

CONSULTING AGREEMENT

IT IS HEREBY AGREED this ____ day of August, 2016, by and between E-Rate Consulting, Inc., a New Jersey Corporation, doing business at 130 Valley Road, Suite B, Montclair, New Jersey 07042, hereinafter referred to as "ERC", and Township of Union Public Schools, with its principal offices located at 2369 Morris Avenue, Union, NJ 07083, hereinafter referred to as "Client", as follows:

1. **SCOPE**. ERC hereby agrees to provide consulting services, as an independent contractor, to the Client in connection with the E-Rate Program for the funding years covered by the term set forth in Section 3 of this Agreement:

- a) Review and analyze internal controls, processes, and procedures and, where necessary, assist in either developing or revising such measures to ensure Program compliance;
- b) Provide comprehensive expertise on all E-Rate eligible equipment and services;
- c) Review your current service plans and technology infrastructure, along with your current technology plan, to provide a comprehensive assessment of how to best maximize the opportunities created under the E-Rate Modernization Orders issued in July and December of 2014;
- d) Prepare FCC Forms 470 on your behalf to request Category One and Category Two services and/or equipment;
- e) As requested, assist in analyzing bids submitted by service providers in response to FCC Forms 470;
- f) As requested, negotiate with service providers on your behalf to ensure you receive optimal service at a fair and reasonable market rate;
- g) Manage preparation and submission of FCC Forms 471 and supporting documentation;
- h) Calculate data supplied by you to determine the applicable discount rates and, whenever possible, explore strategic alternatives to achieve a higher discount rate;

- i) When necessary, manage processes and procedures attendant to reviews by USAC Program Integrity Assurance and, in concert with your staff, formulate timely and accurate responses;
- j) Analyze Funding Commitment Decision Letters ("FCDLs") to ensure you receive all discounts due under E-Rate Program rules;
- k) Prepare and manage the submission of FCC Forms 486 and other post-commitment forms, which, depending on the circumstances, may include FCC Forms 472, 473, and/or 500;
- l) Document retention relative to funding years covered by the Parties' agreement;
- m) Manage standard appeals stemming from funding request denials; and
- n) Assist with any USAC site visit, selective review, audit, or similar activity pertaining to applications filed during the Funding Year covered by the Parties' agreement.

The performance of any services beyond those set forth above shall be compensable at an hourly rate agreed upon by the parties in writing.

2. **DESIGNATION OF REPRESENTATIVE.** The Client agrees to designate to ERC, in writing within 14 days from the date hereof, an appropriate representative invested with the authority to execute all required documents and applications on behalf of the Client and who will be authorized to respond to inquiries raised by ERC and/or the Schools and Libraries Division of the Universal Service Administration.

3. **TERM OF AGREEMENT.** The term of the within Agreement shall begin on the date hereof and shall continue until June 30, 2018. The Client may, at its option, continue this Agreement on the same terms for one successive two (2) year term by notifying ERC of its intent to do so.

All fees earned by ERC, or paid to ERC, in connection with services provided up to and including the date of termination shall remain due and owing and/or

unreimbursed. The parties acknowledge that any fees to be paid pursuant to Section 5 shall remain due and payable in the event funding is granted subsequent to expiration of this Agreement.

4. **ASSIGNMENT.** ERC may assign this Agreement, with the consent of Client, to a successor corporation or other successor entity, or to an entity with whom it may merge or become affiliated, after written notice to the Client. All rights and obligations of ERC pursuant to this Agreement shall remain in full force and effect in the event of said assignment. Client hereby agrees to not unreasonably withhold its consent as to any such assignment.

5. **PAYMENT.** In consideration for the services to be provided by ERC pursuant to the terms of the within Agreement, Client shall pay ERC a flat fee of **Seven Percent (7%)** of all funding actually disbursed by the E-Rate program to Client as a result of applications filed during the term of this Agreement. ERC's annual fee shall not exceed **Twenty-Five Thousand Dollars (\$25,000)**. There is a minimum service fee of **Two Thousand and Five Hundred Dollars (\$2,500)** per funding year. This fee, if applicable, is not assessed until funding is awarded.

There are no additional fees for travel, calls or meetings with service providers, or appeals.

At the end of each Funding Year, ERC will issue Client an Invoice against the applicable Purchase Order in connection with the above. Client shall remit payment in full to ERC within thirty (30) of its receipt of said Invoice.

ERC fees set forth herein shall not be added into any cost item which may be part of a funding application, as said fees are separate and apart from any cost item

connected with the E-Rate program.

