



CR51047  
 Merit Network, Inc.  
 1000 Oakbrook, Suite 200  
 Ann Arbor, MI 48104-6794  
 t.734-527-5700 f.734-527-4125  
 www.merit.edu

This SERVICES AGREEMENT Number: 20180605-DED-747-KMM-1, dated as of August 1, 2018 (collectively with each Service Order Form, as defined below, the "Agreement"), is made by and between Merit Network, Inc. ("Merit") and Washtenaw County ("Member").

## 1. Background

Merit is a non-profit corporation, governed by Michigan's four-year publicly supported universities, operating a statewide computer network providing links to external networks.

## 2. Services Provided

(a) *General.* Merit will provide to Member the Internet access services, optional fee-services, and other mutually agreed-upon services (collectively, the "Services") set forth below or in a specific Service Order Form (each a "Service Agreement") which may be executed from time-to-time by Merit and Member setting forth additional services, all of which shall be subject to the terms and provisions of this Agreement.

(b) *Network Access.* Merit will provide to Member Internet access and other services as defined in the Schedule(s) referenced in Section 3.

(c) *Installation.* Merit will provide the labor, equipment, and other materials necessary to provide network access. This includes the equipment at both ends of the connection, the circuit used, and related materials, parts and labor. Member shall pay a service charge for the equipment, the cost of the circuit and any Merit and telephone company installation fees (if applicable), associated with the installation. All equipment supplied by Merit will remain the property of Merit. Member shall be responsible for all internal networking, host computers to be attached to the network, and any associated software. Member shall also be responsible for the cost of any software upgrades to Member owned equipment, which may be specified by Merit which is required in order to effectuate the network attachment. In addition, if applicable to Member's choice of connection, Member shall provide a voice grade phone line that will be connected to diagnostic equipment supplied by Merit, attached to the router for diagnostic purposes. Member may have the option to select an alternate installation option for a reduced fee. If option is selected, Merit will configure all equipment and ship it to the Member. Member will then be responsible for installation of equipment at their location.

(d) *Service and Support.* Payment of the annual Member fee shall entitle Member to participate in the service and support offered by Merit from time-to-time to other Merit Members. This service and support will include software and firmware upgrades required to maintain compatibility with the equipment and software used in the Merit backbone. It does not include optional equipment or software upgrades offered by Merit which are intended to add new features or provide increased performance. Those upgrades will be provided at Member's expense upon request and pursuant to a separate written Service Agreement. It also does not include the replacement of equipment previously installed by Merit at Member's site that is no longer supported by the manufacturer or which has reached the end of its useful life. If requested to support a service or feature upgrade, that equipment will be replaced by Merit, but at Member's expense.

(e) *Maintenance.* Merit is responsible for the operation and maintenance of its backbone and server facilities. Member is responsible for the operation and maintenance of its local area networks, computers and other equipment. Member is also responsible for the cost of the maintenance on the Merit-supplied circuit at Member's site, but agrees that all maintenance for circuits and Merit-owned equipment will be performed by Merit. Member is responsible for providing and maintaining an acceptable environment for all Merit-owned equipment located at the Member premises. Should Merit owned-equipment be damaged as a result of the Member's abuse, neglect, or failure to provide an acceptable environment or as a result of environmental damage such as fire, flood or lightning strike, Member is responsible for paying (i) the cost of all repair services and travel expenses provided at Member's site at Merit's then-applicable hourly maintenance rate, plus mileage, and (ii) the cost of all parts and materials. Maintenance and repair services are available from Merit between 7:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Service may be provided at other mutually agreed upon times, if arranged in advance.

## 3. Payment

Member shall pay for (i) Services set forth on the attached Schedule(s) to this Agreement and any subsequent schedules that reference this Services Agreement Number (ii) any additional Services as provided in the applicable Service Agreement; and (iii) applicable maintenance services at the then-

applicable rates. Without limiting the foregoing, Member shall pay all one-time set-up and installation charges, any one-time or recurring telecommunications service charges (regardless of whether such costs are passed through by Merit or billed separately by the telecommunications provider), related administrative fees charged by Merit, and all sales and use taxes, as well as duties or levies arising in connection with the Services. All non-recurring and recurring fees are billed in advance on an annual basis beginning on the first date of service, except Member may elect monthly, quarterly or semi-annual billing for an additional administrative fee. The amount of the administrative fee will vary with the frequency of the billing. Any additional service fees will be billed as the service or charge is incurred. Some qualifying Members may be granted extended payment terms for one-time set-up and installation charges with addition of an appropriate administrative fee. Payment is due within (30) days from the date appearing on the invoice. Member will be charged a 1.5% late charge on the first day of each month on all invoices remaining unpaid (45) days after the date appearing on the invoice. These payment terms do not apply to amounts paid to Merit through the USF program.

