

## AGREEMENT

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between **WARREN COUNTY SCHOOL DISTRICT**, with offices at 185 Hospital Drive, North Warren, Pennsylvania, hereinafter referred to as SCHOOL DISTRICT,

AND

**WestPAnet, Inc.**, a corporation with principal place of business at 20 Market Street Plaza, Warren, Pennsylvania, hereinafter referred to as WestPAnet, Inc.

**WHEREAS**, the School District desires to obtain a fiber WAN network for connections to specified Warren County School District locations as well as with Internet services to Allegheny Valley Elementary School for use there and distribution to other locations via the WAN network; and

**WHEREAS**, the Parties have agreed that WestPAnet shall provide a fiber WAN network for connections to specific Warren County School District locations and shall provide Internet services to Allegheny Valley Elementary School; and

**WHEREAS**, the parties have agreed upon the terms for the supply of said services and equipment and wish to set forth their agreement in writing.

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

**1. Provision of Internet Service:** WestPAnet, Inc. shall provide Internet service to the School District through a primary connection point to be located at the School District's Allegheny Valley Elementary School. WestPAnet, Inc., shall provide all labor, equipment and materials necessary for the provision of said service. WestPAnet, Inc., anticipates that said services shall be delivered through a fiber Ethernet backbone to the WestPAnet, Inc., Networks Operation Center. Internet connection shall be scalable with a minimum starting bandwidth of 10 Mbps.

As a part of the provision of the Internet service, WestPAnet, Inc., also agrees to provide domain management, which will be performed by WestPAnet, Inc., for the term of this contract together with IP registration. WestPAnet, Inc., will provide to School District a class of IP addresses (up to 255 such addresses) as a part of said Internet service. Additionally, WestPAnet, Inc., shall provide DNS services, which will be supplied from the WestPAnet, Inc., Server located at the WestPAnet, Inc., Network Operations Center.

**2. Provision of Wide Area Network (WAN):** WestPAnet, Inc., shall provide the labor, equipment and materials necessary to construct and operate a wide area

network connecting the Internet service provider at the primary connection point at Allegheny Valley Elementary School to the several School District facilities set forth on the attached Exhibit "A". Said WAN shall include fiber components for the purpose of providing service at the rate specified on Exhibit "A". The primary portion of the network will be configured in a tree and branch topology. The network will be configured with fault tolerance and fallback features. In the event of a single link failure, the system will notify WestPANet, Inc. of the failure. The failure will trigger notification procedures to WestPANet, Inc. and repairs will be initiated. The fiber based electronics that are proposed for each building will come equipped with dual power supplies and redundant optical interfaces. Monitoring capabilities include SNMP, FSP Element Manager and support for EFM standards Lightweight OAM&P (operations, administration, maintenance, and provisioning).

The connection to the WAN and the Internet will have a scaled connection based upon the immediate and future needs of the School District. Future increases in the bandwidth in the WAN and to the Internet beyond those specified in Paragraph 1 can be negotiated through written request.

3. **Fitness for Particular Purpose:** The parties acknowledge that the system configuration described in the preceding paragraphs has been designed by WestPANet, Inc., based upon its expertise and experience in the delivery of similar services and systems. The School District does not have expertise in such systems and is relying upon the expertise of WestPANet, Inc., to provide the Internet connection and WAN. Accordingly, in the event the aforesaid system or products contemplated for use therein are not sufficient to deliver Internet services and the WAN at the rates and to the locations specified in this contract and Exhibit "A", the parties agree that it shall be the sole obligation of WestPANet, Inc., to reconfigure the system in order to deliver the performance as anticipated hereunder.

4. **Ownership of Equipment:** The equipment installed by WestPANet, Inc., shall be and remain the exclusive property of WestPANet, Inc. During the term of this contract, WestPANet, Inc., 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, WestPANet, Inc., 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, WestPANet, Inc., agrees not to commit waste upon the School District property and within thirty (30) days of the conclusion of the term of this contract, WestPANet, Inc., 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 WestPANet, Inc.

5. **Provision of Electrical Service:** The District will provide the appropriate electrical service sufficient to run the equipment attached to any of its facilities.

