

**AGREEMENT FOR E-RATE SERVICES
BETWEEN SEDONA OAK CREEK UNIFIED SCHOOL DISTRICT NO. 9
AND YAVAPAI COUNTY THROUGH THE YAVAPAI COUNTY SCHOOL
SUPERINTENDENT**

This Agreement for E-Rate Services (hereinafter referred to as this “Agreement”) is made and entered into by and between Sedona Oak Creek Unified School District No. 9 (hereinafter referred to as “School”) and Yavapai County through the Yavapai County School Superintendent (hereinafter referred to as “YCSS”). School and YCSS may each be referred individually as a “Party” or “party,” and collectively as the “Parties” or “parties.”

RECITALS

WHEREAS, Universal Service Administrative Company (USAC) Schools and Library Division (SLD) Program, commonly known as “E-Rate Services,” provides discounts of up to 90% to assist most schools and libraries in the United States to obtain affordable telecommunications and internet access; and,

WHEREAS, School has authority to enter into this Agreement with YCSS for consulting about and assistance with E-Rate Services and discretionary programs pursuant to A.R.S. §§ 15-302(B), 15-343(A), 15-365, and/or 15-1261; and,

WHEREAS, School wishes to retain YCSS to provide consulting about and assistance with E-Rate Services; and,

WHEREAS, YCSS is designated as a local education agency for the purpose of serving as an education service agency that is eligible to receive and spend local, state and federal monies to provide programs and services to school districts, charter schools, county free library districts, municipal libraries, nonprofit and public libraries, tribal libraries, private schools and tribal schools within that county pursuant to A.R.S. § 15-301; and,

WHEREAS, YCSS may provide discretionary programs to School pursuant to A.R.S. § 15-302(B); and,

WHEREAS, YCSS may establish service programs and School may participate in service programs established pursuant to A.R.S. § 15-365; and,

WHEREAS, YCSS wishes to assist school districts, charter schools, county free library districts, municipal libraries, nonprofit and public libraries, tribal libraries, private schools and tribal schools with the paperwork necessary to comply with applicable regulations to obtain available E-Rate Services; and,

WHEREAS, The E-Rate Services provided by YCSS are intended to support and enhance student achievement by assisting and guiding School to plan, procure, and implement essential technology needs and assets.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, School and YCSS, intending to become legally bound, agree as follows:

1. **Duration/Term.** This Agreement's term is for 3 years and shall be effective from July 1, 2019 through June 30, 2022 ("FY 2020-22").
2. **Termination.** The parties may terminate this Agreement with thirty (30) days written notice specifying the termination date. Any termination of this Agreement shall not relieve the parties of responsibility for its costs incurred prior to the effective date of the termination.
3. **Cancellation for Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.
4. **Scope of Work and Duties and Services Provided by YCSS.** Under this Agreement, YCSS shall provide the following services to School:
 - 4.1 YCSS shall consult with and guide School on School's E-Rate application for FY 2019-20, 2020-21, and 2021-22.
 - 4.2 YCSS shall provide School with information on and assistance with the E-Rate process and share technical advice on related services and equipment.
 - 4.3 With respect to E-Rate Services procurement, YCSS shall:
 - 4.3.1 Prepare bid documents and contract documents necessary to procure and contract for E-Rate Services;
 - 4.3.2 Assist School in publishing the call for bids;
 - 4.3.3 Assist School with compliance with federal and state procurement regulations; and
 - 4.3.4 Assist School in scoring and evaluating all bids received.
 - 4.4 YCSS shall assist School in filing, which may include the YCSS filing the forms on behalf of School, the following E-Rate forms: Form 470, 471, 472 (BEAR), 486, and any necessary extension letters, appeals, and/or other related forms.
 - 4.5 YCSS shall assist School with Program Integrity Assurance (PIA) review of Federal

Communications Commission (FCC) forms filed by School.

- 4.6 YCSS shall assist School with its determination on reasonable means and methods to obtain the maximum E-Rate discount allowed in accordance with governing rules and regulations.
- 4.7 YCSS shall assist School with its determination on reasonable means and methods to reduce and minimize costs for both E-Rate eligible and ineligible services.
- 4.8 YCSS shall perform all other reasonable, customary, and lawful E-Rate tasks to assist School during this Agreement's term, including submission of forms online or signing forms as needed.
- 4.9 YCSS makes no promises or guarantees to School with respect to available E-Rate Services and any discounts and/or reimbursements payable to School. If the FCC and/or SLD requests any adjustments from School and/or requests any adjustments to any discounts and/or reimbursements made to School, such adjustments are the sole responsibility of School.

