

# **AGREEMENT**

Mercer Island 01-17-400

This Agreement is made and entered into this 1st day of September, 2019, by and between the Northwest Educational Service District, ("NWESD" hereinafter) and the Mercer Island School District No.400, ("District" hereinafter).

**WHEREAS**, the NWESD is authorized to provide services to school districts by RCW 28A.310.010;

**WHEREAS**, the NWESD has formed the Northwest Regional Data Center cooperative, ("NWRDC" hereinafter);

**WHEREAS**, the District and NWESD under RCW 28A.320.080, RCW 28A.310.200, and RCW 39.34.080 are empowered to enter into agreements for Interlocal agreements and cooperative service programs; and,

**WHEREAS**, the District desires to enter into a cooperative service agreement with the NWESD;

**IT IS HEREBY AGREED** that the NWESD shall receive funds from the District and shall expend such funds for the purpose of providing information systems services through the NWRDC and the Washington Schools Information Processing Cooperative, ("WSIPC" hereinafter) in accordance with the terms and conditions set forth herein:

## **1. GENERAL TERM OF THE AGREEMENT**

**The term of the Agreement will commence September 1, 2019. Thereafter, the terms of the Agreement will automatically renew from September 1<sup>st</sup> through August 31<sup>st</sup> of each successive year.**

This term shall continue unless District gives written notice to NWRDC to terminate the Agreement. This notice must be provided to NWRDC by March 1<sup>st</sup> of the same year termination is desired, at which time District agrees to continue paying Cooperative fees until August 31<sup>st</sup> of the same year. District may extend the term of services beyond the date which notice of termination is given. Each extension must be at least two months long. When applicable, notification of changes made to the Appendix B fee schedule of this agreement will be provided prior to March 1<sup>st</sup> of each year and will include a request for District acknowledgement of receipt.

## **2. MEMBERSHIP IN NORTHWEST REGIONAL DATA CENTER**

District shall become a full member of NWRDC effective September 1, 2019. Membership shall entitle District to nominate candidates and vote for representatives on the NWRDC Executive Committee. NWRDC is a part of and functions through NWESD.

### **3. INFORMATION SYSTEM SERVICES**

During the term of this Agreement, NWESD agrees, through NWRDC, to provide to District information system services as set forth in the Appendix A, which outlines the software, service levels, roles and responsibilities of NWRDC to District in support of student, business and personnel related software packages offered by WSIPC including software support, amount and method of customer support, performance levels, and availability of staff, of this Agreement.

### **4. PROGRAM DEVELOPMENT**

NWESD agrees that priority in the development of new applications services by WSIPC shall be in accordance with the expressed direction of the WSIPC Board of Directors operating under their bylaws.

### **5. COST TO THE DISTRICT**

During each year of the term, the WSIPC fee will be incorporated into the total fee collected by NWRDC. The WSIPC fee is established by the WSIPC Board of Directors and the NWRDC fee is approved by its Executive Committee.

The annual cost to District for services provided under this Agreement will be determined pursuant to the Appendix B fee schedule. The FTE fee will be calculated based on the actual annual student FTE count for the prior fiscal year. This cost includes amounts for sales use or other similar taxes related to the services provided herein. One twelfth of the annual cost will be invoiced for the first ten months of the Agreement. A final adjustment shall be made to the actual average annual FTE for the current year on the July and August payments.

### **6. RIGHTS TO PARTICIPATE IN JOINT COOPERATIVE**

As authorized by RCW 28A.320.080 (3) and RCW 28A.310.180 (3) (currently existing or hereinafter amended), group purchasing and/or bidding for data processing equipment and/or services, or related equipment and/or services, may be part of the activities of the ESD cooperatives. Members of these cooperatives may, at their own option, participate in the bidding/purchasing role of WSIPC, but will not be required to do so for any particular item(s).

### **7. CONFIDENTIALITY**

All materials furnished to WSIPC and NWRDC by District pursuant to this Agreement, shall remain the property of District and shall not be disclosed to third parties except by written consent of District. These materials include, but are not limited to, source data, computer files, reports, listings and computer programs.

NWRDC and WSIPC acknowledge that performance of Services under this Agreement may involve access to confidential information including, personally-identifiable

information, student records, protected health information, or individual financial information that is subject to state or federal law/rules restricting the use and disclosure of such information, (reference Family Educational Rights and Privacy Act (20 U.S.C. § 1232g). NWRDC and WSIPC agree to comply with said FERPA regulations and will follow the federal guidelines in handling or disclosing personally identifiable information.

