



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.

Exhibit E-1**ASSESSMENT SYSTEM – SOFTWARE AND REPORT TERMS**

MAP® Growth™. By using MAP® Growth™, Subscriber agrees to the following:

Excluding Summer test administration, Subscriber shall not administer more than three MAP® Growth™ test events per license in a single academic year, except for MAP® Growth™ K-2 Skills Checklist which can be administered without such academic year limitation. Additionally, Subscriber may administer one summer test event per license per academic year. MAP® Growth™ may require installation of the secure browser ("Secure Browser") on a PC or the "Secure Testing App for iPad or Chromebook. Accordingly, NWEA grants to Subscriber a nonexclusive, nontransferable sublicense to install the Secure Browser for Subscriber's internal use only in connection with the Subscription and only during the period specified in an applicable Schedule. Use of the Secure Browser sublicense extends only to the quantity of licenses indicated on an applicable Schedule. Subscriber shall provide to NWEA its student and class information in a Class Roster File ("Roster File") for each test window in the approved format. Subscribers must import the Roster File at least one (1) week before Subscriber's first day of testing.

MAP® Reading Fluency™. By using MAP® Reading Fluency™, Subscriber agrees to the following:

Subscriber is responsible for providing all hardware, including headsets with boom microphones, necessary to complete the test administration. For the avoidance of doubt, built in microphones and in-line microphones are not supported. MAP® Reading Fluency™ is supported on (i) any Chrome browser on any desktop, laptop, or Chromebook; and (ii) via an iOS application for testing on an iPad or iPad Mini or as otherwise set forth in applicable technical specifications.

MAP® Accelerator™. By using MAP® Accelerator™, Subscriber agrees to the following:

Subscriber's use of MAP® Accelerator™ is subject to the [supplemental terms and conditions](#) (the "MAP Accelerator Terms") which may modify NWEA's Agreement (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.

Subscriber 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.

MAP® Growth Report. The Growth Report contains Student Education Records that may be subject to Subscriber's student data privacy and security policies and applicable state and federal student privacy laws. In addition to Section 5.5 (Disclaimers) of the Agreement, neither NWEA nor its vendors warrant the accuracy, completeness, or usefulness of this report and NWEA expressly disclaims all liability and responsibility arising from reliance on the report.

PARTNER SERVICES TERMS

General Terms. NWEA may offer the following Services onsite or virtually as part of its Partner Services Deliverables: (i) Technical Consulting; (ii) Product Training; (iii) Professional Learning; (iv) Technology Readiness; (v) Onboarding Services; and (vi) Program Management Services (collectively, the "Partner Services"). NWEA does not offer refunds for unused Partner Services Subscriber purchases. Subscriber may purchase Partner Services at the fixed fees set forth in an applicable Schedule. Per the Agreement, Subscriber is responsible for designating a single point of contact who is familiar with Subscriber's systems and will ensure such individual is available to NWEA. Additionally, Subscriber's contact shall ensure NWEA has access to all Subscriber's site(s) where Partner Services will be performed. Subscriber acknowledges that failure or delay in responding to NWEA requests in a timely manner may result in delays or inability for NWEA to perform the requested Partner Services. Scheduling of Partner Services is subject to availability of NWEA personnel.

Pricing; Deliverables; Scope. NWEA's Partner Services Deliverables and pricing shall be detailed in an applicable Schedule.

Product Training. NWEA will provide standard modular format training, in which Subscriber will learn (i) the benefits of the NWEA Assessment System; (ii) how to proctor and/or manage test sessions; (iii) how to troubleshoot common issues; and (iv) how to access reports. Any deviation from this standard training is subject to negotiations.

Professional Learning. NWEA may provide research-driven Professional Learning sessions and workshops as part of NWEA's Partner Services.

Technical Consulting. NWEA may provide virtual or onsite Technical Consulting as a part of Partner Services which may include: (i) general support during testing including assisting

proctors; (ii) troubleshooting technical issues related to NWEA assessment solutions; (iii) real time product training and support during testing to Subscriber's proctors, helpdesk, technology and assessment staff; (iv) onsite product training and support to principals and school administrators; (v) assistance in escalating issues to NWEA technical support and/or engineers; (vi) consulting with Subscriber to identify key areas of support needs; (vii) product training for data administrators; (viii) support with rostering (creation and upload to NWEA systems), user management, and student management; (ix) assistance with exporting data from Subscriber's Student Information Systems; (x) assistance with automating roster imports and exports of comprehensive data file; Technical Consulting does not include: (a) making changes to NWEA's assessment solutions on behalf of the Subscriber; (b) conducting rostering work; (c) creating or implementing coding or scripting, network changes, or auto-rostering; (d) configuration changes or updates to workstations or network devices; (e) hardware setup; (f) report or data usage training; or (g) IT support or training not specifically related to NWEA assessment solutions.

Technology Readiness. NWEA may provide virtual or onsite Technology Readiness as a part of Partner Services to test and evaluate workstations and devices to determine if they meet NWEA technical requirements. NWEA may evaluate the following technical requirements: OS version, primary browser and version, CPU, RAM, screen resolution, wired or wireless connection, and a point in time bandwidth test. Additional technical requirements may be captured upon Subscriber's request; provided, however, certain requests may require administrative access to Subscriber's systems. As part of the Technology Readiness, NWEA expressly does not: (i) make changes or software updates to workstations or devices; (ii) configure networks or make changes to network infrastructure; (iii) provide product training or support; or (iv) provide troubleshooting services or resolve issues or potential issues discovered during the Technology Readiness.

