

# NETWORK FOR EDUCATOR EFFECTIVENESS

Agreement  
University of Missouri  
Assessment Resource Center  
and  
the District

This Agreement is between The Curators of the University of Missouri, a public corporation and institution of higher education organized and existing under the laws of the State of Missouri, through and on behalf of the Assessment Resource Center ("ARC") in the College of Education (collectively "University") and

School District Name:	
School District Address:	

("District") relating to District's subscription to the University's web-based tool called the Network for Educator Effectiveness ("NEE Tool"), and the District's use of the following elements:

- NEE Teacher, NEE Specialist, and NEE Principal Evaluation Measures
- NEE Professional Responsibilities Evaluation
- NEE POWERHUB Peer Observation Measure

The initial term ("Initial Term") of this Agreement is as indicated below.

This Agreement is a single year agreement of one "Annual Period" beginning on July 1, 2025 ("Effective Date") and ending on June 30, 2026. Payment of an "Agreement Fee" of \$ \_\_\_\_\_ for the Initial Term is due before September 1, 2025 or this Agreement shall terminate automatically on September 1, 2025.

This Agreement is a multi-year agreement consisting of \_\_\_\_\_ "Annual Periods" beginning on July 1, \_\_\_\_\_ ("Effective Date") and ending on June 30, \_\_\_\_\_. Payment of an "Agreement Fee" of \$ \_\_\_\_\_ for the Initial Term is due before September 1, \_\_\_\_\_ or this Agreement shall terminate automatically on September 1, \_\_\_\_\_.

The standard terms and conditions set forth in Exhibit A form part of this Agreement, and are incorporated by reference. To the extent there is a conflict between this Agreement and Exhibit A, Exhibit A controls.

**Part I.** As part of this Agreement, the University agrees to do the following:

1. Provide access to the web-based NEE Tool for all End Users (as defined in Exhibit A). Each End User's level of access to NEE will be based on the role identified for each End User (e.g., principal, teacher) by the District.
2. Provide annual evaluator trainings to the District.

**Part II.** As part of this Agreement, the District agrees to do the following:

1. In the case of an agreement with an Initial Term of one Annual Period, make timely payment of the "Agreement Fee" to the University based on the fee schedule available and published effective March 1st of the current calendar year at <https://nee-onlinemanager.missouri.edu/FeeSchedule> by the first September 1 date after the Effective Date. Published fees are based on the latest student head count for the District reported to the applicable state Department of Education as of the Effective Date. For agreements having an Initial Term consisting of multiple Annual Periods, the overall Agreement Fee will also be based on the number of Annual Periods of the Initial Term and the latest student head count for the District reported to the applicable state Department of Education as of the Effective Date. This Agreement Fee must be paid by the first September 1 date after the Effective Date. However, no portion of the Agreement Fee applicable to the Initial Term shall be refundable or reduced based upon any reduction in student head count during the Initial Term.
2. Submit electronically (import) all requested rosters that identify End Users and their NEE Role, as soon as available but not later than the first September 1 date after the Effective Date, and to maintain and update throughout the year and establish a policy to ensure secure access.
3. Ensure that each person identified by Customer as an End User has completed the trainings required by the University to become an End User.
4. As more generally set forth in Exhibit A, grant permission to the University the following rights regarding all District NEE Data (including data at the District, school, and End User level) that the District provides to NEE through the NEE Tool or other means, during the term of this Agreement and thereafter. This includes the right of the University:
  - a. To digitally store the District NEE Data on University servers;
    - i. District NEE Data entered into NEE's digital storage space is not confidential as between the District and NEE.
    - ii. The District represents and warrants that it is legally authorized to enter the District NEE Data into NEE's digital storage space. The District represents and warrants that it has gained any and all necessary releases and authorizations pertaining to District NEE Data entered into NEE's digital storage space, including but not limited to parental releases for student information and/or images.
    - iii. The District acknowledges that by entering District NEE Data into NEE's digital storage space, no confidential, fiduciary, contractually implied or other relationship is created between the District and the University.
  - b. To identify the District as a NEE Member;
  - c. To use District NEE Data for monitoring, analysis, evaluation and research;
    - i. Reports that may identify the District NEE Data will only be viewable internally by NEE staff for purposes such as quality assurance, technical support, and improvement of NEE.
    - ii. Reports, publications, or presentations that may be published or disseminated publicly will not include any identifying information of the District, school, or any individual End User.
    - iii. NEE encourages researchers to use the de-identified and/or aggregated data to improve education. No personally identifying information will be shared.
5. As more generally set forth in Exhibit A, acknowledge that the intent of the NEE Tool is

