



Waukesha Education and Community Area Network Agreement of Association

Revision 1.0

February 2014



Wisconsin Education and Community Area Network

Agreement of Association

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Revision History

Date	Revision	Revision Information
February 2011	1.0	Initial document creation
March 2018	1.1	Formatting changes

Agreement of Association

This Agreement of Association (this “Agreement”) is entered into as of the ___ day of _____, 2014 (the “Effective Date”), by and among the members identified on the attached Exhibit A (the “Founding Members”) for the purpose of forming, pursuant to Chapter 184 of the Wisconsin Statutes, an unincorporated, nonprofit association to be known as Waukesha Education and Community Area network, Unincorporated Association or hereto referred to as “WECAN”.

Background

WECAN began in 2011 as a partnership between Carroll University and Waukesha County Technical College working with Midwest Fiber Networks and WiscNet to establish the initial WECAN fiber ring around the greater city of Waukesha. Now with the current network in place, WECAN plans to expand its present membership to include educational, government, and other non-profit organizations throughout the greater Waukesha area.

The Waukesha Education and Community Area Network (“WECAN”) currently exists as an informal community area network or “CAN” comprised of education institutions and municipalities who have combined their respective resources for the following stated mission:

“Provide all members a robust and resilient high speed fiber optic network by leveraging a coordinated regional communications infrastructure. WECAN membership is an innovative, competitive, and economically viable association for present and future generations.”

As of the Effective Date, WECAN operates a fiber optic cable network spanning the greater municipal area of Waukesha and a portion of Waukesha County. WECAN consists of more than twenty-seven miles of fiber optic cable serving over sixty facilities that encompass the “original network”. The original network is comprised of fiber optic cable installations that serve the facilities of the two founding members of the WECAN Network and fiber optic cable installations and related equipment that serve the facilities of each Charter Member (a “lateral” or if more than one, the “Laterals”).

The original network was constructed using a series of existing dark fiber projects and new construction of which was funded by the Charter Members whose facilities would benefit from the specific project, with each funding party’s contribution commensurate with the benefit the member would derive from that project and/or its ability to pay. Founding Members made financial contributions upon joining WECAN for past construction costs incurred in completing existing projects and from which those Founding Members and any additional member would derive benefit going forward. All members of WECAN agree to provide project funding, an equal share of WiscNet service costs, and pay an annual WECAN maintenance fee. Certain WECAN members also provide non-cash support to WECAN in the form of staff time, and other non-cash resources, all in a spirit of collaboration and fairness aimed at accomplishing WECAN’s mission. By way of clarification, construction of those portions of the Original Network comprising the WECAN network were funded by the Founding Members, whereas those portions of the Original Network comprising the Laterals were funded, in each case, by the Charter of Founding Member whose installation(s) is served by each lateral(s).

Agreement

In consideration of the foregoing, the mutual covenants and obligations created in this Agreement, the benefits each of the Founding Members, Charter Members, and any subsequent General Members will derive from the maintenance and expansion of the Existing Network, and other valuable consideration, the receipt and sufficiency of which the acknowledge, the Founding Members agree as follows:

Section 1 – Creation and Name of Association

The Founding and Charter members, by their execution of this Agreement and pursuant to Chapter 184 of the Wisconsin Statutes, hereby create an unincorporated, non-profit association (the “Association”). The name of the Association shall be Waukesha Education and Community Area Network, Unincorporated Association (WECAN, U.A.).

Section 2 – Membership in the Association

- 1. Founding Members:** Founding Members are defined as the original institutions whose cooperation made the formation of WECAN possible. WECAN Membership in the Association as of the Effective Date shall consist of all Founding Members whose names appear on Exhibit A and who are signatories to this Agreement. Founding Members will always have one position per institution on the Executive Committee for WECAN or any “Board” or “Committee” whose charter is to direct, guide, set policy, governs, or plans the actions, growth, or policy of WECAN, U.A.
- 2. Charter Members:** Charter Members are defined as a member that was not part of the original planning and formation of WECAN, but who was a participant in WECAN at the time of the formalization of the Unincorporated Association. WECAN Membership in the Association as of the Effective Date shall consist of all Founding and Charter Members whose names appear on Exhibit C, and who are signatories to this Agreement. Charter Members will always have one position per institution or civic corporation on the Executive Committee for WECAN or any “Board” or “Committee” whose charter is to direct, guide, set policy, governs, or plans the actions, growth, or policy of WECAN, U.A.
- 3. General Members:** General Members (“New Members”) may join the Association by entering into a Joining Agreement, in a form and under such terms as are determined by the Executive Committee (defined below) from time to time. The Founding Members, Charter Members, and General Members are sometimes referred to in this agreement individually as a “Member” and collectively as “Members.” When such references are used in a provision of this agreement, the intent is to make no distinction between Founding Members and Additional Members with respect to that provision.
- 4. Withdrawal of a Member:** A member may withdraw voluntarily from the Association at any time by providing written notice of withdrawal to the then acting Secretary of the Association, including a withdrawal date that is not sooner than thirty (30) days after delivery of the withdrawal notice. Withdrawing members do not receive a return of any assets or other resources conveyed to or bestowed up on the Association by such withdrawing members. If any member who otherwise would have remained a member is required to withdraw from the Association that member is no longer legally permitted to be a member (an “Involuntary Withdrawal”), that withdrawn member shall have the right following the involuntary withdrawal, but subject to any applicable legal requirements, to

