

## E-Rate Services Agreement

**Date:** July 1, 2013

**Parties:** \_\_\_\_\_, an Arizona charter school (“Charter School”)

Yavapai County Education Service Agency (“YCESA”), the statutory educational service agency for Yavapai County Schools.

### **Statutory Authority:**

1. YCESA is the statutory educational service agency for Yavapai County Schools. *See* Ariz. Rev. Stat. § 15-301.
2. The Charter School may contract with YCESA for services. *See* Ariz. Rev. Stat. §§ 15-183(H); 11-952.
3. YCESA and the Charter School join together and by this E-Rate Services Agreement procure and provide services as follows.

### **Agreements:**

YCESA and the Charter School agree to cooperatively procure and provide services in accordance with the terms and conditions of this E-Rate Services Agreement.

**1. Purpose.** The Charter School retains YCESA to provide E-Rate Services consulting.

**1.1** Universal Service Administrative Company’s Schools and Library Program, commonly known as “E-Rate,” provides discounts of up to 90% to assist most schools and libraries in the United States to obtain affordable telecommunications and Internet access. YCESA assists school districts and individual schools to comply with applicable regulations and to obtain all available E-Rate Services at the lowest cost.

**1.2** YCESA is the successor in interest to Educational Technology Associates L.L.C., the firm that previously provided these services to Arizona school districts and public schools. The E-Rate Services provided by YCESA are intended to support and enhance student achievement by assisting and guiding the Charter School to plan, procure, and implement essential technology assets.

**2. YCESA’s Scope of Services.** Under this Agreement, YCESA shall provide the following specific services to the Charter School.

**2.1** YCESA shall consult with and guide the Charter School on the Charter School's E-Rate application for FY 2013-14, 2014-15, and 2015-16.

**2.2** YCESA shall advise and train the Charter School on the E-Rate process and share technical advice on related services and equipment.

**2.3** With respect to E-Rate Services procurement, YCESA shall: (1) prepare bid documents and contract documents necessary to procure and contract for E-Rate Services; (2) assist the Charter School in publishing the call for bids; (3) advise the Charter School on compliance with federal and state procurement regulations; and (4) assist the Charter School in scoring and evaluating all bids received.

**2.4** YCESA shall assist the Charter School in filing the following E-Rate forms: Form 470, 471, 472 (BEAR), 486, and any necessary extension letters, appeals, and/or other related forms.

**2.5** YCESA shall guide the Charter School through any Program Integrity Assurance (PIA) review of FCC forms filed by or on the Charter School's behalf.

**2.6** YCESA shall advise the Charter School on reasonable means and methods to obtain the maximum E-rate discount allowed by governing rules and regulations.

**2.7** YCESA shall advise the Charter School on reasonable means and methods to reduce and minimize costs for both E-Rate eligible and ineligible services.

**2.8** YCESA shall perform all other reasonable, customary, and lawful E-Rate tasks to assist the Charter School during this Agreement's term.

**2.9** YCESA shall not accept any gratuity, gift, favor, service, or opportunity from any service provider.

**3. Services not provided by YCESA.** YCESA will not provide the following services:

**3.1** YCESA will not select the final E-Rate vendor or advise the Charter School which vendor to select;

**3.2** YCESA will not sign, nor may the Charter School authorize YCESA to sign, any E-Rate Forms.

**4. Charter School Responsibilities.** The Charter School shall provide all information reasonably requested by YCESA in a timely manner. The Charter School shall designate a responsible, authorized person to: (1) serve as a point of contact for

Universal Service Administrative Company's School and Libraries Division (SLD); (2) review and sign all E-Rate Forms; and (3) deal with YCESA on all matters relating to this Agreement. The Charter 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 and incorporated into this Agreement as **exhibit 1**. The Charter School shall not accept any gratuity, gift, favor, service, or opportunity from any service provider.

**5. Duration.** This Agreement's term is three years (FY 2013-16).

**6. Consideration.** Within 30 days after YCESA invoices the Charter School, the Charter School shall pay YCESA \$\_\_\_\_\_ for all services provided under this Agreement for FY 2013-14. YCESA will establish fees for subsequent years, which the Charter School shall pay, if it accepts the amount of the fees, within 30 days after YCESA invoices the Charter School.

**7. Termination.** The Charter School may withdraw from this Agreement on 30 days' notice, but no part of the consideration is refundable if YCESA has assisted the Charter School to file the E-Rate Forms.

**8. Alternative Dispute Resolution.** YCESA and the Charter School may submit any dispute among them arising out of or relating to this Agreement to alternative dispute resolution if they mutually agree.

**9. Indemnification.** To the fullest extent permitted by law, YCESA and the Charter School shall indemnify and hold harmless each other and their respective officers, directors, members, consultants, agents, and employees from and against all claims for bodily injury and property damage, including reasonable attorneys' fees, costs, and expenses that may arise from each party's performance of or failure to perform this Agreement, but only to the extent caused by the negligent acts or omissions of the party, its agents, or employees.