to enhance the effectiveness of educators by highlighting areas for growth and that NEE is not purporting to be the District's exclusive tool of evaluation for purposes of promotion, discipline, or termination. The District further acknowledges that any choice to incorporate the NEE Tool into its evaluation processes is at the sole discretion, responsibility, and liability of the District. The District is responsible for results obtained from the use of the NEE Tool and that the University and its service units have no liability in relation to what the District chooses to do with the District NEE Data obtained from the use of the NEE Tool; nor can the University or its units be liable for fraud or fraudulent misrepresentation knowingly or unknowingly undertaken by the District or any of its End Users.

6. Designate a District staff member as the NEE Point of Contact who will serve as the primary conduit for communication related to this Agreement, the NEE Tool, and training and support and services related to membership in NEE. When requested, the NEE Point of Contact will channel NEE communication to appropriate District staff, including communications to End Users or District Technical Support Staff.
7. Consider participation in opportunities initiated by the University, by member Districts, or others, to enhance the performance and content of NEE based on End User experiences, to share best practices for its implementation, to share learning from analysis of NEE and other data, and other forms of knowledge sharing to the NEE members.

For the District:

\_\_\_\_\_  
Superintendent of Schools

University of Missouri:

*Thomas Hairston*

\_\_\_\_\_  
Director, NEE

*Chase Bunger*

\_\_\_\_\_  
Chase Bunger, OSPA

*Michele Kennett*

\_\_\_\_\_  
Michele Kennett, Division of Research

EXHIBIT A: NEE TOOL SUBSCRIPTION AGREEMENT  
STANDARD TERMS AND CONDITIONS

**Article I. Definitions**

Section 1.01 “Customer” means the legal entity identified as the District in the first paragraph of page 1 of this Agreement.

Section 1.02 “Customer Data” means all information, data, or material which is uploaded to, transferred through, posted, processed, entered, collected by, collected on behalf of, or generated using the NEE Tool by Customer. “Customer Data” includes, for example, all documents, spreadsheets, text, and reports generated by an End User using the NEE Tool.

Section 1.03 “End User” means an individual employed by Customer:

- (a) Who has been assigned a Customer Role by the Customer; or
- (b) Who has been supplied a user identification and password by Customer (or by University at Customer’s request); and

Customer is solely responsible for assigning each End User a level of access. Further, failure on the part of any individual identified by Customer as being an End User to receive the required University annual trainings will result in access privileges to the NEE Tool being denied or revoked to the individual.

Section 1.04 “Intellectual Property” means, without limitation, all patents, trademarks, trade names, copyrights, trade secrets, and confidential information, further including all ideas, inventions, original works of authorship, mask works, technical data, know how, machines, research, plans, products, processes, services, software, developments, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing material and plans, logos, artwork, trade dress, service marks, business methods, and business information, whether or not protectable by applicable patent, copyright, trade name, trademark, trade secret or other laws.

Section 1.05 “NEE Tool” means the on-line tools available at <https://nee-onlinemanager.missouri.edu> and any associated software, including any new releases, modifications, updates, improvements or enhancements to the web site. The NEE Tool includes all computer code, graphics, user interfaces, page headers, images, footers, links, illustrations, graphics, animations, video clip, multimedia clips, text and audiovisual content used.

Section 1.06 “Third Party Content” means any information, data, or materials, including without limitation documents, spreadsheets, text, images, audiovisual media, designs, patterns, entries, web pages, reports, and similar material – regardless of whether in visual, written, audible, or electronic form, which is owned or controlled by third parties that is displayed, included, or made available using the NEE Tool. Third Party Content may be either (1) internally accessible using the NEE Tool or (2) externally accessible, for example, by providing a link to such Third Party Content.

