

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2019, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

AT&T CORP.

(hereinafter referred to as "VENDOR"),
whose principal place of business is
One AT&T Way, Bedminster, New Jersey 07921

WHEREAS, SBBC is in need of certain managed, wide area network (WAN) lit services and has selected the VENDOR to provide such services; and

WHEREAS, VENDOR is willing to provide such managed WAN services to SBBC; and

WHEREAS, SBBC issued a Request for Proposal identified as RFP 19-051E, Managed WAN Lit Service (hereinafter referred to as "RFP"), dated September 18, 2018, and amended by Addendum No. 1 dated September 20, 2018 and Addendum No. 2 dated October 15, 2018, each of which is incorporated by reference herein, for the purpose of receiving proposals for Managed WAN Lit Services; and

WHEREAS, VENDOR offered a proposal in response to the RFP (hereinafter referred to as "Proposal") and which is incorporated herein by reference whereby VENDOR proposed to (describe services/work vendor will provide). This entails all equipment, services and support required for WAN service.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on July 1, 2019 and shall conclude on June 30, 2022. The term of the Agreement may, by mutual agreement between SBBC and

VENDOR, be extended for two (2) additional one-year periods and, if needed, 180 calendar days beyond the expiration date of the renewal period.

2.02 **Description of Goods or Services Provided.** Vendor will provide wide area network services delivered by AT&T Switched Ethernet Service with Managed Router Service.

(a) VENDOR's Responsibilities. Vendor will design, deploy, monitor, and manage SBBC's AT&T managed wide area network.

2.03 **Cost and Payment.** Exclusive of taxes, fees, and surcharges, each circuit shall be billed by bandwidth according to the following service fee chart:

Monthly Cost	Bandwidth
\$756.22	1 GB
\$1,168.64	10 GB
\$5,055.00	40 GB

(a) VENDOR shall submit monthly proper and appropriate invoice, with each circuit clearly listed with its applicable fee minus any credits due (if applicable), to be paid in accordance with the Florida Prompt Payment Act.

2.04 **Priority of Documents.** In the event of a conflict between documents, the following priority of documents shall govern.

- First: This Agreement;
- Second: Any exhibits or attachments to this Agreement;
- Third: Addendum No. 2 to RFP 19-051, then;
- Fourth: Addendum No. 1 to RFP 19-051, then;
- Fifth: RFP 19-051E – Managed WAN Lit Service, then;
- Sixth: Proposal submitted by VENDOR in response to RFP 19-051E

2.05 **Disclosure of Education Records.** Although no student education records shall be disclosed pursuant to this Agreement, should VENDOR come into contact with education records during the course of contracted responsibilities, these records are confidential and protected by the Family Educational Rights and Privacy Act (FERPA) and state laws and may not be used or re-disclosed. Any use or re-disclosure may violate applicable federal and state laws.

2.06 **Inspection of VENDOR's Records by SBBC.** VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by VENDOR or any of VENDOR's payees pursuant to this Agreement. VENDOR's Records subject to examination

shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. VENDOR's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) VENDOR's Records Defined. For the purposes of this Agreement, the term "VENDOR's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide VENDOR reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to VENDOR's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by VENDOR to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any VENDOR's claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by VENDOR in excess of ten percent (10%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by VENDOR. If the audit discloses billings or charges to which VENDOR is not contractually entitled, VENDOR shall pay said sum to SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties.

2.07 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed

by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Chief Information Officer
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To VENDOR: Margarita Castellon
AT&T
321 SE Third Street
Delray Beach, FL 33483

With a Copy to: Esperanza Diaz-Bello
AT&T
321 SE Third Street
Delray Beach, FL 33483

2.08 **Background Screening.** VENDOR shall comply with all requirements of Sections 1012.32, 1012.465, 1012.467 and 1012.468 Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this section or with Sections 1012.32, 1012.465, 1012.467 and 1012.468 Florida Statutes.

