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RELATED SERVICES ITINERANT PROGRAM
INTERLOCAL AGREEMENT
BETWEEN

Northwest Educational Service District 189 *(Hereinafter referred to as the NWESD)*	**AND**	**South Whidbey School District** **Name** *(Hereinafter referred to as District)*	
1601 R Ave, Anacortes, WA 98221		**5476 Maxwelton Road** **Address**	
(360) 299-4000		**Langley** **City**	**WA** **State** **98260** **Zip**
Interlocal Agreement No: **SP-2627-1219-11**		**Phone:** **360-221-6100**	
NWESD Account Code: **1219**			

WHEREAS, the Northwest Educational Service District 189 ("NWESD") is authorized to provide services to school districts pursuant to RCW 28A.310.180 and RCW 28A.310.200; and,

WHEREAS, the District and the NWESD are authorized to enter into interlocal agreements pursuant to Chapter 39.34 RCW, including RCW 39.34.030 and RCW 39.34.080, and pursuant to RCW 28A.320.035 and RCW 28A.320.080; and,

WHEREAS, the NWESD and the District desire to cooperatively support and maintain special education services necessary for the District to carry out its educational and business functions as a shared governmental service; and,

WHEREAS, the District desires to enter into an interlocal agreement with the NWESD for the provision of special education services;

NOW, THEREFORE, IT IS HEREBY AGREED that the NWESD shall receive funds from the District and shall expend such funds for the purpose of providing special education services in accordance with the terms and conditions set forth herein.

I. PURPOSE

The purpose of this Interlocal Agreement is to provide Teacher of the Visually Impaired and Orientation and Mobility services to the District from the NWESD Related Service Itinerant Program during the 2026-2027 school year.

II. RESPONSIBILITIES OF NWESD

In accordance with this Interlocal Agreement, the NWESD shall provide special education services as defined below:

1. The NWESD shall provide the staffing allocation, service schedule, caseload commitment, and related operational support as identified in **Addendum A – Service Commitment.**
2. The NWESD shall provide the Teacher of the Visually Impaired (TVI) and/or Orientation & Mobility (O&M) services identified in **Addendum B – Program Scope of Work**, including appropriately credentialed personnel, administrative oversight, supervision, tools, materials, and operational support necessary to carry out the services described therein.

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

III. RESPONSIBILITIES OF DISTRICT

In accordance with this Interlocal Agreement, the District shall:

1. Provide reasonable cooperation, scheduling coordination, facilities, records, systems access, and operational support necessary for the NWESD to carry out the staffing allocation, service schedule, and caseload commitments identified in **Addendum A – Service Commitment.**
2. Provide reasonable cooperation, access to students, staff, instructional spaces, instructional materials, special education data systems, and other resources necessary for the NWESD to provide the services identified in **Addendum B – Program Scope of Work.**
3. Retain responsibility for all final educational decisions, including compliance with applicable federal and state special education laws and regulations.
4. Provide timely and accurate information reasonably necessary for the NWESD to carry out the services identified in Addendum A and Addendum B.

IV. TERM OF THE INTERLOCAL AGREEMENT

The start date of this Interlocal Agreement is September 1, 2026, and the end date is August 31, 2027. Termination is further specified in the Termination section of this Interlocal Agreement.

V. INTERLOCAL AGREEMENT OBLIGATION

The District shall provide funding of an amount not to exceed $10,000 *(ten thousand dollars)* for the performance of all things reasonably necessary for, or incidental to, the performance of work as set forth in the "Responsibilities of NWESD". This amount includes the estimated mileage trips to and from the District, excluding ferry and hotel stays.

VI. PAYMENT PROVISIONS

All payments to the NWESD shall be conditioned upon:

1. The District or its designee determines that the services and support 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 satisfactory invoices detailing the services and support 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 and support and receipt of the appropriate invoices, whichever occurs later.

