



Erie 1 BOCES Education Campus • 355 Harlem Road • West Seneca, NY 14224-1892



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.
- (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



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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. Erie 1 BOCES will provide Vendor with a copy of its policy. 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: See Vendor Data Security and Privacy Plan at: <https://legal.nwea.org/nwea-ny-privacy-and-security-plan.html> and Vendor Security Whitepaper at: <https://legal.nwea.org/map-growth-information-security-whitepaper.html> (also attached as **Exhibit E-2 and E-3**)
- (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.



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- (e) Vendor will X 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 or the Master License and Service Agreement (referred to as the "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.



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- (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 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.



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:

William Bayers

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Signature

William Bayers

Printed Name

Executive Vice President - General Counsel

Title

10/10/2023

Date



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EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT BETWEEN

ERIE 1 BOCES AND NWEA, A DIVISION OF HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY

Erie 1 BOCES has entered into a Master License and Service Agreement (“MLSA”) NWEA, A Division of Houghton Mifflin Harcourt Publishing Company which governs the availability to Participating Educational Agencies of the following Product(s): See **Exhibit A** and **Exhibit B**

- MAP® Growth
- MAP® Reading Fluency
- MAP® Accelerator
- Implementation Training
- Partner Services

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, 2023 and expires on June 30, 2026.
- 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 in accordance with **Exhibit E** as 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 such formats as may be requested by the Participating Educational Agency.



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- 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, 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 standards 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.



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EXHIBIT E

MASTER SUBSCRIPTION AGREEMENT

The parties agree as follows:

1. **Definitions.**

1.1 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.

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

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

1.4 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.

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

1.6 Exhibit A: means the pricing for the Assessment System per annual Subscription Period.

1.7 Exhibit B: means the pricing for the Implementation Training and Partner Services per annual Subscription Period.

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 a Subscriber who acts as fiscal or administrative agent for a network of Subscribers to provide and implement NWEA's Services for the Subscribers.

1.10 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.

1.11 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.

1.12 Purchase Order: means Subscriber's or Fiscal Agent's Purchase Order on behalf of a Subscriber in its network of Subscribers which incorporates this Agreement and any Schedule by reference.

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

1.14 Schedule: means NWEA's Schedule A and sales quote provided to Subscriber that initiates Subscriber's release of a Purchase Order.

1.15 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).

1.16 Services: means the Assessment System, Content, Documentation, Product training, onsite and virtual services, Reporting, Software, GRD, and other services as described in this Agreement and set forth in an applicable Purchase Order.

1.17 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.

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

1.19 Subscriber: means Erie 1 BOCES and any other subscriber in its network of Subscribers, including any local education agency authorized by Subscriber to purchase under this Agreement.

1.20 Subscription Period: the 12-month term defined by the Start Date and End Date provided in a Schedule, Purchase Order, and in **Exhibit A** and **Exhibit B**, as applicable.

1.21 Supplemental Terms: means the Services-specific terms attached hereto as **Exhibit E-1**.

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 and resulting Purchase Order. The Services extend only to the quantity indicated on an applicable Schedule and resulting Purchase Order. 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 Privacy - 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 collect, use and disclose Student Education Records consistent with the [NWEA Privacy Policy – Assessment System](#) and the New York Data Security and Privacy Plan attached hereto as **Exhibit E-2**.

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

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 15, 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 for its employees and authorized third parties 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 18 of the Agreement, NWEA shall implement administrative, physical, and technical safeguards to protect Student Education Records from unauthorized access,

acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than accepted industry practices 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. More information regarding NWEA's information security program can be found in our [MAP® Growth™ Security Whitepaper attached hereto as Exhibit E-3](#).

10. Fees and Taxes. Subscriber shall pay the fees set forth on the applicable Schedule and resulting Purchase Order. Subscriber is solely responsible for any personal property taxes, value added taxes, local licensing fees, or local taxes related to or resulting from NWEA's delivery of Services under this Agreement. If Subscriber is a tax-exempt entity, Subscriber shall send NWEA written evidence of such tax exemption and any other documentation as NWEA may reasonably request related to assessing taxes applicable to Subscriber. Unless otherwise required by applicable laws governing the activities of Subscriber pursuant to this Agreement, the Subscriber shall collect, withhold, or otherwise pay all taxes, charges and financial assessments charged by and due and payable to any local, regional, or national government in the country where the Subscriber is located.

