



Northwest Educational Service District 189

Together We Can

**1601 R Avenue
Anacortes, WA 98221**

Office Telephone: 866-579-9288

360-299-4087

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AGREEMENT FOR AUTOMATED NOTIFICATION SERVICES (ANS)

BETWEEN

Concrete School District
(Hereinafter referred to as District)
45389 Airport Way, Room 103
Concrete WA 98237

AND

Northwest Educational Service District 189
(Hereinafter referred to as NWESD)
1601 R Avenue, Anacortes, WA 98221
(360) 299-4087 FAX (360) 299-4070

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

1. **Purpose and Formation.** The purpose of this Agreement is for the NWESD to make available to District on a non-exclusive basis during the term specified below, automated voice message delivery by telephone services for District's use from time-to-time in contacting District's parents/guardian households, staff, and/or stakeholders as more fully described below. Both the NWESD and the District recognize this is a mutual arrangement for the benefit of both parties.

The District warrants that it has the authority to enter into this Agreement and that the terms and conditions of this Agreement have been approved by a resolution of the Board of Directors of the District.

2. **Term.**

2.1. **Initial Term.** The initial term for the Agreement shall be from September 1, 2008 to August 31, 2009.

2.2. **Renewal.** After the Initial Term, this Agreement shall be automatically renewed every September 1st (the "Renewal Year"), unless the District gives written notice of its election to not renew the Agreement by April 15 of the Renewal Year, or unless the Agreement is terminated or dissolved in accordance with Sections 6 or 8 herein. It is understood and agreed that the District's failure to provide notice of nonrenewal by April 15 results in all fees due and owing for the subsequent Renewal Year subject to the provision of services under this Agreement and invoicing by the NWESD.

3. **Cost.** During the initial term, the District shall pay to the NWESD an amount equal to one dollar and fifty cents (\$1.50) times the average fulltime enrollment (FTE) for the prior school year, as reported to OSPI for funding purposes. Thereafter, NWESD may change its fees provided that it notifies the District of the new fees in writing by March 15 of each Renewal Year.

After-hours support calls over-and-above the allotted five (5) incidents per district per year shall be charged to the district at the rate of fifty dollars (\$50) per incident. Any calls designated as emergency calls beyond an allotment of ten (10) per district per year shall be charged to the district at the rate of twenty-five dollars (\$25) per incident.

Should any services beyond the scope of this Agreement be requested by the District or required of the NWESD, the NWESD will determine whether it has the expertise or capability to provide the services. Should the NWESD determine that it can provide the additional services, the NWESD and the District will negotiate an amount to be included in an Agreement addendum.

Billing will be processed in four quarterly installments. Billing dates will be: November 30, February 28/29, May 31, and August 31. If the initial contract begins prior to September 1, a prorated billing will be due upon Agreement execution for services until September 1.

Any payment not received within forty (40) days of the date due shall bear interest from the date due at the rate of one (1%) per month (prorated for partial periods) or the maximum rate permitted by applicable law, whichever is less, and may, at NWESD's option, be considered a breach of this Agreement.

In the event any federal, state or local taxes are imposed on the telecommunications services, such taxes, if any, shall be the responsibility of the District and shall be paid by the District.

4. **Responsibilities of the NWESD.** The responsibilities of the NWESD under this Agreement are:

