

20140313-7699

## AGREEMENT

THIS AGREEMENT is made and entered into as of this 13<sup>th</sup> day of March 2014, 2014, 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

### BellSouth Telecommunications, LLC dba AT & T Florida

(hereinafter referred to as "VENDOR"),  
whose principal place of business is  
675 W. Peachtree Street, Suite 4500  
Atlanta, GA 30375

WHEREAS, SBBC issued a Request for Proposal identified as RFP 14-061E, Digital Transmission and Internet Access Services (hereinafter referred to as "RFP"), dated January 21, 2014, and amended by Addendum No.1, dated January 29, 2014, and Addendum No. 2, dated February 13, 2014, each of which is incorporated by reference herein, for the purpose of receiving proposals for Digital Transmission and Internet Access Services; and

WHEREAS, SBBC is desirous of purchasing goods and services from VENDOR; and

WHEREAS, VENDOR submitted a proposal and offer on February 25, 2014, including a Cost Proposal, in response to Item No.: 1, of the RFP, (hereinafter collectively referred to as "PROPOSAL"), which are incorporated herein by reference.

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, 2014 and conclude on June 30, 2019. The term of the Agreement may, by mutual agreement between SBBC and VENDOR be extended for five additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period. Supply Management & Logistics Department, will, if considering renewing, request a letter to renew from VENDOR, prior to the end of the contract period. Any renewal period shall be approved by the Amendment of this Agreement.

## **ARTICLE 2 – SPECIAL CONDITIONS**

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

- First: This Agreement including **Exhibit A and B**; then
- Second: Addendum No. 2 to RFP 14-061E; then
- Third: Addendum No. 1 to RFP 14-061E; then
- Fourth: RFP 14-061E – Digital Transmission and Internet Access Services ; then
- Fifth: Proposal submitted by **VENDOR** in response to RFP 14-061E

2.03 **Pricing.** Pricing for items as specified in the RFP shall be based upon **VENDOR's PROPOSAL**. SBBC expects, during the term of the RFP award, as new business needs are identified and as technologies change, to modify the goods and service it intends to procure under this Agreement, while protecting the price levels and discounts offered herein.

2.04 **E-RATE Rider.** Incorporated herein as **Exhibit A**

2.05 **Service Level Agreement.** Incorporated herein as **Exhibit B**

2.06 **Price Adjustment:** Prices offered shall remain firm through the term of the Agreement. Price adjustments requested for any contract extension periods will be evaluated at the inception of the extension of the initial Agreement, and on an annual basis thereafter. SBBC will accept a price reduction for any good or service at any time, provided there are not changes to related terms and conditions in the established Agreement. During the Agreement term, if **VENDOR** offers lower prices for the same, or nearly the same, services to other similar sized schools in the State of Florida under the same or similar contractual terms and conditions, SBBC expects that the costs for contracted goods and services will be adjusted downward accordingly by the **VENDOR** on a prospective basis.

2.07 **Patents and Royalties.** The obligations set forth in Paragraph 7.14 Patents and Royalties, of the RFP, shall not apply where any alleged infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliate or a third party, or combinations of the Service with any non-AT&T services or products by Customer or others; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of a Service in violation of this Agreement.

2.08 **Licenses and Permits.** The **VENDOR** shall be responsible for obtaining licenses and permits required for its work at its costs, and the Customer will be responsible for obtaining any easements, rights-of-way or other consents required, at its cost.

2.09 **Payment.** SBBC will pay the **VENDOR** according to the terms of the Florida Local Government Prompt Payment Act to the extent applicable to the transaction. This section is intended to replace Paragraph 7.19 of the RFP to the extent of any inconsistency therewith.

2.10 **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 under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. 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 Payee's costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(h) 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.

(i) Awardee Accounting Records and Right to audit Provisions. Section 6.4 from the Special Conditions section of the RFP, including all subparts thereof, is deleted and is not part of the agreement.

**2.11 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 VENDOR UNDER THIS AGREEMENT, IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO VENDOR.

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

**2.12 DISCLAIMER OF LIABILITY.** 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.

2.13 **Acceptable Use Policy.** VENDOR's Acceptable Use Policy (AUP) applies to Services provided over or accessing the Internet. The AUP may be found at <http://att.com/aup> or other locations VENDOR may designate.