**Article II. Grant of License**

Section 2.01 License to Customer and End Users.

- (a) For the fee set forth at <https://nee-onlinemanager.missouri.edu/FeeSchedule> and

otherwise subject to the terms and conditions of this Agreement, University hereby grants to Customer and its End Users a limited, non-exclusive, non-transferable, non-sublicensable license to access and use, on a software-as-a-service (SaaS) basis only, the NEE Tool for Customer's non-commercial internal purposes only during the term of this Agreement. Continuing access to the NEE Tool is contingent upon compliance with the terms and conditions of this Agreement.

- (b) End Users may download, print and store selected portions of the material on the NEE Tool under the licenses set forth in Section 2.01(a) provided such End User:
  - (i) only uses copies of the NEE Tool material (other than Customer Data provided by such End User) for End User's own personal, non-commercial, educational, training, evaluation, and professional development purposes; and
  - (ii) does not copy, reproduce or post any NEE Tool material (other than Customer Data provided by such End User) publicly, including but not limited to through dissemination on any network computer, or broadcast or redistribution of the material (other than Customer Data provided by such End User) in any media or through any channel; and
  - (iii) ensures the security and confidentiality of all account logins and passwords assigned to the End User in order to limit access to the assigned End User; and
  - (iv) does not modify or alter the NEE Tool material (other than Customer Data provided by such End User); and
  - (v) does not delete, obscure or change any copyright, trademark or other proprietary notice or disclaimers contained in the NEE Tool material (other than Customer Data provided by such End User); and
  - (vi) attributes the source of the NEE Tool material if the material states the name of the author (in the case of a copyrightable work), the performer (in the case of a performer's performance), the maker (in the case of a sound recording); and
  - (vii) complies with any purposes or conditions for which such NEE Tool material was uploaded, created, or otherwise made.

Section 2.02 License to University. Customer hereby grants to University a perpetual, irrevocable, worldwide, royalty-free, sublicensable, transferable, non-exclusive license to:

- (a) use, reproduce, display, adapt, modify, create derivative works of, translate, or use the Customer Data for purposes of quality assurance, technical support, and improvement of the NEE Tool; and
- (b) use, reproduce, display, adapt, modify, create derivative works of, translate, use, or distribute any aggregated anonymized Customer Data for reporting, research, academic, or educational purposes, provided that the same: (i) does not contain any personally identifying information; and (ii) does not identify Customer or any particular End User in anyway.

Section 2.03 Revisions. All annual fees, if applicable, set forth in the current University price schedule may be revised by University on an annual basis.

Section 2.04 Nonpayment. Any amount not received by University when due and not disputed in good faith shall be subject to a late fee of 1.5% per month, or the maximum charge permitted by law, whichever is less. If Customer's account is overdue (except with respect to charges disputed in good faith), in addition to any of its other rights or remedies, University reserves the right to suspend use and access to the NEE Tool provided to Customer and its End Users, without liability

to Customer, until such amounts are paid in full.

Section 2.05 End User Agreement. Customer understands and agrees that in order to gain access to and use the NEE Tool, all End Users must create an account with the University and comply with the terms of this Agreement.

Section 2.06 Security. Customer is responsible for ensuring that all End Users maintain security by safeguarding passwords. Further, because of the sensitive and confidential nature of the Customer Data stored by University using the NEE Tool, Customer agrees to inform its End Users that they must prevent unauthorized access to the NEE Tool, including maintaining security of passwords.

Section 2.07 Liability for End Users. Customer is responsible and liable for any and all acts and omissions of its End Users made in connection with this Agreement. Without limiting the foregoing, Customer agrees to be jointly and severally liable for any and all acts and omissions of its employees, consultants, and independent contractors made in connection with this Agreement.

Section 2.08 End User Access Not Transferable. Unless otherwise agreed in writing, an individual End User's right to use the NEE Tool is not transferable to another individual End User. It is a material breach of this Agreement for Customer (or its End Users) to allow unauthorized access to the NEE Tool.

