

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2020, 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

EDUCATION NETWORKS OF AMERICA, INC.
(hereinafter referred to as “VENDOR”),
whose principal place of business is
618 Grassmere Park Drive, Suite 12, Nashville, Tennessee 37211

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

WHEREAS, VENDOR is willing to provide such network services to the SBBC; and

WHEREAS, SBBC issued a Request for Proposal identified as RFP 19-097E, WAN Fiber Options (hereinafter referred to as “RFP”), dated September 24, 2018, and amended by Addendum No. 1 dated October 8, 2018 and Addendum No. 2 dated October 15, 2018, each of which is incorporated by reference herein, for the purpose of receiving proposals for a WAN options; 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 provide internet services to SBBC.

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 upon execution by all parties and

shall conclude ten (10) years (one hundred and twenty (120) months) after the date of this Agreement (hereinafter referred to as the “initial term”).

(a) The initial term of the Agreement may, by mutual written agreement between SBBC and VENDOR, be extended for three (3) additional five-year (5) periods and, if needed, one hundred and eighty (180) days beyond the expiration date of the renewal period.

2.02 **Description of Goods or Services Provided.** VENDOR will provide leased dark fiber wide area network (WAN), ongoing maintenance of said dark fiber WAN, and fully managed network equipment services to SBBC for the two hundred and sixty-five (265) named SBBC locations (sites) as identified in the RFP.

(a) VENDOR’s Responsibilities. VENDOR will provide, as part of its leased dark fiber WAN and fully managed Network Equipment services described herein:

- 1) A scalable, secure private network utilizing a minimum of four (4) strands, or two (2) pairs, of single-mode fiber to provide connectivity to each of the 265 locations
- 2) A resilient WAN topology with a primary ring of eleven (11) SBBC core sites interconnected by two (2) 100 Gbps (Gigabits per second) dedicated fiber optic circuits in each direction
- 3) Multiple sub-rings with significant scalable capacity connected by a 100 Gbps dedicated fiber optic circuit in each direction
- 4) All necessary routing and other related network equipment to provide Layer 3 (IP) data transport across the leased dark fiber network, as part of VENDOR’s managed network equipment service
- 5) A single 10 Gbps, 40 Gbps, or 100 Gbps network handoff to the SBBC local area network (LAN) at each location to interconnect the SBBC local campus network to the VENDOR-managed WAN
- 6) Local equipment sparing of all network equipment components to ensure minimal wait time when equipment replacement is necessary
- 7) Provisioning, installation, and maintenance of all fiber transport, as well as all VENDOR-provided and -managed core and edge network and security equipment and related hardware
- 8) 24x7x365 proactive network monitoring, maintenance, engineering, and support of the leased dark fiber wide area network and managed network equipment service

2.03 **Cost of Goods or Services.** For leased dark fiber WAN, ongoing maintenance of the dark fiber WAN, and fully managed network equipment services, SBBC shall pay VENDOR the following:

(a) For the first one hundred and twenty (120) months of service at each site, Nine Hundred and Fifty and 00/100 Dollars (\$950.00) per site per month, with net thirty (30) day payment terms for the following:

- 1) Six Hundred and Fifty and 00/100 Dollars (\$650.00) per site per month for monthly lease and maintenance of the dark fiber WAN, and
- 2) Three Hundred and 00/100 Dollars (\$300.00) per site per month for managed network equipment services.

(b) If parties exercise the right to extend this agreement, pursuant to section 2.01(a), beginning on the one hundred and twenty first (121st) month of service at any individual site, a reduced rate of Six Hundred and Twenty-Five and 00/100 Dollars (\$625.00) per site per month with net thirty (30) day payment terms, for the following:

- 1) Three Hundred and Fifty and 00/100 Dollars (\$350.00) per site per month for monthly lease and maintenance of the dark fiber WAN, and
- 2) Two Hundred and Seventy-Five and 00/100 Dollars (\$275.00) per site per month for managed network equipment services.

