

FUSFOO PARTICIPATION AGREEMENT AMENDMENT

THIS AMENDMENT is made this _____ day of _____ 2017, by and between **FUSFOO MEDIA LLC (“Fusfoo Media”)**, having an office at 205 East 42nd Street, 20th Floor, New York, NY, 10017, and **WELLSBORO AREA SCHOOL DISTRICT** having an office at **227 NICHOLS STREET, WELLSBORO, PA 16901** (hereinafter referred to as the “School”) Fusfoo Media and the School shall collectively be referred to herein as the “Parties” and individually referred as a “Party.”

WITNESSETH

WHEREAS, on **JUNE 14, 2016**, the School executed an Agreement with Fusfoo Media to participate in a national digital publication source for high school students (“Initial Agreement”); and

WHEREAS, the Parties are desirous of extending the Initial Agreement through the end of the 2018-2019 school year, subject to certain amendments to the terms of the Initial Agreement set forth herein.

NOW, THEREFORE, it is mutually understood and agreed by and between the Parties, who intend to be legally-bound, that:

1. The Initial Agreement, a copy of which is annexed as Exhibit “A,” shall be extended, without interruption, through the end of the 2018-2019 school year;
2. Paragraph 3j of the Initial Agreement, entitled “Operating Offset,” which regards payment and sets forth minimum content posting and reposting requirements, is hereby stricken in its entirety; and
3. All remaining terms and provisions of the Initial Agreement, with the exception of Paragraph 3j referenced above, shall continue in full force and effect for the term of this Agreement.

IN WITNESS HEREOF, the Parties have set their hand and seals and caused this Agreement to be executed the day and year first above written.

ATTEST:
(Affix Corporate Seal if Corporation)

SCHOOL DISTRICT

Secretary/Witness

By: _____

Title: _____

ATTEST:
(Affix Corporate Seal if Corporation)

FUSFOO MEDIA LLC

Secretary/Witness

By: _____

Attachment X-1A

EXHIBIT "A"

FUSFOO PILOT PROGRAM PARTICIPATION AGREEMENT

THIS AGREEMENT is made this 14th day of June 2016, by and between FUSFOO MEDIA LLC ("Fusfoo Media"), having an office at 520 8th Avenue, 20th Floor, New York, NY 10018, and WELLSBORO AREA SCHOOL DISTRICT BOARD OF EDUCATION ("Board"), a Public Corporation of the State of Pennsylvania, having an office at 227 Nichols Street, Wellsboro, PA 16901 (Collectively referred to as the "Parties") (Individually referred to as "Party").

WITNESSETH

WHEREAS, the Board is authorized to perform all acts and do all things, consistent with law, necessary for the lawful and proper conduct of the public schools of the district; and

WHEREAS, Fusfoo Media has created a national digital publication source for high school students to participate through their school and school's administration; and

WHEREAS, the Fusfoo Media is offering the Board's students an opportunity to participate in a pilot program, in accordance with the terms herein; and

WHEREAS, the Board recognizes the importance of media education in an ever-increasing global economy and community; and

WHEREAS, the Board finds that student participation in Fusfoo Media's digital publication can enhance and further develop the skills taught within state-mandated curriculum standards.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. **Definitions.**

a. "Local Channel" refers to the digital publication platform that is designated for the School District and which the School District will operate, manage and maintain during the Pilot Program, subject to the terms of this Agreement.

b. "Editorial and Digital Content" refers to information, text, graphics, pictures, video records, audio recordings, and other materials that are published, transferred to, posted, uploaded and/or pasted to the Local Channel.

c. "Fusfoo" refers to the overall digital publication and website owned, operated, maintained and managed by Fusfoo Media located at the URL: "www.fusfoo.com".

d. "National Channel" refers to the digital publication platform solely operated, controlled, managed and maintained by Fusfoo Media.

e. "Pilot Program" refers to the one-year trial period, between July 1, 2016 and June 30, 2017, during which the School District shall participate with Fusfoo Media and upload Editorial and Digital content onto its Local Channel.

2. **Limited License.** In accordance with the terms herein, Fusfoo Media authorizes the School District to participate in the Pilot Program by publishing Editorial and Digital content to the Local Channel. In accordance therewith, Fusfoo Media grants School District a non-exclusive, revocable, non-transferable license to operate and maintain the Local Channel. Fusfoo Media may alter, modify, add, remove and/or impose limits on certain features and services of the Local Channel and National Channel without prior notice or liability.

