

Data Sharing/Use Agreement

Between

Jefferson County Board of Education

And

KHAN ACADEMY, INC.

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("JCPS"), and Khan Academy, Inc., a non-profit corporation ("Khan Academy" or "Services Provider") organized under the laws of the State of California describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services. The Services Provider will provide personalized learning services for the MAP Accelerator Service being delivered to JCPS by NWEA pursuant to the Services Contract referred to below.

A. PERIOD OF THE AGREEMENT

This Agreement shall be effective as of 09/25/2019 and will terminate 06/30/2020 unless terminated earlier by either party pursuant to Section H.

B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE DATA

1. Services Provider will provide the following services under the terms of a subscription agreement between JCPS and NWEA attached hereto as Attachment C (the "Services Contract"):

Services Provider (Khan Academy) shall use student data, as detailed on **Attachment A** hereto, to provide personalized learning services for the MAP Accelerator Service delivered by NWEA under the terms set forth in Attachment C. Data may also be used for research and analytics purposes as permitted under the Services Contract. In order to provide the MAP Accelerator Service, each student, teacher, other similar personnel will have an individual user account on the Khan Academy website. The Khan Academy accounts will enable users to access all of Khan Academy's standard features, and will remain available for use following the end of the Subscription term, until cancelled by JCPS.

2. JCPS and Services Provider agree that Services Provider is an organization to which JCPS can disclose, upon written request, personally identifiable

information from an education record of a student, as defined in 34 CFR 99.3, under the "school official exception" of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g) and 34 C.F.R. 99.31 (a)(1) ("FERPA"), because the disclosure is to a contractor to whom JCPS has outsourced institutional services or functions for which JCPS would otherwise use employees; the contractor is under the direct control of JCPS with respect to the use and maintenance of education records; and the contractor is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

3. JCPS shall disclose to Services Provider, upon written request, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3, under the "school official exception" of FERPA, 34 C.F.R. 99.31 (a)(1), when the disclosure is within such exception as stated in Paragraph B.2 above and Services Provider has a legitimate educational interest for access to such education records. The confidential data including student and non-student information to be disclosed is fully described in a document attached to this agreement as **Attachment A** and any reference to "confidential information" or "data" in this Agreement shall mean the data described in Attachment A (or otherwise defined as personally identifiable information from an education record by FERPA). Services Provider shall use personally identifiable information from education records and other records in order to perform the services described in Paragraph B.1 above. Services Provider shall notify JCPS and JCPS shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the services or any changes to the scope, purpose or duration of the services themselves. Any agreed upon changes to the data disclosed shall be reduced to writing and included in an update to Attachment A to this Agreement. Any agreed upon changes to the scope, purpose or duration of the services shall be reduced to writing and included in an amendment to the Services Contract described in Paragraph B.1 above or in a separate written agreement between JCPS and Khan Academy.
4. Services Provider and JCPS shall work cooperatively to determine the proper medium and method for the transfer of confidential data between each other. The Parties initially agree that such data will be provided by JCPS to NWEA and that Services Provider will obtain the data from NWEA. Services Provider shall notify JCPS as soon as commercially practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol shall apply to any transfer of confidential data from Services Provider to JCPS.
5. JCPS grants Services Provider permission to collect and use data shared under this Agreement to provide services to students under the age of 13 only as necessary to fulfill the purposes of the Services Contract described in Paragraph B.1 above. Services Provider shall not knowingly offer or provide services to any JCPS student under the age of 13 other than (i) as provided under this Agreement and the Services Contract or (ii) in a "free" Khan Academy Website

account opened by or at the direction of an OPS teacher or employee for school use, without first receiving parental permission in accordance with the Children's Online Privacy & Protection Act. JCPS understands that Khan Academy identifies students as JCPS students based on use of school email address for the student or teacher with whom that student is associated on Khan Academy.