4.1 **Telecommunication Services.**

- 4.1.1 Install and operate, or subcontract for the installation and operation of, one (1) or more telecommunications systems ("System") that is/are capable of making automated telephone calls to phone numbers in lists provided by District and delivering a recorded voice message provided by the District. Pairing a phone number list with a recorded message and activating automated calling is termed an "Event."
- 4.1.2 Phone number lists and voice recordings may be stored on the System for use in creating an Event at a future time, or may be provided immediately prior to the creation of an Event. The maximum size phone number list the District may submit shall be no greater than the total number of its students and employees combined. The maximum length of recorded voice message the District may submit without surcharge is 60 seconds. Calls in excess of this will be subject to a three cent (\$0.03) per minute surcharge for non-priority calls and five cent (\$0.05) per minute for priority calls.
- 4.1.3 The System is capable of executing Events in either Non-priority or Priority modes. Priority calls are defined as "emergency" in the ANS software and Non-priority are defined as either "urgent" or "normal priority" in the ANS software. Non-priority Events are suspended as necessary to accommodate Priority Events use of System resources.
- 4.1.4 When the District's Priority Event is the only Priority Event active on the System, the System will have sufficient capacity to attempt one (1) call to all phone numbers on the District's list, and to deliver the District's Message Length recording to each call that connects, within two (2) hours of Priority Event activation. When concurrent Priority Events are active, System resources will be divided among all concurrent Priority Events and the time required will be proportionally longer.
- 4.1.5 All active Non-priority Events are suspended when there is a concurrent Priority Event to the extent needed to make all System resources available to the Priority Event(s). When concurrent Non-priority Events are present and no Priority Event is active, System resources are divided among the concurrent Non-priority Events.
- 4.1.6 The system will transmit a Caller ID string determined by the NWESD which will initially be "SCHOOL NOTIFY 360-299-4077."
- 4.1.7 The System and all related copyright, patent, trade secret and other intellectual property rights will remain the exclusive property of NWESD and/or its contracted partners.
- 4.1.8 NWESD retains all rights to determine the technical and operating specifications and capacities of the System and to change them from time-to-time without notice.

4.2 **Support Services.**

- 4.2.1 NWESD will provide off premises, one (1) or more live persons ("Service Technician") to receive phone calls at NWESD specified phone numbers between the hours of 8:00 AM and 4:30 PM PST. Any service calls outside of this period will be considered after hours support and will be subject to fees outlined in Section 3.
- 4.2.2 The District's "Account Administrator" identified in Section 5.1, under password verification, will register with a NWESD Service Technician from time-to-time the identity and password information for one (1) person authorized by the District to communicate, under password verification, by live telephone call with a NWESD Service Technician. Up to one (1) backup account administrator may also be designated.

- 4.2.3 The NWESD Service Technician will provide assistance in receiving from Dispatcher, from time-to-time, via the various methods of transmission and file formats supported by NWESD, the District's phone number lists and voice recordings. The NWESD Service Technician may, at his/her option, provide certain data translation or reformatting services to make the District's non-supported format phone number lists or recordings usable. The time required for a NWESD Service Technician to setup and activate the District's Event will vary depending on the readiness for use of the phone number list and voice recording files that the District's Dispatcher provides.
- 4.2.4 The NWESD Service Technician will provide assistance in receiving from Dispatcher, from time-to-time, instructions to initiate, report the progress of, suspend, or cancel an Event, and in executing such instructions on the District's behalf.
- 4.2.5 The system will permit the District to retrieve its own reports after training and report automation configuration at setup. Event results information will not be archived on the System long-term unless prior arrangements are made in writing for additional fees (see Section 3).
- 4.3 **Procurement Documentation.** The NWESD will maintain records of advertising for a Request for Proposals (RFP) for telecommunication infrastructure supports that permits this automated notification service under Washington State requirements. The District is responsible for assuring its policies are not more restrictive than statute.

5. **Responsibilities of the District.** The responsibilities of the District under this Agreement are:

- 5.1 **Identification of Account Administrator.** To identify for the NWESD an Account Administrator (liaison) for day-to-day contact regarding services provided under terms of this Agreement. The Account Administrator (liaison) shall be the sole District authority for authorizing services provided pursuant to this Agreement:

District:	Concrete School District
Billing Address:	45389 Airport Way Rm103
City, State, Zip:	Concrete WA 98237
Account Administrator (person name):	Rob Sutton
Account Administrator Password (initial):	rsutton
Account Administrator Phone Number:	360-853-7804
Account Administrator E-mail Address:	rsutton@concrete.k12.wa.us
Prior Year's Average FTE Enrollment:	(Based on OSPI 10/2007 P223 Report) 708

