



EXHIBIT D

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE MLSA.

1. Purpose

- (a) This Exhibit supplements the Master License and Service Agreement ("MLSA") to which it is attached, to ensure that the MLSA conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as "Section 2-d"). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of Erie 1 BOCES' Parents Bill of Rights for Data Security and Privacy signed by the Vendor, and the Supplemental Information about the MLSA that is required to be posted on Erie 1 BOCES' website.
- (b) To the extent that any terms contained within the MLSA, or any terms contained within any other Exhibits attached to and made a part of the MLSA, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In the event that Vendor has online or written Terms of Service ("TOS") that would otherwise be applicable to its customers or users of its Product that is the subject of the MLSA, to the extent that any term of the TOS conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. Definitions

Any capitalized term used within this Exhibit that is also found in the MLSA will have the same definition as contained within the MLSA.

In addition, as used in this Exhibit:

- (a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (b) "Teacher or Principal Data" means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (c) "Protected Data" means Student Data and/or Teacher or Principal Data to the extent applicable to Vendor's Product.



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- (d) "Participating Educational Agency" means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with a BOCES, and as a result is licensed to use Vendor's Product pursuant to the terms of the MLSA. For purposes of this Exhibit, the term also includes Erie 1 BOCES or another BOCES that is licensed to use Vendor's Product pursuant to the MLSA to support its own educational programs or operations.

3. **Confidentiality of Protected Data**

- (a) Vendor acknowledges that the Protected Data it receives pursuant to the MLSA may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.
- (b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and Erie 1 BOCES's policy on data security and privacy. Vendor acknowledges that Erie 1 BOCES is obligated under Section 2-d to adopt a policy on data security and privacy, but that adoption may not occur until a date subsequent to the effective date of the MLSA. Erie 1 BOCES will provide Vendor with a copy of its policy as soon as practicable following adoption., and Vendor and Erie 1 BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure Vendor's continued compliance with Section 2-d.

4. **Data Security and Privacy Plan**

Vendor agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with Erie 1 BOCES' Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by the Vendor and is set forth below.

Additional elements of Vendor's Data Security and Privacy Plan are as follows:

- (a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with Erie 1 BOCES' data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this Data Sharing and Confidentiality Agreement. In the event Vendor's policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.
- (b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the MLSA, Vendor will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the MLSA: NWEA develops and implements privacy and information security measures aligned to NIST Cybersecurity Framework to protect the confidentiality, integrity, and



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availability of partner personal data. In doing so, personal data is stored and processed in a manner that is designed to ensure the appropriate security of Student Education Records, including protection against unauthorized or unlawful processing and against accidental loss, destruction, or damage, using appropriate technical and organizational measures. [Insert here – also provide a copy of Data Security and Privacy Plan]

- (c) Vendor will comply with all obligations set forth in Erie 1 BOCES' "Supplemental Information about the MLSA" below.
- (d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Vendor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.
- (e) Vendor [check one] _____ will will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the MLSA. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the MLSA, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (f) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.
- (g) Vendor will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the MLSA is terminated or expires, as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

5. **Additional Statutory and Regulatory Obligations**

Vendor acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the MLSA and the terms of this Data Sharing and Confidentiality Agreement:

- (a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).
- (b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the MLSA.



- (c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.
- (d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Vendor using the information to carry out Vendor's obligations under the MLSA, unless:
 - (i) the parent or eligible student has provided prior written consent; or
 - (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.
- (e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;
- (f) Use encryption technology that complies with Section 2-d, as more fully set forth in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (g) Provide notification to Erie 1 BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.
- (h) Promptly reimburse Erie 1 BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

6. **Notification of Breach and Unauthorized Release**

- (a) Vendor shall promptly notify Erie 1 BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.
- (b) Vendor will provide such notification to Erie 1 BOCES by contacting Michelle Okal-Frink directly by email at mokal@e1b.org, or by calling (716) 821-7200 (office) or (716) 374-5460 (cell).
- (c) Vendor will cooperate with Erie 1 BOCES and provide as much information as possible directly to Michelle Okal-Frink or her designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of



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Protected Data, and contact information for Vendor representatives who can assist affected individuals that may have additional questions.

- (d) Vendor acknowledges that upon initial notification from Vendor, Erie 1 BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Vendor shall not provide this notification to the CPO directly. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Erie 1 BOCES, Vendor will promptly inform Michelle Okal-Frink or her designees.
- (e) Vendor will consult directly with Michelle Okal-Frink or her designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.



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EXHIBIT D (CONTINUED)

PARENTS BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

Erie 1 BOCES is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, the BOCES wishes to inform the community of the following:

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record.
- (3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
- (4) A complete list of all student data elements collected by the State is available for public review at <http://www.nysed.gov/data-privacy-security/student-data-inventory>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- (5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website: <http://www.nysed.gov/data-privacy-security/report-improper-disclosure>.

BY THE VENDOR:

DocuSigned by:

 Signature

Printed Name
 Geri Cohen

Title
 CFO & EVP



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SUPPLEMENTAL INFORMATION

ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT BETWEEN ERIE 1 BOCES AND NWEA

Erie 1 BOCES has entered into a Master License and Service Agreement (“MLSA”) with NWEA which governs the availability to Participating Educational Agencies of the following Product(s):

- English- and Spanish-Language MAP Growth Assessments in Mathematics, Reading, and Language Usage for Grades K–12;
- MAP Growth Science for Grades 3–8;
- English- and Spanish-Language MAP Growth Single-Subject (e.g., Mathematics or Reading);
- MAP Skills in Mathematics, Reading, Language Usage, and Vocabulary for Grades 3–8+;
- Standalone MAP Reading Fluency for Grades Pre-K–3;
- MAP Reading Fluency for Grades Pre-K–3; and
- English- and Spanish-Language MAP Accelerator in Mathematics for grades 3–8

Pursuant to the MLSA, Participating Educational Agencies may provide to Vendor, and Vendor will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law (“Protected Data”).

Exclusive Purpose for which Protected Data will be Used: The exclusive purpose for which Vendor is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLSA. Protected Data received by Vendor, or any of Vendor’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the MLSA (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of Vendor under the MLSA and applicable state and federal law. Vendor will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by: N/A



Duration of MLSA and Protected Data Upon Expiration:

- The MLSA commences on July 1, 2020 and expires on June 30, 2023.
- Upon expiration of the MLSA without renewal, or upon termination of the MLSA prior to expiration, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or its assignees or subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by Erie 1 BOCES and/or any Participating Educational Agency, Vendor will assist a Participating Educational Agency in exporting all Protected Data previously received back to the Participating Educational Agency for its own use, prior to deletion, in a .csv or Excel format.
- In the event the Master Agreement is assigned to a successor Vendor (to the extent authorized by the Master Agreement), the Vendor will cooperate with Erie 1 BOCES as necessary to transition Protected Data to the successor Vendor prior to deletion.
- Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, or any other Protected Data, on any storage medium whatsoever. Upon request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Erie 1 BOCES with a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to Vendor, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to Vendor by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States. The measures that Vendor will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: Vendor (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.



Appendix A

NWEA Data Security and Privacy Plan under New York Education Law 2-d

Privacy

NWEA recognizes the importance of protecting the privacy and security of its Subscribers and Users of the Assessment System. NWEA's Privacy Policy informs Subscribers and Users of NWEA's policies and procedures regarding the collection, use, and disclosure of Student Education Records, Deidentified Data, and Anonymized Data. NWEA's Privacy Policy – Assessment System can be found at:

Data Security & Employee Training

NWEA develops and implements privacy and information security measures aligned to NIST Cybersecurity Framework to protect the confidentiality, integrity, and availability of partner personal data. In doing so, personal data is stored and processed in a manner that is designed to ensure the appropriate security of Student Education Records, including protection against unauthorized or unlawful processing and against accidental loss, destruction, or damage, using appropriate technical and organizational measures. Further information on NWEA's data security measures can be found here:

<https://legal.nwea.org/map-growth-information-security-whitepaper.html>,

which include, but are not limited to, training on applicable federal and state laws for officers and employees that have access to Student Education Records.

