

CONTRACT NUMBER: FY21-1019

**NORTHWEST OHIO AREA COMPUTER SERVICES COOPERATIVE
SERVICE PROVIDER CONTRACT
INTERNET SERVICE**

This Agreement for the provision of Internet Access and Transport service ("Agreement") is entered into on this 24th day of February, 2021 ("Effective Date"), between the Northwest Ohio Area Computer Services Cooperative ("Provider or NOACSC") and Elida Local School District ("Customer").

WHEREAS, Provider is an Information Technology Center organized by the State of Ohio to provide communications and other technology services, and;

WHEREAS, the Customer is a School District or School certified for instruction by the State of Ohio, and;

WHEREAS, the Provider desires to provide to Customer and Customer desires to secure from Provider the services detailed in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the Parties hereto, intending to be legally bound, agrees as follows:

I. DEFINITIONS:

As used in this Agreement the following terms shall be defined as follows:

"Agreement" shall also include Exhibits A and B and any written amendments and modifications.

"Customer" shall mean a public or private school or school district or other educational entity that has agreed to the terms and conditions of this Agreement.

"Provider" shall mean the NOACSC Information Technology Center.

"Services" shall mean all of the duties and ministrations affirmatively checked in Article III Performance of this Agreement.

"User" shall mean a school or person authorized by a school to make use of the data services or equipment secured by Customer from Provider by this Agreement.

II. TERM AND RENEWAL

The Initial Service Term of this Agreement shall be for a five-year period commencing on July 1, 2021 through June 30, 2026. The Initial Term may be voluntarily extended for one additional five-year term, subject to mutual written agreement of the Parties and amendment to this Agreement.

4277 EAST ROAD, LIMA, OHIO 45807
PHONE: (419) 228-7417 • FAX: (419) 222-5635

III. PERFORMANCE

Provider shall furnish Customer unbundled Internet Access services as further described in attached Exhibit A.

IV. CHARGES AND PAYMENT

Customer agrees to be solely responsible to Provider for all charges billed by Provider throughout the Initial Service term and any voluntary extensions for Services provided to Customer under this Agreement pursuant to the costs set forth on Schedule 1, attached hereto and incorporated herein by reference. This Agreement is not contingent on E-rate funding approval, funding, or reimbursement. Unless otherwise indicated by Customer that it is seeking the BEAR Reimbursement invoicing method by USAC through the filing of a FCC Form 472, Service Charges will be billed to Customer annually and to USAC quarterly or semi-annually through the filing of a FCC Form 474.

Payment of all invoices sent shall be due within thirty (30) days of the send out date on the Customer's receipt invoice. Late payments shall be subject to a service charge of one and one half percent (1 1/2%) of any and all unpaid balance per month unless expressly waived by the Provider in writing. Provider may at its sole discretion terminate or suspend the Services to any Customer whose payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights the Provider may have for full payment. If the Customer is suspended, there may be a reconnection fee to cover the administrative cost of reconnection. The reconnection charge shall be in addition to amounts due for unpaid balances and/or the above described Service Charges.

V. WARRANTIES AND LIMITATIONS ON LIABILITY AND INDEMNIFICATION

- A. Providers shall be liable to Customer for failure to provide Services, but only if such failure(s) is due to the negligence of Provider and not excused by either of the following: 1) Provider shall not be liable for any damages incurred as a result of the errors, omissions or negligence of Customer, its personnel, employees, agents or users. 2) Provider shall not be liable for failure to perform if such failure is caused by acts of God, winds, fires, landslide, floods, droughts, famines, acts of public enemies, insurrection, military action, sabotage, riots, or civil disturbances, failure of a utility or utility type service which is essential to the Provider's Service or other event(s) not reasonably within the control of the Provider.
- B. Customer may utilize the Services provided for educational and educational administrative related activities only. Where the Services provided include access to the internet networks, Provider does not warrant that the functions of the internet network will meet any specific Customer or user requirements, or that Services provided will be error free or uninterrupted; nor shall Provider be liable for any actual damages or any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation) sustained in connection with the use, operation, or inability to use the Provider Services by Customer or its users. Further, Customer understands and agrees that Provider will exercise no control over the information that Customer and users may transmit and access as a result of the

provision of Services by Provider and that, therefore, Customer will make no claim against Provider for the internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Unless special arrangements are made and appended to this Agreement, Provider will not routinely monitor Customer's activities or pupil access to any of the interconnected systems. Any filters or screening devices are limited to those in existence at the date of this Agreement or for which Provider subsequently installs. Provider is not under any duty to install or modify filters or screening programs. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems. Some material contained in the interconnected systems may be inappropriate for school aged pupils.

