

AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____ 2015, by and between the **WARREN COUNTY SCHOOL DISTRICT**, with offices at 6820 Market Street, Russell, PA 16345, hereinafter referred to as "SCHOOL DISTRICT" or "DISTRICT." AND

ZITO MEDIA COMMUNICATIONS, LLC, having offices at 106 Steerbrook Road, Coudersport, PA 16915, hereinafter collectively referred to as "ZITO."

WHEREAS, the School District desires to obtain SIP trunk services for Warren Area High School and the Warren County Career Center; and

WHEREAS, the Parties have agreed that ZITO shall provide the School District with SIP trunk services for Warren Area High School and the Warren County Career Center pursuant to the terms and conditions as stated herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. **Provision of SIP Trunk Service:** ZITO shall provide SIP trunk service to the Warren Area High School and the Warren County Career Center through the School Districts existing PBX, assuming the District's PBX is SIP trunk capable. ZITO shall provide all labor, equipment and materials necessary for the provision of said service if the PBX is SIP trunk capable.

2. **Ownership of Equipment:** The equipment installed by ZITO shall be and remain the exclusive property of ZITO during the term of this Agreement. ZITO shall be afforded the opportunity to attach to School District facilities the various items of equipment necessary to the system contemplated hereunder. Prior to attaching said equipment, ZITO agrees to give advance notice to the School District so that the means and location of attachment can be arrived at by mutual agreement, which consent will not be unreasonably withheld by the School District. In making said connections and attachments, ZITO agrees not to commit waste upon the School District property and within thirty (30) days of the termination of this Agreement for any reason, ZITO agrees to remove all of its equipment and to make any repairs or replacements to School District facilities in order to return said facilities to the condition which existed prior to the connection or attachment by ZITO.

3. **Provision of Electrical Service:** If necessary, the District will provide the appropriate electrical service sufficient to run the equipment.

4. **E-Rate Compliance:** The Parties acknowledge that one of the components of this Agreement critical to the School District is that the provision of SIP Trunk services contemplated hereunder be in compliance with the rules and regulations regarding e-rate reimbursement from the Universal Service Fund to the School District for telecom and internet services. ZITO represents that it is familiar with said rules and regulations and that, in addition to its other obligations hereunder, ZITO (i) will comply with applicable rules, laws and regulations; (ii) will specifically comply with the laws, rules and regulations concerning e-rate reimbursement; (iii) will prepare and file the necessary reports to ensure that the School District can obtain said reimbursement from the Universal Service Fund; and (iv) will provide the District with copies of all documentation relative E-Rate compliance. ZITO and the School District agree to utilize the E-Rate reimbursement

procedure under which ZITO (i) submits at the end of the funding year a Form 474 for the twelve months of services ZITO has provided, (ii) receives the reimbursement from the Universal Service Fund and (iii) sends such reimbursement amount to the School District so long as this Agreement remains in effect. In the event that ZITO fails to adhere to the terms of this provision in any regard, the District shall provide ZITO with written notice of any necessary action required of ZITO. In the event that ZITO fails to complete the necessary action within 30 days of the receipt of said notice, the District, at its discretion, shall have the right to immediately terminate this Agreement. The School District represents that it is familiar with said rules and regulations and that, in addition to its other obligations hereunder, the School District (i) will comply with applicable rules, laws and regulations; (ii) will specifically comply with the laws, rules and regulations concerning e-rate reimbursement; (iii) will prepare and file the necessary reports to ensure that ZITO can obtain said reimbursement from the Universal Service Fund, including without limitation, Forms 470, 471 and 486; and (iv) will provide ZITO with copies of all documentation relative to E-Rate compliance. In the event that the School District fails to adhere to the terms of this provision in any regard, ZITO shall provide the School District with written notice of any necessary action required of the School District. In the event that the School District fails to complete the necessary action within 30 days of the receipt of said notice, ZITO, at its discretion, shall have the right to immediately terminate this Agreement.

5. **Contract Term:** The primary term of this Agreement shall be for a period of one (1) year commencing July 1, 2015, and concluding June 30, 2016. In addition, the School District shall have the opportunity, at its sole election, to renew this Agreement for an additional one-year term upon the same terms and conditions set forth herein. In the event the School District elects to renew this Agreement for an additional one-year term, the District shall provide written notice to ZITO on or before May 31, 2016, in which case the term of this Agreement shall be automatically extended to June 30, 2017.

The other provisions hereof notwithstanding, ZITO shall, after the execution of this Agreement, have such rights of entry as shall be reasonably necessary to go upon the property of School District in order to install the various elements of the system contemplated hereby so that said system is fully operational on or before July 1, 2015.