(c) Service Outage Credit Schedule: If service outage occurs, VENDOR agrees to the following credits as a percentage of the monthly recurring fees for service at the affected site or sites, which shall be credited on the next monthly invoice:

Length of Service Performance Impact or Outage (Hourly) Based on Performance Standard p/Hour	Credit is the following percentage of monthly recurring fees
Less than four (4) hours	No Credit
Four (4) hours to eight (8) hours	10%
Greater than eight (8) hours and less than twenty-four (24) hours	20%
Greater than twenty-four (24) hours and less than forty (40) hours	30%
Greater than forty (40) hours	50%

VENDOR will provide monthly metrics on each circuit. These monthly reports should display uptime, latency, jitter, packet loss and bandwidth demand level statistics for each circuit. VENDOR also agrees to report outages monthly on a circuit by circuit basis credits. For subring and point to point circuit outages, credits will be limited to the specific circuit or site. For a primary ring or aggregation hub circuit, service credits will also include all sites where an outage occurs due to the primary ring or aggregation hub circuit failure.

VENDOR and SBBC agree that a single event that impacts multiple sites will be considered a single, major incident, not multiple minor incidents.

2.04 **SBBC Growth or Reduction.** The number of SBBC locations (sites) at the time of the RFP is two hundred sixty-five (265), which can change during the course of this Agreement and shall be subject to the following:

(a) **Growth.** New SBBC sites added during the initial term of this Agreement shall bear the same costs listed above in section 2.03. Service at the new sites shall conclude upon the termination or expiration of this Agreement, as described in section 2.01. For the avoidance of doubt, if the parties do not exercise the right to extend the term pursuant tot Section 2.01(a), then service to all sites, including any new sites shall conclude at the end of the initial term.

(b) **Reduction.** A reduction in up to five percent (5%) of the number of SBBC sites or 14 sites, whichever is greater, during the initial term is permissible without penalty or impact on cost of goods or services listed above in section 2.03.

(c) **Relocation.** Relocation of an SBBC site shall not be considered a termination or subject to penalties. Additionally, the term associated with the site shall continue as if the site remained in the same location.

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

First: This Agreement, then;
Second: Addendum No. 2 to RFP 19-097E, then;
Third: Addendum No. 1 to RFP 19-097E, then;
Fourth: RFP 19-097E – WAN Fiber Options, then;
Fifth: Proposal submitted by VENDOR in response to RFP 19-097E

2.06 **Disclosure of Education Records and Employee Information.** 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. Likewise, no employee information shall be disclosed by SBBC to VENDOR. Should VENDOR come into contact with employee information, it may not be re-disclosed except as required or permitted by law.

2.07 **Rider for E-Rate.** SBBC may 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" and/or "E-Rate Program"). 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 that eligibility or ineligibility of products or services for E-Rate funding is solely the

responsibility of the SBBC, USAC/SLD and/or the FCC. VENDOR makes no representations or warranties regarding such eligibility.

(a) SBBC Elections. SBBC acknowledges its obligation to designate the method (BEAR Form 472 or SPI Form 474) by which it will receive E-Rate discounts for each such Service.

(b) Billed Entity Application Reimbursement ("BEAR") - Form 472. SBBC agrees to submit to USAC/SLD complete and accurate BEAR - Form 472 requests prior to the FCC Invoice Deadline date for the Funding Request Number(s) ("FRN") being submitted on that Form 472 if SBBC has paid the VENDOR in full for the products or services and wants to be reimbursed for the discount amount. USAC will review the invoice and will pay SBBC if payment is approved in which SBBC will receive payment directly to their bank account. It is solely SBBC's responsibility to ensure the accuracy of this submission and the amounts sought to be recovered through the E-Rate program.

(c) Service Provider Invoice form - ("SPI") - Form 474. After VENDOR has received notification of approved funding, an approved Form 486, and SBBC has confirmed the appropriate Billed Accounts to be discounted per Funding Request Number, VENDOR will then provide E-Rate program discounts and will file a Form 474 SPI. SBBC agrees to promptly submit any VENDOR or USAC/SLD Forms needed to support requests for reimbursement of Services rendered.

