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*Managed Wide Area Network Agreement*

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THIS AGREEMENT is made and entered into this 1 day of July, 2015, by and between **Tek-Hut, Inc.** an Idaho corporation ("Provider") located at 460 Main Ave. S., Twin Falls, ID 83301 and Emmett Independent School District No. 221 ("Customer") located at 400 South Pine Avenue, Emmett, ID 83617. Hereinafter, Provider and Customer may be collectively referred to as the "Parties."

RECITALS

WHEREAS, Provider is in the business of providing Managed Wide Area Network Services ("WAN Services"); and

WHEREAS, Customer desires to enter into an agreement whereby Provider will provide Managed Wide Area Network Service.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties, for themselves, their successors and assigns, do hereby agree as follows:

1. Scope of the Work. Provider shall provide WAN Services to Customer at locations defined in "Service Order Exhibit A". Provider will provide a 10/100/1000 Ethernet router with customer uplink ports to utilize the WAN Services.
2. Contract Price. Customer agrees price will be expressed as a monthly service fee, for the Services and shall be set forth in the applicable Service Order Exhibit. The sum of the attached service order is \$7,600 per month for a period of 60 months, subject to non-appropriation, for a total contract price of \$456,000 ("Contract Price").
  - a. All charges shall be payable monthly within 30 days of receipt of an undisputed invoice by Customer.
3. Term of Contract. The term of this contract shall be for an initial period of 60 months, commencing on or before the 1st day of July, 2015, and continuing until the 30th day of June, 2020, at which time this contract shall expire. Upon expiration of the Term, this Agreement may be renewed for an additional twelve (12) month periods of time on the terms and conditions identical to those defined in this agreement upon written consent of the Parties.
4. Termination:  
By Customer. If Provider fails to perform any of its obligations hereunder, does not cure such breach within thirty (30) days after written notice thereof from Customer, or if

Provider becomes insolvent or bankrupt, customer, in addition to all other rights it may have under law or this Agreement, shall have the right to terminate this Agreement without penalty and will only be responsible for any fees it incurs prior to cessation of service. If Customer exercises its termination right, Provider shall remove all Provider-owned equipment without cost or fee to Customer.

Should Customer engage in early termination of this Agreement without justification of a Provider breach, Customer understands and agrees that Provider has and may continue to incur certain costs and/or expenses related to the Managed Wide Area Network to be provided to it by Provider pursuant to this Agreement, even should the Customer discontinue use of said WAN or elect to terminate this Agreement prior to its expiration. Therefore, subject to non-appropriation, in the event Customer elects to terminate this Agreement prior to June 30th, 2020, it agrees to pay to Provider the sum of 100% of the balance due through the current fiscal year of the Customer for which funds have been legally appropriated.

By Provider. If Customer fails to perform any of its obligations hereunder, does not cure such breach within thirty (30) days after written notice thereof from Provider, or if Customer becomes insolvent or bankrupt, Provider, in addition to all other rights it may have under law or this Agreement, shall have the right (i) to declare all amounts to be paid by Customer for actual services rendered by Provider prior to cessation of services immediately due and payable, (ii) to cease providing services to Customer, and (iii) immediately to enter the premises and take possession of all Provider-owned equipment without liability to Customer therefore and without relieving Customer of its obligations under this Agreement.

5. Bandwidth. Bandwidth will be provided via 10/100/1000 Ethernet Hand-off, and speeds are defined in attached Service Order Exhibit A.
6. Installation Fee - One time setup fee of \$0.
7. Responsibility of Provider. In addition to the responsibilities of Provider as identified herein, Provider shall provide:
  - a. Internal Routing and QoS(Quality of Service);
  - b. Support on edge routing infrastructure;
  - c. Monitoring of Customer's network traffic;
  - d. Customer notification of outages;
8. Responsibility of Customer. In addition to Customer responsibilities identified herein, the Customer shall provide or be responsible for:
  - a. any equipment and/or labor necessary for the configuration of the equipment and hardware necessary to utilize the Wide Area Network Services, as well as any costs,

charges or fees associated therewith;

9. Outages. Excluding events beyond Provider's control, Provider represents that it will maintain 99% service availability. Provider will allow a reasonable pro-rated credit against future payment for service downtime that fails to maintain the guaranteed service availability.
10. Binding Effect. The provisions of this contract shall be binding upon and inure to the benefit of the heirs, successors, personal representatives, and assigns of the parties hereto.
11. Attorney's Fees. If a suit, action or proceeding is instituted to enforce any of the terms of this contract, the prevailing party shall be entitled to recover reasonable costs and attorney's fees from the non-prevailing party.
12. Venue. The venue of any action arising out of the execution or breach of this contract shall be in the District Court of Twin Falls County, Idaho.
13. Non-appropriation and Right of Termination. The obligations of Customer to make payments of fees charged in accordance with this Agreement and to make any other payments to Provider (or to any other person/party) pursuant to this Agreement are subject to appropriation by the Customer of funds that are lawfully available to be applied for such purpose. If Customer fails to make such an appropriation for the payment of fees scheduled in this Agreement, Provider may terminate this Agreement without penalty, or the Customer may terminate this Agreement by providing written notice of such non-appropriation to Provider as soon as the decision to non-appropriate is made. Upon any such termination of this Agreement, all of the Customer's rights, title, and interest in and its obligation under this Agreement shall terminate effective on the last day for which such an appropriation was made.

