

# Toppenish School District No. 202

306 BOLIN DRIVE  
TOPPENISH, WASHINGTON 98948-1644  
PHONE (509) 865-4455  
FAX (509) 865-2067

November 7, 2011

Mr. Karl Nelson, Director  
Digital Learning Department  
Office of Superintendent of Public Instruction  
PO Box 47200  
600 Washington St. S.E.  
Olympia, WA 98504-7200

Dear Mr. Nelson:

With this letter, I agree that Toppenish School District will comply with the Multidistrict Online Provider approval assurances, as listed here:  
<http://digitallearning.k12.wa.us/approval/process/criteria/assurances.php>.

I assure, to the best of my knowledge and belief, that the information in the application is true and correct and that the filing of the application has been duly authorized. Furthermore, I assure that the applicant is in compliance with the required assurances at the time of submission.

Sincerely,



John M. Cerna, Superintendent  
Toppenish School District

*"Where students come first, and teachers and families work together to make a difference  
in providing the highest level of learning for each student."*

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

**AGREEMENT BETWEEN  
TOPPENISH SCHOOL DISTRICT AND  
NORTHWEST ALLPREP LLC**

THIS AGREEMENT is entered into on the date set forth hereinbelow by and between NORTHWEST ALLPREP LLC, a Washington limited liability corporation (hereinafter "NWA"), Toppenish School District No. 202 (hereinafter the "District"), and TIM KING, individually and on behalf of and for the benefit of his marital community (hereinafter "King").

I. RECITALS - BACKGROUND, INTENT, AND PURPOSE

The intent of this Agreement is to create a relationship that would allow the issuance of Toppenish School District official transcripts and credits for students who enroll in NWA. NWA is operating a Web academy to service the western Washington area, and wishes to continue its association with the Toppenish School District to monitor and issue credits. This Agreement outlines the basis, duties, and responsibilities of this relationship.

II. CONSIDERATION, TERMS AND CONDITIONS

2.1 NWA Consideration

2.1.1 NWA courses, based upon the Odysseyware curriculum, will be provided to the District free of charge to all students and the District via the District's Computer Academy for Toppenish Schools ("CATS") program. There will be no limit to the free courses offered to students enrolled in the District's CATS program.

2.1.2 NWA will provide laptop/notebook computers as needed to its own students and to CATS students. King has recently leased 100 laptop computers from Toshiba, and has asked the District to guarantee payment of that lease. The District agrees to guarantee payment of the lease, on the following conditions:

(a) Said computers will be considered the property of the Toppenish School District until the Toshiba lease agreement is paid in full by NWA.

(b) In the event NWA closes, for any reason, during the term of this Agreement, Tim King, for himself and on behalf of his marital community, agrees to be personally responsible and liable for any and all lease payments to Toshiba.

(c) King further agrees to immediately reimburse the District for any and all lease payments the District is required to make if King and/or NWA defaults on the Toshiba lease.

(d) Should NWA, King, and/or King's marital community file for bankruptcy, the parties agree that NWA, King and/or King's marital community will reaffirm the Toshiba lease debt, and that it will not be discharged in bankruptcy.

2.1.3 NWA will pay in full, including benefits, the entire salary for the District's CATS program Registrar.

2.1.4 NWA will be responsible for completing all aspects of WASL preparation, testing, and reporting.

2.1.5 NWA will be responsible for completing all aspects of Title I budgeting and reporting.

2.1.6 NWA will be responsible for obtaining release forms from every NWA student's resident district. NWA will also be responsible for negotiating and preparing interlocal agreements to arrange for the provision of services with each resident district for every special education student who is represented in the NWA student body. Additionally, NWA shall be responsible for any and all identification of, plans, and accommodations for students with disabilities in strict compliance with Section 504 of the Americans With Disabilities Act.

2.1.7 It is the parties' intent that NWA will be solely responsible for compliance with any local, state, and federal laws and regulations governing schools in Washington State, and that the sole participation of the District will be registering NWA students and granting District diplomas to NWA students at the time of the student's graduation. Any and all other functions will be handled by NWA.