2.14 **SBBC Information Security Guidelines.** VENDOR has developed and maintains VENDOR Security Policy and Requirements (ASPR), a comprehensive set of security control standards based in part on leading industry security standards (e.g., COBIT, ISO/IEC 27001:2005, etc.) . VENDOR's Security Policy is ISO27000 certified. The certification encompasses all functions and services within the business, including AT&T's network operations centers, all VENDOR IDCs, and VENDOR's Hosting & Cloud Services. Making any changes to AT&T's policy could jeopardize this certification. Given the dynamic environments that VENDOR supports, ASPR content is continually re-evaluated and modified as industry standards evolve and as circumstances require. In addition, operating procedures, tools and other protective measures are regularly reviewed to ensure the highest standards of security are observed throughout the corporation.

VENDOR uses a shared environment in which systems, equipment, software and data (including databases) utilized in the provision of the Services to Customer are additionally utilized for the benefit of other VENDOR customers other than Customer (the "Shared Environment")

This Section 2.14 shall supersede the provisions of 7.46 of the RFP.

2.15 **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  
7720 West Oakland Park Blvd, Ste 323  
Sunrise, FL 33351

To VENDOR: John D. Irwin, Jr.  
Senior Vice President, GEM  
AT&T  
2180 Lake Blvd. NE  
Atlanta, GA 30319

With a Copy to:

Margarita T. Castellon  
AT & T, Strategic Team Lead  
2001 NW 64<sup>th</sup> St., Suite 100  
Fort Lauderdale, Florida 33309

2.16 **Background Screening:** VENDOR agrees to comply with all requirements of Sections 1012.32 and 1012.465, 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 in VENDOR's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.17 **Indemnification.** 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.

### **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 contract.

**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, and contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

**3.04 Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

**3.05 Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof on June 30<sup>th</sup> of any year within the term of the Agreement upon ninety (90) days written notice to VENDOR of its desire to terminate this Agreement. In the event of such termination, SBBC shall pay VENDOR for all goods and services provided through the effective date of termination. Further, SBBC reserve the right to terminate at any individual site or group of sites at any time business operations require circuit disconnection without adverse effect on the remainder of the Agreement.

**3.06 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) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) 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) 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.

**3.07 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.

**3.08 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 with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

**3.09 Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

**3.10 Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent,



representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, 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.

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

3.12 **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.

3.13 **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 to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **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.

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

3.16 **Assignment.** Neither this Agreement or 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 or Agreement to a corporate affiliate of VENDOR.

3.17 **Incorporation by Reference.** Exhibits A and B attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **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.

3.20 **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 express 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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **Survival.** All representations and warranties made herein, regarding 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.

3.25 **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.

**FOR SBBC**

(Corporate Seal)

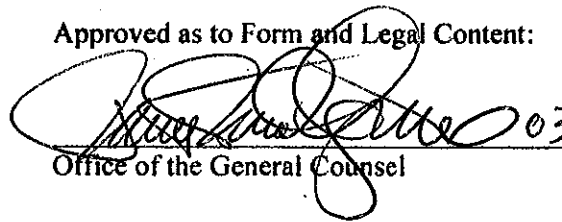
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Patricia Good, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 03/14/14  
\_\_\_\_\_  
Office of the General Counsel

**FOR VENDOR**

(Corporate Seal)

BellSouth Telecommunications, LLC dba  
AT & T Florida

ATTEST:

By Donna Bryant-Johnson

\_\_\_\_\_, Secretary

-or-

\_\_\_\_\_  
Witness

\_\_\_\_\_  
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 \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of  
March, 2014 by Donna Bryant-Johnson of  
AT&T  
Name of Person  
\_\_\_\_\_, on behalf of the corporation/agency.  
Name of Corporation or Agency

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

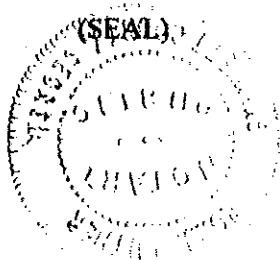
My Commission Expires:

April 22, 2017

Ronna Luther  
Signature - Notary Public

Ronna Luther  
Printed Name of Notary

W-00170129  
Notary's Commission No.





