

## Terms and Conditions for Wireless Access Point Replacement Program

THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT (AS DEFINED BELOW) CREATES A CONTRACT BETWEEN YOU AND THE ELECTRONIC INFORMATION NETWORK. PLEASE READ IT CAREFULLY. TO CONFIRM YOUR UNDERSTANDING AND ACCEPTANCE OF THIS AGREEMENT, CLICK "AGREE" ON THE PRECEEDING ORDER PAGE.

**EIN Contact:** Help Desk

Telephone: (412) 622-3146

E-mail: helpdesk@einetnetwork.net

This Wireless Access Point Replacement Program Agreement (this "Agreement") is made this \_\_\_\_th day of \_\_\_\_\_ (month), 2019 (the "Effective Date") by and between The Electronic Information Network, a non-for-profit corporation organized under the laws of the Commonwealth of Pennsylvania ("EIN"), and the EIN Participating Library (the "LIBRARY") pursuant to the LIBRARY's online acceptance of this Agreement for certain network equipment described in the Order Confirmation Email (as defined below) relative hereto.

**WHEREAS**, EIN has conducted a competitive procurement on behalf of EIN library members and selected, in its reasonable judgment, the most cost-effective vendors to enable the LIBRARY to leverage EIN's aggregate purchasing power for the purchase of certain Wireless Access Point equipment and associated licenses, warranties and software (collectively, "WAP Equipment"); and

**WHEREAS**, pursuant to this Agreement, EIN offers the opportunity to the LIBRARY for installation and use of the WAP Equipment and receipt of the support services from EIN as more particularly described in this Agreement regarding the WAP Equipment; and

**WHEREAS**, the LIBRARY has authorized EIN via an E-rate Letter of Agency and EIN has agreed to apply for E-rate funding pursuant to the Universal Service Support Mechanism for Schools and Libraries, 47 C.F.R. §54.500 et seq. to defray the LIBRARY's costs associated with the WAP Equipment.

**NOW, THEREFORE**, EIN and the LIBRARY, for good and adequate consideration, receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, agree as follows:

### 1. Equipment Description.

- A. WAP Equipment is detailed on the LIBRARY's related on-line order (the "Order"), which Order is incorporated into, and made part of, this Agreement by this reference as if fully set forth herein; and includes multiple wireless access point configurations. A confirmation email will be sent with the on-line order (the "Order Confirmation Email"), which Order Confirmation Email shall include a link to this Agreement.
- B. The LIBRARY understands and agrees that (i) EIN is not a manufacturer's reseller of the WAP Equipment; (ii) EIN shall have no liability for any delivery or failure by the supplier of the WAP

Equipment (the “Supplier”) to fill the LIBRARY’s purchase order or to meet the conditions thereof; and (iii) EIN shall have no responsibility or liability with respect to any implied or express warranty of merchantability and fitness for a particular purpose. EIN, NOT BEING NEITHER THE MANUFACTURER OF THE WAP EQUIPMENT, THE SUPPLIER, NOR SUCH MANUFACTURER’S OR SUPPLIER’S AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE WAP EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, THE MERCHANTABILITY OF THE WAP EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN OR CONDITION OF THE WAP EQUIPMENT; THE CAPACITY OF THE WAP EQUIPMENT; THE WORKMANSHIP IN THE WAP EQUIPMENT; COMPLIANCE OF THE WAP EQUIPMENT WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION, OR CONTRACT PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS. THE LIBRARY SHALL ACCEPT THE WAP EQUIPMENT “AS IS” AND WITH ALL FAULTS, except as otherwise explicitly set forth in this Agreement. The LIBRARY accordingly agrees not to assert any claim whatsoever against EIN for loss of anticipatory profits or consequential damages. The LIBRARY shall look solely to the WAP Equipment’s manufacturer or the Supplier for any claims related to the WAP Equipment.

- c. The WAP Equipment includes only the Supplier’s or manufacturer’s warranty, which warranty includes maintenance on all wireless access points. EIN’s Help Desk will coordinate all hardware support for wireless access points included in this Agreement and covered under such Supplier’s or manufacturer’s warranty.

## **2. Configuration and Installation Services**

- A. The Configuration and Installation Services (“Installation Services”) are detailed on the LIBRARY’s related on-line order (the “Order”), which Order is incorporated into, and made part of, this Agreement by this reference as if fully set forth herein; and may include multiple service options. A confirmation email will be sent with the on-line order (the “Order Confirmation Email”), which Order Confirmation Email shall include a link to this Agreement.
- B. LIBRARY understands and agrees that EIN is not a reseller of the Installation Services and shall have no responsibility or liability with respect to any implied or express warranty of merchantability and fitness for a particular purpose. EIN EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY AGAINST INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **3. Fees.**

- A. The LIBRARY agrees to remit payment to EIN for WAP Equipment offered through this program as detailed in the Order Confirmation Email (incorporated into, and made part of, this Agreement by this reference as if fully set forth herein).