- C. Customer, directly or through its agents, permitting pupil access to the interconnected computer system(s) of the Internet through Provider assumes full responsibility for any and all access to and usage of information contained on the interconnected computer system(s) of the Internet.
- D. CUSTOMER AGREES TO INDEMNIFY AND HOLD PROVIDER, ITS GOVERNING BOARD MEMBERS, OFFICERS, MEMBERS, EMPLOYEES AND/OR AGENTS HARMLESS FROM ANY CLAIMS, SUITS, LIABILITY, LOSS, EXPENSES AND/OR DAMAGES, INCLUDING ALLEGED COPYRIGHT AND OTHER INTELLECTUAL PROPERTY CLAIMS, SUSTAINED BY ANY PERSON BY REASON OF ANY ACT OF CUSTOMER OR ITS USERS IN THEIR ACTIVITIES INVOLVING USE OF PROVIDER'S NETWORK.
- E. Provider reserves the right to discontinue Customer's access to the Provider's Service and/or seek other legal or equitable relief for use of the Services that Provider deems to be in violation of the rules and regulations of the State Board of Education; or in violation of this Agreement; or violate state and federal law; or are uncivil. For purposes of this Agreement, uncivil conduct includes but is not limited to: 1) transmitting offensive or harassing statements; 2) developing and/or transmitting offensive or unlawful graphics; 3) transmitting sexual or ethnic slurs explicitly or as part of a joke; 4) soliciting or encouraging others to engage in sexual, offensive or unlawful acts; or 5) permitting or encouraging unauthorized access to the Providers network and public networks including access to the Internet.
- F. Customer understands and agrees that Provider shall have no responsibility for Customer's or its users' accessing or transmitting offensive or unlawful information, interference or unlawful access to others' information or networks, or other offensive or unlawful activity in which Provider's Service is used.
- G. Although Provider does not have a duty to monitor Customer or its Users' transmissions, it shall not be prohibited from monitoring.

VI. PROPERTY

- A. All written procedures and similar items utilized or developed in connection with this Agreement, residing with Providers, are not to be considered the property of Customer.

VII. CONFIDENTIALITY OF INFORMATION

- A. Provider shall exercise ordinary care in preserving and protecting the confidentiality of information and materials furnished by Customer.
- B. Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.
- C. Except as required by law, Customer agrees not to disclose any information or documentation obtained from Provider.

VIII. NOTICES

- A. All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as the party may designate by notice to the other party hereto):

1) If to Provider:

Name: Northwest Ohio Area Computer Services Cooperative
Address: 4277 East Road
City/State/Zip: Lima, Ohio 45807
Phone: (419) 228-7417
Facsimile: (419) 222-5635
E-mail: ray@noacsc.org

2) If to Customer:

Name: Elida School District
Address: 4380 Sunnydale
City/State/Zip: Elida, Ohio 45807
Phone: 419 331 4155
Facsimile: 419 331 1654
E-mail: joel@elida.k12.oh.us

IX. GENERAL PROVISIONS

- a. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.
- b. **Waiver, Discharge, etc.** This Agreement may not be released, discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall in not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, the term of any purchase order, invoice

or like document issued in conjunction with the Service to be provided herein shall not serve to add to or modify the terms of this Agreement.

- c. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.
- d. **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.
- e. **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- f. **Entire Agreement.** This Agreement, together with the documents referred to herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.
- g. **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
- h. **Construction.** This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in this Agreement, the word "including" shall mean including without limitation. Unless the context requires otherwise, any reference to the masculine, feminine and neuter genders include one another.

- 1. **Compliance with Law.** Each party agrees to comply with all governmental laws and regulations applicable to the Services contemplated by this Agreement. Customer agrees to provide such written evidence of the approval of this Agreement as may be required by law.

- J. **Fully Understand and Freely Enter.** The undersigned hereby acknowledge that they have read and understand the foregoing. The parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.

By signing below, Signatory of Customer ("Signatory") certifies authorization to sign on behalf of Customer and certifies having read, understood and agreed to the terms of this Agreement, including the provisions of the attached exhibits which are hereby incorporated

herein by reference. Signatory certifies that all information provided by Customer in connection with this Agreement is true and accurate. If Customer is a Board of Education of a school district (a political subdivision of the State of Ohio), Signatory certifies that this Agreement has been approved by formal resolution of its Board of Education; if Customer is another educational entity, Signatory certifies that the Agreement has been approved by formal action of its Board.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

CUSTOMER:

Elida Local School District

Printed Name of Customer

Signature of Authorized Customer Representative

2/24/21
Date

Printed name of Authorized Customer Representative

Signature of Authorized Customer Representative

Printed name of Authorized Customer Representative

PROVIDER:

Northwest Ohio Area Computer Services Cooperative

Printed Name of Provider

Signature of Director

Ray Burden

Printed name of Director

EXHIBIT A INTERNET ACCESS SERVICES

This exhibit is hereby made part of the Internet Access Services Agreement (the "Agreement") entered between the Provider and, Elida Local School District ("Customer"), as these terms are defined in the Agreement. The following additional terms and conditions apply to the Agreement.