### **Article III. Customer Responsibilities**

Section 3.01 Representations and Warranties. Customer, on behalf of its employees, consultants, and independent contractors, represents and warrants that Customer:

- (a) has the authority and capacity to enter into this Agreement and to carry out and perform its obligations as set forth herein;
- (b) shall be solely responsible for ensuring that its access and use of the NEE Tool by its End Users does not violate any laws to which Customer is subject or violate or infringe the rights of any third party, including without limitation those involving spamming, privacy, obscenity, or defamation, copyright, trademark, patent, child protective email address registry, FERPA, and export control;
- (c) shall not remove any proprietary notices or labels of University or third parties with respect to Third Party Content;
- (d) shall be solely responsible for the fairness, adequacy, accuracy, completeness, quality, integrity, reliability, truthfulness, and legality of all Customer Data and of the means of acquisition of the Customer Data;
- (e) shall provide to University such information and data as is reasonably necessary to enable University to perform its obligations under this Agreement;
- (f) shall use commercially reasonable efforts to prevent unauthorized access to or use of the NEE Tool, and notify University promptly of any such unauthorized access or use;
- (g) shall not use the NEE Tool to store or transmit any unlawful, hateful, infringing, harmful, threatening, abusive, harassing, offensive, libelous, defamatory, slanderous, immoral, pornographic, indecent, obscene, fraudulent, discriminatory, or objectionable or unacceptable material;
- (h) shall not use the NEE Tool to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs;

- (i) shall not interfere with or disrupt the integrity or performance of the NEE Tool;
- (j) shall not attempt to gain unauthorized access to the NEE Tool or its related systems or networks, including any access to the NEE Tool code;
- (k) shall not, except as expressly permitted in this Agreement, permit any third party to access the NEE Tool by anyone beyond those authorized End Users;
- (l) shall not copy, distribute, reproduce, publish, license, create derivative works based on, transfer, rent, lease, sublicense, modify, adapt, translate, reverse engineer, decompile, or disassemble any or a portion of the NEE Tool;
- (m) shall not advertise or solicit funds for goods or services using the NEE Tool;
- (n) shall not, except for Customer's own internal non-commercial use, copy, frame, or mirror any part or content of the NEE Tool; and
- (o) shall not build a service or web site that competes with the NEE Tool.

Section 3.02 University Rights. Customer is solely responsible for the Customer Data as part of the NEE Tool. University has the right to monitor the Customer Data but shall have no obligation to do so. If University, in its sole discretion, deems any Customer Data to be unlawful, hateful, infringing, harmful, threatening, abusive, harassing, offensive, libelous, defamatory, slanderous, immoral, pornographic, indecent, obscene, fraudulent, discriminatory, or objectionable or unacceptable, University has the right, but not the obligation, to remove or deny access to such Customer Data. Customer agrees that University shall not be liable to Customer for any action taken by University to remove or restrict access to such Customer Data, nor for any action taken to restrict access to any Customer Data posted in violation of any law, regulation or rights of a third party. University reserves the right to take all reasonable actions to remove or restrict access to any such Customer Data, including restriction, suspension or termination of Customer's access to NEE Tool and/or deletion of the Customer Data in question.

Section 3.03 Equipment. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the NEE Tool, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, long distance or local telephone service (collectively, "Equipment"). Customer shall be responsible for ensuring that such Equipment is compatible with the NEE Tool and complies with all configurations and specifications provided by University, which may be amended from time to time.

#### **Article IV. Proprietary Rights and Customer Content**

Section 4.01 University Ownership of IP in the NEE Tool. Customer acknowledges that University shall own all right, title, and interest to the NEE Tool and all Intellectual Property therein. Without limiting the foregoing, the software, workflow processes/protocols, indicator scoring guides, designs, know-how and other technologies provided by University as part of it allowing access to the NEE Tool are the proprietary property of University and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with University and its licensors. University reserves all rights unless expressly granted in this Agreement.

Section 4.02 Customer Data. All Customer Data is and will be, as among University, and End User, and Customer, the property of Customer or End User. The Customer Data is licensed to University in accordance with Section 2.02.

