

E-Rate Bid Evaluation Worksheet

Funding Year: 2019

Billed Entity Name: Central Unified School District

FRN: \_\_\_\_\_

Project or Service: 204-18A.11 WAN Option 2

# of Responders: 1

**Vendor Scoring**

Selection Criteria	Weight*	AT&T		Vendor # 2		Vendor # 3		Vendor # 4		Vendor # 5	
		Raw Score**	Weighted Score***	Raw Score	Weighted Score						
Price (Eligible)	30%	1	0.30		0.00		0.00		0.00		0.00
Experience	25%	1	0.25		0.00		0.00		0.00		0.00
Accuracy of Bid Respo	20%	1	0.20		0.00		0.00		0.00		0.00
Qualifications	15%	1	0.15		0.00		0.00		0.00		0.00
Service Level Agreeeme	10%	1	0.10		0.00		0.00		0.00		0.00
	0%		0.00		0.00		0.00		0.00		0.00
	<b>100%</b>										
<b>Overall Ranking</b>			<b>100</b>		<b>0</b>		<b>0</b>		<b>0</b>		<b>0</b>

**Notes:**  
 \* Percentage weights must add up to 100%. **Price is the heaviest weighted criteria**  
 \*\* Evaluated on a "Ranking" scale: Lowest Ranking #=worst - Highest Ranking #=best  
 \*\*\* Weight x Raw Score

Vendor Selected: AT&T

Approved By: \_\_\_\_\_

*Signature*

*Print Name*

*Title*

Date: 02/13/19

**Comments, if needed:**  
 At this time we have received four bid proposals for services requested. AT&T bid all options but cannot provide services to 2 of the requested sites in Option 1 and Option 3. Spectrum only bid 1GB and 10GB for all sites under Option 1. Cytranet Provided a response for MPLS Point to Point at 1GB and 10 GB, under Option 1. Audeamus/ Sebastian provided a bid response for Options 1 and Option 3. In review of all options, for Option 1, although AT&Ts pricing seems to be cheaper for majority of the services, they cannot provide service to all locations. Due to accuracy of bid response and ability to provide services to all locations, our recommendation would be to go with Audeamus/Sebastian. If the district went with Audeamus/Sebastian for Option 1, the estimated annual amount would be \$390,108.00, but if the District remained with current vendors AT&T for Option 2 and Audeamus/ Sebastian for Option 3 the estimated annual amount would be \$288,623.52, which is an estimated cost savings of \$101,484.48. At this time it is our recommendation that the most cost effective choice would be to stay with the current service providers, AT&T for Option 2 and Audeamus/ Sebastian for Option 3.



### AT&T Switched Ethernet on Demand

CIR Interactive CoS

### Attachment A Site Schedule design OPTION 2 And OPTION 3

48 month Term Agreement +12mo optional extension

Customer: Central Unified School District

Date: 02/08/19

TSC: Blaine Karas  
Contract: 48mo +12 option

Address	Description	Monthly	Installation
4605 N Polk Av, Fresno, CA 93722	10Gbps Port/10Gbps CIR (Primary WAN Host)	\$935.00	\$0.00
6514 W Gattysburg Av, Fresno, CA 93723	10Gbps Port/5Gbps CIR (Secondary WAN Host)	\$763.00	\$0.00
3535 N Cornelia Av, Fresno, CA 93722	10Gbps Port/2Gbps CIR (Primary WAN)	\$615.00	\$0.00
2045 N Dickenson Av, Fresno, CA 93723	Not included in Option 2		\$0.00
4443 W Weidon Av, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
6240 W Palo Alto Av, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
6265 N Grantland Av, Fresno, CA 93723	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
8905 W Kearney Bl, Fresno, CA 93706	Not included in Option 2		\$0.00
5455 W Alluvial Av, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
330 S Brawley, Fresno, CA 93706	Not included in Option 2		\$0.00
4444 W McKinley, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
2195 N Polk, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
6150 Palo Alto Av, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
2600 N Garfield, Fresno, CA 93723	Not included in Option 2		\$0.00
5650 W Escalon, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
3550 N Miburn, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
4725 N Polk Av, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
2280 N Valentine, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
44 S Tellman, Fresno, CA 93706	Not included in Option 2		\$0.00
2698 N Brawley, Fresno, CA 93722	1Gbps Port/1Gbps CIR (Primary WAN)	\$442.00	\$0.00
4200 N Grantland Av, Fresno, CA 93723	Not included in Option 2		\$0.00
4885 N Biola Av, Fresno, CA 93723	NO Fiber Available/Out of AT&T Franchise Area		
10950 W McKinley Av, Fresno CA.93723	NO Fiber Available/Out of AT&T Franchise Area		
4605 N Polk Av, Fresno, CA 93722	10Gbps Port/10Gbps CIR (Internet Host)	\$935.00	\$0.00
1111 Van Ness Av, Fresno, CA 93721	10Gbps Port/10Gbps CIR (FCOE)	\$935.00	\$0.00
<b>AT&amp;T Switched Ethernet Total Charges (Prior to eRate or CTF discounts) add approximately 8% for taxes and fees</b>		<b>\$9,487.00</b>	<b>\$0.00</b>
<b>Approximate 8% Taxes</b>		<b>\$758.96</b>	<b>\$0.00</b>
<b>Monthly Total</b>		<b>\$10,245.96</b>	<b>\$0.00</b>

1. The ASE includes the AT&T-provided network fiber, and includes a Switch that is considered to be an integral part of the AT&T Network.

