

**NORTHEAST OHIO NETWORK FOR EDUCATIONAL TECHNOLOGY
SERVICE PROVIDER CONTRACT
INTERNET SERVICE**

Contract Number: 044552-1722

This agreement for the provision of Internet access service ("Agreement") is entered between the Northeast Ohio Network for Educational Technology (a program of the Metropolitan Regional Service Council) ("Provider") and Norton City Schools ("Customer"), as verified by the signatures on the signature page below.

WHEREAS, Provider is an information technology center ("ITC") organized as a regional council of governments and operating as part of the Ohio Education Computer Network ("OECN"), which has been established by the State of Ohio to provide communications and other technology services to public schools and other authorized user entities; and

WHEREAS, the Customer is an educational entity in the State of Ohio, and;

WHEREAS, the Provider through its technology center desires to provide to Customer and Customer desires to secure from Providers the services detailed in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agrees as follows:

I. DEFINITIONS:

As used in this Agreement the following terms shall be defined as follows:

"Parties" shall mean the Customer and Provider collectively.

"Services" shall mean all of the duties and ministrations listed in Article III and Exhibit A of this Agreement.

"User" shall mean a school or person authorized by Customer to make use of the data services or equipment secured by Customer from Provider by this Agreement.

II. TERM AND TERMINATION

A. This Agreement is effective for all services covered herein for the period of July 1, 2017 through June 30, 2022.

B. Provider reserves the right to discontinue Customer's access to the Provider's Service, terminate this Agreement and/or seek other legal or equitable relief for use of the Service that Provider deems to be in violation of the rules and regulations of the Ohio State Board of Education or any other state or federal agency; or in violation of this Agreement; or local, state or federal, or international law; or are

uncivil. For purposes of this Agreement, uncivil conduct includes, but is not limited to: 1) transmitting offensive or harassing statements; 2) developing and/or transmitting offensive or unlawful graphics; 3) transmitting sexual or ethnic slurs explicitly or as part of a joke; 4) soliciting or encouraging others to engage in sexual, offensive or unlawful acts; or 5) permitting or encouraging unauthorized access to the Provider's network and public networks including unauthorized access to the Internet.

- C. Upon a termination of the Agreement by the Customer prior to the end of the stated term, the Customer agrees to pay Provider for contractual obligations incurred by the Provider on behalf of Customer for the original five (5) year contract period.

III. PERFORMANCE

- A. Provider shall furnish Customer unbundled internet access services on a 24-hour per-day, 7 day-per-week basis, and as further described in attached Exhibit A.
- B. Provider shall be responsible for the maintenance of the Service and any Provider-owned service equipment located on Customer premises ("Service Equipment"). Provider and its agents shall have the right at any time during normal business hours and with advanced notice to enter the Customer's premises (complying with the Customer's visitor's policy) for the purpose of maintaining, inspecting, and testing the Service Equipment. Provider shall have the right to charge the Customer costs and expenses incurred in identifying and correcting any failure in Customer's facilities or equipment, or in repairing or replacing Provider's Service Equipment which has been damaged or rendered inoperable by reason of the Customer's actions or omissions, or the failure or inadequacy of Customer's equipment.

IV. CHARGES AND PAYMENT

- A. Charges for the Services provided under this Agreement are set forth on the attached Exhibit A.
- B. Customer agrees to be solely responsible to Provider for all charges set forth on Exhibit A for the duration of the Agreement, regardless of the approval, denial and/or receipt of E-rate funding.
- C. Charges for the Services provided under this Agreement will be billed to Customer on an annual basis.
- D. Provider purchases transport through a third-party vendor sub-contracted by the Provider to provide transport for the contracted bandwidth ("Bandwidth Service Provider"). The cost of transport from the Bandwidth Service Provider may vary and will be passed through directly to Customer.

- E.** Payment of all invoices sent shall be due within thirty (30) days of the invoice date.
- F.** Late payments shall be subject to a service charge of one and one half percent (1 1/2%) of any and all unpaid balance, unless expressly waived by the Provider in writing. Provider may at its sole discretion terminate or suspend the Services to any Customer whose payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights the Provider may have for full payment. If the Customer's Service is suspended, Provider may charge a reconnection fee to cover the administrative cost of reconnection. The reconnection charge shall be in addition to amounts due for unpaid balances and/or the above described service charges.