14. Assignment. This Agreement shall not be subject to assignment, in whole or in part, by operation of law, or by either party.
15. Amendment. This Agreement may be amended at any time with the prior written, mutual consent of both parties. Any and all amendments to this Agreement shall be in writing.
16. Non-Waiver Breach. The failure of either party to insist upon strict performance of any terms of this Agreement, or to exercise any option herein conferred in any or all instances, shall not constitute a waiver or relinquishment of any such term, but the same shall be and remain in full force and effect, unless such waiver is evidenced by the prior written consent of either party.
17. Force Majeure. If any circumstance should occur that is not anticipated or is beyond the control of a Party or that delays or renders impossible or impracticable performance as to the obligations of such Party, the Party's obligation to perform such services shall be postponed for a period equal to the time during which such circumstance shall extend, or, if such performance has been rendered impossible by such circumstance, the Agreement shall be cancelled.
18. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction (1) will be deemed modified to reflect the intent of the parties, determined by reference to the invalid or unenforceable term or provision, to the greatest extent permissible; and (2) will not affect the validity or enforceability of the remaining terms and provisions of this Agreement, or the validity or enforceability of the offending term or provision in any other situation or jurisdiction.
19. No Third-Party Rights. This Agreement is made for the sole benefit of the Parties. Except as otherwise expressly provided, nothing in this Agreement shall create or be deemed to create a relationship among the Parties or any of them, and any third party, including a relationship in the nature of a third party beneficiary or fiduciary.
20. Construction. The Parties agree that this Agreement has been negotiated at arm's length and between Parties equally sophisticated and knowledgeable in the subject matter dealt with in this Agreement. This Agreement is to be construed as the joint and equal work product of each party, and may not be interpreted more or less favorably in respect to either party on account of its preparation or drafting, and shall be interpreted in a reasonable manner to affect the intent of the Parties as set forth in this Agreement.
21. Headings. The section headings contained herein are for convenience only and shall not in any way affect the interpretation or enforceability of any provision of this Agreement.

22. Merger. This Agreement constitutes the entire agreement between the parties hereto, and shall supersede all previous oral or written proposals, negotiations, commitments, and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing, signed by the duly authorized representatives of the parties.
23. Idaho Public Records Law. Any information furnished between the Parties may be subject to the Idaho Public Records Law, Idaho Code §§ 9-337 through 9-350. The Parties agree to consult one another prior to releasing potentially, confidential privileged, or exempt documents.
24. Confidentiality. To the extent Provider acquires or has access to confidential information in performing its responsibilities under this Agreement, Provider acknowledges its obligation to comply with all federal and state laws regarding privacy, including, but not limited to, the Family Educational Rights and Privacy Act (FERPA) and the Idaho Student Data Accessibility, Transparency, and Accountability Act of 2014 (Idaho Data Accountability Act). Provider agrees that all confidential information provided pursuant to this Agreement, including, but not limited to, a student's identity, shall be confidential. Provider is prohibited from disclosing any information obtained as a result of rendering services pursuant to this Agreement to any individual not authorized and directed by the Customer, or without the consent of the parent/guardian or the student, if 18 years of age or older.
25. Student Data Privacy and Security. To the extent Provider acquires and stores student information, Provider acknowledges its obligation to comply with the Idaho Data Accountability Act, Idaho Code Section 33-133. Provider covenants and represents as follows:
  - (a) Provider agrees that all student information acquired pursuant to this Agreement, including, but not limited to, a student's identity and/or information that could be used to determine a student's identity, shall be confidential and comply with all federal and state laws;
  - (b) Provider represents and warrants that it has in place Administrative Security, Physical Security, and Logical Security controls to protect from a data breach or unauthorized data disclosure;
  - (c) Provider agrees to restrict access to personally identifiable information (PII) to only authorized staff who require such access to perform their assigned duties;
  - (d) Provider is prohibited from using student data and PII for secondary uses including, but not limited to, sales, marketing, or advertising;
  - (e) Provider agrees to indemnify and hold harmless the Customer from any liability, including, but not limited to, costs, fines, expenses, and attorney fees, resulting from Provider's performance of the services provided under this Agreement and/or non-compliance with state and federal law regarding Student Data Privacy and Security; and

- (f) Provider represents and warrants that it has an appropriate records retention schedule and/or policy for the destruction of data that is consistent with the Customer or State's record retention policy.