Cyber Supply Chain Risk Management

NWEA may share Student Education Records, as defined in the Master Subscription Agreement between the parties, with third-party contractors to support the Assessment System. NWEA utilizes a cyber supply chain risk management (SCRM) process for third parties. The primary objective of the cyber SCRM is to identify and assess external parties to ensure they meet NWEA's security profile (based on NIST security controls) and contractual requirements. As a part of this process, third parties are contractually committed to protect the availability, confidentiality, and integrity of Student Education Records. Third parties are prohibited from engaging in targeting advertising and any other use except in support of the Assessment System.



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EXHIBIT E

END USER SUBSCRIPTION AGREEMENT

MAP Growth, MAP Skills and MAP Reading Fluency are offered subject to the terms of the custom End User Subscription Agreement (a copy of which is included below, the "Terms"), which are hereby incorporated by reference. By signing End User Subscription Agreement, you agree you have read and understood the Terms and agree to the Terms.

The custom End User Subscription Agreement is subject to supplemental terms and conditions located at: <https://legal.nwea.org/map-accelerator-supplemental-terms-and-conditions.html>, which are hereby incorporated by reference. Some of these supplemental terms and conditions (the "MAP Accelerator Terms") modify NWEA's standard Terms as applied to the MAP Accelerator Service listed herein (the "Service").

The Service is provided by Khan Academy, Inc., a California 501(c)(3) organization ("Khan"), through Khan's website located at <http://khanacademy.org> and related application programming interfaces (API's), mobile applications, and online services ("Website").

Each student, teacher, leader, aide, or other similar personnel enrolled in the Service will be registered with an individual user account on the Khan Academy Website, use of which is governed exclusively by the Khan Academy Website Terms of Service (<https://www.khanacademy.org/about/tos>) and Privacy Policy (<https://www.khanacademy.org/about/privacy-policy>), as further described in the MAP Accelerator Terms. These accounts will enable users to access all of Khan Academy's standard features and will remain in effect following the end of the Subscription term.

Customer or Licensee (referred to as "Subscriber" in the End User Agreement) hereby grants permission for NWEA to disclose to Khan data related to the use of MAP Accelerator, including, but not limited to, Student Education Records and Demographic Data, for Khan's use in connection with the Service and in Khan Website accounts established (or Linked) in connection therewith, as further provided in the MAP Accelerator Terms. Subscriber further grants permission for NWEA to disclose to Khan the contract terms agreed and proposed to be agreed between Subscriber and NWEA with respect to the Service and the Terms applicable to the MAP assessment to which the Service relates.

Rostering and account provisioning support will be provided through Clever Inc.'s SecureSync service. Subscriber acknowledges that use of MAP Accelerator is contingent upon Subscriber rostering through Clever. Subscriber's use of Clever is subject to the terms and conditions of the agreement between Subscriber and Clever and NWEA and Khan Academy assume no liability for claims or damages resulting from Subscriber's use of Clever. Subscriber confirms instruction to roster students based on the data provided to NWEA and Khan Academy, respectively, via Clever SecureSync and hereby grants permission for NWEA and Khan Academy to share information via Clever for account administration purposes.

If this schedule includes virtually delivered professional learning or workshops, then cancellation is subject to the Virtual Workshop Cancellation Policy at <http://legal.nwea.org/supplementalterms.html>

FISCAL AGENT AGREEMENT

This Agreement is between NWEA, an Oregon nonprofit public benefit corporation, and Fiscal Agent and is effective as of the Effective Date.

The parties agree as follows:

1. **Definitions.** In this Agreement, capitalized words have the following meanings:
 - 1.1 **Agreement:** means this Fiscal Agent Agreement.
 - 1.2 **Effective Date:** means the last date set forth on the signature page.
 - 1.3 **EUSA:** means the End User Subscription Agreement attached hereto as Exhibit A.
 - 1.4 **FERPA:** means the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1), as amended from time to time.
 - 1.5 **Fiscal Agent:** means an organization indicated on the signature page who acts as fiscal or administrative agent for a network of Subscribers to provide and implement NWEA's Services for the Subscribers.
 - 1.6 **Services:** means the Services as defined in the EUSA.
 - 1.7 **Student Education Records:** means Student Education Records as defined in the EUSA.
 - 1.8 **Subscriber:** means the school or district or other subscribing entity who has executed a EUSA and is indicated on Exhibit B.
2. **Purpose.** Subject to the terms and conditions of this Agreement, NWEA shall make available to Subscribers its Services as described in Schedule A.
3. **Fiscal Agent Responsibilities.** Fiscal Agent shall:
 - 3.1 Pay the fees set forth in an applicable Schedule A within thirty (30) days of receipt of invoice. If Fiscal Agent or any Subscriber overestimates the number of students tested, NWEA is not obligated to refund any fees. If, however, Fiscal Agent or any Subscriber underestimates the number of students tested, NWEA may submit an amended invoice to capture the additional students tested and Fiscal Agent shall pay the variance within thirty (30) days of the amended invoice date;
 - 3.2 Schedule and host introductory activities for the Subscribers;
 - 3.3 Cause each Subscriber to execute the EUSA;
 - 3.4 Immediately notify NWEA in writing of any changes to Exhibit B, Participating Subscribers;
 - 3.5 Comply with all federal and state student data privacy laws, including FERPA; and
 - 3.6 Notify NWEA immediately when any Subscriber revokes Fiscal Agent's permission to access, maintain, and use its Student Education Records.
4. **Implementation.** NWEA shall begin implementation of the Services solely upon receipt of executed EUSAs from all Subscribers included in Exhibit B. Fiscal Agent will notify NWEA immediately in the event a Subscriber is added to or removed from Exhibit B.
5. **Publicity.** Fiscal Agent consents to NWEA's use of and/or references to its name, directly or indirectly, in

NWEA's website, marketing, and training materials.

6. **Privacy and Indemnification.** In accordance with FERPA and applicable state law, NWEA cannot grant Fiscal Agent access to a Subscriber's Student Education Records until NWEA receives an executed EUSA with express permission to allow redisclosure of the Student Education Records to Fiscal Agent from such Subscriber. If Fiscal Agent requires access to Student Education Records contained in certain reports generated by the Services in order to coach, guide, and evaluate the Subscribers, then Fiscal Agent will comply with FERPA and applicable state law. Fiscal Agent shall indemnify, defend, and hold harmless NWEA and NWEA's officers, directors, employees, agents, and representatives, from and against any claims, damages, expenses, judgments, fines, and amounts paid in settlement in connection with any proceeding arising from Fiscal Agent's access or use of Student Education Records.

7. **Termination.** This Agreement remains in effect until terminated in accordance with this section. Either party may terminate this Agreement by providing the other party thirty (30) days' written notice of its intent to terminate for convenience. If Fiscal Agent breaches this Agreement, NWEA may terminate immediately without prior notice to Fiscal Agent and may seek any legal or equitable remedy available against Fiscal Agent for breach of the terms of this Agreement, including without limitation, injunctive relief and specific performance. Upon termination of this Agreement for any reason (i) Fiscal Agent shall promptly notify all Subscribers of such termination so that Subscribers may arrange to fund their continued use of the Services; and (ii) Fiscal Agent shall destroy all Student Education Records within thirty (30) days of termination or expiration of this Agreement. For the avoidance of doubt, all fees paid are non-refundable and all obligations non-cancellable.