AT&T will also provision a copper or fiber patch panel adjacent to our NTE Switch, to provide the customer interface. Customers may NOT connect directly into the AT&T Network Switch, and may NOT access or make any configuration changes to the AT&T Network Switch. Customers should contact the AT&T Ethernet Network Operating Center (ENOC) with any requests for information regarding the AT&T Network Switch, configurations, traffic, mapping, etc.

2. Suitable backboard space within the MPOE or extended demarcation room, or rack space in a customer-provided equipment rack, is required along with a grounded, 3-prong, 110V, 15 amp AC power outlet within 6' of our AT&T Network Switch, ideally on a dedicated circuit.

E-Rate Bid Evaluation Worksheet

Funding Year: 2019

Billed Entity Name: Central Unified School District

FRN: \_\_\_\_\_

Project or Service: 204-18A.11 WAN Option 3

# of Responders: 2

Vendor Scoring

Selection Criteria	Weight*	AT&T		Audeamus/Sebastian		Vendor # 3		Vendor # 4		Vendor # 5	
		Raw Score**	Weighted Score***	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score
Price (Eligible)	30%	2	0.60	1	0.30		0.00		0.00		0.00
Experience	25%	1	0.25	2	0.50		0.00		0.00		0.00
Accuracy of Bid Response	20%	1	0.20	2	0.40		0.00		0.00		0.00
Qualifications	15%	1	0.15	2	0.30		0.00		0.00		0.00
Service Level Agreement	10%	1	0.10	2	0.20		0.00		0.00		0.00
	0%		0.00		0.00		0.00		0.00		0.00
	<b>100%</b>										
<b>Overall Ranking</b>			<b>65</b>		<b>85</b>		<b>0</b>		<b>0</b>		<b>0</b>

**Notes:**  
 \* Percentage weights must add up to 100%. **Price is the heaviest weighted criteria**  
 \*\* Evaluated on a "Ranking" scale: Lowest Ranking #=worst - Highest Ranking #=best  
 \*\*\* Weight x Raw Score

**Comments, if needed:**  
 At this time we have received four bid proposals for services requested. AT&T bid all options but cannot provide services to 2 of the requested sites in Option 1 and Option 3. Spectrum only bid 1GB and 10GB for all sites under Option 1. Cytranet Provided a response for MPLS Point to Point at 1GB and 10 GB, under Option 1. Audeamus/ Sebastian provided a bid response for Options 1 and Option 3. In review of all options, for Option 1, although AT&Ts pricing seems to be cheaper for majority of the services, they cannot provide service to all locations. Due to accuracy of bid response and ability to provide services to all locations, our recommendation would be to go with Audeadmus/Sebastian. If the district went with Audeamus/Sebastian for Option 1, the estimated annual amount would be \$390,108.00, but if the District remained with current vendors AT&T for Option 2 and Audeamus/ Sebastian for Option 3 the estimated annual amount would be \$288,623.52, which is an estimated cost savings of \$101,484.48. At this time it is our recommendation that the most cost effective choice would be to stay with the current service providers, AT&T for Option 2 and Audeamus/ Sebastian for Option 3.

Vendor Selected: Audeamus/Sebastian

Approved By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Title*

Date: 02/13/19

Audeamus, Inc. dba Sebastian Corporation

Service Order

Audeamus, Inc., dba Sebastian Corp  
 7600 N Palm Ave  
 Fresno, Ca 93711  
 Office: (559) 432-5800  
 Fax: (559) 432-5858

2

CONTRACT# 4783992  
 DATE February 7, 2019  
 CUSTOMER ID CUSD3122

Customer CENTRAL UNIFIED SCHOOL DISTRICT  
 4605 North Polk Ave  
 Fresno, CA 93722

Qty	Location	Description	Non-Recurring Charge (NRC)	Monthly Recurring Charge (MRC)
1	Operational/ Transportation Services	Hub / Collector Site	\$ -	\$ 1,500.00
1	Central High School, West Campus	2 Gbps	\$ -	\$ 1,450.00
1	Biola Pershing Elementary School	1 Gbps	\$ -	\$ 1,250.00
1	Houghton – Kearney Elementary School	1 Gbps	\$ -	\$ 1,250.00
1	Madison Elementary School	1 Gbps	\$ -	\$ 1,250.00
1	Roosevelt Elementary School	1 Gbps	\$ -	\$ 1,250.00
1	Pathway Community/ Pershing Continuat	1 Gbps	\$ -	\$ 1,250.00
1	Kollgian Stadium	1 Gbps	\$ -	\$ 1,250.00
1	West Arts Center (WAC)	1 Gbps	\$ -	\$ 1,250.00
Total Non-Recurring Charge (NRC)			\$ -	
Total Monthly Recurring Charge (MRC)				\$ 11,700.00
<small>Customer Initials acknowledging Term</small>				
Term (mo)	48			

This service order is entered into by Audeamus, Inc., dba Sebastian and Central Unified School District ("Customer"). It is effective upon execution by both parties ("Effective Date").

The services described herein are governed by Audeamus' Master Service Agreement executed by both parties.

Customer and the individual below represent that named individual has the authority to bind Customer to this Contract.

AUDEAMUS, INC., DBA SEBASTIAN

Customer: CENTRAL UNIFIED SCHOOL DISTRICT

Signature:



Signature:

Print Name:

BRANDON DUKES

Print Name:

Title:

VP

Title:

Date:

02-07-19

Date:

## MASTER SERVICES AGREEMENT

This Master Services Agreement (the “**Master Agreement**”) is dated February 6, 2019 and is between Audeamus, Inc., dba Sebastian Corporation and **CENTRAL UNIFIED SCHOOL DISTRICT (“Customer”)**. This agreement sets forth the general terms and conditions applicable to Customer’s purchase of one or more communications or related services (individually or collectively, “**Services**”) from Audeamus pursuant to an Order (as defined below).