(d) Reimbursement of USAC/SLD. If USAC/SLD seeks reimbursement from VENDOR of E-Rate funds as a result of SBBC's failure to comply with the E-Rate rules or regulations, including SBBC delays in submitting required forms or contracts; or, if USAC/SLD determines that Service(s) that it had previously approved for discounts are not eligible and funds must be returned (a "ComAd") (other than as the result of VENDOR's failure to comply with the E-Rate requirements), then SBBC shall reimburse VENDOR for any such funds VENDOR must return to USAC/SLD within ninety (90) days of notice from USAC/SLD seeking reimbursement. In addition, SBBC agrees and acknowledges that a determination of ineligibility does not affect the obligations set forth in the Agreement, including those obligations related to payments, fees and early termination fees.

(e) Requested Information. If requested, SBBC will promptly provide VENDOR with final copies of the following E-Rate-related materials (including all attachments) prepared by or for SBBC: (i) Form 471 and Item 21 Attachment; if appropriate, (ii) Form 486; (iii) Form 500; (iv) Service Substitution Request; (v) Service Certification Form; and, (vi) Form 472-BEAR. If the SBBC issues purchase orders, SBBC shall clearly delineate between eligible and non-eligible Services on those orders.

(f) Representations, Warranties and Breaches of the Agreement. Each Party represents, warrants and agrees that it is, as specified in the Agreement, contractually obligated to comply with all laws and the requirements applicable to the E-Rate Program. In addition to any contractual obligations set forth in the Agreement and to the extent permitted by law, each Party agrees that it is required by the Agreement to pay to the other Party (its employees, officers,

directors and agents, and its parents and affiliates under common control) as consideration for the Service(s) any payments made to third parties (including FCC or USAC/SLD claims) and related loss, liability, damage and expense (including reasonable attorney's fees) arising out of the breaching Party's violation of the requirements of the E-Rate Program or other breaches of the Agreement and the representations, warranties contained in it.

(g) SBBC Designation of Conditions to Service. As a condition to the provision of the Service(s), services will not commence and/or equipment will not ship until VENDOR receives notification that E-Rate funds have been committed; if E-Rate funding for services and/or equipment is denied in subsequent E-Rate years and the cause for such termination is directly attributable to VENDOR's action (or inaction), the Services will terminate unless and until a new Amendment is executed.

1) Scope: SBBC agrees to use best efforts to obtain funding from the USAC/SLD and VENDOR will not begin Services (including, without limitation, construction, installation or activation activities) until after VENDOR receives SBBC notification to proceed with the Services, and verification of funding approval.

i. With specific reference to Internal Connections (IC), a verification of Form 486 approval, by the USAC/SLD. VENDOR will commence Service(s) as soon as is practical following the receipt of the appropriate documentation.

2) Funding Denial Agreement Termination: If a funding request is denied by the USAC/SLD, the Services and/or equipment, shall terminate sixty (60) days from the date of the FCDL in which E-Rate funding is denied or on the thirtieth (30th) day following the final appeal of such denial. This termination right applies only to the first (1st) year of the multi-year agreement.

(h) Service Substitutions and Suspension of Payments. VENDOR will provide Services and Service Components only as approved by the SLD and may suspend activities pending approval of service substitution requests. Insofar as VENDOR services are being reimbursed with E-Rate funds and VENDOR becomes aware that USAC/SLD has suspended payment resulting from a possible program rule violation or breach of the Agreement by SBBC and, accordingly, suspension of services, VENDOR may continue Services upon execution of an agreement mutually satisfactory to both parties.

(i) Non-Appropriations. By executing the Agreement and ordering services, SBBC warrants that SBBC has funds appropriated and will pay all monthly amounts due for lease and maintenance of the dark fiber WAN, managed network equipment and any related services due hereunder through the end of SBBC's current fiscal period. SBBC further agrees to request all appropriations and funding necessary to pay for the dark fiber lease and maintenance and managed network equipment and related services for each subsequent fiscal period through the end of the initial term (described in the first sentence of Section 2.01). In the event SBBC is unable to obtain the necessary appropriations or funding for the dark fiber lease and maintenance, managed network equipment and related Service(s), SBBC may terminate said Service(s) upon the following

conditions: (i) SBBC has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite SBBC's best efforts funds have not been appropriated and are otherwise unavailable to pay for the Service(s); and (iii) SBBC has negotiated in good faith with VENDOR to develop revised terms, an alternative payment schedule or a new agreement to accommodate SBBC's budget for such Service(s). No penalty shall accrue to SBBC in the event this provision is exercised, and except as set forth herein SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this Agreement.