6. **REPRESENTATIONS.** Client acknowledges for itself and its servants, agents and employees, that all information provided by it to ERC shall be fully relied upon by ERC in providing its consulting services. Therefore, all information provided by the Client shall be true and accurate to the best of the Client's belief. The Client understands that any misstatements or lack of candor by the Client shall constitute a breach of this Agreement and may be grounds for immediate termination by ERC.

7. **CONFIDENTIALITY.** Client agrees that, neither it nor its servants, agents or employees will disclose to any third party, without the prior written consent of ERC, any information relating to the business of ERC if such information could reasonably be construed as confidential or proprietary and was obtained in the course of ERC's provision of services to the Client.

8. **CONDUCT, INDEPENDENT STATUS, AND BENEFITS.** ERC shall provide competent, professional services in the required disciplines, using its own appropriate independent skill and judgment, and the manner and means that appear best suitable to it to perform the work, and Client shall have no right or responsibility hereunder to set ERC's hours or location of work. ERC is a valid corporation existing under the laws of the State of New Jersey, doing business with the corporate name E-Rate Consulting, Inc., and certifies its federal employer identification number (EIN) is 22-3745829.

The parties to this Agreement agree that the relationship created by this Agreement is that of client-independent contractor. ERC agrees that its personnel are not employees of Client and are not entitled to (and also hereby waive) any

benefits provided or rights guaranteed by Client, or by operation of the law, to their respective employees, including but not limited to group insurance, liability insurance, disability insurance, paid vacations, sick leave or other leave, retirement plans, health plans, premium "overtime" pay, and the like. It is understood and agreed the since ERC is an independent contractor, Client will make no deductions from fees paid to ERC for any federal or state taxes or FICA, and Client has no obligation to provide Worker's Compensation coverage for ERC. In the event of any claims brought or threatened by any party against ERC or Client relating to the status, acts or omissions of either party or its personnel, the parties hereto agree to cooperate in all reasonable respects, including supporting the assertions of employment status made in the Agreement.

9. **SERVICES TO OR BY OTHERS.** It is understood and agreed that this is not an exclusive agreement as to ERC and that ERC may provide similar services for others. However, in order to maximize the potential for refunding, it is understood and agreed that Client shall consult with ERC and utilize its services exclusively as to all applications for E-Rate funding filed by or on behalf of Client during the term of this Agreement.

10. **INDEMNIFICATION.** Client shall indemnify and hold harmless ERC, its officers, directors, agents, owners and employees, for any claims brought or liabilities imposed against ERC by any other party (including private parties, governmental entities and courts) as a result of consulting services provided by ERC on behalf of the Client or resulting from claims brought by Client's vendors against ERC, provided

said claims are not based on the negligent or intentional actions of ERC. Indemnification shall be for any and all loss, including costs and attorney fees.

11. **UNCERTAINTY OF FUNDING.** The parties acknowledge that funding determination and decisions are made by entities over which the parties hereto have no control. Thus, Client acknowledges that despite the retention of ERC to provide E-Rate consulting services, applications for E-Rate funding may be denied in whole or in part. Client acknowledges that ERC has not made any representations, which may be construed to be a guarantee of any funding. Therefore, Client hereby waives any and all claims against ERC for payment of anticipated funding, which has been denied in whole or in part and acknowledges that any minimum payments due to ERC pursuant to paragraph 5 herein shall be due and owing without regard to whether funding is received by Client.

12. **MISCELLANEOUS.** Each provision of the Agreement shall be considered severable such that if any one provision or clause conflicts with existing or future applicable law, or may not be given full effect because of such law, it shall not affect any other provision of the Agreement which can be given effect without the conflicting provision or clause. To the extent there may be any conflict between the terms of this Agreement and of any purchase order issued by Client, this Agreement shall take precedence. Client represents that it was afforded the opportunity to ask questions and to seek the assistance of legal counsel regarding these terms, and is not relying upon and advise from ERC in this regard.

13. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of New Jersey, except for its choice of law principles, regardless of where ERC's

work is performed, and any litigation shall be brought in the state or federal courts of the State of New Jersey. Client agrees to the exercise of personal jurisdiction over it by such courts to the full extent permitted by law.

E-RATE CONSULTING, INC.

TOWNSHIP OF UNION PUBLIC SCHOOLS

By: _____

By: _____

Name: Vincent LaForgia

Name : _____

Title: President

Title: _____

Date: _____

Date: _____