C. CONSTRAINTS ON USE OF DATA

1. Services Provider agrees that the services shall be provided in a manner that does not permit personal identification of students by individuals other than representatives (employees and contractors) of Services Provider that have legitimate educational interests in the information (including operational needs relating to providing the education services).
2. Services Provider will not contact the individuals included in the data sets without obtaining advance written authorization from JCPS, except in connection with the creation and administration of accounts and communications relating to the services.
3. Services Provider shall not re-disclose any individual – level data with or without identifying information to any other requesting individuals, agencies, or organizations (other than JCPS or NWEA personnel) without prior written authorization by JCPS, unless required by law.
4. Services Provider shall use the data only for the purpose described in Paragraph B.1 above. The data shall not be used for personal gain or profit.
5. De-identified data may be used by the Services Provider for any lawful purpose, including, but not limited to, educational research, product development, and improvement of educational sites, services, or applications, and to demonstrate the effectiveness of Services Provider's services. Services Provider's use of de-identified data shall survive termination of this Agreement or any request by JCPS to return or destroy data. When using de-identified data, Services Provider may not use the JCPS name, logo or trademarks, or include any description that would associate the data with JCPS without prior written authorization of JCPS.

D. DATA CONFIDENTIALITY AND DATA SECURITY

Services Provider agrees to the following confidentiality and data security statements:

1. Services Provider acknowledges that the data is confidential data and proprietary to JCPS, and agrees to protect the data from unauthorized disclosures and to comply with all applicable Local, State and Federal confidentiality laws and regulations including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; the Personal Information Security and Breach Investigation

Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.

2. If the performance of this Agreement involves the transfer by JCPS to Services Provider of any data regarding any JCPS student that is subject to FERPA, Services Provider agrees to:
 - a. In all respects comply with the applicable provisions of FERPA.
 - b. Use any such data for no purpose other than to fulfill the purposes of the Services Contract described in Paragraph B.1 above, and not share any such data with any person or entity other than Services Provider, NWEA and their respective employees, contractors and agents, without the prior written approval of JCPS.
 - c. Require all employees, contractors and agents of Services Provider to comply with all applicable provisions of FERPA with respect to any such data.
 - d. Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of the Services Contract described in Paragraph B.1 above and as permitted under the Services Contract and FERPA.
 - e. Provide the services under the Services Contract described in Paragraph B.1 above in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agents of Services Provider having a legitimate interest in knowing such personal identification.
 - f. Destroy or return to JCPS any such data obtained under this Agreement within 90 days after the date it is no longer needed by Services Provider for the purposes of the Services Contract described in Paragraph B.1 above and the operation of JCPS Khan Academy accounts referred to therein.
3. Services Provider shall not release or otherwise reveal, directly or indirectly, the data to any individual, agency, entity, or third party not included in or permitted by this Agreement, unless such disclosure is required by law or court order. If Services Provider becomes legally compelled to disclose any confidential and otherwise personally identifiable data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Services Provider shall use all reasonable efforts to provide JCPS with prior notice before disclosure so that JCPS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure JCPS's compliance with the confidentiality requirements of federal or state law; provided, however, that Services Provider will use all reasonable efforts to maintain the confidentiality of confidential and otherwise personally identifiable data. If a protective order or other remedy is not obtained

prior to the deadline by which any legally compelled disclosure is required, Services Provider will only disclose that portion of confidential and otherwise personally identifiable data that Services Provider is legally required to disclose.

4. Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the data; provided that this Agreement does not restrict Khan Academy's use of anonymous usage data regarding use of the Khan Academy website for lawful purposes, including developing and improving its educational sites, services, or applications.
5. Services Provider shall not use data shared under this Agreement for any purpose other than the Services Contract described in Paragraph B.1 above. Nothing in this Agreement shall be construed to authorize Services Provider to have access to additional data from JCPS that is not included in the scope of this Agreement (or addenda). Services Provider understands that this Agreement does not convey ownership of the data to Services Provider.
6. Services Provider shall take commercially reasonable security precautions and protections to ensure that persons not authorized to view the data do not gain access to the data. Commercially reasonable security precautions and protections include, but are not limited to:
 - a. Creating, distributing, and implementing data governance policies and procedures which protect data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;
 - b. Encrypting all data carried on mobile computers/devices;
 - c. Encrypting data before it is transmitted electronically;
 - d. Requiring that users be uniquely identified and authenticated before accessing data;
 - e. Limiting its employee and contractors' access to the data to those employees and contractors who have a legitimate need to access the data to perform their job functions in support of providing the services described in Paragraph B.1;
 - f. Ensuring that all staff accessing data sign a nondisclosure statement, including provisions substantially in the form of **Attachment B**, and maintain copies of signed statements;
 - g. Securing access to any physical areas/electronic devices where sensitive data are stored;
 - h. Installing a firewall to permit or deny network transmissions based upon a set of rules; and