Section 4.03 Feedback. University has and will have a perpetual, irrevocable, worldwide,

royalty-free, sub-licensable, transferable, non-exclusive license to use or incorporate into the NEE Tool, without any obligation to compensate Customer in any way, any comments, suggestions, enhancement requests, recommendations or other feedback provided by Customer, its End Users, and any other Customer employees or agents relating to the NEE Tool.

Section 4.04 Disclaimer of Third Party Content. University makes no representations or warranties, and expressly disclaims all implied warranties and conditions with respect to all Third Party Content, and will not be liable to Customer or any End User for any damage, cost, loss, expense or liability suffered or incurred by Customer as a result of its use or inability to use any Third Party Content.

Section 4.05 Access to Third Party Content. The NEE Tool features and functionalities that interoperate with Third Party Content are entirely dependent upon the continuing availability of such Third Party Content and any Intellectual Property related thereto. If a third party ceases to make available any such Third Party Content on which any aspect of the NEE Tool depends, then University may alter or cease providing such features or functionality without prior notice to Customer or any End User. Similarly, University will alter or cease providing features or functionality if required to do so by applicable laws. In addition, Third Party Content that may be accessed from, displayed on, or linked to from the NEE Tool are not available in all languages or in all countries or regions. University makes no representation that the NEE Tool or such Third Party Content is appropriate or available for use in any particular location. To the extent that any End User chooses to use or access the NEE Tool and/or Third Party Content, each End User does so as his/her own initiative and shall be solely responsible for compliance with any applicable laws, including but not limited to applicable local laws. University reserves the right to change, suspend, remove, or disable access to any Third Party Content at any time without notice. In no event will University be liable for the removal of or disabling of access to any such Third Party Content. University may also impose limits on the use of or access to certain Third Party Content, in any case and without notice or liability.

## **Article V. Confidential Information**

### **Section 5.01 Confidentiality**

- (a) Customer understands and acknowledges that Customer Data is not confidential as between Customer and University. Customer represents and warrants that it is legally authorized to enter the Customer Data using the NEE Tool and that Customer has gained any and all necessary releases and authorizations pertaining to the Customer Data, including but not limited to parental releases for student information or images and compliance with the Family Educational Rights and Privacy Act (FERPA). Customer acknowledges that by entering data using the NEE Tool, no confidential, fiduciary, contractually implied or other relationship is created between Customer and University.
- (b) In accordance with the license granted in Section 2.02(b) for all Customer Data used for reporting, research, academic, or educational purposes, including any academic publications, University shall remove any personally identifying information in the Customer Data.
- (c) Customer understands and agrees that University may store the Customer Data indefinitely and may also disclose the same to third parties, without notice to Customer or the End User if required by law or in the good faith belief that such disclosure is reasonably necessary to (a) enforce or comply with this Agreement or



(b) respond to claims that the Customer Data violates the rights of any third party.

Section 5.02 Sunshine Law. Customer acknowledges that University is subject to the Missouri Sunshine Act, 610 RSMo. All Customer Data shall be owned by Customer and to the extent permitted by law, shall be deemed to constitute “individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment” of Customer under RSMo 610.021(13).

**Article VI. Disclaimer of Warranties**

Section 6.01 No Editorial Control. Customer acknowledges that University exercises no editorial control over Customer Data. The views and opinions expressed in such information do not reflect those of University. University makes no warranties or representations regarding the fairness, adequacy, accuracy, completeness, quality, integrity, reliability, truthfulness, and legality of such information.

Section 6.02 No Warranty. Notwithstanding anything else contained in this Agreement, University does not represent or warrant that:

- (a) the features or functionality contained in the NEE Tool (including the NEE Tool) will meet the requirements of Customer or any of its End Users;
- (b) any particular results can or will be achieved from the use of the NEE Tool;
- (c) any educational, training, evaluation, or professional development programs contained in the NEE Tool are suitable for any purpose;
- (d) the operation or availability of the NEE Tool will be uninterrupted or error-free; or
- (e) any requirements of any civil or governmental authority to which Customer is subject shall be met.