6. **Contract Price:** For the delivery of the items and services described herein, the School District shall pay to ZITO the amounts indicated in Exhibits A and B of this Agreement. ZITO shall submit a monthly invoice to the School District sixty (60) days prior to the month for which said items and services are provided. Provided said invoice is received by the School District at least seven (7) days prior to the School District's regular Board of School Directors' meeting, said invoice shall be paid within twenty (20) days of its receipt unless ZITO is not in compliance with the terms of this Agreement. Amounts not timely paid by the School District shall be considered past due and School District agrees to pay a late payment charge equal to one percent (1%) per month when a payment is thirty (30) days or more late.

7. **Sip Trunk Additions or Subtractions:** The parties agree and acknowledge that the current number of SIP Trunks is subject to change after one (1) year. Both Parties agree and acknowledge that should there be a need to change the number of SIP Trunks, The District may add as many additional trunks as deemed necessary or subtract up to five (5) trunks from the original twelve (12) SIP Trunks. Additional SIP Trunks will be thirty-two (32) dollars per each additional trunk. Likewise, each SIP Trunk removed, limited to five (5) allowable removals, will reduce the contract price by thirty-two (32) dollars per each trunk removed.

8. **Site Alteration:** The Parties agree and acknowledge that the current 2 sites (Warren Area High School and the Warren County Career Center) to be provided services pursuant to the

terms of this Agreement are subject to change during the anticipated term of the Agreement, including any extensions. Both Parties agree and acknowledge that should there be a reduction or an increase in the number of sites available within the Warren County School District for provision of services, the Parties will in good faith renegotiate a new contract price. Both Parties hereto agree that the per site contract prices for Warren Area High School and the Warren County Career Center, as provided in Exhibits A and B of this Agreement, shall serve as a guide for said negotiations. The amendment reflecting said renegotiated contract price must comply with the requirements of Section 26 of this Agreement.

9. Maintenance and Service Assurance: So long as this Agreement remains in effect, all costs necessary to the proper operation and supply of the items and services contemplated herein, including but not necessarily limited to the repair and replacement of malfunctioning equipment, shall be the sole and exclusive obligation of ZITO. The Parties acknowledge that the proper functioning of the system is a critical component to the proper operation of the School District. The system contemplated herein will be used directly by students in the learning process, by teachers in teaching and teaching preparation, and by District Administrators and other staff in the keeping of records and the accessing of necessary information and in communications inherently necessary to the operation of the School District under existing circumstances. Accordingly, ZITO agrees that it will schedule normal maintenance functions (provided that at least 24 hours advance notice by writing is provided by ZITO to the School District) during off-peak hours. "Off-peak hours" are defined as between 11:00 p.m., Fridays and 6:00a.m., the succeeding Mondays and between 11:00 p.m., and 6:00a.m., on the remaining days of the week. Additionally, ZITO agrees to retain and make available maintenance personnel available to the School District on a 24 hour per day, 7 day a week basis whose responsibility will be to promptly repair system malfunctions reported by the School District personnel or by ZITO's automatic notification equipment. In addition, ZITO agrees to maintain in its inventory a sufficient quantity of spare parts for those elements of the system most likely to need repair or replacement so that most repairs can be made in no more than 24 hours after the development of the malfunction. The School District shall provide to ZITO a phone number or specified single point of contact for all School District facilities to provide access to a representative of ZITO.

The Parties acknowledge and agree that a Force Majeure Event (as hereinafter defined in Section 14 of this Agreement) shall supersede the preceding provisions of this paragraph; however, ZITO agrees to utilize its best efforts to promptly repair any damage occasioned by a force majeure event.

The Parties further agree to be bound by the terms and conditions contained in Exhibit C, which is attached hereto and incorporated as a part of this Agreement. In the event of a conflict between the terms and conditions of this provision and the terms and conditions of Exhibit C, the Parties agree that the terms and conditions of this provision shall govern and be controlling.

10. System Failures: System failures ("System Failures") shall be analyzed on a monthly basis. Except as hereinafter defined, a System Failure as used herein shall not include any failure due to a Force Majeure Event (as defined in Section 14 of this Agreement). Without intending to limit the generality of the foregoing, the Parties agree that System Failures shall include diminished service below the rates specified herein in addition to the loss of service altogether. A System Failure shall not include time during off-peak hours as described in the preceding paragraph.

