

## Program Agreement

This Program Agreement (this “Agreement”) is between The Achievement Network, LTD., a Massachusetts nonprofit corporation with a principal place of business at One Beacon Street, Boston, Massachusetts 02108 (“ANet”) and the Partner listed below (“Partner”). Each of ANet and Partner may be referred to herein individually as a “Party” or collectively as the “Parties.” This Agreement includes, collectively, (1) this Cover Sheet, (2) the attached Program Description Page, (3) the attached Partner Data Page, and (4) the attached Standard Terms and Conditions.

<b>Partner: Making Waves Academy Charter</b>
Address: 4123 Lakeside Drive, Richmond, CA 94806
Phone: (510) 262-1511

<b>Invoicing Contact: Damon Edwards</b>	Invoicing Email: dedwards@mwacademy.org
---	---

<b>Effective Date:</b> The earlier of (a) the date this Agreement is last signed below, and (b) the provision of services by ANet to Partner hereunder.	
<b>Program Dates:</b> July 1, 2020 - June 30, 2021	
<b>Fees and Payment Schedule:</b>	
Program Fee:	\$ <u>50,000.00</u>
Assessment Format:	Online Assessments
Online Assessment Fee:	\$ <u>6,000.00</u>
Additional Student Fee:	\$ <u>6,600.00</u>
Total Fees:	\$ <u>62,600.00</u>
<b>Total Payment:</b>	<b>\$ <u>62,600.00</u></b>
<b>Payment Information:</b>	
50% of Fees due by July 15, 2020	\$ <u>31,300.00</u>
Balance of Fees due by September 15, 2020	\$ <u>31,300.00</u>

Each of the Parties has caused this Agreement to be executed on its behalf by its duly authorized representatives as of the Effective Date and agrees that an electronic signature of a duly authorized representative constitutes a valid signature for such Party.

### PARTNER

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### THE ACHIEVEMENT NETWORK, LTD.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Program Description:** ANet will provide:

**1. ONLINE PLATFORM**

Access for every teacher and administrator to ANet’s online platform myANet, containing

a. RESOURCES

- i. Planning – Resources, protocols and templates to facilitate planning, including the ANet Schedule of Assessed Standards, Standards and Objectives Guides aligned to rigorous learning Standards, and example lesson or instructional plans
- ii. Professional Learning materials - sessions, videos, and virtual learning modules that provide guidance on planning from texts and standards and teaching and learning cycle practices
- iii. Platform materials - screencasts and guides to using features found on myANet

b. ASSESSMENT MATERIALS

- i. Up to 4 regularly scheduled interim assessments in Mathematics for grades 5,6,7,8
- ii. Up to 4 regularly scheduled interim assessments in English Language Arts for grades 5,6,7,8
- iii. Quiz Tool access – Assessment tool for teachers

c. REPORTING AND ANALYSIS

- i. Online Reports containing analysis of scheduled interim assessment results (the “Reports”), which include:
  - 1. Partner student summaries by whole school, class, grade and student level
  - 2. Item analysis by grade
  - 3. Partner Network comparisons and out of Network comparisons available through <https://my.achievementnetwork.org>. A “Network” includes all ANet Partner schools assigned to Partner’s Network. “Partner’s Network” includes all schools sharing the same Schedule of Assessed Standards as Partner.

**2. INTERIM ASSESSMENT LOGISTICS AND SUPPORT**

- a. Electronic delivery for all scheduled interim assessment materials and answer sheets
- b. If purchasing paper-based assessments:
  - i. Printing of paper assessments as determined by Partner (additional fees apply)
  - ii. FedEx pick-up at school site for paper assessment answer sheets
  - iii. Scanning and scoring for multiple choice portions of assessment answer sheets
- c. If purchasing online assessments:
  - i. Coordinating set-up for access to online assessments including login-ins
  - ii. Scoring for machine scored portions of assessment
- d. Logistics training for key personnel at school site
- e. Ongoing support via phone and email

**3. TRAINING AND COACHING**

- a. Partner specific coaching/training sessions (as agreed to between ANet’s coach and Partner)
  - i. 30 coaching interactions
- b. Coaching interaction topics are focused by the Partner’s instructional priorities and practice level and vary depending on Partner needs
- c. The focus of coaching interactions may include but are not limited to any of the following:
  - i. Beginning of Year meetings (late spring/early summer or late summer: set focus and priorities for the year; map out overall approach for coaching interactions
  - ii. Partnership Kick-Off Meeting: orient teachers and leaders around partnership, instructional purpose of assessments, and tools

