

COMPREHENSIVE AGREEMENT

This Comprehensive Agreement ("Comprehensive Agreement") is formed between the Amherst County Broadband Authority, a political subdivision of the Commonwealth of Virginia (the "Authority" or "Owner"), and AcelaNet, LLC, doing business as SCS Broadband, a Virginia limited liability company ("SCS" or the "Contractor"; collectively, the "Parties").

RECITALS

WHEREAS, the Authority is a political subdivision of the Commonwealth of Virginia under the Virginia Wireless Service Authorities Act, Chapter 43.1 of Title 15.2 of the Code of Virginia, 1950, as amended, with the authority to participate in the provision of qualifying communications services, defined as high-speed data service and Internet access service, of general application, but excluding any cable television or other multi-channel video programming services; and

WHEREAS, on 9/5/17, the Authority lawfully adopted Guidelines under the Public-Private Education Facilities & Infrastructure Act of 2002 (the "Act"), Chapter 22.1 of Title 56 of the Code of Virginia, 1950, as amended, and is a "responsible public entity" as defined in the Act; and

WHEREAS, on 10/17/17, SCS submitted an unsolicited proposal under the Act (the "Conceptual Proposal"), which the Authority duly advertised and sought competing proposals for, which is incorporated herein by reference as **Exhibit A**; and

WHEREAS, the Authority received no competing proposals, and elected to continue to the detail phase of consideration with SCS, and to begin negotiating a Comprehensive Agreement for a Qualifying Project designed to provide technology, equipment, and infrastructure designed to deploy wireless broadband internet services to schools, businesses, and residential areas; and

WHEREAS, on 7/17/18, the Authority held a public hearing on whether to enter a Comprehensive Agreement, as provided by the Guidelines and the Act, and advertised this Agreement for 30 days for comments; and

WHEREAS, SCS is a wireless internet service provider (WISP) with years of experience providing the infrastructure, goods, and services set forth in this Agreement, and is a "private entity" under the Act, and is capable of providing the services contemplated herein.

WITNESSETH

NOW THEREFORE, in consideration of the premises hereof and the mutual promises set forth herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide ubiquitous high-speed internet to the unserved and underserved public in Amherst County at fair, reasonable, and uniform prices.
2. **Term.** Five-year initial term, with three renewals of five years each, contingent on continued achievement of deployment, customer satisfaction, and service targets.
3. **Payments.** SCS will charge fair, reasonable, and uniform rates to the public for its services. It will provide two main services as the Authority's partner: (1) Installation, maintenance, upkeep, and timely replacement and updating of its equipment; and (2) being an ISP to the public. SCS will receive its payments through customer subscriptions. The Authority will make lease payments to the Region 2000 Radio Board for towers it owns, if required, as a "pass-through" and consult with SCS on the negotiation and payments due under the leases. The Parties understand that the Region 2000 Radio Board supports low-cost use of its towers for the purposes of this Agreement. SCS will

be expected to meet reasonable reinvestment levels for replacement and updated equipment on a regular basis.

4. **Phase I—Tower Deployment.**

4.1. *General.* The Parties anticipate that the services contemplated by this Agreement will occur over several phases. Phase I is composed of testing and deployment on five radio towers.

4.2. *Phase I Towers.* The following towers (each a "Tower") will be part of Phase I rollout, with deployment dates as set forth below:

Name	Lat/Long	Deployment Date
High Peak	37° 33' 47.33" / 79° 11' 37.06"	2/4/18
Buffalo Ridge	37° 31' 15.37" / 78° 59' 9.08"	4/4/19
Panther Mountain	37° 42' 10.0" / 79° 11' 20.70"	6/4/19
Amherst Control	37° 35' 7.60" / 79° 3' 0.20"	8/4/19
Rocky Mountain	37° 47' 43.9" / 79° 10' 48.17"	10/4/19

On or before the "deployment date," the Equipment on each Tower shall be fully installed, fully permitted, and in actual use providing wireless internet service to customers. In the event that the Notice to Proceed is issued later than January 1, 2019, the Deployment Dates shall be extended in the same number of days as the Notice to Proceed is delayed.