3. **Terms of Use.**

a. The School District shall operate its digital news agency and upload

Editorial and Digital Content onto the Local Channel during the 2016-2017 school year, consistent with the School District's academic calendar.

b. Upon execution of this Agreement, School District shall establish a student digital news agency and/or prepare its existing student digital news agency to, among other responsibilities, generate, organize and gather Editorial and Digital Content that can be uploaded onto the Local Channel during the Pilot Program.

c. Fusfoo operates, manages and maintains the National Channel and has the sole right and ability to post Editorial and Digital Content to the National Channel.

d. School District, as a participating school district in the Fusfoo digital publication platform, has the sole right and ability to post Editorial and Digital Content on its Local Channel.

e. The Parties acknowledge that all Editorial and Digital Content posted on the National Channel and the Local Channel will be viewable by other school districts participating in the Pilot Program. Accordingly, School District acknowledges that there is no expectation of privacy for Editorial and Digital Content that is posted to the Local Channel and/or National Channel.

f. As a condition of using the Local Channel, the School District agrees to grant and/or to cause student participants to grant to Fusfoo Media a perpetual, worldwide, irrevocable, unrestricted, non-exclusive, transferable license or sublicense, as applicable, to use, copy, sublicense, distribute, display, publicly perform, reproduce, transmit, and otherwise fully exploit the Editorial and Digital Content that the School District publishes on the Local Channel for publication onto the National Channel. The School District further agrees to grant other participating school districts with a non-

exclusive, revocable and non-transferrable license to repost the School District's Editorial and Digital Content onto their local channels.

g. Regarding the posting of Editorial and Digital content onto the Local Channel, the School District agrees that it will:

- i. not post unauthorized commercial communications, such as spam;
- ii. not upload viruses or other malicious code;
- iii. not allow, permit, publish or participate in any acts of bullying, intimidation and/or harassment;
- iv. not post content that: is hate speech, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence;
- v. not post content promoting, encouraging or condoning drug and/or alcohol use;
- vi. not use Fusfoo or the Local Channel to do anything unlawful, misleading, malicious, or discriminatory;
- vii. not do anything that could disable, overburden, or impair the proper working or appearance of Fusfoo and/or the Local Channel; and
- viii. only post content that is submitted by and/or obtained from high school students in the School District, or repost content from other participating high school local channels.

h. Compliance with Law. School District agrees to comply with any and all applicable laws and regulations in connection with the use and operation of the Local Channel which includes, but is not limited to activities such as publishing, uploading, streaming, downloading, posting, managing, monitoring, selecting, adding and/or

removing editorial and/or digital content.

i. School District acknowledges and agrees to protect individuals' and students' privacy rights and to adhere to any opt out policies and requests. School District acknowledges and agrees that it is solely responsible for ensuring that any student that has opted out from being interviewed, filmed, recorded, photographed, videotaped or otherwise participating in similar activities will not be a part of any Editorial and Digital Content.

j. Operating Offset. Fusfoo Media shall provide the School District with up to five thousand dollars (\$5,000.00) to offset the costs associated with participating in the Pilot Program, including, but not limited to those costs associated with personnel and equipment. The offset amount shall be provided in accordance with the following conditions:

i. Forty percent (40%) to be paid on September 1, 2016;

ii. Thirty percent (30%) to be paid on January 1, 2017, provided the School District posts at least fifteen (15) content pieces per month in October, November and December (inclusive of editorial and video content) and reposts at least five (5) additional pieces of content per month from other high schools' Local Channels and/or from the National Channel); and

iii. Thirty percent (30%) to be paid by June 1, 2017 provided the School District post at least fifteen (15) content pieces per month in January, February, March, April and May (inclusive of editorial and video content) and reposts at least five (5) additional pieces of content per month from other high schools' Local Channels and/or from the National Channel).

4. **Copyright and Intellectual Property Rights.** Fusfoo is protected by copyright(s) pursuant to U.S. copyright laws, international conventions and other intellectual property laws. School District agrees to refrain from violating any such copyrights and/or from improperly using the information published to the National Channel, the Local Channel or any local channel managed by another school district. School District acknowledges and agrees that it will not use any Editorial and Digital Content for commercial purposes.

5. **Mark Ownership and Infringement of Licensor's Marks.**

a. The School District hereby acknowledges (a) that, except for any such rights to the Fusfoo name (the "Name") and the Fusfoo marks (the "Marks") specifically granted to the School District herein, Fusfoo Media owns all right, title and interest in and to the Name and Marks and all goodwill pertaining thereto and (b) the validity and Fusfoo Media's ownership of the registrations of the Name and Marks in all jurisdictions in which such registration is now or may hereafter be accomplished.

b. The School District will not, during the term of this Agreement or thereafter, attempt to register the Marks or any marks similar thereto or attach the title or any rights of Fusfoo Media in and to the Name or Marks, or any other protection or other right pertaining thereto, or attack the validity of this Agreement. The School District shall take no action in derogation of Fusfoo Media's rights in the Name or Marks. The School District agrees that the Marks have acquired distinctiveness in the mind of the public, which associates it exclusively with Fusfoo Media, and all good will and improved reputation generated by Fusfoo Media's use of the Name and Mark hereunder shall inure to the benefit of Fusfoo Media. All use by the School District of the Name and Marks shall inure to the benefit of Fusfoo Media.

c. Fusfoo Media may commence or prosecute at its own expense any claims or suits arising from unauthorized use of the Name or Marks in its own name or join the School District as a party to such claim of suit. The School District shall inform Fusfoo Media in writing of any infringement or imitations by others of the Name or Marks covered by this Agreement which may come to the School District's attention. Fusfoo Media shall have the sole right, in its discretion, to determine whether or not any action shall be taken on account of any such infringements or imitations. The School District shall not take any action on account of any such infringement or imitations without first obtaining the written consent of Fusfoo Media to do so, which consent shall be in Fusfoo Media's sole discretion.