## **8. ACCESS TO PUBLIC RECORDS**

No records of District shall be made available for public inspection or copying by NWRDC, NWESD, or WSIPC without express written authorization of District. Requests pursuant to RCW 42.17 for inspection or copying of public records of District, held or maintained by NWRDC shall be referred to District.

## **9. RIGHTS IN COMPUTER SOFTWARE**

During the term of this Agreement, District agrees that it shall safeguard all Skyward, Inc., NWRDC, and WSIPC proprietary materials as set forth under "Grant and Limitations" in the WSIPC Services portion of Appendix A.

## **10. PERFORMANCE AND BONDING**

NWESD shall not be liable for inadequate services or errors caused by inaccurate or inadequate input data, programs or other software furnished by District.

## **11. DISPUTES**

Any dispute, claim or grievance arising out of or relating to the interpretation or application of this Agreement shall be resolved by a three-member committee. The representatives shall be selected by NWESD and District, each selecting one representative. Thereafter, NWESD's representative and District's representative shall select an impartial third party who shall serve as the third member of the committee. This dispute resolution committee shall be guided and limited by the terms and conditions expressly delineated in this Agreement.

## **12. TERMINATION FOR BREACH**

If either party fails to comply with the terms and conditions of this Agreement, the other party upon thirty (30) days prior written notice to the breaching party may terminate this Agreement.

## **13. INTERLOCAL AGREEMENT**

This Agreement provides authority in addition to those vested by RCW 28A.310.200 and RCW 28A.320.080, is be deemed to be in satisfaction of the provisions of RCW 39.34, and is deemed a contract pursuant to RCW 39.34.080

#### **14. CRIMES AGAINST CHILDREN**

In accordance with RCW 28A.400.330, employees, agents, and contractors of NWESD are prohibited from working at a school if they have or may have contact with children at a public school during the course of their employment and have pleaded guilty to or been convicted of the crimes identified in RCW 28A.400.322. Any failure to comply with this section shall be grounds for District immediately terminating the Agreement.

#### **15. INDEMNITY**

NWESD shall defend, indemnify, and hold harmless District in full for any and all claims against District or its employees, officials, or contractors which arise from the acts or omissions of NWESD and its employees, officials, and contractors in the provision of services under this Agreement. District shall defend, indemnify, and hold harmless NWESD in full for any and all claims against NWESD or its employees, officials, or contractors which arise from the acts of omissions of District and its employees, officials, and contractors in the provision of services under this Agreement.

#### **16. ASSIGNMENT**

This Agreement may not be assigned by either party without written consent of the parties.

#### **17. WAIVER AND SEVERABILITY**

No provision of this Agreement, or the right to receive reasonable performance of any act called for by its terms, shall be deemed waived of a breach thereof as to a particular transaction or occurrence.

If any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions or applications of the Agreement which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this Agreement are declared severable.

The parties acknowledge that they have read and understand this Agreement, including any supplements or attachments hereto, and do agree thereto in every particular. The parties further agree that this Agreement, together with all appendices, constitutes the entire Agreement between the parties and supersedes all communications, written or oral, heretofore related to the subject matter of this Agreement. This Agreement may be modified or amended with the mutual consent of the parties. With the signatures below, the parties indicate that they have the legal authority to obligate their respective agency to the terms and conditions contained herein.

**Mercer Island School District No. 400** elects to contract for:

**Full Services**

Board approval date: \_\_\_\_\_

**OR**

Resolution number \_\_\_\_\_ and date \_\_\_\_\_, of board delegation of authority to sign interlocal agreements.

\_\_\_\_\_  
(Superintendent Signature) (Date)

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

\_\_\_\_\_, Washington  
(County)

\_\_\_\_\_  
Larry Francois, Superintendent (Date)  
Northwest Educational Service District 189  
Skagit County, Washington

# Appendix A

## Software and Systems - Services and Support

### NWRDC Services

The following services are currently available to member districts. Every member of NWRDC may contract for Fiscal/HR Services (Business), Student Services or Full Services (both).