4.3. *Propagation Testing & Engineering.* It is SCS's responsibility to select and license spectrum and to choose appropriate and effective equipment to achieve the goals of this Agreement in a timely manner and as otherwise agreed. In furtherance of these goals, SCS shall:

4.3.1. *Prior Approval of Equipment.* All construction, installations, and alterations, including maintenance, repair, removal or relocation, except routine and/or emergency repairs and maintenance of any of the Company's Improvements on the Leased Premises shall require submission of plans with detail required by the Authority and the prior written approval of the Authority and shall be in compliance with any Authority and Radio Board specifications and with the plans approved by the Authority. In the event emergency repairs or routine maintenance is needed, plans shall be submitted as soon as practical following the end of the emergency or maintenance; provided that any such repairs or maintenance which is consistent with the Construction Drawings shall not require any submittals. The Authority reserves the right, consistent with good engineering practices, to reasonably and within a reasonable time period approve or disapprove the plans and the actual changes or Improvements. In the event the changes or Improvements are not in accordance with the approved plans or do not meet the requirements of this Agreement, the Authority shall provide written notice to Company of such non-compliance. In the event Company has not corrected such non-compliance within thirty (30) days following written notice, the Authority may remove the Improvements or otherwise take the necessary action to restore the Leased Premises at the expense of the Company.

4.3.2. *As-builts.* Within thirty (30) days after substantial completion of construction, installation, or alteration of any of the Improvements, the Company shall provide the County with "as-built" plans for the Improvements.

4.3.3. *Utility Service & Redundancy.* All ground equipment used by SCS will be located inside the leased or owned compound. Ground equipment will be located outside of any buildings and mounted to the exterior of existing poles or buildings with the prior approval of the County. SCS will install a battery backup system that will provide redundancy to their equipment at each tower location. SCS will add a circuit breaker to the breaker box for the existing tower power which also has emergency backup.

4.4. *Structural Testing.* Before SCS's Equipment may be placed in operation: (i) SCS shall carry out strength and wind loading tests and other necessary engineering to ensure that the Tower structure is capable of handling the Equipment chosen, and shall provide the Authority with structural data and certification of wind loads by a licensed professional engineer; (ii) the Authority or its designee must approve in writing SCS's installation and Structural Test and verify that the Tower structure is sufficient for the Equipment selected. If SCS receives written notification stating that the Authority or its designee has disapproved the Structural Test, then SCS shall have the right to make any necessary adjustments to its Equipment, and may, upon agreement with the Authority and the owner of the Tower, strengthen the Tower to achieve the desired structural integrity.

The Broadband Authority may remove towers from the Phase 1 list found in Section 4.2 of this Agreement that do not meet structural testing requirements necessary to hold broadband equipment as provided by SCS. If SCS believes that a tower is not sufficient they shall provide a report to the Authority explaining the reasons why a tower does not meet the structural testing requirements and a cost estimate to upgrade the tower to hold the broadband equipment. The Authority, at its discretion, may remove a tower from the Phase 1 list once it is satisfied of the justification to do so, or may provide for structural improvements necessary to hold the broadband equipment. The completion date for the deployment on that tower shall be tolled until the completion of the strengthening work.

