

## SALES ORDER AGREEMENT E-RATE

THIS SALES ORDER AGREEMENT ("Agreement") is made and entered into on May 2016, by and between AMS.NET, INC., a Delaware corporation ("AMS"), whose address is 502 Commerce Way, Livermore, CA 94551 and San Rafael City Schools, an Education ("Customer"), whose address is 310 Nova Albion Way, San Rafael, CA 94903.

1. **Confirmation of Sales Order.** Customer hereby agrees to purchase from AMS, and AMS hereby agrees to sell to Customer, the multi-service networking equipment and services specified in the AMS price quote, customer purchase order, or other documentation attached hereto and labeled **Exhibit A**, the terms of which are hereby incorporated and made a part of this Agreement.

This agreement is contingent on E-rate funding.

Customer understands the equipment that was quoted in the ERate contract is non-returnable once it has been ordered and received.

2. **Payment Terms and Taxes.** Upon written funding approval from the Schools and Libraries Division (SLD) of the **Universal Service Administrative Company (USAC)**, a sum representing the total utilized project cost minus the discount applied by the SLD and any items that are determined not E-rate eligible, shall be due to AMS.NET. A PO is required representing these items. Subsequent billing invoices for equipment and services provided under this Agreement shall be sent to Customer concurrently with the delivery of equipment and/or the provision of services, as the case may be. Customer is required to complete, sign, and return service certification form sent by SLD within 5 business days. All billing invoices shall be due and payable in full thirty (30) days after the date of billing (i.e., net 30 day payment terms), with the date of billing being the date indicated on the billing invoice. Customer shall pay any and all taxes based on or in any way computed with reference to the equipment and services being provided under this Agreement, (minus the discount applied by SLD) including but not limited to sales taxes but excluding taxes based on AMS's net income. Customer understands that they are responsible for costs incurred due to any unforeseen sales tax increases.
3. **Installation Date.** The term "installation date" means the first business day on which installation of the system is complete. Minor omissions or variances in performance of the System that do not materially or adversely affect the operation of the system, shall not be deemed to have postponed the Installation Date. Seller shall use its best efforts to make timely delivery and installation. **HOWEVER, ALL STATED DELIVERY AND INSTALLATION DATES ARE APPROXIMATE AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER SHALL, UNDER NO CIRCUMSTANCE, BE DEEMED TO BE IN DEFAULT HEREUNDER OR BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR COMMERCIAL LOSS RESULTING FROM DELAYS IN DELIVERY OR INSTALLATION.**
4. **Change Management Procedures.** It may become necessary to amend this agreement for reasons including, but not limited to, the following:
  - Changes to scope of the work and/or specifications for the Services,
  - Changes to the Milestone Invoice Schedule,
  - Changes to the project schedule due to unavailability of resources which are beyond either party's control, and/or,
  - Environmental or architectural conditions not previously identified.

In the event either party desires to change this SOW, the following procedures shall apply:

- i. The party requesting the change will deliver a "Change Request" to the other party (an example of which is provided in Appendix B). The Change Request will describe the nature of the change, the reason for the change, and the effect the change will have on the scope of work.
  - ii. A change Request may be initiated either by Customer or by AMS for any changes to the SOW. The parties will evaluate the Change Request and negotiate in good faith the changes to the Services and additional fees, if required to implement the Change Request. If both parties agree to implement the Change Request, both parties will sign the Change Request, indicating the acceptance of the changes by the parties.
  - iii. AMS shall require a schedule extension of Services of up to thirty (30) Business Days for any personnel Change Request made by Customer.
  - iv. Upon Execution of the Change Request, said Change Request will be incorporated into, and made part of, this SOW.
  - v. AMS is under no obligation to proceed with the Change Request until such time as the Change Request has been agreed upon in writing by both parties.
5. **Warranties.** AMS warrants to Customer that it has good title to the equipment being sold to Customer under this Agreement, and the right to sell such equipment to Customer free of liens or encumbrances. AMS further warrants to Customer that the equipment being sold to Customer hereunder shall be free from defects and workmanship for a warranty period of thirty (30) days commencing on the later of the date the equipment is delivered to Customer or the date upon which AMS completes performance of the services to be performed under this Agreement (this warranty being hereinafter referred to as an "Installation Warranty"). **EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, AMS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR SERVICES BEING PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AGAINST INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.** AMS shall reasonably cooperate and assist Customer in enforcing any manufacturer warranties with respect to the equipment being sold to Customer under this Agreement. AMS hereby advises Customer, and Customer acknowledges that in the event Customer desires to procure from AMS any warranty protection beyond the warranty of title and the Installation Warranty provided under this Paragraph, Customer may do so by entering into a separate Service Agreement with AMS.