### Service Requests

To request support during Normal Support Hours, the following points of contact will be used:

#### Business Team

425-349-6560

[nwrdcfiscalsupport@nwrdc.net](mailto:nwrdcfiscalsupport@nwrdc.net)

Support Hours & Information: <https://www.nwrdc.net/business-team/>

#### Student Team

425-349-6570

[nwrdcstu@nwrdc.net](mailto:nwrdcstu@nwrdc.net)

Support Hours & Information: <https://www.nwrdc.net/student-team/>

#### Operations Team

425-349-6666

[croom@nwrdc.net](mailto:croom@nwrdc.net)

Support Hours & Information: <https://www.nwrdc.net/operations-team/>

#### Technology Team

425-349-6496

[jsain@nwrdc.net](mailto:jsain@nwrdc.net)

Information: <https://www.nwrdc.net/technology-team/>

### Response Times

NWRDC maintains a phone/e-mail support administrator during normal working hours. This individual monitors and assigns all client contacts to ensure timely responses. At any time an issue is determined critical, the client will be notified within one hour of its status and every two hours thereafter.

A critical incident meets any of the following conditions:

- Productivity has stopped
- A staff member or agency cannot continue work
- Data is corrupt
- Financial controls are impaired
- System security has been compromised

**Application Support Services**

NWRDC services are available to employees of the District for the application under contract. This service includes telephone support, formal classroom training, on-site training, on-line training, user documentation materials and consulting in conjunction with the implementation of the WSIPC provided software. When the District contracts with outside consultants, it is recommended that these consultants attend relevant training.

**Data Transportation**

NWRDC assumes responsibility and cost to deliver computer output via United Parcel Service to a single designated drop-off location within the District. Districts requesting delivery to multiple drop-off points will be billed for this added service. The District may elect to pick up their output at the NWRDC Operations Center. Data shipped from the District to NWRDC is the financial responsibility of the District.

**Paper and Special Forms**

NWRDC reserves the right to bill the district for paper usage beyond approved levels as determined by the NWRDC Executive Committee. Additional fees will be levied for anything beyond that limit. Paper and special forms used in the district on terminals, personal computers and other office machines are provided by the district.

**Terminal Communications**

District assumes responsibility for the costs and support of hardware, telecommunication software, and telecommunication connection costs to the access points established by NWRDC. NWRDC provides Active Directory account management for member districts as well as provides member districts' network analysis and troubleshooting support, including Remote Desktop Services (RDS) support.

**Additional Services**

Districts may contract with the NWRDC for special projects, which are not covered in the above services. Such services shall be provided under the policy and rates adopted by NWESD and based on the availability of staff. For more information visit our website at <https://www.nwrdc.net/business-team/contract-business-services/>.

## WSIPC Services

### SYSTEM AVAILABILITY

#### **Normal: Monday – Friday; 6:00 AM – 6:00 PM**

Defined as primary school district work hours during which no elective downtime is done by WSIPC.

#### **Evening/Weekend/WSIPC Holiday: Monday-Friday; 6:00 PM – 11:00 PM;**

#### **Weekends: 6:00 AM – 11:00 PM**

Defined as hours during which elective downtime can be scheduled with one week's notice. End-users can access the application. Individual components of a redundant group may be unavailable. Approval is required by the NWRDC Director and WSIPC Operations department heads. Advance communication will be sent to the NWRDC Director and WSIPC Operations departments. At the conclusion of downtime, communication will be sent to this same group.

#### **Late Night: Monday – Sunday; 11:00 PM – 6:00 AM**

Defined as hours during which backups, system reboots and maintenance can occur. Elective downtime may be scheduled with same-day notice. Services may be unavailable. Advance communication will be sent to the NWRDC Director and WSIPC Operations departments. At the conclusion of downtime, communication will be sent to this same group.

#### **SMS Release Weekend: Saturday; 12:00AM – 9:00 PM**

Defined as three time yearly period during which application software, hardware and operating system maintenance is performed. Expect services to be unavailable. Approval required by the Data Center Director(s) and WSIPC Operations department heads. Advance communication will be sent to the Data Center Director(s) and WSIPC Operations departments. At the conclusion of downtime, communication will be sent to all data centers and WSIPC Operations departments. The approved down time schedule will be communicated regularly throughout the year to reduce the number of surprises to Cooperative members.

#### **Qmlativ Releases**

WSIPC Qmlativ software update releases are an automated function. WSIPC has designated the timeframe of 11 PM to 5 AM for these functions. There is currently no published Qmlativ release schedule.

#### **Emergency Downtime**

Emergency downtime can be performed for degradation of hardware or software components for which either of the following is true:

- The software or hardware is part of the failover system for a mission-critical system
- The software or hardware is a single point of failure for a mission critical system.



Emergency downtime can be requested between the hours of 6:00 PM and 6:00 AM with same-day notice or an agreed upon elected time with same-day notice. Advanced communication will be sent to the Data Center Director(s) and WSIPC Operations departments. At the conclusion of downtime, communication will be sent to this same group.