apply to the Association for continued use of the WECAN Network under the terms of Section 2.5 below and the Executive Committee shall give all due consideration to that withdrawn member's application in the spirit of this Agreement and the Association's purposes

- a. **Involuntary Withdrawal:** A member who is forced to withdraw from WECAN due to a change beyond their immediate control is entitled to be reimbursed their "unused" contribution to the WECAN service and maintenance contingency funds. Unused contributions will be computed by subtracting the current balance of the members contributions (up to 2 years) minus any expenditures incurred during that time period. The value of expenditures will be determined by dividing the expenditure(s) total by the total number of active members during the same time period.
5. **Removal of a Member:** A member may be removed from the Association, but only under extreme circumstances where (i) the Member's continued membership jeopardizes the existence of functioning of the Association; and (ii) diligent and good faith efforts to resolve the situation have been unsuccessful. The Association's Bylaws will contain procedures governing the removal of a member, including without limitation, notice, cure period, and voting procedures. Removed members do not receive a return of any assets or other resources conveyed to or bestowed upon the Association by such removed members.
6. **Services to Non-Members:** The Association may make the WECAN Network available for use by non-member entities who were a member, but for reasons not foreseen can no longer participate in the Unincorporated Association known as WECAN. Furthermore the Executive Committee has determined the non-member whose missions of functions the Executive Committee reasonable believes are consistent with the Association's stated mission, pursuant to terms specified by the Executive Committee; provided that the Association expressly herein states that it is not the intention of the Association for the WECAN Network be made available to individuals of the public generally, and further states that, under no circumstances, will the Association or its Members, sell telecommunications services via the WECAN Network, nor will the WECAN Network be made available to non-member entities in a manner that competes directly with commercially available connectivity services.

Section 3 – Assets of the Association

1. **Active Network:** As of the Effective Date, the Founding Members hereby convey to the Association, all of their right, title, and interest in, and to, the fiber strands in use by WECAN "Active Network" (except Laterals), together with all their right, title, and interest in, and to, any and all easements relating to such portions of the "Active Network."
2. **Existing Rights and Uses:** Notwithstanding the rights and interests they are transferring to the Association by this Agreement, each of the Founding Members shall continue to have and enjoy the same level of use of the "Active Network" as they enjoy on the Effective Date, subject to the terms of this Agreement, including the effect of any Projects (defined below).

3. **Expansion of the Network:** Future expansion of the “Active Network” may continue to occur through projects undertaken by two or more members (“projects”) under the following parameters:
- a. *Project Proposal:* A project may be initiated by the submission of a proposal to the Executive Committee. At a minimum, a proposal shall identify:
 - i. The route of the proposed expansion
 - ii. The members who will benefit from the project
 - iii. Any new members who will join the association in conjunction with the project
 - iv. Each member’s use of the WECAN Network as expanded by the approved project
 - v. The source(s) of funding for the project
 - vi. Such other factors as the Executive Committee may require
 - b. *Project Approval:* The Executive Committee has the responsibility to approve submitted projects. The Association will arrange for the design and construction of the project on behalf of the Members proposing the project (including the new members described in the proposal provided those new members enter into Joining Agreements as described above)
 - c. *Expanded Network:* Upon completion of the project, the WECAN Network shall be deemed to include all of the fiber optic cable installed as part of the approved project (except any laterals), and the WECAN Network map shall be updated accordingly. Each lateral shall be and remain the property of the member whose facility is served by that lateral.
 - d. *Projects Not Approved or Other Projects by Members:* Nothing in this Agreement shall prevent any Member or group of Members from carrying out, individually or as a group of Members, or as a group including non-Members, projects that were presented to the Association in a proposal that was not approved by the Executive Committee or other projects that such Member(s) determine would be better completed without involving the Association. Installations constructed through projects completed under this subsection (3.3.d) will not become part of the WECAN Network or be owned by the Association, but the Association, on behalf of one or more of its Members may enter into separate agreements whereby those Members may obtain the use or other benefit of such projects on terms agreed upon among the Member (and/or others) who constructed the non-WECAN project and those other Members who wish to obtain the benefit of such non-WECAN project.
 - e. *WECAN Initiated Projects:* In addition to the above, the Association, acting through the Executive Committee, shall have the authority to approve and undertake a project to expand the WECAN Network whenever the Executive Committee deems such expansion to be in the best interest of the Association. The funding for, and use of, an Executive Committee initiated project will be explained to the then-current members in a regularly-scheduled Association meeting, or in a special meeting called in accordance with the procedures set forth in the Association Bylaws prior to the commencement of that project, provided, however; that no Member may be required to participate in the funding of design