4.5. *Interference Testing.* SCS recognizes that the Authority will primarily be leasing it space that is also used by the Region 2000 Radio Board ("Radio Board") for public safety radio. It further recognizes that the Radio Board reserves the right to reject uses and Equipment that interferes with the primary purpose of the Towers as public safety facilities. Before SCS's Equipment may be placed in operation, (i) SCS shall test (the "Interference Test") the Equipment to ensure that the actual operation will not cause Interference as defined in this Agreement and shall provide the Authority with an intermodulation study and certification of lack of Interference by an independent third-party consultant ("Certification of Non-Interference") and (ii) the Authority or its designee must approve in writing SCS's installation and Interference Test of its Equipment and verify that there is no Interference from the Equipment. If SCS receives written notification stating that the Authority or its designee has disapproved the Interference Test, then SCS shall have the right to make any necessary adjustments to its Equipment and to resend the Certification of Non-Interference to the Authority. The Authority shall have 20 days after SCS's submission of the Certification of Non-Interference to notify SCS in writing whether the Interference Test and any subsequent test, if necessary, is approved or disapproved. If the Authority or its designee should determine that there is Interference that cannot be resolved within a reasonable period of time, this Agreement shall be terminated as to that Tower and neither party shall have any liability to the other.

5. Phase II—Operations.

5.1. *Customer Service.* The goal of the Parties is to provide service to all persons desiring it at fair, reasonable, and uniform pricing.

5.1.1. *Non-Discrimination.* SCS shall provide service on a non-discriminatory to any business or resident in the County that requests it without regard to race, sex, religion, alienage, disability status, age, or other reason prohibited by law. Service shall only be denied for a valid capacity-related reason. If a request for service is made by a residence or business and service is not available, SCS shall notify the Authority, indicate what would be needed to provide service to the customer, and work with the Authority to find a solution to expand coverage to the requested area.

5.1.2. *Quarterly Reports.* SCS shall provide the Authority a quarterly report describing the customer base in Amherst and demonstrating that broadband availability is being expanded into the Authority. Coverage areas, available services, new buildout activity, and customer success stories demonstrating the impact of the project are strongly encouraged. A list of customer complaints and their resolution status should be provided. Customer lists, however, should not be provided; aggregated data is sufficient.

5.1.3. *Complaints.* Customer service complaints should be resolved as soon as practicable, but in no event later than seven calendar days from a customer reporting them without reasonable cause. Excessive legitimate complaints from customers regarding SCS's service sent to the Authority will be considered a failure to meet performance criteria. The Authority shall take the following steps to work with SCS and resolve complaints before determining that complaints are excessive. After the Authority works with SCS by following the steps below, the Authority shall have sole discretion in deciding whether issues have been resolved to the satisfaction of the Authority:

- a) The Authority will forward all complaints it receives to SCS, and provide SCS's customer service contact information to any person from whom it receives a complaint.
- b) If the Authority determines that complaints are becoming excessive, in the sole determination of the Authority, both parties shall meet at the County Offices or another mutually agreed upon location.
- c) At the meeting SCS shall report on the root cause of the complaints and present a plan to resolve the issues responsible for the complaints.
- d) The Company shall then have 30 days to resolve the issues and report to the Authority on the resolution.

5.2. *Maintenance.* Maintenance of Towers is the responsibility of the Authority; maintenance of Equipment, including wiring and base stations, is the responsibility of SCS.

5.3. *SCS's Right of Access.* Subject to such reasonable security-related rules and regulations as the Authority shall from time-to-time promulgate notifying SCS in writing thirty (30) days in advance of the effective date, SCS and SCS's employees, representatives, contractors and subcontractors shall have the right of 24-hour, 7-day-a-week access to the premises for the purposes of installing, inspecting, maintaining, operating, repairing, or removing equipment and facilities used by SCS in connection with its operations. SCS shall give reasonable advance notice to the Authority when SCS needs access to a site, if practicable, and SCS shall provide a timeframe for access, as soon as practical and in the interest of security, but

within 24 hours of the request, except in case of emergency. In the event of an emergency SCS shall give prior notice to the Authority if possible, or within a reasonable time thereafter. Only those employees, representatives, contractors, and subcontractors of SCS of which the Authority has been informed in writing will be allowed access to the sites. The Authority has the option of assigning a representative to be present at all times when SCS is present at a site. The Authority may establish additional or more or less stringent access requirements by written notification to SCS. However, in no event shall SCS be unreasonably denied access to the Site.

