



educational excellence through leadership, partnership, and innovation

AGREEMENT FOR WAN, INTERNET & RELATED SERVICES

This Agreement for Wide Area Network (WAN), Internet and Related Services (hereinafter "Agreement") is made this 1st day of July, 2017, by and between the **Capital Area Intermediate Unit** (hereinafter "CAIU"), a Pennsylvania Intermediate Unit organized and operating under the Public School Code of 1949, 24 P.S. § 1-101 *et seq.*, with its principal place of business at 55 Miller Street, Enola, PA 17025, and **NORTHERN YORK COUNTY SCHOOL DISTRICT** (hereinafter "Client"), a local education agency with its principal place of business at 149 South Baltimore Street, Dillsburg, PA 17019.

1. Scope of Work.

1.1 CAIU agrees to provide WAN, Internet and Related services as follows:

Background:

- The CAIU currently provides a regional Wide Area Network (WAN) as well as Internet and Related services for school districts and other interested educational and governmental entities. The current WAN and Internet agreements are scheduled to expire June 30, 2017.
- In order to meet the increased demand of the Regional WAN and Internet bandwidth for the member districts, the CAIU issued an RFP to potential service providers and with the help of an IU-wide committee, selected a vendor. The intent of the committee was to increase the WAN connectivity from 1 Gbps to 3 Gbps and provide failover Internet, as continuity of connection becomes increasingly essential in the classroom.
- All Districts signed a Letter of Commitment to participate in the new CAIU WAN and Internet Services. The District is entering into this agreement to participate in the CAIU WAN and Internet as the next step in the process and will be part of the consortium for a five-year period and have the CAIU administer their services.

1.2 The services described in section 1.1 above include all labor, products, and/or tools the CAIU requires to provide the services, unless otherwise specifically stated as excluded or to be provided/performed by Client or a third party, and said services shall be referenced collectively throughout this Agreement as "work."

2. Responsibilities of the Parties.

- 2.1 Both parties agree to act in good faith in fulfillment of this Agreement. Neither party shall attempt to hinder or otherwise prevent the other party from fulfilling their duties as outlined herein.
 - 2.2 CAIU shall:
 - Provide, as a base service, a 3 Gbps WAN connection between the Client and the CAIU through an Ethernet fiber connection.
 - Provide the services as detailed in Exhibit A attached to this Agreement.
 - 2.3 Client shall:
 - Indicate the desired Internet bandwidth by completing a yearly Exhibit A.
3. **Cost.** The District will receive one invoice for two separate services, WAN and Internet, as follows:
- 3.1 **WAN:** The District will pay a charge for WAN not to exceed \$983 per month to participate in the CAIU WAN for the 2017-18 fiscal year. This cost is all-inclusive and includes bandwidth (E-rateable costs) and support costs (non E-rateable costs). The actual cost charged to the Client will be adjusted to account for E-rate reimbursement. The monthly charge starting with year 2 of the agreement (the 2018-19 fiscal year) will be adjusted to account for the pro-rated cost of any increases/decreases in governmental taxes.
 - 3.2 **Internet:** A form entitled "Exhibit A" shall be distributed to the Client each year so the Client can determine and select the amount of Internet bandwidth they would like to purchase for the upcoming fiscal year. The cost listed on Exhibit A will reflect the prior year E-rate percentage. Cost for the Internet is determined by bandwidth and E-rate percentage. These accounts shall be reconciled as described below.
 - 3.3 Any credits or rebates that the CAIU receives from the service provider resulting from the service delivery agreement or service level agreement (SLA) for delay in service implementation, service outage, network performance or other reasons, will be credited back to the Client in full as appropriate on the next invoice issued by the CAIU after the credit is received by the CAIU.
 - 3.4 The Client will be invoiced for the WAN and Internet services when final E-rate percentages are released, but no later than April 15th.
4. **Invoicing and Payment.** The CAIU shall invoice Client on a(n) annual basis for the costs incurred to provide the Services. All invoices are due within 45 days of the date of the invoice.

Both the Client and CAIU recognize and agree that CAIU will suffer financial hardship to its cash flow in the event payments are received late; therefore, CAIU reserves the right to impose a two percent (2%) late fee for every 30 days past the 45 days that payment is late. Additional Invoicing and Payment terms, if any, shall be addressed in Attachment 1 or subsequent Addenda as agreed to by both parties.

5. Term, Renewal, and Termination

5.1 The term of this Agreement shall commence as of the date first set forth above and shall terminate effective June 30, 2020.

5.2 As of July 1, 2020, this Agreement shall automatically renew from year to year unless either party terminates as outlined below.

Due to the timing of E-rate filing, if either party wishes to terminate service after July 1, 2020, written notice must be provided by November 30 to terminate on the next June 30th. Service will continue from the date of written notice until June 30.