6. **E-Rate Compliance:** The parties acknowledge that one of the components of this contract critical to the School District is that the provision of Internet and WAN 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. WestPANet, Inc., represents that it is familiar with said rules and regulations and that in addition to its other obligations hereunder to comply with applicable rules, laws and regulations, it will specifically comply with the laws, rules and regulations concerning e-rate reimbursement and that it will prepare and file FCC form 499 Q and other attachments, required to be filed by WestPANet, Inc. to remain a telecom eligible service provider during the term of the contract. WestPANet, Inc. is not responsible for filing any documents for the School District required for obtaining reimbursement from the Universal Service Funds concerning e-Rate reimbursement for telecom services except that WestPANet, Inc. shall provide any document specifically required of it by the administrator of the Universal Service Funds. WestPANet, Inc. shall provide the District with a copy of their FCC form 499 A showing proof of filing to obtain their initial telecom eligible service provider as part of this agreement. Said status must be in place before the District files its FCC form 470 in early February 2006 or can result in void of the contract with no penalty to the district.

7. **Contract Term:** The primary term of this contract shall be for a period of five (5) years commencing July 1, 2006, and concluding June 30, 2011.

The other provisions hereof notwithstanding, WestPANet, Inc., 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 2006.

8. **Contract Price:** For the delivery of the items and services described herein, the School District shall pay to WestPANet, Inc., a one-time, non-recurring installation charge of \$500,000.00 (\$400,000.00 for WAN and \$100,000.00 for Internet), and the total compensation of \$17,616.66 per month, which for the purposes of allocation the parties agree shall be allocated \$14,683.33 per month for the WAN network and \$2,933.33 per month for the Internet access services. WestPANet, Inc., shall submit a monthly invoice to the School District on or after the last day of the month for which said items and services were so provided. Amounts not timely paid by the School District shall be considered past due and the School District agrees to pay a late payment charge equal to 1% per month when payment is thirty (30) days or more late. If payment has not been received within thirty (30) days of the date of the invoice WestPANet, Inc. shall submit a second invoice which shall include the late payment charge equal to 1%. Said invoice shall constitute written notice to the School District that failure to make payment within thirty (30) days of the aforementioned second invoice, absent valid written explanation from the School District setting forth that the School District is withholding payment based upon a failure to perform by WestPANet, Inc. with the other terms of this Agreement, shall provide WestPANet, Inc. with cause to terminate the Agreement herein

immediately, in the sole discretion of WestPANet, Inc. upon written notice provided to the School District.

**9. Contract Revisions:** The parties agree and acknowledge that Table 1 of Exhibit "A" contains the current list of 13 sites to be provided services pursuant to the terms of this Agreement. Both parties also agree and acknowledge that this list is subject to change during the anticipated term of the Agreement. Both parties agree and acknowledge that should there be a reduction in the number of sites available within the Warren County School District (due to consolidations or closings only) for provision of services that one-thirteenth (1/13) of the WAN monthly cost shall be deleted from the compensation due to WestPANet, Inc.. Conversely, should there be an increase in the number of sites available for the provision of services called for under this Agreement the parties agree that they will in good faith renegotiate the contract terms specific to sites. Both parties hereto agree that the contract prices called for within this Agreement shall serve as a guide for said negotiations.

**10. Maintenance and Service Assurance:** During the term of this Agreement, 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 required to provide WAN and Internet services to the primary connection point and to the buildings described on Exhibit A, shall be the sole and exclusive obligation of WestPANet, Inc. 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 hereby 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 a School District under existing circumstances. Accordingly, WestPANet, Inc., agrees that it will schedule normal maintenance functions (provided that at least 24 hours advance notice by writing is provided by WestPANet, Inc., to the School District) between 11:00 p.m., Fridays and 7:00 a.m., the succeeding Mondays and between 11:00 p.m., and 7:00 a.m., on the remaining days of the week. These times may be adjusted on a per incident basis if more time is needed to perform a certain maintenance function. Additionally, WestPANet, Inc., agrees to retain and make available to the School District maintenance personnel available 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 WestPANet, Inc.'s automatic notification equipment. In addition, WestPANet, Inc., 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 4 hours after the development of the malfunction. The School District agrees to provide access to WestPANet, Inc. to any and all locations of facilities where services are being provided herein on a twenty four (24) hour per day seven (7) day a week basis to promptly repair system malfunctions reported by the School District personnel by WestPANet, Inc. automatic notification equipment within a minimum of one (1) hour after contact, by a representative of WestPANet, Inc. The School District shall

provide to WestPANet, Inc. a phone number or specified single point of contact for all School District facilities to provide said access to a representative of WestPANet, Inc.