- iii. Classroom observations with school leadership
- iv. Planning Support with leaders/Instructional Leadership Team (based on need)
  - v. Data Meeting Support with leaders/ILT (based on need)
  - vi. Observations of adapted instruction with school leadership
  - vii. Mid-Year and End of Year Meetings to monitor and review progress

#### **4. NETWORK EVENTS**

- a. Each ANet Network may offer additional optional specific professional learning events throughout the school year for Partner and other ANet partner schools to access. The exact offering number and type will vary by Network.
- b. Events may include but are not limited to the following:
  - i. Professional learning series: A professional learning series is an opportunity to bring leaders together to learn from each other and from ANet facilitators on a topic.
  - ii. Network meeting: An opportunity to bring schools together across the network to learn from each other and from ANet facilitators (typically offered fall/winter and/or spring). These events often provide opportunities for sharing best practices across schools.
  - iii. Learning walk: An opportunity to bring participants together in schools to learn from each other through observation and debrief.
  - iv. Artifact review: An opportunity to bring leaders together to look at teacher plans and/or student work from classrooms where practice is shifting as a result of the content shared through professional learning.

#### **5. PARTNER RESPONSIBILITIES**

- a. Partner will work with its information technology team to ensure that emails from 'achievementnetwork.org' are not blocked or filtered as spam.
- b. Partner will provide to ANet within six (6) weeks of the beginning of the applicable school year teacher information for all ANet-involved teachers, including (1) name, (2) grade and subject taught, and (3) email address, updated as necessary to reflect changes in the staffing structure.
- c. Partner will provide to ANet by the end of the applicable calendar year school-level targets for state assessments.

Note: Due to the current pandemic, ANet is able and prepared to provide its services virtually. ANet will take into account CDC guidance, state and local regulations and guidance, Partner's health and safety COVID-19 response plan and its and Partner's internal policies. If the parties agree that on-site work is necessary, ANet will provide its staff with the requisite Personal Protective Equipment ("PPE") prior to commencing on-site work and require its staff to wear such PPE and to follow all applicable Partner health and safety procedures at all times while on Partner's site. ANet reserves the right to discontinue on-site work and perform such services to Partner virtually at any time if ANet determines in good faith that cessation of on-site visits is necessary to protect the health and safety of its personnel.

**Partner Data:**

Partner will provide the following information:

**1. For the year prior to the Program Start Date, and all years during the Program (Optional):** a. *To be*

*provided when available:*

- i. State assessment outcomes (1) by student, including student demographic information, scaled scores, and proficiency levels, and (2) by grade, including number of students at each proficiency band and total number of students tested.
- ii. Student outcomes when available, including (1) mobility rate, (2) retention rate (students “held back”), and (3) graduation or progression rate.

b. *To be provided by the end of the applicable calendar year, or when available:*

- i. School-level demographics, including (1) total enrollment, (2) percentage of students in each race/ethnic category, (3) percentage ELL/FEP/LEP/NEP, (4) percentage special education/students with disabilities, (5) percentage FRL, and (6) Title I status.

**2. For all years during the Program:**

a. *To be provided within six (6) weeks of the beginning of the applicable school year:*

- i. Required Student information, including (1) first name, (2) last name, (3) birthdate or SASID, (4) grade. This information should be updated regularly within the online platform to reflect changes in the student body.
- ii. Required Enrollment information, including (1) class name, (2) subject, (3) teacher first name, (4) teacher last name, (5) teacher email for access to myANet
- iii. Optional Student Information, including (1) race/ethnicity, (2) FRL, ELL/FEP/LEP/NEP, special education status

## Program Agreement

## Standard Terms and Conditions

### BACKGROUND

ANet offers a program consisting of educational services and materials, including an online platform (the “Platform”), curriculum and teaching resources, assessment materials, assessment analysis, training and coaching and network events, as described on the Program Description Page (collectively, the “Program”). Partner desires to use the Program in accordance with the terms and conditions set forth herein.

### 1. THE PROGRAM

1.1 Program: ANet agrees to implement the Program for Partner during the Term. Partner agrees to commit the resources and personnel necessary to fully participate in the Program.