6. **Insurance.**

a. The School District shall secure and obtain in full force and effect, throughout the term of this Agreement, adequate insurance coverage for any and all claims that may arise out of and/or relate to this Agreement:

i. Commercial general liability insurance or its equivalent insurance covering the use of the Local Channel and participation with Fusfoo, including but not limited to, student participation in events that are published to the Local Channel, and activities related to, but not limited to, recording, broadcasting, reproducing, transferring and/or selecting content that is published to the Local Channel, for bodily injury, personal injury and property damage, arising out of any one occurrence, insuring the indemnity obligations assumed by the School District under this Agreement subject to the terms and conditions herein.

ii. Errors and Omissions coverage or its equivalent coverage relating

to participation in Fusfoo and the School District's use of the Local Channel.

iii. The School District shall provide Fusfoo Media with proof of coverage that its insurance carrier deems is satisfactory to Fusfoo Media, and shall provide, at least thirty (30) days prior notice to Fusfoo Media of cancellation of any such insurance policy.

iv. Fusfoo Media shall be included as an additional insured and certificate holder under all policies. All insurance shall be written and procured from companies authorized to do business in the State in which the School District is located.

7. **Representation.** School District acknowledges that Fusfoo does not guarantee or endorse the accuracy, reliability or genuineness of the editorial and/or digital content that is posted to the National Channel, Local Channel, and/or on the local channels of any participating school district. School District further acknowledges that any reliance upon any editorial and/or digital content, such as any opinions, advice, statements and/or information posted to the National Channel, Local Channel and/or the local channels of participating school districts, shall be at the School District's own risk.

8. **Indemnification.** If any claim is brought against Fusfoo Media, and/or its directors, officers, employees, agents, stockholders, and/or affiliates ("Indemnified Parties") related to the actions of the School District and/or its employees, officers, students, volunteers, agents and/or representatives (collectively referred to as the "School District Parties"), and/or related to the Editorial and Digital Content posted to the Local Channel, the School District shall defend, indemnify and hold the Indemnified Parties harmless from and against all claims, actions, liabilities, damages, losses, and expenses of any kind (including reasonable legal fees

and costs) related to such claim, whether or not such claim(s) relate to a third-party claim, and/or whether or not such claim(s) have merit. The School District acknowledges and agrees that the Indemnified Parties are not responsible for, nor do they direct, the Editorial and Digital Content that is posted to the Local Channel and/or the individuals who post the Editorial and Digital Content. The Indemnified Parties are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable content or information that students and/or individuals may encounter on the local channels of participating school districts.

9. **Venue and Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania, before the appropriate State or Federal Court located in the State of Pennsylvania.

10. **Notices.** Any notice required or permitted under this Agreement shall be in writing and delivered to the addresses first set forth above. Notices sent to the School District shall be directed to the Superintendent's attention.

11. **Severability.** In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of, or to this Agreement, or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein. All other provisions of the Agreement shall remain in full force and effect.

12. **Non-Waiver.** It is understood and agreed that nothing which is contained in this Agreement shall be construed as a waiver on the part of the Parties, or of any right which is not explicitly waived in this Agreement.

13. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties hereto with respect to the transactions contemplated herein. No change or modification of this Agreement shall be valid unless the same is in writing, duly authorized and signed by all the Parties hereto.

14. **Headings.** The paragraph headings in this Agreement are included herein for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

[INTENTIONALLY OMITTED]

15. **Authorization.** All Parties hereto have the requisite power and authority to enter into this Agreement and it is the intention of the Parties to be bound by the terms hereof. The execution and delivery of this Agreement is valid and binding upon the Parties hereto and the genuineness of any and all resolutions executed may be assumed to be genuine by the Parties in receipt thereof.

IN WITNESS HEREOF, the Parties have set their hand and seals and caused this Agreement to be executed the day and year first above written.

ATTEST:
(Affix Corporate Seal if Corporation)


Secretary/Witness

SCHOOL DISTRICT


By: 

Title: Acting Superintendent

ATTEST:
(Affix Corporate Seal if Corporation)


Secretary/Witness

FUSFOO MEDIA LLC

By: 
Chief Executive Officer 7/4/12