VII. INTERLOCAL AGREEMENT MANAGERS

NWESD Agreement Manager	**District Agreement Manager**
Name: Michelle Roper	Name: Dr. Becky Clifford
Address: 1601 R Avenue Anacortes, WA 98221	Address: 5476 Maxwelton Road Langley, WA 98260
Phone: 360-299-4098	Phone: 360-221-6100
Email: mroper@nwesd.org	Email: bclifford@sw.wednet.edu

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

VIII. SPECIAL EDUCATION COMPLIANCE

The parties shall comply with all applicable federal and state special education laws and regulations, including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, Chapter 28A.155 RCW, and applicable OSPI regulations.

IX. ADMINISTRATION

No separate legal or administrative entity is created by this Interlocal Agreement. For purposes of RCW 39.34.030(4), the NWESD shall serve as the administrator of this Interlocal Agreement.

X. NONDISCRIMINATION/ANTI-HARASSMENT

In performing its obligations under this Interlocal 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.

XI. GOVERNING LAW/VENUE

The terms of this Interlocal 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 Interlocal Agreement, the venue of such action or arbitration shall be in Skagit County, Washington.

XII. INDEMNIFICATION/HOLD HARMLESS

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

XIII. TERMINATION

This Interlocal Agreement may be terminated by either party upon ninety (90) days' prior written notice to the other party. The notice shall specify the effective date of termination. If either party fails to comply with the terms and conditions of this Interlocal Agreement, the non-breaching party may terminate this Interlocal Agreement upon thirty (30) days' written notice to the breaching party if the breach is not cured within the notice period. The parties shall cooperate in good faith to support an orderly transition of services, staff, systems, materials, and operational responsibilities upon termination of this Interlocal Agreement. Upon termination, the District shall remain responsible for payment or reimbursement of obligations, services, and authorized expenses incurred by the NWESD prior to the effective date of termination in accordance with the terms of this Interlocal Agreement.

XIV. OTHER ASSURANCES

In performing its obligations under this Interlocal Agreement, each party shall promptly comply with all laws, ordinances, orders, rules, regulations and requirements of the federal, state, county or municipal

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

governments or any of their departments, bureaus, boards, commissions or officials concerning the subject matter of this Interlocal Agreement (the "Laws"). This provision applies to Laws currently existing or applicable to a party's duties under this Interlocal Agreement during the term of this Interlocal Agreement.

XV. ASSIGNMENT

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

XVI. DEFAULT

Either party shall be in default of this Interlocal Agreement upon the occurrence of any of the following:

1. A material representation made by either party is false or misleading;
2. Either party fails to perform its obligations under this Interlocal Agreement and such failure continues for thirty (30) calendar days after written notice to cure from the other party; or
3. Either party continues unauthorized use of the other party's systems, materials, or resources following termination of this Interlocal Agreement.

XVII. BREACH/DEFAULT WAIVER

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

XVIII. REMEDIES FOR DEFAULT

If either party defaults under this Interlocal Agreement, the non-defaulting party may pursue one or more of the following remedies:

1. Provide written notice of default and an opportunity to cure within thirty (30) calendar days;
2. Terminate this Interlocal Agreement in accordance with the termination provisions herein;
3. Seek equitable relief or specific performance as authorized by law; and
4. Recover reasonable attorneys' fees and costs incurred in enforcing the terms of this Interlocal Agreement, if awarded by a court of competent jurisdiction.

XIX. SEVERABILITY

If any provision of this Interlocal 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 Interlocal Agreement shall remain enforceable.

XX. HEADINGS

The headings of each section of this Interlocal 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 Interlocal Agreement, the content or context will prevail.

XXI. INTEGRATION/MODIFICATION

This Interlocal 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 Interlocal Agreement. The Parties

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

may amend this Interlocal Agreement only upon a writing bearing the actual signatures of the names of all the Parties or their respective, authorized representatives.

XXII. NOTICES

Any notice given under this Interlocal 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 Interlocal Agreement; or (iii) e-mail to the recipient's email address given in Interlocal 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.

XXIII. FORCE MAJEURE

A party to this Interlocal 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 Interlocal Agreement. If a party asserts Force Majeure as an excuse for failure to perform its contractual 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.

