

eFinancePlus Participation Agreement

This eFinancePlus Participation Agreement (“Participation Agreement”) is between the Management Council of the Ohio Education Computer Network (“MCOECN”) and _____ Northwest Ohio Area Computer Services Cooperative (“ITC”) (collectively “Parties”). In consideration of the promises and mutual covenants set forth herein, and with the express intent of bestowing a third-party benefit to _____ Lima City School District (“End User”) in the form of a sublicense to use the eFinancePlus software, as that software is described in the SunGard K-12 End-User Agreement (“End User Agreement”) that will be signed between End User and SunGard Public Sector LLC (“SunGard”), the Parties agree as follows:

I. TERM.

- A.** This Participation Agreement shall become effective upon the date of execution by both Parties (“Effective Date”).
- B.** The Initial Term of this Participation Agreement shall begin on the Effective Date and shall end on the second-year anniversary of the Wave Implementation Date, as set forth in Exhibit 1.
- C.** Upon the end of the Initial Term, this Participation Agreement shall automatically renew for a successive one-year term (“Renewal Term”) unless either Party provides notice of its intention to terminate the Participation Agreement at least forty-five (45) days prior to the second-year anniversary of the Wave Implementation Date.
- D.** Upon the end of any Renewal Term, this Participation Agreement shall automatically renew for an additional one-year Renewal Term unless either Party provides notice of its intention to terminate the Participation Agreement at least forty-five (45) days prior to the end of the then current Renewal Term.
- E.** Any Renewal Term shall begin on the applicable anniversary of the Wave Implementation Date and shall end on the next anniversary of the Wave Implementation Date.

II. EXECUTION OF END USER AGREEMENT.

- A.** ITC acknowledges that, pursuant to a separate agreement, SunGard has granted MCOECN the right to sublicense software known as eFinancePlus. ITC further acknowledges that, pursuant to the same separate agreement, MCOECN cannot grant a sublicense for the use of eFinancePlus until the sublicensee fully executes the End User Agreement.
- B.** Pursuant to the acknowledgements in the preceding subparagraph, ITC agrees that MCOECN shall not have any obligations under this Participation Agreement until it is in receipt of an End User Agreement, fully executed by an authorized representative of End User.

III. PAYMENT OBLIGATIONS.

With the express intent of causing MCOECN to bestow a third-party benefit to End User in the form of the sublicense to use the eFinancePlus software, ITC agrees to make the following payments.

A. Implementation Fee.

- 1.** ITC agrees to pay MCOECN fifty percent (50%) of the Implementation Fee, as set forth in Exhibit 1, due on the Effective Date of this Agreement.

2. ITC agrees to pay MCOECN the remaining fifty percent (50%) of the Implementation Fee, as set forth in Exhibit 1, due sixty (60) days after the Wave Implementation Date.

B. Year One Use Fee.

1. ITC agrees to pay MCOECN twenty-five percent (25%) of the Year 1 Use Fee, as set forth in Exhibit 1, due on the Effective Date of this Agreement.
2. ITC agrees to pay MCOECN seventy-five percent (75%) of the Year 1 Use Fee, as set forth in Exhibit 1, due sixty (60) days after the Wave Implementation Date.

C. Subsequent Year(s) Use Fee.

1. ITC agrees to pay MCOECN the Year 2 Use Fee, as set forth in Exhibit 1, in four equal installments. The installments shall be due thirty (30) days prior to the beginning of each fiscal quarter that occurs between the first year anniversary of the Wave Implementation Date and the second year anniversary of the Wave Implementation Date.
2. At least ninety (90) days prior to the expiration of the Initial Term, MCOECN shall send written notice to ITC establishing the Year 3 Use Fee. Unless ITC terminates the Participation Agreement pursuant to paragraph I, subparagraph C herein, ITC agrees to pay MCOECN the Year 3 Use Fee in four equal installments. The installments shall be due thirty (30) days prior to the beginning of each fiscal quarter that occurs during the first Renewal Term.
3. At least ninety (90) days prior to the expiration of any Renewal Term, MCOECN shall send written notice to ITC establishing the Use Fee for the next Renewal Term. ITC agrees to pay MCOECN, in four equal installments, the Use Fee associated with each Renewal Term that automatically renews pursuant to paragraph I, subparagraph D herein. The installments shall be due thirty (30) days prior to the beginning of each fiscal quarter that occurs during the Renewal Term associated with the Use Fee.

