



FLOYD COUNTY BOARD OF EDUCATION
Dr. Henry L. Webb, Superintendent
106 North Front Avenue
Prestonsburg, Kentucky 41653
Telephone (606) 886-2354 Fax (606) 886-8862
www.floyd.kyschools.us

Sherry Robinson- Chair - District 5
Dr. Chandra Varia, Vice-Chair - District 2
Linda C. Gearheart, Member - District 1
William Newsome, Jr., Member - District 3
Rhonda Meade, Member - District 4

Date: June 12, 2017

Consent Agenda Item (Action Item): Approve the E-Rate Rider agreement between the Floyd County Schools and AT&T


Applicable Statue or Regulation: BOE Policy 01.11 General Powers and Duties of the Board.

Fiscal/Budgetary Impact: None

Recommended Action: Approve as presented

Contact Person(s): Courtney DeRossett, CIO


CIO


Superintendent



E-rate Rider

ATTACHMENT TO PARTICIPATION AGREEMENT ("Agreement") FOR SERVICES AND/OR PRODUCTS SUBJECT TO UNIVERSAL SERVICES ("E-RATE") FUNDING

This Attachment ("Attachment"), entered into by AT&T ("AT&T") and FLOYD COUNTY SCHOOL DISTRICT ("Customer") and effective as of the date last signed below ("Effective Date"), is an attachment to the Agreement. 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.

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

Customer 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"). 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 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.

CONFIDENTIAL INFORMATION

*This agreement is for use by the authorized employees of the parties hereto only
and is not for general distribution within or outside the companies.*



E-rate Rider

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 not approve funding or may delay its decision.

2. **E-rate Funding Delay or Denial:** CUSTOMER ACKNOWLEDGES THAT THERE IS NO RIGHT TO TERMINATE THE SERVICES OR SERVICE COMPONENTS THAT ARE PROVIDED UNDER 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.

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 30th 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.

CONFIDENTIAL INFORMATION

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E-rate Rider

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

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:

Beginning with the 2016 Program Year, Applicants will file their BEAR forms online in the E-rate Productivity Center (EPC). Applicants will receive their payments from USAC directly to their bank accounts without any Service Provider involvement. The Applicant will need to complete an FCC Form 498 to obtain an Applicant 498 ID and to notify USAC of their banking information. It is solely the Applicant's responsibility to ensure the accuracy of the BEAR 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.

☐ THIS ATTACHMENT REPLACES THE E-RATE RIDER ATTACHMENT BETWEEN THE PARTIES DATED <Date of Original e-Rate Rider Attachment>.

SO AGREED by the Parties' respective authorized signatories:

Insert E-Rate Billed Entity Number (BEN): 128928

FLOYD COUNTY SCHOOL DISTRICT (by its authorized representative)	AT&T ("AT&T") (by its authorized representative)
By: <i>Wesley Turner</i>	By: <i>Cheryl Wankowski</i>
Name: <i>Wesley Turner</i>	Name: Cheryl Wankowski
Title: <i>Network Service / E-RATE Coord.</i>	Title: SENIOR CUSTOMER CONTRACTS
Date: <i>5-8-2017</i>	Date: 10 May 2017

CONFIDENTIAL INFORMATION

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20170509-5983

MA 758 1300000727
 OneNet #:56869
 PA #:0326
 PCS ID#:20130218-074

PARTICIPATION AGREEMENT
MA 758 1300000727

MA 758 1300000727

CUSTOMER ("Customer")	AT&T ("AT&T")
Customer: FLOYD COUNTY SCHOOL DISTRICT Street Address: 106 NORTH FRONT AVENUE City: PRESTONSBURG State: KY Zip Code: 41653 <u>Billing Address (if different)</u> Street Address: City: State: Zip Code:	AT&T Corp.
CUSTOMER Contact (for Contract Notices)	AT&T Sales Contact Information and for Contract Notices <input type="checkbox"/> Primary Sales Contact
Name: WESLEY TURNER Title: IT Telephone: (606) 886-4548 Fax: Email: wesley.turner@floyd.kyschools.us <u>Address for Notices</u> <input type="checkbox"/> Same as Cust. Address above <input checked="" type="checkbox"/> Same as Billing Address <u>Address for Notices (if different)</u> Street Address: City: State: Zip Code:	Name: Bennett Dickerson Title: Account Manager Telephone: (859) 230-4880 Fax: Email: bd5487@att.com Street Address: 3120 Wall Street Suite 200 City: State: Zip Code: Lexington, KY 40513 <u>With a copy to:</u> AT&T Corp. One AT&T Way, Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: masi@att.com
AT&T Authorized Agent or Representative Information (if applicable) <input type="checkbox"/> Primary Sales Contact	
Name: Company Name: Agent Street Address: City: State: Zip Code: Telephone: Fax: Email: Agent Code	

1. **Adoption of Commonwealth of Kentucky "Kentucky Information Highway 3 (KIH3) The Next Generation Network" contract.** Customer (hereinafter "Participant") and AT&T Corp. (AT&T) agree that the Service, as specified below, shall be provided pursuant to the rates, charges, terms and conditions set forth in this Agreement and the contract between AT&T Corp. and the Commonwealth of Kentucky, identified as MA 758 1300000727, last signed on February 21, 2013 as amended ("Master Contract"), to the extent applicable to Participant. The Master Contract is incorporated herein by reference. Participant agrees to be bound the rates, terms and conditions of this contract and any subsequent modifications and amendments.
2. AT&T shall provide the services described in Attachment 1 (the "KIH3 Services") (as amended from time to time) to Customer solely pursuant to the terms and conditions contained in MA 758 1300000727
3. **Payment:** Participant is exclusively responsible for all payments due and owing to AT&T for the Services provisioned hereunder and the Commonwealth of Kentucky shall not be deemed to be responsible for any such payments. Participant shall pay for the Services ordered hereunder pursuant to the conditions in Section 40.075 "Payments" of the Master Contract and KRS 45.454.
4. **Rates:** The services set forth Attachment 1 shall be provided at the prices as set forth in the Master Contract.

MA 758 1300000727
OneNet #:56869
PA #:0326
PCS ID#:20130218-074

PARTICIPATION AGREEMENT
MA 758 1300000727

5. **E-Rate:** For services which are E-rate eligible, Participant agrees to execute and be bound by the terms and conditions of the "Attachment to this Participation Agreement for Services and/or Products Subject to Universal Services ("E-Rate") Funding" ("E-Rate Rider") .For purposes of the E-Rate Rider, references to "Customer" shall be deemed to mean Participant. In the event that E-rate eligible services are to be purchased, an E-Rate Rider will be provided for signature.

IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement to be executed by their respectively authorized representatives.

AT&T Corp.

By: *Cheryl Wankowski*

Print Name: Cheryl Wankowski

Title: SENIOR CUSTOMER CONTRACTS

Date Signed: 10 May 2017

Customer:

By: *Wesley Turner*

Print Name: Wesley Turner

Title: Network Services /ERATE Coord.

Date Signed: 5-8-17

ms769d

MA 758 1300000727
OneNet #:56869
PA #:0326
PCS ID#:20130218-074

**PARTICIPATION AGREEMENT
MA 758 1300000727**

Attachment 1

Services
All KIH3 Services
AT&T OneNet 56869