Manufacturer's warranty that is guaranteed is whatever is published by the manufacturer at the time of purchase.
  6. **Return for Credit Policy.** Merchandise must be returned within 30 days in unopened original packaging. An RMA number must be requested prior to the return and accompany the equipment when it is received.



7. **Limitation of Liability.** In no event shall AMS be liable to Customer for:
- Any indirect, special or consequential damages or lost profits arising out of or related to this Agreement or AMS's performance or breach thereof, even if AMS has been advised of the possibility of any such damages or losses; or.
  - Any damages resulting from or related to any failure or delay of AMS in the delivery or installation of equipment or the performance of installation or maintenance services (if any).
  - Notwithstanding any other provision of this Agreement, all liability of AMS and its suppliers under this Agreement or otherwise shall be limited to the money paid to AMS under this Agreement. This limitation of liability is cumulative and not per incident.
8. **Attorneys' Fees.** If any legal action is necessary to enforce terms of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs in addition to any other relief to which the prevailing party may be entitled.
9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
10. **Entire Agreement.** This Agreement, together with any price quotes or purchase orders attached hereto as **Exhibit A**, is the complete and exclusive statement of the mutual understanding of the parties with respect to the subject matter of this Agreement, supersedes and cancels any prior understanding, communications or agreements of the parties with respect to the subject matter of this Agreement, and may be amended or supplemented only by a writing signed by both parties.
11. **Risk of loss.** Seller shall bear all risk of loss or damage to components of the system while they are in transit to the Customer and until deliver to the premises. Thereafter, such risk of loss shall be done by Customer, except for loss caused by the negligence of Seller or its employees
12. **Default.** If Customer shall fail to pay or cause payment of any sum owing to Seller hereunder when due, then, in addition to all other remedies available to Seller at law or equity or under other provisions of this Agreement and not in limitation thereof, Seller may, until said sum is paid in full, collect interest on the sum then owing at the rate of 18% per annum from the date of the last installment due date until such default by the Customer has been cured. It is

expressly agreed and understood that in no event shall the aggregate interest charges under the provisions of this paragraph exceed the maximum rate of interest that could be charged under applicable state law.

Should either party institute legal action to enforce its rights under this agreement, the venue shall be in Alameda County, State of California, and the prevailing party in such action shall be entitled to recover reasonable attorney fees and costs.

13. **Force majeure.** The obligations of Seller hereunder shall be suspended to the extent and for the period of time that is hindered or prevented from performing because of labor disturbances, strikes and lockouts, acts of God, fires, storms, water, unreasonable delays in transportation, governmental action, failure of suppliers, and or any other cause beyond Seller's control.
14. **Assignment.** Seller shall have the right to assign Sellers obligations; however, Seller shall remain liable to Customer for the performance of Seller's obligations under the terms of this agreement.
15. **Customer to provide.** Customer shall, as specified by Seller provide appropriate environmental conditions, necessary commercial power and facilities for the System, access to the premises, and if required by local law, conduit and or special fire retarding cabling. Customer shall pay all charges for telephone trunk lines, in the room system is to be installed, if applicable as well as extensions and equipment for the installation of the system.
16. **Representation of Customer.** Customer warrants and represents that Customer has been duly authorized by all necessary corporate and other action of Customer and Customer's execution of this Agreement will not violate any provision of law or its Articles of Incorporation or Bylaws, or result in the breach of any agreement to which Customer is a party.
17. **Notices.** All notices required or permitted to be given under the Agreement may be given by either party to the other by depositing same in the United States Mail with first class postage prepaid or by fax. Until changed by written notice, such notices shall be direct to Seller at the address that appears at the beginning of this Agreement and Customer at the premises.