2.2 In consideration for receiving the services and products described in Paragraph 2.1 herein, the District agrees to allow NWA to issue an official transcript for credits earned by students outside the District who successfully complete NWA courses. This will be handled by the NWA staff, who will mail and/or deliver said transcripts in the form now allowed by the Toppenish School District and/or as allowable by law and regulation.

2.3 It is understood and agreed by all parties that NWA will align all of its courses with Washington state standards, so that the courses are approved for use within Washington state. Said course alignment shall occur prior to using the courses, as required by state regulations, or within thirty (30) days of use, whichever is sooner. NWA shall forward those alignments to District staff as soon as possible thereafter.

### III. CURRICULUM APPROVAL

3.1 NWA agrees to allow the District, at its sole discretion, to subject the Odysseyware copyrighted curriculum to the usual curriculum approval processes at no cost or required participation by NWA beyond online access to materials as is customary in the normal course of business of NWA. Courses offered at the time of this Agreement will continue to be offered in Washington state, and will offer Toppenish School District or other credit until such time as written approval is granted.

3.2 New courses developed and offered online by NWA and Odysseyware after the commencement of this Agreement will be assumed to be approved by the District, unless written notice of disapproval is received within thirty (30) business days. NWA and Odysseyware will notify the District in writing of new courses, and the District should take any and all necessary measures for online review as soon as possible, because District credits will be issued for all new courses immediately upon offering the new courses for use on the Odysseyware website.

3.3 Approval of new courses by the District shall in no way transfer any ownership in NWA's or Odysseyware's curriculum to the District. NWA and/or Odysseyware shall retain all rights to such materials and to all such work products.

3.4 By approving NWA/Odysseyware course offerings, the District is in no way representing that course credit will be accepted by the participating student's school district, or that the curriculum meets any requirements imposed by any governmental entity or regulatory body with jurisdiction over the school district in which the participating student is enrolled. NWA agrees that it will not represent to any participating student that credit will be accepted by that student's district. NWA shall advise participating students that they are responsible for obtaining approval from their own districts prior to enrolling in NWA courses.

3.5 The District shall not unreasonably withhold or delay its approval of the NWA/Odysseyware curriculum. NWA and/or Odysseyware is not obligated to await the outcome of the District's approval process in order to offer its courses in the District's state, region, or area, as long as the District's credits are not offered until the approval process is complete.

3.6 The District agrees to copy or forward to NWA any and all correspondence, inquiries, or regulatory notices regarding the accreditation of Odysseyware's copyrighted materials and the issuance of transfer credits by the District. Subject to the indemnification terms set forth hereinbelow, NWA reserves the right to contest, and if necessary to litigate governmental or regulatory agency rulings that adversely affect NWA's business.

3.7 The District shall not retroactively decline the issuance or cancel any credits to students who have already received an official transcript in good faith from NWA, unless such action is required by applicable law, regulation, or accreditation association.

#### IV. INDEMNIFICATION AND HOLD HARMLESS

NWA, King, and the District agree to indemnify each other and to hold each other harmless from any and all claims, suits, or other legal actions of any nature arising from any action of NWA, its employees, agents, or principals, and the District, its directors, employees, agents, or principals. NWA and the District further agree to indemnify each other and to hold each other harmless for all costs and expenses incurred by either party in relation to any claim or suit arising out of this Agreement, which may be brought against NWA or the District.

#### V. COMPENSATION AND PAYMENT

5.1 NWA, King, and the District agree that for the duration of the Toshiba lease agreement, the maximum amount to be paid to NWA under this contract shall not exceed the state basic allocation per student, minus the sum of eight hundred dollars (\$800.00) per student for each student enrolled and serviced by NWA, which amount shall be retained by the Toppenish School District. After the Toshiba lease agreement has concluded, the maximum amount to be paid to NWA under this contract shall not exceed the state basic allocation per student, minus the sum of one thousand dollars (\$1,000.00) per student for each student enrolled and serviced by NWA, which amount shall be retained by the Toppenish School District. Monthly billings will be prorated, based upon Washington State's FTE allotment.

5.2 NWA shall submit invoices at least monthly by the fifth (5th) business day. The NWA invoice shall show the number of students enrolled, the name of each student enrolled, and the basic education allotment less the \$1,000.00 per student. Each voucher will clearly indicate that it is for services rendered in performance under Toppenish School District Contract No. NWA101. The invoice shall be for all services rendered during the previous calendar month.