1.2 Use Rights: Subject to the terms of this Agreement and effective as of the Program Start Date (as defined on the Cover Sheet), ANet hereby grants to Partner the following use rights, during the Term:

(a) *Access to the Platform*: a non-exclusive, nontransferable right to access and use the Platform, solely for Partner’s internal education-related purposes in connection with the implementation of the Program.

(b) *Assessment Materials*: a non-exclusive, nontransferable license to use, reproduce and distribute solely to Permitted Users (as defined below) the Assessment Materials (as defined on the Program Description Page) provided to Partner during the Program, solely for Partner’s internal education-related purposes in connection with the implementation of the Program.

(c) *Resources*: a non-exclusive, non-transferable license to use and reproduce in hard copy form the Resources (as defined on the Program Description Page) provided to Partner during the implementation of the Program, solely for Partner’s internal, informational purposes related to Partner’s educational mission.

(d) *Other Downloadable Content*: with respect to such additional content and materials that are owned by or licensed to ANet and made available for download by Partner through proper use of the Platform (collectively, “Additional Content”, and together with the Assessment Materials and Resources, “ANet Content”), a

nonexclusive, non-transferable license to download a copy of any portion of such Additional Content, and use such Additional Content solely for Partner’s internal education related purposes in connection with the implementation of the Program.

1.3 Permitted Users. “Permitted Users” shall mean Partner’s personnel who have a professional need to know or need to access the Platform and ANet Content in connection with the implementation of the Program. ANet will either issue to Partner or authorize a Partner administrator to create and issue to each Permitted User, a user identification number and/or password for access to and use of the Platform. Partner and its Permitted Users are responsible for maintaining the confidentiality of all user identification numbers and/or passwords and for ensuring that each user identification number and/or password is used only by the Permitted User to which it was issued. Partner shall be solely responsible for the Permitted Users’ compliance with this Agreement, and for any and all activities that occur under Partner’s account by Partner personnel. Partner will restrict Permitted Users from sharing passwords. Partner will immediately notify ANet of any unauthorized use of Partner’s account or any user identification number and/or password, or any other breach of security known to Partner. ANet will immediately notify Partner of any unauthorized use of Partner’s account or any user identification number and/or password, or any other breach of security known to ANet. Partner will ensure that it has obtained any and all necessary and appropriate consents from students and parents to (a) provide student personally identifying information to ANet, and (b) establish student accounts and student access to the Platform. ANet will have no liability for any liability arising from Partner’s failure to comply with the terms set forth in this Section.

1.4 Restrictions. The rights and licenses set forth in Section 1.2 are granted subject to the following restrictions: (a) The Platform and ANet Content shall be used or accessed only by Permitted Users;

(b) Results of the Assessment Materials may not be used for the purposes of evaluating or determining the employment status of personnel of Partner;

(c) Partner shall not, directly or indirectly, and Partner shall not encourage or assist, or knowingly permit any User to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code or source code of the Platform; (ii) modify, translate, or create derivative works based on any element of the Program or the Platform; (iii) license, sublicense, sell, resell, rent, lease, distribute, assign, or transfer its rights to use the Platform or any elements of the Program, or otherwise commercially exploit or make available to any third party any portion of the Platform or Program; (iv) use the Program for timesharing purposes, to process data on behalf of third parties, or otherwise for the benefit of any person or entity other than for the benefit of Partner and Permitted Users at Partner's facility; (v) remove any proprietary notices from any materials furnished or made available to Partner; (vi) publish any evaluation of the Platform without ANet's prior written consent; (vii) use the Platform for any purpose other than its intended purpose; (viii) use or access the Platform for the benefit of any facility or location other than the Partner's primary facility; (ix) circumvent or otherwise interfere with any user authentication or security of the Platform, or disrupt the integrity or performance of the Platform; (x) attempt to gain unauthorized access to the Platform or its related systems or networks or any ANet Content; or (xi) use the Platform to store or transmit infringing, libelous, or otherwise unlawful or tortuous content or material, or to store or transmit content or material in violation of any rights of any third party.

1.5 Ownership; Reservation of Rights. Subject only to the rights expressly granted to Partner under this Agreement, as between ANet and Partner, all rights, title and interest in and to the Platform and the ANet Content, and any other ANet materials furnished or made available hereunder, and all modifications and enhancements thereof, including all copyright rights, patent rights and other intellectual property rights in each of the foregoing, will remain with and belong exclusively to ANet or ANet's licensors and providers, as applicable.