Onboarding Services. NWEA provides, at no additional cost to Subscriber, a Success Manager to guide and support Subscriber for onboarding the Assessment System. This service is typically included as part of a Subscriber's initial licensing of the Assessment System and is available through the completion of the first testing term. Once the initial testing term is complete, the account manager assumes ongoing management of the Subscription from the Success Manager. Additionally, the Subscriber has ongoing access to support resources, including toll-free phone, email, and chat support via Product Support and self-directed support via in-product Help and Professional Learning Online.

Expedited Onboarding Services. NWEA recommends a timeline of approximately four (4) weeks from the date of sale to the beginning of testing in order to provide NWEA and Subscriber adequate time to onboard and administer the Assessment System. If Subscriber opts to onboard and administer the Assessment System within two (2) weeks from the date of sale, Subscriber may purchase Expedited Onboarding Services. Expedited Onboarding Services do not include: (i) a Success Manager who is exclusive to Subscriber; (ii) rostering; (iii) onsite Product Training; (iv) Technical Consulting; or (v) Technology Readiness. For the avoidance of doubt the two (2) week expedited delivery applies to the Expedited Onboarding Services only and to no other products specified on an applicable order.

Changes. Within thirty (30) days prior to the end of each Service Period identified in a Schedule, the parties will review the project status, results to date, and agree upon a

modification, if necessary, to the Services required for the upcoming Service Period. Any modifications to the Services to be delivered in the upcoming Service Period will be documented in a change order to the Schedule and agreed to in writing by the Subscriber.

Scheduling and Rescheduling. NWEA may cancel Services for any reason whatsoever, including inclement weather, strikes, wars, acts of God, or any other circumstance that may make the Services inadvisable. In those instances, Subscriber will not be charged a cancellation fee and the Services will be rescheduled.

Rescheduling is subject to facilitator availability. Services must be scheduled a minimum of three (3) weeks in advance and all Services completed within twelve (12) months from the Start Date listed in Subscriber's Schedule. If after twelve (12) months and up to three (3) attempts to schedule (or reschedule) the Services, NWEA considers its Services obligations fulfilled and may retain associated funds during such 12-month period. NWEA does not offer refunds for unused Services Subscriber purchases.

NWEA is not responsible for any expenses incurred on your behalf in preparing for the Services, including nonrefundable fares or penalties.

Virtual Professional Learning Sessions. If Subscriber cancels a virtual Services less than two (2) weeks before the scheduled date of the learning session, Subscriber shall pay a \$200 cancellation fee to NWEA. This includes instances of no shows. Notwithstanding the generality of Section 3 (Protection from Unauthorized Use or Access) of the Agreement, Subscriber shall not (i) share or distribute the virtual Services link provided by NWEA or any passwords associated with such link beyond their school or district; or (ii) screen-capture or otherwise copy the recording; or (iii) modify and/or remove copyright notices.

Onsite Professional Learning Sessions. If Subscriber wants to schedule Services within three (3) weeks from the date of sale, Subscriber shall pay a \$500 nonrefundable rush fee. Scheduling Services within three (3) weeks from the date of sale is subject to facilitator availability.

If Subscriber cancels onsite Services less than two (2) weeks before the scheduled date of the session, or if Subscriber does not show up to a previously agreed date and time for a learning session, Subscriber shall pay a \$500 cancellation fee plus the cost of the applicable the applicable Services session(s) to NWEA.

Background Checks. NWEA conducts background checks on employees and interns upon commencement of employment. NWEA's standard background check package verifies (i) National Sex Offender Registry; and (ii) Widescreen Plus National Criminal Search; and (iii) Education Verification (highest level completed); and (iv) Social Security Trace/Credit; and (v) Criminal Background Check by State and County (the last 7 years); and (vi) Social Security Number Validation (vii) Motor Vehicle Report (only if position requires vehicle travel to schools/districts). Notwithstanding the foregoing, the check in section (vi) does not apply to interns.

NWEA Travel Reimbursement Policy. NWEA travels to Subscriber locations as a part of the Services provided to Subscribers. The cost of onsite domestic travel is included in the total cost of the Services Product described in a Schedule. In the event Subscriber changes delivery dates or cancels the Services impacting travel, Subscriber will be subject to the processing fees associated with such change as stated herein.

NWEA Recording Policy. NWEA does not allow or provide recordings of Services sessions for the following reasons: (i) NWEA learning content should reflect the most up-to-date educational research, professional learning standards, and product enhancements; and (ii) NWEA adheres to digital asset standards for quality and accessibility in its recordings of Services sessions; and (iii) NWEA's Services experiences are designed to be engaging and to serve as a resource for participants in attendance. Professional Learning offerings are the intellectual property of NWEA.

Exhibit E-2

NWEA PRIVACY POLICY - ASSESSMENT SYSTEM

Introduction

NWEA (also referred to as “we”, “our”, or “us” in this Policy) recognizes the importance of protecting the privacy and security of its Subscribers and Users of the Assessment Products. The purpose of this Privacy Policy ("Policy") is to inform Subscribers and Users of our policies and procedures regarding the collection, use, and disclosure of Student Education Records, Deidentified Data, and Anonymized Data. Nothing in this Policy grants any Subscriber or User the right to use or access the Assessment Products. Subscribers and Users only have the right to use and access the Assessment Products as set forth in the agreement(s) entered into between a Subscriber and us (“Agreement”). By using the Assessment Products, Subscribers and Users agree to this Policy.