8. **Limitation.** EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL NWEA BE LIABLE FOR ANY DAMAGES OR EXPENSES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES, OR PECUNIARY LOSS, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, EVEN IF NWEA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, NWEA'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY FISCAL AGENT FOR ITS SUBSCRIBERS' RIGHT TO USE THE SERVICES IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THIS LIMITATION ALSO APPLIES TO NWEA'S DEVELOPERS AND SUPPLIERS AND IS THE MAXIMUM FOR WHICH THEY AND NWEA ARE COLLECTIVELY RESPONSIBLE.

9. **Disclaimer.** The only warranty on the Services provided is to a Subscriber pursuant to the EUSA. All other warranties are expressly disclaimed.

10. **Miscellaneous.**

10.1 **Force Majeure.** NWEA shall not be liable for any failure to perform any obligation hereunder, or from any delay in the performance thereof, due to causes beyond its control, including without limitation war, riot, insurrection, civil commotion, terrorist activity, flood, industrial disputes of whatever nature, acts of God, computer crimes, or public enemies of government.

10.2 **Waiver and Severability.** Waiver of any default or breach under this Agreement by NWEA does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any part of this Agreement is held illegal or otherwise unenforceable by a court of competent jurisdiction, the parties intend that the remainder of this Agreement nevertheless remains in full force and effect. Upon a determination that any term or provision is illegal or unenforceable, the court may modify this Agreement to effect the original intent of the parties as closely as possible.

10.3 **No Third-party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party except the Subscribers as provided by the EUSA.

10.4 **Survival.** The following sections survive any termination or expiration of this agreement or the termination of any license granted under this agreement: 6; 7; 8; 9; and 10.

10.5 **Entire Agreement.** This Agreement along with Fiscal Agent's Schedule A contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

10.6 **Assignment.** Fiscal Agent may not assign this Agreement to any third party without the prior written consent of the NWEA.

10.7 **Binding.** This Agreement will be binding on the parties and their respective successors and permitted assigns, and will inure to their benefit.

10.8 **Representation of Signatories.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement for its respective party.

10.9 **Notices.** Any notice required under this Agreement shall be in writing and effective when (i) delivered personally against receipt; (ii) deposited in the mail and registered or certified with return receipt requested, postage prepaid; (iii) shipped by a recognized courier service and addressed to either party as designated in this Agreement; (iv) delivered by e-mail or other electronic transmission to an e-mail address designated by the recipient; or (v) when delivered via any of the foregoing at such other address as may be provided by the recipient in accordance with this Section.

Address for Notices to NWEA:

NWEA
121 NW Everett Street
Portland, Oregon 97209
Email: legalservices@nwea.org

Address for Notices to Fiscal Agent shall to the address set forth in Fiscal Agent's signature box below.

10.10 **Controlling Law and Venue.** This Agreement shall be construed and controlled by the laws of the State of Oregon, U.S.A., without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods, Uniform Commercial Code, and Uniform Computer Information Transactions Act are specifically disclaimed and do not apply to this Agreement. Any litigation arising out of this Agreement must be conducted in courts located in Multnomah County, Oregon.

10.11 **Attorney Fees.** If any lawsuit is instituted to interpret, enforce, or rescind this Agreement, the prevailing party on a claim may recover, in addition to any other relief awarded, its reasonable attorney fees and other fees, costs, and expenses incurred in connection with the lawsuit, the collection of any award, or the enforcement of any order as determined by a judge.

10.12 **Equal Opportunity.** NWEA is committed to building a diverse workforce in order to strengthen its organization to meet the needs of its diverse client base. NWEA is an equal opportunity, affirmative action employer and purveyor of services and does not discriminate against its employees, job applicants, or independent contractors on the basis of race, color, national origin, age, religion, gender disability, sexual orientation, veteran status or any other status or consideration protected by local, state and federal laws, except where a bona fide occupational qualification applies. Equal opportunity applies to hiring, promotion, training, compensation and any other organizational action.

10.13 **Counterparts.** The parties may execute this Agreement in counterparts, each of which is an original, and the counterparts constitute one and the same Agreement. The parties may also deliver and accept facsimile or electronically scanned signatures, which bind a party as if the signature were an original.

10.14 **Vendor Status and Independent Contractor.** NWEA provides Services within its normal business operations and operates in a competitive environment. The Services constitute a vendor relationship, as defined by OMB Circular A-133 and, therefore, any monies to pay for this Agreement are not subject to the federal audit requirements of OMB Circular A-133. NWEA is an independent contractor, and neither NWEA nor its employees are Fiscal Agent's employees. Nothing contained in this Agreement creates or implies an agency relationship, joint venture, or partnership between the parties.

NWEA:

FISCAL AGENT
ERIC 1 BOCES

By: _____

Geri Cohen, CFO & EVP, Corporate Services

By: _____

Date: _____

Date: _____

Address: _____

Schedule A [estimate]

Exhibit A

FISCAL AGENT END USER SUBSCRIPTION AGREEMENT—DATA SHARING

This Agreement is between NWEA, an Oregon nonprofit public benefit corporation, and Subscriber and is effective as of the Effective Date.

The parties agree as follows:

1. **Definitions.** In this Agreement, capitalized words have the following meanings:

1.1 **Agreement:** means this end user subscription agreement including applicable Schedule(s) and Supplemental Terms and Khan Academy Supplemental Terms.

1.2 **Anonymized Data:** means any Student Education Record rendered anonymous in such a manner that the student is no longer identifiable. For example, this includes non-identifiable student assessment data and results, and other metadata, testing response times, scores (e.g. goals, RIT), NCES codes, responses, item parameters, and item sequences that result from the Services.

1.3 **Assessment System:** means, to the extent included in an applicable Schedule, the following assessment, reporting, and administration systems: (i) MAP® Growth; (ii) MAP® Skills; (iii) MAP® Reading Fluency; or (iv) MAP® Accelerator, each a product ("Product"). Assessment System excludes Subscriber's operating environment and any other systems not within NWEA's control.

1.4 **Content:** means test items, including images, text, graphs, charts, and pictures.

1.5 **Deidentified Data (Pseudonymized Data):** means a Student Education Record processed in a manner in which the Student Education Record can no longer be attributed to a specific student without the use of additional information, provided that such additional information is kept separately using technical and organizational measures.

1.6 **Documentation:** means Product documentation made available to Subscriber by NWEA, which includes technical manuals, but excludes any marketing materials or brochures.

1.7 **Effective Date:** means the last date set forth on the signature page.

1.8 **FERPA:** means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1), as amended from time to time.

1.9 **Fiscal Agent:** means the fiscal agent who has agreed to pay for the Services pursuant to the Fiscal Agent Agreement.

1.10 **Fiscal Agent Agreement:** means the agreement between NWEA and Fiscal Agent allowing Fiscal Agent to pay for the Services.

1.11 **GRD:** means the Growth Research Database used to generate longitudinal studies, alignment studies, linking studies, norming studies, and other research reports that Subscriber and other subscribers may receive.

1.12 **Legal Order:** means a valid order issued by a court or governmental agency of competent jurisdiction.

1.13 **NWEA Confidential Information:** means all NWEA non-public, proprietary or confidential information, in oral, visual, written, electronic or other tangible or intangible form, whether or not marked

or designated as confidential, including without limitation all NWEA Content, test scripts, underlying ideas, algorithms, item calibrations, concepts, procedures, processes, principles, know-how, and methods of operation that comprise the Services, including updates, enhancements, modifications, and improvements.

1.14 **Reporting:** means Product reports, learning statements, research studies, and scoring.