### **Service Continuity**

In the event of SMS 2.0 complete failure of the centralized hosting provided by the Cooperative a failover system is in place for limited mission-critical access to core software and data systems. Backup or redundant capacity exists for database, servers and network. This failover capacity will only be used for dramatic and sudden system failure of the primary hosting center, but will not be utilized during normal, routine, or scheduled down time. WSIPC also has a redundant network link to provide connectivity in the event of an outage with the primary K-20 circuit. Virtual Router Redundancy Protocol (VRRP) communicates to two routers, K-20s 10GB router and the Comcast router connected to a provisioned switch.

## **SOFTWARE**

### **Delivery**

WSIPC, in conjunction with NWRDC, will ensure the software WSIPC provides complies with state reporting, budgeting, and personnel retirement requirements. WSIPC will install the Software either at a site hosted or purchased by WSIPC or at a locally designated sight. Software included is posted on our website <https://www.nwrdc.net/business-team/> or <https://www.nwrdc.net/student-team/>.

### **Warranty**

WSIPC warrants that upon delivery by WSIPC: (a) the Software will perform substantially in accordance with its written specifications established by WSIPC; and (b) the Software does not infringe any U.S. patent or copyright. WSIPC does not warrant that the Software is free from bugs, errors or omissions. The exclusive warranties set forth in this paragraph apply only to the latest release of such items of Software incorporating all corrections, updates, enhancements and modifications made available by WSIPC.

### **Performance Remedy**

As Licensee's exclusive remedy and WSIPC's entire liability, if any Software subject to the warranty set forth in Cooperative Supported Products listed on our website at, <https://www.nwrdc.net/business-team/> or <https://www.nwrdc.net/student-team/>, fails to comply with the warranty set forth WSIPC will use reasonable efforts to correct the noncompliance (e.g., by furnishing an update, new release, enhancement, or modification of the noncomplying Software); provided that (i) Licensee notifies WSIPC of the noncompliance and (ii) WSIPC is able to reproduce the noncompliance on the hardware for which the Software was designed. If after the expenditure of such reasonable efforts and the expiration of a reasonable time period WSIPC is unable to correct any such noncompliance, WSIPC will refund to Licensee a pro rata portion of the license fee paid by Licensee during the then current Year

for that portion of the Software found to be noncomplying. Such refund will be in full satisfaction of all claims of Licensee relating to such noncompliance.

### **Grant & Limitations**

WSIPC grants to the District a nontransferable, nonexclusive license during the Term to use the software and documentation for District data operations. The District will not disclose or make available any software or documentation associated with this Agreement to any parties or persons not using the same on behalf of the District. Nor will the District change, modify or alter any software without prior written permission from WSIPC. In short, the district agrees that it shall safeguard all proprietary materials being serviced by WSIPC and shall not infringe on or violate any vendor license agreements WSIPC has entered into on their behalf. If a vendor working on behalf of the district needs access to data or software provided by WSIPC, the vendor will be required to sign a Non-Disclosure Agreement with WSIPC.

### **Software Updates**

WSIPC agrees to keep current with software licensed from Skyward and will install new versions on a timeline approved by WSIPC governance. This timeline will be communicated by NWRDC to the Districts.

### **School District Workstations**

Configuration requirements for devices and their software that school district personnel use to access WSIPC's software modules can be found on our website:

<https://www.nwrdc.net/technology-team/>.

### **State Reports**

WSIPC will provide, at no additional fee, all data reports required by the state that impact 50% or more of the school districts in the state. WSIPC and NWRDC will work with state agencies to gather requirements on the required data. WSIPC will inform NWRDC staff of any mandated changes to state reports and NWRDC will communicate the information to the District.

**Appendix B**  
**NWRDC**  
**FTE Fees**

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	<b>NWRDC</b> Software Support Services	<b>WSIPC</b> Software Licensing	<b>Total</b> <b>FTE Fee</b>
<b>Fiscal Only</b>	<b>\$13.63</b>	<b>\$20.34</b>	<b>\$33.97</b>
<b>Student Only</b>	<b>\$15.56</b>	<b>\$13.08</b>	<b>\$28.64</b>
<b>Full Service</b>	<b>\$24.52</b>	<b>\$20.34</b>	<b>\$44.86</b>

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Northwest Regional Data Center  
2121 W. Casino Road, Everett, WA 98204  
Phone 425-349-6600 Fax 425-349-6686