Penalties for Provider's non-compliance with state and federal law or Provider's covenants and representations regarding Student Data Privacy and Security as set forth in this Agreement will be assessed at the discretion of Customer's Board of Trustees and may include, but are not limited to:

- (1) Immediate termination of any contracts with the Customer without cause and for convenience, without recourse by Provider;
- (2) A two-year ban on Provider's ability to contract and provide services to the Customer; and
- (3) Any other sanction the Customer's Board of Trustees deems proper and appropriate under the circumstances.

26. Definitions.

**"Administrative Security"** consists of policies, procedures, and personnel controls including security policies, training, and audits, technical training, supervision, separation of duties, rotation of duties, recruiting and termination procedures, user access control, background checks, performance evaluations, and disaster recovery, contingency, and emergency plans. These measures ensure that authorized users know and understand how to properly use the system in order to maintain security of data.

**"Aggregate Data"** is collected or reported at a group, cohort or institutional level and does not contain PII.

**"Data Breach"** is the unauthorized acquisition of PII.

**"Logical Security"** consists of software safeguards for an organization's systems, including user identification and password access, authenticating, access rights and authority levels. These measures ensure that only authorized users are able to perform actions or access information in a network or a workstation.

**"Personally Identifiable Information (PII)"** includes: a student's name; the name of a student's family; the student's address; the students' social security number; a student education unique identification number or biometric record; or other indirect identifiers such as a student's date of birth, place of birth or mother's maiden name; and other information that alone or in combination is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances, to identify the student.

**"Physical Security"** describes security measures designed to deny unauthorized access to facilities or equipment.

“**Student Data**” means data collected at the student level and included in a student’s educational records.

“**Unauthorized Data Disclosure**” is the intentional or unintentional release of PII to an unauthorized person or untrusted environment.

27. Authority. Each Party represents and warrants that it has the full power and authority to enter into this Agreement and to carry out the transactions contemplated by it, and has taken all action necessary to authorize the execution, delivery, and performance of the Agreement. Each person signing this Agreement warrants that s/he has full power and authority to bind the entity or agency under which her/his signature appears.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

"PROVIDER"  
Tek-Hut, Inc

"CUSTOMER"  
EMMETT INDEPENDENT SCHOOL DISTRICT

By: 

By:   
Its: \_\_\_\_\_

Date: 4-13-15

Date: 4-13-2015

Service Order Exhibit A  
Site-Specific Information

1. Site Name: EMMETT HIGH SCHOOL  
Order Type (New, Renew, Change): NEW  
Service Location: 721 W 12<sup>th</sup> Street  
Bandwidth: 1.1Gbps  
Monthly rate: \$1700  
Service: Managed Wide Area Network
  
2. Site Name: Emmett Middle School  
Order Type (New, Renew, Change): NEW  
Service Location: 301 E 4<sup>th</sup> Street  
Bandwidth: 100 Mbps  
Monthly rate: \$700  
Service: Managed Wide Area Network
  
3. Site Name: Butte View Complex  
Order Type (New, Renew, Change): NEW  
Service Location: 400 S Pine Avenue  
Bandwidth: 400 Mbps  
Monthly rate: \$1000  
Service: Managed Wide Area Network
  
4. Site Name: Kenneth J. Carberry Elementary  
Order Type (New, Renew, Change): NEW  
Service Location: 1950 E 12<sup>th</sup> Street  
Bandwidth: 100 Mbps  
Monthly rate: \$700



- Service: Managed Wide Area Network
5. Site Name: Shadow Butte Elementary  
Order Type (New, Renew, Change): NEW  
Service Location: 3900 W Idaho Boulevard  
Bandwidth: 100 Mbps  
Monthly rate: \$700  
Service: Managed Wide Area Network
6. Site Name: Patriot Center  
Order Type (New, Renew, Change): NEW  
Service Location: 330 W Main St  
Bandwidth: 100 Mbps  
Monthly rate: \$700  
Service: Managed Wide Area Network
7. Site Name: Bus Garage  
Order Type (New, Renew, Change): NEW  
Service Location: 1380 N Washington  
Bandwidth: 100 Mbps  
Monthly rate: \$700  
Service: Managed Wide Area Network
8. Site Name: Sweet Elementary  
Order Type (New, Renew, Change): NEW  
Service Location: 6600 Sweet-Ola highway  
Bandwidth: 100 Mbps  
Monthly rate: \$700  
Service: Managed Wide Area Network
9. Site Name: Ola Elementary  
Order Type (New, Renew, Change): NEW  
Service Location: 11475 Ola School Road  
Bandwidth: 100 Mbps  
Monthly rate: \$700  
Service: Managed Wide Area Network

Incremental pricing available in 50Mbps increments on a site by site basis at \$50/50 Mbps.