1.15 **Schedule:** means one or more applicable order schedules or other order documents, including, upon renewal, any confirmation page generated by NWEA's online account renewal portal. Schedule(s) may be provided as a separate attachment to the same email from which this Agreement is sent.

1.16 **Security Breach:** has the meaning ascribed to that term by the applicable state law, or, if not defined by state law, means actual evidence of a confirmed unauthorized acquisition of, access to, or unauthorized use of any Student Education Record(s).

1.17 **Services:** means the Assessment System, Content, Documentation, product training, professional learning, Reporting, Software, GRD, and other services as described in this Agreement and set forth in an applicable Schedule.

1.18 **Software:** means (i) any web-based or client-server software made available to Subscriber by NWEA; (ii) a lockdown browser sublicensed through NWEA from a third party that facilitates access to the Services; (iii) NWEA software that supports client server assessments; and (iv) any other software set forth in the Supplemental Terms.

1.19 **Student Education Record:** means personally identifiable information of Subscriber's students as defined by FERPA and any applicable state law.

1.20 **Subscriber:** means the school or school district or other subscribing entity indicated on the signature page and may also refer to a school or group of schools forming an educational entity or any individual persons using or accessing the Services on behalf of the school or school district.

1.21 **Supplemental Terms:** means the Services-specific terms available at <http://legal.nwea.org/supplementalterms.html> and Khan Academy Supplemental Terms included here.

1.22 **Systems Administrator:** means the Subscriber-designated individual who, within the Assessment System, is authorized to: (i) modify assessment preferences for Subscriber; (ii) create and modify user profiles for roles including lead roles (i.e. data administrator, assessment coordinator); and (iii) declare testing complete for Subscriber.

2. **Grant of License.** NWEA grants to Subscriber a nonexclusive, nontransferable, limited license to access, use, display, and install or download a copy, as needed, of the Services solely for Subscriber's internal use. The license is effective for a period of one (1) year commencing on the date NWEA makes the Software available to Subscriber, unless otherwise specified in an applicable Schedule. The Services extend only to the quantity indicated on an applicable Schedule. Subscriber acknowledges Product limitations on the number of test events per academic year (see Supplemental Terms).

3. **Protection from Unauthorized Use or Access.** Subscriber shall not: (i) copy, distribute, reproduce, resell, publish, license, create derivative works, transfer, rent, lease, or sublicense any or all of the Services; (ii) exploit for any commercial purposes any portion of the Services or permit use of the Services by anyone not employed by or under the control of Subscriber; (iii) remove any proprietary notices or labels from the Services; (iv) use the Services in an attempt to, or in conjunction with, any device, program, or service designed to circumvent technological measures employed to control access to, distribution of, or rights in, the Services. Subscriber shall use reasonably secure measures to prevent unauthorized use (e.g., copying test items) by its end users. Further, Subscriber shall reproduce all copyright, trademark, and other proprietary notices and legends on each copy, or partial copy, of the

Services. Subscriber will deactivate and remove from any equipment under its control any prior versions of the Services.

4. **Ownership.** The Services are owned and copyrighted by NWEA and are licensed through this Agreement to Subscriber, except certain Software is sublicensed from an NWEA supplier. All right, title, and interest in the Services and all copies, updates, enhancements, modifications, and improvements, along with all associated intellectual property rights, remain with NWEA, regardless of either: (i) the source giving rise to the intellectual property; or (ii) any modifications or adaptations made for the benefit of Subscriber. The Services, and all updates, enhancements, modifications, and improvements, are protected by United States and international intellectual property laws and treaties. Subscriber is not granted any license to use NWEA's or its suppliers' trade or service marks. Additionally, NWEA retains all right, title, and interest in its trade and service marks. Subscriber shall allow NWEA to use, without restriction or royalty obligation, any comments, suggestions, or contributions provided by Subscriber with respect to the Services. Subscriber grants and assigns to NWEA any intellectual property rights that Subscriber may incidentally obtain or have with respect to any such comments, suggestions, or contributions.

5. **NWEA Confidential Information.** Subscriber shall not use, disclose, or distribute any NWEA Confidential Information, directly or indirectly, without the prior written consent of NWEA, except that NWEA authorizes Subscriber to disclose NWEA Confidential Information: (i) to Subscriber's employees or agents who have signed written confidentiality and nondisclosure agreements before such disclosure; and (ii) as required by applicable federal, state, or local law, regulation, or a Legal Order. Before making any disclosure under Section 5(ii), Subscriber shall provide NWEA: (a) Prompt written notice of such requirement so that NWEA may seek, at its sole cost and expense, a protective order or other remedy; and (b) Reasonable assistance, at NWEA's cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required in this Section, the Subscriber remains subject to a Legal Order to disclose any NWEA Confidential Information, the Subscriber (or its representatives or other persons to whom such Legal Order is directed) may disclose no more than that portion of the NWEA Confidential Information which, on the advice of Subscriber's legal counsel, specifically requires the Subscriber to disclose. For any such disclosure, Subscriber shall use best efforts to obtain written assurances from the applicable court or agency that such NWEA Confidential Information will be afforded confidential treatment.

6. **Student Education Records.**

6.1 **Use of Student Education Records.** Subscriber shall comply with all applicable federal and state laws regarding use, access, and disclosure of Student Education Records. The foregoing obligation includes but is not limited to, Subscriber's compliance with its policies regarding parental and guardian consents required for NWEA and its contractors to provide Services to Subscriber under this Agreement. NWEA and Subscriber acknowledge that NWEA will create, access, secure, and maintain Student Education Records to perform the Services as further outlined in NWEA Privacy and Security for Personally Identifiable Information. Except as permitted under this Agreement, NWEA shall not (i) use Student Education Records for targeted student advertising; or (ii) resell or otherwise disclose to third parties any Student Education Records without the written consent of Subscriber. Subscriber grants permission to NWEA and its contractors that have executed confidentiality agreements to use Student Education Records for maintaining and providing the Services.

6.2 **Subscriber's Ownership of Student Education Records.** Subscriber owns the Student Education Records.

6.3 **Requests for Disclosure of Student Education Records.** If NWEA receives a request from a state educational agency for Student Education Records, NWEA shall notify Subscriber via email. Such notification to the Subscriber will provide Subscriber the ability to create and maintain a record of the request or disclosure with the records of each student and have the record available to parents upon their request, as required by 34 CFR 99.32. Upon NWEA's email notification to Subscriber, NWEA may promptly respond to such requests for disclosure. Subscriber hereby consents to such disclosure by NWEA to Subscriber's state education agency and its designated vendors. Subscriber shall indemnify NWEA in accordance with Section 18 of this Agreement for any consequences which may result from NWEA's disclosure of Student Education Records to Subscriber's state educational agency and/or its designated vendors.

6.4 **Redisclosure to Fiscal Agent; Education Analytics.** During the term of this Agreement, Subscriber grants NWEA permission to redisclose Student Education Records that are generated from test administrations under this Subscription to Subscriber's Fiscal Agent. Subscriber further agrees that the Student Education Records may be retained by the Fiscal Agent until the Fiscal Agent Agreement is terminated or expired. Pursuant to the Fiscal Agent Agreement, Fiscal Agent is obligated to destroy the Student Education Records upon such termination or expiration. Subscriber also grants permission to NWEA to create a login or share Subscriber's login username and password with the Fiscal Agent, its designees and other Fiscal Agent officers who have administrative oversight of Subscriber. The Fiscal Agent has legitimate educational interests to access Subscriber's Student Education Records to evaluate the educational effectiveness of Subscriber's school. If Subscriber purchases services to be performed by Education Analytics, Inc., then Subscriber grants permission to NWEA to redisclose Student Education Records in the reports generated from the Products to Education Analytics, Inc.