5.3 All invoices must be submitted for payment to:

Toppenish School District Contracts - Lynnette Brizendine  
306 Bolin Drive  
Toppenish, WA 98948-1644

The District may, at its sole discretion, withhold payments owed to NWA for services rendered under this or under any other agreement with NWA, and may take any other actions it deems necessary to mitigate damages, if NWA fails to satisfactorily comply with any term or condition of this Agreement.

## VI. GENERAL TERMS AND CONDITIONS

6.1 Waiver. Any party's failure to perform a duty or responsibility pursuant to this Agreement, or additional activities, actions or inaction shall not be deemed a waiver of any future duties or responsibilities under the Agreement.

6.2 Term. This Agreement shall be effective on the date of signing, and shall continue in full force and effect for three (3) calendar years from the date of signing.

6.3 Assignment. The District's obligations under this Agreement may not be assigned or transferred to any other person, firm, corporation, or entity without the prior written consent of NWA. Said consent shall not be unreasonably withheld by NWA. NWA's obligations under this Agreement may not be assigned or transferred to any other person, firm, corporation, or entity without the prior written consent of the District. Said consent shall not be unreasonably withheld by the District.

6.4 Remedies. If any party to this Agreement shall default ("default" meaning failure to perform without legal excuse) in performing this Agreement, the non-defaulting party shall be entitled to fully pursue all legal and equitable remedies available, and any damages other than actual damages, including but not limited to all consequential, special, punitive, and/or exemplary damages.

6.5 Choice of Law and Venue. This Agreement shall be governed and interpreted under the laws of the State of Washington. In the event litigation is commenced to enforce any of the terms or provisions of this Agreement, the parties agree that the venue of such action shall be in the Superior Court of Yakima County, Washington, or other court of competent jurisdiction in Yakima County. In the event of litigation concerning any of the terms and provisions of this Agreement, the substantially prevailing party shall be entitled to receive all of its attorney's fees, court costs, and litigation expenses.

6.6 Approval. It is the District's responsibility to ensure that where appropriate, the proper approval process for this Agreement, including School Board approval, is obtained.

6.7 Confidentiality. Whether or not identified as confidential, all information exchanged between the parties shall be considered confidential. This includes, but is not limited to, all data systems and student records. Additionally, the marketing, customers, and product development plans of NWA, the design and coding of its products, and any document or information transmitted to NWA shall be considered confidential information supplied pursuant to this Agreement. Within the confines of state and federal laws and/or regulations, the District shall not disclose, transmit, publish or otherwise make available to any third party any such confidential information without NWA's prior written approval, which shall not be unreasonably withheld. The District shall establish reasonable security measures to comply with this paragraph. For the purposes of this paragraph, confidential information shall not include any information that is already

generally known in the computer software industry, any information that is published or disclosed by NWA and Odysseyware, any information transmitted to any third party by NWA and/or Odysseyware, any information that is already known to the District at the time of its receipt, and any information that becomes a part of the public domain through no fault of the District.

6.8 Time Is of the Essence. Time is of the essence in this Agreement; however, the foregoing shall not be construed to limit or deprive a party of the benefits of any grace and/or use period allowed in the Agreement.

6.9 Changes/Amendments to Agreement. This Agreement may be amended, supplemented or otherwise modified with the prior written consent of both parties. Such consent shall not be unreasonably withheld by either party. In order to maintain flexibility in the parties' relationship, both parties may change the terms of this Agreement by giving the other party thirty (30) business days prior written notice of a request to amend and then obtaining all parties' consent to the proposed amendment. No amendments shall be retroactive, unless specified in the amendment. All amendments shall apply as of the effective date specified in the amendment, and shall apply only to the specific clauses amended. No amendment shall have the effect of voiding other elements of this Agreement.

6.10 Force Majeure. Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure results from any act of God, riot, war, civil unrest, natural disaster, mechanical, electronic, or communications failure, or any other cause beyond the party's reasonable control. This shall not include failure caused by a party's financial condition, criminal activity, or negligence.

