

# CONNECTION AGREEMENT

This Connection Agreement ("Agreement"), effective as of March 1, 2016 ("Effective Date"), is entered into by and between the University Corporation for Advanced Internet Development d/b/a Internet2 ("Internet2") and CUDI ("Participant") (each a "Party" and collectively the "Parties").

Participant is a research and education network ("REN") that desires to connect to the Internet2 international exchange point located in a facility in El Paso, Texas, United States owned by Level 3 Communications ("Level 3").

The Parties, therefore, agree to the terms and conditions below.

## 1. Certain Definitions.

The following terms when capitalized have the meanings specified.

**"Exchange Point"** means Internet2's international exchange point located in the Facility.

**"Facility"** means the Level 3 facility located at 501 West Overland Avenue, First Floor, Suite S004, El Paso, Texas 79901, United States.

## 2. Services.

**2.1.** This Agreement establishes a relationship between Internet2 and Participant in which Internet2 will provide Participant with access to and use of the Facility and the Exchange Point and local support of the Facility through Internet2's Network Operations Center ("NOC") (collectively referred to as the "Services").

**2.2.** All uses of the Services by Participant shall be subject to these terms and conditions. In the event that the Participant fails to meet any of the requirements set forth in this Agreement, Internet2 may take reasonable action to correct such failure, including suspension or termination of Participant's use of the Services until Participant complies with all such requirements, as set forth in this Agreement.

**2.3. Peering Arrangements.** Participant will be required to enter into separate agreements with

Internet2 if Participant desires to make peering arrangements for use of the Internet2 Network.

**2.4. Exchanging Traffic.** Participant is responsible for pursuing agreements with other connectors with whom Participant wishes to exchange traffic. Internet2 does not guarantee that any connector will exchange traffic with Participant.

**2.5. Connections within Facility.** If Participant seeks to connect to the Facility outside of Internet2's space, Participant may be required to enter into separate agreement with Level 3 for the fiber cross-connect to the Exchange Point, which may carry additional, separate charges. In the event Internet2 enters into such separate agreement(s) on behalf of Participant, Internet2 shall invoice Participant for any associated charges or fees.

## 3. Term and Termination.

**3.1. Term.** The Agreement is effective as of the Effective Date, which may be earlier than the date Participant receives connectivity to the Facility ("Connection Date"). The Agreement shall remain in effect for one year from the Connection Date ("Term"), and from year to year thereafter, unless either Internet2 or Participant notifies the other to the contrary at least 90 days before the anniversary of the Connection Date.

**3.2. Access.** On or about the Connection Date specified by Internet2, Internet2 will attempt to provide the Participant with access to the Facility. Internet2 does not guarantee that Participant's access will begin on the Connection Date.

## 3.3. Termination.

**3.3.1. Termination for Convenience.** Each Party shall have the right to terminate this Agreement without cause and for its own convenience, by giving the other Party written notice, specifying the date upon which such termination becomes effective. The termination date must be at least 90 days from the date of the notice. In the event of such termination by Participant, it will cooperate in good faith with Internet2 with respect to any transition arrangements requested by Internet2. In the event of termination for convenience by Participant, Internet2 shall not refund

any Fees or other payments made by Participant, and Participant shall pay upon termination all remaining Fees for the remaining period of the Term. In the event of such termination by Internet2, it will refund to Participant the annual Fees paid for the year in which the termination occurs, prorated based on the number of days remaining in the year until the next then-current Term.

**3.3.2.** Internet2 may refuse to renew this Agreement in accordance with section 7.1 below.

**3.3.3. Termination for Cause.** If either Party commits a material breach or default in the performance of such Party's obligations under this Agreement, the aggrieved Party shall have the right to give the breaching or defaulting Party written notice of breach or default, including a statement of the facts relating to the material breach or default. If the material breach or default is not cured within 15 days after the breaching or defaulting Party's receipt of such notice (or such later date as may be specified in such notice), the aggrieved Party, at its option, shall have the right to elect to terminate this Agreement on written notice to the other Party at any time thereafter while the breach or default remains uncured.