5. Services Not Provided By YCSS.

- 5.1 YCC shall not be responsible for any information provided to SLD whether provided directly by School or whether provided by YCSS on behalf of School.
- 5.2 YCSS shall not select the final E-Rate vendor or advise School which vendor to select.
- 5.3 YCSS shall not accept any gratuity, gift, favor, service, or opportunity from any service provider.

6. Scope of Work and Duties and Warranties Provided by School. Under this Agreement, School shall provide the following duties and warranties to YCSS:

- 6.1 School shall provide all information reasonably requested by YCSS in a timely manner.
- 6.2 School shall designate a responsible, authorized person to:
 - 6.2.1 Serve as a point of contact for SLD under the direction of the FCC;
 - 6.2.2 Review all E-Rate Forms; and
 - 6.2.3 Coordinate and cooperate with YCSS on all matters relating to E-Rate services under this Agreement.
- 6.3 School shall fully comply with all E-Rate rules and regulations and all other

applicable federal and state laws, including the obligation to certify the representations in and execute the Letter of Agency form attached as Exhibit 1 and incorporated by reference herein. School certifies and warrants all information provided to YCSS and certifies and warrants all information provided to the FCC and/or SLD whether provided directly by School or whether provided by YCSS on behalf of School.

6.4 School acknowledges and agrees that if the FCC and/or SLD requests any adjustments from School and/or requests any adjustments to any discounts and/or reimbursements made to School, such adjustments are the sole responsibility of School.

6.5 School shall not accept any gratuity, gift, favor, service, or opportunity from any service provider.

7. **Payment and Consideration.** Within thirty (30) days after YCSS invoices School, School shall pay YCSS the invoiced amount for all services provided under this Agreement not to exceed the following:

\$4500.00 for FY 2019-20.

\$4500.00 for FY 2020-21.

\$4500.00 for FY 2021-22.

8. **Non-appropriation of funds.** The parties recognize and acknowledge that YCSS is a governmental entity and this Agreement's validity is based upon the availability of public funding. In the event public funds are not appropriated for the performance of YCSS's obligations under this Agreement, then YCSS shall notify the other party(ies) in writing of any such non-allocation of funds at the earliest possible date, and this Agreement shall automatically expire without penalty to YCSS. If YCSS's allocation of funds is reduced, then the scope of this Agreement may be reduced, if appropriate, or this Agreement may be cancelled without further duty or obligation.

9. **Insurance.** The parties shall maintain appropriate insurance. Certificates of Insurance shall be provided to a party upon request.

10. **Indemnification.** To the fullest extent permitted by law, School (as "Indemnitor") hereby agrees to defend, indemnify, and hold harmless YCSS, its departments, officers, officials, agents, employees, volunteers, and E-Rate Manager (hereinafter collectively referred to as "Indemnitee") without limitation from and against any and all claims, actions, damages, losses, liabilities, fees, fines, or expenses (including, but not limited to, attorney fees, court costs, and costs of claim processing, investigation, litigation, and appellate proceedings) (hereinafter referred to as "CLAIMS") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused as a direct or indirect result of any

acts or omissions of School or any of its owners, officers, directors, agents, employees, or subcontractors, regardless of whether or not such Claims are caused in part by a party indemnified hereunder. This indemnity includes, but is not limited to, any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of School to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is agreed that School will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. School shall not be obligated to defend Indemnitee against any Claims or indemnify Indemnitee resulting solely from the negligence or willful misconduct of Indemnitee and not in any way resulting from any act or omission of School or anyone directly or indirectly employed by School or anyone for whose acts School may be liable. School agrees to waive all rights of subrogation against the YCSS, its departments, officers, officials, agents, employees, volunteers, and E-Rate Manager. This indemnification shall survive the termination of this Agreement.

Any insurance, its limits, amount, and type required herein to be maintained by School shall in no way be construed as limiting the scope of this Indemnity.

11. **Limitation of Liability.** To the fullest extent permitted by law, School agrees that the liability of YCSS, its departments, officers, officials, agents, employees, volunteers, and E-Rate Manager in connection with services hereunder to School and to all persons having contractual relationships with them, for all causes of action, including, but not limited to, breach of contract and tort, including any negligent act, errors and/or omissions of YCSS, its departments, officers, officials, agents, and/or employees is limited to the total fees actually paid by School to YCSS for services rendered by YCSS under this Agreement.
12. **Notices.** All notices under this Agreement must be in writing and sent to the appropriate person. Notices will be deemed properly given if sent by personal delivery or certified U.S. mail, postage prepaid, return receipt requested, addressed as follows:

If to School to:

Sedona Oak Creek Unified School District No. 9
Attn: Heather Shaw- Burton
221 Brewer Rd. Suite 100
Sedona, AZ 86336

If to YCSS to:

Tim Carter, Yavapai County School Superintendent
2970 Centerpointe East Drive
Prescott, AZ 86301

The parties shall have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other parties. Notice is effective on the date of actual receipt or three days after the date of mailing, whichever is earlier.

13. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between the parties. The Parties' employees shall not be considered employees of the other Party, and neither Party's personnel will, by virtue of this Agreement, be entitled or eligible, by reason of this Agreement, to participate in any benefits or privileges given or extended by the other Party to its employees.
14. **Third Parties.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against School or YCSS. This Agreement is not intended to benefit any third party.
15. **Assignment.** No party to this Agreement may assign any of its rights or responsibilities under this Agreement, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, except with the prior written consent of the other parties. No party may delegate any performance under this Agreement, except with the prior written consent of the other parties. Any purported assignment of rights or delegation of performance in violation of this section is void.
16. **Compliance with Law.** The parties shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities in performing this Agreement, including environmental laws.
17. **Written Certification Pursuant to A.R.S. § 35-393.01.** The parties are not currently engaged in, and agree for the duration of this Agreement, to not engage in, a boycott of Israel.
18. **Fingerprint and E-verify.** If required, and only to the extent required, the parties shall comply with the fingerprinting provisions in A.R.S. § 15-512(H) and the e-verify provisions in A.R.S. § 41-4401.
19. **Non-discrimination.** The parties shall comply with State Executive Order 2009-09, the pertinent provisions of which are incorporated into this Agreement by reference, and which mandate, in part, that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules and regulations, including the Americans with Disabilities Act. The parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.
20. **Legal Arizona Workers Act Compliance.** The Parties hereby warrant that they will at all times during the term of this this Agreement comply with all federal immigration laws applicable to their employment of their employees and with the requirements of A.R.S. §§ 23-214 and 41-4401 (together the "State and Federal Immigration Laws"). A breach of the foregoing warranty shall be deemed a material breach, and the parties shall have the right to terminate this Agreement for such a breach, in addition to any other applicable remedies. The

parties retain the legal right to inspect the papers of each contractor or subcontractor employee who performs work pursuant to this Agreement to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.

21. **Workers' Compensation.** For purposes of workers' compensation, an employee of a party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another party pursuant to this Agreement, is deemed to be an employee of both the party who is his primary employer and the party under whose jurisdiction or control or within whose jurisdiction he is then working, as provided by A.R.S. § 23-1022(D). The primary employer party of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. The parties herein shall comply with the provisions of A.R.S. § 23-1022(E) by posting the public notice required.
22. **Alternative Dispute Resolution.** Pursuant to A.R.S. § 12-1518, disputes under this Agreement shall be resolved through the use of arbitration when the case or lawsuit is subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133.
23. **Waiver of Jury Trial.** The parties hereby waive their respective rights to trial by jury in any action or proceeding arising out of this Agreement.
24. **Governing Law.** This Agreement shall in all respects be interpreted and construed in accordance with and governed by the laws of the State of Arizona. The parties agree to bring any legal proceedings arising under this Agreement in a state or federal court of competent jurisdiction within Yavapai County, Arizona. Any changes in governing laws, rules, and regulations that do not materially affect this Agreement will apply during the term of this Agreement and will not require an amendment.
25. **Material Change in Law or Regulation.** In the event of adoption of legislation, regulations, or instructions or the initiation of an enforcement action by a governmental agency, any of which materially affects the legality of this Agreement or the relationship among the parties hereto, either party may propose amendments to this Agreement to bring this Agreement into conformity with such laws. If School and YCSS are unable to reach agreement on the renegotiation of this Agreement within thirty (30) days of the initiation of negotiations, then either party may terminate this Agreement upon written notice to the other party.
26. **Implied Contract Terms.** Each provision of law and any terms required by law to be in this Agreement are a part of this Agreement as if fully stated herein.
27. **Severability/Unenforceable Provisions.** In the event that any of the provisions of this Agreement are held to be unenforceable or invalid, the validity and enforceability of the remaining provisions shall not be affected and effect shall be given to the intent manifested by the provisions held enforceable and valid. If any of the provisions of this Agreement are inapplicable to a person or circumstance, the same provisions shall remain applicable to all other persons and circumstances.