Definitions

"Assessment Products" means, to the extent included in an applicable Schedule, the assessment, reporting and administration systems provided to Subscriber by us. Assessment Products excludes Subscribers operating environment and other systems not within our control.

"Anonymized Data" means any Student Education Record rendered anonymous in such a manner that the student is no longer identifiable or public information within a Student Education Record. 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.

"COPPA" means the Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506, including the rules and regulations promulgated thereunder, in each case as amended.

"Deidentified 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.

"FERPA" means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, including the Protection of Pupil Rights Amendment, including the rules and regulations promulgated thereunder, in each case as amended.

"Student Education Record" means personally identifiable information of Subscriber’s students as defined by FERPA, COPPA and other applicable federal and state laws.

"Users" means Subscriber's students, teachers, administrators, and other individuals licensed to use the Assessment Products under the Agreement.

Except as set forth in this Policy, all other capitalized terms in this Privacy Policy shall have the meaning set forth in the Agreement between the parties, which incorporates the material terms of our Master Subscription Agreement found [here](#).

Compliance with Applicable US Laws

Student Education Records may be protected under applicable federal and state student data privacy laws, which may include COPPA, FERPA, and the California Student Online Personal Information Protection Act, Ch. 22.2, §§ 22584 et seq. of the California Business and Professions Code, and Section 49073.1 of the California Education Code. For the avoidance of doubt, the California Student Online Personal Information Protection Act is referenced because it is the most comprehensive legislation related to state student data privacy, however we comply with all applicable student data privacy laws.

Consent

FERPA permits a school to provide educational records (including Student Education Records) to certain service providers without requiring the school to obtain specific parental consent. FERPA permits this where the service provider acts as a “school official” by performing services that would otherwise be

performed by the school's own employees. We fulfill FERPA requirements for qualifying as a school official by giving the school direct control with respect to the use and maintenance of the education records (including Student Education Records) and refraining from re-disclosing or using this Student Education Records except for purposes outlined in this Policy and the Agreement. We comply with FERPA by relying on this form of consent.

COPPA permits a school, acting in the role of "parent," to provide required consents regarding Student Education Records who are under the age of 13. We rely on this form of COPPA consent. We provide Subscribers with this Policy, to ensure that the Subscriber, in providing its COPPA consent, has full information and assurance that our practices comply with COPPA.

Accordingly, Subscribers are responsible for providing all notices and obtain all such consents required under FERPA and COPPA to allow us to provide the Assessment Products to Users and process Student Education Records in accordance with this Policy.

In addition to Subscribers' obtaining consents regarding personal information of Users other than students (such as teachers and school administrators) on our behalf, we may also obtain consents regarding such personal information. To obtain these consents we (a) notify the Users of our privacy practices by including links to this Policy within our Assessment Products, and (b) rely on their continued use of our Assessment Products to indicate their consent to this Policy.

Subscriber Control and Choices Regarding Student Education Records

The collection, input, use, retention, disposal, and disclosure of Student Education Records by Users via the Assessment Products are controlled solely by the Subscriber. As outlined in the Agreement, Subscriber owns the Student Education Records.

We will not delete, change, or divulge any Student Education Records from our Assessment Products controlled by the Subscriber except as outlined in this Policy. If a User has questions regarding control of Student Education Records related to the Assessment Products licensed by the Subscriber, then User shall contact User's applicable school, district, or educational entity (i.e., Subscriber). If a User desires to revoke User's consent or "opt-out" of a particular use of User's Student Education Records, User shall contact User's applicable school, district, or educational entity. If we receive a request from a User to "opt-out" we shall forward the request to the applicable school, district, or educational entity for handling. The applicable school, district, or educational entity is solely responsible for handling the User's "opt-out" in the Assessment Products.

The parents of a student can obtain access — through their child's school — to information concerning their child that is available on our Assessment Products. To do so, the parent should follow the school's procedures for such access.

Information Collected & Maintained

We collect and maintain the following information:

- **Usage Information.** When Users access the Assessment Products, we may automatically collect certain details of the User's access to and use of the Assessment Products, including traffic data, session and user counts, pageviews, time on page, geographic location data, logs and other communication data, and the resources that Users access and use on or through the Assessment Products. This information is Anonymized Data.
- **Cookies.** A cookie is a small file placed on computing devices such as computers, tablets, and smartphones. We may use cookies to collect usage details for authentication purposes. For authentication purposes, cookies allow Users to navigate across multiple parts of the Assessment Products without needing to re-authenticate. It may be possible to refuse to accept cookies by activating the appropriate setting on the computing devices. However, selection of these settings may disable access to certain parts of the Assessment Products. The information collected via cookies is Deidentified Data. We do not use Deidentified Data from cookies to identify Users. Data from cookies may be collected by us using Google Analytics™ or other third-party tools in the Assessment Products. Google Analytics™ and these other third-party tools do not collect, store, transit, use, or have access to Student Education Records. Google's privacy policy is located at: <https://policies.google.com/privacy>.