D. Optional Miscellaneous Fees.

1. ITC agrees to pay MCOECN the Custom Programming Fee, as set forth in Exhibit 1, for any Customization that SunGard makes to the eFinancePlus software at End User's request. For purposes of this Participation Agreement, Customization means any individualized modification made by SunGard to the eFinancePlus source code, object code, or related specifications. MCOECN may unilaterally adjust the Custom Programming Fee after providing ITC forty-five (45) days' written notice.
2. The Parties acknowledge that the Implementation Fee covers travel and living expenses incurred by SunGard for eight (8) on-site visits, either to ITC or End User, during the implementation of the eFinancePlus software. ITC agrees to pay MCOECN the Travel Fee, as set forth in Exhibit 1, for any on-site visits, either to ITC or End User, beyond the eight (8) on-site visits covered in the Implementation Fee. MCOECN may unilaterally adjust the Travel Fee after providing ITC forty-five (45) days' written notice.

3. The Parties acknowledge that the Implementation Fee covers expenses incurred to provide group training regarding the eFinancePlus Software to End User, ITC, and other, similarly situated entities. These group training sessions will be scheduled pursuant to the End-User Responsibilities for Individual District Participation, attached hereto as Exhibit 2. If additional training sessions are provided to ITC or End User pursuant to either entity's request or due to either entity's failure to comply with the training requirements, ITC agrees to pay MCOECN the Training Fee, as set for in Exhibit 1, for all such additional training provided. MCOECN may unilaterally adjust the Training Fee after providing ITC forty-five (45) days' written notice.

IV. CALCULATING USE FEES.

The Parties agree that the Use Fees set forth in Exhibit 1 and any future Use Fees set by MCOECN shall be calculated based on the End User's Student Enrollment. For purposes of all such calculations in this Participation Agreement, the End User's Student Enrollment shall be derived annually on the Wave Implementation Date or the applicable annual anniversary of the Wave Implementation Date from the then-current data available on the Ohio Department of Education's Information Technology Center subsidy system.

V. WAVE IMPLEMENTATION AND PROJECT PLAN.

- A. The Parties agree End User and ITC will be part of a group of other similarly situated entities ("Wave") for purposes of implementation of the eFinancePlus Software.
- B. The Parties agree that MCOECN has the sole discretion to determine the particular Wave in which End User and ITC shall participate. To that end, MCOECN's wave assignment may unilaterally alter the Wave Implementation Date so long as MCOECN provides ITC with written notice of such change at least thirty (30) days prior to the Wave Implementation Date set forth in Exhibit 1. Any such written notice shall be considered a pre-authorized amendment to Exhibit 1 of this Participation Agreement, and the Wave Implementation Date in Exhibit 1 shall be changed to reflect that amendment.
- C. ITC agrees to comply with all applicable duties and responsibility set forth in the End-User Responsibilities for Individual District Participation, attached hereto as Exhibit 2, which, in Wave-based implementations like the one contemplated herein, requires End-User Responsibilities to be provided in whole or in part by ITC.
- D. ITC's failure to comply with all of its duties and responsibilities set forth in Exhibit 2 shall not be considered a material breach of this Participation Agreement and will not be cause for termination of this Participation Agreement. However, ITC understands and agrees that it will be subject to additional fees, payable to MCOECN, for any additional expenses incurred based on ITC's or End User's failure to comply with the duties and responsibilities set forth in Exhibit 2.

VI. GRANT OF SUBLICENSE.

Pursuant to ITC's express intent to bestow a third party benefit to End User by way of this Participation Agreement, MCOECN hereby grants a perpetual, non-exclusive, sublicense to End User for the use of the eFinancePlus Software, as set forth in Exhibit A of the End User Agreement, and its required third-party applications.

VII. HOSTING SERVICES.

Pursuant to ITC's express intent to bestow a third party benefit to End User by way of this Participation Agreement, MCOECN shall provide Hosting Services to End User for the use of the eFinancePlus Software and its required third-party applications. For purposes of this Participation Agreement, Hosting Services shall mean a combination of hardware, software, and networking elements that permit End User to access and use the hosted software from End User's local machines.

