

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
OFFICE OF THE CHIEF TECHNOLOGY OFFICER (OCTO) / DC-NET
November 30, 2012



DC-CAN SERVICES CONTRACT – COMMUNITY ANCHOR INSTITUTION

I. Parties.

This Contract is between the District of Columbia’s Office of the Chief Technology Officer/ DC-Net, the central information technology and telecommunications agency in the District of Columbia Government, hereinafter referred to as “OCTO/DC-Net”, with offices located at 441 4th Street NW Suite 930 South, Washington DC 20001, and _____, a Community Anchor Institution that provides services in the District of Columbia (hereinafter, including its Affiliates, referred to as “Customer”), with offices located at _____. Customer and OCTO/DC-Net are sometimes hereinafter referred to individually as a “Party” or collectively as “Parties.”

II. Purpose.

The purpose of this Contract is to establish the terms under which OCTO/DC-Net will provide telecommunications services to Customer.

III. Definitions.

“Affiliate” means an entity controlled by, controlling, or under common control with Customer.

“Confidential Information” means any information that is not generally available to the public, whether of a technical, business, or other nature and that: (a) the receiving Party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing Party; and/or (b) is of such a nature that the receiving Party should reasonably understand that the disclosing Party desires to protect such information against unrestricted disclosure. Confidential Information will not include information that is in the public domain through no breach of this Contract by the receiving Party or is already known or is independently developed by the receiving Party.

“Content” means content provided by OCTO/DC-Net or its third party licensors, providers or suppliers and accessible on the Service, including without limitation images, photographs, animations, video, audio, music, and text, with the exception of content uploaded by and stored on behalf of users.

“Contract Year” means each one year period running from October 1 to September 30.

“Customer” means the Community Anchor Institution that is purchasing services from OCTO/DC-Net and the CAI’s authorized users.

“D.C.” means the District of Columbia.

“DC-CAN” means District of Columbia Community Access Network.

“Pricing” means the agreed upon prices for services as outlined in Attachment B.

“Project” means the agreed upon deliverables as stated in the Statement of Work, Attachment A.

"Service" means OCTO/DC-Net services provided to Customer as outlined in Statement of Work, Attachment A.

IV. Relationship of the Parties.

Nothing in this Contract shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, pooling arrangement, agency or employment relationship between the Parties. Nothing in this Contract is construed to provide for the sharing of profits or losses arising out of the efforts of either or both of the Parties.

V. Term.

This Contract shall be effective upon the date of the last signature on this document and shall continue through September 30 of that same Contract Year. This Contract automatically renews for one year periods at OCTO/DC-Net's then current prices, unless Customer notifies OCTO/DC-Net in writing with intent to cancel by the later of (i) thirty (30) days prior to expiration or (ii) 5 days after receipt of OCTO/DC-Net's then-current pricing.

VI. Termination.

OCTO/DC-Net may terminate this Contract at any time upon sixty (60) days' written notice to Customer.

Customer may terminate this Contract at any time upon sixty (60) days' written notice to OCTO/DC-Net but shall remain liable for all remaining payments in the then current Contract Year.

VII. Payment and Late Fees.

OCTO/DC-Net will invoice Customer for non-recurring costs associated with site deployment within thirty (30) calendar days after signing of this Contract. OCTO/DC-Net will invoice Customer monthly for Service. Payment is due upon receipt of invoice and shall be made in U.S. currency. A payment received more than thirty (30) calendar days after Customer's receipt of the invoice is considered past due, and is subject to a one percent (1%) late charge per month.

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Prices are exclusive of all applicable federal and local fees and taxes which OCTO/DC-Net is obligated or authorized to pass through to Customer, including but not limited to federal universal service fees attributable to Customer's use of the Services. Any such fees or taxes, if applicable, will be billed separately on the invoice.

VIII. Additional Services.

Customer may choose to purchase additional services as specified, and at the prices listed in the DC-CAN Pricing Guide (<http://dcnet.dc.gov/DC/DCNET/Support/Product+Information/DC-CAN+Pricing+Guide>) at the time of the request. To purchase such services, Customer must be current on all non-recurring and monthly service payments required under this Contract. OCTO/DC-Net reserves the right to require a new Contract for any additional service, depending on the complexity of the work required for Customer's specific needs and the resulting need for a separate statement of work.

IX. Disclaimer of Warranty

ADVICE OR INFORMATION GIVEN BY OCTO/DC-Net OR ITS REPRESENTATIVES SHALL NOT CREATE A WARRANTY. USE OF TECHNICAL SUPPORT IS AT CUSTOMER'S OWN RISK AND IS NOT WARRANTED. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, OCTO/DC-Net AND ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS DISCLAIM, WITH RESPECT TO ALL SERVICES, ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR ARISING BY COURSE OF PERFORMANCE, DEALING, CUSTOM OR TRADE USAGE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. CUSTOMER AGREES THAT THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.