- i. Installing anti-virus software to protect the network.
- 7. If Services Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), Services Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:
 - a. "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
 - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency (this item includes student ID numbers issued by JCPS);
 - v. A passport number or other identification number issued by the United States government.
 - vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
 - b. As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."
 - c. Services Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees, other than as permitted under its contract or agreement with JCPS or the relevant parent or employee.

- d. Services Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
 - e. Services Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.]
- 8. Services Provider shall report all known or suspected breaches of the data, in any format, to Dr. Dena Dossett, Chief, Accountability, Research, and Systems Improvement (email: dena.dossett@jefferson.kyschools.us). The report shall include (1) the name, job title, and contact information of the person reporting the incident; (2) the name, job title, and contact information of the person who discovered the incident; (3) the date and time the incident was discovered; (4) the nature of the incident (e.g. system level electronic breach, an electronic breach of one computer or device, or a breach of hard copies of records; (5) a description of the information lost or compromised; (6) the name of the electronic system and possible interconnectivity with other systems; (7) the storage medium from which information was lost or compromised; (8) the controls in place to prevent unauthorized use of the lost or compromised information; (9) the number of individuals potentially affected; and (10) whether law enforcement was contacted.
- 9. Services Provider shall securely and permanently destroy the data, and any and all hard and soft (electronic) copies thereof, upon the termination of this Agreement and closure of JCPS Khan Academy accounts. Services Provider agrees to require all employees, contactors, or agents of any kind using JCPS data to comply with this provision. Services Provider agrees to document the methods used to destroy the data, and upon request, provide certification to JCPS that the data has been destroyed. Notwithstanding the foregoing, Khan Academy will not be required to destroy data that is included in individual Khan Academy accounts that are (i) retained by and under control of JCPS for educational purposes other than the MAP Accelerator service or (ii) retained by individual account holders in accounts transferred to the student, with the consent of the student, parent or guardian.
- 10. Services Provider will receive JCPS data from NWEA. For purposes of this Agreement and JCPS oversight of compliance, Khan Academy designates its General Counsel (or an alternative designee specified in writing) as its representative for responding to requests for information regarding Services Provider's compliance with the terms of this Agreement and application of state and Federal laws under this Agreement, and appoints Jason Chancey (or an alternative designee specified in writing) as its representative for transmitting all data requests and for responding to requests for information regarding data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the data as described below. JCPS or its agents may, upon written request, review the records Services Provider is required to keep under this Agreement.

11. Services Provider acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for JCPS to immediately terminate this Agreement.

E. FINANCIAL COSTS OF DATA-SHARING

Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to JCPS are costs associated with the compiling of student data requested under this agreement and costs associated with the electronic delivery of the student data to Services Provider (directly or through NWEA).

No payments will be made under this Agreement by either party. Any payments will be made to NWEA under Services Contract described in Paragraph B.1 above.

F. OBLIGATIONS OF JCPS

During the term of this Agreement, JCPS shall:

1. Prepare and deliver student demographic and academic data as defined in **Attachment A – Data File Description**.
2. Upon request of the Services Provider, provide Data Stewardship training for data custodian.