## 4. Term and Termination

(a) *Term.* The term of this Agreement begins on the date of start of Services provided by Merit, and extends for the term as defined in attached notice.

(b) *Renewals.* Unless either party gives a written termination notice at least (30) days prior to the end of the current term (whether it's the initial term or a renewal term), the term of this Agreement will be renewed automatically for a similar term as the term which is then in effect.

(c) *Early Termination.* If Member terminates this Agreement for any reason other than Merit's breach of its responsibilities under this Agreement before the end of the term, or if Merit terminates this Agreement because of a violation by Member of any term or provision of this Agreement including, but not limited to, Member's failure to make any payment when due, then Member shall be responsible for and shall pay a lump sum equal to (i) 50% of the applicable monthly charges, multiplied by the number of months remaining in the current term of this Agreement, plus (ii) all telecommunications service charges applicable through the date service is actually terminated, regardless of the effective date of termination of the Agreement, and any related administrative fees charged by Merit, plus (iii) any additional early termination penalties or charges assessed by the telecommunications carrier, plus (iv) the balance of any remaining fiber access fees or amortized install charges, plus (v) all costs associated with disconnecting Member's service and removing any equipment from Member's site (charged at the then-applicable rates for maintenance), plus (vi) any outstanding amounts previously incurred for maintenance, plus (vii) if Member previously received a discount as a result of agreeing to a term longer than one (1) year, an early termination penalty equal to the total amount of the discount, as calculated without any reduction or proration to reflect the point during the term at which the termination occurs, and plus (viii) if Member previously received extended payment terms for one-time set-up and installation fees, the balance remaining plus any assessed administrative charge are due and payable upon termination. One-time installation charges are not refundable. In the event Member requests Merit to continue providing any portion of the Services beyond the requested termination date, Member agrees to pay Merit for those Services at the then-applicable rates in accordance with the terms of payment provided in Section 3 above. The above termination charges do not apply to Merit service moves or upgrades.

(d) *Termination.* Upon termination of dedicated service with Merit, whether such termination occurs at the end of the initial term or any subsequent terms, or as an early termination during an agreement period, Member agrees that all IP addresses assigned from Merit's CIDR block shall be promptly returned. In addition, Member shall be responsible for transitioning responsibility of primary and/or secondary DNS to their own DNS server, or that of its new carrier.

(e) *Price Adjustments.* If Merit initiates reduced Service Fees to its Non-Profit Members during the Agreement period, Member may renew this Agreement at the new rates for a term of equal or greater length than the initial term. In all instances, the renewal will be for a minimum of twelve (12) months and the renewal rates will reflect the term discount of the new term period.

## 5. Limited Warranty

Merit will supply, at no charge, new or rebuilt replacements for defective equipment or parts for the initial term of this Agreement. This Limited Warranty does not cover damages due to accident, misuse, abuse or negligence. REPAIR OR REPLACEMENT AS PROVIDED UNDER THIS LIMITED WARRANTY IS THE EXCLUSIVE REMEDY OF MEMBER. MERIT

SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS LIMITED IN DURATION TO THE DURATION OF THIS LIMITED WARRANTY.

6. Rights and obligations of Member

(a) *Member is Responsible to Its Authorized Users.* Member is solely responsible for communicating with its own authorized users, and for handling all complaints and trouble reports made by its authorized users, with respect to the Services provided hereunder.

(b) *Acceptable Use Restrictions.* Merit's Acceptable Use Policy ("AUP") applies to the use of all Services provided by Merit, including any unsupervised anonymous network access offered by Member. By accepting Services from Merit, Member agrees to comply with the AUP located at <https://www.merit.edu/aup.pdf>, and any changes made from time to time thereto. Member also agrees to be responsible for the compliance by its users with the AUP.

7. Rights and Obligations of Merit

Merit shall be responsible only for the operation and maintenance of the Services. Member shall be responsible for maintaining and managing its own network that interfaces with the Services. Merit shall not be responsible for cabling that connects Member-owned equipment to Merit equipment or the Services. Any interruption in the Services that is caused by the malfunction or interruption of any physical telecommunications media or facility (including, but not limited to cables and fiber optic lines) or by any malfunction or manufacturer's defects of equipment either provided by Merit to Member or separately purchased by Member will not be deemed a breach of Merit's obligations under this Agreement.