### ARTICLE 1. ORDERS FOR AND DELIVERY OF SERVICE

**1.1 Submission and Acceptance of Order(s).** *Not a Purchase Agreement.* This Master Agreement is not an agreement to purchase or provide Services. Any such agreement or commitment may be entered into by Audeamus and Customer only pursuant to an Order (each, an “**Order**” and collectively, “**Orders**”). Each Order will set forth the specific terms of the Services to be provided by Audeamus and will incorporate the terms of this Master Agreement by reference. In the event of any inconsistency between an Order and this Master Agreement, this Master Agreement will control. Customer may submit an Order requesting Services and containing the duration for which Audeamus will provide the Services (“**Service Term**”). Services will continue on a month to month basis at the expiration of the Service Term at Audeamus’ then current rates. Audeamus shall notify Customer of acceptance of the Order, such acceptance being at Audeamus’ sole discretion, by delivering in writing the date by which Audeamus shall endeavor to install Services (the “**Install Date**”) or by delivering the Services. Renewal Orders will be deemed accepted by Audeamus’ continuation of Services. Customer shall pay Audeamus’ then current charges for moves, adds, or changes agreed to by Audeamus with respect to any Order or Services. The Master Agreement and any Order are collectively referred to as the “**Agreement.**”

**1.1.1 Growth Clause**

Growth Services may or may not be requested by the Owner during the contract term. Customer may increase bandwidth during the term of the agreement to any of the speeds above without any change in contract terms other than the price.

**1.2 Credit Approval and Deposits.**

(A) Audeamus reserves the right to request financial information from Customer to determine the creditworthiness of Customer. Customer’s execution of this Agreement signifies Customer’s acceptance of Audeamus’ initial and continuing credit approval procedures and policies. Customer shall provide Audeamus with credit information as Audeamus requests. Audeamus may require Customer to make a security deposit as a condition of Audeamus’ acceptance of any Order or continuation of Services or as otherwise provided herein. Deposits will be due on Audeamus’ written request. When Services are discontinued, Audeamus will credit the deposit to Customer's account and refund the balance, if any, to Customer.

(B) Audeamus reserves the right to withhold initiation or full implementation of any or all Services under an Order pending Audeamus’ initial satisfactory credit review and approval thereof, which may be conditioned on terms specified by Audeamus. Audeamus further reserves the right to modify its requirement, if any, with respect to any security or other assurance Customer provides for payments due hereunder in light of Customer’s actual usage when compared to projected usage levels on which any security or assurance requirement was based.

(C) If at any time there is a material adverse change in Customer’s creditworthiness, as determined by Audeamus in its sole discretion, then in addition to any other remedies available to Audeamus, Audeamus may elect, in its sole discretion, to exercise one or more of the following remedies: (i) delay or withhold the commencement of Services; (ii) suspend Services; (iii) decline to accept Orders or other requests from Customer to provide Services; and/or (iv) condition its provision of Services or acceptance of Orders.

**1.3 Customer Premises; Title to Equipment.**

(A) If access to non-Audeamus facilities is required for the installation, maintenance or removal of Audeamus equipment, Customer shall, at its expense, secure such right of access and shall arrange for the provision and maintenance of power and HVAC as needed for the proper operation of such equipment.

(B) Unless stated otherwise in the applicable Order, Customer is solely responsible for the acquisition, installation, maintenance and repair of any and all equipment necessary to receive Services.

(C) If, under the applicable Order, Audeamus provides equipment, network facilities and other property in order to provide Services, title to all such equipment, network facilities and other property of Audeamus (including software) provided by Audeamus is and will always remain with Audeamus. Such equipment, network facilities and other Audeamus property will not become fixtures of any Customer premises and must be returned to Audeamus at any time Services are discontinued in the condition in which they were received, subject to ordinary wear and tear. Customer shall not sell, lease, assign or create or permit to be created any liens, encumbrances or security interests on Audeamus' equipment, network facilities or other property.

**1.4 Scheduled Maintenance and Local Access.** Scheduled maintenance will not normally result in Services interruption. If scheduled maintenance requires Services interruption, Audeamus shall: (i) provide Customer reasonable advance notice, (ii) work with Customer to minimize such interruptions, and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time. If Customer obtains third party local access services, Customer shall: (i) provide Audeamus with circuit facility and firm order commitment information and design layout records to enable cross-connects to Audeamus Services (provided by Audeamus subject to applicable charges), (ii) cooperate with Audeamus (including providing necessary authorizations) respecting circuit grooming, and (iii) where related Services are disconnected, provide Audeamus a written disconnection firm order commitment from the relevant third party provider.

## **ARTICLE 2. BILLING AND PAYMENT**

**2.1 Commencement of Billing.** Audeamus shall deliver written notice (a "**Connection Notice**") stating when Services were installed either as part of Customer's first invoice for particular Services or in a separate notification. If Customer notifies Audeamus earlier than three days after delivery of the Connection Notice that Services are not functioning properly, Audeamus shall correct any deficiencies and, on Customer's request, credit Customer's account in the amount of 1/30 of the applicable MRC for each day the Services did not function properly.

**2.2 Payment of Invoices and Disputes.** The fees payable to Audeamus by Customer and the due dates of such fees are set forth in the applicable Orders (the "**Fees**"). All Fees are due within 30 days after the invoice date. Fixed charges are billed in advance and usage-based charges are billed in arrears. Billing for partial months is prorated. Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Acceptance of any such interest charges paid by Customer will not constitute a waiver by Audeamus of any Customer Default (as defined below) with respect to any such overdue amount. Customer is responsible for all charges respecting the Services, even if incurred as the result of unauthorized use. Audeamus' failure to submit an invoice will not relieve Customer of its obligation to pay all amounts owed when due, unless otherwise agreed upon in writing by both parties.