G. LIABILITY

Except as otherwise limited by the Services Contract described in Paragraph B.1 above, Services Provider agrees to be responsible for and assumes all liability for any actual claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from Services Provider's intentional or negligent release of personally identifiable student or staff data ("Claims"). Services Provider agrees to hold harmless JCPS and pay any costs incurred by JCPS in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this Agreement. In connection with any Claim under this section for which JCPS seeks indemnification from Khan Academy, JCPS will (i) notify Khan Academy promptly of any Claim, (ii) give Khan Academy the sole control of the defense of the Claim and any settlement negotiations (provided such settlement does not impose any liability, obligation, or cost, onto JCPS), and (iii) reasonably cooperate with the Khan Academy in defense of any such claim.

H. TERMINATION

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):
 - a. By either party immediately in the event of a material breach of this Agreement by another party.

- b. By either party after thirty (30) days advance written notice to the other party, for any reason or no reason.
2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement. If this Agreement is terminated by either party for material breach or for any other reason with thirty (30) days written notice, the confidential information shall be returned or destroyed within ninety (90) days of the written request of JCPS. If this Agreement terminates at the end of the term described in Section A, Services Provider shall return or destroy all confidential information when it is no longer needed for the services provided under the Services Contract. Such return or destruction shall occur within ninety (90) days after it is no longer needed for such services and following the written request of JCPS to return or destroy the confidential information.
3. Destruction of the confidential information shall be accomplished by utilizing an approved method of confidential destruction, including shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using approved methods of electronic file destruction, or permanent de-identification of user data permitted to be retained.

I. PUBLICATIONS AND COPYRIGHTS

Both parties recognize that each organization may have extant work that predates this agreement. If those materials and/or data are used in the course of this work, they remain the property of the original developer or researcher. If new materials are developed during the term of the Services Contract described in Paragraph B.1 above, ownership and copyright of such will be governed by the terms of the Services Contract. Khan Academy retains all rights to its website and services, as set forth in its website terms of service.

J. MODIFICATION

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.

K. QUALITY OF SERVICES

JCPS reserves the right to review Services Provider's performance under this Agreement for effectiveness in serving the specific purposes as outlined in Paragraph B.1. Failure of Services Provider to perform in a manner that meets or exceeds the quality standards for JCPS shall serve as grounds for termination of this Agreement.

L. BREACH OF DATA CONFIDENTIALITY

Services Provider acknowledges that the breach of this agreement or its part may result in irreparable and continuing damage to JCPS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this agreement

by Services Provider, JCPS, in addition to any other rights and remedies available to JCPS at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that Services Provider has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), JCPS may not allow Services Provider access to personally identifiable information from education records for at least five (5) years.

M. CHOICE OF LAW AND FORUM

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the parties expressly waive the right to bring any legal action or claims in any other courts.

N. WAIVER

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

O. SEVERABILITY

If any part of this Agreement is held to be void, against public policy or illegal, the balance of this Agreement shall continue to be valid and binding.

P. NOTICES

Any notices or reports by one party to the other party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, or to such other address as may be designated in writing by one party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

Q. RELATIONSHIP OF PARTIES

JCPS is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor JCPS shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

R. ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, together with any attachments hereto and any amendment or modifications that may hereafter be agreed to, constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Services Provider shall not assign this Agreement or any portion thereof to a subcontractor or

other third party without the prior written consent of JCPS, and any attempted assignment without such prior written consent in violation of this Section R shall automatically terminate this Agreement.

AGREED:

Khan Academy, Inc.
P.O. Box 1630
Mountain View, CA 94042

BY: Catherine Wang

Name: Catherine Wang

Title: VP Marketing & Strategic Partnerships

Date: 9/11/2019

AGREED:

Jefferson County Board of Education
3332 Newburg Road
Louisville KY 40218

BY: _____

Name: _____

Title: _____

Date: _____

Attachment A

CONFIDENTIAL INFORMATION TO BE DISCLOSED

- A. Students By School: Term name, District name, School name, Student last name, Student first name, Student middle initial, Student ID, Student BID, Student Email, Student date of birth, Grade;
- B. Assessment Results: Term name, Student ID, Student Email, District name, School name (school where test event occurred), Measurement scale, Growth measure Yes/No, Test type, Test name, Student BID, Test BID, Test start date, Test RIT score, Test standard error, For Goals 1-8: Goal name, Goal RIT score, Goal standard error;
- C. Class Assignments: Term name, Student ID, Student BID, Student email, District Name, School name (school where student was assigned to class), Class name, Teacher name, and Teacher email
- D. Demographic data: Gender, Ethnicity/Race, and when provided by the Customer eligibility for special programs including Free/Reduced Lunch, English Language Learner, and Special Education.