and construction for a project initiated by the Executive Committee under this subsection 3.3.e over that Member's objection.

- f. *Maintenance of the WECAN Network:* The Association will be responsible for the maintenance, repair, and replacement of the WECAN Network as the same may be expanded from time to time as provide in Section 3.3 above. The costs of such maintenance, repair, and replacement shall be assessed against the Members as set forth in Section 5.5 below and the Association's Bylaws, provided, however; that the Executive Committee may, in its discretion, apply grant funds received by the Association for these purposes in accordance with the requirements of any such grants. Members shall be solely responsible for the maintenance, repair, and replacement of all laterals, provided, however; that the Members may contract with or through the Association for such work on such terms as may be determined by the Executive Committee.

Section 4 – Association Governance and Meetings

1. **Association Bylaws:** The governance of the Association and the scheduling of the annual and other Association meetings shall be set forth in the Association's Bylaws (as initially adopted and as they may be amended from time to time), the initial version of which shall take effect upon adoption by the Founding Members and Charter Members, either by unanimous adoption as evidenced by the signature of all Founding Members on a copy of the Bylaws, or by majority voice of the Founding Members present at the Inaugural meeting (defined below). Thereafter, the Bylaws may be amended as set forth in the bylaws.
2. **Executive Committee and Other Committees:** The affairs of the Association shall be governed by an Executive Committee of six (6) members consisting of:
 - i. One (1) member appointed by each of the following Founding Members:
 1. Carroll University
 2. Waukesha County Technical College
 - ii. One (1) member appointed by each of the following Charter Members:
 1. Waukesha School District
 2. City of Waukesha
 - iii. Two (2) members elected by majority vote among General Members (and any New Members who may join) that do not appoint an Executive Committee member under subsection 4.2.i and 4.2.ii.
3. **Inaugural Meeting:** The inaugural executive committee members shall be appointed or elected (as the case may be) at a meeting of the Founding and Charter Members to be scheduled, noticed, and held within thirty (30) days after the execution of this Agreement by all of the Founding and Charter Members (the "Inaugural Meeting") Notice of the date, time, and location of the Inaugural Meeting shall be provided to the Founding and Charter Members by the Fiscal Agent (currently WCTC) not less than ten (10) days before the date of the Inaugural meeting at the notice address shown on Exhibit A. Executive Committee members appointed and elected at the Inaugural Meeting shall serve until the Annual Meeting of Members to be held in January, 2014 (unless sooner replaced as allowed under the Bylaws). Thereafter, the appointment and election of the Executive Committee members shall be conducted as set forth in the Association's Bylaws.

4. **Other Committees:** The bylaws may also provide for the establishment of additional committees (or the appointment of such additional committees) by the Executive Committee
5. **Annual Meeting:** The Association shall hold an annual meeting during the month of January in each calendar year. The location and agenda for each annual meeting shall be determined by the Executive Committee. Notice of the annual meeting and agenda shall be given as proscribed in the Association's Bylaws. The scheduling of additional Association meetings, including special meetings, shall be done in the manner set forth in the Bylaws.