2.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes,

or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

2.10 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

(a) By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

(b) By VENDOR: VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by VENDOR, its agents, servants or employees; the equipment of VENDOR, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of VENDOR or the negligence of VENDOR's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by VENDOR, SBBC or otherwise.

2.11 **Insurance Requirements.** VENDOR shall comply with the following insurance requirements throughout the term of this Agreement:

(a) General Liability. VENDOR shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) Professional Liability/Errors & Omissions. VENDOR shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per claim or wrongful act and in the aggregate covering services provided under this Agreement.

(c) Workers' Compensation. VENDOR shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) Auto Liability. VENDOR shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(e) Acceptability of Insurance Carriers. The insurance policies required under this Agreement shall be issued by companies eligible to do business in the State of Florida and having a rating of at least A- VII by AM Best.

(f) Verification of Coverage. Proof of the required insurance must be furnished by VENDOR to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) calendar days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit VENDOR to remedy any deficiencies. VENDOR must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) Required Conditions. Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are included as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) **Cancellation of Insurance.** VENDOR is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and will provide at least 30 days written notice to SBBC of cancellation or non-renewal of any required coverage that is not replaced.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein once per term of this Agreement.

2.12 **Nondiscrimination.**

(a) As a condition of entering into this Agreement, VENDOR represents and warrants that it will comply with the SBBC's Commercial Nondiscrimination Policy, as described under, Section D.1 of SBBC's Policy No. 3330 – Supplier Diversity Outreach Program.

(b) As part of such compliance, VENDOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall VENDOR retaliate against any person for reporting instances of such discrimination. VENDOR shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the SBBC's relevant marketplace. VENDOR understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

2.13 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.14 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.15 **Incorporation by Reference.** **Exhibit A, E-RATE RIDER** attached hereto and the RFP, its Addenda and the Proposal which are referenced herein shall be deemed to be incorporated into this Agreement by reference.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) calendar days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.05 **Termination.**

(a) Contract Termination. This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) calendar days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC shall be entitled to

a *pro rata* refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within thirty (30) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate. The per circuit minimum service period described in section (b) below does not apply in the event of a termination of the Contract in its entirety as provided in this section (a).

(b) **Individual Circuit Termination.** SBBC may terminate services on an individual circuit basis, without the need to terminate the Agreement in its entirety. With respect to termination on an individual circuit basis, early termination penalties (standard 50%) will apply to individual service disconnections that occur prior to twelve months of turn-up of such circuit (the "minimum service period"); provided that, in order to give SBBC flexibility in handling normal churn within a large network, during the term of this Agreement, SBBC will be able to close up to 37 circuits that have not satisfied the minimum service period without incurring an early termination charge. Evolution of Service from one technology to a more technologically advanced AT&T service as part of Vendor's network modernization shall not count as a termination of services for purposes of this section.

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC. Notwithstanding the foregoing, Vendor may assign all or part of the award of Agreement to a corporate affiliate of Vendor.

3.12 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **LIMITATION OF LIABILITY.** VENDOR'S ENTIRE LIABILITY, AND SBBC'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES AND NOT CAUSED BY SBBC'S NEGLIGENCE, SHALL IN NO EVENT EXCEED AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO SBBC FOR THE PERIOD OR SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION,

DELAY, ERROR OR DEFECT IN THE SERVICES OCCURS AND CONTINUES OR THE AMOUNT OF FEES BY SBBC TO AT&T UNDER THIS AGREEMENT, IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO AT&T.

THIS LIMITATION OF LIABILITY WILL NOT APPLY TO (I) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE; (II) BREACH OF SECTIONS, CONFIDENTIAL INFORMATION, PUBLICITY, OR TRADEMARKS; (III) SETTLEMENT, DEFENSE, OR PAYMENT OBLIGATIONS FOR THIRD PARTY CLAIMS; (IV) DAMAGES ARISING FROM AT&T'S NEGLIGENCE OR MISCONDUCT.

NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS AND REVENUES, OR INCREASED COST OF OPERATIONS.