(a) If Customer in good faith disputes any charges invoiced by Audeamus, Customer shall promptly pay all undisputed charges and may notify Audeamus in writing of any such disputed amounts within 60 days after the invoice date, identifying in reasonable detail its reasons for the dispute and the nature and amount of the dispute. All amounts not timely and appropriately disputed within 60 days after the invoice date will be deemed final and not subject to further dispute. If Customer was billed in error, a credit for the amount billed incorrectly will be made to the next invoice. If the amount was billed correctly, Customer shall pay the amount within 15 days of confirmation.

(b) If Audeamus receives Customer's payments more than 30 days after the invoice dates for two consecutive months, Customer shall, within five days after Audeamus' request, deposit with Audeamus an amount equal to two month's monthly recurring charges. On expiration or termination of this Agreement and Customer's compliance with its financial obligations hereunder, Audeamus shall return to Customer all amounts on deposit, if any.

(c) Fees due hereunder are billed one month in advance. The first billing cycle may include a partial month's recurring fee and a full month's recurring fee if Audeamus provides Services for a partial month. Fees are payable for the duration of the Service Term.

(d) Audeamus may charge a reasonable service fee for all returned checks and bankcard, credit card or other charge card charge-backs.

(e) Customer will be responsible for all expenses, including reasonable attorney's fees and collection costs, Audeamus incurs in collecting any unpaid amounts due under this Agreement.

**2.3 Taxes and Fees.** Except for Audeamus' federal and state income tax and Audeamus' personal property tax, Customer is responsible for the determination, calculation, collection and payment of all taxes and other fees (including FCC fees such as universal service fees, TRS, etc.) that may be imposed on Audeamus or Customer, all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Services, including but not limited to value added, consumption, sales, use, gross receipts, foreign withholding (which will be grossed up), excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911 surcharges), whether imposed on Audeamus or an Audeamus affiliate, along with similar charges stated in an Order (collectively "**Taxes and Fees**"). Some Taxes and Fees are recovered through imposition of a percentage surcharge on the charges for Services. Fees are exclusive of Taxes and Fees. Customer may present Audeamus with an exemption certificate eliminating Audeamus' liability to pay certain Taxes and Fees; Audeamus will give effect thereto prospectively.

**2.4 Regulatory and Legal Changes.** If changes in applicable law, regulation, rule or order materially affect delivery of Services, the parties shall negotiate in good faith appropriate changes to any applicable Order. If the parties cannot reach agreement within 30 days after Audeamus' notice requesting renegotiation: (a) Audeamus may, on a prospective basis after such 30 days period, pass any increased delivery costs on to Customer, and (b) if Audeamus does so, Customer may terminate the affected Services on written notice to Audeamus delivered within 30 days of the increased costs.

**2.5 Order Cancellation and Termination Charges.**

(A) Customer may cancel an Order (or portion thereof) prior to the Install Date by giving 30 days written notice to Audeamus in accordance with section 7.5 of this Master Agreement, identifying the affected Order and Services. If Customer does so, Customer shall pay Audeamus, within 30 days after invoice, a cancellation charge equal to the sum of: (i) for "off-net" Services, any and all third party termination charges for the cancelled Services; (ii) for "on-net" Services, one month's monthly recurring charges for the cancelled Services; (iii) any set-up costs and other the non-recurring charges for the cancelled Services; and (iv) any other expenses Audeamus incurs to prepare to comply with the Order.

(B) Following the Install Date, Customer may discontinue any Services and terminate any Order if Customer provides written notification thereof to Audeamus at least 30 days in advance of the effective date of discontinuance, provided that Customer shall pay Audeamus the Disconnection Charge under section 2.5(D) of this Master Agreement.

(C) Subject to order cancellation permitted by subsection 2.5(A) above, either party may terminate an Order and specified Services on the occurrence of any of the following events: (i) the other party's Default, as defined in article 3 below, of this Agreement; (ii) Audeamus, in its sole discretion, determines that Audeamus' installation or provision of Services or Customer's use of Services granted hereunder is resulting or will result in significant damage to the property of Audeamus or risk of harm to Audeamus or its employees or representatives; or (iii) a party's filing of a voluntary petition for bankruptcy, filing of an involuntary petition of bankruptcy against a party that is not discharged within 60 days of its filing, a party's assignment of assets for the benefit of creditors, the appointment of a receiver over a majority of a party's assets, or a party's general inability to pay its creditors as bills become due.

(D) If Audeamus terminates an Order in accordance with this Agreement (i) as the result of Customer Default as defined in article 3 below, or (ii) because Audeamus, in its sole discretion, determines that Audeamus' installation or provision of

Services or Customer's use of Services granted hereunder is resulting or will result in significant damage to the property of Audeamus or risk of harm to Audeamus or its employees or representatives pursuant to section 2.5(C) above, or if Customer terminates an Order following the Install Date pursuant to section 2.5(B) above or for any reason other than (i) Audeamus' Default prior to the expiration of the Service Term, or (ii) in accordance with the Force Majeure provisions of section 7.1 of this Master Agreement, Customer shall pay Audeamus a disconnection charge (as liquidated damages and not as a penalty) including all unpaid amounts for Services actually provided, all non-recurring, disconnection or termination charges reasonably incurred by Audeamus on Customer's behalf, and the sum of all remaining monthly recurring charges and other charges Customer was to pay Audeamus for the remainder of the Service Term (the "**Disconnection Charge**"). This Disconnection Charge will be due and payable within five days after the effective date of termination of the Order. In the event of termination of an Order for breach, the non-breaching party will have the right to pursue any or all remedies available to it at law or in equity. Customer acknowledges that the charges in this subsection 2.5(D) are a genuine estimate of Audeamus' actual damages and are not a penalty. On termination of the Order, Customer, at its sole cost and expense, shall immediately deliver or cause to be delivered to Audeamus any Audeamus property located on any premises of Customer and/or remove all of its equipment from Audeamus' property.