5.4. *Duty to Replace Equipment in the Event of Damage or Destruction.* In the event of the damage or destruction of any piece of Equipment, SCS shall repair or replace such equipment within seven days following such damage or destruction. In the event such damage or destruction results in a claim on insurance made under Section 8.2.2.d of this Agreement, SCS shall use all funds recovered on such claim for the purpose of replacement or improvement of such equipment.

5.5. *Replacement.* Choice of wireless communications equipment and its replacement schedule is the responsibility of SCS. SCS has the responsibility, consistent with the other obligations of this Agreement, to replace equipment that is superannuated, technologically obsolescent, or has become unreliable due to passage of time or wear and tear. However, SCS shall replace each piece of equipment or infrastructure to ensure that it is providing up-to-date wireless communication assets that is consistent with current market demands.

6. Phase III—Future Considerations.

6.1. *Other Vertical Assets.* The Authority or affiliated entities have access to other vertical assets, such as water towers, public safety towers, and other tall structures. Within two years following execution of this Agreement, the Parties shall develop a plan to begin Phase III rollout of facilities on such assets.

6.2. *Economic Development Partnerships.* Within one year after the final deployment date, SCS should develop a price schedule for private homeowners, apartment owners, businesses, and property owner associations to have equipment placed on their property. Some people, including potentially the Economic Development Authority of Amherst County, Virginia (EDA), are not content to wait for service, and may be willing to make contributions to assist in accelerating deployment of services. A schedule of values for such services and extensions would assist the Authority in working with private persons and economic development prospects on accelerated deployment.

6.3. *Small Cells & 5G Wireless.* Small cell and 5G wireless technologies may be appropriate in some areas of Amherst County, where there is sufficient density to make such technology economical. The Authority is a Wireless Service Authority under Virginia law, and has access to public rights of way. On the same schedule as study of other vertical assets under Section 7.1, the Authority shall study possibilities of deployment of small cell technology in Madison Heights, the Town of Amherst, and other areas of subdivisions, either itself, in partnership with SCS, or in partnership with the Town. In the event such technology is advisable, in the Authority's discretion, the Parties may add such deployment to this Agreement by amendment hereto, and such amendment and extension of this Agreement is expressly contemplated.

7. **Public Procurement Act.** SCS agrees to comply with the following mandatory Public Procurement Act provisions:

7.1. *Required Terms & Conditions.* The provisions of this section apply at any site where performance of work in connection with this specific Agreement is done.

7.1.1. *Non-Discrimination.* SCS agrees that it will (Va. Code § 2.2-4311):

- a) Not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by local, state, or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of SCS's business;
- b) Post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause;
- c) State that it is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of SCS to perform services under this Agreement. All notices, advertisements, and solicitation placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section; and
- d) Will include the provisions of the foregoing subparagraphs in every subcontract or purchase order exceeding \$10,000 issued by SCS in order to fulfill its obligations under this Agreement, so that the provisions will be binding on each subcontractor or subvendor.

7.1.2. *Drug-Free Workplace.* SCS agrees that it will (Va. Code § 2.2-4312):

- a) Provide a drug-free workplace for its employees;
- b) Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specify the actions which will be taken against any employee for a violation;
- c) State in all of its solicitations or advertisements for employees to perform services under this Agreement that SCS maintains a drug-free workplace;
- d) Include the provisions of this sub-paragraph in every subcontract or purchase order of over \$10,000, so that said provisions shall be binding upon each subcontractor or subvendor.

7.1.3. *Illegal Alien Workers.* SCS agrees not to employ illegal alien workers or otherwise violate the provisions of the Immigration Reform and Control Act of 1986.

