

7

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

THIS CONTRACT FOR PROCUREMENT OF SUBSCRIPTION 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, OR 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, including all attachments hereto, 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. The NWEA Master Subscription Agreement (“NWEA MSA”) is attached to this agreement as Attachment A and incorporated herein. In the event of a conflict between any provisions of the NWEA MSA and any provisions of this Contract, this Contract shall prevail.

ARTICLE II

Services

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

Contractor shall provide software licenses for MAP testing. MAP Growth is an assessment for measuring achievement and growth in K–11 math and reading. It provides teachers with accurate, and actionable evidence to help design data-driven instruction to personalize learning. Purchase orders for licenses shall be entered by the Office of Curriculum Design and Learning Innovation. The NWEA software license pricing is attached as Attachment B and incorporated herein by reference.

Contractor agrees that they will not operate a motor vehicle in the performance of this Contract. The Contract Administrator hereby waives the insurance requirement for automobile liability insurance. If during the terms of this Contract, Contractor is not required by Kentucky law to maintain workers compensation insurance, then the Contract Administrator hereby waives the requirement for workers compensation insurance contained in Article V. All other provisions of Article V shall remain the same.

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 pursuant to the terms and conditions regarding payment as set forth in the NWEA MSA . 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.

This contract is for software license only. Contractor and the Board acknowledge that no “works” are contemplated under this contract, unless this Contract is amended in accordance with Article VIII above.

Contract Amount:	\$840,661.50
Progress Payments (if not applicable, insert N/A):	Teaching and Learning will submit Purchase Order
Costs/Expenses (if not applicable insert N/A):	N/A
Fund Source:	General Fund

ARTICLE IV
Term of Contract

Contractor shall begin performance of the Services on July 1, 2020 and shall complete the Services no later than June 30, 2021 (“Contract Term”), unless this Contract is modified as provided in Article VIII.

ARTICLE V
Performance of Services by Contractor

The Services shall be performed by Contractor. In the event Contractor subcontract’s with a Subprocessor to aid in the completion of the Services, Contractor shall obtain prior written approval of the Contract Administrator defined below. “Subprocessor” means any third party used by NWEA to process personally identified student data in connection with the NWEA MSA.

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.

The Contract Administrator agrees that insurance is not required for this Contract. 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. In the event that on-site Services are performed, 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. In the event that on-site Services are performed, 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, if applicable; 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.

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 material provision of this Contract and does not cure the breach or failure within a period of thirty (30) 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. 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

Reserved

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, not more than once a year, to request an audit of all accounting reports, books or records (collectively "Financial Records") which concern the performance of the Services. The Financial Records audit shall take place during normal business hours at Contractor's place of business, or a third-party location to be agreed upon between the parties. Contractor shall retain all financial 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' and approved Subprocessor's 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 as of September 2, 2020, effective as of July 1, 2020.

Contractor's Social Security Number or Federal Tax ID Number:

JEFFERSON COUNTY BOARD OF
EDUCATION

NWEA
CONTRACTOR

By: _____

By:  8/18/2020
SEE41D73747048D...

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

Title: Geri Cohen
EVP and CFO

Cabinet Member: Dr. Kermit Belcher

(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: Education Specialist: Software License

- 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.

Dr. Lisa Revel

Print name of person making Determination

Technology Division

School or Department

Signature of person making Determination

Date

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





Attachment A

To

Jefferson County Public Schools Contract for the Procurement of Subscription Services

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 Schedule, the following assessment, reporting, and administration systems: (i) MAP® Growth; (ii) MAP® Skills; or (iii) 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 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.

1.7 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.

1.8 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.

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

1.10 Schedule: means one or more applicable order schedules or other order documents, including, upon renewal, any confirmation page generated by NWEA's online account renewal portal, which are considered incorporated into this Agreement

1.11 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).

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

1.13 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.

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

1.15 Supplemental Terms: means the Services-specific terms available at <http://legal.nwea.org/supplementalterms.html> which are incorporated herein by reference.

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

2. Grant of License. NWEA grants to Subscriber a nonexclusive, nontransferable, limited license to access, use, display, and install or download a copy, as

needed, of the Services solely for Subscriber's internal use. The license is effective for a period of one (1) year commencing on the date NWEA makes the Software available to Subscriber, unless otherwise specified in an applicable Schedule. The Services extend only to the quantity indicated on an applicable Schedule. Subscriber acknowledges Product limitations on the number of test events per academic year (see Supplemental Terms).