5.2 **Scope of Use.**

- 5.2.1 The services of the System may be used by the District and its approved Dispatchers only for the District's automated notification telephone message delivery and performing administrative functions pertaining thereto and for no other purpose.
- 5.2.2 The District is solely responsible for determining that services requested and data submitted are not prohibited by any regulation, law, ordinance or other restriction established by any governing body or regulatory agency having jurisdiction over such matters, including without limitation state and federal "Do Not Call" phone number registries and "Do Not Call" time-of-day limitations.
- 5.2.3 The District warrants that it will only submit to NWESD requests for services or data that are for parties with whom the District has an established business relationship as that term, or the equivalent, is defined in applicable state and federal law. The District agrees to waive any claims against NWESD based on complaints from any individual whose information the District provided to NWESD who in fact should not have received District notification(s) and to indemnify NWESD for any damages, costs and attorneys' fees that may incur from defending resulting actions brought by any person/entity (see related Section 10.2).

- 5.2.4 The Federal Telephone Consumer Protection Act of 1992, and all revisions thereto ("TCPA"), and state law, can regulate the use of telecommunications using recorded or artificial voice messages. The District is aware of the terms of the TCPA and any other applicable statute, law, rule or regulation applicable to its messages and warrant these messages and their delivery to be compliant with applicable laws. The District is aware that substantial penalties can apply if its messages do not comply with applicable law.
- 5.2.5 The District agrees that its messages and Events will not solicit the sale of goods or services or advertise the availability or quality of goods or services at any time either during the message or in some subsequent contact resulting from the message or Event.
6. **Mutual Termination.** This Agreement may be terminated by mutual agreement by the parties.
7. **Unilateral Termination by District.**
- 7.1 **Definition.** A "unilateral termination by the District" is a withdrawal from or termination of the Agreement prior to the expiration of the initial or any renewal term.
- 7.2 **Damages.** By entering into this Agreement, the District acknowledges that it is or may be participating in a fee-for-services program with the NWESD and that its withdrawal from or termination of this Agreement prior to the expiration of the then ongoing term is likely to result in material adverse financial consequences for the NWESD and/or its programs. As a result, in the event of the unilateral termination by the District, the District shall pay all fees for the remainder of the then ongoing initial term or renewal term in full; fees shall not be prorated for any partial term. The District agrees such amount constitutes liquidated damages and not a penalty and further agrees that those amounts are a reasonable reflection and estimate of damages which will be incurred by the NWESD as a result of the District's unilateral termination.
- 7.3 **Termination After Renewal.** If this Agreement is renewed and thereafter the District unilaterally terminates this Agreement within the last one hundred twenty (120) days of the ongoing initial term or any renewal term, then in addition to the damages called for above, the District shall also be responsible for all costs related to personnel whose services would have been needed to serve the District had it not unilaterally terminated.
8. **Termination by NWESD.**
- 8.1 **Breach by District.** In the event the NWESD determines at its sole discretion that the District has breached the terms of this Agreement, the NWESD may terminate this Agreement upon thirty (30) days written notice of the breach to the District and the District shall be responsible for payment of all damages as described in Section 7 above. However, the NWESD may at its sole discretion provide the District thirty (30) days to cure the breach to NWESD's satisfaction.
- 8.2 **Upon Dissolution of Fee for Services Program.** The NWESD reserves the right to dissolve this fee-for-services program and terminate this Agreement when in the NWESD's judgment its participation in this fee-for-services program does not afford an educational or financial advantage in quality or quantity of services called for in this Agreement. The NWESD will give the District notice by May 1 of the dissolution of this program at the end of the then current contract year. In the event of dissolution of this fee-for-services program, all assets acquired by the NWESD from any monetary source or assets donated and placed in service for this fee-for-services program during the life of this Agreement shall be and remain the property of the NWESD, to be used for the benefit of other service programs.
9. **Employment Representation.** During the term of this Agreement, employees of the NWESD may have contact with public school children. Therefore, the NWESD will assure all persons performing services under this Agreement have cleared appropriate background checks indicating he/she has not pled guilty or been convicted of any felony crime involving the physical neglect, injury, death, sexual abuse or exploitation of a minor. Failure of the NWESD to comply with this section shall be grounds for immediate termination of this Agreement.