**11. 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 (as defined later in this Agreement) or an item or condition beyond the control of WestPANet, Inc., such as the loss of electrical power, Primary Internet service provider (Sprint, MCI, etc) failures, or local loop (for example Alltel, Verizon, etc) network failures. However, a system failure shall include any failure due to any problem with any component or items supplied by WestPANet, Inc., 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. Without intending to limit the generality of the foregoing, the parties agree that the term system failure shall include diminished service below the rates specified within Schedule A, in addition to the loss of service altogether. A system failure is a failure regardless of the number of sites affected. The hours of service affected are calculated as being between the time a site (or sites) fail and the time the system is restored to full capacity. 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.

**12. 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 contract, the School District may, at its election, terminate this contract under the termination provisions hereinafter set forth. When any Class 3 failure shall occur during the term of this contract, the School District may, at its election, terminate this contract 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 25% during each month in which there shall be a Class 1 failure, shall be reduced by 50% during each month in which there shall be a Class 2 failure, and shall be done away with entirely during any month in which there shall be a Class 3 failure.

In the event the School District shall elect to terminate this contract per the terms of the preceding paragraph, the School District shall give notice by writing or to WestPANet, Inc. At the election of the School District WestPANet, Inc., shall, nevertheless, be obligated to provide up to 6 months additional service to the School District in order that the School District have time to secure an alternate provider for the services contemplated hereunder. Except as set forth in the succeeding paragraph dealing with cover said additional months of service shall be delivered under the same terms and



conditions as set forth hereinabove.

In addition to the other remedies provided for hereunder in the event there shall be a Class 3 failure during the term hereof, including said period of up to 6 months, WestPANet, Inc., shall pay liquidated damages to the School District in the amount of \$2,000.00 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 \$2,000.00 per month is a fitting remedy.

**13. Termination by WestPANet, Inc.:** WestPANet, Inc., 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, WestPANet, Inc., 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. In the event that WestPANet, Inc. justifiably terminates hereunder its sole remedy shall be payment of all accrued but unpaid charges together with 25% of the remaining contract price (meaning the unexpired portion of the original contract term measured from the date of termination by WestPANet, Inc.).

**14. Cover and Bond.** In the event the School District shall terminate the contract 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 District agrees to utilize a competitive bidding process similar to the process engaged in by WestPANet, Inc., prior to the formation of this contract in order to secure said alternate provider. The parties agree that, subject to the limitations set forth below, WestPANet, Inc., shall be liable in damages (in the form of cash and provision of services without charge) to the School District for any difference in price between which the alternative provider will provide said items and services and the price called for under this contract. Recognizing that such damages, if any, would be greater resulting from a breach during the earlier rather than the later portion of this contract, the parties agree that WestPANet, Inc., shall maintain through the first year of this contract, at its sole cost and expense, a performance bond protecting against and providing for the damages described in this Agreement. WestPANet, Inc., shall be required to secure and maintain a performance bond with a minimum coverage amount of \$176,200.00, which performance bond shall remain in place through at least June 30, 2007.

The other provisions hereof notwithstanding, in the event the School District justifiably gives notice of termination during the first year of this contract the liability of WestPANet, Inc. shall be limited to cash in the amount of \$176,200.00; in the event that said cash amount is insufficient to cover the difference between the cost of an alternate supply of services and the price called for under this contract WestPANet, Inc. further agrees to deliver the services called for hereunder at no charge during the period of up to 6 months that the School District is afforded hereunder to locate an alternate supplier via competitive bid.

If thereafter the School District justifiably gives notice of termination the liability of WestPANet, Inc. shall be limited to cash in the amount of \$60,000.00; in the event that said cash amount is insufficient to cover the difference between the cost of an alternate supply of services and the price called for under this contract WestPANet, Inc. further agrees to deliver the services called for hereunder at no charge during the period of up to 6 months that the School District is afforded hereunder to locate an alternate supplier via competitive bid.

**15. Force Majeure:** Neither party shall be liable for its failure to perform hereunder due to any contingency beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages. However, equipment failure shall not be regarded as a force majeure.

**16. Relationship of Parties:** WestPANet, Inc., 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 WestPANet, Inc., acting under the scope of this Contract, 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 WestPANet, Inc. 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.

**17. Use of Subcontractors:** WestPANet, Inc., 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 WestPANet, Inc. of its obligation under this Agreement. WestPANet, Inc., hereby acknowledges that any subcontractors or such other consultants WestPANet, Inc. deems necessary shall be retained at the sole cost and expense of WestPANet, Inc. The School District shall not incur any additional financial obligations other than those specifically set forth in this Agreement. WestPANet, Inc. is responsible for the work performed and produced by any and all subcontractors and consultants, if any, used by WestPANet, Inc. in the completion of the project. 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.