Section 6.03 No Warranty. THE NEE TOOL (AND ANY THIRD PARTY CONTENT) IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR WARRANTIES OF NON-INFRINGEMENT. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, UNIVERSITY MAKES NO WARRANTIES AND SHALL NOT BE LIABLE FOR THE USE OF THE NEE TOOL, INCLUDING WITHOUT LIMITATION ANY INTERRUPTION OR ERROR IN THE NEE TOOL UNDER ANY CIRCUMSTANCES.

**Article VII. Limitations of Liabilities and Remedies, and Indemnities**

Section 7.01 Limitation of Liabilities. IN NO EVENT SHALL UNIVERSITY ITS CURRENT OR FORMER CURATORS, AGENTS, EMPLOYEES, AND AFFILIATES BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), STRICT LIABILITY, OR IN TORT (INCLUDING NEGLIGENCE OR OTHERWISE), AND INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, ATTORNEYS' AND EXPERTS' FEES, REGARDLESS OF WHETHER UNIVERSITY MAY BE ADVISED, MAY HAVE OTHER REASON TO KNOW, OR IN FACT MAY KNOW OF THE POSSIBILITY, INCLUDING BUT NOT LIMITED TO ALL CLAIMS ARISING OUT OF THIS AGREEMENT, ALL USE OF THE NEE TOOL, OR WITH RESPECT TO THE INSTALLATION, IMPLEMENTATION, CUSTOMIZATION, USE, INABILITY TO USE, OPERATION OR SUPPORT OF THE NEE TOOL. Without limiting the

foregoing, Customer acknowledges that it is solely responsible and liable for any results obtained from the use of the NEE Tool and that University has no liability in relation to what Customer chooses to do with the Customer Data obtained from the use of the NEE Tool.

Section 7.02 Remedies: Aggregate Liability. In no event will the total aggregate liability of University to Customer for any and all claims relating to this Agreement, based upon any legal theory, including but not limited to breach of warranty, breach of contract (including fundamental breach), negligence, other tort claims or strict liability exceed the last Annual Period fee paid prior to the first act or omission giving rise to the claim.

Section 7.03 Indemnity. To the extent permitted by applicable law, Customer will defend, indemnify, and hold harmless University, its current or former, curators, agents, employees, and affiliates from any and all claims, actions or demands, including, without limitation, reasonable legal fees, accounting fees, and expert fees, arising out of, related to, or in conjunction with (a) the use of the NEE Tool by Customer and its End Users, directors, agents, employees and representatives, including but not limited to those based on any fraudulent, invalid, duplicate, incomplete, unauthorized, or misleading information submitted or reported, (b) any unauthorized use, access or distribution of the NEE Tool caused, in whole, or in part, by Customer or its End Users; (c) any breach of any term, condition, obligation, covenant, representation, or warranty by Customer or its End Users, (d) any violation of any law or regulation by Customer or its End Users (including but not limited to any rights of privacy), (e) the infringement, misappropriation or violation by Customer or its End Users of any patent, copyright, trademark, trade secret or other proprietary or privacy right of a third party, or (f) the exercise or any rights granted to Customer under this Agreement.

#### **Article VIII. Term and Termination**

Section 8.01 Term. The term of this Agreement is set forth in the second paragraph on page one of this Agreement.

In the case where the Initial Term is a single Annual Period, this Agreement shall automatically renew effective July 1st of each calendar year for additional successive Annual Periods unless the District provides written notice of its intent not to renew this Agreement at least 90 days prior to the end date (June 30th) of then current Annual Period.

In the case where the Initial Term consists of more than one Annual Period, this Agreement shall automatically renew for successive Annual Periods effective the first July 1st date after the Initial Term and on each July 1st date thereafter unless the District provides written notice of its intent not to renew this Agreement at least 90 days prior to the end date (June 30th) of the Initial Term or the then current Annual Period.

The Agreement Fee for each renewed Annual Period shall be the fee available and published effective March 1st of the then current calendar year at <https://nee-onlinemanager.missouri.edu/FeeSchedule> based on the latest student head count for the District reported to the applicable state Department of Education. District must pay the Agreement Fee for each renewed Annual Period before September 1 of that period.

