

## Exhibit H

### Additional Terms or Modifications

#### IL-NDPA Standard Version 1.0

LEA and Provider agree to the following additional terms and modifications (new language underlined and deleted language ~~strikethrough~~):

1. Section 2 of the preamble is amended as follows

- If checked, LEA and Provider agree to the additional terms or modifications set forth in Exhibit "H".

2. Section 3 of the preamble is amended as follows:

"3. In the event of a conflict between the SDPC Standard Clauses, the State or Special Provisions will control. With respect to the treatment of Student Data, in the event there is a conflict between the terms of the DPA and any other writing including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control."

3. Section 4 of the preamble is amended as follows:

"This DPA shall stay in effect for ~~three years~~ the term of the Service Agreement unless otherwise terminated by the parties. Exhibit E will expire upon expiration of termination of the Service Agreement. ~~3 years from the date the original DPA was signed.~~"

4. Section 1 of Article IV: Duties of Provider is amended as follows:

"**1. Privacy Compliance.** The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security applicable to Provider, all as may be amended from time to time."

5. Section 2 of Article IV: Duties of Provider is amended as follows:

"**2. Authorized Use.** The Student Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in Exhibit A or stated in the Service Agreement and/or otherwise authorized under applicable law ~~the statutes referred to herein~~ this DPA."

6. Section 4 of Article IV: Duties of Provider is amended as follows:

"**4. No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Student Data ~~or any portion thereof, including without limitation, user content or other non-public information and/or personally identifiable information contained in the Student Data~~ other than as directed or permitted by the LEA or this DPA. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information or Student Data disclosed: (i) pursuant to a lawfully issued court order or other legal process; or (ii) to subprocessors performing services on behalf of the

Provider pursuant to this DPA; (iii) pursuant with 20 U.S.C 1232g(b)(1)(I), 34 C.F.R. 99.31(a)(10), 34 C.F.R. 99.36, 34 C.F.R. 99.32 and other applicable law for health or safety emergencies purposes; (iv) pursuant to 20 U.S.C. 1232g(b)(1)(F), 34 C.F.R 99.31(a)(6) and other applicable law to organizations conducting certain studies for educational institutions; (v) to third parties that LEA has authorized; and (vi) Provider legal counsel solely in connection with legal advice and subject to executed confidentiality agreements. Provider will not Sell Student Data to any third party.

7. Section 5 of Article IV: Duties of Provider is amended as follows:

“5. **De-Identified Data**: Provider agrees not to attempt to re-identify de-identified Student Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA, the Service Agreement, and the following purposes: (1) assisting the LEA or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive learning purpose and for customized student learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors, Provider agrees not to transfer de- identified Student Data to any party unless that party agrees in writing not to attempt re-identification. Provider shall obtain the LEA's written approval prior to publishing any document that names the LEA explicitly.. Provider agrees to use De-Identified Data consistent with the terms of the Service Agreement.”

8. Section 6 of Article IV: Duties of Provider is amended as follows:

“6. **Disposition of Data**. Upon written request from the LEA, Provider shall dispose of or provide a mechanism for the LEA to transfer Student Data obtained under the Service Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the LEA is received, Provider shall dispose of all Student Data after providing the LEA with reasonable prior notice in accordance with applicable law. The duty to dispose of Student Data shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The LEA may employ a “Directive for Disposition of Data” form, a copy of which is attached hereto as **Exhibit “D”**. If the LEA and Provider employ Exhibit “D,” no further written request or notice is required on the part of either party prior to the disposition of Student Data described in Exhibit “D.”

9. Section 2, Article V: Data Provisions is deleted in its entirety and replaced with the following:

“2. **Audits**. At least annually Provider will obtain a Service Organization Controls (SOC) 2 Type II audit, or other commercially reasonable security audit, which attests NWEA's security policies, procedures, and controls performed by an independent third party based on recognized industry standards. Provider will make results of such controls review or audit available to LEA upon request and will address noted exceptions.”