8. Indemnification

Member and Merit (collectively the "Indemnifying Parties" and individually the "Indemnifying Party") will indemnify, save harmless and defend each other and all of Merit's Members and other Members, as well as their respective employees, officers, directors and agents (collectively "Indemnified Parties") from and against any claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative) and expenses (including, but not limited to reasonable attorney's fees incurred with or without suit, in arbitration or mediation, on appeal or in a bankruptcy or similar proceeding) (collectively "Claims") threatened, asserted, or filed by a third party against any of the Indemnified Parties to the extent that such third party Claims arise out of or relate to any actual or alleged (i) breach of this Agreement by the Indemnifying Party; or (ii) negligent or tortious act or omission to act of the Indemnifying Party. The Member will also indemnify, save harmless and defend the Indemnified Parties from Claims threatened, asserted, or filed by a third party against any of the Indemnified Parties to the extent that such third party Claims assert that the data content delivered by the Member via the Services constitutes an infringement of any confidential information, trade secret, patent, copyright, trademark, trade name or other legal right of a third party.

9. Limitation of Liability

Except for the Limited Warranty in Section 5 above, the equipment and Services provided by Merit are provided on an "as is" and "as available"

basis. Merit does not warrant that the Services will be uninterrupted or free of harmful components. Merit makes no express warranties and waives all implied warranties. Merit and its employees are not liable for any costs or damages arising directly or indirectly from Member's use of the Services or the Internet including any direct, indirect, incidental, exemplary, multiple, special, punitive or consequential damages. Member assumes full responsibility and risk for the use of the Services and the Internet, and is solely responsible for evaluating the accuracy, completeness, and usefulness of all services, products and other information. If Member is dissatisfied with the Service(s) or with any terms, conditions, rules, policies, guidelines or practices of Provider in operating the Service(s), Member's sole and exclusive remedy is to terminate this Agreement in accordance with Section 4, above, and discontinue using the Service(s). Merit's cumulative liability to Member or any third party for any and all claims relating to the use of the equipment and Services provided by Merit shall in no event exceed the amount of the annual Member fees paid by Member to Merit during the twelve (12) month period ending on the date of the event giving rise to the claim. Merit shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services.

10. Data Content

Merit is not liable for the content of any data transferred either to or from Member via the Services provided by Merit, nor for any loss or damage, whether personal, material, or financial, suffered by Member as a direct or indirect consequence of the Services provided by Merit.

11. Miscellaneous

(a) *Governing Law; Jurisdiction.* The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of Michigan.

(b) *Entire Agreement.* This Agreement, and the Service Agreements entered into by the Parties from time-to-time, is the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement may not be amended except upon the written consent of the parties. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity. The waiver by any party of the time for performance of any act or condition hereunder shall not constitute a waiver of the act or condition itself.

(c) *Assignment.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, and assigns. Member may not assign this Agreement without the prior written consent of Merit.

(d) *Headings; Severability.* Headings used in this Agreement are for reference purposes only and shall not constitute a part hereof or affect the meaning or interpretation of this Agreement. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

(e) *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

\_\_\_\_ Please do not include my organization's name or likeness in Merit Network's marketing or advertising campaigns or materials.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

APPROVED AS TO CONTENT:

[Signature] 11/27/2018  
Jason Fee, FM Infrastructure Manager

APPROVED AS TO CONTENT

[Signature] 11/21/2018  
IT Operations Manager

APPROVED AS TO CONTENT

[Signature] 11/30/2018  
Dave Shirley, OIM Director

APPROVED AS TO FORM

[Signature]  
CURTIS N. HEDGER  
CORPORATION COUNSEL

Merit Network, Inc.

Signed By: [Signature]  
Printed Name: Mary Shindell  
Title: Member Engagement Manager  
Date Signed: 10/16/18

WASHTENAW COUNTY:

[Signature] 12/05/2018  
Gregory Dill, Administrator

ATTESTED TO

[Signature] 12/07/2018  
COUNTY CLERK

12/04/2018  
Lawrence Kestenbaum, County Clerk/Register

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Merit Network Service Agreement Schedule

Merit Network Service Agreement Number: 20180005-DE0-747-KMM-1

Merit Network, Inc.
1000 Oakbrook Drive, Suite 200
Ann Arbor, MI 48104
734-527-5700 734-527-4125
www.merit.edu

Renewal Internet Access Quote

June 6, 2018

Prepared For:
Andy Brush
Washtenaw County
220 N. Main St.
Ann Arbor, MI 48107

Provided By:
Mary Shindell
734-527-5783
shindell@merit.edu

Select One

Select One -->

Table with columns for Contract Type (1-Yr, 2-Yr, 3-Yr, 5-Yr) and rows for Equipment, Upgrade Allowance, Telco Installation, Merit Installation, and bandwidth options (300 Mbps, 400 Mbps, 800 Mbps).

