



**educational excellence** through leadership, partnership, and innovation

### AGREEMENT FOR AGENDAMANAGER® SERVICES

This Agreement for AgendaManager® Services (hereinafter “Agreement”) is made this 7<sup>th</sup> day of May, 2019, by and between the **Capital Area Intermediate Unit** (hereinafter “CAIU”), a Pennsylvania Intermediate Unit organized and operating under the Public School Code of 1949, 24 P.S. § 1-101 *et seq.*, with its principal place of business at 55 Miller Street, Enola, PA 17025, and **Wellsboro Area School District** (hereinafter “Client”), a local education agency with its principal place of business at 227 Nichols Street, Wellsboro, PA 16901.

#### 1. **Scope of Work.**

##### 1.1 CAIU agrees to provide AgendaManager® services as follows:

Background: Client is seeking the use and support of an intuitive and user-friendly paperless meeting management solution. AgendaManager® is an online paperless meeting management solution that simplifies meeting management and information dissemination to participants. AgendaManager® provides for the immediate publishing and updates for agendas and other meeting materials via the Client's Web browser and its Internet connection.

Services to be Provided: Access to the AgendaManager® web-based application shall be provided. Client shall have the ability to use its AgendaManager® account to create unlimited meetings, agendas, groups and users for up to 5 GB of data. Client's AgendaManager® account data shall be hosted securely at the CAIU and shall include off-site backup of data.

Implementation and Training: CAIU shall provide 3 days of implementation and training. The tasks and timeline of the implementation and training activities will be defined at the initial meeting with the Client. Implementation resources will work closely with the Client during the initial configuration of its AgendaManager® accounts, groups, meetings, and agendas. Training will be provided in a manner that best meets the needs of the Client and their schedules. Implementation resources will be available to assist with Board Meeting preparation to ensure a smooth transition to AgendaManager®.

User Support Services: CAIU shall provide ongoing support for Account Administrators and Group Administrators via a support helpdesk on CAIU regular work days from the hours of

7:00 am - 5:00 pm EST Monday - Friday. The support Helpdesk is reached by phone at 717.732.8403, via the Help Center at <http://support.caiu.org>, or by email to [support@agendamanager.com](mailto:support@agendamanager.com). After hours emergency support is available for Account Administrators. This information shall be provided to Client during implementation.

Hosting: The CAIU shall host AgendaManager® on its servers.

Backup: Barracuda Backup up to 5 GB (offsite) is included in the pricing structure. Refer to Paragraph 8 for backup overages.

Documentation on how to use the AgendaManager® features shall be provided in a Portable Document Format (PDF.)

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

## **2. Responsibilities of the Parties.**

2.1 Both parties agree to act in good faith in fulfillment of this Agreement. Neither party shall attempt to hinder or otherwise prevent the other party from fulfilling their duties as outlined herein.

2.2 CAIU shall:

Perform the Scope of Work as indicated above.

2.3 Client shall:

Be responsible for the maintenance of its account, including but not limited to, creating and deleting users, account security, groups, agendas, meetings and templates and reporting issues to the CAIU Support Helpdesk.

3. **Cost.** In consideration for the work to be provided under this Agreement, Client agrees to pay and CAIU agrees to accept, **\$3,000** (three thousand dollars per year for Year 1.) in fulfillment of this Agreement. In the first year of this agreement (July 1, 2019 - June 30, 2020), Wellsboro Area School District will be invoiced a pro-rated amount. Their 90-day FREE trial period ends on August 12, 2019. The above stated amount is pro-rated from August 13, 2019 - June 30, 2020. Additional

years of this agreement will be invoiced at a cost of \$3,400 per year. Additional cost terms, if any, shall be addressed in Section 25 herein or subsequent Addenda as agreed to by both parties.

4. **Invoicing and Payment.** The CAIU shall invoice Client on a(n) annual basis for the costs incurred to provide the Services. All invoices are due within 45 days of the date of the invoice. Both the Client and CAIU recognize and agree that CAIU will suffer financial hardship to its cash flow in the event payments are received late; therefore, CAIU reserves the right to impose a two percent (2%) late fee for every 30 days past the 45 days that payment is late. Additional Invoicing and Payment terms, if any, shall be addressed in Attachment 1 or subsequent Addenda as agreed to by both parties.

5. **Term and Renewal.**

5.1 The term of this Agreement shall commence July 1, 2019, and shall terminate effective June 30, 2022.

5.2 This Agreement shall then automatically renew from year to year unless: (1) either party provides written notice of its intent to terminate within ninety (90) days of the termination effective date set forth above; or (2) either party provides notice of intent to terminate as outlined in Section 20 herein.

5.3 In the event Client has received discounted pricing for entering into a multi-year contract and terminates this Agreement without cause prior to the above-stated termination date or as otherwise provided for under Section 25 herein, Client shall be billed and responsible for the single year cost.

6. **Notice.**

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

Contact Name: Joseph Gallucci

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Address: 55 Miller Street, Enola, PA 17025

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Phone: 717-732-8424

Fax: 717-732-8414

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Email: [jgallucci@caiu.org](mailto:jgallucci@caiu.org)

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

Client Contact

Name:

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Address:

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Phone:

Fax:

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Email:

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**7. Mutual Release from Liability.**

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

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

**8. Mutual Indemnification.**

8.1 Both parties are protected under the Commonwealth of Pennsylvania's Tort Claims Act (Act), and as such, cannot and shall not be held responsible or otherwise liable for those actions or inactions specifically enumerated under the Act. Based on the foregoing, each party agrees to protect, indemnify, and hold harmless the other party and its agents, employees, directors, officers, affiliates, consultants, and/or contractors from and against any and all damages, injuries (including bodily injury, dismemberment, and/or death), claims, liabilities, and costs (including reasonable attorneys' fees), which arise or may be suffered or incurred in whole or in part as a result of the acts or omissions of the indemnifying party, its agents, employees,

directors, officers, affiliates, consultants, and/or contractors, and whether arising under this Agreement.