**4. Fees.** Participant must pay Internet2 annual connection fees and non-recurring charges ("Fees") as shown in Schedule 3 for the initial Term. Billing shall commence on the Connection Date. The Fees for each subsequent Term, which are subject to change at Internet2's sole discretion, will be payable before each anniversary of Participant's Connection Date, unless either Participant or Internet2 has given notice of termination at least 90 days before the anniversary of the Connection Date. All amounts due to Internet2 are payable in full within 30 days of the invoice receipt. All invoices shall call for payments in U.S. dollars.

**5. Use of the Services.** Participant's use of the Services shall be conditioned on the following terms:

**5.1.** Participant shall cooperate with the management of the Facility and with Internet2 via the NOC.

**5.2.** Participant is responsible for the contractual and physical arrangements required to connect such Participant. Internet2 expressly disclaims that connections will or can be made successfully.

**5.3.** Participant must set forth the expected specific characteristics of each of its connections on Schedule 1. Schedule 1 requires the following information: the name and contact information of the carrier providing connectivity to El Paso Facility and the location of the carrier in the Fiber Meet Me Room ("FMMR"), the starting date of the carrier's connection, the requested date of the connection, and the bandwidth of the connection. Participant is responsible for updating this information as needed.

**5.4.** Participant must provide Internet2 with contact information for Participant's Technical Contact, Executive Contact, and Billing Contact in Schedule 2. Participant is responsible for updating this information as needed.

**5.5.** Participant agrees not to violate or tamper with the security of any equipment or program within the Facility or otherwise.

**5.6.** Participant agrees to notify the NOC promptly of any known or suspected breach of or challenge to security or any known or suspected unauthorized use of Participant's facilities to access the Facility. The NOC will notify Participant of any known breach of or challenge to the Facility potentially affecting it.

**5.7.** Participant agrees to operate the Participant router(s) and any other Participant equipment that is attached to the Facility in a manner that does not adversely impact the Exchange Point performance.

**5.8.** Participant agrees to use Participant supplied Internet Protocol ("IP") addresses whenever possible and Virtual Local Area Networks ("VLAN") identifiers assigned by the NOC. In cases where using Participant supplied IP addresses is impracticable, Participants may use non-portable IP addresses assigned by the NOC that the Participant shall return to the NOC upon termination of this Agreement. Participant agrees not to announce these addresses to its peers.

**5.9.** With the exception of Address Resolution Protocol ("ARP") packets, Participant agrees not to generate any broadcast packets across the switch media

from Participant's attached router interface(s) unless explicitly agreed to by the operators of the Facility.

**5.10.** Participant agrees not to make any unauthorized use of another participant's resources, and to abide by any peering or other agreements between the Participant and other participants. In particular, Participant may not use another participant's facilities for Internet transit without the explicit consent of that participant. In addition, Participant may not route any of its traffic across the Facility to another participant with which it does not have an established peering agreement. Participant may send traffic to another participant only if that traffic is destined for an Internet address that has been announced to Participant by the other participant or if the other participant has granted Participant explicit Internet transit privileges.

## **6. Indemnity.**

**6.1.** Participant shall, at its own expense, defend, indemnify, and hold harmless Internet2 and each of its successors, assigns, affiliates, and subsidiaries and its respective members, managers, directors, officers, trustees, shareholders, agents, employees, and representatives (collectively, "Indemnitees"), from and against any and all damages, costs, liabilities, loss and expenses, including reasonable attorneys' fees (collectively, "Damages"), incurred by Indemnitees in connection with any and all claims, proceedings, actions or suits ("Claims") based in whole or in part upon or arising in connection with (A) Participant content, including without limitation, Claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade name, service mark or other moral or intellectual property right of any person; (B) the use of Participant equipment or any facilities, equipment, apparatus or systems of Participant not provided by Internet2, including without limitation Claims for infringement of any third party's patent, copyright, trademark, trade secret or other intellectual property right ("Intellectual Property Right(s)"); (C) the use of the Services by any end user of Participant, the inability of any end user of Participant to use the Services, or any other Claims by any end user of Participant except to the extent such Claims are based solely on the willful misconduct of Internet2; and (D) damage to any business or property, or injury to, or death of, any person arising out of any act or omission of Participant, or its agents, employees

or end users, in connection with any product, service, facility (including the Facility) or equipment provided by Internet2.