11. Billing; Payment; and Orders. Subscriber shall use its best efforts to determine the number of students to be tested by Subscriber. NWEA shall send an invoice based on the applicable Schedule and resulting Purchase Order to Subscriber, and Subscriber shall pay the amount due within 30 days of the invoice date by mailing a check or depositing the amount due via a wire transfer. Subscriber must contact NWEA at accountsreceivable@nwea.org for wire transfer instructions. If Subscriber overestimates the number of students tested, NWEA is not obligated to refund any fees. If, however, Subscriber underestimates the number of students tested, NWEA may submit an amended invoice to capture the additional students tested, and Subscriber shall pay the variance within 30 days of the amended invoice date. Any purchase order, credit card order, or other order document with sufficient information for NWEA to process the order that is accepted by NWEA will be governed by this Agreement, provided however, the terms and conditions in any purchase order accepted by NWEA shall not be binding upon NWEA and shall not modify the terms of this Agreement. All Purchase Orders, including Schedules,

license renewals, and/or other order documents will be governed by the terms of this Agreement. Pricing for the Subscription Periods are identified in **Exhibit A** and **Exhibit B**. NWEA reserves the right to increase its then-current list prices and introduce new list prices upon notice to Subscriber at the end of the Term of this Agreement. Any such increases will only become effective upon renewal of a Subscription Period beyond the Term of this Agreement.

12. Amendments and Renewals. Notwithstanding anything to the contrary, terms of any Purchase Orders or written authorizations issued by Subscriber or any other communications which are additional to or inconsistent with this Agreement are not binding unless NWEA expressly assents to such terms in writing. Such renewals and expansions are governed by this Agreement (including all NWEA order forms). The conditions of payment described in Sections 10 and 11 apply to all renewals and expansions. Subscriber shall make all payments under this Agreement to NWEA.

13. 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.

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

15. Term, Termination, and Remedies. The Term of this Agreement is for one (1) year ("Initial Term"). The parties will have the option to renew this Agreement for two (2) additional one-year Subscription Periods (each a "Renewal Term"). 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 and/or suspend Services without prior notice to Subscriber upon Subscriber's breach of this Agreement. Upon termination for any reason, NWEA is under no obligation to refund any fees paid by Subscriber for the Services. All payment obligations are non-cancelable and all sums paid are non-refundable. 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.

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

17. 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.

18. Limited Warranty.

18.1 Performance 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.

18.2 Disclaimer. EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 18, 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. THE REMEDIES SET FORTH IN THIS SECTION 18 ARE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDIES AND NWEA'S SOLE AND EXCLUSIVE LIABILITY REGARDING THE PRODUCTS AND SERVICES FAILURE TO PERFORM AS WARRANTED IN THIS SECTION 18.

19. Limitation of Liability. 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 CLAIM. 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.

20. Indemnification.

20.1 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.

20.2 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.

21. Evaluation License. This Section 21 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 21 AND OTHER TERMS OF THIS AGREEMENT, THIS SECTION 21 WILL SUPERSEDE SUCH TERMS WITH RESPECT TO THE SERVICES LICENSED TO SUBSCRIBER FOR EVALUATION PURPOSES.

22. Miscellaneous.

22.1 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.

22.2 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.

22.3 No Third-party Beneficiaries. The parties do not intend to confer any right or remedy on any third party.

22.4 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, 9.1, 14, 15, 18, 19, 20.1, 22.2, 22.3, 22.4, 22.5, 22.9, 22.10, 22.11, 22.12, and 22.16.

22.5 Entire Agreement; Order of Precedence. The MLSA to which this Agreement is attached, along with this Agreement contains the entire understanding of the parties regarding the subject matter of the MLSA and 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 the MLSA and this Agreement. The terms of the MLSA and this Agreement apply to all order documents, including but not limited to purchase orders and credit card orders, accepted by NWEA, and the MLSA 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 the MLSA and this Agreement, the parties intend that it be resolved by giving precedence to the documents in the following order (i.e. the earlier listing governing the later): (i) the MLSA; (ii) this Agreement; (iii) any Supplemental Terms to the extent related to Services described in an applicable Schedule and resulting Purchase Order; (iv) this Agreement without any Schedules, Purchase Orders, or Supplemental Terms; (v) the most recent Schedule or Purchase Order; followed by (vi) any other Schedules or Purchase Orders in reverse chronological order.

22.6 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.

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

22.8 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.

22.9 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.

22.10 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.

22.11 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 New York, 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 Erie County, New York.

22.12 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.

22.13 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.

22.14 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.

22.15 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.

22.16 Fiscal Agent Responsibilities. The Subscriber, when acting as a Fiscal Agent shall: (i) Pay the fees set forth in an applicable Schedule and resulting Purchase Order on behalf of a Subscriber; (ii) Schedule and host introductory activities for

Subscribers; (iii) Be responsible for its network of Subscribers' use of and compliance with the terms of this Agreement for Products and Services purchased by Fiscal Agent under this Agreement; (iv) Flow down the terms of this Agreement to all Subscribers it acts as Fiscal Agent for outside of its network of Subscribers; (v) Immediately notify NWEA in writing of any new Subscribers who become a part of Fiscal Agent's network of Subscribers; (vi) Comply with all terms and conditions of this Agreement. For the avoidance of doubt, Student Education Records that are generated from any network of Subscribers' use of the Assessment System will not be redisclosed to the Fiscal Agent under this Agreement.