VIII. MAINTENANCE SERVICES.

Pursuant to ITC's express intent to bestow a third party benefit to End User by way of this Participation Agreement, MCOECN or its independent contractor shall use reasonable efforts to provide End User with avoidance procedures for or corrections of defects with the eFinancePlus Software. This may include providing updates to the eFinancePlus Software.

IX. INDEMNIFICATION.

ITC, to the extent permitted by law, shall defend, indemnify, and hold harmless MCOECN, its Trustees, Officers, directors, and employees from and against any and all claims, liability, losses, third party claims, damages, costs, or expenses (including attorneys' and experts' fees) arising out of or resulting from its good faith performance under this Participation Agreement. Specifically, ITC agrees to defend, indemnify, and hold harmless MCOECN, its Trustees, Officers, directors, and employees from and against any and all claims alleged by End User against MCOECN resulting from MCOECN's good faith performance under this Participation Agreement.

X. LIMITATIONS OF LIABILITY.

- A.** Except with respect to a Party's indemnification obligations under this Agreement, under no circumstances shall either Party (or any of its affiliates or agents) be liable to the other party or a third party beneficiary for any incidental, indirect, exemplary, consequential, special or punitive damages of any kind, including such damages arising from any breach of this Agreement or any termination of this Agreement, whether such liability is asserted on the basis of contract, tort (including negligence or strict liability) or otherwise and whether or not foreseeable, even if such Party has been advise or made aware of the possibility of such loss or damage.
- B.** MCOECN's total liability under this Participation Agreement shall not, under any circumstances, exceed the total sum of payments actually received by MCOECN from ITC pursuant to this Participation Agreement.

XI. TERMINATION.

- A.** Either Party may terminate this Participation Agreement pursuant to the terms set forth in paragraph I herein.
- B.** ITC may also terminate this Participation Agreement for breach if MCOECN materially fails to provide the sublicense set forth in paragraph VI herein or if MCOECN fails to implement the eFinancePlus Software pursuant to the Project Plan and does not remedy that failure within thirty (30) calendar days of ITC's written notice describing the specific alleged issue.
- C.** MCOECN may terminate this Participation Agreement for breach if ITC materially fails to perform its obligations under this Participation Agreement and does not remedy that failure

within thirty (30) calendar days of MCOECN's written notice describing the specific alleged issue.

XII. ASSIGNMENT.

- A.** MCOECN may not assign or otherwise transfer its rights and obligations under this Agreement without the express written consent of ITC.
- B.** ITC may not assign or otherwise transfer its rights and obligations under this Agreement without the express written consent of MCOECN. However, in the event that End User transfers from ITC to another information technology center in the state of Ohio, ITC shall negotiate in good faith with the other information technology center to assign and transfer its rights and obligations under this Agreement, and MCOECN shall not unreasonably deny its consent for ITC to assign or otherwise transfer its rights and obligations under this Agreement to the other information technology center in the state of Ohio.

XIII. GOVERNING LAW.

The Parties agree that this Participation Agreement shall be governed by, construed under, and interpreted in accordance with the laws of the state of Ohio. Both Parties hereby consent to the jurisdiction of the courts of Ohio or the Federal courts sitting in Ohio and wave any objection to such venue.

XIV. ENTIRE AGREEMENT.

This Participation Agreement and its Exhibits contain the entire agreement between the parties with respect to the subject herein. The End User Agreement is not an agreement between the parties, but shall be used to clarify certain terms of this Participation Agreement. This Participation Agreement supersedes all previous agreements and proposals, oral or written, and all negotiations, conversations or discussions between the parties related to this Agreement.

XV. MODIFICATION AND WAIVER.

Except as otherwise provided for herein, no modification of this Participation Agreement, and no waiver of any breach of this Participation Agreement, shall be effective unless in writing and signed by an authorized representative of the Party against whom enforcement is sought. No waiver of any breach of this Participation Agreement, and no course of dealing between the Parties, shall be construed as a waiver of any subsequent breach of this Participation Agreement.

XVI. SEVERABILITY.

A determination that any provision of this Participation Agreement is invalid or unenforceable shall not affect the other provisions herein.

XVII. HEADINGS.

Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto have caused this Participation Agreement to be executed by their duly authorized officers as of the day and year inscribed below.