Note: Items A, C and D will be provided by JCPS to NWEA, who will then provide it to Services Provider. Item B will be provided to Services Provider directly by NWEA.

Khan Academy will supply an account username for each account (using email address provided by JCPS); the account password will be supplied by the individual account holder during account set-up.

Attachment B

SERVICE PROVIDER'S EMPLOYEE NONDISCLOSURE STATEMENT

I understand that the performance of my duties as an employee or contractor of Khan Academy ("Khan Academy") involve a need to have access to and review personal information of Khan Academy customers and account holders. I understand that this data is confidential information, and that I am required to maintain the confidentiality of this information and to prevent any redisclosure prohibited under applicable federal and state law.

By signing this statement, I agree to the following:

- I will not permit access to confidential information to persons not authorized by Khan Academy.
- I will maintain the confidentiality of the data or information.
- I will not access data of persons related or known to me for personal reasons.
- I will report to my immediate supervisor (or team leader), immediately and within twenty-four (24) hours, any known reasonably believed instances of lost data, data that has been inappropriately shared, or data that has been removed from Khan Academy systems or databases.
- I understand that procedures must be in place for monitoring and protecting confidential information.
- I understand that the Family Educational Rights and Privacy Act ("FERPA") protects information in students' education records that are maintained by an educational agency or institution or by a party acting for the agency or institution (including Khan Academy when providing in-school services). This includes, but is not limited to the student's name, email or home address, and any personal identifier, such as the student's student number, and also includes indirect identifiers, such as the student's date of birth, and other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
- I understand that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing of federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. 3571) or imprisonment for not more than five years (under 18 U.S.C. 3559), or both.
- I understand and acknowledge that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the Richard B. Russell National School Lunch Act (42

U.S.C. 1751 et seq)(NSLA) or Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.)(CNA) and the regulations implementing these Acts, is highly confidential information.*

- I understand that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal as provided in the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq)(NSLA) or Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.)(CNA) and the regulations implementing these Acts, specifically 7 C.F.R 245.6. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.*
- I understand that an account owner's login credentials (ie. user name password that would permit access to a Khan Academy account) is confidential information.
- I understand that other federal and state privacy laws protect confidential data not otherwise detailed above and I acknowledge my duty to maintain confidentiality of that data as well.
- I understand that any personal characteristics that could make the person's identity traceable, including membership in a group such as ethnicity or program area, are protected.

In addition, I understand that any data sets or output reports that I may generate using confidential data are to be protected. I will not distribute to any unauthorized person any data sets or reports that I have access to or may generate using confidential data.*

Employee signature:

Date:

*Items of the form marked with an asterisk apply only to individuals working in research and efficacy, however all staff should recognize the confidentiality of this information

Attachment C

SERVICES CONTRACT

**JEFFERSON COUNTY PUBLIC SCHOOLS
CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES**

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "Board"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and NWEA (hereinafter "Contractor"), with its principal place of business at 121 NW Everett Street, Portland, Oregon 97209.

WITNESSETH:

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter "Parties") agree as follows:

ARTICLE I

Entire Agreement; Amendments

This Contract is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII. This Contract is supplemented by the Board's Procurement Regulations currently in effect (hereinafter "Regulations") that are incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail.