SBBC acknowledges and agrees that if SBBC terminates the lease and maintenance of the dark fiber WAN and managed network equipment and related services due to non-appropriations or any other cause, it will no longer have access to or use of the dark fiber as of the effective date of termination.

2.08 **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 applicable 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 the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **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.

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

(c) **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.

(d) **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 SBBC's denial of some or all of any VENDOR's claims for payment.

(e) 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 two percent (2%) 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) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor's Records. If applicable, VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(g) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.09 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: Gayle Nelson
Education Networks of America
618 Grassmere Park Drive, Suite 12
Nashville, Tennessee 37221

With a Copy to: Kitty Gainer, General Counsel ENA
Education Networks of America
618 Grassmere Park Drive, Suite 12
Nashville, Tennessee 37221

2.10 **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.

2.11 **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.

2.12 **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.

2.13 **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 occurrence 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 qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(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 added 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 must notify SBBC within two (2) business days if required insurance is cancelled.

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

2.14 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.

2.15 **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 consistent with the provisions of Section 2.06(i) above, 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.

2.16 **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.

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 sixty (60) calendar days written 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) This Agreement may be canceled with or without cause by SBBC during the term hereof upon sixty (60) 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 pre-paid amounts for any services that are scheduled to be delivered after the effective date of such termination, unless such amounts are required to be paid in connection with the termination pursuant to Sections 3.05(b) and 3.05(c) below. 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 ninety (90) 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.

(b) If termination is due to **VENDOR's** failure to comply with the requirements of the E-Rate Program or **VENDOR's** uncured default of this Agreement (as described in Section 3.04), SBBC shall have no further liability to **VENDOR** except for any unpaid portions of services already rendered or that will be rendered prior to the effective date of applicable termination, which shall be paid to **VENDOR** prior to the effective date of the applicable termination.

(c) SBBC understands that **VENDOR** is required to enter into a substantial long-term obligation in order to deliver the services described herein, and **VENDOR** is only incurring this obligation based on a commitment from SBBC that it will receive full benefit of the initial term of this Agreement at all 265 sites, as described in the first sentence of Section 2.01. If termination is for any other reason than specified in Section 3.05(b) above, SBBC shall immediately pay to **VENDOR** an amount equal to all future payments (as described in Sections 2.03(a) and 2.03(b)) that would be owed to **VENDOR** during the initial term of the Agreement. For the avoidance of doubt, such amounts shall be owed by SBBC regardless of whether the services described herein have been rendered, and **VENDOR** shall have no obligation to provide such services after termination of this Agreement. The parties acknowledge and agree that this provision is a material

aspect of the Agreement and **VENDOR** would not enter into this Agreement without such provision.

(d) SBBC further acknowledges and agrees that if SBBC terminates this Agreement with or without cause, it will no longer have access to or use of the dark fiber as of the effective date of termination.

(e) Individual Circuit Termination. SBBC may terminate services on an individual circuit basis, without the need to terminate the Agreement in its entirety.

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.

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 **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.

3.18 **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, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **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.

3.20 **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.

3.21 **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 _____
Donna P. Korn, 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)

EDUCATION NETWORKS OF AMERICA, INC.

ATTEST:

By *Michael McKerley*
Michael McKerley, Chief Technology Officer

_____, Secretary

-or-

Cory L. [Signature]
Witness

Ebon [Signature]
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 Tennessee

COUNTY OF DAVIDSON

The foregoing instrument was acknowledged before me this 20th day of February, 2020 by Michael McKerley of

Education Networks of America, Inc., on behalf of the corporation/agency.
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:

Vickie L. Noltkamper
Signature - Notary Public

Vickie L. Noltkamper
Printed Name of Notary

(SEAL)



Notary's Commission No.