Section 5 – Association Finances

1. **Finance Committee:** The Association's finances shall be overseen by a Finance Committee appointed by the Executive Committee as further set forth in the Bylaws. Members of the Executive Committee may serve on the Finance Committee, provided however, that the Executive Committee member appointed by the Association's Fiscal Agent (defined below), if then applicable, may not serve on the Finance Committee.
2. **Annual Budget/Assessments:** Prior to the end of each calendar year, the Finance Committee shall prepare an annual budget for the upcoming calendar year showing the Association's anticipated expenses for that year, together with proposed assessments for each of the Members. The estimated annual budget will be presented to the active members of WECAN not later than June 30th of each year. The Annual Budget shall be subject to the approval of the Members at the Annual Meeting in the manner set forth in the Bylaws and will be voted on not later than December 30th of the year the estimated budget was presented to the membership.
3. **Fiscal Agent:** The Association may continue the practice followed by WECAN of selecting a fiscal agent (the "Fiscal Agent") from among the Members to act in the Association's behalf in contracting for Projects and other services needed by the Association as approved by the Executive Committee. As of the Effective Date, of the formalization of the Unincorporated Association "WECAN", the Fiscal Agent is Waukesha County Technical College.

Section 6 – Dissolution

The following events shall result in the dissolution of the Association:

1. **Lack of Membership:** There remain fewer Members in the Association than required by applicable law (as of the Effective Date, a minimum of three (3) members is required by Wisconsin Statutes Section 184.01(2)); or
2. **Vote of Members:** A duly-presented motion to dissolve the Association at a duly-called meeting of the Association is approved by not less than three-fourths 3/4 of the then-existing Members; or
3. **Condemnation:** The taking by eminent domain (or the transfer in lieu of condemnation) of all or substantially all of the assets of the Association; or;
4. **Final Judgement:** A non-appealable judgment rendered by a court with lawful jurisdiction and authority that orders the Association is or shall be dissolved.

If the Association is dissolved, after satisfying all debts and obligations of the Association, any remaining assets of the Association shall be disposed of in one of the following manners, as approved by a majority of the Members then entitled to vote under the Association's Bylaws:

1. the remaining assets shall be conveyed, in whole, to an "Eligible Entity" as that term is defined below; or
2. the remaining assets shall be liquidated and the proceeds thereof distributed as follows:
 - a. First, to the then-current Members, a payment shall be made calculated by multiplying the total amount of such proceeds by a fraction the numerator of which is the total value of all cash and non-cash support (not including annual maintenance fees) a Member has paid or provided to the Association and the denominator of which is the total value of all cash and non-cash support (not including annual maintenance fees) that all Members have paid or provided to the Association (including, to the extent they can be calculated with reasonable accuracy, the value of all cash and non-cash support provided to WECAN by the Founding Members as of the Effective Date), all as determined by the Association's records as supplemented by any additional records that the Executive Committee deems reliable. Notwithstanding the foregoing, no Member may receive a payment in excess of 100% of the total amount of cash and non-cash support that Member provided to the Association (not including annual maintenance fees), the intent being that no Member shall profit from the disposition of the Association's assets upon the dissolution of the Association; and
 - b. any remaining assets shall be distributed to one or more Eligible Entities.
3. Fiber that was conveyed to the association by the founding members will revert back to the original "Charter Member" who purchased and installed fiber with the original "IRU". Fiber Optic "Laterals" will remain the property of the "Member" who installed them.
4. For purposes of this section, an "Eligible Entity" is an entity of the type designated as eligible for a distribution of the Association's assets under then applicable law, as determined and selected by the Executive Committee. As of the Effective Date, Wisconsin Statutes Section 184.09(2) identifies as Eligible Entities:
 - a. A nonprofit association or non-profit corporation pursuing broadly similar purposes; or
 - b. A government or governmental subdivision, agency or instrumentality.
 - c. An active and current member of WiscNet.

Section 7 – Miscellaneous

1. **Binding Effect; Amendment:** This Agreement shall be binding upon and inure to the benefit of the Founding Members, Charter Members and any New Members who join the Association under the terms hereof. This Agreement shall be amended or modified only in a written amendment signed by all of the then-current Members or as otherwise provided in the Bylaws of the Association.
2. **Third Party Beneficiary:** No one who is not a Member shall be entitled to or have the right to claim to be a third party beneficiary hereunder or otherwise be entitled to enforce or seek the benefit of any of the terms or provisions of this Agreement.
3. **Exhibits:** The Exhibits appended to this Agreement are incorporated herein and for all purposes are a part of this Agreement.