V. FORCE MAJEURE

Provider shall not be liable for any damages incurred as a result of the errors, omissions or negligence of Customer, its personnel, employees, agents or users. Provider shall not be liable for failure to perform if such failure is caused by acts of God, winds, fires, landslide, floods, droughts, famines, acts of public enemies, insurrection, military action, sabotage, riots, or civil disturbances, failure of a utility or utility type service which is essential to the Provider's Service or other event(s) not reasonably within the control of the Provider.

VI. WARRANTIES AND LIMITATIONS ON LIABILITY

- A.** The following provisions define Provider's entire liability with respect to claims arising in any way out of the provision of or failure to provide the Service set out in this Agreement; with respect to any breach of its contractual obligations arising under the Agreement; with respect to any errors, omissions, or negligence of Customer, its personnel, employees, agents or users; and any representations, statements, or tortious act or omission including negligence or gross negligence arising under or in connection with this Agreement (including any liability for the acts or omissions of its employees, agents, and subcontractors; subsequently referred to as the "Event of Default"). Provider shall not be liable, in respect of or arising out of an Event of Default or the performance, non-performance, or breach of its obligations under this Agreement, for any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation), including loss of profits, goodwill, revenue, data, or use, incurred by Customer or by any third party whether in an action in contract or tort, even if such damages were foreseeable or Provider had been advised of the possibility of such damages. Provider, from time to time, will be requested to provide consultation related to Service described within this Agreement. Provider will use reasonable efforts in this regard. Customer acknowledges and agrees that the limitation of liability shall apply to such consultation. Without derogating from the other provisions of this section and this Agreement, Provider's liability for damages for breach of this Agreement shall in no event exceed the amounts received by Provider under this Agreement.

- B.** Customer warrants and represents that it will only utilize the Services provided for educational and educational administrative related activities on its premises. Where the Services provided include access to the networks, Provider does not warrant that the functions of the network will meet any specific Customer or user requirements, or that Services provided will be error free or uninterrupted; nor shall Provider be liable for any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation) sustained in connection with the use, operation, or inability to use the Provider Services by Customer or its users. Further, Customer understands and agrees that Provider will exercise no control over the information that Customer and users may transmit and access as a result of the provision of Services by Provider and that, therefore, Customer will make no claim against Provider for the internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Any filters or screening devices are limited to those in existence at the date of this Agreement or for which Provider subsequently installs. Provider is not under any duty to install or modify filters or screening programs. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems. Customer understands and agrees that the Internet, by its nature, is an open portal of content and material, some of which may be inappropriate for school-aged students.
- C.** Provider assumes no responsibility for controlling, regulating, or monitoring access to the interconnected computer system(s) of the network by minors or for compliance with any laws regulating the same.
- D.** Provider reserves the right to discontinue Customer's access to the Provider's network and/or seek other legal or equitable relief for use of the Services that Provider deems to be in violation of the rules and regulations of any state or federal agency; or in violation of this Agreement; or in violation of municipal, state, federal or international law.
- E.** Customer understands and agrees that Provider shall have no responsibility for Customer's or its Users accessing or transmitting offensive or unlawful information, interference or unlawful access to others' information or networks, or other offensive or unlawful activity in which Provider's Service is used.
- F.** Although Provider does not have a duty to monitor Customer or its Users' transmissions, it shall not be prohibited from so monitoring.

VI. INDEMNIFICATION

CUSTOMER AGREES TO INDEMNIFY AND HOLD PROVIDER, ITS GOVERNING BOARD MEMBERS, OFFICERS, MEMBERS, EMPLOYEES AND/OR AGENTS HARMLESS FROM ANY CLAIMS, SUITS, LIABILITY, LOSS, EXPENSES AND/OR

DAMAGES, INCLUDING ALLEGED COPYRIGHT AND OTHER INTELLECTUAL PROPERTY CLAIMS, SUSTAINED BY ANY PERSON BY REASON OF ANY ACT OF CUSTOMER OR ITS USERS IN THEIR ACTIVITIES INVOLVING USE OF PROVIDER'S NETWORK.

VII. TITLE AND OWNERSHIP

- A.** Title to the Service Equipment shall irrevocably and under all circumstances remain with the Provider and its designees, and the Customer will take no action to knowingly compromise the rights, title, and interest of the Provider. The Customer's interest in the Services and Service Equipment is limited to non-exclusive use thereof on the premises.
- B.** All written procedures and similar items utilized or developed in connection with this Agreement, residing with Providers, are not to be considered the property of Customer.