As used elsewhere in this Agreement, conditions which result in a System Failure lasting (cumulatively) more than 15 hours but less than 35 hours within any given month shall be regarded as a Class 1 failure. As used elsewhere in this Agreement, conditions which result in a System Failure lasting (cumulatively) more than 35 hours but less than 60 hours within any given month shall be regarded as a Class 2 failure. As used elsewhere in this Agreement, conditions which result in a System Failure lasting (cumulatively) more than 60 hours within any given month shall be regarded as a Class 3 failure.

11. Remedies for System Failure: When three or more Class 1 or Class 2 failures (in any combination) shall occur during any 12 month time span during the term of this Agreement, the School District may, at its election, terminate this Agreement under the termination provisions hereinafter set forth. When any Class 3 failure shall occur during the term of this Agreement, the School District may, at its election, terminate this Agreement under the termination provisions hereinafter set forth. In addition to and not in lieu of the termination remedy, the contract price called for hereunder shall be reduced by 50% during each month in which there shall be a Class 1 failure and shall be done away with entirely during any month in which there shall be a Class 2 failure or Class 3 failure.

In the event the School District shall elect to terminate this Agreement per the terms of the preceding paragraph or for any other reason provided for in this Agreement, the School District shall give 30 days prior written notice to ZITO. Upon termination and at the election of the School District, ZITO shall, nevertheless, be obligated to provide up to 4 months additional service to the School District under the same terms and conditions as set forth herein in order that the School District have time to secure an alternate provider for the services contemplated hereunder.

In addition to the other remedies provided for hereunder, in the event there shall be a Class 3 failure during the term hereof, ZITO shall pay liquidated damages to the School District in the amount of \$1,000.00 for each month in which there shall exist such a Class 3 failure. The Parties agree that the type of harm that will befall the School District in the event of a Class 3 failure is impossible to quantify and that, therefore, the imposition of liquidated damages in the amount of \$1,000.00 per month is a fitting remedy.

The Parties agree that in the event of a conflict between the terms and conditions of this provision and the terms and conditions of Exhibit C, the terms and conditions of this provision shall govern and control.

12. Termination by ZITO: ZITO may terminate this Agreement for cause, which shall mean the School District's failure to pay any invoice within thirty (30) days after the due date of that invoice. The previous sentence notwithstanding, ZITO shall not have the ability to terminate this Agreement until it has provided written notice of the breach to the School District and the School District has failed to cure the breach within thirty (30) days after delivery of such notice or the School District has failed to assert why it believes no such cause exists.

13. Cover and Bond: In the event the School District shall terminate the Agreement as hereinabove provided, the Parties acknowledge that it will be necessary for the School District to obtain a replacement provider for the services and items contemplated hereunder. The Parties agree that ZITO shall be liable in damages to the School District for any industry reasonable difference in price between which the alternative provider will provide said items and services and the price

called for under this Agreement. This provision is not intended to in any way limit any other damages that the District may be entitled to either at law or in equity.

So long as this Agreement remains in effect and for 1 year thereafter, ZITO shall also maintain, at its sole cost and expense, a performance, labor, and material bond in the amount of 100% of the total yearly contract price and a maintenance bond in the amount of 10% of the total yearly contract price. It is understood and agreed that the bond required by this provision shall cover claims asserted against Zito Media Communications, LLC. Proper evidence of the preceding bond is attached hereto as Exhibit D and, on or before June 1st of each year that this Agreement remains in effect, ZITO shall provide the District with proof that the preceding bond shall remain in effect for the upcoming July 1 through June 30 contract year.

14. Force Majeure: Neither Party shall be liable for its failure to perform hereunder due to a Force Majeure Event. Force Majeure Event shall mean any contingency beyond its reasonable control, including, without limitation, acts of God and governments, fires, floods, wars, sabotage, accidents, loss or electricity or labor disputes or shortages. However, equipment failure or any failure due to any problem with any component or items supplied by ZITO hereunder (including the breakage or malfunction thereof) as well as any failure due to improper or insufficient design of the system to meet the needs and conditions then existing shall not be regarded as a Force Majeure Event. Additionally, the Parties agree that this provision shall not apply relative to ZITO's obligation to adhere to the established service dates, as set forth in Exhibits A and B of this Agreement.

15. Relationship of Parties: ZITO represents and acknowledges that in the performance of the work contemplated hereunder, it is an independent contractor and not an agent, servant or an employee of the School District. The Parties understand that ZITO acting under the scope of this Agreement, has no authority to assume or create any obligation whatsoever, express or implied, on behalf of or in the name of the School District or to bind the School District in any manner whatsoever. Nothing contained in this Agreement shall be construed to create a joint relationship or partnership between the School District and ZITO to authorize either Party to act as a general agent or undertake contracts for the other Party. The Parties agree that they conduct completely separate businesses and are separate entities.