(E) No termination pursuant to this section 2.5 will relieve Customer of any of its obligations under any this Agreement that are intended to continue, including, without limitation, the obligation to pay all Fees due to Audeamus prior to such termination. Further, each of the sections in article 5 and sections 7.8, 7.10 and 7.16 of this Master Agreement will survive any early termination or the expiration of this Agreement.

(F) If Customer terminates an Order due to Audeamus Default as defined in article 3 below, Audeamus shall reimburse Customer for any pre-paid, unused monthly service fees attributable to such terminated Order.

**2.6 Offsets.** In no event shall Customer offset any amount to due to Audeamus from Customer for any reason, against amounts owed to Customer from Audeamus. If Customer is indebted to Audeamus for any reason, Audeamus may offset any such amount owed to Audeamus by Customer for any reason, against any money otherwise due to Customer from Audeamus and any and all amounts for which Audeamus may become liable to third parties by reason of Customer's acts in performing or failing to perform Customer's obligations under this Agreement or any other agreement. Further, Audeamus may withhold such sums for any monies that become due to Customer under this Agreement and/or any other agreement or from funds or equipment to be paid or disbursed to Customer pursuant to business dealings between the parties not reflected in any contract, as Audeamus, in its sole discretion, deems necessary to protect Audeamus from any loss, damage or expense relating to or arising out of Customer's action, inaction or performance of Customer's duties under this Agreement or any other agreement. The provisions of this section 2.6 will survive the expiration or termination of this Agreement indefinitely.

### **ARTICLE 3. DEFAULT**

**3.1 Customer Default.** Customer will be in default under this Agreement ("**Customer Default**") if Customer does one or more of the following (each individually to be considered a separate event of Customer Default) and Customer fails to correct each such noncompliance within 10 days of receipt of written notice in cases involving non-payment or within 30 days of receipt of written notice identifying with reasonable particularity the nature of the breach in cases involving any other noncompliance:

- (i) Customer is past due with respect to any payment required hereunder;
- (ii) Customer substantially breaches any other material terms of this Agreement ; or
- (iii) Customer files or initiates proceedings or has proceedings filed or initiated against it seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within 60 days.

**3.2 Audeamus Default.** Audeamus will be in default under this Agreement ("**Audeamus Default**") if Audeamus does one or more of the following (each individually to be considered a separate event of Audeamus Default) and Audeamus fails

to correct each such noncompliance or within 30 days of receipt of written notice from Customer identifying with reasonable particularity the nature, scope and extent of the noncompliance:

- (i) Audeamus substantially breaches any material term of this Agreement; or
- (ii) Audeamus files or initiates proceedings or has proceedings filed or initiated against it seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within 60 days.

#### **ARTICLE 4. RIGHT TO SUSPEND OR TERMINATE**

##### **4.1 Termination and Suspension by Audeamus.**

(A) In the event of Customer Default, Audeamus may, at its option, and in addition to any other remedies it may have at law or in equity:

- (i) Immediately suspend Services until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Audeamus any amounts due under this Agreement (*e.g.*, monthly services fees), as if such suspension of Services had not taken place;
- (ii) Terminate the Services or applicable Order; or
- (iii) After the occurrence of two such events of Customer Default in any 12 month period, terminate this Agreement or any applicable Order.

(B) Customer hereby forever waives, releases and discharges Audeamus and its affiliates from any and all claims, demands, actions, damages and causes of action related in any way to, or arising out of, any suspension or termination in accordance with this section 4.1.

**4.2 Termination by Customer.** In the event of Audeamus Default, if Audeamus' diligent efforts to correct such default are not commenced and pursued within 30 days of Audeamus' receipt of a written notice from Customer describing in reasonable detail the nature, scope and extent of the Audeamus Default, Customer's exclusive remedies will be (i) reimbursement set forth at section 2.5(F) hereunder, and (ii) termination of any applicable Order.

**4.3 Automatic Termination.** In addition to other termination rights under this Agreement, unless Audeamus, at its sole discretion, notifies Customer in writing of its choice not to exercise the automatic termination rights granted by this section 4.3, this Agreement will terminate automatically if any of the follow occurs:

- (i) For more than twenty consecutive days Customer fails to maintain operations as a going business;
- (ii) Customer, or any officer, director, substantial shareholder or principal of Customer, is charged in a court of competent jurisdiction with any offense substantially related to the business conducted by Customer in connection with this Agreement;
- (iii) Customer fails to comply with any applicable federal, state or local law or regulation, or engages in any practice, substantially related to the business conducted by Customer in connection with this Agreement, that is determined to be an illegal or unfair trade practice in violation of any applicable federal, state or local law or regulation;
- (iv) Customer falsifies any record or report hereunder;

- (v) Customer fails to maintain in full force and effect throughout the Service Term each right of entry, license, permit or similar document or authority required by contract, law or governmental authority having jurisdiction, that is necessary to carry out the provisions of this Agreement or to maintain Customer's corporate or other business status;
- (vi) Customer commits any fraud, misrepresentation or illegal action in connection with this Agreement or any other agreements;
- (vii) Audeamus, at any time during the Service Term, does not have all rights necessary to provide the Services or Audeamus is advised by counsel that termination of this Agreement is advisable given current and then-pending laws, regulations or ordinances, whether federal, state or local;
- (viii) Audeamus is legally or contractually prohibited from offering the Services; or
- (ix) Delivery of the Services becomes technically infeasible due to equipment changes and reconfiguration or other technical issues.