7. **FERPA.** In accordance with FERPA, NWEA may maintain and use Student Education Records to perform the Services and may disclose Anonymized Data to third parties for legitimate educational research. Subscriber is responsible for any notices to parents required under FERPA and for providing parents and guardians with an opportunity to inspect and challenge the contents of a Student Education Record. If NWEA receives a request from a parent or guardian challenging the content of a Student Education Record maintained by NWEA, NWEA shall contact Subscriber to validate the identity of the parent or guardian and student and request instructions regarding corrective action to be taken, if any. Once validated, NWEA shall correct the erroneous Student Education Record as directed by Subscriber in writing.

8. **GRD.** Subscriber authorizes NWEA to use Student Education Records in the GRD, commencing on the Effective Date or upon the date that Subscriber used or ordered Services, whichever is earlier. NWEA and Subscriber acknowledge that the permissions and obligations expressed in this Agreement survive the termination of this Agreement and any renewals. As described in Section 12, NWEA will maintain Student Education Records after termination of this Agreement for Services which may include, but are not limited to, Subscriber's access to Reporting and research-related Services and to validate the authenticity of data in such Reporting. If NWEA receives Subscriber's written request to opt out of participation in the GRD, NWEA will deidentify Student Education Records in the GRD. As a result of opting out of the GRD, certain research reports are unavailable to Subscriber due to the inability to accurately link student data with research data. Subscriber's written request must be sent via email to legalservices@nwea.org and include the following: (i) requestor's name, title and contact information; (ii) the name of requesting school or entity with NCES #; (iii) a request to deidentify Student Education Records in the GRD; and (iv) an attestation that requestor is duly authorized and has legal capacity to execute the request.

9. **Security and Privacy Obligations.**

9.1 **Subscriber Responsibilities.** Subscriber is solely responsible for configuring role-based access to Student Education Records within the Assessment System and for ensuring the security and availability of Subscriber's own passwords, computers, computer networks, and internet connections, including security patches, choice of browser and browser configuration settings to be used with the Assessment System, email, and other transmissions. Subscriber acknowledges that its Systems Administrator controls the access and security points of the Assessment Systems. Annually, Subscriber shall remove any inactive Systems Administrators and confirm to NWEA the names of its active Systems Administrators. The Assessment System may contain mechanical or electronic methods to prevent unauthorized use or distribution of the Services. Subscriber shall not disable or circumvent such control devices. Subscriber acknowledges that the validity and accuracy of the Reporting depends upon the accuracy and completeness of the class roster file Subscriber submits.

9.2 **NWEA Responsibilities.** Subject to the limitations of warranty set forth in Section 15 of the Agreement, NWEA shall maintain commercially reasonable privacy and data security controls, including policies, procedures, and training, to protect the confidentiality, integrity, and availability of Student Education Records. NWEA has an incident response program that specifies the actions to be taken in the event of a Security Breach. NWEA shall notify Subscriber by email or telephone in accordance with applicable state law or without unreasonable delay, whichever occurs sooner, after a Security Breach. In the event of a Security Breach, Subscriber shall cooperate fully with NWEA so that NWEA can comply with its notification obligations to the affected parent(s), legal guardian(s), eligible student(s), or any other parties for which notification by NWEA is required under applicable state law.

10. **Product Training.** If Subscriber is new to the Services, Subscriber's teachers and staff administering the Services must, at Subscriber's cost, participate in NWEA introductory product training before testing begins (e.g. MAP Admin Workshop if Subscriber subscribes to MAP Growth or Client Server MAP). Before testing commences, Subscriber shall assign a member of its staff to coordinate the logistics of setting up the training. If Subscriber experiences staff change that affects the administration of the Services, Subscriber shall promptly notify NWEA in writing. NWEA may require Subscriber to send any new staff to introductory NWEA product training.

11. **Publicity.** Subscriber consents to NWEA's use of and references to Subscriber's name, directly or indirectly, in NWEA's marketing and training materials.

12. **Termination and Remedies.** This Agreement remains in effect until terminated in accordance with this section. Either party may terminate by providing the other party thirty (30) days written notice of its intent to terminate for convenience. NWEA may terminate immediately without prior notice to Subscriber upon Subscriber's breach of this Agreement. NWEA may seek any legal or equitable remedy available against Subscriber for breach of the terms of this Agreement, including without limitation, injunctive relief and specific performance. After termination of the Agreement, NWEA shall continue to maintain Student Education Records until: (i) NWEA receives Subscriber's written request to destroy Student Education Records via email to legalservices@nwea.org that includes requestor's name, title, contact information, name of requesting school or entity with NCES #, and attestation that Subscriber is duly authorized and has legal capacity to execute the request; and (ii) NWEA confirms the information in Subscriber's written request. Thereafter, NWEA shall destroy the Student Education Records without undue delay or as otherwise required under applicable state law. Subscriber understands and agrees that if NWEA destroys Subscriber's Student Education Records, NWEA will not be able to provide such data to Subscriber after its destruction.

13. **Support.** NWEA will provide to Subscriber limited support, updates, enhancements, modifications, improvements, and maintenance services.

14. **Scheduled Maintenance.** NWEA has system maintenance periods throughout the year that affect Subscriber's use of the Services, including Subscriber's ability to (i) upload or download student and test data; (ii) access Reporting; or (iii) interact with any of NWEA's websites. NWEA provides notice of regularly scheduled maintenance at [NWEA.org \(https://www.nwea.org\)](https://www.nwea.org). NWEA may perform emergency maintenance at any time without notice.

15. **Limited Warranty.** NWEA warrants, during the subscription period, that the Product(s), as delivered by NWEA and when used in accordance with the Documentation and the terms of this Agreement, will substantially perform in accordance with the Documentation. If any Product does not operate as warranted and Subscriber has provided written notice of the non-conformity to NWEA within thirty (30) days of discovery of such non-conformity, NWEA shall at its option (i) repair the applicable Product; (ii) replace the applicable Product with a system of substantially the same functionality; or (iii) terminate the license to the non-conforming Product and provide Subscriber a pro-rata refund representing the portion of any fees previously paid for the unused portion of the terminated license for such Product measured from the effective date of termination. The foregoing warranty specifically excludes defects in or non-conformance of the Assessment System resulting from (a) use of the Assessment System in a manner not in accordance with the Documentation except as otherwise authorized in writing by NWEA; (b) modifications or enhancements to the Assessment System made by or on behalf of Subscriber except as otherwise authorized in writing by NWEA; (c) combining the Assessment System with products, software or devices not provided by NWEA; (d) improper or inadequate maintenance of Subscriber's own computers, computer networks, operating environment, security programs, and internet connections; or (e) computer hardware malfunctions, unauthorized repair, accident, or abuse.