4. **Captions/Headings:** The captions or headings placed upon sections of this Agreement are for convenience only, do not constitute a part of this Agreement, and shall not limit or affect in any way the interpretation or construction of this Agreement.
5. **Severability:** If any part of this Agreement shall be found to be invalid or unenforceable by a court of competent jurisdiction, such finding shall not affect the validity or enforceability of any other provisions of this Agreement that can be given effect in the absence of the parts determined to be invalid or unenforceable.
6. **Governing Law/Authority:** All matters relating to the making, enforcement, and performance of this Agreement shall be governed by the internal laws of the State of Wisconsin. It shall be the obligation of each Member to determine whether its membership in the Association is within its governmental, municipal, corporate or other legal power and authority, and for each such Member to comply with all applicable laws, codes, and ordinances and with the provisions of its governing documents. Each Initial Member executing this Agreement represents and warrants that such execution has been duly authorized by all required procedures, that the person or persons signing this Agreement on such Initial Member's behalf has the proper authority to do so, and that upon execution by such Initial Member, this Agreement shall be binding and enforceable against such Initial Member in accordance with its terms.
7. **Counterparts/Facsimile or Digital Signatures:** This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. Facsimile or digitally transmitted signatures shall be binding upon the parties hereto.

Section 8 – Limitation of Warranties and Liability

Except as expressly stated in this agreement, WECAN makes no representations or warranties – express or implied – regarding the system or the services, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, non-infringement, or that the services will be uninterrupted or error free, and all such warranties are hereby disclaimed by WECAN and waived by the members to the extent nor prohibited by laws. No party shall be liable to the other or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages, even if advised of the possibly there of.

Notwithstanding anything to the contrary in this agreement, in no event shall WECAN, U.A. aggregate liability to Members or to any third-party under this agreement, regardless of the basis for such liability, exceed the total amount received by WECAN during the previous 12-month period under this agreement. All claims under this agreement must be initiated not later than one year after the occurrence giving rise thereto or they shall be deemed waived, except with respect to claims by Member(s) relating to service charges, invoices, or payments due from or made by the Member(s) which must be initiated not later than six months after the date of such charge, invoice or payment.

1. **Personal Liability:** Under no circumstances shall any Member, or any officer, official, director, commissioner, member, agent, or employee of any Member, have any personal liability arising out of this Agreement, and no Member shall seek or claim any such personal liability on the part of any of the above. Notwithstanding the foregoing, the Members agree to the fullest extent permitted under applicable law to indemnify, defend, and hold one another harmless from and against any claims or liabilities arising out of

damage to person or property caused by the gross negligence or willful misconduct of the indemnifying Member, or its agents or employees in the performance of this Agreement.

2. **Confidentiality; Trademarks:** Each member shall be entitled to announce publicly and/or in business presentations, that the member has joined the “WECAN U.A.” under which WiscNet will be providing Internet access. Nothing in this Agreement shall be deemed or construed to be a license or other grant of rights to use any other Member’s copyrighted materials, trademarks, service marks, trade names, logos, or other intellectual property or proprietary rights without the prior consent of each member.

Signature Page

Agreement of Association

The individuals signing below represent, warrant and covenant to each other, “WECAN, U.A.”, and all members that they are duly authorized to execute and deliver this Agreement on behalf of the entity for which they have signed. If an agent or a manager is signing this Agreement on behalf of any Founding Member or Charter Member, such individual also represents, warrants and covenants that they have actual authority to negotiate, execute and deliver this Agreement on behalf of the Founding Member or Charter Member they represent. This Agreement may be signed electronically, in which case the signature lines below will remain blank and evidence of each party’s electronic signatures will appear at the bottom of this signature page.

Founding Members Signatory Record

Waukesha County Technical College

Sign: _____

Print: _____

Title: _____

Date: _____

Carroll University

Sign: _____

Print: _____

Title: _____

Date: _____

Charter Members Signatory Record

School District of Waukesha

Sign: _____

Print: _____

Title: _____

Date: _____

City of Waukesha

Sign: _____

Print: _____

Title: _____

Date: _____

County of Waukesha

Sign: _____

Print: _____

Title: _____

Date: _____

Exhibit A – Founding Members/Notice Addresses

Carroll University

Information Technology Services
100 N. East Avenue
Waukesha, Wisconsin 53186

Waukesha County Technical College

Information Technology Services
800 Main Street
Pewaukee, Wisconsin 53072

Exhibit C – Charter Members/Notice Addresses

School District of Waukesha

Office of the CIO
222 Maple Street
Waukesha, Wisconsin 53186

City of Waukesha

Attn: IT Department
201 Delafield Street
Waukesha, Wisconsin 53188

County of Waukesha

515 West Moreland Boulevard
Information Technology, Room CG-53
Waukesha, Wisconsin 53188