#### **ARTICLE 5. LIABILITIES AND SERVICE LEVELS**

**5.1 Limited Warranty.** At all times during the Service Term, Audeamus warrants that it shall use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to Customer. ***The foregoing limited warranty is exclusive and in lieu of all express and implied warranties whatsoever.*** Customer must make any warranty claim within 30 days after the applicable Services have been performed. Audeamus' sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth in this section, is a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty.

**5.2 Disclaimer of all other Warranties.** *Audeamus makes no warranties or representations, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties or merchantability, fitness for a particular purpose or title or non-infringement of third party rights, except those expressly set forth in this Agreement. No advice or information given by Audeamus, its affiliates or its contractors or their respective employees will create a warranty. If, under the applicable Order, Audeamus provides equipment, network facilities and other property in order to provide Services to Customer, Customer (i) shall pay for and accept all such Audeamus provided equipment "as is"; (ii) forever waives any right or claim it or any of its affiliates may now have or may hereafter acquire against Audeamus regarding such equipment or the installation, maintenance, replacement or the use thereof; and (iii) shall look only to the warranty provided by the manufacturer of such equipment for any issues, damages, problems or concerns that may arise in connection therewith. Notwithstanding the foregoing, if Customer discovers any material defect in any such equipment within five days following delivery of the equipment to Customer, and Customer does not cause such defect, Customer may return such equipment to Audeamus. If Audeamus determines in its sole and absolute discretion that such returned equipment contains a material defect not caused by Customer, Audeamus shall make commercially reasonable efforts to replace the defective equipment at no additional cost to Customer except for any applicable shipping and handling costs associated with the return and replacement.*

**5.3 Limitation of Audeamus Liability.**

*(A) Notwithstanding anything to the contrary herein, Audeamus' total cumulative liability to Customer under this Agreement is limited to the aggregate amount of the Fees actually paid by Customer to Audeamus for the rights obtained under this Agreement during the six months immediately preceding the date of the termination of this Agreement, exclusive of any amounts expended by Audeamus hereunder. Customer hereby irrevocably and forever releases Audeamus from all obligations, liability, claims or demands in excess of the foregoing limitation.*

*(B) Upon expiration or termination of this Agreement, Audeamus will have no liability or obligation to Customer whatsoever and no amounts spent by Customer in fulfillment of this Agreement will be recoverable from Audeamus by Customer.*

**5.4 No Special Damages.** *Without limiting any express provisions provided elsewhere in this Agreement, neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement or, even if the party has been advised, knew or should have known of the possibility of such damages.*

**5.5 Liability and Indemnification.**

(A) In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement, Customer shall, at its own expense, indemnify, defend and hold harmless Audeamus and its members, directors, employees, representatives, officers and agents (the "**Audeamus Indemnified Parties**") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Audeamus Indemnified Parties, including but not limited to, reasonable attorneys' fees and court costs incurred by Audeamus Indemnified Parties under this Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Audeamus Indemnified Parties will have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Audeamus Indemnified Parties in such case.

(B) Customer accepts full responsibility for all actions taken by its employees, contractors or agents for work performed on any property of Audeamus and for the any equipment used in connection with the Services, and Customer shall indemnify Audeamus Indemnified Parties from any actions of such employees, contractors and agents and arising from such equipment in accordance with subsection 5.5(A).

**5.6 Service Levels.** The "**Service Level**" commitments applicable to Services, maintenance log and trouble ticketing procedures and credit procedures and regulations for Audeamus' noncompliance with a Service Level are contained in the Orders.

**5.7 Right of Termination for Installation Delay.** In lieu of installation Service Level credits, if Audeamus' installation of Services is delayed by more than 30 business days beyond the Install Date, Customer may terminate the affected Services without liability on written notice to Audeamus, provided such written notice is delivered prior to the actual installation of Services. This Section will not apply where Audeamus is constructing facilities to a new location not previously served by Audeamus.

**ARTICLE 6. CUSTOMER REPRESENTATIONS AND OBLIGATIONS**

**6.1 Customer Representations.** Customer represents that:

(A) it has the full power and legal authority to execute, deliver and carry out the terms of this Agreement and that the individual signing this Master Agreement and any Order has the authority to do so;

(B) it has all permits, licenses and authorizations that may be required under contract and/or applicable federal, state and local law, rules, regulations and ordinances to install, operate and maintain any equipment used in connection with this Agreement, including without limitation, if applicable, the contractual right of entry to any properties on which any such equipment is or will be located;

(C) any person who accesses any Services through Customer's equipment or network facilities in Customer's premises will be an authorized user, will use the Services and/or equipment in an appropriate and legal manner will be subject to the terms of this Agreement. Customer is responsible for ensuring that all such users understand this Agreement and comply with its terms;

(D) as of the date of the applicable Order Customer is in compliance with, and throughout the Service Term it shall comply with, any and all applicable local, state and federal laws, rules, regulations, licensing requirements, and valid orders of administrative agencies, governmental entities and courts of competent jurisdiction in connection with the operation of its business and the performance of its obligations under this Agreement. Customer shall maintain all permits, licenses, permissions, authorizations, and rights that may be required under any applicable legal requirements or otherwise for the performance of its obligations under this Agreement;

(E) it is in compliance with all laws, rules and regulations and court and governmental orders related to maintenance of its corporate or other business status and/or to the operation of its business;

(F) it has not and shall not during the Service Term enter into an agreement or arrangement that could limit the full performance of its obligations under this Agreement; and

(G) it is under no obligation and shall not become subject to any obligation that may interfere with its performance of this Agreement;

**6.2 Customer Obligations.** Customer is responsible for payment of all Fees due in accordance with this Agreement and shall comply with all other terms of this Agreement.