- **Web Beacons.** A web beacon is a small electronic file such as a clear gif, pixel tag, or single-pixel gif. We may use web beacons to collect usage details. It may be possible to refuse to accept web beacons by activating the appropriate setting on the computing devices. However, selection of these settings may disable access to certain parts of the Assessment Products. The information collected via web beacons is Anonymized Data that is aggregated. Data from web beacons may be collected by us using Google Analytics™ or other third-party tools in the Assessment Products. Google Analytics™ and these other third-party tools do not collect, store, transit, use, or have access to Student Education Records.
- **Device Information.** We may collect information about a User's computing device, mobile device, and network or Internet connection; including the device's unique device identifier, IP address, operating system, browser type, geographic location, and mobile network information. This information is Anonymized Data that is aggregated.
- **System Administrator Information.** We collect registration information from the Subscriber designated system administrator when signing up with us or changing administrators, which may include the school administrator's own first and last name, business address and phone number, email address, profile information and account information.
- **Information input by Users to the Assessment Products.**
 - *Roster Information.* As part of the rostering process, Users may input the following information to the Assessment Products:
 - School Name; Instructor ID (current and previous); Instructor State ID; Instructor First, Middle, and Last Name; Instructor Username; Instructor Email; Class Name; Student ID (current and previous); Student First, Middle and Last Name; Student Date of Birth; Student Gender; Student Grade; Student Ethnic Group; Student State ID; Clever ID; Ed-Fi ID; ClassLink ID; One Roster ID; Student Information System ID; Student Username; Student Email; Subject; Role; School State Code; Economically Disadvantaged Status; English Language Learner or Migrant Status; Homeless Status; Disability, Accessibility, or Accommodation Status; and Date of Enrollment.
- **Information generated from using the Assessment Products.** Users' use of the Assessment Products generates Deidentified or Anonymized Data, which may include:
 - Assessment scores; Assessment responses and response times; Item responses and response times; Growth and norming information; and Assessment interaction behavior such as completed, paused, suspended, or terminated tests.

How We Use Student Education Records

We may use Student Education Records for the following purposes:

- **To Deliver the Assessment Products.** We may use Student Education Records to provide Subscribers and Users with access to the Assessment Products and to generate reports and other services associated with the Assessment Products or requested by the Subscriber.
- **To Communicate with Users and Subscribers.** We may use Student Education Records to communicate with Users as necessary to fulfill our obligations to Subscribers and provide Subscriber with notices about its account, including expiration, renewal, or changes in the Assessment Products.
- **For Compliance, Fraud Prevention, and Safety.** We may use Student Education Records as necessary or appropriate to: (a) enforce our Master Subscription Agreement and policies; (b) protect our rights, privacy, safety or property, and that of our Users or Subscribers; and (c) protect, investigate, and deter against fraudulent, harmful, unauthorized, unethical, or illegal activity.
- **To Improve our Assessment Products.** We may use Student Education Records to improve the performance, availability, and functionality of the Assessment Products.
- **To Create Deidentified and Anonymized Data.** We may use Student Education Records to create Deidentified Data or Anonymized Data.
- **With Consent.** We may ask for consent from Subscribers or Users to collect, use, or share Student Education Records for purposes not described in this Policy.

How We Use Deidentified and Anonymized Data

We may aggregate information collected, including Deidentified and Anonymized Data, and uses such aggregated information and other non-personally identifiable information collected as follows:

- **Legitimate Educational Research.** We may use Deidentified and Anonymized Data to conduct legitimate educational research or produce aggregate statistical studies and analysis related to our products and services, by us or third parties, as an added benefit to our Subscribers, which may be distributed publicly (e.g., norming studies, research papers, etc.).
- **Third Party Legitimate Educational Research.** We may share Deidentified and Anonymized Data with third parties for them to conduct legitimate educational research.
- **To Improve our Assessment Products.** We may use and share Deidentified and Anonymized Data with third party vendors to improve performance, availability, and functionality of the Assessment Products.
- **Authorized Public Agency Legitimate Educational Research.** We may share Deidentified and Anonymized Data with state educational agencies for legitimate educational purposes.
- **General Research.** We may use Deidentified and Anonymized Data for general research and to develop new products, features, and technologies.
- **Provide Services.** We may use Deidentified and Anonymized Data to develop, evaluate, and provide Services and other Subscriber insights as permitted under COPPA and FERPA.

Disclosure of Student Education Records

We use Student Education Records for our internal purposes only, with the following limited exceptions:

- **Authorized Service Providers.** We may share Student Education Records with service providers to permit them to provide the contracted services to us to help support the Assessment Products. A list of service providers that maintain or have access to Student Education Records is available to Subscribers here: <https://legal.nwea.org/privacy-policy-third-party-contractors.html>.
- **Subscribers and Users.** We may share Student Education Records with the applicable Subscriber and Users. We do not control and are not responsible for Subscriber or Users handling of Student Education Records. Similarly, we do not control and are not responsible for the roles-based access to Student Education Records, which is determined by the Subscriber's system administrator.
- **Administrative and Legal Purposes.** We may share Student Education Records: (i) if it is required to do so by law or legal process, such as to comply with a court order or subpoena; (ii) for public health or safety purposes; (iii) in response to bankruptcy proceedings; (iv) to protect the security or integrity of our Assessment Products; (v) to enable us to take precautions against liability, enforce legal rights, and detect, investigate and prevent activities that violate our policies or that are illegal; and (vi) to the extent we believe necessary or appropriate to protect our rights, safety, or property or that of our Subscribers and Users.
- **Business Transitions.** We may sell, transfer, or otherwise share some or all our assets, including our license to use Student Education Records collected to perform the services under our agreement with Subscriber, in connection with a merger, acquisition, reorganization, sale of assets, or in the event of bankruptcy, in which case the successor entity is subject to the same commitments set forth in this Policy.
- **Consent.** We may share Student Education Records with third parties that a Subscriber has authorized.