16. **Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 15, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF (i) MERCHANTABILITY; (ii) FITNESS FOR A PARTICULAR PURPOSE OR USE; (iii) QUALITY; (iv) PRODUCTIVENESS; OR (v) CAPACITY, OR THAT THE OPERATION OF THE SERVICES IS ERROR-FREE. EXCEPT AS PROVIDED HERE, THE ENTIRE RISK AND LIABILITY ARISING OUT OF USE OF THE SERVICES REMAINS WITH SUBSCRIBER. THERE IS NO WARRANTY FOR DATA SECURITY OR PERFORMANCE ISSUES (a) CAUSED BY FACTORS OUTSIDE OF NWEA'S REASONABLE CONTROL; OR (b) RESULTING FROM ANY ACTION OR INACTION OF SUBSCRIBER OR ANY THIRD PARTIES; OR (c)

RESULTING FROM SCHEDULED MAINTENANCE PERIODS. NWEA CANNOT CONTROL PERFORMANCE OF THE SERVICES BASED ON THE FLOW OF DATA TO OR FROM NWEA'S NETWORK OR OVER THE INTERNET, WHICH DEPEND IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT SUBSCRIBER'S CONNECTIONS TO THE INTERNET. ALTHOUGH NWEA USES COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, NWEA DOES NOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NWEA DISCLAIMS ANY LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

17. **Limitation.** THE REMEDIES PROVIDED UNDER THE LIMITED WARRANTY ARE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDIES, EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT IS NWEA LIABLE FOR ANY DAMAGES OR EXPENSES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES, OR PECUNIARY LOSS, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, EVEN IF NWEA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NWEA'S ENTIRE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER FOR THE RIGHT TO USE THE PRODUCT IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THIS LIMITATION ALSO APPLIES TO NWEA'S DEVELOPERS AND SUPPLIERS OF THE SERVICES AND IS THE MAXIMUM FOR WHICH THEY AND NWEA ARE COLLECTIVELY RESPONSIBLE. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

18. **Indemnification.**

18.1 **By Subscriber.** Except To the extent limited by applicable law, Subscriber shall indemnify, defend, and hold harmless NWEA and NWEA's officers, directors, employees, agents, and representatives, from and against any third party claims, damages, expenses, judgments, fines, and amounts paid in settlement in connection with any proceeding arising from (i) any breach of this Agreement by Subscriber or any of its employees or agents; or (ii) any use of the Services.

18.2 **By NWEA.** If all the conditions in this section are met, NWEA shall (i) defend Subscriber against claims made by an unaffiliated third party that the Assessment System infringes its US patent, copyright, or trademark; and (ii) pay the amount of any resulting adverse final judgment against Subscriber (after any appeals) or settlement to which NWEA consents. Subscriber must notify NWEA promptly in writing of the claim. Subscriber must also give NWEA sole control over its defense and settlement. Subscriber shall provide NWEA with reasonable assistance in defending the claim. NWEA's obligations under this Section will not apply to the extent the claim (or adverse final judgment) is based on: (a) Subscriber using the Assessment System after NWEA has informed Subscriber to discontinue use due to such a claim; (b) the combination or use of the Assessment System with non-NWEA information, data, or materials except as otherwise authorized in writing by NWEA; (c) modification of the Assessment System except as otherwise authorized in writing by NWEA; (d) use of NWEA's trademark(s) without express written permission; or (e) Subscriber's acts or omissions which result in a claim under this Section. If NWEA receives information about a claim under this Section related to the Assessment System in whole or in part, NWEA may do any of the following, at its discretion and expense: (i) procure the right to continue its use; (ii) replace the infringing portion of the Assessment System with a functional equivalent; (iii) modify the infringing portion of the Assessment System to make it non-infringing (if NWEA does this, Subscriber will stop using the allegedly infringing portion of the Assessment System immediately); or (iv) terminate this Agreement. Notwithstanding anything to the contrary, NWEA's commitment under this Section is Subscriber's exclusive remedy for third-party infringement and trade secret misappropriation claims. Nothing in this Section obligates NWEA to indemnify Subscriber from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable to the acts or omissions of Subscriber, its officers, employees, or agents.

19. **Evaluation License.** This Section 19 applies if NWEA has provided the Services (including but not limited to Assessment System, Reporting, and/or Software) to Subscriber for evaluation purposes. NWEA grants Subscriber a thirty (30) day (or as otherwise indicated by NWEA in writing) limited license to use such Services solely for the purposes of evaluation. NWEA is not obligated to provide support for the evaluation Services. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE SERVICES PROVIDED FOR EVALUATION MAY FUNCTION FOR A LIMITED PERIOD OF TIME, HAVE LIMITED FEATURES, AND HAVE OTHER LIMITATIONS NOT CONTAINED IN A COMMERCIAL VERSION OF THE SERVICES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NWEA IS PROVIDING THE SERVICES "AS IS", AND NWEA DISCLAIMS ANY AND ALL WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR

A PARTICULAR PURPOSE, MERCHANTABILITY, AND STATUTORY WARRANTIES OF NON-INFRINGEMENT, LIABILITIES, AND INDEMNIFICATION OBLIGATIONS OF ANY KIND. IN THE EVENT OF A CONFLICT BETWEEN THIS SECTION 22 AND OTHER TERMS OF THIS AGREEMENT, THIS SECTION 22 WILL SUPERSEDE SUCH TERMS WITH RESPECT TO THE SERVICES LICENSED TO SUBSCRIBER FOR EVALUATION PURPOSES.

20. **Miscellaneous.**

20.1 **Force Majeure.** Neither party is liable for any delay or failure to perform any obligation hereunder due to causes beyond its control, including without limitation, war, riot, insurrection, civil commotion, terrorist activity, fire, industrial dispute, act of nature, computer-related crimes (including, but not limited to, denial of service attacks), epidemic, act or omission of a third-party vendor or supplier, equipment failure, public enemy of government, failure of telecommunications, system malfunction, or other casualty.

20.2 **Waiver and Severability.** Waiver of any default or breach under this Agreement by NWEA does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any part of this Agreement is held illegal or otherwise unenforceable by a court of competent jurisdiction, the parties intend that the remainder of this Agreement nevertheless remains in full force and effect. Upon a determination that any term or provision is illegal or unenforceable, the court may modify this Agreement to affect the original intent of the parties as closely as possible.

20.3 **No Third-party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party including the Fiscal Agent.

20.4 **Survival.** The following sections survive any termination of this agreement or the termination of any license granted under this agreement: 1, 3, 4, 5, 6, 7, 8, 9, 14, 15, and 18 and 20.

20.5 **Entire Agreement; Order of Precedence.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. The terms of this Agreement apply to all order documents, including but not limited to purchase orders and credit card orders, accepted by NWEA, and this Agreement will supersede any inconsistent or different pre-printed terms of any such order document. If there is a conflict among any of the terms of this Agreement, the parties intend that it be resolved by giving precedence to Agreement documents in the following order (i.e. the earlier listing governing the later): (i) any Supplemental Terms to the extent related to Services described in an applicable Schedule; (ii) this Agreement without any Schedules or Supplemental Terms; (iii) the most recent Schedule; followed by (iv) any other Schedules in reverse chronological order.

20.6 **Assignment.** Subscriber may not assign this Agreement to any third party without the prior written consent of NWEA, which consent shall not be unreasonably withheld.

20.7 **Binding.** This Agreement binds and inures to the benefit of each party and its respective successors and approved assigns, if any.

20.8 **Merger or Sale of NWEA.** If either (i) NWEA and a third-party merge; or (ii) NWEA is sold to a third party, then the surviving or resulting entity shall maintain the Student Education Records in accordance with this Agreement, if the entity is subject to this Agreement.

20.9 **Representation of Signatories.** Each person signing this Agreement represents and warrants that such person is duly authorized and has legal capacity to execute and deliver this Agreement for its respective party.

20.10 **Notices.** Any notice required under this Agreement shall be in writing and effective when (i) delivered personally against receipt; (ii) deposited in the mail and registered or certified with return receipt requested, postage prepaid; (iii) shipped by a recognized courier service and addressed to either party as designated in

this Agreement; (iv) delivered by email to an email address designated by the recipient; or (v) when delivered via any of the foregoing at such other address as may be provided by the recipient in accordance with this section.