## **ARTICLE 7. GENERAL TERMS**

**7.1 Force Majeure.** Neither party will have any claim or right against the other for any failure of or delay in performance by the other party (other than Customer's payment obligations under article 2 of this Master Agreement) if the failure or delay is caused by or the result of causes beyond the reasonable control of the other party, including, but not limited to, acts of God, fire, flood, hurricane or other natural catastrophe, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war; inability to obtain equipment, material or other supplies, or; other similar occurrence beyond the control and without the fault or negligence of the affected party. Notwithstanding the foregoing, if the excusable delay exceeds 60 days, either party may terminate this Agreement or applicable Order immediately on written notice without incurring any termination liability hereunder.

### **7.2 Assignment and Resale.**

(A) Customer shall not assign or otherwise transfer this Agreement or delegate Customer's obligations, in whole or in part, whether by operation of law or otherwise, to any other party, except that on obtaining the prior written consent of Audeamus, which will not be withheld unreasonably, Customer may assign this Agreement, in whole or in part, to any parent, subsidiary or affiliate of Customer controlling, under the control of or under common control with Customer (a "**Customer Affiliate**"), or any entity that purchases all or substantially all of the assets of Customer.

(B) Any assignment will be contingent on the assignee or transferee agreeing in writing to assume and to perform all of Customer's obligations under this Agreement. The parties' rights and obligations under this Agreement will bind and inure to the benefit of the parties and each of their respective permitted successors and assigns. At Audeamus' request, any prospective assignee for which Audeamus' consent is required for assignment shall submit to Audeamus evidence of its financial fitness, competitive standing and any other criteria Audeamus deems appropriate. The prospective assignee shall reimburse Audeamus the costs of reviewing such evidence to determine whether to permit the assignment or sublease. If Customer validly assigns or otherwise transfers this Agreement in accordance with subsection 7.2(A) above, Customer will remain liable for the obligations under this Agreement if the assignee fails to fulfill those obligations.

(C) If Customer sells substantially all of its assets to a party that is not a Customer Affiliate, Customer may choose to terminate this Agreement and be released from its obligations under this Agreement as of the effective date of such sale, provided that (i) Customer provides 30 days' prior written notice to Audeamus of such sale; (ii) Customer has fully paid, in accordance with the terms of this Agreement, all amounts to which Audeamus is entitled under this Agreement as of the effective date of such

sale; and (iii) Customer is not in breach or Customer Default of this Agreement. If Customer terminates this Agreement in accordance with this subsection 7.2(C), Audeamus will not have any further duty or obligation under this Agreement or otherwise with respect to Customer.

(D) Unless otherwise provided in an Order, Customer may provide Services to third parties or use the Services in connection with goods or services provided by Customer to third parties ("**Customer Provided Services**") provided that Customer shall indemnify, defend and hold Audeamus and its affiliates harmless from any claims arising from or related to any Customer Provided Services. If Customer sells telecommunications services, Customer shall file all required documentation and at all times have the requisite authority with appropriate regulatory agencies respecting the same.

**7.3 Authorized Representatives.** Each party represents to the other that the execution and delivery of this Agreement and the performance of such parties' obligations hereunder have been duly authorized, and that this Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms

**7.4 Affiliates.** Services may be provided to Customer by an affiliate of Audeamus, but Audeamus will remain responsible to Customer for the delivery and performance of Services. If Customer transfers this Agreement, in whole or in part, to a Customer Affiliate pursuant to section 7.2 above, or the Customer Affiliate otherwise purchases Services, Customer will be jointly and severally liable for all claims and liabilities related to Services ordered by any Customer Affiliate.

**7.5 Notices.** Any notice to be given to either party under this Agreement will be in writing and deemed received (a) when received, if hand delivered, (b) three days after being sent by certified mail, postage prepaid and return receipt requested, (c) when received, if sent by facsimile during the hours of 9:00 a.m. to 5:00 p.m. (recipient's time) with printed confirmation of receipt, or (d) the next day, when sent by reliable, commercial overnight courier providing receipt of service to a party at such party's address set forth below. Notice received after 5:00 p.m. (recipient's time) will be effective the next regular business day:

**IF TO AUDEAMUS:**

AUDEAMUS, INC.  
7600 North Palm Avenue  
Fresno, CA 93711  
Attn: Brandon Dukes  
Facsimile: 559-432-5800  
Email: bdukes@sebastiancorp.com

**IF TO CUSTOMER:**

Attn:  
Facsimile:  
Email:

**WITH A COPY TO:**

AUDEAMUS, INC.  
811 South Madera Avenue  
Kerman, CA 93630  
Attn: Rhonda Armstrong  
Facsimile: 559-846-6127  
Email: rarmstrong@sebastiancorp.com

Attn:  
Facsimile:  
Email:

For billing inquiries/disputes, requests for Service Level credits and/or requests for disconnection of Services (other than for default):

AUDEAMUS, INC.  
811 South Madera Avenue  
Kerman, CA 93630  
Attn: Tina Barrios  
Facsimile: 559-846-6127  
Email: tbarrios@sebastiancorp.com

If no Customer address is provided above, notices may be provided to any electronic or physical address identified on any applicable Order. Either party may change its notice address by giving notice to the other party in accordance with this section.