Section 8.02 University's Right to Terminate. University may, in its sole discretion, immediately terminate this Agreement, suspend Customer's ability to access the NEE Tool (in whole or in part), or suspend the delivery of the NEE Tool (in whole or in part) if Customer or its End User commits a breach of the terms of this Agreement or any other agreement between

Customer and University, and such breach has not been rectified within twenty (20) days of receipt of notice by Customer requiring that Customer remedy such breach. In the case of an agreement with an Initial Term consisting of more than one Annual Period, University may terminate this Agreement during the Initial Term as to any upcoming Annual Periods in the event the student head for District increases by more than 25% from the reported student head count as of the Effective Date.

District's Right to Terminate. In the case where the Initial Term consists of more than one Annual Period, District may give notice during any current Annual Period of its intent to terminate this Agreement as to all subsequent Annual Periods by delivering written notice of intent to terminate to University at least 90 days prior to June 30th of the then current Annual Period. If Customer provides such timely notice, the Agreement shall terminate effective June 30th of the then current Annual Period. University will refund to District only fees applicable to Annual Periods subsequent to the end of the then current Annual Period during which timely notice of intent to terminate is received. Refund amounts for timely terminated subsequent Annual Periods will be calculated as follows \_\_\_\_\_.

Section 8.03 No Waiver. Notwithstanding termination of this Agreement for any reason, such termination will not relieve either party from any obligation or liability that has accrued under this Agreement to the date thereof, or from the performance of its obligations under this Agreement to the date thereof.

Section 8.04 Survival. All provisions of this Agreement that would reasonably be expected to survive the termination or expiration of this Agreement shall do so, including Section 2.02 (License to University), Section 3.01 (Representations and Warranties), Section 4.01 (University Ownership of the NEE Tool), Section 4.03 (Feedback), Section 4.04 (Disclaimer of Third Party Content), Section 4.05 (Access to Third Party Content), Article V (Confidential Information), Article VI (Disclaimer of Warranties), Article VII (Limitation of Liabilities, Remedies, and Indemnities), Article VIII (Term and Termination) and Article IX (Miscellaneous).

Section 8.05 Customer Data Portability Upon Termination. Upon termination of this Agreement, University will make only the raw classroom observations, student surveys, professional development plans, unit of instructions, specialist organizers, and principal evaluation measures contained in the Customer Data available to Customer for export or download solely in a Microsoft Excel (.XLS) or Common Separated Values (.CSV) file format through August 31. For clarity, the University will not provide any customizable reports, or written components of any organizer instruments after termination. After August 31, University will have no obligation to maintain or provide any Customer Data to Customer. The University, may in its discretion, extend the time period for accessing the foregoing Customer Data for an additional fee.

**Article IX. Miscellaneous**

Section 9.01 Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not constitute a part hereof.

Section 9.02 Polls/Feedback. University, may, from time to time (but no more than quarterly), conduct polls of End Users to ascertain and measure the use and enjoyment of the NEE Tool by End Users. Customer agrees to encourage its End Users to cooperate with University by providing the information requested by University in order for University to improve and

expand the NEE Tool.

Section 9.03 Publicity. Customer agrees that University will have the right to use the name and logos of Customer in its University's promotional materials (including, without limitation, on any web sites owned or controlled by University), and to indicate that Customer is a subscriber of the NEE Tool.

Section 9.04 Trademarks. "Network for Educator Effectiveness", "NEE", and "EDHUB" are trademarks, service marks, and/or trade names of The Curators of the University of Missouri. All other company names, brand names, trademarks and logos are the property of their respective owners. Nothing contained on the NEE Tool or this Agreement will be construed as granting any license or right to use any trademarks (whether by implication or otherwise), including "Network for Educator Effectiveness", "NEE", and "EDHUB" except with the express written permission of University or such other party that may be the owner thereof.

Section 9.05 Force Majeure. University shall not be liable for any delay or failure to perform its obligations under this Agreement resulting from any cause beyond its reasonable control, including but not limited to fires, explosions, earthquakes, floods, strikes, work stoppages or slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of civil or military authorities, delays by carriers, suppliers or materials shortages, and interruption or failure of telecommunication of digital transmission links or internet slowdowns or failures. Notwithstanding the foregoing, each party acknowledges and agrees that the foregoing does not operate so as to excuse it from prompt payment of any and all sums due by it to the other in accordance with terms and conditions of this Agreement.