We do not sell Student Education Records to third parties for their commercial use and do not use such data to target advertisement at students. We do not share, sell, rent, or transfer Student Education Records other than as described in the Agreement between the parties and this Policy.

We do not publicly disseminate Student Education Records submitted by Users. We permit Users to share comments and feedback in the Assessment Products, but we do not publicly disseminate those comments and feedback outside of the Assessment Products. Third parties are prohibited from storing Student Education Records outside the borders of the United States of America.

Erasure, Rectification, Access & Portability of Student Education Records

Users or parents of such Users (if a User is a minor) may review and amend Student Education Records of such User by contacting the Subscriber and following the Subscriber's procedures for amending such User's Student Education Records. We will not make any changes to any Student Education Records without the applicable Subscriber's express written permission, and then, only in accordance with applicable law.

Service Providers

We use a cyber supply chain risk management (SCRM) process for third party service providers that have access to Student Education Records. The primary objective of the cyber SCRM is to identify and assess external parties to ensure they meet the required 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 in written terms no less restrictive regarding Student Education Records than the terms of this Policy. Third parties are prohibited from engaging in targeting advertising and any other use except in support of the Assessment Products.

Security

We develop and implement privacy and information security measures aligned to NIST Cybersecurity Framework to protect the confidentiality of Student Education Records. 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. All Student Education Records are stored in facilities located within the borders of the United States of America. Further information on our data security measures can be found here: <https://legal.nwea.org/map-growth-information-security-whitepaper.html>.

Please be aware that despite our efforts, no data protection measures can guarantee security. Users should take steps to protect against unauthorized access to their password, phone, and computer by, among other things, signing off after using a shared computer, choosing a robust password that nobody else knows or can easily guess, and keeping your log-in and password private. We are not responsible for any lost, stolen, or compromised passwords or for any activity on a User's account via unauthorized password activity.

Data Retention & Destruction

We retain Student Education Records for the length of time necessary to meet our contractual and legal commitments. These commitments generally extend past the end date of contractual agreements as Subscribers may need continued access to Student Education Records and educational data for reporting; and many Subscribers resume their subscriptions later and want their historical Student Education Records intact for longitudinal growth studies or legal compliance.

We honor Subscribers' requests to delete Student Education Records if required by applicable law. To request that Student Education Records relating to a particular Subscriber and/or User(s) be deleted, Subscriber shall send a written request to us via email to legalservices@nwea.org and include the following: (i) requestor's name, title, and contact information; (ii) the name of requestor's school or entity with NCES number (if available); (iii) a request to delete Subscriber's Student Education Records; and (iv) an attestation that requestor is duly authorized and has legal capacity to execute the request. We will subsequently contact Subscriber to confirm the destruction request before executing the destruction request. We retain Anonymized Data indefinitely for the purposes stated in this Policy.

Links to Third-Party Websites and Services

Users accessing the Assessment Products, Documentation, and/or our sites may find links to external websites and applications owned and operated by other organizations. We are not responsible for and has no control over the content or privacy policy of any linked site. We encourage Users to read the privacy statements of any linked site as its privacy policy may differ from our Policy.

Jurisdiction Specific Data Privacy Addendum

California

With respect to Pupil Records (as defined in Cal. Educ. Code 49073.1) that we process on behalf of Subscriber in California, the following provisions shall apply to the extent required by applicable law:

- Pupil Records that that we process on behalf of Subscriber are Subscriber Student Education Records and under the control of Subscriber.
- We shall limit our use of Pupil Records to those purposes specified in the Agreement and this Policy.
- Procedures for the review and correction of Pupil Records shall be in accordance with this Policy.
- We shall implement, maintain, and use reasonable measures to ensure the security and confidentiality of Pupil Records as specified in this Policy and the Agreement.
- Procedures for notification in the event of a confirmed security breach of Pupil Records shall be in accordance with the terms of the Agreement.
- We agree that retention of Pupil Records shall be in accordance with the terms of the Agreement and this Policy.
- Both parties agree that access to and use of Student Education Records shall be subject to this Policy and the Agreement.
- We will not use Student Education Records to engage in targeted advertising.

New York

With respect to personally identifiable information (as defined in N.Y. Comp. Codes R. & Regs. tit. 8, § 121.3(m)) (“NY Student Education Records”) that we process for Subscribers in New York, the following provisions shall apply to the extent required by applicable law:

- We agree that our safeguards and practices align with the NIST Cybersecurity Framework.
- We shall comply in all material respects with applicable state and federal laws.
- We shall limit access to and use of NY Student Education Records consistent this Policy and the Agreement.
- We shall not disclose NY Student Education Records except in accordance with this Policy and the Agreement.
- We shall use encryption to protect NY Student Education Records in transit and at rest.
- We shall not sell NY Student Education Records and shall limit its use and disclosure in accordance with this Policy and the Agreement.
- Our NY Data Security and Privacy Plan can be found at: <https://legal.nwea.org/nwea-ny-privacy-and-security-plan.html>.