Address for Notices to NWEA:

NWEA
121 NW Everett Street
Portland, OR 97209
Email: legalservices@nwea.org

Address for Notices to Subscriber shall be sent to the address set forth in Subscriber's signature box below or if left blank, the address on file with NWEA

20.11 **Controlling Law and Venue.** Unless the law of the jurisdiction where Subscriber is domiciled requires otherwise, the parties intend that this Agreement be construed and controlled by the laws of the State of Oregon, U.S.A., without giving effect to principles of conflict of laws. Notwithstanding anything to the contrary, The United Nations Convention on Contracts for the International Sale of Goods, Uniform Commercial Code, and Uniform Computer Information Transactions Act are specifically disclaimed and do not apply to this Agreement. Any litigation arising out of this Agreement must be conducted in courts located in Multnomah County, Oregon.

20.12 **Attorney Fees.** If any lawsuit is instituted to interpret, enforce, or rescind this Agreement, the prevailing party on a claim may recover, in addition to any other relief awarded, its reasonable attorney fees and other fees, costs, and expenses incurred in connection with the lawsuit, the collection of any award, or the enforcement of any order as determined by a judge.

20.13 **Counterparts.** The parties may execute this Agreement in counterparts, each of which is an original, and the counterparts constitute one and the same Agreement. The parties may also deliver and accept facsimile or electronically scanned signatures, which bind a party as if the signature were an original.

20.14 **Vendor Status and Independent Contractor.** NWEA provides Services within its normal business operations and operates in a competitive environment. The Services constitute a vendor relationship, as defined by OMB Circular A-133 and, therefore, any monies to pay for this Agreement are not subject to the federal audit requirements of OMB Circular A-133. NWEA is an independent contractor, and neither NWEA nor its employees are Subscriber's employees. Nothing contained in this Agreement creates or implies an agency relationship, joint venture, or partnership between the parties.

20.15 **UK Bribery Act.** Each party agrees to comply with the UK Bribery Act. Subscriber acknowledges and agrees that Subscriber has not received, requested, been offered, agreed, paid or promised, any offer, promise or gift of any financial or other advantage from and to any person that would constitute a violation under the UK Bribery Act, or which would have influenced or secured any business or other advantage to NWEA.

NWEA:

SUBSCRIBER name and address:
(please print)

By: _____

Geri Cohen, CFO & EVP, Corporate Services

By: _____

Printed Name: _____

Title: _____

Date: _____

Date: _____

Exhibit B
Participating Subscribers

MAP®Accelerator Supplemental Terms and Conditions

MAP Accelerator and Khan Academy Accounts

The MAP Accelerator service (the "Service") provided by Khan Academy, Inc., a California 501(c)(3) organization ("Khan Academy") through Khan Academy's website located at <http://khanacademy.org> and related application programming interfaces (API's), mobile applications and online services (the "Website").

Except as supplemented by following supplemental terms or as otherwise provided herein, the Service is provided pursuant to, and subject to, the terms and conditions of the Fiscal Agent Agreement and End User Subscription Agreement ("MSA") located at: <https://legal.nwea.org/>, provided however, these supplemental terms are hereby incorporated by reference into the MSA with respect to Service, and modify certain of the MSA terms as applied to the Service, as provided herein. We refer to these supplemental terms as the "MAP Accelerator Terms".

Each student ("Student") and each teacher, leader, aide, or other similar personnel ("School Personnel") enrolled in the Service will be registered with an individual account on the Website. Khan Academy accounts are provided free of charge to students, teachers, and other authorized School Personnel.

As used herein, visitors and users of the Website (including Students and School Personnel) are referred to individually as "User" and collectively as "Users" and accounts held by those persons are referred to as "User Accounts". User Accounts held by Students and School Personnel are sometimes collectively referred to as "School Accounts".

1. Administrative Accounts. Subscriber will register for one or more accounts for use by School Personnel who will administer Subscriber's use of the Service ("Admin Accounts"). Admin Accounts are provided for the sole purpose of oversight, administration, account management and access to Service provided through the dashboard. Each authorized administrator will register for a separate account. Any use of an Admin Account for other purposes is not authorized.

2. User Account

2.1 User Account Terms. User Accounts and use of the Website are governed exclusively by the Khan Academy Website Terms of Service ("Website TOS") and Privacy Policy as in effect from time to time. In addition to use in connection with the Service, User Accounts will enable Users to access Khan Academy's standard features (educational videos and other educational content, exercises, and all other standard features) and are provided free of charge.

2.2 Account Opening. Khan Academy will facilitate the creation of individual accounts and assign Students to initially designated classes in accordance with instructions and data provided by NWEA and/or Subscriber. Such data will include information necessary to separately identify accounts to be held by Students under age 13 and age 13 or above and by School Personnel. Subscriber understands and agrees that Students are bound to the Website TOS.

2.3 Passwords. Each User will register for a separate User Account. Accounts may not be shared or transferred among Users. Users are responsible for maintaining the confidentiality of each password registered for use of the accounts. Subscriber agrees to accept responsibility for all activities that occur under such accounts and passwords.

2.4 Use of Khan Academy Accounts After Subscription Term. Upon termination of the subscription for the Service, individual User Accounts for Students and School Personnel will remain open and available for use for other educational purposes. Following any termination of the Service, administration of User Accounts will be handled by Khan Academy.

2.5 Personal Accounts.

(a) **Linked Accounts.** Students and other School Users may have personal accounts (i.e., accounts associated with an email address other than the applicable school account or email address) in addition to School Accounts. Khan Academy may (but is not required to) permit a User to associate a personal account with their School Account, by using the login credentials associated with a personal account to join a class or use the account for school-directed learning. If a User chooses to associate a personal account with their School Account, we refer to these as "Linked" Accounts". The User's learning activity (information regarding use of the Website generated by the User through use of the Website), whether generated during or outside of the school use, may be viewed by any person with access to either account. Linked Accounts are not separately functioning accounts; they permit access to a singular Khan Academy account using more than one account interface or set of access credentials. Linked Accounts may benefit Students who want to use the Website for both personal and School purposes, by allowing School Personnel to have a deeper understanding of Student progress, and by allowing Users to keep track of all of their Khan Academy learning activity on an aggregate basis. The User's election to enable Account Linking must be made, if at all, in connection with the initial account registration and rostering process for a given school year.

(b) **Khan Academy Activity in Linked Accounts.** Upon any termination of the School Account by authorized School Personnel, the User's learning activity (including any learning activity from school use) will be retained in any Linked personal account, notwithstanding any termination of the School Account.

(c) **User-Generated Content.** Prior to termination of School Accounts at the direction of School Personnel, Khan Academy may invite Users, or parents or legal guardians of Students, to establish and maintain a personal account for purposes of retaining any content generated or provided and owned by Users under the Website TOS (including such User's learning activity). Any such Personal accounts will be established under Khan Academy's standard account opening process, including parent consent for Users under the age of 13.

3. Licenses

3.1 **Definitions: Nature of Services.** MAP Accelerator is a Service that provides personalized learning plans for students and other services and support for Subscribers, and is delivered through the Khan Academy Website. The Service does not include any additional license grant under Section 2 of the MSA's End User Subscription Agreement.

4. Ownership.

4.1 **Proprietary Materials; Licenses.** The Website is owned and operated by Khan Academy. The visual interfaces, graphics, design, compilation, information, computer code (including source code or object code), software, services, content, educational videos and exercises, training materials, professional development resources, and all other elements of the Website and Service, other than certain trademarks or copyrights owned by NWEA and licensed to Khan Academy for use in providing the Service (the "**Khan Academy Materials**") are protected by United States and international laws, international conventions, and other applicable laws governing intellectual property and proprietary rights. Except for any content provided and owned by Users under the Website TOS, all Khan Academy Materials, and all

trademarks, service marks, and trade names, contained on or available through the Website or through the Service are owned by or licensed to Khan Academy, and Khan Academy reserves all rights therein and thereto not expressly granted to Users under the Website TOS. Subscriber shall allow Khan Academy to use, without restriction or royalty obligation, any comments, suggestions, or contributions provided by Subscriber with respect to the Website and Service. Subscriber grants and assigns to Khan Academy any intellectual property rights that Subscriber may incidentally obtain or have with respect to any such comments, suggestions, or contributions.