16. Use of Subcontractors: ZITO shall have the right to subcontract any portion of the work or to use such other subcontractors as it may deem necessary, provided that the utilization of such subcontractors or consultants shall not relieve ZITO of any of its obligations under this Agreement. ZITO hereby acknowledges that any subcontractors or such other consultants ZITO deems necessary shall be retained at the sole cost and expense of ZITO. The School District shall not incur any additional financial obligations other than those specifically set forth in this Agreement. ZITO is responsible for the work performed and produced by any and all subcontractors and consultants, if any, used by ZITO in the completion of the work required in this Agreement. Any and all work performed and produced by such subcontractors and consultants must conform with the requirements of this Agreement, and must be completed in accordance with the standards stated herein. When utilizing subcontractors, ZITO agrees to adhere to the requirements of Act 72 (43 P.S. § 933.1, et. seq.)

17. Insurance: ZITO shall obtain, at its sole expense, insurance policies in the types and amounts indicated below prior to the commencement of work under the Agreement and ensure that said policies remain in effect throughout the duration of the Agreement and for a

period of 1 year thereafter. The amounts of such insurance, without deductible, shall be as follows:

(1) General Liability Insurance protecting both Zito Media Communications, LLC against liability due to injury or death to persons and damage to property shall be not less than \$1,000,000.00 per occurrence.

(2) Workers' Compensation-In accordance with statutory Pennsylvania limits for Zito Media Communications, LLC.

Said insurance shall protect Zito Media Communications, LLC and the District from and against any and all claims, demands, action, judgments, costs, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury, death, or damage as a result of ZITO's operations and performance in accordance with the Agreement. Each policy of insurance herein mentioned shall carry with it an endorsement to the effect that the insurance carrier will provide to the District, by certified mail, written notification of any cancellation/termination, modifications, or alterations to the policy at least thirty days prior to the effective date of any such modification, alteration or cancellation/termination.

All insurance policies required of ZITO under the terms of the Agreement shall contain provisions that underwriters will have no rights of recovery or subrogation against the District, its agents, directors, officers, employees, or Board Members, it being the intention of the Parties that the insurance so effected shall protect all such Parties and that said insurance shall be primarily liable for any and all losses covered by the described insurance. Prior to beginning the work contemplated hereunder, and thereafter at the request of the School District, ZITO shall furnish to the School District, Certificates from an Insurance Carrier authorized to do business in Pennsylvania indicating: (1) the existence of the insurance required under the preceding paragraphs of this Agreement; (2) that Zito Media Communications, LLC and the District are covered by all the policies; (3) the amount of coverage for such insurance; and (4) the list of exclusions for all insurance coverage. Such exclusions must be acceptable to and approved by the School District. Copies of said Certificates are attached hereto as Exhibit E.

18. Standard of Care: ZITO agrees that it will exercise the care and diligence expected and required by law of a comparably situated professional in the application of its professional knowledge to accomplish the purpose for which it is retained. ZITO represents that it has the experience, skill and knowledge to perform its responsibilities under the Agreement so as to attain the required standard of care and diligence. The services provided by ZITO shall be rendered at such times and in such manner as ZITO shall determine, provided that such services shall always be completed in a competent, workmanlike and timely manner. It is expressly agreed that any review or approval by the School District of the plans and/or designs shall not diminish ZITO's obligation to provide designs and plans that are adequate and sufficient to accomplish the purposes of the work required in this Agreement.

19. Compliance with Law: In the performance of the work hereunder, ZITO agrees to abide by all applicable state and federal laws, regulations and other requirements applicable to the work contemplated hereunder.

20. ZITO Certifications: ZITO certifies that it is not the subject of the FCC's Red Light Rule and that it does not have any obligations outstanding with the FCC, USAC, or any other federal agency.

21. Indemnification: District shall defend, indemnify, hold free and save harmless ZITO and ZITO's directors, officers, employees, agents, and representatives, from any losses, actions, demands, suits, judgments and claims of any kind (and regardless of when any claims are asserted), including any expenses, reasonable attorneys' fees or costs incident thereto, filed or presented by any person or entity in connection with, arising from or in relation to District's or District's directors, officers, employees, agents, or representatives (i) violation of any law, regulation, or ordinance; (ii) violation of any term of this Agreement; or (iii) actions or performance in accordance with the terms of this Agreement. District's duties and obligations in accordance with this provision shall survive the termination of this Agreement.