XXIV. BACKGROUND CHECKS

By executing this Interlocal Agreement with the District, the NWESD represents and warrants that each of its employees or agents shall have a record check through the Washington state patrol criminal identification system in compliance with RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the Federal Bureau of Investigation before she or he has unsupervised access to any child. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card.

XXV. COPYRIGHTS

Materials, records, and work products developed by NWESD staff in the course of providing services under this Interlocal Agreement shall remain the property of the NWESD unless otherwise required by law or agreed to in writing by the parties. The District may use such materials solely for educational and operational purposes consistent with this Interlocal Agreement.

XXVI. CRIMES AGAINST CHILDREN

The NWESD warrants that any of its employees or agents who has pled guilty or been convicted of any crime under RCW 28A.400.330 shall not have any contact with any child at a public school. Failure to comply with this section shall be grounds for immediate termination of this Interlocal Agreement.

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

XXVII. DISPUTE RESOLUTION

If a dispute regarding this Interlocal 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 Interlocal Agreement, and its decision(s) shall be final.

XXVIII. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

The NWESD agrees that it may create, have access to, or receive from or on behalf of the District, records or record systems that are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. Section 1232g (collectively, the "FERPA Records"). The NWESD represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Interlocal Agreement, (b) required by law, or (c) otherwise authorized by the District in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which the NWESD protects its own confidential information; and (3) continually monitor its operations and take any action reasonably necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this Interlocal Agreement.

XXIX. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

The District will comply with Health Insurance Portability and Accountability Act and its implementing regulations (collectively, “HIPAA”) specified in Addendum C (HIPPA Business Associate District Agreements) and as amended from time to time.

XXX. SUSPENSION AND DEBARMENT ASSURANCES

The NWESD certifies, and the District relies thereon in execution of this Interlocal Agreement, that neither it nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded for the award of contracts by any Federal governmental agency or department. “Principals”, for the purposes of this certification, mean officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity. Further, the NWESD agrees to provide the District immediate written notice if, at any time during the term of this Interlocal Agreement, including any renewals hereof, it learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances. The NWESD’s certification via the execution of this Interlocal Agreement is a material representation of fact upon which the District has relied in entering into this Interlocal Agreement. Should the NWESD determine, at any time during this Interlocal Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the District may terminate this Interlocal Agreement in accordance with the terms and conditions therein.

XXXI. FILING

Pursuant to RCW 39.34.040, this Interlocal Agreement shall be filed with the appropriate county auditor or posted on the NWESD’s public website as required by law prior to its entry into force.

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

XXXII. AUTHORITY

The terms and conditions of this Interlocal Agreement to which the parties agree are being entered into by appropriate resolutions of the respective boards of directors of the NWESD and the District.

XXXIII. SIGNATURES/APPROVALS

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

Board Approval Date: 08/26:2026

OR Resolution number and date of board delegation of authority to sign Interlocal Agreements.

Resolution Number: NA and Date Resolution was signed: NA

Signed by: Dr. Ismael Vivanco, Superintendent 8/27/2026
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Dr. Ismael Vivanco, Superintendent Date
Northwest Educational Service District 189

Signed by: 8/27/2026
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Dr. Becky Clifford, Superintendent Date
South Whidbey School District

NWESD Internal Approvals:

Fiscal: Initial

Program Manager: Initial

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

ADDENDUM A
SERVICE COMMITMENT
Teacher of the Visually Impaired (TVI) and Orientation & Mobility (O&M) Services

This Addendum A is incorporated into and governed by the terms of the Interlocal Agreement between the Northwest Educational Service District 189 ("NWESD") and the District.

The purpose of this Addendum is to identify the District specific staffing allocation, funding commitment, and operational expectations associated with the services provided under this Interlocal Agreement. The NWESD Special Programs and Services Director will meet with the District Special Education Director to review and approve a mutually agreed upon Service Plan including the service schedule, student caseload, and other operational commitments no later than September 15th, 2026.