3. Protection from Unauthorized Use or Access.

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

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

5. NWEA Confidential Information. Subscriber shall not use, disclose, or distribute any NWEA Confidential Information, directly or indirectly, without the prior written consent of NWEA, except that NWEA authorizes Subscriber to disclose NWEA Confidential

Information: (i) to Subscriber's employees or agents who have signed written confidentiality and nondisclosure agreements before such disclosure; and (ii) as required by applicable federal, state, or local law, regulation, or a Legal Order. Before making any disclosure under Section 5(ii), Subscriber shall provide NWEA: (a) prompt written notice of such requirement so that NWEA may seek, at its sole cost and expense, a protective order or other remedy; and (b) reasonable assistance, at NWEA's cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required in this Section, the Subscriber remains subject to a Legal Order to disclose any NWEA Confidential Information, the Subscriber (or its representatives or other persons to whom such Legal Order is directed) may disclose no more than that portion of the NWEA Confidential Information which, on the advice of Subscriber's legal counsel, specifically requires the Subscriber to disclose. For any such disclosure, Subscriber shall use best efforts to obtain written assurances from the applicable court or agency that such NWEA Confidential Information will be afforded confidential treatment.

6. Student Education Records.

6.1 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](#).

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 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](#).

10. Fees and Taxes. Subscriber shall pay the fees set forth on the applicable Schedule. 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 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.

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. Termination and Remedies. This Agreement remains in effect until terminated in accordance with this section. Either party may terminate by providing the other party thirty (30) days written notice of its intent to terminate for convenience. NWEA may terminate immediately without prior notice to Subscriber upon Subscriber's breach of this Agreement. Upon termination for any reason, NWEA is under no obligation to refund any fees paid by Subscriber for the Services. 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>). 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, and 22.12.

22.5 Entire Agreement; Order of Precedence.

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

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 Oregon, U.S.A., without giving effect to principles of conflict of laws. Notwithstanding anything to the contrary, the United Nations Convention on Contracts for the International Sale of Goods, Uniform Commercial Code, and Uniform Computer Information Transactions Act are specifically disclaimed and do not apply to this Agreement. Any litigation arising out of this Agreement must be conducted in courts located in Multnomah County, Oregon.

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.



Schedule A

SALES ORDER

Company Address: 121 NW Everett Street
Portland, OR 97209
License Start Date: 07/01/2020
License End Date: 06/30/2021

Created Date: 05/12/2020
Quote Number: 00032842
Partner ID: 6286

Prepared By: Holly Sears
Phone:
Email: holly.sears@nwea.org

Contact Name: Susan Price
Phone: (502) 777-9572
Email: susan.price@jefferson.kyschools.us

Bill To Name: Jefferson County Public Schools
Bill To Address: Attn: ACCOUNTS PAYABLE
3001 Crittenden Drive
Louisville, KY 40209

Ship To Name: Jefferson County Public Schools
Ship To Address: P.O. Box 34020
Louisville, KY 40232-4020

Table with 6 columns: Product, List Price, Sales Price, Quantity, Total Price, Item Discount. Rows include Growth Report +1hr Virtual Consulting, Instructional Report + 2hr Virtual Consulting, and MAP Growth K-12.

Quote Discount -\$259,189.00
Quote Subtotal \$840,661.50
Estimated Tax \$0.00
Grand Total \$840,661.50

Terms and Conditions

This Schedule A is subject to NWEA's terms and conditions located at: https://legal.nwea.org/. By signing this Schedule A you agree you have read and understood the terms and agree to them.

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

Information about NWEA's collection, use, and disclosure of Student Information can be found here: https://legal.nwea.org/nwea-privacy-and-security-for-pii.html

NWEA's W9 can be found at: https://legal.nwea.org/nwea-w-9.html

Until this Schedule A is signed, the terms identified here are valid for 90 days from the date above. Please confirm the billing address, or specify changes to your account manager.

Signature

Signature: _____

Printed Name: _____

Date: _____

Title _____

MASTER SUBSCRIPTION AGREEMENT

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

The parties agree as follows:

1. **Definitions.** In this Agreement, capitalized words have the following meanings:
 - 1.1 **Agreement:** means this master subscription agreement including applicable Schedule(s) and Supplemental Terms.
 - 1.2 **Anonymized Data:** means any Student Education Record rendered anonymous in such a manner that the student is no longer identifiable. For example, this includes non-identifiable student assessment data and results, and other metadata, testing response times, scores (e.g. goals, RIT), NCES codes, responses, item parameters, and item sequences that result from the Services.
 - 1.3 **Assessment System:** means, to the extent included in an applicable Schedule, the following assessment, reporting, and administration systems: (i) MAP® Growth; (ii) MAP® Skills; (iii) MAP® Reading Fluency; or (iv) Children's Progress Academic Assessment™ (CPAA™), each a product ("Product"). Assessment System excludes Subscriber's operating environment and any other systems not within NWEA's control.
 - 1.4 **Content:** means test items, including images, text, graphs, charts, and pictures.
 - 1.5 **Deidentified Data (Pseudonymized Data):** means a Student Education Record processed in a manner in which the Student Education Record can no longer be attributed to a specific student without the use of additional information, provided that such additional information is kept separately using technical and organizational measures.
 - 1.6 **Documentation:** means Product documentation made available to Subscriber by NWEA, which includes technical manuals, but excludes any marketing materials or brochures.
 - 1.7 **Effective Date:** means the last date set forth on the signature page.
 - 1.8 **FERPA:** means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1), as amended from time to time.
 - 1.9 **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.
 - 1.10 **Legal Order:** means a valid order issued by a court or governmental agency of competent jurisdiction.
 - 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 **Reporting:** means Product reports, learning statements, research studies, and scoring.
 - 1.13 **Schedule:** means one or more applicable order schedules or other order documents, including, upon renewal, any confirmation page generated by NWEA's online account renewal portal. Schedule(s) may be provided as a separate attachment to the same email from which this Agreement is sent.
 - 1.14 **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).