ARTICLE II

Services

Contractor agrees to perform the following services (hereinafter "Services") of a quality and in a manner that is within the highest standards of Contractor's profession or business. The Services are as follows:

Contractor will provide professional learning sessions to teachers and administrators within the Archdiocese of Louisville. Contractor shall follow the grant stipulations for use of Title II, Part A funds that are allocated by the federal government to the private, non-public schools' students and managed by the JCPS Fiscal Coordinator. "NWEA 2019/2020 Sessions" is attached and incorporated herein by reference. Locations and times to be agreed upon at a later date by the Contractor and the Archdiocese of Louisville. At all times during the term of this contract, Contractor will be independent of the Archdiocese of Louisville and of any religious organization in the provision of services.

With respect to Article XII, Contractor's Work Product, the Board acknowledges that in providing services in this Contract, the Contractor may utilize certain pre-existing materials and other intellectual property to which the Contractor owns the intellectual property rights. Nothing herein shall affect ownership of such pre-existing intellectual property. To the extent the Contractor includes any Board specific information in any versions of any such materials provided the Board under this Contract, the Contractor will not provide the information or those versions of such materials to any other entity.

In regards to Article XIV, should the Board require an inspection and audit of any records related to the performance of this Contract, the location to provide all documents shall be mutually agreed on by the Board and the Contractor at that time.

ARTICLE III Compensation

The Board shall pay Contractor the total amount stated below (hereinafter "Contract Amount"). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	<u>\$52,400.00</u>
Progress Payments (if not applicable, insert N/A):	<u>Within 30 days of approved invoice for services provided</u>
Costs/Expenses (if not applicable insert N/A):	<u>N/A</u>
Fund Source:	<u>Title II, Part A</u>

ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on August 28, 2019 and shall complete the Services no later than June 30, 2020, unless this Contract is modified as provided in Article VIII.

ARTICLE V Performance of Services by Contractor

The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below.

Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for the performance of the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with the performance of this Contract. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Contract. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and naming the Board as an additional insured. Additionally, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

ARTICLE VI Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

ARTICLE VII Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

ARTICLE VIII

Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

ARTICLE IX

Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination.

ARTICLE X

Termination for Default

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of five (5) days after receipt of notice specifying the breach or failure. In the event of termination for default, the Board may secure the required services from another contractor. If the cost to the Board exceeds the cost of obtaining the Services under this Contract, Contractor shall pay the additional cost. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE XI

Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

ARTICLE XII

Contractor's Work Product

Unless waived in writing by the Contract Administrator, the Board shall retain ownership in and the rights to any reports, research data, creative works, designs, recordings, graphical representations or other works of a similar nature (hereinafter "Works") produced or delivered by Contractor under this Contract. Contractor agrees that the Works are "works for hire" and Contractor assigns all right, title and interest in the Works to the Board.

Any reports, information, data, etc. given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Board. Provided, nothing in this Article may be used to violate the provisions of any Kentucky or Federal statute or regulation which requires reporting of information.

ARTICLE XIII
Contract Administrator

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor ~~in the manner prescribed by the Regulations.~~ If the Board fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be the Board's Chief Financial Officer.

ARTICLE XIV
Right to Audit

The Board shall have the right to inspect and audit all accounting reports, books or records which concern the performance of the Services. Inspection shall take place during normal business hours at Contractor's place of business. Contractor shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract.

ARTICLE XV
Miscellaneous

- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.
- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records, Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.
- G. If this Contract requires Contractor and/or any employees of Contractor access to school grounds on a regularly scheduled and continuing basis for the purpose of providing services directly to a student or students, all individuals performing such services under this Contract are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no findings

of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.

- H. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.
-

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of August 28, 2019.

Contractor's Social Security Number or Federal Tax ID Number: 93-0686108

JEFFERSON COUNTY BOARD OF
EDUCATION

NWEA
CONTRACTOR

By: _____

By: _____

Title: Martin A. Pollio, Ed.D.
Superintendent

Title: Geri Cohen
Sr. VP and CFO

Cabinet Member: Dr. Carmen Coleman

(Initials)

Jefferson County Public Schools
**NONCOMPETITIVE NEGOTIATION
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.) —

State the date the emergency was declared by the superintendent: _____

2. There is a single source for the items within a reasonable geographic area —

Explain why the vendor is a single source: _____

3. The contract is for the services of a licensed professional, education specialist, technician, or an artist —

State the type of service: Educational Consultant

4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —

State the item(s): _____

5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —

State the type(s) of item(s): _____

6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —

State the item(s): _____

7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools —

State the location: _____

8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —

Explain the logic: _____

9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —

State the items: _____

I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.