I. DISTRICT INFORMATION

District: South Whidbey School District

District Liaison/Primary Contact: Dr. Becky Clifford

NWESD Program Contact: Dr. Michelle Roper

II. SERVICE COMMITMENT

Service dates and schedules shall be mutually coordinated between the District and the NWESD based upon student needs, travel requirements, and regional operational considerations. Minor scheduling adjustments may occur as reasonably necessary to support regional itinerant service delivery.

1. Provider Type: Teacher of the Visually Impaired (TVI) and/or Orientation & Mobility (O&M)
2. Service Allocation: The NWESD shall provide up to 5 days of services under this Addendum, consisting of approximately 0 full days (6 hours of onsite services) and 10 half days (3 hours of onsite services).
3. Caseload and service allocations shall be implemented in accordance with the workload, caseload, and service delivery considerations identified in **Addendum B – Program Scope of Work.**
4. The parties acknowledge that regional itinerant services are designed to provide equitable access to specialized educational support across the NWESD region. While service allocations under this Interlocal Agreement establish the anticipated onsite service commitment, service delivery requires consideration of travel requirements, scheduling logistics, student needs, provider availability, workload considerations, and other regional operational factors. These considerations may affect the scheduling and coordination of services but shall not alter the service allocation identified in this Addendum except as otherwise agreed to by the parties in writing.

III. FUNDING COMMITMENT

1. The District shall provide funding in an amount not to exceed $10,000 for the services identified in this Addendum.
2. Services shall not exceed $1,000 per half day unless otherwise amended in writing by the parties.
3. Approved travel-related expenses, including ferry, lodging, parking, or other authorized travel expenses, may be reimbursed in accordance with NWESD procedures and as mutually agreed by the parties.

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

IV. AMENDMENTS

Changes to the staffing allocation, schedule, caseload commitment, funding, initial evaluations, or service expectations identified in this Addendum may be made by written amendment signed by both parties, subject to provider availability and operational capacity.

V. ACKNOWLEDGEMENT AND APPROVAL

By signing below, the parties acknowledge and agree to the staffing allocation, service schedule, caseload commitment, funding, and operational expectations identified in this Addendum A – Service Commitment, which is incorporated into and governed by the terms of the Interlocal Agreement between the NWESD and the District.

Signed by:
Dr. Ismael Vivanco, Superintendent 8/27/2026
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Dr. Ismael Vivanco, Superintendent Date
Northwest Educational Service District 189

Signed by:
8/27/2026
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Dr. Becky Clifford, Superintendent Date
South Whidbey School District

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

ADDENDUM B
PROGRAM SCOPE OF WORK
Teacher of the Visually Impaired (TVI) and Orientation & Mobility (O&M) Services

This Addendum B is incorporated into and governed by the terms of the Interlocal Agreement between the Northwest Educational Service District 189 ("NWESD") and the District.

I. PROGRAM OVERVIEW

The NWESD Teacher of the Visually Impaired (TVI) and Orientation & Mobility (O&M) Program is designed to provide equitable access to specialized educational services and supports across participating districts within the NWESD region. Services are delivered through a regional itinerant service model intended to support students with visual impairments and related educational needs in accordance with applicable federal and state laws and regulations.

Because service delivery occurs across multiple geographic locations, travel time, scheduling logistics, student needs, provider availability, and operational considerations affect regional staffing and scheduling. Service allocations are therefore based on student needs, travel requirements, and regional operational considerations while maintaining equitable onsite service expectations across participating districts.

II. SCOPE OF SERVICES

In accordance with this Interlocal Agreement, the NWESD shall provide Teacher of the Visually Impaired (TVI) and/or Orientation & Mobility (O&M) services to the District as identified in this Program Scope of Work.