X. Customer's Responsibilities.

Customer represents that Customer has the power and the legal authority to enter into this Contract, and that the information Customer supplies to OCTO/DC-Net is correct and complete. Customer acknowledges and agrees that Customer is solely responsible for all use of the Service and the manner in which the Service is used by Customer or anyone who uses the Service with or without Customer's permission. If Customer uses a wireless router or similar device, Customer is responsible for securing Customer's wireless network and for any use of the Service via that wireless network. Customer may connect multiple computers/devices within a single office location to Customer's Service router to access the Service, but only through a single account and an IP address(es) obtained from OCTO/DC-Net, and for use by Customer. Customer agrees to use the Service only within the United States and the District of Columbia.

XI. Use of the Service.

Customer understands and agrees that Customer is responsible for the protection, storage, backup and security of Customer's data, software, computer network and other facilities, as well

as Customer's choice of equipment, software and online content; and all other matters related to how Customer accesses and uses the Service, including compliance with copyright protection laws. Customer acknowledges and agrees that the reliability, availability and performance of data or services accessed through the Internet or other services connected or linked to the Service are beyond OCTO/DC-Net's control and are not in any way warranted or supported by OCTO/DC-Net. Customer also agrees to provide OCTO/DC-Net with the access and support required to allow OCTO/DC-Net to implement, maintain, and provide the Services. Customer agrees that use of the Service is subject to all applicable local, state, national and international laws and regulations.

Customer may not resell, re-provision or rent the Service (either for a fee or without charge) or allow third parties to use the Service by any means (whether wired or wireless), including but not limited to, providing Internet access to third parties through a wired or wireless connection. Any act by Customer in violation of this prohibition shall be a material breach of this Contract. Customer shall bear all liability arising out of such violation of this Contract.

OCTO/DC-Net may take any action OCTO/DC-Net deems appropriate, in OCTO/DC-Net's sole discretion, to maintain the high quality of OCTO/DC-Net's Service and to protect others and itself, and comply with applicable law.

Any dealings that Customer has with third parties, merchants or advertisers found on the Service are between Customer and the third party, merchant or advertiser and Customer acknowledges and agrees that OCTO/DC-Net is not liable for any loss or claim Customer may have against a third party, merchant or advertiser. In no event shall OCTO/DC-Net be liable to anyone for any damage arising from or caused, directly or indirectly, by the creation or use of a third party's web site, or the information or material accessed through such web sites.

XII. Entry to Customer's Business.

Customer agrees to allow OCTO/DC-Net to enter Customer's business during normal business hours by appointment to perform necessary activities related to the installation, inspection, repair, replacement or disconnection of OCTO/DC-Net's Equipment and Service. Customer will allow OCTO/DC-Net to make attachments and connections that are necessary to provide Service to Customer. If Customer is not the owner of the premises to be entered, Customer must supply proof that Customer is authorized to allow work to be done on such premises.

XIII. Indemnification.

Customer agrees to defend, indemnify and hold the District of Columbia, OCTO/DC-Net, and OCTO/DC-Net's employees, agents, and contractors harmless from any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys' fees), resulting from, arising out of, or in any way connected with the performance or non-performance of the terms of this Agreement by Customer, Customer's officers, employees, agents, servants, subcontractor, or any other person acting for or by permission of the Customer in connection with this Agreement.

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Customer shall also repair or replace any District property that is damaged by the Customer, Customer's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of Customer while performing work under this Agreement.

Customer agrees to defend, indemnify and hold the District of Columbia, OCTO/DC-Net, and OCTO/DC-Net's employees, agents, and contractors harmless from any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys' fees), resulting from, arising out of, or in any way connected with the performance or non-performance of the terms of this Agreement by OCTO/DC-Net or its agents, employees and subcontractors, except for acts of gross negligence or willful misconduct in performing the terms of this Agreement.

Any dealings between Customer and third parties, including, but not limited to, merchants, suppliers, advertisers, contractors, and end-users, are between Customer and such third parties. Customer acknowledges and agrees that OCTO/DC-Net shall not be responsible or liable for any damages, losses, or claims between Customer and such third parties, including, but not limited to, claims involving Customer's or a third party's web site or to any information or material accessed through such web sites.

The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for the Customer, and shall survive the termination of this Agreement. OCTO/DC-Net agrees to give Customer written notice of any claim of indemnity under this section. Additionally, Customer shall have the right and sole authority to control the defense or settlement of such claim in its own name, provided that Customer shall not acquiesce to any judgment or enter into any settlement that adversely affects OCTO/DC-Net's rights or interests without OCTO/DC-Net's prior written consent. The latter shall include, but not be limited to, any settlement that requires OCTO/DC-Net to admit liability, to pay any amount of money, or to take or refrain from taking any action.

Nothing in this Contract is intended, nor shall it be construed, as a waiver or limitation, express or otherwise, of any governmental immunity available to the District of Columbia or OCTO/DC-Net under applicable law.

XIV. Return of Equipment.

Upon termination or expiration of this Contract, Customer agrees to return any Equipment owned and provided by OCTO/DC-Net within thirty (30) calendar days following such termination or expiration; failure to do so will result in an additional equipment charge equivalent to the current value to the equipment and hardware.