1.6 Feedback. The Parties acknowledge that Partner or Permitted Users may, from time to time, provide to ANet ideas, feedback and suggestions about the Platform

(collectively, "Feedback"). ANet and its licensors and providers shall be free to use such Feedback as they see fit without obligation of any kind to Partner.

## 2. PARTNER MATERIALS; PARTNER DATA; PARTNER GENERATED CONTENT

2.1 Partner Materials and Partner Data. "Partner Materials" means any and all information or materials provided to ANet by Partner and its employees in connection with the implementation of the Program, including, without limitation, the Partner Data and student performance results on the scheduled interim assessments (as defined on the Partner Data Page).

2.2 Provision of Partner Materials. Partner agrees to provide ANet with all Partner Materials necessary for ANet to implement the Program, including without limitation the Partner Data. Such Partner Materials shall be provided promptly when requested or otherwise agreed by the Parties, provided that the Partner Data shall be provided in accordance with the timing set forth on the Partner Data Page. Partner acknowledges that timely provision of such Partner Materials is essential to the success of the Program.

Partner represents to ANet that it has all necessary rights to provide such Partner Materials (including the Partner Data) to ANet.

2.3 Access to Partner Data Through State and Other Agencies. Partner agrees to allow relevant agencies, including but not limited to the state education agency or local education agency to directly release registration, demographic and performance data for Partner to ANet as permitted by applicable law.

2.4 License to Partner Materials. Subject to the terms and conditions of this Agreement, Partner hereby grants to ANet a worldwide, non-exclusive, revocable, assignable, royalty free, license to use, reproduce, distribute, display and create derivative works of Partner Materials in connection with the implementation of the Program, but no personally identifiable information shall be included in any derivative work other than derivative works that are solely used by ANet pursuant to Section 2.7 .

2.5 Reports. Partner acknowledges and agrees that Partner Data, and the student performance on the scheduled interim assessments at the grade, school and organizational level, may be disclosed, published, distributed and otherwise used by ANet in Reports (as defined on the Program Description Page) provided to Partner. Such Reports and the disclosure thereof shall comply at all times with Section 5 of this Agreement, as well as with the Family Educational Rights and Privacy Act of 1974 ("FERPA") and applicable state and federal laws and regulations

2.6 Aggregate Data. During or following the Term, ANet and its subcontractors shall have the right to disclose, distribute and use any Partner Materials and any other information input into the Platform (“Input Data”) that does not identify any such data as being related to any specific Partner student or teacher (“Aggregated Data”), as part of an aggregate, de-identified set of data. Partner acknowledges that ANet and its subcontractors may (a) compile Aggregated Data based on Partner Materials and Input Data, and (b) distribute such Aggregated Data to third parties consistent with Section 2.7.

2.7 Use of Partner Materials. Except as otherwise set forth in this Agreement, ANet shall not use, disclose or distribute to third parties Partner Materials other than (a) as part of Aggregated Data pursuant to Section 2.6, (b) to its subcontractors who require such information in connection with the implementation of the Program under the terms of this Agreement, provided that such subcontractors shall not disclose the Partner Materials or information contained therein to any other party without Partner’s prior written consent, (c) to third parties for research and evaluation purposes on behalf of ANet, provided that such third parties shall not disclose any of Partner’s personally identifiable student or employee information to any other party without Partner’s prior written consent, or (d) for its own internal professional development or evaluative purposes to help improve ANet products and services, provided that ANet shall not disclose the Partner Materials or information contained therein to any other party without Partner’s prior written consent except as provided in this Section or in Section 2.6. For clarity, the results of any research described in the foregoing clause (c) may be disclosed, published, distributed and otherwise used by ANet without restriction, provided that Partner Materials are not revealed in such disclosure, publication, distribution or use other than as part of Aggregated Data. Partner hereby grants to ANet and its subcontractors a non-exclusive, revocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Partner Materials and Input Data in connection with the uses described in the foregoing clauses (a)-(d).

## 2.8 Partner Generated Content.

(a) Partner is solely responsible for all “Partner Generated Content” (defined below) and Users use of the Partner Generated Content. ANet does not guarantee the accuracy, integrity or quality of Partner Generated Content. ANet obtains no ownership or control rights to Partner Generated Content. By using ANet’s services, Partner approves of ANet’s right to access, retain, use and disclose Partner Content solely for the purpose of providing Services hereunder.