VENDOR WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY VENDOR'S NEGLIGENCE OR MISCONDUCT, ARISING OUT OF OR RELATING TO INTEROPERABILITY, ACCESS, OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, CONTENT, OR NETWORKS PROVIDED BY SBBC OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF SBBC'S ITS AFFILIATES, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, NETWORK, OR SYSTEMS.

TO THE EXTENT OF ANY INCONSISTENCIES UNDER THIS SECTION 3.17 AND SECTION 2.10 ABOVE, THE TERMS AND CONDITIONS OF SECTION 2.10 ABOVE SHALL CONTROL.

3.18 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.19 **AT&T Acceptable Use Policy.** AT&T's Acceptable Use Policy ("AUP") applies to (i) services provided over or accessing the Internet and (ii) wireless (i.e., cellular) data and messaging services. The AUP can be found at att.com/aup or other locations AT&T may designate.

3.20 **Technical and Operational Specifications.** The following Technical and Operational Specifications shall replace Technical and Operational Specifications 4.4.2.11, 4.4.2.14, and 4.4.2.22, from the RFP:

(a) 4.4.2.11. Network Latency Commitment (all based on One way) is:

- Real Tim – 5 ms;
- Interactive – 13 ms;
- Bus Crit High – 20 ms;
- Bus Crit Med – 30 ms.

(b) 4.4.2.14. With respect to Mean Time-to-Restore, AT&T has a general internal objective of 4 hours Mean-Time-to-Restore. These are not associated with specific credits or other remedies.

(c) 4.4.2.22. As the current provider of SBBC's WAN, AT&T will maintain SBBC WAN operations throughout the cutover of the service so that there is no disruption of service during the transition to upgraded bandwidths. It is AT&T's intention to upgrade the bandwidth at each site within a reasonable amount of time once SBBC confirms the bandwidths required at each site and gives AT&T the direction to move forward with the upgrades. Should SBBC require the specific bandwidths stated in this RFP, there will be a need for upgrades to AT&T's Core Equipment at AT&T's Central Offices. Lower bandwidths would mean fewer upgrades to the Core Equipment.

Timeframe estimates are as follows:

1. Core Equipment Upgrades: Seven months from the date of customer order to proceed with specific bandwidths.
2. Circuit Upgrades: Three months from completion of Core Equipment upgrades.
3. Individual Sites Installations: Individual sites timelines will be negotiated between SBBC and AT&T's project manager.

As we have done successfully in the past, AT&T will work cooperatively with the SBBC IT staff to meet the installation dates requested with the assistance of a professional project manager who will be assigned to this project. The project manager will prepare a project plan with the necessary milestones and projected timelines. AT&T's goal is to deliver the best quality service in the shortest time possible while maintaining a high level of quality throughout the entire project. As with all projects, there is a risk that unexpected circumstances could lengthen the intervals or that aggressive project management and favorable conditions could allow for sooner delivery.

3.21 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, limitation of liability, and obligations to return public funds shall survive the termination of this Agreement.

3.22 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.23 **SBBC Ordering of Service.** SBBC will order the services provided by Vendor under this Agreement via e-mail, citing this Agreement in the e-mail.

3.24 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.25 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Heather P. Brinkworth, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

FOR VENDOR:

(Corporate Seal)

AT&T CORP.

ATTEST:

By Debra Szabo
Debra Szabo, Lead Solutions Architect bt904t

_____, Secretary

-or-

Debra Szabo
Witness

Paula Ann Hanger
Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF New Jersey

COUNTY OF Somerset

The foregoing instrument was acknowledged before me this 25 day of February, 2019 by Debra Szabo of

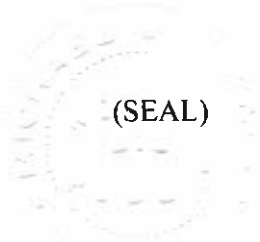
AT&T Corp, on behalf of the corporation/agency.
Name of Person
Name of Corporation or Agency

He/She is personally known to me or produced _____ as
identification and did/did not first take an oath. Type of Identification

My Commission Expires:

Michael J. Hickey
Signature - Notary Public

Michael J. Hickey
Printed Name of Notary



MICHAEL J. HICKEY
NOTARY PUBLIC OF NEW JERSEY
Notary's Commission No. **Comm. # 2208336**
My Commission Expires 06/16/2023

EXHIBIT A: E-RATE RIDER

C1 Rider REV092717

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This Attachment shall have the same term as the Agreement.

