

22-23

# AGREEMENT

## BETWEEN

**Northwest Educational Service District 189**  
*(Hereinafter referred to as NWESD)*

**AND Stanwood-Camano School District**  
*(Hereinafter referred to as District)*

**1601 R Ave, Anacortes, WA 98221**

**26920 Pioneer Highway**

**(360) 299-4000**

**FAX (360) 299-4070**

Address

**Stanwood**

**WA**

**98292**

City

State

Zip

**NWESD Account: 1605-98-7000**

**Phone:**

**360-629-1200**

In consideration of the promises and conditions contained herein, NWESD and the District do mutually agree as follows:

### I. PURPOSE

The purpose of this Agreement is to provide use of the pdEnroller application hosting and development services for the 2022-23 school year.

### II. RESPONSIBILITIES OF NWESD

In accordance with this Agreement, the NWESD shall:

1. Be responsible for employment of necessary staff for the administration of pdEnroller. Said staff and/or personnel shall not be considered employees of the district.
2. Provide verbal and/or written technical assistance and support for pdEnroller to identified district staff.
3. Send notifications of pdEnroller system updates.
4. Act as a liaison between the district and ESD112 when trouble shooting issues or requesting system updates.
5. Represent the regional and district needs on the pdEnroller Advisory Committee.

### III. RESPONSIBILITIES OF THE DISTRICT

In accordance with this Agreement, the District shall:

1. Designate an individual(s) to be the liaison with NWESD.
2. Be responsible for the input and management of the District content for the District Member's pdEnroller website
3. Maintain a clock hour approval process and advisory compliant with WAC 181-85-200.
4. Provide staff who will maintain and administer pdEnroller on a district level.
5. Provide a single point of contact for administrative authorizations and support.
6. Not disclose or make available any software or documentation associated with the Services to any parties or persons not using the Services on behalf of the District. The District understands that pdEnroller contains copyrighted material and agrees to safeguard all materials being provided under this Agreement and shall not change, modify or alter any software without prior written permission, nor infringe on or violate any vendor license agreement entered into on their behalf

### IV. TERM OF THE AGREEMENT

The start date of this Agreement is the later of September 1, 2022 or the date that signatures have been obtained from both parties to the Agreement. The end date of this Agreement is August 31, 2023. Termination is further specified in the Termination section of this Agreement.

## V. AGREEMENT OBLIGATION

1. Annual membership subscription:  
\$0.58 per student FTE and the District provides clock hours free of charge to staff for in-district offerings. The District May 2022 FTE count was 4,532 for a total fee of **\$2,628**. This fee includes an additional ten (10) hours annually of technical assistance, face-to-face training, and/or on-line training.
2. Face-to-Face or online training and technical assistance after the annual 10 hours will be invoiced at \$60 per hour.
3. NWESD will invoice the District. Invoices will be paid within thirty (30) days of receipt.

## VI. PAYMENT PROVISIONS

All payments to the NWESD shall be conditioned upon:

1. The District or its designee determines that the services or goods provided by the NWESD are satisfactory, provided that such determination shall be made within a reasonable time and not be unreasonably withheld; and
2. The NWESD timely submits to the District Fiscal Department satisfactory invoices detailing the services or goods rendered for requested payment.
3. Any date(s) specified herein for payment(s) to the NWESD shall be considered extended as necessary to process and deliver payment. Such extension will not be greater than thirty (30) days following delivery of satisfactory services or goods and receipt of the appropriate invoices, whichever occurs later.

## VII. CONTRACT MANAGERS:

<b><u>NWESD Agreement Manager</u></b>	<b><u>District Agreement Manager</u></b>
Name: David Forsythe	Name: Ben Gauyan
Address: 1601 R Avenue Anacortes, WA 98221	Address: 26920 Pioneer Hwy Stanwood, WA 98292
Phone: 360-299-4021	Phone: 360-629-1246
Fax: 360-299-4070	Fax:
Email Address: dforsythe@nwesd.org	Email Address: bgauyan@stanwood.wednet.edu

## VIII. NONDISCRIMINATION/ANTI-HARASSMENT

In performing its obligations under this agreement, the District shall comply with the NWESD, state and federal guidelines and regulations regarding nondiscrimination and harassment involving any employee/student on the basis of race, color, sex, religion, ancestry, national origin, creed, marital status, age, sexual orientation, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or use of a trained dog or service animal by a person with a disability in employment, services, or any other regards.

## IX. GOVERNING LAW/VENUE

The parties agree NWESD will serve as the administrator for this cooperative undertaking and as such will govern and direct the operation of pdEnroller services. A separate legal or administrative entity is not being formed. As the Administrator, NWESD shall act in accordance with the terms of this Agreement and NWESD's adopted policies and procedures.

The terms of this Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, without regard to conflicts of laws principles. In the event that legal action or arbitration is commenced to resolve a dispute related to this Agreement, the venue of such action or arbitration shall be in Skagit County, Washington.

## **X. INDEMNIFICATION/HOLD HARMLESS**

The District indemnifies and shall defend and hold the NWESD, its employees, agents and representatives, harmless from and against all third-party claims, actions, liens, suits or proceedings asserted against the NWESD that are related to the District's obligations or performance under this Agreement. The District shall timely reimburse the NWESD for all costs, expenses, damages, losses, liabilities or obligations, including reasonable attorney's fees, incurred by the NWESD as a result of such third-party claims, actions, liens, suits or proceedings.