28. **Waiver.** A party's failure or neglect to enforce any term, covenant, condition, right, or duty in this Agreement does not constitute a waiver of any term, covenant condition, right, or duty, nor is it deemed to be a waiver of that party's rights or remedies under this Agreement. A waiver or extension is only effective if it is in writing and signed by the party granting it. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy. One or more waivers by a party of any term, covenant, condition, right, or duty in this Agreement shall not be construed as a waiver of a subsequent default or breach of the same covenant, term, condition, right, or duty.
29. **Parol Evidence.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this Agreement.
30. **Headings and Construction of Agreement.** In construing this Agreement, all headings and titles are for the convenience of the parties and for organizational purposes only and shall not be considered in interpreting the meaning of any provision in this Agreement or considered a part of this Agreement. Whenever required by the context, each number shall include the plural, each gender shall include all genders, and unless the context otherwise requires, the word "person" shall include corporation, firm or association. This Agreement shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it.
31. **Entire Agreement.** This Agreement contains the entire, integrated agreement of the parties and there are no oral agreements, understandings, or representations relied upon by the parties. This Agreement supersedes all prior negotiations, representations, or agreements, whether written or oral. Any modifications or amendments to this Agreement must be in writing and signed by all parties.
32. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto. Each of the Parties may sign any number of copies of this Agreement. Each signed copy shall be deemed to be an original, but all of them together shall represent one and the same agreement.
33. **Legal Agreement.** This Agreement is an important, binding legal document, and each Party warrants it has had an opportunity to consult with an attorney about the terms set forth herein. By signing this Agreement, each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute this Agreement and understands the meaning of all terms contained herein and agrees to their application and enforceability.

APPROVALS

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials and have affixed their signatures to this Agreement on the date written below.

SEDONA OAK CREEK UNIFIED SCHOOL DISTRICT NO. 9

Signature of Authorized Agent

Date: _____

Printed Name and Title

DETERMINATION OF COUNSEL: This Agreement has been reviewed by the undersigned who has determined that it is in the appropriate form and is within the power and authority granted under the laws of the State of Arizona to School.

Signature

Date: _____

Printed Name and Title/Law Firm Name

YCSS:
Yavapai County through the Yavapai County School Superintendent

Tim Carter

Date: _____

APPROVED BY:

Randall W. Garrison, Chairman
Yavapai County Board of Supervisors

Date: _____

ATTEST:

Kim Kapin, Clerk of the Board
Yavapai County Board of Supervisors

DETERMINATION OF COUNSEL: This Agreement has been reviewed by the undersigned who has determined that it is in the appropriate form and is within the power and authority granted under the laws of the State of Arizona to YCSS.

Joy L. Biedermann
Deputy Yavapai County Attorney

Date: _____

EXHIBIT 1
Letter of Agency

This confirms Sedona Oak Creek Unified School District No. 9's participation with and representation by Yavapai County through the Yavapai County School Superintendent (hereinafter referred to as "YCSS") for procurement of affordable telecommunications and/or Internet access, and related equipment. I hereby authorize YCSS to submit FCC Form 470, FCC Form 471, and other E-rate forms to the Schools and Libraries Division of the Universal Service Administrative Company on School's behalf.

I understand that, in submitting these forms on School's behalf, YCSS is making the certifications for School. By signing this Letter of Agency, I make the following certifications:

- (a) I certify that library or school and all schools in the school district are all libraries or schools under the statutory definitions of libraries or elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38), that do not operate as for-profit businesses and do not have endowments exceeding \$50 million.
- (b) I certify that library or school and/or school district(s) has/have secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that to the extent that the Billed Entity is passing through the non-discounted charges for the services requested under this Letter of Agency, that the entities I represent have secured access to all of the resources to pay the non-discounted charges for eligible services from funds to which access has been secured in the current funding year.
- (c) I certify that the services the school, library, or district purchases at discounts provided by 47 U.S.C. § 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the rules of the Federal Communications Commission (Commission or FCC) at 47 C.F.R. § 54.500 *et seq.*
- (d) I certify that library or school and/or school district(s) have complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.
- (e) I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.
- (f) I certify that I will retain required documents for a period of at least TEN (10) years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statutes and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if

audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.

- (g) I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies) covered by this Letter of Agency. I certify that I am authorized to make this request on behalf of the eligible entity(ies) covered by this Letter of Agency, that I have examined this Letter, that all of the information on this Letter is true and correct to the best of my knowledge, that the entities that will be receiving discounted services under this Letter pursuant to this application have complied with the terms, conditions and purposes of the program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.
- (h) I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed and will notify USAC should I be informed or become aware that I or any of the entities, or any person associated in any way with my entity and/or the entities, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.
- (i) I certify that, to the best of my knowledge, the non-discount portion of the costs for eligible services will not be paid by the service provider. I acknowledge that the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.
- (j) I certify that I am authorized to sign this Letter of Agency and, to the best of my knowledge, information, and belief, all information provided to YCSS for E-rate submission is true.

The duration term applicable to this Letter of Agency, as agreed upon in the Agreement, is for 3 years and shall be effective from July 1, 2019 through June 30, 2022 (“FY 2020-22”).

SEDONA OAK CREEK UNIFIED SCHOOL DISTRICT NO. 9

Signature of Authorized Agent

Date: _____

Printed Name and Title