

MEMBER SERVICE AGREEMENT

This Member Service Agreement (“Agreement”) is made between Tri-Rivers Educational Computer Association (“TRECA”) and Big Walnut Local Schools, a user entity and member of TRECA (collectively the “Parties”).

WHEREAS, TRECA desires to provide to Big Walnut Local Schools and Big Walnut Local Schools, hereby a member of TRECA, desires to secure from TRECA core services associated with membership in TRECA (the “Member Services”).

WHEREAS, Big Walnut Local Schools' Board of Education, through previous action or by execution hereof, has adopted, or hereby adopts, and agrees to adhere to the terms and conditions of TRECA's Constitution and By-Laws constituting Big Walnut Local Schools' membership with TRECA, an Information Technology Center (ITC) per Ohio Revised Code Section 3301.075 organized under Ohio Revised Code Chapter 167.

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the Parties, intending to be legally bound, agree as follows:

- I. General.** This Agreement supersedes any existing contracts between the Parties for the same or substantially similar, but not ancillary, services. This Agreement is subordinate to, and governed by, the Constitution, By-Laws, policies, rules and regulations of TRECA (the “Policies”) that are applicable to Big Walnut Local Schools' class of membership in TRECA. TRECA reserves the right to add, modify, delete and/or otherwise amend the Policies at any time at the sole discretion of the TRECA Board of Directors. TRECA may notify Big Walnut Local Schools of any changes by posting the changes to the Policies accessible at TRECA's website. Big Walnut Local Schools agrees to access TRECA's website on a regular basis so as to comply with all terms thereof.
- II. Term & Renewal.** This Agreement shall be effective upon signature with services to be provided for a period beginning July 1, 2012, and shall thereafter remain in full force and effect until June 30, 2013. This Agreement shall automatically renew for successive one-year terms running concurrent with membership in TRECA as defined in the Policies, and/or may be otherwise renewed by affirmative action of the parties. Notwithstanding the foregoing, at TRECA's option, this Agreement may not be renewed if Big Walnut Local Schools is delinquent in any payment due to TRECA at the time of the expiration of any term of this Agreement.

III. Services

- A. Member Services.** TRECA shall provide Big Walnut Local Schools Level I Support via TRECA Web Help Desk, as defined by TRECA, in the following areas:
 1. Fiscal support, including but not limited to: USAS and USPS matters; equipment inventory; payroll; accounting issues; and Web-GAAP.
 2. Student data support, including but not limited to: state mandated data and reporting through EMIS; and Student Information Systems.
 3. IT support, including but not limited to: connectivity coordination and maintenance.
- B. Value Add Services.** Value Add Services are those services provided by TRECA to its members as a benefit of membership and shall be provided at no additional cost to Big Walnut Local Schools. Value Add Services shall be subject to change and/or cancellation at any time at TRECA's sole discretion. Current Value Add Services, any of which may or may not be subject to the terms and conditions evidenced by any associated statement of work (“SOW”), include, but are not limited to:
 1. General educational technology integration consulting and assistance;
 2. Fiscal data imports/exports, setup and processing;
 3. W-2 Printing;
 4. INFOhio basic package;
 5. SIS Implementation;

6. SIS Hosting;
7. SIS Licensing Fees;
8. SIS Maintenance;
9. E-Rate Coordination;
10. Back-end IT support of all associated systems, filtering, firewall protection, test environments, bandwidth analysis and monitoring, and system updates; and
11. Discounted pricing on all other offered services including Professional Development.

C. Additional Contracted Services

1. This Agreement contemplates the potential need for future execution by TRECA and Big Walnut Local Schools of one or more written statements of work when necessitated by the desire for services beyond Member Services (“Extended Services”) and the nature of the requested service(s). Each SOW shall be deemed to be incorporated into this Agreement. If the SOW conflicts with the terms and conditions of this Agreement, the terms and conditions of the SOW shall control with regard to the specific Extended Service only. No SOW shall replace, modify, or void any of the terms and conditions of this agreement with regard to Member Services.
2. By its execution of this Agreement, Big Walnut Local Schools expressly acknowledges and agrees that no request for Extended Services hereunder shall be valid and binding on TRECA, and TRECA will perform no Extended Services for Big Walnut Local Schools hereunder, unless and until the Parties execute an appropriate SOW and Big Walnut Local Schools issues TRECA a valid purchase order sufficient to meet the terms of the SOW.