**Exhibit A**  
**E-rate Rider**  
**Priority 1 Services, Facilities and/or Equipment**

ATTACHMENT TO (Agreement") FOR

**SERVICES AND/OR PRODUCTS SUBJECT TO UNIVERSAL SERVICES ("E-RATE") FUNDING**

This Attachment shall have the same term as the Agreement. If there are any inconsistencies between the Agreement and this Attachment with respect to the Service for which E-rate funding is sought, the terms and conditions of this Attachment shall control.

This Attachment provides additional terms and conditions that apply when Customer obtains an end-to-end solution involving the use of terminating equipment ("Equipment") as part of its service from AT&T pursuant to FCC order # 99-216 ("Tennessee Decision"). 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. Reimbursement of USAC/SLD. If USAC/SLD seeks reimbursement from AT&T of 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, if USAC/SLD determines that Services which it had previously approved for discounts are not eligible and funds must be returned (a "ComAd") (other than as the result of AT&T's failure to comply with the E-Rate requirements), then Customer shall reimburse AT&T for any such funds AT&T must return to USAC/SLD within ninety (90) days of notice from USAC/SLD seeking reimbursement. In addition, Customer agrees and acknowledges that a determination of ineligibility does not affect the obligations set forth in the Agreement, including those obligations related to payments and early termination fees.
2. 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.
3. 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. If Customer intends to make any such service substitutions, then Customer agrees to pursue them, and file any and all requisite documentation, diligently. AT&T will provide Services and Service Components only as approved by the SLD and may suspend activities pending approval of service substitution requests.
4. 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 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 Customer issues purchase orders, Customer shall clearly delineate between eligible and non-eligible Services on those orders.
5. 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



## Exhibit A E-rate Rider

### Priority 1 Services, Facilities and/or Equipment

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.

6. 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 or funding 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 with AT&T to develop revised terms, an alternative payment schedule or a new agreement 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 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.

Customer Must Choose A or B

A.) ☒ [OPTION "A" IS AVAILABLE FOR NEW OR EXISTING SERVICES]

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.

1. Scope: Customer desires that Services commence on or about July 1 unless a different date is inserted here **INSERT DATE**. 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.

2. E-rate Funding Delay or Denial: 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.

Customer should refer to the E-Rate Rules and Regulations regarding USAC/SLD payments for eligible services delivered after the beginning of the E-Rate year (July 1st) but before receipt of an FCDL.

B.) ☐ [OPTION "B" IS APPROPRIATE FOR NEW SERVICES]

SERVICES WILL NOT COMMENCE AND/OR EQUIPMENT WILL NOT SHIP UNTIL AT&T RECEIVES NOTIFICATION THAT E-RATE FUNDS HAVE BEEN COMMITTED; IF E-RATE FUNDING FOR SERVICES AND/OR EQUIPMENT IS DENIED, AGREEMENT WILL TERMINATE AS TO THOSE SERVICES AND/OR EQUIPMENT UNLESS AND UNTIL A NEW ATTACHMENT (REPLACING THIS ATTACHMENT) IS EXECUTED.

1. Scope: Customer agrees to use best efforts to obtain funding from the USAC/SLD AT&T will not begin work related to the Services and/or equipment (including, without limitation, construction, installation or activation activities) until after AT&T receives Customer notification to proceed with the order, and verification of funding approval, and, for Internal Connections (IC), a verification of Form 486 approval by the USAC/SLD. AT&T will commence Service(s) as soon as is practical following the receipt of the appropriate documentation.



## Exhibit A E-rate Rider

### Priority 1 Services, Facilities and/or Equipment

2. Funding Denial Agreement Termination: If a funding request is denied by the USAC/SLD, the Agreement, with respect to such Service(s) and/or equipment, shall terminate sixty (60) days from the date of the FCDL in which E-Rate funding is denied or on the 30<sup>th</sup> day following the final appeal of such denial, and Customer will not incur termination liability. In the event Services and/or equipment are to be provided pursuant to a multi-year arrangement (whether by contract or tariff), this termination right applies only to the first year of the multi-year agreement.