1. Services may include:
    a. Specially designed instruction (SDI).
    b. Data collection and service documentation.
    c. Participation in IEP meetings.
    d. Conduct re-evaluations.
    e. Consultation with District staff, families, and service providers.
    f. Entry into the District's special education data management system as applicable.
    g. Student support services.
    h. Other related service provider duties mutually agreed upon by the District and the NWESD.
2. The NWESD shall provide appropriately credentialed itinerant staff in support of the service allocation identified in **Addendum A – Service Commitment**.
3. The NWESD shall provide administrator oversight and supervision of NWESD staff assigned under this Interlocal Agreement. Administrator support may include observations, evaluations, professional support, and assistance related to students on the provider's caseload who are involved in dispute resolution matters, including mediation or citizen complaints, as applicable.
4. The NWESD shall provide the related service provider tools, materials, technology, assessments, protocols, and equipment reasonably necessary to support service delivery under this Program Scope of Work, including laptops, assessment tools, and related service materials as appropriate. Student related specialized technology, equipment, and other supports will be provided by the District.
5. The NWESD shall not be responsible for legal fees or legal costs incurred by the District related to the provision of special education services under this Interlocal Agreement.
6. Requests for initial evaluations, independent assessments, or other services outside the staffing allocation, caseload commitment, or scope identified in **Addendum A – Service Commitment** may

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

require a separate agreement or written amendment between the parties, subject to provider availability and operational capacity.

III. WORKLOAD, CASELOAD, AND SERVICE DELIVERY CONSIDERATIONS

1. Certificated Related Services Itinerant Program staff generally work within a regional service delivery model designed to provide equitable access to specialized educational services across participating districts.
2. Certificated itinerant staff provide direct and consultative services and perform other professional responsibilities associated with their role and certification. A full day of services shall include approximately six (6) hours of onsite service delivery to the District. The remaining portion of the workday may include travel associated with regional and in-district service delivery and other professional responsibilities related to service delivery.
3. Caseload considerations account for the number of students on Individual Education Plans (IEPs) who need consultative or direct services from a Related Services Itinerant Program member (TVI, SLP, OT, PT, BCBA, etc.). Itinerant caseload considerations consider the number of students on IEPs, the "workload" or the total number of minutes that a caseload of students requires, and the number of potential re-evaluations for the school year. They may provide interventions and/or other supports to students, and consult with students, teachers, school/district staff, and families, in addition to their evaluation/assessment and report-writing duties. Workload considerations consider direct service time as well as other professional responsibilities, including the time required for documentation, planning, meetings, evaluation/assessment time, equipment adjustment and training, staff training, development of individualized student programs (i.e., positioning equipment use, etc.), number of sites being served, and travel time. In recognition of the impact of caseload size and workload considerations on service quality, caseload ranges are established on position, severity and frequency of students' needs, and any significant travel times.
    a. Examples of caseload are (these times provide travel, reporting, meetings, evaluations, etc.)
        1. Generally, 20-30 students equal a full-time caseload.
        2. Generally,10-15 students equal a half-time caseload.
4. Service allocations are based upon workload and service capacity considerations rather than a fixed number of students. Student service needs may vary significantly in frequency, duration, intensity, and required support. As a result, the number of students served during a service day may vary depending upon individual student needs and operational considerations.
5. Should the District request additional caseload or expanded services beyond the scope identified in **Addendum A – Service Commitment**, the parties may amend the Interlocal Agreement or enter into a separate agreement subject to provider availability and operational capacity.

IV. ACKNOWLEDGEMENT AND APPROVAL

By signing below, the parties acknowledge and agree to the program scope, workload considerations, operational expectations, and service delivery framework identified in this Addendum B – Program Scope of Work, which is incorporated into and governed by the terms of the Interlocal Agreement between the NWESD and the District.

Signed by:
Dr. Ismael Vivanco, Superintendent 8/27/2026
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Dr. Ismael Vivanco, Superintendent Date
Northwest Educational Service District 189

Signed by:
8/27/2026
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Dr. Becky Clifford, Superintendent Date
South Whidbey School District

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

ADDENDUM C
BUSINESS ASSOCIATE AGREEMENT
CONTRACTOR AS "COVERED ENTITY"
NWESD AS "BUSINESS ASSOCIATE"

This Business Associate Agreement (the "Agreement") is made effective September 1, 2026, by and between the South Whidbey School District hereinafter referred to as "Covered Entity," and Northwest Educational Service District (NWESD), hereinafter referred to as "Business Associate" (individually, a "Party" and collectively, the "Parties").