10. **Indemnification.**

10.1 The NWESD agrees to indemnify and hold the District, its officers, agents and employees harmless from any and all claims and losses for bodily injury, including death, and/or property damage to the extent such claims or losses arise or result from the NWESD's negligent performance under this Agreement.

10.2 In addition to the indemnification in Section 5.2.3, the District agrees to indemnify and hold the NWESD, its officers, agents and employees harmless from any and all claims and losses to the extent such claims or losses arise or result from the District's negligent performance under this Agreement.

11. **Waiver.** The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder, operate as a waiver of any breach or default by the other party.

12. **Severability.** If any term of 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 and, to this end, the terms and conditions of this Agreement are declared severable.

13. **Dispute Resolution, Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Washington. Disputes shall be resolved by a three-member committee. The Committee shall consist of one representative selected by NWESD and the District; thereafter, the NWESD's representative and the District's representative shall select an impartial third party, who shall serve as the third member of the Committee. All decisions of this dispute resolution committee shall be limited to the issues contained in this Agreement and shall be final and binding on the parties.

14. **Whole Agreement.** The parties agree that this Agreement, together with all appendices, if any, constitute the entire agreement between the parties and supersedes all prior or existing written or oral agreements between the parties and may not be amended other than by written addendum signed by the parties and attached to the original executed Agreements.

15. **Attorneys Fees and Costs.** Each party shall be responsible for its own legal fees in the event they arise out of this Agreement (see Section 13).

16. **Captions.** Paragraph headings have been included for the convenience of the parties and shall not be considered a part of this Agreement for any purpose relating to construction or interpretation of the terms of this Agreement.

17. **Opportunity Without Discrimination.** The NWESD and the District agree to comply with all applicable state and federal rules and regulations which prohibit discrimination on the basis of race, color, creed, religion, national origin, age, sex, marital status, or the presence of any sensory, mental or physical disability. Inquiries regarding compliance and/or grievance procedures for the NWESD may be directed to the NWESD at its address above.

18. **Warranty.** NWESD does not warrant that operation of the System shall be uninterrupted or error free or that it shall meet District needs. The District is solely responsible for the accuracy and integrity of its own data, reports, documentation and security. The District holds NWESD harmless from any damages or liabilities resulting from NWESD's execution of instructions received from the District's Dispatchers, or persons believed to be its dispatchers under password verification.

The District's exclusive remedy, and NWESD's sole obligation, in the event of any warranty claim or any other contract deficiency shall be for NWESD to repair or replace the defect or, if such repair or replacement is not provided or does not correct the defect, to refund an equitable part of the District's payments for use of the System determined in reference to prior use and impact of the defect.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, NO WARRANTY OR ASSURANCE, EXPRESS, IMPLIED, OR STATUTORY, IS GIVEN BY NWESD WITH RESPECT TO THE SYSTEM, SERVICES, OPERATION, CAPACITY, SPEED, FUNCTIONALITY, QUALIFICATIONS, OR CAPABILITIES OF THE SYSTEM, OR ANY OTHER MATTER, INCLUDING, WITHOUT LIMITATION (AND NWESD SPECIFICALLY DISCLAIMS) ALL WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19. **Limitation of Liability.** IN NO EVENT SHALL NWESD BE LIABLE TO THE DISTRICT, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE) FOR LOST PROFITS OR REVENUES, LOSS OR INTERRUPTION OF USE, LOST OR DAMAGED DATA, REPORTS, DOCUMENTATION OR SECURITY, OR SIMILAR ECONOMIC LOSS, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR FOR ANY CLAIM MADE AGAINST THE DISTRICT BY ANY OTHER PARTY, INCLUDING WITHOUT LIMITATION CIVIL ACTION FOR INJURIES, DEATH OF A PERSON OR PROPERTY DAMAGE INCURRED BY ANY PERSON OR ENTITY, EVEN IF NWESD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM.