3. IF CUSTOMER WISHES TO CHANGE ITS SELECTION AND WISHES AT&T TO COMMENCE SERVICES REGARDLESS OF FUNDING COMMITMENT FROM THE USAC/SLD, CUSTOMER WILL EXECUTE A NEW (REPLACEMENT) ATTACHMENT, AND AGREE TO THE TERMS SET FORTH IN "A" ABOVE. Upon execution of the Replacement Attachment, the Parties will mutually agree upon a Service Commencement Date.

This provision does not apply to Services that were initially approved for funding and subsequently deemed ineligible by USAC/SLD after commencement of Service

### 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 construction associated with the delivery of the underlying Service.

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.
- 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 Agreement.

### Terms of Equipment Usage - E-Rate Priority 1 Funding

Pursuant to the Tennessee Decision referenced above, the Parties agree:

- The same service provider will supply the Equipment and associated eligible Priority 1 Telecommunications Services or Internet Access services.
- 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.
- AT&T will provide and maintain the Equipment on the Premise as part of these services.
- The Equipment is capable of servicing other customers of the service provider. Customer has no right to exclusive use of



## Exhibit A E-rate Rider

### Priority 1 Services, Facilities and/or Equipment

the Equipment, and AT&T may use the Equipment to provide service to another customer.

- 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.
- The Local Area Network for data communications of the school or library is functional without dependence on the Priority 1 Equipment. Customer will provide equipment within their LAN to connect to the Priority 1 Equipment.

Additionally, overall SLD program rules and eligibility requirements apply, and these requirements may change from time to time.

### Customer Site Obligations

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:

**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.

**SPACE** - In a standard installation, Equipment is placed in a common area with access to the entire building.

- The choice for Equipment placement should be decided before the order is placed and will be subject to confirmation following a site visit by an authorized AT&T Engineer. Accordingly, equipment racks, floor space and/or plywood backboards may be required.
- If the Customer prefers the Equipment to be floor rack mounted, the first preference is to use a Customer provided rack. The Customer rack must be properly installed and of suitable strength and quality to properly support the intended Equipment.

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

**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 Agreement.

### Customer Owned Facilities - 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 conduit and/or other conduit pathway support structures ("CPSS" or "Facilities") on the Customer's premises (the "Premises"). Customer does not wish to provide these Facilities itself, but instead requests the placement of the Facilities as part of the construction and installation work associated with the delivery of the underlying Service.

Accordingly, Customer hereby:

- Grants AT&T a license to install and operate -- in accordance with the designs agreed to within the Statement of Work, Scope of Work, or other documents, approved by the parties in connection with this project -- such Facilities and such additional or replacement Facilities as AT&T may from time to time deem necessary or desirable for the provision of the Services contemplated by the Service Agreement, at such locations as mutually agreed by the parties at the time of





## Exhibit A E-rate Rider

### Priority 1 Services, Facilities and/or Equipment

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, repairing and replacing such Facilities. All Facilities brought onto the Premises by AT&T will be deemed the property of Customer.
- Confirms that Customer shall be responsible for the cost of any maintenance, repair or replacement of the Facilities.
- Assumes responsibility for notifying any other contractors or persons with a need to know, of the presence of the Facilities and the location of such Facilities;

#### Choice of Funding Method

Customer acknowledges its obligation to designate the method by which it will receive E-Rate discounts. With respect to each discount method, Customer agrees as follows:

#### Billed Entity Application Reimbursement ("BEAR") – Form 472:

Customer agrees to submit to AT&T complete and accurate BEAR – Form 472 requests for certification at least five (5) business days prior to the FCC Invoice Deadline date for the Funding Request Number(s) ("FRN") being submitted on that Form 472. AT&T cannot ensure that the Form 472 will be reviewed prior to the deadline if not received at least five (5) business days prior. Upon receipt of USAC/SLD check in the amount of the certified Form 472, AT&T will remit payment to Customer within twenty (20) business days after receipt of payment from USAC/SLD. It is solely Customer's responsibility to ensure the accuracy of this submission and the amounts sought to be recovered through the E-Rate program.

