FLOYD COUNTY BOARD OF EDUCATION
Danny Adkins, Superintendent
106 North Front Avenue
Prestonsburg, Kentucky 41653
Telephone (606) 886-2354   Fax (606) 886-4550
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
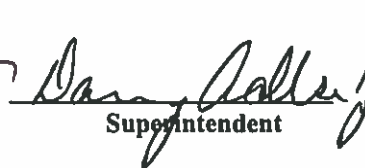
Date: June 12, 2018

Consent Agenda Item (Action Items): Approve the Services Agreement between SeNet International Corporation and Floyd County Schools.

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

Fiscal/Budgetary Impact: General Fund.

Recommended Action: Approve as presented.

Contact Person(s):   Courtney DeRossett, Chief Information Officer

_____   _____
CIO   Superintendent

CONSULTING SERVICES AGREEMENT

1. Scope of Work. Subject to the terms hereof, SeNet International Corporation ("SENET") agrees to provide to the party identified on the face hereof (the "Customer") consulting services, including any deliverables (the "Services"), as are described on such Statements of Work as are executed from time to time by both parties via an accepted Quotation attached to this Agreement. Statements may be added to this Agreement or may be modified by subsequent Statements by the mutual agreement of the parties. The Statement may include such additional terms as the parties may desire, provided that such terms are expressly stated and no additional or contrary terms shall be implied.

2. Price and Payment. The Customer shall pay SENET in accordance with the schedule set forth in the attached Quotation. In addition, unless otherwise stated in the Quotation, Customer shall pay SENET for all expenses incurred by SENET in connection with performance hereunder, including, but not limited to, reasonable travel and lodging expenses. Customer shall pay all invoices within 15 days of receipt thereof from SENET. Customer shall pay a late payment fee of 1.5% of any unpaid amount for each month or fraction thereof that any payments are in arrears.

3. Taxes. Customer shall pay all sales and other taxes, however designated, which are levied or imposed by reason of the transactions contemplated hereby, except for taxes based on SENET's net income. Customer and SENET agree that SENET is acting solely as an independent contractor. SENET represents to Customer that it is not subject to any back-up withholding requirements.

4. Customer Responsibilities. Customer shall: (a) provide SENET with specific and detailed information concerning, and reasonable access to, Customer's computer systems and networks as more fully set forth in the Statement; (b) make available to each SENET employee physically located on Customer's premises, access to and time upon Customer's computer system sufficient for SENET to provide the Services; (c) provide one employee of Customer who shall have substantial computer systems and network and project management experience to act as a liaison between Customer and SENET; and (d) in general, provide all information, access and full, good faith cooperation reasonably necessary to facilitate the Services. If Customer fails or delays in its performance of any of the foregoing, SENET shall be relieved of its obligations hereunder to the extent such obligations are dependent on such performance.

5. Confidentiality. Each party hereby acknowledges that it may be exposed to confidential and proprietary information of the other party including, without limitation, third party software products, standard software products, custom work products, embedded software and other technical information, functional and technical specifications, designs, drawings, analysis, research, processes, algorithms, methods, ideas, "know how" and the like, business information, sales and marketing research, materials, plans, accounting and other financial information, personnel records, and the like, and other information designated as confidential expressly or by circumstances in which it is provided ("Confidential Information"). Confidential Information does not include information already known or independently developed by the recipient or information in the public domain through no wrongful act of the recipient, or information received by the recipient from a third party who was free to disclose it. Each party agrees not to divulge, disclose, or communicate in any manner any Confidential Information to any third party without the prior written consent of both parties. Each party will protect the Information and treat it as strictly confidential for a period of at least four years. A violation of this paragraph shall be a material violation of this Agreement.

6. Proprietary Rights. Customer agrees that SENET exclusively owns any and all object code, source code, processes, procedures, flow charts, documentation, information, reports, test results, findings, ideas and any and all works and other materials developed hereunder (collectively, the "Work Product") and that title thereto shall remain with SENET. All applicable patents, copyrights, trademarks, trade secrets and other rights and interests in the Work Product are and shall remain entirely with SENET. Upon payment in full of the amounts due hereunder, Customer shall have a perpetual, non-exclusive license to use any Work Product prepared as part of the Services for its internal business purposes. Nothing contained herein shall be deemed to afford SENET any right to any proprietary information of the Customer derived from sources other than SENET.

7. Warranty Disclaimer. All of the services are provided "As Is". SENET makes and customer receives absolutely no warranties, express or implied, and there are expressly excluded warranties of merchantability and fitness for a particular purpose. Customer agrees that SENET shall have no liabilities or obligations under warranty or otherwise to customer for damages arising out of or in connection with the delivery, use or performance of the work product provided hereunder including any services.