General Data Protection Regulation (GDPR) and UK Data Protection Law (UK GDPR)

We comply with all applicable laws governing international partners, including the GDPR and UK GDPR. We primarily act in the role of a processor with respect to its processing of personal data of Subscribers. Information regarding our data processing activities and our compliance with GDPR and UK GDPR in our role as a processor is described in the [NWEA MAP® Growth™ GDPR Overview](#) and our [International Master Subscription Agreement](#). We also ensure that any EU personal data transferred to the United States for processing on behalf of our Subscribers receives adequate protection by entering into Standard Contractual Clauses approved by the approved by European Commission Implementing Decision (EU) 2021/914 of 4 June 2021, as currently set out at https://eurlex.europa.eu/eli/dec_impl/2021/914/oj. For UK personal data, we enter into the Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the Information Commissioner’s Office and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as revised under Section 18 of those Mandatory Clauses (“Approved Addendum”).

Subscribers subject to the GDPR or UK GDPR need to obtain informed consent of individual students and parent Users for the collection, processing, and transfer of personal data under our agreement with them. NWEA’s Explicit Consent to Process Data Form can be found [here](#). This is provided for informational purposes only as Subscribers are responsible for ensuring they have provided notice and obtained written consent from student and parent Users necessary to provide personal data to us and the Assessment Products. Subscribers should submit the completed consent forms to legalservices@nwea.org.

We may also collect personal data in its role as a controller, such as name, address, email address, organization, title, and other contact information as well as IP address and usage information about Subscribers and their personnel (such as school administrators and teachers) (“Subscriber Users”) that access and use the Assessment Products. Such personal data is used for the purposes set forth in the section entitled Use of Information Collected. The legal bases for using such personal data are (a) necessity to perform our contractual obligations (such as providing the Assessment Products), (b) for our legitimate interests (such as to improve products and services or to market to current and prospective customers); (c) compliance with legal obligations; (d) protection of the vital interests of data subjects; and (e) in accordance with the data subject’s consent, which can be withdrawn by emailing us at legalservices@nwea.org.

Data subjects for which we act as a controller may make the following requests:

- Right to access and rectification: You can request details of the personal data we hold, along with a copy of your personal data, and the correction of any errors in your personal data.
- Right to erasure (“right to be forgotten”): The right, in certain circumstances, to ask for your personal data to be deleted. In specific cases, we may not be able to delete some types of personal data, in particular, where we have a legal obligation to keep that personal data (e.g. for regulatory reporting purposes) or, for example, where you want us to continue to provide you with our products and services and the processing of the personal data is necessary for the provision of those products and services.
- Marketing communications and sharing with third parties. We provide you with an opportunity to express your preferences with respect to receiving certain marketing communications from us, and our sharing of personal data with trusted partners for their direct marketing purposes.
- Right to portability: The right in some cases to receive your personal data in a digital format or to have it transmitted directly to another controller (where technically feasible).
- Right to object: The right to object (on grounds relating to your particular situation) to the processing of your personal data on the basis of our legitimate interests, including for direct marketing purposes.
- Right to withdraw consent: You can withdraw your consent at any time in respect of any processing of personal data which is based upon a consent.

If you believe our processing of your personal data violates data protection laws, you have a legal right to lodge a complaint with a supervisory authority responsible for data protection. You may do so in the EU member state of your habitual residence, your place of work, or the place of the alleged violation or in the case of UK residents with the UK Information Commissioner’s Office (see <https://ico.org.uk/make-a-complaint/>).

Data subjects may make such requests by emailing us at legalservices@nwea.org. We will respond to all such requests within 30 days of our receipt of the request, unless there are extenuating circumstances, in which event we may take up to 60 days to respond. We will inform you if we expect our response to take longer than 30 days. Please note, however, that certain personal data may be exempt from such rights pursuant to applicable data protection laws. In addition, we will not respond to any request unless we are able to appropriately verify the requester’s identity. We may charge you a reasonable fee for subsequent copies of personally identifiable information that you request. In addition, if we consider that a request is manifestly unfounded or excessive, we may either request a reasonable fee to deal with the request or refuse to deal with the request.

Retention

In broad terms, we will only retain your personal data and other information for as long as is necessary for the purposes described in this Policy and in accordance with our retention policies. Retention periods may vary according to the type of personal data and the reason that we have collected the personal data. We may also retain personal data a number of years in order to comply with various legal obligations. After a retention period has lapsed, the personal data is securely deleted, unless it is necessary for the establishment, exercise or defense of legal claims or to comply with legal obligations.

Updates

We may periodically revise this Policy from time to time and will make updated version of this Policy available [here](#). However, we will not make material changes to this Policy without first providing notice to

Subscriber as provided in the Master Subscription Agreement. Notwithstanding the foregoing, should laws and regulations change to regarding the collection, use, or distribution of Student Education Records, we shall be permitted to make appropriate changes to this Policy to comply with the laws and regulations without issuing prior notice to Subscriber.