DDoS Protection

Select One -->

Table for DDoS Protection with columns for Bandwidth Level (300, 400, 600 Mbps) and Protection w/ One-Time, and rows for 1, 2, 3, and 8 year terms.

Preferred Billing Period 8/1-7/31 Invoice Frequency: X Annual [ ] Bi-Annual [ ] Quarterly [ ] Monthly
Note: Invoice frequencies other than annual incur a \$25 billing fee per invoice

Consortium/WAN Pricing - Under Merit Network, Inc.'s Consortium/WAN Pricing Model, one or more related organizations may aggregate traffic from multiple physical locations using multiple circuits for consolidated pricing.

APPROVED AS TO CONTENT:

Signature of Jason Foo, FM Infrastructure Manager, dated 11/27/2018

WASHTENAW COUNTY:

Signature of Gregory Dill, Administrator, dated 12/05/2018

APPROVED AS TO CONTENT

Signature of Kathy Tanner, IT Operations Manager, dated 11/21/2018

ATTESTED TO:

Signature of Lawrence Kestenbaum, County Clerk/Register, dated 12/06/2018

APPROVED AS TO CONTENT

Signature of Dave Simpson, dated 11/30/2018

Merit Network, Inc.

Signature of Mary Shindell, Member Engagement Manager

Signature of Curtis N. Hedger, dated 12/04/2018, CURTIS N. HEDGER CORPORATION COUNSEL

Handwritten initials 3/10

**Merit Internet Access Service Features:**

- Layer 3 Internet Access
- Settlement-free peering and caching access Included
- Internet2 access Included
- Use of 256 total IPv4 addresses Included
- Hosted, authoritative DNS service for up to 3 zones Included
- Recursive DNS Included
- 24x7x365 MSC support Included

**Proposed Solution:**

THIS SECTION IS NOT NEEDED

**Connectivity Diagram:**

THIS SECTION IS NOT NEEDED



Connecting Organizations, Building Community

**Addendum to  
Service Agreement Number 20180605-DED-747-KMM-1  
between**

**Merit Network, Inc.  
and  
Washtenaw County**

May it be known that the undersigned parties, for good consideration, do hereby agree to make the following changes and / or additions that are outlined below. These additions shall be made valid as if they are included in the original stated agreement. The original stated agreement shall be signed in addition to this addendum.

**3. Payment**

The language of:

*"and all sales and use taxes,"*

Is removed in its entirety by:

**3. Payment**

The language of:

*"1.5% late charge"*

Is replaced in its entirety by:

*"1% late charge"*

**8. Indemnification**

The language of:

*"To the extent permitted by Michigan law,"*

Is prepended to the section.

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[www.merit.edu](http://www.merit.edu)

p 734.527.5700 | f 734.527.4125  
1000 Oakbrook Drive, Suite 200 | Ann Arbor, MI 48104 - 6794

Merit Network Inc.

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Connecting Organizations, Building Community

No other terms or conditions of the above mentioned agreement shall be negated or changed as a result of this herein stated addendum.

IN WITNESS WHEREOF, the Parties here to have caused this Agreement to be executed and delivered as of the date below.

Washtenaw County

APPROVED AS TO CONTENT:

Jason Fee 11/27/2018  
Jason Fee, FM Infrastructure Manager

APPROVED AS TO CONTENT

Amy Brink 11/21/2018  
IT Operations Manager

APPROVED AS TO CONTENT

Dave Shroyer 11/30/2018  
PROXY SIGNED BY: COLE HANN

APPROVED AS TO FORM

Curtis N. Hedger 12/04/2018  
Curtis Hedger, Corporation Counsel  
CORPORATION COUNSEL

WASHTENAW COUNTY:

Gregory Dill 12/05/2018  
Gregory Dill, Administrator

ATTESTED TO:

Lawrence Kestenbaum, County Clerk/Register

Merit Network, Inc.

Mary Shindell

Signature

Mary Shindell

Printed Name

11/15/2018

Date Signed

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