**6.2.** Internet2 agrees to notify Participant in writing within 30 days of the assertion of any such Claims (provided that failure to provide such notice shall not limit Participant's indemnification obligations except to the extent Participant is materially and irrevocably prejudiced thereby) and agrees not to settle, compromise or otherwise dispose of any such Claims without the prior written consent of Participant, which shall not be unreasonably delayed, conditioned or withheld. Internet2 agrees to provide Participant with such information, assistance, and authority (at Participant's sole expense, as applicable) as reasonably necessary or useful for Participant's handling and defense of the Claims.

## **7. Limitation of Liability and Warranties.**

**7.1.** Internet2 reserves the right to interrupt, suspend or reduce service to Participant, or any other person, when such action is necessary in Internet2's sole judgment. Internet2 will endeavor where reasonably possible, but does not promise, to provide advance notice to Participant of any such interruption, suspension, or reduction. As soon as commercially reasonable following the interruption, suspension or reduction, Internet2 will contact Participant in an attempt to resolve any problems and restore service. NOTWITHSTANDING ANY OTHER PROVISION; INTERNET2 SHALL NOT BE LIABLE TO PARTICIPANT OR OTHER PARTY FOR ANY ERROR IN TRANSMISSION OR FOR ANY INTERRUPTION OR TERMINATION OF CONNECTION, EITHER PARTIAL OR TOTAL, EITHER INTENTIONAL OR ACCIDENTAL (INCLUDING ANY ERROR, INTERRUPTION OR TERMINATION DUE TO THE DELIBERATE MISCONDUCT OR NEGLIGENCE OF ANY PERSON), WHETHER OR NOT PRIOR NOTICE OF ANY SUCH INTERRUPTION OR TERMINATION HAS BEEN GIVEN.

**7.2.** THE SERVICES ARE PROVIDED ON AN AS IS, AS AVAILABLE BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND

NON-INFRINGEMENT. INTERNET2 EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE SERVICES OR ACCESS TO THE FACILITY WILL BE ERROR-FREE, SECURE, OR UNINTERRUPTED. NO STATEMENT, ORAL OR WRITTEN, GIVEN BY INTERNET2, ANY OF ITS EMPLOYEES, OR ANY OTHER PERSON WILL CREATE A WARRANTY, NOR MAY PARTICIPANT OR OTHER PERSON RELY ON ANY SUCH STATEMENT FOR ANY PURPOSE. FURTHERMORE, NOTWITHSTANDING ANY CONTRARY PROVISION SET FORTH IN THIS AGREEMENT, PARTICIPANT EXPRESSLY AGREES THAT IN NO EVENT SHALL INTERNET2'S ENTIRE LIABILITY FOR ANY LIABILITIES, LOSSES, CLAIMS, JUDGMENTS, DAMAGES (WHETHER DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHERWISE), EXPENSES OR COSTS (INCLUDING REASONABLE FEES AND EXPENSES OF COUNSEL) ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF THE ANNUAL FEE(S) PAID BY PARTICIPANT TO INTERNET2 UNDER THIS AGREEMENT DURING ANY CONSECUTIVE TWELVE (12) MONTH PERIOD.

7.3. Internet2 shall have no responsibility for Participant's use of the Services. In the event Internet2 (A) is advised by a governmental authority with appropriate legal jurisdiction that Participant's use of the Services is a violation of state, national or international law, or (B) reasonably determines that Participant's use of the Services is or may adversely affect the Services, or interfere with other participant's use of Internet2 services, Internet2 shall notify Participant and when possible, provide a commercially reasonable period for Participant to correct the problem. However, if in Internet2's sole judgment, Participant's continued use of the Services presents a threat of damage or injury to Internet2, or if ordered to do so by a governmental authority with appropriate legal jurisdiction, Internet2 shall have the right to suspend Participant's use of the Services immediately.