Notwithstanding the foregoing, termination of this Agreement by Client prior to July 1, 2020, is not permissible, as per the terms of the agreement between the CAIU and the Service Provider, and any such termination shall be considered a material breach.

6. Notice.

6.1 All notice to, contact with, or any provision of information relevant or pertaining to this Agreement shall be directed to the CAIU as follows:

Contact Name: David L. Martin

Address: 55 Miller Street, Enola, PA 17093

Phone: 717-732-8477

Fax: 717-732-8414

Email: dmartin@caiu.org

6.2 All notice to, contact with, or any provision of information relevant or pertaining to this Agreement shall be directed to the Client as follows:

Client Contact

Name:

Address:

Phone:

Fax:

Email:

7. Mutual Release from Liability.

7.1 Except as otherwise provided in this Agreement, Client, on behalf of itself, its agents, employees, directors, officers, affiliates, consultants, and/or contractors (collectively "Client") hereby releases CAIU and its agents, employees, directors, officers, affiliates, consultants, and/or contractors "CAIU"), and CAIU hereby releases Client, from all liabilities and claims for damages and/or suits for or by reason of any injury or injuries to any person or persons or property of any kind whatsoever from any cause or causes whatsoever during the performance and execution of this Agreement.

7.2 It is specifically understood and agreed that neither party shall be held liable or otherwise responsible for the acts and/or omissions, including negligence or willful misconduct, of the other party or any of the other party's agents, employees, directors, officers, affiliates, consultants, and/or contractors.

8. Mutual Indemnification.

8.1 Each party agrees to protect, indemnify, and hold harmless the other party and their agents, employees, directors, officers, affiliates, consultants, and/or contractors from and against any and all damages, injuries (including bodily injury, dismemberment, and/or death), claims, liabilities, and costs (including reasonable attorneys' fees), which arise or may be suffered or incurred in whole or in part as a result of the acts or omissions of the indemnifying party, its agents, employees, directors, officers, affiliates, consultants, and/or contractors, and whether arising under this Agreement.

8.2 Said indemnity is in addition to any other rights that the indemnified party may have against the indemnifying party and will survive the termination of this Agreement

9. Insurance Coverage.

9.1 The CAIU affirms it carries Workers' Compensation, General Liability, and Errors and Omissions insurance at amounts recognized as customary in the ordinary scope of business. Upon written request, the CAIU shall provide Client with a copy of its certificate of insurance, but under no circumstances, shall CAIU name Client as an additional insured. Under no circumstances shall CAIU be responsible for any liability incurred by Client as a result of not carrying said insurance.

9.2 The Client shall carry appropriate insurance coverage, including, but not limited to, Workers' Compensation, General Liability, Errors and Omissions, and the like, throughout the entire term this Agreement.

10. **Limitation of Relationships.** Nothing contained in this Agreement shall be construed to create the relationship of employer and employee between CAIU and Client. CAIU and Client assert that they are not in a joint venture with each other, nor intend to operate as a joint venture.

11. Work Product.

11.1 All work products, whether tangible or intangible, and regardless of medium, that are created, produced, engineered or otherwise devised by CAIU during the course of this Agreement are solely owned by the CAIU and may not be used, sold, or otherwise distributed by the Client in any manner which exceeds the scope of the relationship between the Client and the CAIU as described herein or as described in a contract made hereunder.

11.2 Any unauthorized use or infringement of work product by Client shall be considered a material breach.

11.3 Unless otherwise expressly stated herein, no license for use, whether expresses or implied, is given to Client by this Agreement.

12. Confidentiality.

12.1 Under this Agreement, the parties may have access (verbally or in writing) to information that is confidential in nature. Such information may include, but not be limited to student information and data; work product, facts or statistics, ideas, materials, business plans, technical information, methodologies, or any other shared data.

12.2 CAIU and Client agree not to use or disclose such confidential information for any purpose other than in fulfillment of this Agreement, and/or as required by activities described herein., and then, only to the designated employees and/or consultants of CAIU and Client.

Additionally, both parties acknowledge and agree that they are bound by the Family Education Rights and Privacy Act of 1974 (FERPA) and the business associate and subcontractor privacy rules of the Health Insurance Portability and Accountability Act of 1996 as amended (HIPAA), and all other application State and federal laws.

12.3 Notwithstanding the above, CAIU is a public governmental entity subject to public disclosure and right-to-know laws, and this paragraph 12 and its subparagraphs shall not apply with respect to any information that is required to be disclosed under or by any law or which subsequently enters the public domain through no fault of the receiving party.

