



SALES ORDER

Order Date: 04/09/2024
Order #: 00095801

Start Date: 07/01/2024
End Date: 06/30/2025

Prepared For

Account Name: Fayette County Public Schools
Agency Code: 2374
Primary Contact: Brooke Stinson
Email: brooke.stinson@fayette.kyschools.us

Customer Information

Fayette County Public Schools
1126 Russell Cave Road
Lexington, KY 40505
United States

Bill-To Information

Fayette County Public Schools
1126 Russell Cave Road
Lexington, KY 40505-3412
United States

NWEA Sales Point of Contact

Lindsey Skirtich
lindsey.skirtich@nwea.org

Products & Services

Product	Sales Price	Quantity	Total Price
MAP Reading Fluency Add-on for Bundle price (incl. English & Spanish)	\$6.00	9,000	\$54,000.00
MAP Growth K-12	\$12.00	28,000	\$336,000.00
Growth Report + 1hr Virtual Consulting	\$4,000.00	2	\$8,000.00

Subtotal	\$398,000.00
Estimated Tax	\$0.00
Grand Total	\$398,000.00

Invoicing Information

Unless otherwise specified, payment terms are Net 30. Remittance instructions will be included with your invoice.

Until this Sales Order is signed, the pricing is valid for 30 days from the Order Date listed at the top of this document. Please confirm the billing address or specify changes to your Sales Point of Contact.

For a copy of the latest NWEA division W-9, it is available at <https://support.hmhco.com/s/article/Billing-and-Invoices>. Click on "Requesting a W-9" and select "NWEA".

The Tax ID for NWEA, a division of Houghton Mifflin Harcourt Publishing Company, is 04-1456030.



Terms and Conditions

This Sales Order is between Customer and NWEA, a division of Houghton Mifflin Harcourt Publishing Company, and is subject to the HMH Standard PreK-12 Terms of Purchase located at <https://www.hmhco.com/terms-of-purchase> (the "Agreement") for the Products and Services listed above. By signing this Sales Order, you agree you have read, understand, and agree to the Agreement.

Signature

Customer Signature: B. Stinson

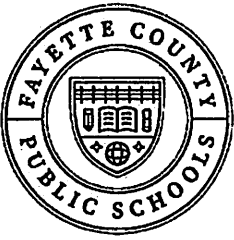
Customer Printed Name: S. Brooke Stinson

Date: 4-11-24

Customer Title: Director of Assessment
PK

msw





450 Park Place
Lexington, KY 40511
Phone: (859) 381-4100
FCPS.net

Board of Education:
Tyler Murphy, Chair
Amy Green, Vice Chair
Amanda Ferguson
Marilyn Clark
Jason Moore

Superintendent:
Demetrus Liggins, PhD

An Equal Opportunity
School District

Memorandum of Agreement: Data Sharing Agreement

PARTIES

1. Fayette County Public Schools ("FCPS") is a public school district organized and existing under and pursuant to the constitution and laws of the State of Kentucky and with a primary business address at 450 Park Place, Lexington, Kentucky 40511.
2. NWEA, a division of Houghton Mifflin Harcourt Publishing Company ("Contractor") provides assessment and learning solutions that precisely measure growth and proficiency—and provide trustworthy insights to help tailor instruction with a primary place of business at 125 High Street, Boston, MA 02110.

PURPOSE AND SCOPE

1. The purpose of this Data Sharing Agreement ("DSA") is to allow FCPS to provide the Contractor with student and teacher personally identifiable information (PII) data and the subsequent processing of that data within Contractor's Assessment Products which are governed by the HMH Standard PreK-12 Terms of Purchase located at <https://www.hmhco.com/terms-of-purchase> (the "Agreement").
2. This Agreement is meant to ensure that both parties adhere to the requirements concerning the use of student information protected under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g, 34 Code of Federal Regulations Part 99; the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §6501-6506, 16 Code of Federal Regulations Part 312
3. This DSA shall be effective as of **7/1/2024** ("Effective Date"), terminating on **06/30/2027** and shall not continue longer than three (3) years.
4. This Agreement is deemed to be made under and shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, pursuant to KRS 61.932 and KRS 365.734.