7.4. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL ANY OF THE OFFICERS, TRUSTEES, DIRECTORS, PARTNERS,

BENEFICIARIES, JOINT VENTURERS, AUTHORIZED ORGANIZATIONS, STOCKHOLDERS OR OTHER PRINCIPALS OR REPRESENTATIVES OF EITHER PARTY, DISCLOSED OR UNDISCLOSED, THEREOF, EVER BE PERSONALLY LIABLE TO THE OTHER PARTY (INCLUDING FOR DIRECT OR CONSEQUENTIAL DAMAGES), AND THE PARTIES HEREBY WAIVE THE RIGHT TO RECOVER DAMAGES FROM ANY SUCH PERSONS.

8. **Content.** Through this Agreement, Internet2 and its suppliers provide interconnection services as well as local support of the Facility and NOC services. They do not operate or control any content transported. Internet2 and its suppliers shall have no liability or responsibility for the content of any communication transmitted via the Services hereunder. Participant shall be solely responsible for any and all claims related to such content, and for any and all third-party claims relating to Participant's use of Services hereunder. Neither Participant nor any of Participant's end users shall make any claim against Internet2 or its suppliers regarding said content, or respecting any information, product, service, software or other item(s) ordered through or provided by virtue of the network services accessed through the Services provided under this Agreement.

## 9. Miscellaneous.

9.1. **Modification.** Internet2 reserves the right to modify these terms at any time. Internet2 shall give written notice of such modifications to Participant via email ("Modification Notice"). Subject to the transition requirements in section 3.3.1, within 30 days of receipt of Modification Notice, Participant has the right to terminate this Agreement upon 30 days written notice if Internet2 modifies the terms in any way that materially harms Participant. Participant's use of its connection to the Facility thereafter shall constitute its continuing agreement to the terms of this Agreement as so modified.

9.2. **Press Releases.** Neither Party shall have the right to issue a press statement or press release regarding this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

**9.3. Marketing Materials.** Each Party shall have the right during the Term to identify the other Party in any marketing material and use the other Party's trademarks or logo, including displaying such trademarks or logo on its website, so long as the requesting Party has received prior written approval from the other Party.

**9.4. Entire Agreement.** This Agreement, including the Schedules and all attachments, constitutes the entire understanding between Participant and Internet2 with respect to Participant's connection to the Facility and supersedes any prior understanding or agreement, written or oral, between Participant and Internet2 respecting that subject matter. No other representation or other statement, written or oral, is binding on Participant or Internet2.

**9.5. Assignment.** Participant may not transfer or assign any of its rights or obligations under this Agreement without Internet2's written consent.

**9.6. Dispute Resolution.** This Agreement will be construed and enforced in accordance with the laws of New York, without reference to its choice of law rules. In the event of any dispute relating to this Agreement, the Parties shall first seek to resolve the dispute in good faith through informal discussions or through the use of a mediator. In the event any dispute cannot be resolved informally, the Parties agree to arbitrate the dispute before a single arbitrator in Washington, D.C.

**9.7. Contractual Relationship.** The Parties are entering into this Agreement as independent contracting parties. This Agreement will not be construed to create an association, joint venture or partnership between the Parties or to impose any partnership liability upon any Party.

**9.8. Non-Waiver.** The failure of either Party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision, right or remedy in that or any other instance.

**9.9. Compliance with Applicable Laws.** Each Party will comply with all applicable laws in

connection with the subject matter of this Agreement and its performance under this Agreement.

**9.10. Participant's Contacts.** Participant shall provide the NOC an updated list with names, positions, phone numbers, and electronic mail addresses of the Participant's administrative, technical, and operational contacts for issues related to the Facility. Hours of availability must be provided for the operational contact(s).