IN NO EVENT SHALL NWESD'S LIABILITY UNDER ANY CLAIM MADE BY THE DISTRICT EXCEED THE TOTAL AMOUNT OF FEES THERETOFORE PAID BY THE DISTRICT TO NWESD DURING THE CURRENT YEAR RELATED TO THE AFFECTED SYSTEM OR SERVICES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MAY BE BROUGHT BY THE DISTRICT MORE THAN ONE (1) YEAR AFTER THE FIRST TO OCCUR OF A) THE TERMINATION OR EXPIRATION OF THE AGREEMENT, OR B) THE EVENT GIVING RISE TO SUCH CAUSE OF ACTION.

20. **Access to Data/Confidentiality.** The District agrees to provide the NWESD access to contact data necessary to make use of the System in ready-for-use format. If the District uses the Washington State Information Processing Cooperative (WSIPC) for its data management, this data extraction will be facilitated by the NWESD at no additional cost. All the District's data processed or stored in NWESD's systems is kept confidential and is not disclosed to anyone except employees, agents, and contractors of NWESD with a "need to know." All data is and remains the District's sole property.
21. **Force Majeure.** Neither party shall be responsible for failures or interruptions of communications facilities or equipment of third parties, power outages, labor strikes or slowdowns, shortages of resources or materials, natural disasters, world events, delay or disruption of shipment or delivery, trespass or interference of third parties, or similar events or circumstances outside its reasonable control.
22. **Suspension/Debarment Assurances.** The parties to this Agreement certify, and each relies thereon in execution of this Agreement, that their entity 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 (e.g., general manager; plant manager; head of subsidiary, division, or business segment; and similar positions). Further, each party agrees to provide the other(s) immediate written notice if, at any time during the term of this Agreement, including any renewals hereof, it learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances. Each party's certification via the execution of this Agreement is a material representation of fact upon which each party has relied in entering into this Agreement. Should either party determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, it may terminate this Agreement in accordance with the terms and conditions therein.
23. **Miscellaneous.** Invoices, purchase orders, acknowledgments, confirmations and other communications submitted by the District shall not be considered part of this Agreement and shall not modify this Agreement unless signed and approved by an authorized representative of NWESD clearly indicating this is the Agreement in which it is incorporated.

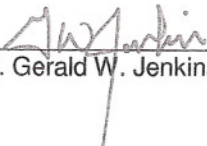
NWESD, in providing services, is acting as an independent contractor and does not undertake by this Agreement or otherwise to perform any regulatory or contractual obligation of the District.

This Agreement may be executed in two originals, with each party receiving one (1) for its records.

24. **Authority.** The terms and conditions of this 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.

IN WITNESS WHEREOF, the NWESD and the District have executed this Agreement on the date and year indicated below.

NORTHWEST EDUCATIONAL SERVICE DISTRICT 189

By:  ^{LKH} Date: 8/15/08
Dr. Gerald W. Jenkins, Superintendent

Concrete School District

By:  Date: 7/28/08
Superintendent

PLEASE SIGN, DATE, AND RETURN BOTH COPIES OF THIS AGREEMENT TO:

Ms. Tammy Lee, Administrative Assistant
Information Systems Support Center
Northwest Educational Service District 189
1601 R Avenue
Anacortes, WA 98221

A countersigned copy will be returned to you.