## **XI. TERMINATION**

This Agreement may be terminated by the NWESD or District at any time, without reason, upon written notification thereof to the other party. The notice shall specify the date of termination and shall be conclusively deemed to have been received by the other party as of midnight of the second day following the date of its posting in the United States mail addressed as first noted herein. In the event of termination, the NWESD shall be entitled to an equitable proration of the total compensation provided herein for uncompensated services that have been performed as of the date of termination, and to the reimbursement of expenses incurred as of the date of termination, but solely to the extent such expenses are reimbursable under this Agreement.

## **XII. OTHER ASSURANCES**

In performing its obligations under this Agreement, each party shall promptly comply with all laws, ordinances, orders, rules, regulations and requirements of the federal, state, county or municipal governments or any of their departments, bureaus, boards, commissions or officials concerning the subject matter of this Agreement (the "Laws"). This provision applies to Laws currently existing or applicable to a party's duties under this Agreement during the term of this Agreement.

## **XIII. ASSIGNMENT**

Neither this Agreement nor any interest therein may be assigned by the District without first obtaining the written consent of the NWESD.

## **XIV. DEFAULT**

The District shall be in default of this Agreement upon the occurrence of any of the following:

1. Any covenant, representation or warranty made by the District was false or misleading when made or subsequently becomes so;
2. The District fails to perform any of its obligations under the Agreement, and unless otherwise specifically stated elsewhere in this Agreement, such failure continues for thirty (30) calendar days after the District receives a notice to cure from the NWESD or its designee;
3. The District files a petition in bankruptcy or other similar proceeding, makes any assignment for the benefit of creditors, or is the subject of an involuntary bankruptcy petition, receivership or other insolvency proceeding; or
4. After the termination of the Agreement, the District continues to use any of the NWESD's intellectual property.

## **XV. BREACH/DEFAULT WAIVER**

No delay or failure on the part of the NWESD to exercise any rights under the Agreement shall operate as a waiver of the NWESD's agreemental rights. Also, the NWESD's waiver or acceptance of a partial, single or delayed performance of any term or condition of the Agreement shall not operate as a continuing waiver or a waiver of any other breach of a Agreement term or condition. No waiver shall be binding unless it is in writing and signed by the party waiving the breach.

## **XVI. REMEDIES FOR DEFAULT**

If the District is in default of this Agreement, the NWESD may pursue any or all of the following remedies, which may be cumulative:

1. Immediately terminate the Agreement;
2. Injunctive relief without proof of actual damage and without posting a bond pending resolution by court action or arbitration;
3. Liquidated damages to protect against the immeasurable damage to the NWESD's business and goodwill of \$50.00 for each day that the District improperly or without permission uses the NWESD's intellectual property;
4. Consequential and incidental damages to the NWESD from the District's default; and
5. Recover reasonable attorneys' fees and costs for any arbitration or litigation brought to enforce the NWESD's rights under this Agreement.

## **XVII. SEVERABILITY**

If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted and the balance of the Agreement shall remain enforceable.

## **XVIII. HEADINGS**

The headings of each section of this Agreement are provided only to aid the reader. If there is any inconsistency between the heading and the content of the paragraph or the context of the agreement, the content or context will prevail.

## **XIX. INTEGRATION/MODIFICATION**

This Agreement constitutes a fully integrated document containing the full, final and binding agreement of all parties signatory and all persons claiming by or through a signator, and supersedes all other negotiations, offers or counteroffers relating to the subjects treated in this Agreement. The parties may amend this Agreement only upon a writing bearing the actual signatures of the names of all the parties or their respective, authorized representatives.

## **XX. NOTICES**

Any notice given under this Agreement shall be in writing from one party to another, given only by one of the following methods: (i) personal delivery, (ii) United States first class and certified mail, return receipt requested, with postage prepaid to the recipient's business address provided on the front page of this Agreement; or (iii) e-mail to the recipient's email address given in the Agreement Managers section. Notice shall be deemed to occur in the case of the use of the mail, when the notice is postmarked. Notice shall be deemed received on the date of personal delivery, on the second day after it is deposited in the mail or on the day sent by e-mail. A party may change the place notice is to be given by a notice to the other party. For efficiency, the parties agree that documents sent by electronic means shall be considered and treated as original documents.

## **XXI. FORCE MAJEURE**

A party to this Agreement is not liable to the other party for failing to perform its obligations if such failure is a result of Acts of God (including fire, flood, earthquake or other natural disaster), war, government sanction/order/regulation, riot, terrorist attack, labor dispute, or other similar contingency beyond the reasonable control of the parties. Force Majeure does not include computer events, such as denial of service attacks or those that may occur as a result of a third party. Each party shall have backup computer systems to allow it to continue to perform its obligations under the Agreement. If a party asserts Force Majeure as an excuse for failure to perform its agreemental obligations, then it must prove that it took reasonable steps to minimize delay or damages caused by foreseeable events, that it substantially fulfilled all non-excused obligations and that the other party was timely notified of the likelihood of or actual occurrence of such an event.

**XXII. DISPUTE RESOLUTION**

If a dispute regarding this agreement arises between the District and the NWESD, then the District will appoint someone to represent it, the NWESD will appoint someone to represent it, and those two parties will appoint someone as a third representative. Decisions will be made by a vote of the majority of the representatives. The dispute committee shall be limited to resolving issues pursuant to the terms of this Agreement, and its decision(s) shall be final.

**XXIII. SIGNATURES/APPROVALS**

The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the parties.



8/2/22

\_\_\_\_\_  
Larry Francois, Superintendent      Date  
Northwest Educational Service District 189

\_\_\_\_\_  
Dr. Deborah Rumbaugh, Superintendent      Date  
Stanwood-Camano School District

Reviewed:

Program Manager                       


Fiscal                                       


District Contact                       