ZITO shall defend, indemnify, hold free and save harmless District and District's directors, officers, employees, agents, and representatives, from any losses, actions, demands, suits, judgments and claims of any kind (and regardless of when any claims are asserted), including any expenses, reasonable attorneys' fees or costs incident thereto, filed or presented by any person or entity in connection with, arising from or in relation to ZITO's or ZITO's directors, officers, employees, agents, representatives, or subcontractors (including the subcontractors' employees or agents) (i) violation of any law, regulation, or ordinance; (ii) violation of any term of this Agreement; or (iii) actions, performance, or work in accordance with the terms of this Agreement. ZITO's duties and obligations in accordance with this provision shall survive the termination of this Agreement.

22. Confidentiality: ZITO and the District agree that neither Party shall disclose to others any confidential information gained by virtue of this Agreement, which shall include information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Party.

23. Status Reports: ZITO acknowledges and agrees that the School District has the right throughout the duration of this Agreement to view, discuss, and receive satisfactory explanations upon request as to the status of the work hereunder, or any work produced in accordance with the terms of this Agreement.

24. Non-Discrimination: ZITO agrees that neither ZITO nor any subcontractor, where applicable, shall discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, religion, ancestry, marital status, sexual orientation, or sex. ZITO and any subcontractor, where applicable, shall ensure that all qualified applicants are recruited and employed, and that all employees are treated equally in all aspects of their employment, regardless of age, race, creed, color, national origin, religion, ancestry, marital status, sexual orientation or sex.

25. Governing Law: In the event of any controversy or dispute arising between the Parties relative to this Agreement, both Parties agree to use best efforts to amicably resolve the matter without litigation. In the event that any matter cannot be amicably resolved, the Parties agree that all actions, proceedings, or disputes arising between the Parties shall be governed by the laws of Pennsylvania and shall be filed, tried and litigated exclusively in the State Courts, Federal courts, and Magisterial Districts having jurisdiction over Warren County, Pennsylvania. The aforementioned choice of venue is mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties in any jurisdiction other than that specified in this paragraph. Each Party hereby waives any right it may have to assert the doctrine of forum non convenience or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph. Each Party stipulates that the State Courts, Federal Courts, and Magisterial Districts having jurisdiction over Warren County, Pennsylvania shall have exclusive

in personam jurisdiction and venue over the Parties for the purpose of litigating any dispute, controversy, or proceeding between the Parties arising out of, or resulting from, the terms and conditions of this Agreement or either Party's performance in accordance with the terms and conditions of this Agreement.

26. Entire Agreement and Modification: This Agreement constitutes the entire agreement of the Parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representative of ZITO and the President of the District's Board of School Directors.

27. Waiver: The failure of either Party to exercise any right or remedy provided for herein or to insist upon strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any right, remedy, or entitlement to strict performance provided for herein and shall in no way effect the right of such Party enforce such right, remedy, or entitlement to strict performance at a later time. Additionally, the waiver of the breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature.

28. Notice: All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been given when delivered by Federal Express, signature required and sent for ZITO, to ZITO Media Communications, LLC 106 Steerbrook Road, Coudersport, PA 16915 Attention Colin Higgin and for the School District to Warren County School District, Attn: Superintendent, 6820 Market Street, Russell, PA 16345.

29. Authority: Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The undersigned agree, in their individual capacities, to defend, hold harmless, and indemnify the other Party against all claims to the effect that the undersigned are without the authority to execute this Agreement or are not authorized to enter into this transaction.

30. Draftsmanship: The Parties acknowledge that this Agreement, including all Exhibits hereto, are the joint work product of the Parties through the assistance of legal counsel. Accordingly, in the event of any ambiguity in this Agreement, including any Exhibit hereto, the Parties mutually desire that no inferences be drawn against either Party and that the ambiguity not be interpreted against either Party on the basis of authorship of this Agreement.

31. Severability: All sections, sentences, and provisions contained in this Agreement are severable. Should any section, sentence, or provision of this Agreement be rendered void, invalid or unenforceable by any court of law (or arbitrator), for any reason, such a determination shall not render void, invalid, or unenforceable any other section, sentence, or provision of this Agreement, and the remainder of this Agreement shall remain in full force and effect and binding on the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, for themselves, their respective heirs, executors, successors and assigns, have hereunto set their hands and seals the day and year first above written.

ZITO MEDIA COMMUNICATIONS, LLC

By:

ATTEST: (SEAL)

WARREN COUNTY SCHOOL DISTRICT

Board Secretary

_____(SEAL)
By: School Board President

School