Additional questions regarding this Policy can be sent to:

Privacy

NWEA

121 NW Everett Street

Portland, Oregon 97209

503-624-1951

legalservices@nwea.org

Data Privacy and Security Plan - NY 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 consistent with applicable federal and state law. Subscriber shall provide NWEA with copies of district specific privacy and data security policies that are applicable to the service, and provide NWEA with an opportunity to review and confirm its acceptance of them.

Administrative, Operational and Technical Safeguards for Sensitive Data

NWEA develops and implements privacy and information security measures aligned to NIST Cybersecurity Framework to protect the confidentiality, integrity, and availability of Student Education Records. 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. Specific administrative, operational, and technical safeguards for Student Education Records are detailed in our [Security Whitepaper](#).

Employee Training for Sensitive Data

All NWEA employees undergo information security awareness training as part of the onboarding process and receive ongoing security awareness training throughout their NWEA careers. During the onboarding process, new employees agree to our employee guide and information security handbook which, among other things, highlights our commitment to keep student and confidential information safe and secure. NWEA recognizes that dedicated employee engagement is a key means of raising security and privacy awareness. Additionally, certain roles (for example, software developers and architects) undergo additional information security training.

Cyber Supply Chain Risk Management

NWEA may share Student Education Records with third-party contractors to in order to provide the services and 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.

Incident management

NWEA maintains an incident management process for security events that may affect the confidentiality, integrity, or availability of systems or data. If an incident occurs, the security team, privacy professional, or designated incident commander logs and prioritizes it according to its severity. The process specifies courses of action, procedures for notification, escalation, mitigation, and documentation. NWEA's security incident management program is structured around NIST SP 800-61 Rev 2, Computer Security Incident Handling. NWEA notifies Subscribers of a Security Breach in accordance with applicable state law or without unreasonable delay, whichever occurs sooner.

Erasure, Rectification, Access & Portability of Student Education Records

Users or parents of such Users (if a User is a minor) may review and amend Student Education Records of such User by contacting the Subscriber and following the Subscriber's procedures for amending such User's Student Education Records. NWEA will not make any changes to any Student Education Records without the applicable Subscriber's express written permission, and then, only in accordance with applicable law.

Data Retention, Destruction & Return

Subscribers may use the Assessment System to download its Student Education Records and data. NWEA retains Student Education Records for the length of time necessary to meet NWEA's contractual and legal commitments to Subscribers. These commitments generally extend past the end date of contractual agreements as Subscribers may need continued access to Student Education Records and educational data for reporting; and many Subscribers resume their subscriptions later and want their historical Student Education Records intact for longitudinal growth studies or legal compliance.

NWEA honors Subscribers' requests to delete Student Education Records if required by applicable law. To request that Student Education Records relating to a particular Subscriber and/or User(s) be deleted, Subscriber shall send a written request to NWEA via email to legalservices@nwea.org and include the following: (i) requestor's name, title, and contact information; (ii) the name of requestor's school or entity with NCES number (if available); (iii) a request to delete Subscriber's Student Education Records; and (iv) an attestation that requestor is duly authorized and has legal capacity to execute the request. NWEA will subsequently contact Subscriber to confirm the destruction request before executing the destruction request. NWEA retains Anonymized Data indefinitely for the purposes stated in its [Privacy Policy](#).

Last Modified: March 15, 2022

Exhibit E-3

NWEA MAP® GROWTH™ SECURITY WHITEPAPER

Introduction

As an organization that seeks to aid in the improvement of educational outcomes for all children, NWEA is committed to maintaining the confidentiality, integrity, and availability of NWEA information assets and resources, including, but not limited to, the data of our partners. In doing so, NWEA information security controls are guided by the following principles:

- Protect the confidentiality, integrity, and availability of NWEA information assets and those of our partners.
- Comply with applicable privacy and data protection laws.
- Enable the business to make informed decisions through risk assessments.
- Grant access to sensitive, proprietary, or other confidential information only to those with a need to know.
- Provide security training opportunities and expert resources to help individuals understand and meet their information security obligations.
- Utilize the controls established by the National Institute of Standards and Technology (NIST) and applicable federal and state laws as guidance for our information security initiatives.

Organizational security

Employee background checks

NWEA utilizes a third party to conduct pre-employment background screening. As a condition of employment, all final candidates undergo national sex offender registry check, education verification, social security validation, and national criminal background checks. Additional screening and checks are performed on individuals that access to sensitive areas.

Security training for all employees

All NWEA employees undergo general information security awareness training as part of the onboarding process and receive ongoing security training throughout their NWEA careers. During the onboarding process, new employees agree to our employee guide which, among other things, highlights our commitment to keep student and confidential information safe and secure. NWEA recognizes that dedicated employee engagement is a key means of raising security and privacy awareness. Additionally, certain roles (for example, software developers and architects) undergo additional information security training.

Dedicated security team

NWEA has a dedicated security team that employs security and privacy professionals. This team is tasked with maintaining and/or advising on NWEA's defense systems, developing security review processes, advising on and building security infrastructure, and implementing NWEA's security policies. NWEA's dedicated security team actively scans for security threats using industry standard tools, penetration tests, and security reviews.

Workstation security

All workstations issued to NWEA employees are configured by NWEA to comply with our standards for security. These standards require all workstations to be properly configured, kept updated, and tracked. NWEA's default configuration sets up workstations to encrypt data, have strong passwords, anti-virus software, and lock when idle for a specified amount of time.