**9.11. Notice.** Unless otherwise provided for in this Agreement, any notice communication, request, or reply ("Notice") under this Agreement made by either Party to the other must be in writing and shall be effectively given if: (i) addressed to the Party to be notified and deposited in the United States Postal Service ("USPS") using certified or registered mail, postage prepaid with return receipt requested, shipped by a nationally recognized overnight courier service, or shipped by an internationally recognized courier service; (ii) delivered in person; or (iii) sent via email for such Party with a confirmation telephone call, provided, however, that any notice asserting a material breach or default or terminating the Agreement shall also be delivered in writing by overnight courier. Any notice mailed is effective three (3) days after it is deposited in a depository of the USPS or other national overnight services and four (4) days after it is deposited in a depository of an international courier service. All notices shall be addressed as set forth below (or to such changes in address of which one Party notifies the other in accordance with the foregoing).

If to Participant: CUDI  
Parral 32, Col. Condesa  
México City, C.P. 06140  
At'n. Carlos Casasús

If to Internet2: UCAID/Internet2  
100 Phoenix Drive, Suite 111  
Ann Arbor, MI 48108  
Attn: James A. Pflasterer  
Chief Financial Officer  
Email: [japflasterer@internet2.edu](mailto:japflasterer@internet2.edu)

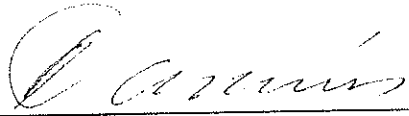
With (copies) to: UCAID/Internet2  
1150 18<sup>th</sup> Street NW, Suite 900  
Washington, D.C. 20036

Attn: John S. Morabito  
VP of External Relations, General  
Counsel, and Corporate Secretary

In witness whereof, the Parties have executed this  
Agreement as of the Effective Date.

ACCEPTED AND AGREED:

CUDI

By: 

Name: Carlos Casasús

Title: Director General

Internet2

By: 

Name: JAMES A. PFLASTERER

Title: CFO

SCHEDULE 1

REQUESTED CONNECTION(S)

1. Location of Connection:

Level 3 Communications Facility  
501 West Overland Avenue  
First Floor, Suite S004  
El Paso, Texas 79901  
U.S.A.

2. Means of Connecting:

Name of the carrier providing capacity to the Level 3 POP:

TRANSTELCO

3. Actual or anticipated start date of the connection to the FMMR:

MARCH 18, 2016

4. Requested date of the Connection:

5. Connection bandwidth and number:

Layer 2 Ethernet Connections:

- i. 10 GigabitEthernet ( x )
- ii. 100 GigabitEthernet ( )



## SCHEDULE 2

### EXECUTIVE, TECHNICAL, AND BILLING CONTACTS

[NAMES AND CONTACT INFORMATION TO BE PROVIDED BY PARTICIPANT]

Executive contact  
Carlos Casasús  
Director General  
Parral 32  
Col. Condesa  
México, City  
C.P. 06140

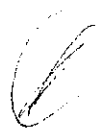
ccasasus cudl.edu.mx

Technical contact  
Hans Ludwing Reyes  
Network Coordinator  
Parral 32  
Col. Condesa  
México City  
C.P. 06140

hans cudl.edu.mx

Billing contact  
María Isabel Sánchez  
Accounting  
Parral 32  
Col. Condesa  
México City  
C.P. 06140

isanchez cudl.edu.mx





### **SCHEDULE 3**

#### **2016 Annual Fees**

#### **Connection Fees and Non-Recurring Charges (“NRC”):**

##### **LAYER 2 ETHERNET:**

<b>EACH 10 GIGABIT ETHERNET CONNECTION</b>	<b>\$25,000</b>
<b>EACH 100 GIGABIT ETHERNET CONNECTION</b>	<b>\$50,000</b>

**NRC:** **\$10,000**

As defined in section 3.1, the initial Term of this Agreement begins on the Connection Date and remains in effect for one year thereafter. For the initial Term, Participant’s Fees are \$35,000 – 10 Gigabit Ethernet connection fee plus the NRC. Internet2 is providing Participant with a fifty percent (50%) discount for the initial Term. Participant shall be responsible for the full amount of Fees, which are subject to change in Internet2’s sole discretion, in all subsequent Terms.

