lake Library	Humboldt County Library - Eureka Main Library	AT&T	100Mbps	7/1/2025	\$0.00	\$592.70	\$0.00	\$59.27		
Humboldt County Library - Fortuna	Humboldt County Library - Eureka Main Library	AT&T	500Mbps	7/1/2025	\$0.00	\$895.34	\$0.00	\$89.53		
Humboldt County Library - Mckinleyville	Humboldt County Library - Eureka Main Library	AT&T	100Mbps	7/1/2025	\$0.00	\$592.70	\$0.00	\$59.27		
Humboldt County Library - Rio Dell	Humboldt County Library - Eureka Main Library	AT&T	100Mbps	7/1/2025	\$0.00	\$592.70	\$0.00	\$59.27		
Humboldt County Library - Trinidad	Humboldt County Library - Eureka Main Library	AT&T	250Mbps	7/1/2025	\$0.00	\$787.20	\$0.00	\$78.72		
Humboldt County Library - Garberville	Humboldt County Library - Eureka Main Library	AT&T	500Mbps	7/1/2025	\$111,536.65	\$895.34	\$22,307.33	\$89.53		
Humboldt County Library - Ferndale	Humboldt County Library - Eureka Main Library	AT&T	1Gbps	7/1/2025	\$156,931.66	\$1,108.80	\$31,386.33	\$110.88		