

ELECTRONIC COURSEWARE LICENSE AND HOSTING AGREEMENT

Resolution No. 847

This Electronic Courseware License and Hosting Agreement (the "**Agreement**"), dated as of February 21, 2006, is made and entered into by and between the Everett School District No. 2 ("**Everett**") and the Peninsula School District No. 401 ("**Peninsula**"). Everett and Peninsula are sometimes referred to in this Agreement collectively as "**Parties**" and individually as "**Party**."

RECITALS

A. Each Party is a duly constituted school district organized and existing under and by virtue of the laws of the State of Washington.

B. Everett, through the use of its own personnel and contractors, has developed certain electronic courseware ("**Courseware**") for use in online high school classes offered by Everett to its students through the Internet.

C. Peninsula wants to purchase and Everett wants to sell a license to the Courseware whereby Peninsula may use the Courseware or customized version thereof in Peninsula's own online high school program ("**Peninsula School District Cyber Classroom Program**").

D. Peninsula and Everett also want to enter into an arrangement whereby Everett will host Peninsula's offering of the Courseware for the Peninsula School District Cyber Classroom Program and modify the Courseware to incorporate Peninsula's name and logos.

AGREEMENT

THEREFORE, the Parties agree as follows:

1. Courseware License

Everett shall notify Peninsula about the then existing Courseware that is available for Peninsula to license and the applicable license fees for the same. Upon Peninsula's request, Everett will grant Peninsula a nonexclusive, nontransferable license to such Courseware requested by Peninsula.

2. Customization of Courseware

Upon Peninsula's request and the Parties reaching agreement on the applicable fees payable by Peninsula for such services, Everett will modify the licensed Courseware to

substitute Peninsula's name and logos in the Courseware for those of Everett and make such other modifications as may be agreed upon by the Parties.

3. **Hosting**

Upon Peninsula's request and the Parties reaching agreement on the applicable fees payable by Peninsula for such services, Everett will provide Internet hosting services (the "Hosting Services") to Peninsula with regard to Courseware licensed by Peninsula under this Agreement to provide access and usage of that Courseware through the World Wide Web to Peninsula administrators, teachers and students during their participation in the Peninsula School District Cyber Classroom Program. The Hosting Services shall be similar to hosting services used by Everett in offering the Courseware to its administrators, teachers and students during their participation in Everett's online high school.

4. **Fees; Taxes**

Peninsula shall pay Everett the applicable Courseware license fees, Courseware modification fees and the Hosting Services fees within thirty (30) days of Everett's invoice for such fees. The Courseware license and modification fees and Hosting Service fees do not include any taxes. Peninsula will pay or reimburse Everett for any and all taxes that may be levied on the fees paid or payable by Peninsula to Everett under this Agreement.

5. **Reservation of Rights; Restriction on Use**

Everett reserves ownership of the Courseware. Except for the licenses granted to Peninsula, no right, title or interest in, to or under any of the Courseware is granted, created, assigned or otherwise transferred to Peninsula pursuant to or by virtue of this Agreement. Without limiting the generality of the foregoing, Peninsula shall not without Everett's prior written consent: (a) sublicense or transfer to any third party the right to use or distribute the Courseware; or (b) use all or any portion of the Courseware for any purpose other than the Peninsula School District Cyber Classroom Program. Unless otherwise mutually agreed upon by the Parties, Peninsula shall restrict its use of the Courseware licensed from Everett to the Peninsula School District Cyber Classroom Program.

6. **Warranty Disclaimer**

The Courseware is being licensed and the Courseware modification services and Hosting Services are being provided by Everett to Peninsula pursuant to this Agreement "AS-IS" and **"WITH ALL FAULTS, DEFECTS AND ERRORS."** Without limiting the generality of the foregoing, Everett makes no warranty or representation, express or implied, arising by law or otherwise, with regard to the Courseware, Courseware modification services or Hosting Services, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, title, or non-infringement.

7. Term/Termination

This Agreement shall remain in force for a period of five (5) years unless earlier terminated by either Party upon thirty (30) days' written notice to the other Party.

8. Limitation on Liability

Except to the extent arising out of a Party's infringement or violation of the other Party's patents, copyrights or trade secrets, no Party shall be liable to the other Party, whether arising out of contract, tort (including negligence), strict liability or otherwise, for any indirect, incidental, special or consequential damages, including loss of revenue, cost of capital or loss of business reputation or opportunity, arising out of or relating to this Agreement or any Courseware, Hosting Services or other materials licensed or services provided hereunder, even if such Party has been advised of the possibility of such damages. In no event shall the aggregate liability of Everett to Peninsula arising out of or relating to this Agreement or any Courseware, Hosting Services or other materials licensed or services provided hereunder exceed the total amount of fees received by Everett from Peninsula under this Agreement.

9. Miscellaneous

(a) **Authority** – Everett and Peninsula each represent and warrant that such party has the respective power and authority, and is duly authorized, to execute, deliver, and perform its obligations under this Agreement.

(b) **Waiver; Assignment** – The failure of any Party to enforce or insist upon strict performance of any provision of this Agreement shall not be construed to be a waiver or relinquishment of any such provision or any other provision in that or any other instance; rather, the same shall be and remain in full force and effect. Peninsula shall not assign its rights under this Agreement without the prior written consent of Everett. Without limiting the foregoing, this Agreement shall be fully binding upon the Parties and their respective successors, assigns, and legal representatives.

(c) **Entire Agreement; Amendment** – This Agreement sets forth the entire agreement and supersedes all prior agreements and understandings of the Parties regarding the subject matter hereof. This Agreement may not be amended or changed except by a written instrument signed by both Parties.

(d) **Governing Law; Notices** – This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington. Any notices by a Party to the other under this Agreement shall be in writing and shall be deemed to have been given upon receipt by the parties hereto. All notices to Everett shall be sent to the address set forth below Everett's signature below, and all notices to Peninsula shall be sent to the address set forth below Peninsula's signature below. Either Party may change its notice address by giving notice to the other Party in the manner provided above.

Everett School District No. 2

By: Carol Whitehead
Printed Name: Carol Whitehead
Title: Supt. of Schools

Address: Everett Public Schools
4730 Colby Avenue
Everett, WA 98203

Peninsula School District No. 401

By: Ryan LeClair
Printed Name: RYAN LECLAIRE
Title: DIRECTOR OF INSTRUCTIONAL TECH.

Address: 14015 62nd Ave NW
Gig Harbor WA
98332