RECITALS:

A. WHEREAS, the Parties wish to enter into a Business Associate Agreement to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Privacy and Security Rules") (45 C.F.R. Parts 160 and 164); and
B. WHEREAS, the Health Information Technology for Economic and Clinical Health ("HITECH") Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the "HIPAA Privacy and Security Rules" include all amendments thereto set forth in the HITECH Act and any accompanying regulations); and
C. WHEREAS, the Parties have entered into a written or oral arrangement or arrangements (the "Agreements") whereby Business Associate will provide certain services to Covered Entity and, pursuant to such Agreements, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy and Security Rules; and
D. WHEREAS, Business Associate may have access to Protected Health Information (hereinafter "PHI") or Electronic Protected Health Information (as defined below) in fulfilling its responsibilities under the Agreements; and
E. WHEREAS, Covered Entity wishes to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a Business Associate to Covered Entity.

THEREFORE, in consideration of the Parties' continuing obligations under the Agreements, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, the HIPAA Privacy and Security Rules in effect at the time shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Privacy and Security Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Agreement shall control.

The term "Breach" means the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information. The term "Breach" does not include: (1) any unintentional acquisition, access, or use of PHI by any employee or individual acting under the authority of a covered entity or business associate if (a) such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate, and (b) such information is not further impermissibly acquired, accessed, used, or disclosed by any person; (2) any inadvertent disclosure by an individual who is otherwise authorized to access PHI at a facility operated by a covered entity or business

Docusign Envelope ID: 32CA4CF9-C418-8176-8029-DB8E76D3BB27

associate to another similarly situated individual at the same facility, where the information disclosed is not further impermissibly acquired, accessed, used, or disclosed by any person; or (3) an impermissible disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

The term "HIPAA Privacy and Security Rules" refers to 45 C.F.R. Parts 160 and 164 as currently in effect or hereafter amended.

The term "Protected Health Information" or "PHI" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information," as defined below.

The term "Electronic Protected Health Information" means PHI which is transmitted by or maintained in Electronic Media (as now or hereafter defined in the HIPAA Privacy and Security Rules).

The term "Secretary" means the Secretary of the Department of Health and Human Services.

The term "Unsecured Protected Health Information" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance published in the Federal Register at 74 Fed. Reg. 19006 on April 27, 2009 and in annual guidance published thereafter.

II. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

A. Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreements, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.

B. Business Associate may use PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

C. Business Associate may disclose PHI in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:
   1. The disclosures are required by law; or
   2. Business Associate obtains reasonable assurances from the third parties to whom the PHI is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

D. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes "minimum necessary" for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, access, use, and request only PHI that is contained in a limited data set (as defined in Section 164.514(e)(2) of the HIPAA Privacy and Security Rules), unless Business Associate requires certain direct identifiers in order to accomplish the intended purpose of the access, use, or request, in which event Business Associate may access, use, or request only the minimum necessary amount of PHI to accomplish the intended purpose of the access, use, or request.

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The Parties shall collaborate in determining what quantum of information constitutes the "minimum necessary" amount for Business Associate to accomplish its intended purposes.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

A. Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

B. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.

C. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Specifically, Business Associate will:

3. Implement the administrative, physical, and technical safeguards set forth in Sections 164.308, 164.310, and 164.312 of the HIPAA Privacy and Security Rules that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with Section 164.316 of the HIPAA Privacy and Security Rules, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in Sections 164.308, 164.310, and 164.312; and
4. Report to Covered Entity any use or disclosure of PHI not provided for by this Agreement, including any Security Incident, of which Business Associate becomes aware, regardless of whether the Security Incident rises to the level of a Breach. For purposes of this Agreement, "Security Incident" means the successful unauthorized access, use, disclosure, modification, or destruction of PHI or interference with system operations in an information system, of which Business Associate has knowledge or should, with the exercise of reasonable diligence, have knowledge, excluding (i) "pings" on an information system firewall; (ii) port scans; (iii) attempts to log on to an information system or enter a database with an invalid password or user name; (iv) denial-of-service attacks that do not result in a server being taken offline; or (v) "malware" (*e.g.*, a worm or a virus) that does not result in unauthorized access, use, disclosure, modification or destruction of PHI. The report shall be made as soon as practical, and in any event within ten (10) days of Business Associate's discovery of the Security Incident. A Security Incident shall be treated as discovered by Business Associate as of the first day on which such Security Incident is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

D. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

E. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules and of which Business Associate has been notified by Covered Entity. In addition, and notwithstanding the provisions of Section 164.522 (a)(1)(ii), Business Associate agrees to comply with an individual's request to restrict disclosure of PHI to a health plan for purposes of carrying out payment or health care operations if the PHI pertains solely to a health care item or service for which Covered Entity has been paid by in full by the individual or the individual's representative. The restriction can only apply to disclosures beginning the next business day after the request for restriction is received.

F. At the request of Covered Entity, and in a reasonable time and manner, Business Associate agrees to make available PHI required for Covered Entity to respond to an individual's request for access to his or her PHI in accordance with Section 164.524 of the HIPAA Privacy and Security Rules. If Business Associate maintains PHI electronically, it agrees to make such PHI available electronically to the applicable individual or to a person or entity specifically designated by such individual, upon such individual's request.

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G. At the request of Covered Entity, and in a reasonable time and manner, Business Associate agrees to make available PHI required for amendment by Covered Entity in accordance with the requirements of Section 164.526 of the HIPAA Privacy and Security Rules.
H. Business Associate agrees to document any disclosures of, and make PHI available, for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy and Security Rules.
I. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary for the purpose of determining Covered Entity's compliance with the HIPAA Privacy and Security Rules, in a time and manner designated by the Secretary.
J. Business Associate agrees that, while present at any Covered Entity facility and/or when accessing Covered Entity's computer network(s), it and all of its employees, agents, representatives and subcontractors will at all times comply with any network access and other security practices, procedures and/or policies established by Covered Entity including, without limitation, those established pursuant to the HIPAA Privacy and Security Rules.
K. Business Associate agrees that it will not directly or indirectly receive remuneration in exchange for any PHI of an individual without the written authorization of the individual or the individual's representative, except where the purpose of the exchange is:
    5. For public health activities as described in Section 164.512(b) of the HIPAA Privacy and Security Rules;
    6. For research as described in Sections 164.501 and 164.512(i) of the HIPAA Privacy and Security Rules, and the price charged reflects the costs of preparation and transmittal of the data for such purpose;
    7. For treatment of the individual, subject to any further regulation promulgated by the Secretary to prevent inappropriate access, use, or disclosure of PHI;
    8. For the sale, transfer, merger, or consolidation of all or part of Business Associate and due diligence related to that activity;
    52. For an activity that Business Associate undertakes on behalf of and at the specific request of Covered Entity;
    53. To provide an individual with a copy of the individual's PHI pursuant to Section 164.524 of the HIPAA Privacy and Security Rules; or
    54. Other exchanges that the Secretary determines in regulations to be similarly necessary and appropriate as those described in this Section III.K.
L. Business Associate agrees that it will not directly or indirectly receive remuneration for any written communication that encourages an individual to purchase or use a product or service without first obtaining the written authorization of the individual or the individual's representative, unless:
    1. Such payment is for a communication regarding a drug or biologic currently prescribed for the individual and is reasonable in amount (as defined by the Secretary); or
    2. The communication is made on behalf of Covered Entity and is consistent with the terms of this Agreement.
M. Business Associate agrees that if it uses or discloses patients' PHI for marketing purposes, it will obtain Covered Entity's written approval and such patients' authorization before making any such use or disclosure.

IV. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

A. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

B. Following the discovery of a Breach of Unsecured Protected Health Information, Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than ten (10) calendar days after discovery of the Breach. A Breach shall be treated as discovered by Business

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Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

C. Notwithstanding the provisions of Section IV.B., above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:
   3. If the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or
   4. If the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time. Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official's statement to Covered Entity.