This Attachment provides additional terms and conditions that apply if and when the Customer obtains an end-to-end solution involving the use of terminating equipment ("Equipment"). If called for in the applicable Statement of Work, this Attachment also provides additional terms and conditions for the installation of conduit pathway support structure ("CPSS" or "Facilities") installed by AT&T in order to bring Service to Customer's demarcation point.

TERMS AND CONDITIONS APPLICABLE TO E-RATE FUNDED PRODUCTS AND SERVICES

Customer has represented that it intends to seek funding through the Federal Universal Service Fund program known as "E-Rate" for some or all of the Services or Service Components purchased under the Agreement. E-Rate is administered by the Schools and Libraries Division ("SLD") of the Universal Service Fund Administrative Company ("USAC") (sometimes collectively or individually referred to herein as "USAC/SLD"). The Federal Communications Commission ("FCC") has promulgated regulations that govern the participation in the E-Rate program. Both Parties agree to adhere to FCC regulations as well as the rules established by SLD and USAC regarding participation in the E-Rate program. The Parties further agree:

1. Eligibility of Products and Services. The eligibility or ineligibility of products or services for E-Rate funding is solely the responsibility of the USAC/SLD and/or the FCC. AT&T makes no representations or warranties regarding such eligibility.

2. Service Substitutions. Customer acknowledges that USAC/SLD funding commitments are based upon the products, services and locations set forth in the Form 471 and that any modification to the products and services and/or the locations at which the products or services are to be installed and/or provided, requires Customer to file a service substitution with USAC/SLD, seeking permission to receive alternative service or receive the service to an alternative location. AT&T will provide Services and Service Components only as approved by the USAC/SLD and may suspend activities pending approval of service substitution requests.

3. Requested Information. If requested, Customer will promptly provide AT&T with final copies of the following E-Rate related materials (including all attachments) prepared by or for Customer: (i) Form 471 and Bulk Upload template(s); (ii) Form 486; (iii) Form 500; (iv) Service Substitution Request; (v) Service Certification Form; and, (vi) Form 472-BEAR. If

the Customer issues purchase orders, Customer shall clearly delineate between eligible and non-eligible Services on those orders.

4. Representations, Warranties and Indemnities. Each Party represents and warrants that it has and will comply with all laws and the requirements applicable to the E-Rate Program. In addition to any indemnification obligations set forth in the Agreement and to the extent permitted by law, each Party agrees to indemnify and hold harmless the other Party (its employees, officers, directors and agents, and its parents and affiliates under common control) from and against all third party claims (including FCC or USAC/SLD claims) and related loss, liability, damage and expense (including reasonable attorney's fees) arising out of the indemnifying Party's violation of the E-Rate Requirements or breach of the representations, warranties, and terms contained in this Attachment.

5. Non-Appropriations. By executing the Agreement, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for the Services for each subsequent fiscal period through the end of the Agreement Term. In the event Customer is unable to obtain the necessary appropriations for the Services provided under this Attachment, Customer may terminate the Services without liability for the termination charges upon the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite Customer's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Services; and (iii) Customer has negotiated in good faith a revised agreement with AT&T to develop revised services and terms to accommodate Customer's budget. Customer must provide AT&T thirty (30) days' written notice of its intent to terminate the Services. Termination of the Services for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available. If Customer terminates the Services under this Attachment, Customer agrees as follows: (i) it will pay all amounts due for Services incurred through date of termination, and reimburse all unrecovered non-recurring, and/or special construction charges; and (ii) it will not contract with any other provider for the same or substantially similar services or equipment for a period equal to the original Agreement Term.