**10. Insurance.** Throughout this Agreement's term, YCESA shall maintain insurance in the coverages and limits of liability available to it through the Arizona School Risk Retention Trust, and the Charter School shall maintain the same coverages in similar limits through insurers authorized to write insurance in Arizona.

**11. Waivers of Subrogation.**

**11.1** YCESA and the Charter School waive all rights against each other and any of their agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Agreement or other applicable property insurance, except the rights they have to proceeds of the

insurance held by the Charter School as fiduciary. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**11.2** A loss insured under the Charter School's property insurance must be adjusted by the Charter School as fiduciary and made payable to the Charter School as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause.

## **12. Miscellaneous Provisions.**

**12.1 Governing Law.** This Agreement's interpretation and performance are governed by Arizona law.

**12.2 No Waiver.** No action or failure to act by YCESA or the Charter School constitutes a waiver of any right or duty under this Agreement, nor does the action or failure to act constitute approval of or acquiescence in a breach of the Agreement, unless YCESA and the Charter School memorialize the waiver or approval in writing and sign it.

**12.3 Entire Agreement.** This Agreement represents the entire, integrated agreement between YCESA and the Charter School. The Agreement supersedes all prior negotiations, representations, or agreements, whether written or oral. The Agreement may be amended only by written instrument signed by YCESA and the Charter School.

**12.4 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 YCESA or the Charter School. This Agreement is not intended to benefit any third party.

**12.5 Binding Effect.** YCESA and the Charter School each bind themselves and their respective successors, assigns, and legal representatives each to the other and to the other's successors, assigns, and legal representatives with respect to this Agreement's covenants, terms, and conditions.

**12.6 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 (1) personal delivery, (2) facsimile transmission, (3) first-class United States mail, postage prepaid, or (4) certified U.S. mail, postage prepaid, return receipt requested, addressed as follows:

Charter School

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

Attn: \_\_\_\_\_

Yavapai County Education Service Agency

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Each party may specify by notice to the others a different address for purposes of subsequent notices. Notice is effective on the date of actual receipt or three days after the date of mailing, whichever is earlier.

**12.7 Compliance with Law.** YCESA and the Charter School shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities in performing this Agreement, including but not limited to environmental laws.

**12.8 Severability.** If any provision(s) of this Agreement is/are invalid, illegal, or unenforceable for any reason, all other Agreement provisions shall nevertheless remain in full force and effect. If any provision(s) is/are inapplicable to any person or circumstance, the same provision(s) shall nevertheless remain applicable to all other persons and circumstances.

**12.9 Fingerprint and E-verify.** If required, and only to the extent required, the parties shall comply with the fingerprinting provisions in Ariz. Rev. Stat. § 15-512(H), the e-verify provisions in Ariz. Rev. Stat. § 41-4401, and the Federal Immigration and Nationality Act.

**12.10 Nondiscrimination.** The parties shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, disability, age, veteran's status, or political affiliation. They shall comply with all applicable federal and state employment laws, rules, regulations, and executive orders.

**12.11 Conflict of Interest.** In accordance with Ariz. Rev. Stat. § 38-511, either party may cancel this Agreement for a prohibited conflict of interest.

**12.12 Scrutinized Business Operations.** In accordance with Ariz. Rev. Stat. §§ 35-391.06, 35-393.06, the parties represent and warrant that they do not have, and their contractors do not have, scrutinized business operations in Sudan or Iran.

This E-Rate Services Agreement is effective on the date approved by the Charter School's authorized agent.

Dated \_\_\_\_\_, 2013

**Charter School:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated \_\_\_\_\_, 2013

**YCESA:**

Yavapai County Education Service Agency

By: \_\_\_\_\_

Name: Tim Carter \_\_\_\_\_

Title: Yavapai County School

Superintendent \_\_\_\_\_

# **Exhibit 1**

## Letter of Agency

This confirms our participation with and representation by Yavapai County Education Service Agency (“YCESA”) for procurement of affordable telecommunications and/or Internet access. I hereby authorize YCESA 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 our behalf.

I understand that, in submitting these forms on our behalf, YCESA is making certifications for us. By signing this Letter of Agency, I make the following certifications:

- (a) I certify that our school and all schools in our district are all schools under the statutory definitions of 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 our 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 our school and/or school district(s) are covered by a technology plan(s) that is written, that covers all 12 months of the funding year, and that has been or will be approved by a state or other authorized body, or an SLD-certified technology plan approver, prior to the commencement of service. The plan(s) is written at the following level(s):
  - \_\_\_\_\_ an individual technology plan for using the services requested in this application; and/or
  - \_\_\_\_\_ higher-level technology plan(s) for using the services requested in this application; or
  - \_\_\_\_\_ no technology plan needed; applying for basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only.
- (d) 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.).

- (e) I certify that our 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.
- (f) 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.
- (g) I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statute 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.
- (h) 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.
- (i) 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.

(j) 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.

(k) 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 YCESA for E-rate submission is true.

Entity name: \_\_\_\_\_ Signature \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_