XV. Service Performance.

Service performance is guaranteed based on the DC-CAN Service Level Agreement as included in Attachment C, "Service Level Commitments."

XVI. Termination for Default.

Either party may terminate or cancel this Contract if the other fails to cure a material breach of the Contract within thirty (30) calendar days after receiving written notice of the breach. OCTO/DC-Net reserves the right, but assumes no obligation, to suspend performance immediately if Customer is more than sixty (60) calendar days overdue in payments or if, in OCTO/DC-Net's reasonable judgment, Customer has violated any provision of this Contract.

XVII. Monitoring of System Performance.

OCTO/DC-Net automatically measures and monitors network performance and the performance of Customer's Internet connection in order to improve the level of Service. OCTO/DC-Net does not share information collected for the purpose of network or computer performance monitoring or for providing customized technical support outside of OCTO/DC-Net or its authorized vendors, contractors and agents.

XVIII. Limitation of Liability.

Neither Party will be liable to the other Party for any indirect, incidental, special, reliance, punitive or consequential damages relating to the Project or this Contract, regardless of the legal theory under which such liability is asserted. Neither Party will be liable for any claims against to the other Party by any third party.

XIX. Limitation of Damages.

OCTO/DC-Net's aggregate liability to customer for any cause of action or claim whatsoever, including, but not limited to, any failure or disruption of services provided under this Contract, shall abide by the terms outlined in Attachment C, "Service Level Commitments."

XX. IP Addresses.

Upon expiration, cancellation or termination of this Contract for any reason, Customer agrees to return to OCTO/DC-Net any IP addresses or address blocks assigned to Customer by OCTO/DC-Net.

XXI. Force Majeure.

If the performance of any obligation hereunder is interfered with by reason of any circumstance beyond OCTO/DC-Net's reasonable control, including but not limited to acts of God, labor strikes and other labor disturbances, power surges or failures, or the act or omission of any third party, OCTO/DC-Net shall be excused from such performance to the extent necessary, provided that OCTO/DC-Net shall use reasonable efforts to remove such causes of nonperformance.

XXII. Publicity.

Customer shall not use any trademark, trade name, trade dress or any name, picture or logo which is commonly identified with the District of Columbia or its affiliates, or from which any association with District of Columbia or its affiliates or agencies may be inferred or implied, in any manner without the prior written permission of OCTO/DC-Net.

XXIII. Governing Law; Dispute Resolution.

The validity, construction, scope and performance of this Contract will be governed by the laws of the District of Columbia.

Any legal proceeding relating to this Contract shall take place in the Superior Court of the District of Columbia.

XXIV. Assignment and Successors in Interest.

This Contract will be binding on all successors-in-interest of Customer.

Neither Party may assign this Contract without the prior written consent of to the other Party.

XXV. Severability; Waiver.

If any term of this Contract is held unenforceable, such term will be construed as nearly as possible to reflect the original intent of the Parties, and the remaining terms will remain in effect.

All terms of this Contract that should by their nature survive the termination of this Contract will so survive.

Neither Party's failure to insist upon strict performance of any provision of this Contract will be construed as a waiver of any of its rights hereunder.

XXVI. Entire Contract; Amendment.

The foregoing states the entire Contract between the Parties, and supersedes any and all prior understandings, commitments, or agreements, oral or written, with respect to the Project, Statement of Work (Attachment A), Pricing Schedule (Attachment B), Service Level Commitments (Attachment C) or Contract.

Upon execution by the duly authorized representatives of the Parties, this Contract will become a mutually binding Contract by and between Customer and OCTO/DC-Net and may not be modified except by a written amendment duly executed by authorized representatives of each Party.

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XXVII. Miscellaneous.

Any changes to this Contract, or any additional or different terms in Customer's purchase orders, acknowledgments or other documents, will not be effective unless expressly agreed to in writing by OCTO/DC-Net. Any notices or demands or other communications under the terms of this Contract or under any statute must be communicated in writing.

XXVIII. Notices.

Any notice, consent, demand, or request required or permitted by this Contract will be in writing, and will be deemed to have been sufficiently given when personally delivered or transmitted by electronic mail, certified or registered United States Mail (postage prepaid), overnight airmail service, and/or courier addressed as follows (or to such other address as either Party may, by written notice, designate to the other Party):

ATT'N:

Don Johnson
Director of DC-Net
655 15th Street, NW, #400
Washington, DC 20005
Phone: (202) 715-3751

don.johnson@dc.gov

If to Customer:

ATT'N: _____

_____ @ _____

202-_____

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XXIX. Signatures

The Parties have, through their duly authorized representatives, executed this Contract effective as of the Effective Date of this Contract.

OCTO/DC-Net

Customer

Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

Remittance Information

PAY TO THE ORDER OF: DC TREASURY

ADDRESS:
DC-NET (Finance)
C/O Haider Ali, Director
655 15th Street NW,
Suite 400
Washington DC 20005

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Attachment A – Statement of Work

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Attachment B – Pricing

Attachment C – Service Level Commitments

See attached document “DC-CAN Service Level Agreement.”