6. CUSTOMER DIRECTS AT&T TO COMMENCE OR CONTINUE SERVICES EVEN IF FUNDING COMMITMENT DECISION LETTER ("FCDL") HAS NOT BEEN RECEIVED FROM USAC/SLD. CUSTOMER ACKNOWLEDGES ITS OBLIGATION TO PAY FOR THE SERVICE IF FUNDING IS DENIED OR USAC/SLD COMMITMENT IS NOT RECEIVED. (i). **Scope;** Customer desires that Services commence on or about July 1 unless a different date is inserted here . Customer intends to seek funding from the USAC/SLD, but acknowledges that it may not receive an FCDL prior to this date and that it is possible that USAC/SLD may delay, or not approve funding. The Services term begins on the latter of July 1 or installation and delivery of those services, and will continue for the term stated in the Agreement.

(ii). Funding Denial Agreement Termination; CUSTOMER ACKNOWLEDGES THAT THERE IS NO RIGHT TO TERMINATE THE SERVICES OR SERVICE COMPONENTS

MADE THE BASIS OF THIS ATTACHMENT IF E-RATE FUNDING IS DELAYED OR DENIED.

7. AT&T Owned Equipment - General Terms and Conditions To the extent provided in the applicable Statement of Work, Customer desires Services to be rendered to its location(s) by placing Equipment (e.g. routers, switches) on the Customer's premises (the "Premises"). Customer does not wish to provide this Equipment itself, but instead requests the placement of the Equipment as part of the installation associated with the delivery of the underlying Service. The Equipment is owned by AT&T. Ownership of the Equipment will not transfer to the Customer in the future, and neither the Master Agreement nor this Attachment includes an option to purchase the Equipment. The Equipment shall not be used by Customer for any purpose other than receipt of the eligible telecommunications or Internet access service of which it is a part. A. Accordingly, Customer hereby: • Grants AT&T a license to install, operate, and maintain such Equipment and such additional, supplemental or replacement equipment as AT&T may from time to time deem necessary or desirable for the provision of services contemplated by the Service Agreement) within the Premises at such locations as mutually agreed by the parties at the time of installation, for so long as AT&T is providing the Services. • Confirms such license shall include a right of access to, from and within the Premises for purposes of installing, operating, maintaining, repairing and replacing such Equipment. All Equipment brought onto the Premises by AT&T will be deemed the personal property of AT&T (regardless of whether such Equipment is attached or affixed to the Premises) and Customer shall have no right to or interest in such Equipment. Customer has no right to exclusive use of the Equipment, and AT&T may use the Equipment to provide service to another customer. • Agrees to provide adequate space and electric power for the Equipment and keep the Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to the Equipment (other than ordinary wear and tear), except to the extent caused by AT&T or its agents. The Equipment will be provided at the prices set forth in the attached Statement of Work. • Agrees to notify AT&T of any and all issues arising out of or related to such Equipment, including the need for maintenance or repair, and assumes responsibility for notifying any other contractors or persons with a need to know, of the presence of the equipment and their location. • Agrees to indemnify and hold AT&T harmless from any and all liability that may arise out of the presence and placement of such equipment, except for AT&T's gross negligence. • Grants AT&T the right, but not the obligation, to remove all or any part of such equipment from the Premises at any time after the termination of the Service. Additionally, overall SLD program rules and eligibility requirements apply, and these requirements may change from time to time.

8. Terms of Equipment Usage – E-Rate Category 1 Funding Please note that there are some important Customer obligation areas to facilitate timely Equipment installation and service delivery. Accordingly, Customer agrees to provide the following:

A. PATH - The Customer is responsible for providing or causing the property owner to provide a path from the property line into the building. A clear underground or aerial path is required from the property line where AT&T ILEC facilities exist, to the equipment room designated to support the entrance fiber.