**18. Insurance:** WestPANet, Inc. shall secure and maintain, at its sole cost and expense, general liability insurance in the minimum amount of One Million Dollars (\$ 1, 000,000.00) per occurrence to protect the School District and its employees against claims arising out of WestPANet, Inc.'s services during the Agreement for damage in law or in equity, for property damage and personal injury, including wrongful death.

**19. Certificate of Insurance:** Prior to beginning the work contemplated

hereunder, and thereafter at the request of the School District, WestPANet, Inc. shall furnish to the School District, a Certificate 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) the amount of coverage for such insurance; and (3) the list of exclusions for all insurance coverage. Such exclusions must be acceptable to and approved by the School District.

**20. Standard of Care:** WestPANet, Inc. 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. WestPANet, Inc. 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 WestPANet, Inc. shall be rendered at such times and in such manner as WestPANet, Inc. 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 WestPANet, Inc.'s obligation to provide designs and plans that are adequate and sufficient to accomplish the purposes of the project.

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

**22. Confidentiality:** WestPANet, Inc. shall not 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 School District.

**23. Conflict:** WestPANet, Inc. shall not, in connection with this Agreement, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendations, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the School District. Except with the written consent of the School District, none of WestPANet, Inc., its partners, officers, directors, owners, or shareholders shall have a financial interest in any other contractor, subcontractor, or supplier providing technology services, equipment or materials to the School District.

**24. Assignment:** This Agreement is for the professional services of WestPANet, Inc., and performance hereunder may not be assigned or transferred by WestPANet, Inc. without written consent of the School District. This provision shall not prevent WestPANet, Inc. from retaining or consulting with subcontractors or consultants at WestPANet, Inc.'s sole responsibility and expense as may be necessary for the proper development of this project.



**25. Modification:** WestPANet, Inc. hereby acknowledges receipt of notice that no person has any authority to amend or modify this Agreement or waive any term or provision hereof, except by written amendment hereto approved by the School District Board.

**26. No Third Party Beneficiary:** Nothing in this Agreement, or in any subsequent amendments hereto, or in any other document incorporated herein by reference or issued hereunder, express or implied, is intended to or shall be construed to confer upon or give to any person, firm or corporation, or any governmental agency other than the School District, its successors and assigns and WestPANet, Inc., any right, remedy or claim, legal or equitable, whether as third party beneficiary or otherwise. This Agreement and all provisions applicable hereto or incorporated herein being intended to be and being for the sole and exclusive benefit of the School District, its successors and assigns and WestPANet, Inc.

**27. Indemnification:** WestPANet, Inc. shall defend, protect, indemnify and hold harmless the School District from and against any and all liabilities, losses, damages, costs, expenses, causes of action, suits, claims, demands, or judgments of any nature arising out of or resulting from performance by WestPANet, Inc., of this Agreement, provided that such liability, loss, damages, costs, expenses, causes of action, suits, claims, demands, or judgments are caused in whole or in part by the negligent, reckless or intentional acts or omissions of WestPANet, Inc., its employees, its agents or WestPANet, Inc. subcontractors, or by the failure to WestPANet, Inc. to perform its obligations hereunder.

**28. Status Reports:** WestPANet, Inc. acknowledges that the School District has the right throughout the duration of this Project 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.

**29. Waiver:** WestPANet, Inc. acknowledges that waiver or failure to enforce any of all of the provisions of this Agreement does not constitute the School District's waiver of its rights to enforce any such provisions or terms in the future.

**30. Governing Law:** This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the remaining provisions herein.

**31. Entire Agreement:** Upon acceptance of this Agreement, the terms and conditions represented herein shall constitute the entire agreement between the Parties and supersedes all prior agreements, understanding and negotiations between the Parties,

whether oral or written. The Agreement shall not be amended or modified except by written agreement executed and signed by the Parties hereto.

**32. Notice:** All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been given when delivered by Registered Mail, postage prepaid, Return Receipt Request and sent to for **WestPANet, Inc.**, to **WestPANet, Inc., 20 Market Street Plaza, Warren, PA 16365**, and for the School District to Warren County School District, Curwen Building, 185 Hospital Drive, North Warren, Pennsylvania 16365.

**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.

**WestPANet, Inc.**

\_\_\_\_\_  
By: Michael S. Flannery, Partner & Network Manager

WARREN COUNTY SCHOOL DISTRICT

\_\_\_\_\_  
By: Jacki Nuttal, President, Board of School Directors