8. Limitation of Liability. Customer agrees that SENET shall have no liability to customer for consequential, exemplary or incidental damages arising out of or in connection with this agreement including any work product, even if SENET has been advised of the possibility of such damages. In no event shall SENET be liable for any damages arising out of or in connection with this agreement or the services in excess of the amounts paid by customer hereunder.

9. Term and Termination. This Agreement shall continue in full force and effect until completion of the Services or until terminated in accordance with the provisions hereof. In the event of any material breach of this Agreement by either party, the other party may cancel this Agreement by giving 30 days' prior written notice thereof (or 10 days notice in the case of non-payment); provided, however, that this Agreement shall not terminate at the end of the applicable period if the party in breach has cured the breach of which it has been notified prior to the expiration of the applicable period.

10. No Hiring. During the term hereof and for six months thereafter, neither party shall hire any employee of the other who is involved in providing or utilizing the Services without the prior written consent of such other party.

11. General. This Agreement shall be binding upon the parties' respective successors and permitted assigns. Customer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of SENET. This Agreement shall be governed by and construed in accordance with the laws of Commonwealth of Virginia (without regard to principles of conflicts of law). The sole jurisdiction and venue for any litigation arising out of this Agreement shall be an appropriate federal or state court located in Fairfax County, Virginia. A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder. This Agreement and all Statements set forth the entire understanding of the parties as to the subject matter herein and may not be modified except in writing executed by both parties. The rights and remedies of the parties as set forth herein are not exclusive and are in addition to any other rights and remedies available to it in law or in equity. All provisions hereof relating to the following paragraphs shall survive the termination of this Agreement: 5, 6, 7, 8, 10 and 11.

THIS AGREEMENT NOT EFFECTIVE UNTIL ACCEPTED IN WRITING BY CUSTOMER AND SENET

ACCEPTED:

CUSTOMER:_____

By:_____

Title:_____

Date:_____

ACCEPTED:

SENET INTERNATIONAL CORPORATION

By: Steven R. Davis_____

Title: Chief Operating Officer_____

Date:_____

SeNet International Corporation, 3040 Williams Dr., Suite 510, Fairfax, VA 22031

1. <u>PARTIES</u>. This Mutual Non-Disclosure Agreement ("Agreement") is entered into by and between the Floyd County Kentucky School District ("District"), whose principal place of business is 106 North Front Ave, Prestonsburg, KY 41653 and <u>SeNet International Corporation</u> ("Contractor"), an independent contractor doing business as a <u>corporation</u> whose principal location is <u>3040 Williams Drive, Suite 510 Fairfax VA 22031</u>. District and Contractor may individually be referred to as "Party" or collectively as "Parties." In consideration of their mutual promises and for their mutual benefit, the Parties agree as follows:

2. <u>PURPOSE</u>. The Parties wish to conduct discussions regarding a solicitation opportunity of mutual interest (the "Purpose") and, in connection with the Purpose, each Party may disclose (as a "Disclosing Party") to the other (as a "Receiving Party") certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential.

3. <u>EFFECTIVE DATE; TERM</u>. This Agreement is effective as of the date it is fully executed by both Parties and shall continue in effect until terminated as set forth herein.

4. <u>TERMINATION; SURVIVAL OF OBLIGATIONS</u>. This Agreement may be terminated by either Party upon written notice to the other Party. However, the Receiving Party's confidentiality obligations, with respect to any particular Confidential Information of the Disclosing Party under this Agreement, shall survive termination and continue for a period of three years after disclosure of the corresponding Confidential Information.

5. <u>CONFIDENTIAL INFORMATION</u>.

   A. For purposes of this Agreement, "Confidential Information" means any data or information that is proprietary to the Disclosing Party and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to: any source code, byte code, source documentation, training materials, libraries, and/or project management materials developed or maintained by the Disclosing Party; any information in tangible or intangible form relating to and/or including released and unreleased software or hardware; user interface specifications; use case documents; images and design screens; database design structures and architecture; security structures and architectures; non-public business policies and practices relating to software development and use; the terms and conditions of any proposed (or actual) license agreement(s) or other agreement(s) concerning the Disclosing Party's products, licensing negotiations; and any information received from others that the Disclosing Party is obligated to treat as confidential. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information.

   B. "Confidential Information" does not include any information which: (i) is or becomes generally available to or known by the public (other than as a result of a disclosure directly or indirectly by the Receiving Party); (ii) is independently developed by the Receiving Party without breach of this Agreement; (iii) was in the Receiving Party's

possession free of any obligation of confidentiality of which the Receiving Party is aware at the time of the Disclosing Party's communication to the Receiving Party; (iv) is lawfully received by the Receiving Party without restriction from a third party who obtained the Confidential Information other than as a result of a breach of any confidentiality obligation; or (v) is approved for disclosure by the written authorization of the Disclosing Party.