B. SPACE – Customer is responsible for providing appropriate floor space and a properly installed equipment rack of suitable strength and quality to properly support the intended Equipment and the location of the Minimum Point of Entry (MPOE)/ Demarcation Point in compliance with FCC and AT&T service requirements. The appropriate space and location will be mutually agreed following an AT&T site visit by an authorized AT&T Engineer. Any Demarcation Point location which is further than the closest practicable point to the MPOE in the building will require custom work which may not be eligible for E-Rate Category 1 (C1) funding, and must be paid for by the Customer.

C. ENVIRONMENTAL – Operating environment should be between +40° F and 100° F at 0% to 85% relative humidity (RH-Noncondensing).

D. POWER - GROUND - Customer will need to provide permanent, dedicated, 3-prong grounded power for the Equipment being installed. Power requirements can consist of nominal –48VDC, +24/-24 VDC, 110V, 125V, 220V, etc. located within 3 feet of the AT&T Equipment. AT&T may require more than one power outlet for some Equipment types, and there are specific amperage requirements for different Equipment types. Relay racks/cabinets must be properly grounded by placing an exposed #6 or larger grounding wire to the building’s ground source. This ground wire will be attached to the closest ground rod (earth ground) or building bus bar available and run to the Network Terminating Equipment location in the room. Site specific customer obligations will also be provided by AT&T personnel via e-mail upon finalization of this Attachment.

9. USAC Invoicing Method

AT&T will follow Service Provider invoicing requirements for the E-Rate Program, and will accommodate either the Service Provider Invoice Form (“SPI”) - Form 474 – or Billed Entity Application Reimbursement (“BEAR”) - Form 472 invoice method. Customer agrees to promptly submit any AT&T or USAC/SLD Forms needed to support requests for payment of Services rendered. a. SPI – Customer must first receive an approved Funding Commitment Decision Letter and Form 486 Notification Letter. In addition, the Customer shall NO LATER THAN 120 days prior to their Last Date to Invoice notify AT&T of its SPI election, provide and certify to AT&T an accurate list of the applicable Billing Accounts Numbers for services per their Form 471 funding application for each Funding Request Number for which the SPI method is sought. Customer understands and agrees that invoices are due and payable in full by their stated due date unless and until these requirements have been met and SPI discounts commence. Where these requirements are not met, Customer agrees to utilize the BEAR disbursement method to request their E-rate funding. See: <http://usac.org/sl/applicants/step06/default.aspx>. b. BEAR - Under current rules, Service Providers have no involvement in the BEAR invoice process.

10. Reimbursement of USAC/SLD

Customer agrees to promptly submit any AT&T or USAC/SLD Forms needed to support Form 474 SPI requests for payment of discounted Services. If USAC/SLD (i) seeks recovery from AT&T for disbursed E-Rate funds as a result of Customer’s failure to comply with the E-Rate rules or regulations, including Customer delays in submitting required forms or

contracts; or (ii) determines that Services which it had previously been approved for discounts are not eligible resulting in a "Notice of Improperly Disbursed Funds" or other request for recovery of funds requests (other than as the result of AT&T's failure to comply with the E-Rate requirements), then AT&T shall reverse any E-rate SPI discounts provided which were denied, any reimbursements demanded, and any funds returned, and Customer shall (a) pay all unfunded, reimbursed, or returned amounts and (b) reimburse AT&T for any funds AT&T must return to USAC/SLD, each within ninety (90) days of notice from USAC/SLD. In addition, Customer agrees and acknowledges that a determination of ineligibility, reduction, or other non-funding by USAC/SLD does not affect the obligations set forth in the Agreement, including those obligations related to payments and early termination fees. This provision shall supersede any other provision with respect to limits on the time period in which charges may be invoiced.

FCC RULES REQUIRE THAT PRIOR TO SUBMISSION OF A FORM 471 APPLICATION FOR FUNDING THE PARTIES MUST HAVE ENTERED INTO A BINDING CONTRACT FOR THE SERVICES MADE THE SUBJECT OF THE APPLICATION. IT IS THE CUSTOMER'S RESPONSIBILITY TO ENSURE THAT STATE LAW REQUIREMENTS FOR A BINDING CONTRACT HAVE BEEN MET PRIOR TO THE SUBMISSION OF A FORM 471.