6.11 Severability/Legal Counsel. All parties and their attorneys have participated fully in the review and revision of this Agreement. If any term or provision of the Agreement is determined by a court of competent jurisdiction to be illegal, unenforceable or invalid, in whole or in part for any reason, the remainder of the Agreement shall remain in full force and effect, provided that the negated element does not directly affect the overall integrity and meaning of the Agreement.

6.12 Construction of Agreement. The parties agree that any rules of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning.

6.13 Entire Agreement. The parties agree that this Agreement is the complete expression of the terms and conditions hereto, and any oral representations or understandings not incorporated herein are excluded. The parties agree that any modification of this Agreement must be in writing and signed by both parties.

6.14 Representations, Warranties, or Guarantees. The parties acknowledge that no party has been induced to enter into this Agreement by the other, nor is any party

relying on any representation, understanding, agreement, commitment, warranty, or guarantee except those expressly set forth in this Agreement.

6.15 Compliance with Laws and Regulations. In performing this Agreement, all parties agree to comply with all federal, state, and local laws, ordinances, and regulations, including corporate filing responsibilities, registration and reporting, tax payments, payment of prevailing wages, standards for licensing, certification, and operation of facilities, programs, accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to ensure the quality of services provided.

6.16 Non-Discrimination in Employment. In performing this Agreement, the Contractor agrees to comply with federal, state and local laws prohibiting discrimination in employment and delivery of services, including the Americans with Disabilities Act of 1990, as said laws now exist or are hereafter amended.

6.17 Contracts and Agreements. Any and all contracts or agreements, proposals, partnerships, interlocal agreements, memoranda of understanding, subcontracting, or other actions taken pursuant to the provisions of this Agreement which would bind the District legally and/or encumber public funds shall be reviewed and approved in writing by the Assistant Superintendent and the Attorney for the District prior to entering into such agreements.

6.18 Establishment and Maintenance of Records. NWA agrees to maintain books, records, documents, and accounting procedures and practices which accurately reflect all direct and indirect costs related to the performance of this Agreement. As a private entity working with a public entity, NWA may also be subject to RCW 42.56, the Washington Public Records Act, and agrees to maintain a system of files and indices to comply with RCW 42.56, which can be accessed by the public during normal business hours. NWA also agrees that the District and its designee shall have full and complete access to any and all records during the term of this Agreement. Both parties shall submit any report required by the other party for state or federal audit purposes. NWA shall return all books, records, documents, and other material relevant to this Agreement to the District upon termination or expiration of this Agreement.

6.19 Notices. Except as otherwise provided, any notice required under this Agreement shall be made by written notice and sent to the other party by first-class mail, postage prepaid, at the addresses set forth below, or to any agent designated in writing by either party. Notices shall be deemed received three (3) days after the date of the postmark. Notice shall be sent to the parties as follows:

Mr. John M. Cerna, Assistant Superintendent  
Toppenish School District  
306 Bolin Drive  
Toppenish, WA 98948



Mr. Tim King  
Northwest Allprep LLC  
15727 S.E. Happy Valley TWN CTN dr #202  
Happy Valley, OR 97086

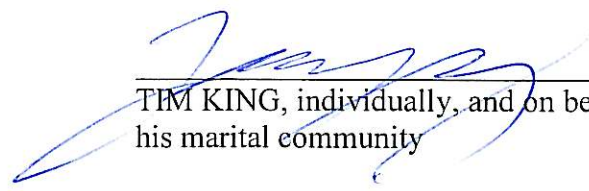
6.20 Execution. This Agreement, or amendments hereto, shall be executed on behalf of each party by its duly-authorized representative and where necessary, pursuant to an appropriate motion or resolution of each party. This Agreement, or any amendment hereto, shall be deemed adopted upon the date of execution by said duly-authorized representatives of the parties.

DATE: 4/16/10

NORTHWEST ALLPREP LLC


  
By: TIM KING, President/CEO

DATE: 4/16/10

  
TIM KING, individually, and on behalf of his marital community

DATE: 4/16/10

TOPPENISH SCHOOL DISTRICT

  
By: JOHN M. CERNA  
Assistant Superintendent