VIII. CONFIDENTIALITY OF INFORMATION

- A.** Provider shall exercise reasonable ordinary care in preserving and protecting the confidentiality of information furnished by Customer.
- B.** Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.
- C.** Except as required by law including but not limited to the Ohio public records laws, Customer agrees not to disclose any information or documentation obtained from Provider.

IX. NOTICES

- A.** All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as the party may designate by notice to the other party hereto):

1. If to Provider:

Name: Matthew Gdovin
Address: 700 Graham Road
City/State/Zip: Cuyahoga Falls / Ohio / 44221
Phone: 330-926-3902
Facsimile: 330-926-3901
E-mail: Gdovin@neonet.org

2. If to Customer:

Name: Angie Wagler
Address: 4128 S. Cleveland-Massillon Rd
City/State/Zip: Norton, Ohio 44203
Phone: 330-825-6427

B. GENERAL PROVISIONS

1. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.
2. **Waiver, Discharge, etc.** This Agreement may not be released, discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall in not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, the term of any purchase order, invoice or like document issued in conjunction with the Service to be provided herein shall not serve to add to or modify the terms of this Agreement.
3. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.
4. **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.
5. **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall

not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

6. **Entire Agreement.** This Agreement, together with the documents referred to herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.
7. **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
8. **Construction.** This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in this Agreement, the word "including" shall mean including without limitation. Unless the context requires otherwise, any reference to the masculine, feminine and neuter genders include one another.
9. **Compliance with Law.** Each party agrees to comply with all governmental laws and regulations applicable to the Services contemplated by this Agreement. Customer agrees to provide such written evidence of the approval of this Agreement as may be required by law.
10. **Fully Understand and Freely Enter.** The undersigned hereby acknowledge that they have read and understand the foregoing. The parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.

EXHIBIT A

INTERNET ACCESS SERVICES

This exhibit is hereby made part of the Internet access services agreement (the "Agreement") entered between Provider and Customer on _____(date), as these terms are defined in the Agreement. The following additional terms and conditions apply to the Agreement.

Services will be rendered for the period of the Agreement, unless otherwise stated below.

1. Services

Provider will render a minimum of 1Gbit of unbundled basic conduit access to the Internet. The minimum annual charges for basic conduit access to the Internet for the period of the Agreement are indicated in Section 3 below.

2. Transport

Provide gigabyte transport to the following building(s):

- A. Norton High School
- B. Norton Middle School
- C. Norton Elementary
- D. Norton Primary
- E. Norton BOE

Should Customer desire to move the Service to a building that is not listed above Customer may request, via written notice, a Service location change ninety (90) days prior to the requested move. Please note that Service to the new building may not qualify for E-rate funding nor may construction charges associated with the move.

3. Annual Charge for the period July 1, 2017 to June 30, 2022

\$62,160

4. Provider's Obligations

- a) Provider will plan and coordinate all activities incidental to the implementation of the Internet access.
- b) Provider will assume all responsibilities for Internet access including the Internet router located in the instructional building.

5. Customer's Obligations

- a)** Customer will assume all responsibilities for all local area networks (LAN) up to the building router specified in section 4 item b) above. These responsibilities include, but are not limited to, Customer-owned communications equipment/cabling, LAN software, and LAN hardware.
- b)** Customer agrees to comply with equipment specifications defined by the provider for all components integral to the Internet access.
- c)** Customer will supply Provider with appropriate and sufficient space and electrical power to facilitate the Internet access.
- d)** Customer agrees not to connect any of its local area networks to alternative network providers without Provider approval.
- e)** Customer agrees not to resell any network services provided by Provider.

By signing below, Signatory of Customer (“Signatory”) certifies authorization to sign on behalf of and legally bind Customer to this Agreement and certifies having read, understood and agreed to the terms of this Agreement, including the provisions of the attached exhibits which are hereby incorporated herein by reference. Signatory certifies that all information provided by Customer in connection with this Agreement is true and accurate.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

CUSTOMER: Norton City Schools

Signature of Authorized Customer Representative

Date

Printed name of Authorized Customer Representative

Signature of Authorized Customer Representative

Date

Printed name of Authorized Customer Representative

PROVIDER: Northeast Ohio Network for Educational Technology

Printed name of Provider

Signature of Officer or Manager for the Provider

Date

Matthew Gdovin
Printed name of Officer or Manager for the Provider

WCSR 33397897v4