(b) Partner represents and warrants that it has all necessary rights and authority in the Partner Generated Content to permit ANet to display such content on the Platform without infringing the rights of any copyright owners, violating any applicable laws or violating the terms of any license or agreement to which it is bound.

(c) During the Term, Partner permits ANet the right to publicly perform, publicly display and digitally perform the Partner Generated Content only on or in conjunction with the use and hosting of the Platform in accordance with the terms of this Agreement. Partner grants no rights other than expressly granted herein, and ANet will not exceed the scope of its license hereunder.

(d) “Partner Generated Content” means any Quiz Tool items or other third party content, tools or resources imported or posted by Partner to the Platform.

2.9 Student Records. With respect to any access by ANet to any “Education Records” (as such term is defined in FERPA) held by Partner under or in connection with this Agreement, ANet shall be acting as a legal agent and shall be deemed to be a “school official” (as such term is defined under FERPA) of Partner. As between the Parties, any Education Records protected by FERPA submitted to ANet by Partner in connection with this Agreement shall be deemed the Confidential Information of Partner subject to Section 5 and under the ownership and direct control of Partner. ANet agrees not to disclose any FERPA protected Education Record to any third party except as required by FERPA or as authorized or permitted by Partner in writing or in accordance with this Agreement. ANet will implement or cause to be implemented technical and administrative security measures to protect the confidentiality, integrity and security of the Education Records in compliance with all applicable laws as further detailed in Section 2.10 below.

2.10 Data Security. ANet certifies that it and, after reasonable investigation, diligence and inquiry, its vendors, consultants, contractors and other parties engaged by ANet in contact with Partner Materials have established, implemented, and will maintain comprehensive information security programs detailing administrative, technical, and physical safeguards designed to ensure the security and confidentiality of Partner Materials, protect against anticipated threats or hazards to the security and integrity of Partner Materials, protect against unauthorized access to or use of Partner Materials, and provide for the proper disposal of Partner Materials, all as required by applicable law and this Agreement. During the Term, Partner reserves the right to assess ANet’s controls and security practices to ensure compliance with these requirements one time per calendar

year, upon 14 business days' advance notice to ANet and during ANet's normal business hours. All costs incurred by Partner for such assessments shall be at Partner's expense.

### 3. FEES; PAYMENT TERMS

3.1 Fees; Payment Terms. All payments for fees as set forth on the Cover Sheet shall be made by Partner or, if applicable and as set forth on the Cover Sheet, by a sponsoring entity on behalf of Partner, to ANet in accordance with the payment schedule set forth on the Cover Sheet. Payments are non-refundable and cannot be pro-rated. ANet reserves the right to terminate services related to the Program and this Agreement if any payment is more than thirty (30) days past due.

3.2 Printing. Partner is responsible for all printing and printing costs associated with duplicating the Assessment Materials prior to the administration of each assessment, as set forth on the cover sheet.

### 4. TERM, TERMINATION

4.1 Term. Unless earlier terminated as described below, the term of the Agreement shall commence on the Effective Date and continue for the period set forth on the Cover Sheet (the "Term").

4.2 Termination. Each Party may terminate this Agreement upon written notice in the event the other Party commits any material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach.

#### 4.3 Obligations on Termination.

(a) Upon the expiration or termination of this Agreement, Partner shall (a) cease using the Platform and all ANet Content, and (b) promptly return to ANet or, at ANet's option, destroy, all copies of any ANet Content in Partner's possession or control.

(b) During the 30 days following termination or expiration of this Agreement, ANet will not erase any Partner Generated Content and Partner may retrieve Partner Generated Content from the Platform without assistance from ANet. ANet will subsequently destroy or fully return to Partner all Partner Materials in its possession following receipt Partner's written request.