7.2. *Insurance Requirements.*

7.2.1. *Liability Coverage.* SCS must take out and maintain during the term of this Agreement such bodily injury, personal liability, and property damage liability insurance necessary protect it and the Authority from claims for damages arising from personal injury, including death, as well as from claims for property damage,

which might arise from SCS's performance of its obligations under this Agreement. Such insurance must be issued by a company admitted to do business in the Commonwealth of Virginia and with at least an AM Best rating of A-. Within 10 days after execution of this Agreement, and in no event later than the first day on which SCS begins its performance, SCS must provide the Authority with a certificate of insurance showing such insurance to be in force and providing that the insurer must give the Authority at least 30 days' notice prior to cancellation or other termination of or reduction in such insurance.

7.2.2. *Insurance.* SCS shall maintain the following insurance to protect it from claims that could arise from performance of this Agreement, including claims (i) under the Workers' Compensation Act; (ii) for personal injury, including death; and (iii) for damage to property, regardless of whether such claims arise out of SCS's actions or inactions, or those of SCS's subcontractor or other persons directly or indirectly employed by either of them:

a) Worker's Compensation:

Coverage A: Statutory

Coverage B: \$100,000

b) General Liability:

Per Occurrence: \$1,000,000

Personal/Advertising Injury: \$1,000,000

General Aggregate: \$2,000,000

Products/Completed Operations \$2,000,000 Aggregate

Fire Damage Legal Liability \$ 100,000

c) Automobile Liability:

Combined Single Limit: \$1,000,000

d) Professional Liability:

Per Occurrence: \$1,000,000

General Aggregate: \$1,000,000

e) Insurance on Equipment. SCS shall maintain insurance on its Equipment in an amount at least equal to its present depreciated value, which amount, however, shall not be less than 100% of the replacement cost of the Equipment.

7.3. **Registration to Transact Business** (Va. Code § 2.2-4311.2). SCS warrants and certifies that it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, 1950, as amended, or as otherwise required by law. SCS will not allow its corporate existence to lapse or its certificate of authority or registration to do business in the Commonwealth to be revoked or cancelled at any time during the

term of this Agreement. The Authority may void this Agreement if SCS fails to remain in compliance with the provisions of this section.

7.4. Non-Collusion.

7.4.1. *Governmental Frauds Act.* Neither SCS's proposal nor this agreement is the result of, or affected by, any unlawful act of collusion with another person or company engaged same line of business or commerce, or any act of fraud punishable under the Virginia Governmental Frauds Act, §§ 18.2-498.1 *et seq.* of the Code of Virginia, 1950, as amended. Furthermore, SCS understands that fraud and unlawful collusion are crimes and can result in fines, prison sentences, and civil damage awards.

7.4.2. *COIA.* All aspects of SCS's proposal and agreement are in compliance with the applicable provisions of the State and Local Government Conflict of Interests Act, §§ 2.2-3100 *et seq.* of the Code of Virginia, 1950, as amended. Specifically, without limitation, no employee of the Authority or member of employee's immediate family shall have any proscribed personal interest in this Agreement.

7.4.3. *Ethics in Contracting.* SCS's proposal and this Agreement are in accordance with the applicable provisions of the Virginia Public Procurement Act, Art. 6, Ethics in Public Contracting, §§ 2.2-4367 *et seq.* of the Code of Virginia, 1950, as amended, and any other applicable law set forth therein.

8. Remedies.

8.1. *Liquidated Damages for Delay.* Execution of this Agreement shall constitute Notice to Proceed on Phase I. The Parties agree that if the Equipment on each Tower is not fully installed as of the deployment date, following the Authority's giving 14 days' demand for performance, the Authority's damages shall be deemed liquidated in the amount of \$200 per day. The Parties agree that the damages are not susceptible of definite measure, and that this is a good faith pre-estimate of probable damages and not a penalty. This sum shall be due and payable and shall extend until SCS either cures the default or the Authority declares SCS in breach and terminates this Agreement.