Karen Moore

Print name of person making Determination

Teaching and Learning Finance

School or Department

Karen Moore

Signature of person making Determination

7-19-19

Date

NWEA

Name of Contractor (**Contractor Signature Not Required**)

Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations

F-471-1

Revised 05/2011

NWEA 2019/2020 Sessions

Date	Time	Location	Workshop Topic/Presenter	Amount
08/28/2019	TBD	TBD	Virtual Workshop – Getting Started with Reading Fluency	\$1,000.00
08/30/2019	TBD	TBD	Virtual Workshop – Getting Started with Reading Fluency	\$1,000.00
09/25-27/2019	8:30 -11:30/12:30 – 3:30 Each day	TBD	MAP Growth - Essential Reports (six ½ day workshops)	\$ 8,400.00
10/8-9/2019	8:30 -11:30/12:30 – 3:30 Each day	TBD	MAP Reading Fluency - Essential Reports (four ½ day workshops)	\$ 5,600.00
12/11-12/2019	8:30 -11:30/12:30 – 3:30 Each day	TBD	MAP Reading Fluency – Informing Instruction (four ½ day workshops)	\$ 5,600.00
02/10-12/2020	8:30 -11:30/12:30 – 3:30 Each day	TBD	MAP Growth – Student Growth and Goal-Setting (six ½ day workshops)	\$ 8,400.00
03/18-19/2020	8:30 -11:30/12:30 – 3:30 Each day	TBD	MAP Reading Fluency – Informing Instruction (four ½ day workshops)	\$ 5,600.00
05/12-14/2020	8:30 -11:30/12:30 – 3:30 Each day	TBD	MAP Growth Student Growth and Goal Setting (six ½ day workshops)	\$ 8,400.00
06/09-11/2020	8:30 -11:30/12:30 – 3:30 Each day	TBD	MAP Growth and Reading Fluency (six ½ day workshops)	\$ 8,400.00
TOTAL				\$52,400.00

The Archdiocese of Louisville has contracted **NWEA** to present workshops according to the schedule above. The contract should be written with **NWEA** for the amount in the **TOTAL AMOUNT** column.

NWEA
121 NW Everett Street
Portland, Oregon 97209
Tax ID: 93-068108
Contact: Geri Cohen



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/20/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA INC. 111 S.W. COLUMBIA FIFTH FLOOR PORTLAND, OR 97201	CONTACT NAME: PHONE: (A/C, No, Ext): E-MAIL: ADDRESS:	FAX (A/C, No):
CN102455558-GAWUP-19-20 GE	INSURER(S) AFFORDING COVERAGE	
INSURED NWEA 121 NW Everett Street Portland, OR 97209	INSURER A: American Casualty Company Of Reading, Pa	NAIC # 20427
	INSURER B: Continental Insurance Company	35289
	INSURER C: ACE American Insurance Company	22667
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** SEA-003624964-04 **REVISION NUMBER:** 3

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD: WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		6056556713	01/01/2019	01/01/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input type="checkbox"/> AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		6056556307	01/01/2019	01/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A	6050607300 (AOS) 6056558770 (CA)	01/01/2019 01/01/2019	01/01/2020 01/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Digital Technology & Professional Liability		G2367869A006	01/01/2019	01/01/2020	Per Claim \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Jefferson County Public Schools is named as an additional insured, where required by written contract, with respect to General Liability.

CERTIFICATE HOLDER

Jefferson County Public Schools
VanHoose Education Center
3332 Newburg Road
Louisville, KY 40218

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Elin Hammarberg

Elin Hammarberg

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