#### Service Provider Invoice form - ("SPI") – Form 474:

After AT&T has received notification of approved funding, an approved Form 486, and Customer has confirmed the appropriate Billed Accounts to be discounted per Funding Request Number, AT&T will then provide E-rate program discounts and will file a Form 474 SPI. Customer agrees to promptly submit any AT&T or USAC/SLD Forms needed to support requests for payment of Services rendered. In the event SLD denies payment, Customer will be responsible for repayment of all funds provided to Customer by AT&T associated with this process.

**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.**

## Exhibit B – Service Level Agreements

Section	High Value elements sought by SBBC	Yes, Can Comply – related and added value proposition(s) noted	Yes, Can Comply But With Stated Deviations or Qualifications	No, Cannot Comply or Provide
1.1.2	SBBC requires that orders for circuit upgrades be performed within two weeks of the receipt of the upgrade order.		Upgrades may be accomplished within two weeks if the upgrade is only a logical change. See 1.2.29.	
1.1.9	SBBC has the following SLA Requirements: Availability – >99.98%, <3.5 hours Time to Repair Outage Recovery (including local loop), <30 milliseconds latency, <0.2% packet loss, and <2 millisecond jitter factor.	AT&T complies to the following SLA requirements: Availability is 99.99%; Latency is (All based on One way) Real Time - 5 ms, Interactive - 13ms, Bus Crit High -20ms, Bus Crit Med - 30 ms; Packet Loss is defined by AT&T as Packet Delivery Rate - Real time 99.995%, Interactive - 99.95%, Bus Crit High and Medium 99.8%	AT&T complies. On time to repair outage, AT&T measures Time to Repair as MTTR and our objective is 4 hours. AT&T's best objective for jitter is 3ms.	

1.2.18 Proposer must describe "Service Level Agreement (SLA)" to include end to end availability, guaranteed time to repair, end to end packet delivery, end to end latency, end to end jitter, etc.

### AT&T Response:

AT&T's service level agreements are end-to-end, meaning from originating NTE to terminating NTE. The measurements are obtained by sending frequent out of band test packets across the network and compiling in our global performance system. Following are details of the AT&T SLAs.

### Network Availability

A Network Availability Service Level Agreement of at least 99.99% per month, including the local loop, is provided by AT&T. This equates to not more than 4.32 minutes of downtime per month (based on a 30-day month), excluding maintenance windows and other appropriate

exclusions (see *Exclusions* following). Network Availability is calculated as the percentage of time that the network is capable of accepting and delivering customer data during the measurement period. The calculation for Network Availability for a given calendar month is as follows:

$$\begin{aligned} \text{Network Availability} = & \\ & \frac{24 \text{ hours} \times \text{days in month} \times 60 \text{ minutes} \times \text{number of customer sites} \\ & - \text{network outage time (measured in minutes)}}{24 \text{ hours} \times \text{days in month} \times 60 \text{ minutes} \times \text{number of customer sites}} \end{aligned}$$

- As noted in the above formula, all ports included in a customer's network are utilized in calculating Network Availability.
- The customer is responsible for (1) notifying AT&T within 45 days after the end of the month when the service parameter within the calendar month falls below the committed level, and (2) requesting a service credit.
- Upon verification by AT&T that the actual service performance for that parameter was less than the committed level, the customer will be provided a service credit equal to 10% of the Monthly Recurring Charge (MRC) for all affected ports.

#### **Mean Time to Repair**

Mean Time to Repair (MTTR): 4 hours, end-to-end, including the local loop.

#### **Latency/Jitter/Packet Delivery**

The AT&T Network includes a choice among multiple Classes of Service. Each Class of Service contains performance objectives based on the priority of traffic through the network. Higher level Classes of Service receive higher priority through the network allowing higher level SLAs.