8.1.1. *Excusable Delay.* If and to the extent SCS is delayed at any time in the progress of the project by strikes, fires, unusual delays in transportation or unavoidable casualties, delays in governmental approvals, third party supporting infrastructure or other causes outside the control of SCS, then SCS shall give the Authority written notice within 14 days after the inception of the delay. SCS shall also give the Authority written notice of the termination of the delay within 14 days after such termination. For delays by the Authority the Authority shall extend the delivery date for the length of time that the delivery date was actually delayed thereby, and the SCS shall not be charged with liquidated damages for delay during the period of such extension.

8.2. *Right of Authority to Terminate Agreement upon Bankruptcy or Insolvency of SCS.* In the event SCS becomes bankrupt, either voluntarily or involuntarily, or if a receiver is appointed for it, or if it executes any bill of sale, deed of trust, or general assignment for the benefit of creditors in lieu of foreclosure, or become critically insolvent, in the sole judgment of the Authority, the Authority may terminate this Agreement, giving SCS reasonable time to remove its Equipment from the Towers.

8.3. *Right of Authority to Make Payments.* In the event SCS intends to default on any payment to any creditor who has or may have a lien on the Equipment, it shall give notice to the Authority at the same time as it gives notice to the creditor. The Authority has the right to advance such sums as may be necessary to make payments on behalf of SCS under any lien, credit, subordination, or other agreement relating to the Equipment, including any taxes, insurance proceeds, replacements, or repairs to the Equipment, or to ensure the performance of any of the covenants included in such credit agreement or lien, which sums shall become a lien on the Equipment in favor of the Authority. All such advances may be evidenced by the Authority by a memorandum of lien, and shall bear interest from the date of payment thereof at the lawful judgment interest rate in the Commonwealth of Virginia.

8.4. *Termination for Cause.*

8.4.1. If SCS should refuse or should repeatedly fail, except in cases for which the Authority is notified and gives permission, to supply enough properly skilled workmen or proper materials and equipment to perform its obligations under this Agreement, or if he should fail to perform its obligations in a diligent, efficient, workmanlike, skillful, and careful manner, or if it should fail or refuse to perform its obligations, or if he should fail to make prompt payment to creditor or lienor, or if he should disregard laws or ordinances, or otherwise be in substantial violation of any provision of this Agreement, then SCS shall be in default of the Agreement.

8.4.2. The Authority will give SCS prompt written notice of any default and allow 10 days during which SCS may rectify the basis for the notice of default. If the default is rectified to the reasonable satisfaction of the Authority within said ten (10) days, the Authority shall rescind its notice of default. If not, the Authority may terminate this Agreement for cause by providing written notice of termination to SCS. In the alternative, the Authority may, in writing, postpone the effective date of the termination for cause, at its sole discretion, if it should receive reassurances from SCS that the default will be remedied in a time and manner which the Authority finds acceptable. If at any time after such postponement, the Authority determines that SCS has not or is not likely to rectify the default in an acceptable manner within the time allowed, then the Authority may immediately terminate this Agreement for cause, without the necessity of providing a further notice of default, by notifying SCS in writing of the termination. If the Authority postpones the effective date of the termination, and SCS subsequently rectifies the default to the reasonable satisfaction of the Authority, the Authority shall rescind its notice of default.

8.4.3. Termination of this Agreement under this Section is in addition to and without prejudice to any other right or remedy of the Authority. Any actions by the Authority permitted herein shall not be deemed a waiver of any other right or remedy of the Authority under this Agreement or under the law. The provisions of this Section shall survive termination of this Agreement.

8.5. *"Cooling Off" Period.* In no event shall either Party file suit against the other without first giving notice of all grievances, and waiting 90 days prior to filing. In the event such waiting period would cause the aggrieved Party to miss a statute of limitations or other time bar, it shall be ineffective; nor shall this section be construed to be a pledge not to plead the statute of limitations.