10. Section 3, Article V: Data Provisions is amended as follows:

**"3. Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standards set forth set forth in **Exhibit "F"**. ~~Exclusions, variations, or exemptions to the identified Cybersecurity Framework must be detailed in an attachment to **Exhibit "H"**.~~ Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit "F"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who LEA may contact if there are any data security concerns or questions."

11. Section 4(2), Article V; Data Provisions is amended as follows:

"(2) Provider agrees to adhere to all federal and state requirements applicable to Provider with respect to a data breach related to the Student Data, including, when applicable appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach."

12. Section 4(4), Article V; Data Provisions is deleted in its entirety.

13. Section 1 of Article VII: Miscellaneous is deleted in its entirety and replaced with the following:

**"1. Termination.** This DPA will terminate on the date the Service Agreement terminates or expires. Either party may terminate this DPA and the Service Agreement if the other party breaches any material terms of this DPA and such breach is not cure within 30 days of notice."

13. Section 3 of Article VII: Miscellaneous is amended as follows:

**"3. Priority of Agreements.** This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all privacy statutes applicable to services provided by Provider. With respect to the treatment of Student Data, in the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence. In the event of a conflict between Exhibit H, the SDPC Standard Clauses, and/or the Supplemental State Terms, Exhibit H will control, followed by the Supplemental State Terms. Except as described in this paragraph herein, all other provisions of the Service Agreement, including, without limitation, any license rights, limitation of liability or indemnification provisions, shall remain in effect."

14. Section 6 of Article VII: Miscellaneous is deleted in its entirety and replaced with the following:

**"6. Governing Law.** THIS DPA WILL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF THE LEA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES."

15. Definition of Student Data in Exhibit C, Definitions is amended as follows:

**"Student Data:** Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or

online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. ~~Student Data includes Meta Data.~~ Student Data further includes "personally identifiable information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Student Data as specified in **Exhibit "B"** is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized, ~~or~~ De-identified Information, or anonymous usage data regarding a student's use of Provider's services."

16. Section 4 of Exhibit G is amended as follows:

"4. **Limitations on Re-Disclosure.** The Provider shall not re-disclose Student Data to any Third Party or affiliate without the express written permission of the LEA or pursuant to court order, unless such disclosure is otherwise permitted under SOPPA, ISSRA, FERPA, ~~and~~ MHDDCA, applicable law, this DPA or the Service Agreement. In the event a Third Party, including law enforcement or a governmental entity contacts the Provider with a request or subpoena for Student Data in the possession of the Provider, the Provider shall redirect the Third Party to seek the data directly from the LEA if allowed under order. In the event Provider is compelled to produce Student Data to a Third Party in compliance with a court order, Provider shall notify the LEA at least five (5) ~~school~~ calendar days in advance of the court ordered disclosure and, upon request, provide the LEA with a copy of the court order requiring such disclosure."

16. The following is hereby added to the end of Section 6 of Exhibit G:

"Notwithstanding the foregoing, in the event of multiple requests, Provider shall have a commercially reasonable time to respond to LEA."

17. Section 10 of Exhibit G is deleted in its entirety and replaced with the following:

"10. **Reimbursement of Expenses Associated with Security Breach.** In the event of a Security Breach that is attributable to the Provider, the Provider shall pay direct and actual damages arising from the Security Breach for the following: (i) notification to parents of those students whose Student Data was the subject of the Security Breach if required by applicable law; (ii) notification to regulatory agencies or other entities if required by applicable law; and (iii) credit monitoring to those student subject to the Security Breach if required by law."

18. The first paragraph of Section 11 of Exhibit G is deleted in its entirety and replaced with the following:

"Provider will delete or transfer to LEA all Student Data if the information is no longer needed for the purposes of the Services Agreement within 30 days of Provider being made aware that such information is no longer needed.

19. Section 13 of Exhibit G is amended as follows:

"13. **Subcontractors.** Provider shall provide the LEA with a list of any subcontractors to whom Student

Data may be disclosed or a link to a page on the Provider's website that clearly lists any and all subcontractors to whom Student Data may be disclosed. ~~This list shall, at a minimum, be updated and provided to the LEA by the beginning of each fiscal year (July 1) and at the beginning of each calendar year (January 1)."~~