Section 9.06 Sovereign Immunity. Customer agrees that nothing in this Agreement is intended or shall be construed as a waiver, either express or implied, of any of the immunities, rights, benefits, defenses or protections provided to University under governmental or sovereign immunity laws from time to time applicable to University.

Section 9.07 Notices. Any notice permitted or required under this Agreement must be in writing. Unless otherwise specified herein, any such notice will be deemed delivered: (a) on the day of delivery in person; (b) one day after deposit with an overnight courier, fully prepaid; (c) on the date sent by facsimile transmission; or (d) on the date sent by e-mail, if confirmed with a "read receipt" if made to the following:

If to University:  
Associate Director  
Sponsored Programs Administration  
University of Missouri  
601 Turner Avenue  
Turner Avenue Garage, Room 200  
Columbia, MO 65211

with a copy to:

Director  
Technology Advancement Office  
University of Missouri  
440A Bond Life Sciences Center

Columbia, MO 65211

With a copy to:  
Director  
nee@missouri.edu  
Network for Educator Effectiveness  
College of Education  
University of Missouri  
2800 Maguire Boulevard  
Columbia, MO 65201

If to Customer:

The address set forth for the District in the first paragraph of this Agreement.

Section 9.08 No Waiver. Neither party's failure to enforce strict performance of any provision of this Agreement will be construed as a waiver of any provision or right.

Section 9.09 Relationship of the Parties. This Agreement does not create a partnership, joint venture, agency, franchise, and fiduciary or employment relationship between the parties.

Section 9.10 Assignment. This Agreement is binding upon and shall inure to the benefit of University, its successors and assigns. University may assign this Agreement in connection with a merger or sale of substantially all the assets of the NEE Tool as a business-like unit within University. This Agreement shall not be transferred or assigned, in whole or in part, by Customer without the prior written consent of University, and any attempted transfer or assignment without such consent shall be void.

Section 9.11 Third Party Contractors. University will have the right to engage the services of third party contractors to perform any NEE Tool on its behalf without the prior consent of Customer.

Section 9.12 Further Assurances. University and Customer, from time to time, shall promptly and duly execute and deliver all documents and take such action as may be reasonably necessary or desirable in order to effectively carry out the intent and purposes of this Agreement, to protect the interests of the parties and to establish, protect and perfect the rights, remedies and interests granted or intended to be granted under this Agreement.

Section 9.13 No reliance. Customer hereby acknowledges and agrees that in entering into this Agreement it has not relied on any warranty, representation or undertaking except as expressly set out in this Agreement.

Section 9.14 Injunctive Relief. Customer acknowledges that University will be irreparably harmed by any breach of this Agreement by the unauthorized use of the NEE Tool and, further, that monetary damages may not be a sufficient remedy for such harm. Customer agrees that University shall be entitled, without waiving any other rights or remedies and without further demonstration of irreparable harm or the inadequacy of monetary damages, to obtain injunctive or other equitable relief in the event of any breach of this Agreement by Customer or by Customer's unauthorized use of the NEE Tool.

Section 9.15 Severability. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not

affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreement of the parties herein set forth.

Section 9.16 No Offset. Customer will have no right to set-off or deduct any amount from any subscription fees owing to University under this Agreement or any training fees otherwise due to University.

Section 9.17 Certification. If this Agreement has a total potential value of \$100,000 or more, and if Customer is a company with ten (10) or more employees, then Customer certifies that it, and any company affiliated with it, does not boycott Israel and will not boycott Israel during the term of this Agreement. In this paragraph, the terms "company" and "boycott Israel" shall have the meanings described in Section 34.600 of the Missouri Revised Statutes.

Section 9.18 Entire Agreement. This Agreement, together with the other documents incorporated into this Agreement by reference, constitutes the entire agreement between the parties with regard to the matters dealt with in this Agreement, and supersedes all prior representation, negotiations, understandings and agreements, oral or written, between the parties, with respect thereto.

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