4.4 Survival. The following Sections shall survive any expiration or termination of this Agreement: Sections 1.5, 1.6, 2.4, 2.5, 2.6, 2.7, 2.8, 2.10, 3, 4.3, 4.4, 5, 6, 7, 8, 9, 10, 11 and

### 5. CONFIDENTIALITY

#### 5.1 Confidential Information.

(a) *Definition*: "Confidential Information" means any and all information or data, regardless of whether it is in tangible form, disclosed orally or in writing, by either Party (the "Disclosing Party") to the other Party (the "Receiving Party"), (a) that the Disclosing Party has identified as confidential or proprietary (either orally or in writing), or (b) such information which is reasonably understood by a reasonable person to be confidential or proprietary information of the Disclosing Party; provided, however, that in any event ANet's Confidential Information shall include (i) all information relating to the Program, including without limitation the ANet Content and the Platform, (ii) the terms of this Agreement, including without limitation pricing information, and (iii) Education Records of Partner's students.

(b) *Exclusions*: Information and data will not be deemed "Confidential Information" if such information: (i) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

(c) *Obligations*: The Parties shall use reasonable measures to protect the secrecy of, avoid disclosure and unauthorized use or reproduction of the other Party's Confidential Information. Without restricting or otherwise limiting the exercise by a Party of the rights and licenses expressly granted to it under this Agreement, Confidential Information may be disclosed to only (1) such employees and consultants of the Parties as may have a need to know such information in connection with the exercise of its rights and performance of its obligations under this Agreement, and (2) legal or financial advisors of the Parties, provided that such employees and consultants are bound by written agreements, which shall include a provision prohibiting the re-disclosure of the Confidential Information if required under FERPA, and advisors are bound by ethical duties, in each case respecting such Confidential



Information in accordance with the terms of this Section 5.1.

## 6. REPRESENTATIONS, WARRANTIES AND EXCLUSIONS

6.1 Representations and Warranties. ANet represents and warrants to Partner that ANet shall provide the Program in all material respects as described in the in this Agreement and shall implement the Program in a professional and workmanlike manner and in accordance with generally accepted industry practices and applicable state and federal laws and regulations. Each Party represents and warrants to the other Party that such Party has the required rights, power and authority to enter into this Agreement and to grant all rights, authority and licenses granted hereunder.

6.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PROGRAM (INCLUDING WITHOUT LIMITATION THE PLATFORM AND ANET CONTENT) IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND ANET DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. PARTNER ACKNOWLEDGES THAT ANET DOES NOT WARRANT THAT THE PROGRAM (INCLUDING WITHOUT LIMITATION THE PLATFORM) WILL BE PROVIDED IN AN UNINTERRUPTED OR ERROR FREE FASHION AT ALL TIMES, OR THAT THE PROGRAM WILL MEET PARTNER'S REQUIREMENTS.

## 7. INDEMNIFICATION

7.1 Indemnification by ANet. ANet shall defend, indemnify and hold harmless Partner, its Board, directors, officers, employees or agents at its expense from and against any claim, action, suit or proceeding (each, a "Claim") brought against Partner, its Board, directors, officers, employees or agents by any third party to the extent such Claim arises from or is related to a breach of this Agreement or violation of applicable California or federal law or regulation by ANet or any of its employees or agents, and ANet shall pay all costs including reasonable attorneys' fees and costs, damages, penalties, fines, judgments, awards, liabilities, expenses and damages ("Losses") arising from or incurred by Partner, its Board, directors, officers, employees or agents as a result of any such Claim. If Partner's proper use of the Platform or any ANet Content in accordance with the terms of this Agreement constitutes or in ANet's opinion might be held to constitute infringement as set forth above, ANet may, at its option, (a) modify the Platform or ANet Content, as applicable, so as to avoid infringement or misappropriation; (b) procure the right for Partner to continue to use the Platform or ANet Content, as applicable; or (c) terminate the Agreement and provide to

Partner a refund of the prorated fees. The foregoing indemnity shall not apply to any Claim solely based upon or arising from the negligence or willful misconduct of Partner or its agents or employees.

7.2 Indemnification by Partner. Partner shall defend, indemnify and hold harmless ANet, its Board, directors, officers, employees or agents at its expense from and against any Claim brought against ANet, its Board, directors, officers, employees or agents by any third party to the extent such Claim arises from or is related to a breach of this Agreement or violation of applicable California or federal law or regulation by Partner or any of its employees or agents, and Partner shall pay all Losses arising from or incurred by ANet, its Board, directors, officers, employees or agents as a result of any such Claim. The foregoing indemnity shall not apply to any Claim solely based upon or arising from the negligence or willful misconduct of ANet or its agents or employees.