- B. The LIBRARY will be invoiced for the WAP Equipment when the Order is placed with the vendor. Payments are due within 30 days of the LIBRARY's receipt of EIN's invoice.
- C. The LIBRARY acknowledges and agrees that EIN will submit an E-rate application pursuant to 47 C.F.R. Section 54.500 *et seq.* (Universal Service Support Mechanism for Schools and Libraries) on behalf of the LIBRARY to obtain funding for the E-rate-eligible costs associated with the items set forth in the Order Confirmation Email.
- D. The E-rate funding received for the LIBRARY's eligible WAP Equipment costs will be disbursed to LIBRARY when EIN receives such funds from the E-rate program. In the event that E-rate funding is not successfully obtained on behalf of LIBRARY, LIBRARY shall be responsible for paying all charges itemized in the Order Confirmation Email.
- E. The LIBRARY also acknowledges and agrees that the E-rate funding applied for by EIN and that may be approved by the E-rate administrator for the WAP Equipment will be deducted from the LIBRARY's Category 2 E-rate funding budget that is available pursuant to 47 C.F.R. §54.502 (b).

#### **4. E-rate Compliance.**

The LIBRARY further agrees to abide by all E-rate terms and conditions regarding the purchase contemplated by this Agreement, as well as the installation and use of the WAP Equipment as follows:

- A. The WAP Equipment will be used by LIBRARY for at least three (3) years from its date of installation.
- B. If the LIBRARY closes before the end of three (3) years from the date of installation of the WAP Equipment, LIBRARY agrees to notify EIN in writing and cooperate with EIN to ensure that the WAP Equipment is transferred to another E-rate eligible entity. This Section 4.B. shall survive the expiration or earlier termination of this Agreement.
- C. If the LIBRARY decides to transfer the WAP Equipment to another E-rate eligible entity three (3) years after the date of installation but prior to five (5) years after the date of installation, LIBRARY agrees to promptly notify EIN in writing and cooperate with EIN to provide E-rate required documentation of the transfer including the reason therefor. This Section 4.C. shall survive the expiration or earlier termination of this Agreement.
- D. The LIBRARY agrees to ensure that the WAP Equipment will be used in a manner consistent with and authorized by E-rate regulations.

#### **5. Term and Termination.**

The "Effective Date" for this Agreement shall be the date upon which the LIBRARY places the Order for the WAP Equipment, and this Agreement will expire on January 1, 2025. EIN may remove (or cause the removal of) the WAP Equipment prior to the expiration of this Agreement in order to provide effective replacement of the WAP Equipment for all EIN Participating Libraries

to which EIN provides services similar to those contemplated by this Agreement. Additionally, EIN may (in its sole and absolute discretion) terminate this Agreement immediately if LIBRARY breaches any of its obligations under this Agreement. Notwithstanding any other provision of this Agreement, EIN may terminate all similar Wireless Access Point Replacement Program Agreements it may have with any EIN Participating Library (including this Agreement with the LIBRARY) in the event that the E-rate program is cancelled, suspended, or amended in any way that, in the reasonable judgment of EIN, frustrates, burdens, or otherwise negatively impacts EIN's ability to competitively procure the WAP Equipment.

**6. Equipment Protection and Use.**

- A. The LIBRARY shall take all reasonable steps to secure physical access to and use of the WAP Equipment.
- B. The LIBRARY agrees to comply with EIN guidelines, policies, and standards, as the same may be adopted and amended from time to time, for purposes of ensuring successful and secure use of WAP Equipment.

**7. Assignment.**

The rights granted in this Agreement may not be assigned or transferred, including, without limitation, assignments and transfers by operation of law, by the LIBRARY without the prior written approval of EIN, which approval EIN may withhold in its sole discretion. The LIBRARY shall not be permitted to delegate its responsibilities or obligations hereunder without the prior written approval of EIN, which approval EIN may withhold in its sole discretion.

**8. Governing Law, Jurisdiction.**

This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the internal laws, and not the laws of conflicts, of the Commonwealth of Pennsylvania, USA. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in Pittsburgh or Allegheny County, Pennsylvania, USA. The LIBRARY and EIN agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

**9. General Terms.**

- A. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.
- B. This Agreement, together with the Order and the Order Confirmation Email, constitutes the complete agreement between the parties hereto and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing

and authorized by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.

- C. No failure or delay on the part of either party in the exercise of any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.
- D. Neither party shall be liable for failure to perform hereunder if the failure results from a cause beyond its control, including, without limitation, fire, electrical, mechanical, or equipment breakdowns, delays by third party vendors (such as, but not limited to, shipping delays attributable to the hardware manufacturer), civil disturbances or disorders, strikes, Acts of God or acts or omissions by the other party. The foregoing sentence shall not apply to the LIBRARY's obligation to make any payment to EIN.