The measurements associated with these SLAs include the following categories:

- **Latency:** Latency is measured by averaging sample measurements taken during a calendar month between the NTE to which the customer ports are attached (i.e. end to end) based on one-way traffic traversing the NTE and the network. The SLA target for Latency is to be not more than that specified in the SLA table. Note: Latency may vary on ports with Real Time CIR of 10 Mbps and below and such ports are excluded from calculations that determine whether the latency SLA is met.
- **Jitter:** Jitter is measured by averaging sample measurements taken during a calendar month between the NTE to which the customer ports are attached (i.e. end to end), based on one-way traffic traversing the NTE and the network. The SLA target for Jitter is to be not more than that specified in the SLA table.

**Packet Delivery Rate (PDR):** Packet Delivery Rate is measured by averaging sample measurements taken during a calendar month between the NTE to which the customer ports are attached (i.e. end to end), based on one-way traffic traversing the NTE and the

network. The SLA target for PDR is to be not less than the applicable percentage specified in the SLA table.

Class of Service	Service Measurement		
	Latency (one-way)	Jitter	Packet Delivery Rate (PDR)
Real Time	5 ms	3 ms	99.995%
Interactive	13 ms	10 ms	99.95%
Business Critical - High	20 ms	n/a	99.9%
Business Critical - Medium	30 ms	n/a	99.9%
Non-Critical High	50 ms	n/a	99.5%
Non-Critical Low <sup>1</sup>	n/a	n/a	n/a

<sup>1</sup> This CoS is only offered as part of the Per Packet Class of Service serving arrangement.

#### Exclusions for all SLAs

AT&T will be excused from providing Service Level Agreement credits should any of the following conditions occur:

- Any cause beyond AT&T's reasonable control (force majeure events) including, but not limited to, acts of war, civil disturbances, acts of civil or military authorities or public enemies, earthquakes, hurricanes, floods, fires, storms, tornadoes, explosions, lightning, power surges or failures, fiber cuts, strikes, or labor disputes.
- All SLAs are offered across AT&T's network. The failures of any components beyond the local facility including the Network Interface (NI), the CSU/DSU/Channel band/Extended Demarcation are excluded from the SLA calculation.
- Data loss during AT&T's scheduled maintenance window.
- Data exceeding subscribed Committed Information Rate.
- Failures attributed to facilities or equipment provided by customer or its contractors, equipment vendors, another local exchange carrier or inter-exchange carrier.
- Any type of Customer Network Management functionality is not included in SLAs.

1.2.29 Proposer must describe the ability of SBBC<sup>1</sup> to upgrade or downgrade level of service during commitment period. (i.e. Upgrade from 10Mbps to 100Mbps or downgrade from 1Gbps to 100Mbps at any SBBC location at any time). Please describe any timeframes associated processing these requests -- being cognizant of related requirements stated in Attachment H.

#### AT&T Response:

AT&T can upgrade or downgrade any circuit within two weeks provided that the change is only logical. If the change requires a new circuit, the upgrade or downgrade may take up to 90 days. AT&T will make every effort to complete SBBC's requests as expeditiously as possible.

1.2.38 Proposer must disclose and describe in detail any one-time special construction costs that area associated with the design of the service for which SBBC would be responsible.

**AT&T Response:**

Any special construction costs will be identified based on the list of sites presented by SBBC for consideration of service. Any future sites will need to be checked to see if special construction charges apply. AT&T has an extensive fiber network within Broward County so it is unlikely (but not impossible) that special construction charges will apply.

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014, 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

**ENA Services, LLC**

(hereinafter referred to as "VENDOR"),  
whose principal place of business is  
1101 McGavock Street  
Nashville, TN 37203

**WHEREAS**, SBBC issued a Request for Proposal identified RFP 14-061E, Digital Transmission and Internet Access Services (hereinafter referred to as "RFP"), dated January 21, 2014, and amended by Addendum No.1, dated January 29, 2014, and Addendum No. 2, dated February 13, 2014, each of which are incorporated by reference herein, for the purpose of receiving proposals for Digital Transmission and Internet Access Services; and

**WHEREAS**, SBBC is desirous of purchasing goods and services from VENDOR; and

**WHEREAS**, VENDOR submitted a proposal and offer on February 25, 2014, including a Cost Proposal, in response to Item No.: 2 of the RFP, (hereinafter collectively referred to as "PROPOSAL"), which are incorporated herein by reference.