7.3 Additional Terms. The foregoing obligations in this Section 7 are subject to the Party that is seeking indemnification (a) promptly notifying the other Party in writing of such Claim; (b) promptly giving the other Party the right to control and direct the investigation, preparation, defense and settlement of such Claim; and (c) giving reasonable assistance and cooperation as necessary for the defense of same at the indemnifying party's expense. The indemnifying party will not be responsible for any settlement made by the party seeking indemnity without the indemnifying party's written consent, which will not be unreasonably withheld or delayed, nor will the indemnifying party settle any claim under this Section 7 without first obtaining the written consent of the party seeking indemnity, which will not be unreasonably withheld or delayed.

## 8. LIMITATION OF LIABILITY

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 7, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST DATA, OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 7, A PARTY SHALL NOT BE LIABLE FOR ANY DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE FEES PAID OR PROPERLY PAYABLE BY PARTNER UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRECEDING THE TIME OF ANY CLAIM.

9. **(RESERVED)**

10. **PUBLICITY**

10.1 ANet shall be entitled to (a) identify Partner as a customer of ANet in any marketing, promotional or sales literature, or in any other form of publicity, and (B) publicize, by news release or other public announcements, the existence of an arrangement between the Parties.

10.2 Partner hereby grants permission to take photographic, audio and video recordings of Partner employees, contractors and consultants during sessions with Partner and Partner and Network events after obtaining Partner's and such employees', contractors' and consultants' written consent in advance. ANet will use such photographic, audio and video recordings only for the purposes of education, professional learning, advertising, promotion, marketing, and/or public relations.

11. **DISPUTES**

Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled as follows: a representative of the senior management of each Party shall meet to attempt to resolve such disputes. If a dispute cannot be resolved within ten (10) business days, either Party may make a written demand for mediation. Within thirty (30) days after such written notification, the Parties shall meet for one (1) day with an impartial mediator. The costs and expenses of the mediator shall be shared equally by the Parties. If the dispute is not resolved by mediation, the dispute shall be settled by binding arbitration conducted in accordance with the JAMS procedures pursuant to its Streamlined Arbitration Rules and Procedure, by a single arbitrator, in Contra Costa County, California. The arbitrator shall be selected as provided in the Streamlined Arbitration Rules and Procedure. The arbitrator may not award non-monetary or equitable relief of any sort. The arbitrator shall have no power to award damages inconsistent with this Agreement. No discovery shall be permitted in connection with the arbitration unless it is expressly authorized by the arbitrator upon a showing of substantial need by the Party seeking discovery. All aspects of the arbitration shall be treated as confidential. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a Party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. The result of the arbitration shall bind the Parties, and judgment on the arbitrator's award may be entered in any court having jurisdiction. Each Party shall bear

its own costs of the arbitration. The fees and expenses of the arbitrator shall be shared equally by the Parties.

12. **GENERAL**

12.1 Relationship. Nothing in this Agreement shall be construed to place the Parties in an agency, employment, franchise, joint venture, or partnership relationship. Neither Party will have the authority to obligate or bind the other in any manner.

12.2 Governing Law, Jurisdiction. All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the laws of California without regard to its rules of conflict of laws. Subject to and without limiting Section 11 of this Agreement, each of the Parties hereto hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of California and of the United States of America located in the California for any litigation among the Parties hereto arising out of or relating to this Agreement pursuant to Section 12.9.

12.3 No Assignment. Neither Party may assign this Agreement, in whole or in part, or, in the case of Partner, sublicense any of the rights granted herein, in each case without the prior written consent of the other Party, provided, however, that either Party (the "Assigning Party") may assign this Agreement without the written consent of other Party to an entity succeeding to all or substantially all the assets and business of the Assigning Party by merger or purchase, provided that such entity expressly assumes all of the terms and conditions of this Agreement. Any attempted assignment, delegation or transfer by an Assigning Party in violation hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on the Parties and their successors and assigns. For clarity, ANet may subcontract any of its obligations hereunder to a third party.

12.4 Severability. In the event that any provision of this Agreement is found to be unenforceable, such provision will be reformed only to the extent necessary to make it enforceable, and such provision as so reformed (and all other provisions) will continue in effect, to the extent consistent with the intent of the Parties as of the Effective Date.

12.5 Force Majeure. ANet shall not be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control, including, without limitation, earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially

declared) or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree. If ANet is not able to perform under this Agreement due to force majeure, Partner will be released from its obligation to pay any costs/charges under this Agreement until such time as ANet is able to recommence performance again, and Partner shall be entitled to a proportional refund of any costs/charges under this Agreement for the period of ANet's nonperformance due to force majeure.