5. This Agreement excludes any data which is freely and publicly available through other sources.

PROCESS FOR DATA TRANSFER

FCPS and the Contractor will at the appropriate time agree on a file or data sharing process that will involve the encrypted transfer of the data via the public network.

FCPS DUTIES

FCPS shall provide confidential data in compliance with all applicable federal, state, and local privacy laws, rules, and regulations.

CONTRACTOR DUTIES

The Contractor warrants that it will:

1. Use this data only for the joint project outlined above.
2. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations pertaining to data privacy and security, including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.932 et seq.;
3. While in possession of this data maintain it in a secure, non-public location.
4. Allow FCPS, upon FCPS request, access to Contractor's annual 3rd party audit records (ISO or SOC 2, Type II as applicable) for the purposes of completing a review. FCPS agrees to have a non-disclosure agreement in place with Contractor prior to obtaining such files.
5. Ensure that the student data will be accessed, used and manipulated only by those individuals necessary for the successful implementation of the project.
6. Advise all individuals accessing the data on proper procedures for securely maintaining the data.
7. Take appropriate technical and organizational measures against the unauthorized or unlawful accessing of the data.

8. Securely delete all copies of the student data when they are no longer required. "Securely delete" means that industry-standard methods will be taken for the purpose of ensuring that no unauthorized person shall be able to reasonably locate or extract the data after the deletion date.
9. Promptly comply with any request from FCPS to amend, transfer or delete the data or a subset thereof within sixty (60) days.
10. The Contractor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purpose, and shall not sell, disclose, or otherwise process student data for any commercial purpose.
11. To the extent permitted by law, the Contractor assumes all liability for damages which may arise from its use, storage or disposal of the data. FCPS will not be liable to the Contractor for any loss, claim or demand made by the Contractor, or made against the Contractor by any other party, due to or arising from the use of the data by the Contractor, except to the extent permitted by law when caused by the gross negligence or willful misconduct of FCPS, its agents, or subcontractors.
12. Defend, indemnify, and hold harmless FCPS its agencies, officers and employees from any and all third-party claims of any nature, including all costs actual, expenses, and reasonable attorney's fees, which may in any manner result from or arise out of this Agreement, except for claims resulting from or arising out of the FCPS', its agents, or subcontractors' sole negligence. The legal defense provided by the contracting party to FCPS under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the FCPS is necessary. The contracting party also agrees to defend, indemnify, and hold FCPS harmless for all costs, expenses, and attorneys' fees finally awarded by a court or that are included in a settlement entered into by the parties. FCPS agrees to notify the contracting party of such a claim within a reasonable time and agrees to cooperate with the contracting party in the defense and any related settlement.

DATA BREACH ACT

In the event of a confirmed unauthorized release, disclosure, or acquisition of confidential data that compromises the security, confidentiality, or integrity of the confidential data maintained by the Contractor ("Security Breach"), the Contractor shall provide notification to FCPS within seventy-two (72) hours of confirmation of the Security Breach incident. The contractor shall follow the following process:

1. The Security Breach notification described above shall include, at a minimum, the following information to the extent known by the Contractor and as it becomes available:
 - a. The name and contact information of the individual reporting a Security Breach subject to this section
 - b. A list of the types of personal information that were or are reasonably believed to have been subject of a Security Breach.
 - c. If the information is not possible to determine at the time the notice is provided, then either (1) the date of the Security Breach, (2) the estimated date of the Security Breach, or (3) the date range within which the Security Breach occurred. The notification shall also include the date of the notice.
 - d. A general description of the Security Breach incident, if that information is possible to determine at the time the notice is provided.
2. The Contractor agrees to adhere to all applicable federal and state requirements with respect to a data breach related to the confidential data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
3. The Contractor further acknowledges and agrees to have a written incident response plan that reflects industry standards and applicable federal and state law for responding to a data breach, breach of security, privacy incidents or unauthorized acquisition or use of confidential data or any portion thereof, including personally identifiable information and agrees to provide FCPS, upon request, with a summary of said written incident response plan.
4. FCPS shall provide notice and facts surrounding the Security Breach to the affected students, parents or guardians, or staff, as applicable.
5. In the event of a Security Breach originating from FCPS's use of service, the Contractor shall cooperate with FCPS to the extent necessary to expeditiously secure the confidential data.
6. If the Contractor receives personal information as defined by and in accordance with Kentucky Personal Information Security and Breach Investigation Procedure and Practices Act, KRS 61.932, *et seq.*, the Contractor 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 KRS