4.2 Permitted Use; Prohibited Conduct. Subscriber may access and use the Service solely through their School Accounts, and solely for Subscriber's educational purposes. Subscriber shall not, nor permit any of its authorized Users to, use the educational videos, exercises, and related supplementary materials that are owned by Khan Academy or its third-party licensors (the "**Licensed Educational Content**") made available on the Website, or any educational, user-readable source code in connection with the Computer Science modules or exercises available on the Website (the "**Licensed Educational Code**"), except as permitted under, and pursuant to, these terms and the Website TOS. Subscriber shall not, nor permit any of its authorized Users to, engage in any conduct using the Website that is "Prohibited Conduct" under the Website TOS.

5. Student Personal Information and Educational Records.

5.1 Student Education Records. In the course of providing the Service, NWEA will provide Khan Academy with access to certain Student Education Records. Subscriber shall comply with all applicable federal and state laws regarding use, access, and disclosure of Student Education Records. The foregoing obligation includes but is not limited to, Subscriber's compliance with its policies regarding parental and guardian consents required for Khan Academy and its contractors to provide the Service to Subscriber and to provide Students with School Accounts as provided under this Agreement. Khan Academy will use Student Education Records to perform the Service and provide use of the Website and for other purposes outlined in Khan Academy's Privacy Policy. Khan Academy's collection, use and disclosure of personal information is governed by Khan Academy's Privacy Policy.

5.2 COPPA. The Children's Online Privacy Protection Act of 1998 ("COPPA") prohibits online service providers from knowingly collecting personal information from children under 13 years of age without verifiable parental consent or notice, as applicable. Subscriber is responsible for obtaining all parent or guardian consents for use of the Service and the Website in the classroom and providing required notices. With respect to Students under the age of 13, Subscriber confirms that it has obtained parental consent, or is acting as the agent of the parent and consenting on their behalf to the sharing of the Student's personal information in connection with for use of the Service and the Website in the classroom. Subscriber is responsible for providing appropriate disclosures to students using the Website for classroom use ("Students") and their parents regarding Student use of the Website, the Website TOS, and Khan Academy's Privacy Policy, including any notices required by COPPA.

5.3 Personalized Learning. The Service and Website use adaptive learning technologies to provide customized student learning services and suggested learning activities based on factors such as Website interactions, age, and class/ course enrollment. Subscriber agrees that Khan Academy's use of personal information for adaptive learning, customized student learning plans or related purposes, including issuing prompts to Students to complete, or teachers to assign exercises, or suggesting additional learning activities on the Website, are part of the Service and are not targeted advertising under Section 6.1 of the MSA's End User Subscription Agreement.

6. FERPA. With respect to Section 7 of the MSA, parents or guardians of Student Users may have parent accounts associated with a Student User. If Khan Academy receives a request from a parent or guardian

of a Student User requesting access to or correction of information in Student Education Records maintained by Khan Academy, Khan Academy may provide direct assistance parent or guardian with respect to information that may be accessed in the parent account.

7. Research and Analysis. In addition to Section 8 of the MSA's End User Subscription Agreement, Subscriber authorizes Khan Academy to use Student Education Records for purposes of educational research, analytics, efficacy studies and other analyses relating to development of its personalized learning products and services, including research and analyses that may be provided to or conducted jointly with NWEA, Subscriber and other subscribers. Khan Academy may collect, analyze, and use data derived from Student Education Records, as well as data about user's access and use of the Service and Website, for product development and analytics purposes, including for the purpose of analyzing, improving or demonstrating the effectiveness of the Service or Website and educational services. Subscribers' permissions and obligations expressed in this Agreement survive the termination of this Agreement and any renewals; provided, that Khan Academy may not share or publicly disclose information that is derived from Student Education Records unless the data is de-identified and/or aggregated such that the information does not reasonably identify a specific individual.

8. Modification of Website TOS.

8.1 Terms Subject to Change. Except as provided in Section 8.2, Khan Academy reserves the right, at its discretion, to change, modify, add, or remove any portion of the Website TOS at any time. Please check the Website TOS and any posted guidelines periodically for changes to the Website TOS. Subscriber's continued use of the Website after the posting of changes constitutes its binding acceptance of such changes. For any material changes to the Website TOS, Khan Academy will provide notice of such amended terms, and such amended terms will be effective on the earlier of (i) actual notice of such changes and (ii) thirty days after Khan Academy makes reasonable attempt to provide Subscriber with such notice pursuant to Section 23.10 of the MSA. However, changes addressing new functions for a service or changes made for legal reasons will be effective immediately.

8.2 Material Changes. Khan Academy will not make any material change to the Website TOS affecting the use of the Service, or change how personal Information contained in Student Education Records is used or shared under this Agreement during the term of this Agreement, without notice to Subscriber. If a change with respect to how personal Information contained in Student Education Records is used or shared under the Website TOS or this Agreement has a material adverse impact on Student Users or Subscriber, and Subscriber does not agree to the change, Subscriber must notify Khan Academy within thirty days of receiving the notice of change as described under the "Miscellaneous-Notices" below. If Subscriber notifies Khan Academy as required, then the Subscriber will remain governed by the terms in effect immediately prior to the change until the end of the then current term of the Agreement. If the subscription to the Service is renewed, it will be renewed under Khan Academy's then-current Website TOS.

9. Exceptions to Application of MSA Terms. The following clarifications and modifications are made with respect to the application of the MSA terms to and for the benefit of Khan Academy:

9.1 Confidentiality. With respect to the Service, the provisions of Section 21.11 and Section 5 shall also apply to Khan Academy, and all references therein to "NWEA" shall also refer to and be provided for the benefit of Khan Academy.

9.2 Product Training. Product training for the Service will be administered and provided by NWEA. Portions of the training may be provided directly by Khan Academy, including introductory product training, which may be provided to Subscriber's School Personnel and staff administering the Service

through a series of email messages and prompts.

9.3 Support. Khan Academy will provide direct support to Student Users with respect to use of the Website and related learning activity, as well as any available updates, enhancements, modifications, improvements, and maintenance services relating to the Service that are made available from time to time. Support for teachers and staff will be administered and provided by NWEA.

9.4 Publicity. Subscriber consents to Khan Academy's use of and references to Subscriber's name, directly or indirectly, in Khan Academy's marketing and training materials.

9.5 Third Party Beneficiary. Notwithstanding Section 10.3 of the MSA, Subscriber understands and agrees that Khan Academy is an intended third party beneficiary of these MAP Accelerator Terms. Without limiting the foregoing, **THE DISCLAIMERS AND LIMITATIONS SET FORTH IN SECTIONS 8 and 9 OF THE MSA AND 16, 17 AND 19 OF THE MSA END USER SUBSCRIPTION AGREEMENT ALSO APPLY TO KHAN ACADEMY AS AN EXPRESS THIRD PARTY BENEFICIARY. DISCLAIMERS AND LIMITATIONS SET FORTH IN THE WEBSITE TERMS OF SERVICE APPLY TO USERS OF THE WEBSITE.**

9.6 Inapplicable Provisions: The following provisions are not applicable for the Service: Section 8 (GRD) of the MSA's End User Subscription Agreement.

10. Entire Agreement. This Agreement contains the entire understanding of the parties regarding Khan Academy's provision of the Service, and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between Subscriber and Khan Academy with respect to the subject matter of this Agreement, including any data sharing agreements entered into in preparation for delivery of the Service.