IN WITNESS WHEREOF, AMS and Customer have executed this Agreement as of the date first set forth above.

"AMS:"

"Customer:"

AMS.NET, Inc.,  
a Delaware Corporation

San Rafael City Schools,  
a Education Customer

By:   
Robert M. Tocci, President

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

**EXHIBIT A**

<b><u>Quote Number</u></b>	<b><u>Description</u></b>	<b><u>Total \$</u></b>
Q-00008740	UPS Battery Replacement	\$12,026.97
Q-00009062	WAN - WAN Optimization - District-Wide	\$118,808.15
Q-00009045	WAN - Terra Linda HS-DO	\$39,965.68
Q-00009072	WAN - San Rafael HS-Madrone HS	\$39,965.68
Q-00009070	WAN - Davidson MS	\$39,965.68
Q-00009069	WAN - Venetia Valley K-8	\$39,965.68
Q-00009046	WAN - Bahia Vista ES	\$39,965.68
Q-00009064	WAN - Coleman ES	\$39,965.68
Q-00009065	WAN - Glenwood ES	\$39,965.68
Q-00009066	WAN - Laurel Dell ES	\$39,965.68
Q-00009067	WAN - San Pedro ES	\$39,965.68
Q-00009947	WAN - Short School	\$39,321.88
Q-00009068	WAN - Sun Valley ES	\$39,965.68
Q-00009625	Wireless - Terra Linda HS-DO	\$41,348.53
Q-00009626	Wireless - San Rafael HS-Madrone HS	\$59,326.17
Q-00009627	Wireless - Davidson MS	\$53,034.01
Q-00009628	Wireless - Venetia Valley K-8	\$50,337.37
Q-00009636	Wireless Labor - Terra Linda HS-DO	\$4,600.00
Q-00009637	Wireless Labor - San Rafael HS-Madrone HS	\$6,600.00
Q-00009638	Wireless Labor - Davidson MS	\$5,900.00
Q-00009639	Wireless Labor - Venetia Valley K-8	\$5,600.00
Q-00009666	Core Switching - Terra Linda HS-DO	\$28,059.37
Q-00009667	Core Switching - San Rafael HS-Madrone HS	\$28,059.37
Q-00009668	Core Switching - Davidson MS	\$28,059.37
Q-00009669	Core Switching - Venetia Valley K-8	\$28,059.37
Q-00009670	Core Switching - Bahia Vista ES	\$15,303.67
Q-00009671	Core Switching - Coleman ES	\$15,303.67
Q-00009672	Core Switching - Glenwood ES	\$15,303.67
Q-00009673	Core Switching - Laurel Dell ES	\$15,303.67
Q-00009674	Core Switching - San Pedro ES	\$15,303.67
Q-00009675	Core Switching - Sun Valley ES	\$15,303.67
Q-00009676	Core Switching Labor - Terra Linda HS-DO	\$1,600.00
Q-00009677	Core Switching Labor - San Rafael HS-Madrone HS	\$1,600.00
Q-00009678	Core Switching Labor - Davidson MS	\$1,600.00
Q-00009679	Core Switching Labor - Venetia Valley K-8	\$1,600.00
Q-00009680	Core Switching Labor - Bahia Vista ES	\$1,600.00
Q-00009681	Core Switching Labor - Coleman ES	\$1,600.00
Q-00009682	Core Switching Labor - Glenwood ES	\$1,600.00
Q-00009683	Core Switching Labor - Laurel Dell ES	\$1,600.00
Q-00009684	Core Switching Labor - San Pedro ES	\$1,600.00
Q-00009685	Core Switching Labor - Sun Valley ES	\$1,600.00

**Total Investment**    \$1,016,619.38

\_\_\_\_\_  
Customer Initials