61.932, *et seq.*, 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;
 - v. A passport number or other identification number issued by the United States government; or
 - 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-affiliate third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
- c. Except as provided in the Agreement, the Contractor shall not re-disclose, without the written consent of FCPS, any "personal information" as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
- d. The Contractor agrees to cooperate with FCPS in complying with the response, mitigation, correction, investigation, and notification requirements of KRS 61.931, *et seq.*
- e. The Contractor agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

7. If the Contractor is a cloud computing service provider (as defined in KRS 365.734(1)(b) as “any person other than an educational institution that operates a cloud computing service”), The Contractor agrees that:
 - a. The Contractor shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services in accordance with the Agreement, unless the Contractor receives express permission from the student’s parent. The Contractor shall work with the students’ school and district to determine the best method of collecting parental permission. KRS 365.734 defines “process” and “student data.”
 - b. Pursuant to KRS 365.734 (2), the Contractor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purpose; and shall not sell, disclose, or otherwise process student data for any commercial purpose.
 - c. Pursuant to KRS 365.734 (3), the Contractor shall certify in writing to the agency that it will comply with KRS 365.734 (2).
8. Within 48 hours of completion of the investigation, the contracting party shall notify the above if the investigation finds that the misuse of personal information occurred or is likely to occur.

NOTICES

All notices or other communication required or permitted to be given pursuant to this agreement may be given via e-mail transmission, or certified mail, sent to the designated representatives below.

The designated representative for FCPS for this DSA is:

Name: Raymond Ross Title: Information Security Manager

Address: 450 Park Place, Lexington, KY 40511

Phone: (859) 381-3886 Email: raymond.ross@fayette.kyschools.us

The designated representative for the Contractor for this DSA is:

Name: Jacob Carroll Title: Sr. Director, Privacy & Information Security

Address: 125 High Street, Boston, MA 02110.

Phone: 503-548-5281 Email: legalservices@hnhco.com

DATA OPT OUT

FCPS may provide a mechanism for students, parents or guardians to opt out of any data sharing agreement with any contracting party. For the avoidance of doubt in the case of an opt-out, FCPS' Systems Administrator has sole control to opt out any students, parents or guardians participation in the Assessment System.

SUCCESSORS BOUND

This DSA is and shall be binding upon the respective successors in interest to Contractor in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that the Contractor sells, merges, or otherwise disposes of its business to a successor during the term of this DSA, the Contractor shall provide written notice to FCPS no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DSA and any obligations with respect to confidential data within the service agreement. FCPS has the authority to terminate the DSA if it disapproves of the successor to whom the Contractor is selling, merging, or otherwise disposing of its business.

IN WITNESS WHEREOF, FCPS and the Contractor execute this DSA as of the Effective Date above.

FCPS Superintendent/Designee (Print full name/title)

FCPS Superintendent/Designee (Signature)

Date

(Handwritten signature in blue ink)

(Handwritten initials in blue ink)

Shawn Weirather, Sr. Director, Proposals

Contracting party representative (Printed)

DocuSigned by:
Shawn Weirather
02F7A16F79514CB...

Contracting party representative (Signature)

April 30, 2024 | 11:14 AM EDT

Date

Bowers, Catherine L

From: Stinson, Brooke
Sent: Tuesday, May 28, 2024 11:26 AM
To: Bowers, Catherine L
Subject: Fw: NWEA Contract 2024-2025
Attachments: scan_brooke.stinson_2024-05-28-11-22-34.pdf

Please submit to Legal for review. This is for the July Planning meeting.

Thank you,

Brooke Stinson, Ed.D.
Director of Assessment | Office of Academic Services
Office: (859) 381-4296 | Mobile: (859) 494-7255

Fayette County Public Schools
John D. Price Administration Building
450 Park Place | Lexington, KY 40511
FCPS.net | Facebook | Twitter

From: Stinson, Brooke <brooke.stinson@fayette.kyschools.us>
Sent: Tuesday, May 28, 2024 11:23 AM
To: Stinson, Brooke <brooke.stinson@fayette.kyschools.us>
Subject: NWEA Contract 2024-2025