IV. Performance

- A. The Parties acknowledge that TRECA has offered Big Walnut Local Schools at least the minimum state-subsidized “Core Services” as identified in Ohio Administrative Code Section 3301-3-01(B)(5) and required by the Ohio Department of Education, including but not limited to the following:
 1. Fiscal services, including accounting (cash basis with generally accepted accounting practice extensions), payroll/personnel, and fixed asset accounting;
 2. Student records management, including provisions for student scheduling, grade reporting, attendance tracking, and tracking of special education needs;
 3. State-mandated data reporting, including access to the appropriate department databases and software applications;
 4. Library automation, curricular resources, and educational technology services to support academic content standards and effective instruction; and
 5. Internet access and networking services, including email and the support of data exchange within the information technology center's user entities and across different information technology centers and their user entities.
- B. In performing the Member Services that Big Walnut Local Schools has hereby elected to purchase, TRECA shall conform to the quality implementation standards, as defined by the Ohio Department of Education for all Core Services. Any delays in TRECA's performance of its obligation hereunder shall be excused to the extent that such delays may be due to causes not within TRECA's control.

V. Fees & Payment

- A. For Member Services, Big Walnut Local Schools shall pay TRECA **\$10.75** per student. To determine Big Walnut Local Schools' student count under this agreement, TRECA shall reference and accept Big Walnut Local Schools' count as reflected in the immediately preceding fiscal year's October student enrollment head count report as recorded with the Ohio Department of Education.
- B. Subsidies. Big Walnut Local Schools shall pay TRECA an amount equal to 50% of any K-12 subsidy funds upon receipt annually for costs associated with network/connectivity infrastructure. The obligation shall remain over the term of this Agreement unless and until such funding is no longer provided by the state.

- C. Big Walnut Local Schools agrees to be solely responsible to TRECA for all charges billed by TRECA for Member Services. Except as otherwise provided by the Policies, such charges shall be billed quarterly according to TRECA's invoice terms. If payment is not received within thirty (30) days, TRECA reserves the right to immediately suspend and/or terminate any and all contracted services to Big Walnut Local Schools under this or any other agreement between the Parties. Late payments may be subject to a service charge of up to 1 1/2% of unpaid fees per month. Charges are subject to change annually with the approval of the TRECA Board of Directors.

VI. Property. All data, software, information systems, databases and other data, administrative and business systems, websites, technology, models, designs, business or marketing plans, documentation, other materials or products, formulas, methodologies, processes or techniques or other works or inventions (whether or not copyrightable or patentable), or other intellectual property of any kind furnished, developed or created by TRECA, or by TRECA's employee, contractor, subcontractor, representative or agent providing services under this Agreement including, but not limited to, all intermediate and partial versions thereof and derivative works based thereon, shall constitute the proprietary information and trade secrets of, and shall be the sole property of, TRECA

VII. Miscellaneous

- A. Severability. If any part of this Agreement shall be deemed illegal or unenforceable, only that portion of the agreement shall be affected.
- B. Entire Agreement. This Agreement, together with the documents referred to herein, including but not limited to TRECA's Policies, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.
- C. Governing Law. This Agreement shall be governed and construed under the laws of the state of Ohio.
- D. Amendment. This Agreement shall not be modified or amended without the written and signed agreement of both parties.
- E. No Waiver. The failure by a party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
- F. Rights and Remedies. The rights and remedies provided by this Agreement are cumulative, and are in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.
- G. Confidentiality. TRECA and Big Walnut Local Schools, without regard to the expiration or termination of this Agreement and extending there beyond, agree that each shall exercise ordinary care in preserving and protecting the confidentiality of information, including but not limited to, any non-published information, technical data, trade secrets or know-how including, but not limited to, information relating to students, data, research, products, software, formula, process, customers, techniques, services, development, inventions, processes, pricing, and/or internal procedures, whether having existed, now existing, or to be developed or created in the future, whether tangible or intangible, in any form. Except as required by law, TRECA agrees not to disclose any materials, information, or other data relating to Big Walnut Local Schools' operations, to other individuals, districts, or governmental agencies, without prior written consent from Customer except as required by law, Big Walnut Local Schools agrees not to disclose any information or documentation obtained from TRECA.
- H. Beneficiaries. This agreement is for the sole benefit of the parties hereto, and not for any other person(s) or legal entities.
- I. Headings. The headings used before the various section of this Agreement are for ease of reference only and do not constitute parts of this Agreement.
- J. Counterparts. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.

- K. Independent Contractors. At all times, the relationship of the parties shall be as independent contractors. TRECA may perform any of its obligations hereunder directly or through subcontractors.
- L. Limitation of Liability. **TRECA shall not be liable to Big Walnut Local Schools for any special, exemplary, indirect, incidental or consequential damages; or lost funds, lost funding, or lost or damaged data. In any event, in respect to any claim, demand or action arising out of this agreement, Big Walnut Local Schools shall be limited to receiving actual and direct damages in a maximum aggregate amount equal to the amount paid by Big Walnut Local Schools to TRECA during the immediately preceding twelve (12) month period for the applicable service or support on which the claim is based.**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

Big Walnut Local Schools Authorized Signature

Date

TRECA Authorized Signature

Date