9. Miscellaneous.

9.1. *Integration.* This Agreement, including the exhibits hereto, constitutes the full and complete agreement of the Parties respecting its subject matter, and any prior or contemporaneous agreements or understandings, written or oral, are hereby merged into and superseded by the provisions of this Agreement. This Agreement may only be amended or supplemented by a subsequent writing of equal dignity except where expressly set forth herein. This Agreement may not be assigned by a Party without the prior written consent of the other Party.

9.2. *Notices.* Notices may be given to:

If to Authority:

Amherst County Broadband Authority
Attn: Purchasing Office
153 Washington Street
P.O. Box 390
Amherst, Virginia 24521
drproffitt@countyofamherst.com

If to SCS:

SCS Broadband
Attn: Clay Stewart
604 Thomas Nelson Highway
Arrington, Virginia 22922
cstewart@stewartcomputerservices.com

Either Party may amend addresses it has set forth in this paragraph by sending notice to the other Party as set forth in this paragraph, notwithstanding the provisions of section 10.1.

9.3. *No Covenants of Officials.* No covenant, agreement or obligation contained in this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee, council member, supervisor or agent of the Authority in his or her individual capacity, and neither Authority officials nor any officer, employee, council member, supervisor or agent thereof executing this Agreement or any related instrument shall be liable personally on this Agreement or such instrument or be subject to any personal liability or accountability by reason of the execution and delivery thereof. No director, officer, employee, council member, supervisor or agent of the Authority shall incur any personal liability with respect to any other action taken by him or her pursuant to this Agreement or any of the transactions contemplated hereby, provided he or she acts in good faith.

9.4. *Intellectual Property.* All intellectual property created in the performance of the Obligations is the property of the Authority. Any reports, studies, photographs, negatives, or other documents prepared by Company in the performance of its Obligations shall be remitted to the Authority by the Company, without demand therefor, upon the earliest of (i) completion of its Obligations; (ii) completion of the Contract Period; or (iii) termination, cancellation or expiration of the Contract Documents. The Company shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of the Obligations without the prior written consent of the Authority.

9.5. *Rule of construction as to dates.* If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a

legal holiday in the Commonwealth of Virginia, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references in this Agreement to a "day" or "days" shall refer to calendar days and not business days.

9.6. *Choice of law.* This Agreement shall be construed according to the laws of the Commonwealth of Virginia without regard to its principles of conflicts of laws. The Parties consent to exclusive venue and jurisdiction in the Circuit Court for Amherst County, Virginia, and shall not file any suit in any other court.

9.7. *Drafter & Severability.* This Agreement has been jointly drafted by the Parties, and is to be construed as jointly drafted and not be construed against either of the Parties as the drafter. This Agreement is severable, and if any provision is found to be invalid by any court of competent jurisdiction, the remainder shall survive. The section and paragraph headings in this Agreement are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions of this Agreement.

9.8. *Covenant of authority.* All Parties warrant that the signatories below have full authority, and have undertaken such legal actions as may be necessary to ensure such authority, to bind the entities of which they are representatives to the full extent permitted by law. This Agreement may be executed by facsimile, electronic or original signature of the Parties and in counterparts which, assuming no modification or alteration, shall constitute an original and when taken together, shall constitute one and the same instrument.

9.9. *Time of the essence.* Time is of the essence of all obligations set forth herein for which a time is stated.

9.10. *Waiver.* The failure of either Party to this Agreement to insist upon strict compliance with any term herein shall not be construed to be a waiver of that requirement.

IN WITNESS WHEREOF, the Parties affix their signatures below:

AMHERST COUNTY BROADBAND
AUTHORITY



By: Claudia D. Tucker

Its: Chair

ACELANET, LLC, d/b/a SCS BROADBAND



By: Lon Whelchel

Its: ~~Manager~~ CEO