**7.6 Acceptable Use Policy.** Customer's use of Services shall comply with Audeamus' Acceptable Use Policy, as communicated in writing to Customer from time to time and which is also available upon request.

**7.7 Intellectual Property and Publicity.** Nothing in this Agreement or its performance grants either party, by implication, estoppel or otherwise, any right, title, interest or license in or to the other party's names, logos, logotypes, trade dress, designs, or other trademarks, patents, patent applications, trade secrets, copyrights, mask work rights or other intellectual property rights of the other party or its affiliates.

**7.8 Confidential Information.** "Confidential Information" means the specific terms of this Agreement and any information, data or other materials provided by one party to the other under or in connection with this Agreement that is (a) clearly and conspicuously marked as "confidential" or with a similar designation; (b) identified by the disclosing party as confidential and/or proprietary before, during or promptly after presentation or communication; or (c) disclosed in a manner which the disclosing party reasonably communicated, or the receiving party should reasonably have understood under the circumstances, that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used. Except with the prior written consent of the disclosing party, the receiving party shall not (i) use or disclose any Confidential Information other than to employees and contractors who have a need to know the Confidential Information, with any disclosure only to contractors who have signed a non-disclosure agreement to protect the confidential information of third parties, or (ii) make copies or allow others to make copies of such Confidential Information except as is reasonably necessary for internal business purposes. Nothing in this Agreement prohibits or limits either party's use or disclosure of information (a) previously known to it without obligation of confidence; (b) independently developed by or for it without use of or access to the other party's Confidential Information; (c) acquired by it from a third party which is not under an obligation of confidence with respect to such information; (d) which is or becomes publicly available through no breach of this Agreement; or (e) is required to be disclosed by operation of law, court order or other governmental demand. Further, the receiving party is free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the disclosing party, provided that the receiving party shall not disclose the Confidential Information except as expressly permitted pursuant to the terms of this Agreement. The term "residuals" means information in intangible form, which is retained in unaided memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The receiving party will not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. The parties acknowledge and agree that breach of this section 7.8 may cause irreparable injury for which monetary damages are not an adequate remedy. Accordingly, each party may seek injunctive relief and any other available equitable remedies to enforce the provisions of this section 7.8, without posting a bond if otherwise required by law. Neither party shall issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed between the parties in writing. Any non-disclosure agreement between the parties applicable to this Agreement supersedes this section 7.8.

**7.9 Compliance with Laws.** Customer shall not use or permit third parties to use Services in any manner that violates applicable law or causes Audeamus to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties under this Agreement.

**7.10 Governing Law; Forum Selection.** The laws of the State of California govern all matters arising out of this Agreement. The state and federal courts located in Fresno County, California will have exclusive jurisdiction and be the exclusive venue of any lawsuit between the parties arising out of this business relationship, including disputes when they arise following termination of this Agreement. Customer waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. Customer acknowledges and agrees that this section 7.10 serves as a material inducement for Audeamus to enter into this Agreement. *Each party waives, to the fullest extent permitted by law, trial by jury of any disputes, claims or issues arising under this Agreement.*

**7.11 Further Actions.** The parties shall, at their own costs and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intended purposes of this Agreement.

**7.12 Amendment.** This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the Services and supersedes all prior agreements relating to the Services. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party.

**7.13 Waiver.** No failure by either party to enforce any rights hereunder will constitute a waiver of such rights. Audeamus' acceptance of any payment under this Agreement will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Audeamus for additional amounts due from Customer. No express or implied waiver by Audeamus of any event of default will in any way be a waiver of any further subsequent event of default.

**7.14 Relationship.** This Agreement is a commercial contract between Audeamus and Customer and the relationship between the parties is that of independent contractors. Nothing in this Agreement creates any partnership, principal-agent, employer-employee or joint venture relationship between the parties or any of their affiliates, agents or employees for any purpose.

**7.15 Counterparts.** This Master Agreement and any Order may be executed in several counterparts, each of which will be an original, but all of which will constitute one and the same instrument. Any executed documents sent via facsimile or portable document format (pdf) images will be considered originals.

**7.16 Legal Expenses.** If any proceeding is brought by a party to enforce or interpret any term or provision of this Agreement, the substantially prevailing party in such proceeding will be entitled to recover, in addition to all other relief as set forth in this Agreement, that party's reasonable attorneys' and experts' fees and expenses.

**7.17 Severability.** The invalidity under applicable law of any provision of this Agreement will not affect the validity of any other provision of this Agreement, and if any provision herein is determined to be invalid or otherwise illegal, this Agreement will remain effective and will be construed in accordance with its terms as if the invalid or illegal provision were not contained herein.

**7.18 No Inference Against Author.** No provision of this Agreement will be interpreted against any party because the party or its legal representative drafted the provision.

**7.19 No Third Party Beneficiaries.** This Agreement is not intended and does not confer any rights or remedies on any entity or person other than Audeamus and Customer.

**7.20 Successor Interests.** This Agreement is binding upon the heirs, legal representatives, successors and permitted assigns of the parties.

**7.21 Headings.** The article and section headings in this Agreement are furnished for the convenience of the parties and are not to be considered in the construction or interpretation of this Agreement.

The parties are signing this agreement on the date stated in the introductory clause.

**CENTRAL UNIFIED SCHOOL DISTRICT**

**AUDEAMUS, Inc., dba Sebastian Corporation**

By \_\_\_\_\_

By  \_\_\_\_\_

Name \_\_\_\_\_

Name **BRANDON DUKES** \_\_\_\_\_

Title \_\_\_\_\_

Title **VP** \_\_\_\_\_