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

1.16 **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.

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

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

1.19 **Supplemental Terms:** means the Services-specific terms available at <http://le.gal.nwea.org/supplementalterms.html>.

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

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

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

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

5. **NWEA Confidential Information.** Subscriber shall not use, disclose, or distribute any NWEA Confidential Information, directly or indirectly, without the prior written consent of NWEA, except that NWEA authorizes Subscriber to disclose NWEA Confidential Information: (i) to Subscriber's employees or agents who have signed written confidentiality and nondisclosure agreements before such disclosure; and (ii) as required by applicable federal, state, or local law, regulation, or a Legal Order. Before making any disclosure under Section 5(ii), Subscriber shall provide NWEA: (a) prompt written notice of such requirement so that NWEA may seek, at its sole cost and

expense, a protective order or other remedy; and (b) reasonable assistance, at NWEA's cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required in this Section, the Subscriber remains subject to a Legal Order to disclose any NWEA Confidential Information, the Subscriber (or its representatives or other persons to whom such Legal Order is directed) may disclose no more than that portion of the NWEA Confidential Information which, on the advice of Subscriber's legal counsel, specifically requires the Subscriber to disclose. For any such disclosure, Subscriber shall use best efforts to obtain written assurances from the applicable court or agency that such NWEA Confidential Information will be afforded confidential treatment.

6. **Student Education Records.**

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

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

6.3 **Requests for Disclosure of Student Education Records.** If NWEA receives a request from a state educational agency for Student Education Records, NWEA shall notify Subscriber via email. Such notification to the Subscriber will provide Subscriber the ability to create and maintain a record of the request or disclosure with the records of each student and have the record available to parents upon their request, as required by 34 CFR 99.32. Upon NWEA's email notification to Subscriber, NWEA may promptly respond to such requests for disclosure. Subscriber hereby consents to such disclosure by NWEA to Subscriber's state education agency and its designated vendors. Subscriber shall indemnify NWEA in accordance with Section 21 of this Agreement for any consequences which may result from NWEA's disclosure of Student Education Records to Subscriber's state educational agency and/or its designated vendors.

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

10. **Fees and Taxes.** Subscriber shall pay the fees set forth on the applicable Schedule. Unless Subscriber is a tax-exempt entity, 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. 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 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.

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. **Termination and Remedies.** This Agreement remains in effect until terminated in accordance with this section. Either party may terminate by providing the other party thirty (30) days written notice of its intent to terminate for convenience. NWEA may terminate immediately without prior notice to Subscriber upon Subscriber's breach of this Agreement. Upon termination for any reason, NWEA is under no obligation to refund any fees paid by Subscriber for the Services. 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.** 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.

19. **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.

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

21. **Indemnification.**

21.1 **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.

21.2 **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.

22. **Evaluation License.** This Section 22 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, LIABILITY, AND INDEMNIFICATION OBLIGATIONS OF ANY KIND. IN THE EVENT OF A CONFLICT BETWEEN THIS SECTION 22 AND OTHER TERMS OF THIS AGREEMENT, THIS SECTION 22 WILL SUPERSEDE SUCH TERMS WITH RESPECT TO THE SERVICES LICENSED TO SUBSCRIBER FOR EVALUATION PURPOSES.

23. **Miscellaneous.**

23.1 **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.

23.2 **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.

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

third party.

23.4 **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, 19, 20, 21.1, 23.2, 23.3, 23.4, 23.5, 23.9, 23.10, 23.11, and 23.12.

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

23.6 **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.

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

23.8 **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.

23.9 **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.

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

Address for Notices to NWEA:

NWEA

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

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

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

23.12 **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.

23.13 **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.

23.14 **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.

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

NWEA:

SUBSCRIBER name and address: (please print)

By: _____
Geri Cohen, CFO & EVP, Corporate Services

By: _____

Printed Name: _____

Title: _____

Date: _____

Date: _____