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

**9. Insurance Coverage.**

9.1 The CAIU affirms it carries Workers' Compensation, General Liability, and Errors and Omissions insurance at amounts recognized as customary in the ordinary scope of business. Upon written request, the CAIU shall provide Client with a copy of its certificate of insurance, but under no circumstances, shall CAIU name Client as an additional insured.

9.2 The Client shall carry appropriate insurance coverage, including, but not limited to, Workers' Compensation, General Liability, Errors and Omissions, and the like, throughout the entire term this Agreement. Under no circumstances shall CAIU be responsible for any liability incurred by Client as a result of Client not carrying said insurance.

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

**11. Work Product.**

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

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

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

**12. Confidentiality.**

12.1 Under this Agreement, the parties may have access (verbally or in writing) to information that is confidential in nature. Such information may include, but not be limited to student

information and data; work product, facts or statistics, ideas, materials, business plans, technical information, methodologies, or any other shared data.

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

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

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

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

### 13. Warranties.

13.1 **Unless otherwise expressly stated in Section 25 herein or in an Addendum hereto, CAIU MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IN REGARDS TO THE SERVICE(S) AND/OR PRODUCT(S) IT PROVIDES TO CLIENT, AND**

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

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

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

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

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

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

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

16. **Governing Law and Venue.**

16.1 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the provisions concerning conflict of laws.

16.2 Client hereby irrevocably consents to and agrees that jurisdiction and venue for all disputes arising under this Agreement shall lie exclusively with the state and federal courts for Cumberland County, Pennsylvania and the Middle District of Pennsylvania.

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

18. **Compliance with Law and Policy.** During the term of this Agreement, both parties hereto shall comply with all applicable federal, state, and local laws and regulations, including the Pennsylvania School Code and applicable Board Policy of either party.
  
19. **Clearances.** As a Pennsylvania education agency, the CAIU complies with the Pennsylvania School Code, Pennsylvania Department of Education (PDE), and any other rules and/or regulations regarding the hiring and administration of personnel. All CAIU staff members and independent consultants who may be assigned to work with Client have all met applicable standards regarding hiring and the completion of background checks and clearances, including Act 34, Act 151, and Act 114 background checks and TB/physical exams as required by the PA School Code. Upon written request by the Client, the CAIU will provide a copy of all clearances *to its employee(s) and consultants* who are providing work to the Client and the employee or consultant will present them to the Client; the CAIU shall not forward clearances directly to the Client.
  
20. **Termination.**
  - 20.1 Each party has the right to terminate this Agreement (1) to the extent provided herein; or (2) in the event of a material breach, after giving written notice and at least thirty (30) calendar days to remedy; or (3) without cause upon ninety (90) days written notice.
  - 20.2 Upon termination by the Client, all work shall stop and payment for all work completed to date shall be immediately due and payable to the CAIU.
  
21. **Damages.** In addition to termination and any other rights provided hereunder, CAIU has the right to seek any remedy available to it in equity or in law, whether monetary or injunctive relief.
  
22. **Headings.** The headings of this Agreement are for convenience of reference only and do not affect the meaning or interpretation of this Agreement.
  
23. **Rules of Construction.** No provision of this Agreement shall be construed against a party simply because that party drafted the provision.
  
24. **Entire Agreement and Modification.**
  - 24.1 This Agreement constitutes the entire contract between the parties regarding the work and supersedes any previous oral and/or written representations, negotiations, and/or understandings between the parties.



- 24.2 Any changes, additions, or deletions to the Scope of Work shall be considered a modification as described herein. Any such modification must be subsequently labeled *Addendum 1, Addendum, 2, en sic*. To be valid, any modifications/amendments to this Agreement shall be made in writing, signed by an authorized representative of both parties, and dated.
- 24.3 Any and all Addenda shall be considered incorporated as a valid term of this Agreement.
- 24.4 It is specifically understood and agreed that every Addendum must be separately negotiated and a revised price agreed upon, in writing, by both parties.
- 24.5 Notwithstanding, this Agreement may be executed in multiple counterparts. Each such counterpart shall be an original and all together shall constitute but one and the same Agreement.

**25. Additional Terms and Conditions Specific to this Agreement.**

25.1 The CAIU is able to offer additional training, beyond the Scope of Work, at the rate of \$800 for three (3) web-based training sessions or \$850 plus travel expenses outside of the CAIU footprint for a one (1) day onsite training. This additional training shall be provided only upon request and shall require an Addendum. Supplemental invoices shall be issued for this service.

25.2 Backup exceeding 5 GB shall incur an additional charge of \$50 per month for each 200 GB increment. At the end of the fiscal year, a final invoice may be sent dependent on fees incurred for overages in backup and/or disc space used.

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

**CAPITAL AREA INTERMEDIATE UNIT**

**WELLSBORO AREA SCHOOL DISTRICT**

\_\_\_\_\_  
Authorized Signature

Andria B. Saia, Ed.D., JD

\_\_\_\_\_  
Printed Name

Executive Director

\_\_\_\_\_  
Title

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title



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