**Management Council of the Ohio
Education Computer Network**

ITC

Signature

Signature

Chief Executive Officer

X-X-XX

Title

Date

Title

Date

Participation Agreement – Exhibit 1

ITC:	Northwest Ohio Area Computer Services Cooperative	Enrollment:	4,336
End User:	Lima City School District	Bundle Choice:	Base
Wave Implementation Date:	July 1, 2017	Category:	B

Payment Obligations:	Total	Deposit	Invoice 2
Implementation Fee	\$20,079.00	\$10,039.50	\$10,039.50
Year-One Use Fee:	\$34,471.20	\$8,617.80	\$25,853.40

Year-Two Use Fee:

Per Year	Per Quarter
\$8,064.96	\$2,016.24

Micellaneous Fees If Incurred:

Custom Programming Fee:	\$1,500 per day
Travel Fee:	\$1,943 per day
Training Fee:	\$1,280 per day
Professional Services Fee:	Billed at SunGard's then current rates

Participation Agreement – Exhibit 2

END-USER RESPONSIBILITIES FOR INDIVIDUAL DISTRICT PARTICIPATION**

- a. **General.** SunGard K-12 will utilize its proprietary project management methodologies in providing users with services in connection with the implementation, configuration and usage of the Software. SunGard K-12 will develop a project plan that identifies each party’s responsibilities for such services. The project plan will describe in detail the tentative schedule and the scope of services that SunGard K-12 will provide, which shall, at a minimum, include Ohio specific training plan template and tools, Ohio specific training agendas, Ohio specific training handouts and supplements, Ohio and ITC eLearning, Ohio and iTC Seminar Series, Configuration and setup plans, Conversion Toolkit, and Train the trainer education and certifications. SunGard K-12 will establish the overall project direction, provided that End-user will assign and manage the End-user’s project personnel team. The project plan will be defined by SunGard K-12 and be based on our best practices which will be followed by all Participating Entities. Any deviation from those best practices will be considered at our sole discretion.

- b. **End-user Project Position Descriptions.** To facilitate SunGard K-12’s ability to provide End-user with Services in connection with the implementation and deployment of the Software, End-user must assume certain roles and responsibilities under the project plan. Those responsibilities include designating End-user personnel to serve in but not be limited to each of the positions outlined below:

Role/Position	Sample Description of Responsibilities
Executive Steering Committee	Provide End-user staff and facilities; make decisions on policy changes; final End-user escalation point for project issues.
Project Sponsor	Approve material changes in the project plan; advise Project Managers on resolution of project issues; report project progress to Executive Steering Committee.
End-user Project Manager	Supervise End-user Project Team; fulfill End-user project deliverables; coordinate End-user staff per project plan; work with SunGard K-12 Project Manager to project manage detailed project activities.

Project Team Leads (Application)	Coordinate with the End-user Project Manager in communications and issue resolution; make recommendations to the Project Manager concerning any policy or implementation issues; configure Software based on consulting provided by SunGard K-12; Identify end users to attend training; create end-user training documentation; deliver end-user training classes; provide support to the user community in the post production timeframe.
Project Team Leads (Technical)	Provide converted data to SunGard K-12; provide data conversion specifications; provide workflow specifications and assist SunGard K-12 technical leads with setting up workflows test converted data, workflows and reports for compliance with specifications; set up security profiles.
Functional Experts (SME's)	Support Project Team Leads and Project Manager.

- c. Project Escalation Procedures. Issues will arise from time-to-time throughout the course of the project. In order for challenging issues to be addressed in a timely fashion, End-user and SunGard K-12 will utilize the following communication and escalation procedure:
- i. Communications regarding the project will be directed to SunGard K-12's Project Manager and the End-user's Project Manager in order to maintain consistent communication between the parties. Scheduled weekly calls will be maintained between the Project Coordinator and the End-user's Project Team (including the End-user's Project Manager).
 - ii. All issues or concerns will be discussed actively and openly between SunGard K-12's Project Team and the End-user's Project Team.
 - iii. If issues begin to interfere with the progression of the implementation project, the End-user and/or SunGard K-12 should escalate challenges to SunGard K-12 management as needed.

**For Wave-based implementations, these End-User Responsibilities will be provided in whole or in part by the sponsoring ITC or other eligible entity.