12.6 Amendment; Waiver. This Agreement may not be amended or modified, in whole or part, except by a writing signed by duly authorized representative of both Parties. No provision or part of this Agreement or remedy hereunder may be waived except by a writing signed by a duly authorized representative of the Party making the waiver. Failure or delay by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

12.7 Notices. All notices under or related to this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when: (i) delivered personally; (ii) sent by confirmed telecopy or other electronic means; (iii) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth on the Cover Sheet or such other addresses designated pursuant to this Section 12.7.

12.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations.

12.9 Remedies. Each Party retains all rights not expressly granted hereunder and any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy available under this Agreement or otherwise. Because a breach of any obligations set forth in Sections 5 (Confidentiality), 1.5 (Ownership) and 9 (Non-Solicitation) will irreparably harm a party and substantially diminish the value of a Party's proprietary rights or its Confidential Information, the Parties agree that if either Party believes in good faith that

the other Party has or intends to breach any of its obligations thereunder, the other Party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights hereunder, including without limitation protection of its proprietary rights. The Parties agree that a Party need not invoke the procedures set forth in Section 11 in order to seek injunctive or declaratory relief.

12.10 Insurance. Without in anyway limiting ANet's liability pursuant to the Agreement, ANet will maintain policies of workers compensation, automobile liability, general liability, professional liability and errors and omissions applying to the services provided by ANet to Partner for the entire duration of the Term. If any policies are written on a claims-made form, ANet agrees to maintain such coverage continuously throughout the Term and, without lapse, for a period of at least one year beyond the expiration of the Term, such that should occurrences during the Term give rise to claims made after expiration of the Term, such claims shall be covered. ANet's workers compensation insurance policy as required by this Agreement shall meet the minimum legal requirements and include employer's liability insurance in the amount \$1,00,000 per accident for bodily injury and disease. Such insurance (other than workers' compensation) shall have a minimum combined single limit of liability of no less than one million dollars (\$1,000,000) per occurrence and a general aggregate limit of at least two million dollars (\$2,000,000). Such insurance shall be issued by an insurance company or companies authorized to engage in such insurance business in the State of California and rated not less than A-VIII in Best's Insurance Guide. In addition, ANet shall maintain a policy of cyber liability coverage, with a minimum combined single limit of liability of no less than one million dollars (\$1,000,000) per occurrence and a general aggregate limit of at least two million dollars (\$2,000,000). ANet shall provide thirty (30) days advance written notice to Partner of cancellation, non-renewal or reduction in coverage. General Liability and Business Automobile Liability policies must provide the following: (1) name as Additional Insured Making Waves Academy, its Board, officers, authorized volunteers, agents, and employees and the Contra Costa County Office of Education; and (2) that such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of these Terms and that such policies apply separately to each insured against who claim is made or suit is brought. Before any payment is due to ANet by Partner, ANet must provide Partner with the certificates of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative, and additional insured policy endorsements in form (CG 20 10 11 85 or its equivalent) as applicable, evidencing all coverages set forth above and shall furnish complete copies of policies

promptly upon Partner's request. ANet also understands and agrees that Partner may withhold payment for services or products for any violation of or noncompliance with these insurance obligations.

12.11 Education Code Section 49073.1. ANet will not use any information in an Education Record for any purpose other than those required or specifically permitted by this Agreement. ANet will not use personally identifiable information in an Education Record to engage in targeted advertising. Students may retain possession and control of their own student-generated content and transfer student-generated content to a personal account, to the extent consistent with the functionality of the Platform, by submitting a written request to Partner. After receiving written authorization from Partner, ANet will provide the option to transfer student account data into a family account (to be paid for by the student or parent/guardian separately). A parent, legal guardian, or eligible student may review personally identifiable information in the student's records and correct erroneous information by notifying the Partner in writing. Upon Partner's written request to ANet, ANet will work with Partner to correct any erroneous student information and provide such information to Partner via the Platform and Partner will make such information available to the parent, legal guardian or eligible student for review. ANet will, within thirty (30) days of receipt of a written request from Partner, provide written notice that student personally identifiable records have been destroyed and/or deidentified. This provision shall survive termination of the Agreement.