C. Neither Party is obligated to disclose any information to the other Party or enter into any other agreement with the other Party.

D. The Disclosing Party makes no warranties regarding the completeness or accuracy of its Confidential Information. Any Confidential Information is provided on an "as is" basis.

6. USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION.

A. The Receiving Party agrees to use Confidential Information solely in connection with the Purpose of this Agreement.

B. Except as may be agreed upon in writing by the Parties, the Receiving Party shall not disclose Confidential Information to any person or entity except for those employees or representatives of Receiving Party needed for the Purpose of this Agreement. Any employee or representative of Receiving Party receiving Confidential Information shall be informed by the Receiving Party as to the confidential nature of the Confidential Information and shall be subject to confidentiality duties or obligations to the Receiving Party that are no less restrictive than those in this Agreement.

C. The Receiving Party shall handle any Confidential Information with at least the same degree of care which it applies to its own confidential information, which shall be no less than a reasonable degree of care.

D. The Receiving Party agrees to notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information.

E. Restrictions on use set forth above do not restrict or limit the right of the Receiving Party to independently design, develop, acquire, market, service or otherwise deal in, directly or indirectly, products or services competitive with those of the Disclosing Party.

F. Nothing in this Agreement shall be construed to restrict either Party's use or disclosure of its own Confidential Information.

7. DISCLOSURE REQUIRED BY LAW. The Receiving Party may disclose Confidential Information pursuant to any statutory or regulatory authority or court order, provided that: (i) the Receiving Party gives the Disclosing Party prior written notice of such requirement, (ii) the scope of such disclosure is limited to that which is legally required, and (iii) the Receiving Party reasonably cooperates with the Disclosing Party, at the Disclosing Party's expense, in the Disclosing Party's efforts to ensure that the Confidential Information will be subject to a protective order or other legally available means of protection.

8. PROPERTY RIGHTS. The Receiving Party acknowledges and agrees that no right or license in the Confidential Information is granted to the Disclosing Party. Title to the Confidential Information will remain solely with the Disclosing Party.

9. <u>RETURN OF CONFIDENTIAL INFORMATION</u>. The Receiving Party agrees, upon the request of the Disclosing Party, to promptly deliver to the Disclosing Party (or, with the Disclosing Party's consent, destroy) the originals and all copies of the Disclosing Party's Confidential Information and any notes derived therefrom then in the Receiving Party's possession or control.

10. <u>REMEDIES</u>. The Receiving Party acknowledges and agrees that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. Moreover, the damages to the Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, the Receiving Party hereby agrees that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. The Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in successfully obtaining any such relief. The Receiving Party further agrees that if the Disclosing Party employs any attorney(s) to enforce any rights arising out of or relating to this Agreement and prevails in doing so, the Disclosing Party shall be entitled to recover its reasonable attorney fees and costs.

11. <u>MISCELLANEOUS</u>.
    A. <u>Choice of Law; Venue</u>. The construction, interpretation and performance of this Agreement shall be governed by the laws of the State of Colorado. The Federal and State courts located in Colorado shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement.
    B. <u>Severability</u>. If any part of this Agreement shall be held unenforceable, the rest of this Agreement will nevertheless remain in full force and effect provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.
    C. <u>Entire Agreement; Modifications</u>. This Agreement is the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless executed in writing by both Parties.
    D. <u>Non-Waiver</u>. Any failure by a Party to enforce strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.
    E. <u>Assignment</u>. This Agreement is personal in nature and a Party shall not directly or indirectly assign or transfer its rights and/or obligations under this Agreement without the prior written consent of the other Party. All obligations contained in this Agreement shall extend to and be binding upon any approved successors, assigns and designees.
    F. <u>Notices</u>. All notices under this Agreement shall be in writing, directed to the addresses set forth Paragraph 1, and delivered by certified or registered mail with return receipt requested.

G. <u>Counterparts; Electronic Signature</u>. This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one agreement binding on the Parties. The Parties consent to the use of electronic signatures by either Party.
H. <u>Export Restrictions</u>. As applicable, the Parties shall comply with, and obtain all authorizations required by, U.S. export control laws and all related regulations.
I. <u>Party Relationship</u>. This Agreement does not create any partnership, agency, or business relationship between the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates written below.

Floyd County Schools   SeNet International Corporation

By:_____   By: <u>Steven R. Davis</u>_____
Title:_____   Title: <u>Chief Operating Officer</u>_____
Date:_____   Date:_____