**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, 2014 and conclude on June 30, 2019. The term of the contract may, by mutual agreement between SBBC and VENDOR be extended for five additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period. Supply Management & Logistics Department, will, if considering renewing, request a letter to renew from VENDOR, prior to the end of the Agreement period. Any renewal period shall be approved by the Amendment of this Agreement.

## **ARTICLE 2 – SPECIAL CONDITIONS**

2.02 **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 14-061E; then
- Third: Addendum No. 1 to RFP 14-061E; then
- Fourth: RFP 14-061E – Digital Transmission and Internet Access services ; then
- Fifth: Proposal submitted by VENDOR in response to the RFP 14-061E

2.03 **Pricing.** Pricing for items as specified in the RFP shall be based upon VENDOR's PROPOSAL. SBBC expects, during the term of the RFP award, as new business needs are identified and as technologies change, to modify the goods and service it intends to procure from this pricing for the replacement items shall be based upon the price levels and discounts offered in the VENDOR's Proposal.

2.04 **Price Adjustment:** Prices offered shall remain firm through the term of the Agreement. Price adjustments requested for any Agreement extension periods will be evaluated at the inception of the extension of the initial Agreement, and on an annual basis thereafter. SBBC will accept a price reduction for any good or service at any time, provided there are not changes to related terms and conditions in the established Agreement. During the Agreement term, if VENDOR offers better pricing to similarly situated customers outside the Agreement, but upon the same or similar terms of the Agreement, for substantially the same quantity of the same or substantially similar goods and services, then the price under the Agreement shall be immediately reduced to the lower price.

2.05 **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 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) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. 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 Payee's costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of VENDOR.

(h) 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  
7720 West Oakland Park Blvd, Ste 323  
Sunrise, Fl. 33351

To VENDOR: Contract Administrator  
ENA Services, LLC, a subsidiary of Education Networks of  
America, Inc.  
1101 McGavock Street  
Nashville, TN 37203

**2.09 Background Screening:** VENDOR agrees to comply with all requirements of Sections 1012.32 and 1012.465, 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 in VENDOR's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

**2.10 Indemnification.** 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.

### **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 contract.

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, and contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof on June 30<sup>th</sup> of any year within the term of the Agreement upon ninety (90) days written notice to VENDOR of its desire to terminate this Agreement. In the event of such termination, SBBC shall pay VENDOR for all goods and services provided through the effective date of termination.

3.06 **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) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) 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) 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.

3.07 **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.

3.08 **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 with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, 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.

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

3.12 **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.

3.13 **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 to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **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.

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

3.16 **Assignment.** Neither this Agreement or 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.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **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.

3.20 **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 express 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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **Survival.** All representations and warranties made herein, regarding 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.

3.25 **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.

**FOR SBBC**

(Corporate Seal)

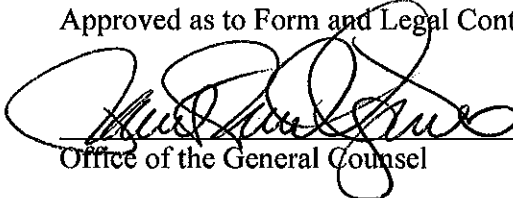
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Patricia Good, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 03/14/14  
\_\_\_\_\_  
Office of the General Counsel

**FOR VENDOR**

(Corporate Seal)

ATTEST:

Jean C. Schmidt  
Jean C. Schmidt, Secretary

-or-

ENA Services, LLC,

By [Signature]

\_\_\_\_\_  
Witness

\_\_\_\_\_  
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

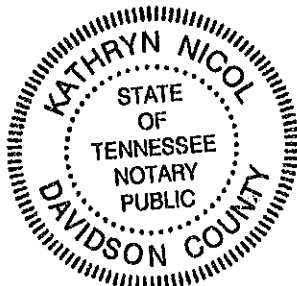
The foregoing instrument was acknowledged before me this 13<sup>TH</sup> day of MARCH, 2014 by BOB COLLIE, SVP of ENA SERVICE LLC, on behalf of the corporation/agency.

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: 1-9-16

(SEAL)



[Signature]  
Signature - Notary Public

KATHRYN NICOL  
Printed Name of Notary

N/A  
Notary's Commission No.