Charges will be incurred for only those Services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below. Any additional services will be billed monthly as incurred.

1. Services

The Services provided and Service Charges are set forth on Exhibit B attached hereto and incorporated herein by reference.

2. Additional Charges

Customer agrees to pay for any installation costs, if incurred, as a result of providing Services to Customer.

3. Northwest Ohio Area Computer Service's Obligations

- a) The NOACSC will provide sufficient configuration information to the Customer's personnel.
- b) The NOACSC will plan and coordinate all activities incidental to the implementation of the internet access connection.
- c) The NOACSC will assume all responsibilities for the physical Internet Access system up to and including the router included in any Internet Access connection.

4. Customer's Obligations

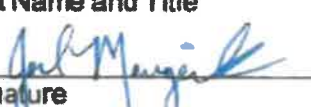
- a) Customer will assume all responsibilities for all local area networks (LAN) connected to an Internet Access connection. These responsibilities include, but are not limited to, Customer-owned communications equipment/cabling, LAN software, and LAN hardware.
- b) Customer will provide surge protection for all devices either directly or indirectly connected to the Internet Access connection.
- c) Customer will make its personnel and records available to the extent necessary to facilitate the planning and implementation process of the Internet Access connection.
- d) Customer will provide the NOACSC with appropriate and sufficient space and electrical power to facilitate the Internet Access connection installation.
- e) Customer agrees not to connect any of its local area networks to alternative Internet service providers without the approval of the NOACSC.
- f) Customer agrees not to resell any Internet Access services provided by the NOACSC.

CUSTOMER:

Elida Local School District

Signature 

Joel L. Parker, Treasurer

Signature 

Joel Mengerink, Supt

PROVIDER:

Northwest Ohio Area Computer Services Cooperative

Signature of Executive Director 

Ray Burden



Northwest Ohio Area Computer Services Cooperative

Exhibit B Summary of Costs

This Exhibit is hereby made a part of the Agreement by and between the Northwest Ohio Area Computer Services Cooperative and Elida Local School District.

Annual Service Charges are listed below.

Charges will be incurred for only those services for which a rate is shown and/or a charge is itemized. Services will be rendered for the Term of the Agreement, including any Voluntary Extensions, unless otherwise stated below.

Customer may upgrade services pursuant to the Upgrade Prices in the Chart below. Customer may add or delete sites during the Initial Term and any voluntary extensions. Any upgrade or deletion or addition of sites require a written amendment executed by both parties. If an Upgrade is requested after the close of the Form 471 Window, then Customer will be liable for the Upgrade charge in full for that funding year.

Please initial bandwidth desired below and return to erate-noacsc@noacsc.org

Annual Charge	Monthly Charge	Connection Speed	Select the Bandwidth desired by initialing below	Upgrade Pricing (For each Increase)
\$216,000	\$18,000	10000Mb (10g)		Add'l \$84000/year or \$7000/month
\$132,000	\$11,000	5000Mb (5g)		Add'l \$42000/year or \$3500/month
\$90,000	\$7,500	3000Mb (3g)		Add'l \$30000/year or \$2500/month
\$60,000	\$5,000	2000Mb (2g)		Add'l \$30000/year or \$2500/month
\$30,000	\$2,500	1000Mb (1g)	X	Add'l \$10800/year or \$900/month
\$19,200	\$1,600	500Mb		Add'l \$3600/year or \$300/month
\$15,600	\$1,300	200Mb		Add'l \$6000/year or \$500/month
\$9,600	\$800	50 or 100Mb		Add'l \$1200/year or \$100/month
\$8,400	\$700	20Mb		N/A

***Additional information needed to complete eRate form 471:

CONTRACT NUMBER:	FY21-1019
BILLING ACCOUNT NUMBER:	220018
SPIN NUMBER:	143024461
SERVICE PROVIDER NAME:	Northwest Ohio Area Computer Services Cooperative
SERVICE START DATE:	07/01/2021
CONTRACT EXPIRATION DATE:	06/30/2026