Privacy

NWEA honors the privacy of student information and recognizes the importance of protecting such sensitive information. NWEA treats personally identifiable student data according to applicable local laws that regulate securing the access, maintenance, and transfer of such data. Additional information on NWEA's privacy policy for student information can be found at: <https://legal.nwea.org/nwea-privacy-and-security-for-pii.html>

External audit and compliance

On an annual basis, NWEA engages with an independent third-party auditing firm that reviews MAP Growth's compliance with the criteria for the Service Organization Control (SOC) 2 Trust Principals for Security and Availability. A copy of NWEA's most recent SOC 2 audit is available upon request provided the requestor signs a non-disclosure agreement or has a current Master Subscription Agreement on file.

Supply Chain Risk Management

NWEA's Legal Services examines and classifies third party access to NWEA systems, data, personnel, and physical locations. As part of this process, the Legal Services department reviews third party security controls, policies and procedures, contractual representations, and insurance to determine whether industry standard information security controls are in place based on the type of access and/or data they have access to. Thereafter, access is only granted to third-parties that are approved by the NWEA Legal Services.

Physical Security

All visitors and vendors to NWEA's headquarters must be admitted at the front desk and sign in using NWEA's electronic sign-in system. Photo identification is required for anyone who enters sensitive areas of the building. All external doors and stairwell entrances are monitored by closed circuit security cameras and require badge access. Security personnel are onsite during the hours of 4 p.m.– to 8 a.m. M-F and 24 hours on weekends and holidays.

Business Continuity

NWEA conducts business impact analysis and risk assessments as part of its business continuity plan (BCP). NWEA's BCP addresses all key functions of MAP Growth. Detailed testing plans have been developed to ensure continued operation of MAP Growth. NWEA reviews its BCP annually.

Risk Assessments

NWEA conducts ongoing risk assessments to enable improved decision making, planning, and prioritization through a structured understanding of opportunities and threats to maximize the use of resources.

General Data Protection Regulation (GDPR)

As a data processor, NWEA understands its obligations to comply with the GDPR. We thoroughly analyzed GDPR requirements and put in place a dedicated internal team to drive our organization to meet them. Our ongoing initiatives can be found here: <https://legal.nwea.org/nwea-map-growth-gdpr-overview.html>

Operational Security

Vulnerability Management

NWEA administrates a vulnerability management process that actively scans (internal, external, application) for security threats using industry best tools. The vulnerability team tracks and follows up on vulnerability remediation. Once a vulnerability requiring remediation is identified, it is logged, prioritized according to severity, and assigned an owner. The vulnerability management team tracks issues and follows up frequently until they can verify the issues were mitigated or remediated.

External Third-Party Penetration Testing

On an annual basis NWEA engages with an independent third-party organization to perform network and application level external penetration tests. The results of the penetration test are prioritized and corresponding remediation plans are enacted accordingly.

Malware prevention

NWEA utilizes up-to-date antivirus on systems connected to the NWEA network.

Logging & Monitoring

NWEA's security team maintains a security information and event management system to provide real-time analysis of certain log data and alerts.

Incident management

NWEA maintains an incident management process for security events that may affect the confidentiality, integrity, or availability of systems or data. If an incident occurs, the security team, privacy professional, or designated incident commander logs and prioritizes it according to its severity. The process specifics courses of action, procedures for notification, escalation, mitigation, and documentation. NWEA's security incident management program is structured around NIST SP 800-61 Rev 2, Computer Security Incident Handling.

Network Security

Network access to NWEA's production environment from open, public networks is restricted. NWEA deploys mitigations against distributed denial of service (DDoS) attacks at its network perimeter. Changes to NWEA's production network configuration are restricted to authorized personnel. NWEA utilizes Intrusion Detection / Intrusion Prevention (IDS/IPS) services. NWEA also employs web filtering solutions that provide another layer of security protection against known compromised sites and malware.

Media Sanitization

NWEA uses NIST SP 800-88, Guidelines for Media Sanitization, as guidance for asset sanitization and disposal decisions based on the security categorization of the associated system's confidentiality.

Logical Access

NWEA has implemented information security guidelines that define how internal data, systems, and resources are secured and protected from unauthorized access, attempted intrusions, and service interruptions. These policies address topics that include, but are not limited to, access control, authentication, and remote access control.

Encryption in Transit and at Rest

NWEA encrypts all traffic in transit over public networks using current industry standard encryption protocols and algorithms. Sensitive data in NWEA's MAP Growth production systems and backups are encrypted at rest.

Disaster Recovery

NWEA maintains a disaster recovery (DR) plan specific to MAP Growth to ensure the protection and restoration of systems, facilities, and capabilities and to reduce the consequences of any unexpected or undesirable event or disaster. This DR plan is intended to not only reduce the severity of the effects of a disaster, but to permit a planned, timely response and eventual effective recovery. The goal is to restore NWEA Product Engineering operations as quickly as possible. Disaster recovery on MAP Growth is exercised annually.

Backup

NWEA automates full hourly backups of MAP Growth to the secondary colocation facility. Additionally, database replications are conducted hourly using native database capabilities.

Additional questions regarding NWEA's MAP Growth Security Whitepaper can be sent to legalservices@nwea.org.

NWEA Legal Services & Enterprise Information Assurance Team

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