12.4 The provisions of this paragraph 12 and its subparagraphs shall survive termination or expiration of the Agreement.

13. Warranties.

13.1 **Unless otherwise expressly stated in Paragraph 23 herein or in an Addendum hereto, CAIU MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IN REGARDS TO THE SERVICE(S) AND/OR PRODUCT(S) IT PROVIDES TO CLIENT, AND**

13.2 **CLIENT ACCEPTS THE SERVICE(S) AND/OR PRODUCT(S) PROVIDED BY CAIU "AS IS," WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.** The CAIU assumes no liability for losses, damages, or legal judgments resulting from Client's use of any product or service provided to Client under this Agreement.

13.3 CAIU does not warrant that any product provided by it will perform without error or that it will run without immaterial interruption. Moreover, CAIU provides no warranty regarding, and shall therefore have no responsibility for any claim arising from a modification made by Client unless CAIU approves such modification in writing; and/or use of the product in combination with or on products other than as specified in writing by the CAIU.

13.4 CAIU shall (a) "pass through" to Client any warranty right it receives from any third party provider of system components not authored or manufactured by CAIU ("Third Party Components"); and (b) reasonably cooperate with Client in enforcing such rights. CAIU provides no warranties, express or implied, with regard to Third Party Components, and CAIU shall not be liable for any failure of any Third Party Component to function as

expected or intended.

14. **Audit.** All service and billing records of the Client are subject to audit at any time by auditors performing annual fiscal or program audits, as required by the federal government, and/or the Pennsylvania Department of Education, and/or the CAIU as required by a third party.

15. **Severance; Full Force and Effect.**

15.1 If any provision of this Agreement is found to be invalid, illegal, or unenforceable, that provision shall be null and void, and all other provisions shall remain in full force and effect.

15.2 In the event a term of this Agreement is not strictly enforced, such non-enforcement shall not be interpreted as acquiescence nor shall it be seen a precedent setting and enforcement of the term at any time in the future shall be binding and not subject to dispute.

16. **Governing Law and Venue.**

16.1 Any dispute arising out of or from this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

16.2 Client agrees to be subject to the jurisdiction of the courts for the County of Cumberland, Pennsylvania, and further agrees that Cumberland County shall be the venue for any and all legal actions brought under this Agreement.

17. **Non-Discrimination.** The Client agrees to treat all persons in a non-discriminatory manner, in keeping with applicable state and federal laws, including, without limitation, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, and the Pennsylvania Human Relations Act. No person shall be discriminated against by the Provider because of race, color, religious creed, ancestry, national origin, sex, age, sexual orientation, or handicap.

18. **Compliance with Law and Policy.** During the term of this Agreement, both parties hereto shall comply with all applicable federal, state, and local laws and regulations, including the Pennsylvania School Code and applicable Board Policy of either party.

19. **Clearances.** As a Pennsylvania education agency, the CAIU complies with the Pennsylvania School Code, Pennsylvania Department of Education (PDE), and any other rules and/or regulations regarding the hiring and administration of personnel. All CAIU staff members and independent

consultants who may be assigned to work with Client have all met applicable standards regarding hiring and the completion of background checks and clearances, including Act 34, Act 151, and Act 114 background checks and TB/physical exams as required by the PA School Code. Upon written request by the Client, the CAIU will provide a copy of all clearances *to its employee(s) and consultants* who are providing services to the Client and the employee or consultant will present them to the Client; the CAIU shall not forward clearances directly to the Client.

20. Modification.

20.1 This Agreement constitutes the entire contract between the parties regarding the work and supersedes any previous oral and/or written representations, negotiations, and/or understandings between the parties.

20.2 Any changes, additions, or deletions to the Scope of Work shall be considered a modification as described herein. Any such modification must be subsequently labeled *Addendum 1, Addendum, 2, en sic*. To be valid, any modifications/amendments to this Agreement shall be made in writing, signed by an authorized representative of both parties, and dated.

20.3 Any and all Addenda shall be considered incorporated as a valid term of this Agreement.

20.4 It is specifically understood and agreed that every Addendum must be separately negotiated and a revised price agreed upon, in writing, by both parties.

21. Damages. In addition to termination and any other rights provided hereunder, CAIU has the right to seek any remedy available to it in equity or in law, whether monetary or injunctive relief caused indirectly or directly to CAIU by Client during the performance of this contract.

22. Additional Terms and Conditions.

Not applicable

By signing below, each person represents he/she has the authority to execute this Agreement on behalf of his/her respective party and freely enters into this Agreement with the intent to be bound hereby as of the date first set forth above.

CAIU:
CAPITAL AREA INTERMEDIATE UNIT

Client:
**NORTHERN YORK COUNTY SCHOOL
DISTRICT**

Authorized Signature

David L. Martin

Printed Name

Director of Technology

Title

Authorized Signature

Printed Name

Title