D. The Breach notification provided shall include, to the extent possible:
   5. The identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;
   6. A brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;
   7. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
   8. Any steps individuals should take to protect themselves from potential harm resulting from the Breach;
   55. A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches and when such steps were taken; and
   56. Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

E. Business Associate shall provide the information specified in Section IV.D. above, to Covered Entity at the time of the Breach notification, if possible, or promptly thereafter as information becomes available. Business Associate shall not delay notification to Covered Entity that a Breach has occurred in order to collect the information described in Section IV.D., and shall provide such information to Covered Entity even if the information becomes available after the ten (10)-day period provided for initial Breach notification.

V. OBLIGATIONS OF COVERED ENTITY

A. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520 of the HIPAA Privacy and Security Rules.

B. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such PHI. Business Associate shall have a reasonable period of time to act on such notice.

VI. TERM AND TERMINATION

A. Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate upon the later of the following events: (i) in accordance with Section VI.C., when all of the PHI provided

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by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity or, if such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the last of the Agreements.

B. Termination. Upon either Party's knowledge of a material breach by the other Party of its obligations under this Agreement, the non-breaching Party shall, within twenty (20) days of that determination, notify the breaching Party, and the breaching Party shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. If the breaching Party fails to take reasonable steps to effect such a cure within such time period, the non-breaching Party may terminate this Agreement and the Agreements. Where either Party has knowledge of a material breach by the other Party and determines that cure is infeasible, prior notice of the breach is not required, and the non-breaching Party shall terminate the portion of the Agreements affected by the breach. Where neither cure nor termination is feasible, the non-breaching Party shall report the violation to the Secretary.

C. Effect of Termination.
   1. Except as provided in paragraph (2) of this subsection C., upon termination of this Agreement, the Agreements or upon request of Covered Entity, whichever occurs first, Business Associate shall within ten (10) days return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Neither Business Associate nor its subcontractors or agents shall retain copies of the PHI.
   2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide within ten (10) days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VII. MISCELLANEOUS

A. Indemnification. Each Party shall indemnify and hold the other harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitations, attorneys' fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement, or any Breach, by that Party or its subcontractors or agents.

B. No Rights in Third Parties. Except as expressly stated herein, in the HIPAA Privacy and Security Rules, the Parties to this Agreement do not intend to create any rights in any third parties.

C. Survival. The obligations of Business Associate under Section VI.C. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Agreements, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein. Furthermore, the Parties' indemnification obligations pursuant to Section VII.A. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Agreements, and/or the business relationship of the Parties, and shall continue to bind the Parties, their agents, employees, contractors, successors, and assigns as set forth herein.

D. Amendment. This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in the HIPAA Privacy and Security Rules as are necessary for Covered Entity to comply with the current requirements of the HIPAA Privacy and Security Rules. In addition, in the event that either Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy and Security Rules or any other applicable legislation, then such Party shall notify the other Party of its belief in writing. For a period of up to thirty (30) days, the Parties shall address in good

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faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty (30)-day period, the Agreement fails to comply with the HIPAA Privacy and Security Rules or any other applicable legislation, then either Party has the right to terminate this Agreement and the underlying arrangement upon written notice to the other Party.

E. Assignment. Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

F. Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

G. Governing Law. To the extent this Agreement is not governed exclusively by the HIPAA Privacy and Security Rules or other provisions of federal statutory or regulatory law, it will be governed by and construed in accordance with the laws of the State of Washington.

H. No Waiver. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

I. Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules.

J. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

K. Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

L. Certain Provisions Not Effective in Certain Circumstances. The provisions of this Agreement relating to the HIPAA Security Rule shall not apply to Business Associate if Business Associate does not receive any Electronic PHI from or on behalf of Covered Entity.

M. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written. In the event of any inconsistency between this Agreement and any other agreement between the Parties concerning the use and disclosure of PHI and the Parties' obligations with respect thereto, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

Business Associate (NWESD):

Signed by:
Dr. Ismael Vivanco, Superintendent 8/27/2026
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Dr. Ismael Vivanco, Superintendent Date
Northwest Educational Service District 189

Covered Entity:

Signed by:
8/27/2026
FD8C7E4933B2442...

Dr. Becky Clifford, Superintendent Date
South Whidbey School District