



Renewal Notice for

**Robert E Abbott Middle School**

Service Renewal Date: 2021-07-01

**Created by:**

Allie Flowers  
SchoolMint, Inc.  
Jul 15, 2021

**Prepared for:**

Theresa Plascencia  
Robert E Abbott Middle School



1100 Bertrand Dr. Suite B  
Lafayette, LA 70501  
800.396.1615  
[SchoolMint.com](http://SchoolMint.com)

April 6, 2021

Enclosed, please find your renewal quote for the Whetstone platform for the upcoming 2021-2022 term year. **Please note, there has been an entity change for Whetstone Education, Inc.**

SchoolMint was very excited to welcome Whetstone Education into the SchoolMint family of companies on January 6, 2021. SchoolMint is committed to ongoing investments and innovations in the Whetstone platform. This includes expansion and enhancement of the current platform as well as key investments in the kinds of innovations that will help your district work smarter, overcome more challenges, and empower your effective parent engagement.

For your records, enclosed you will find our current W-9. You will find additional information in your attached renewal. In addition, please update your records to reflect the below information.

**Invoicing contact:**

Email: [AR@schoolmint.com](mailto:AR@schoolmint.com)  
Phone: 800-396-1615 x400

**Remittance address:**

SchoolMint Inc.  
1100 Bertrand Dr., Suite B  
Lafayette, LA 70506

We look forward to a seamless transition to SchoolMint, Inc. If you have any questions about this change, please feel free to contact your Customer Success Manager or [Accounting@SchoolMint.com](mailto:Accounting@SchoolMint.com). Looking forward to our continued partnership.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan MacDonald". The signature is fluid and cursive, with the first name "Bryan" and last name "MacDonald" clearly distinguishable.

Bryan MacDonald  
Chief Executive Officer at SchoolMint



## Whetstone Service Renewal for Robert E Abbott Middle School

We appreciate your loyalty as a SchoolMint customer and look forward to continuing to provide SchoolMint products and services to support your student behavior programs. Please review this document for accuracy and notify us regarding any changes to your student enrollment.

This Renewal Notice is entered into by **SchoolMint, Inc.** ("SchoolMint") and Robert E Abbott Middle School ("Customer") as of 2021-07-01 pursuant to the terms of the initial Whetstone Master Service Agreement (the "Agreement"). The terms of the Agreement are incorporated by reference, as modified and supplemented hereby the terms of this Proforma Invoice. Except as expressly amended and supplemented hereby, the terms of the Agreement shall remain in full effect.

This Order Form shall remain in effect until 2022-06-30 ("Subscription End Date") unless earlier terminated in accordance with the Agreement. By signing below, customer agrees to receive an invoice for the subscription period based on the details of this notification. Should there be specific invoice date or purchase order requirements, please notify us when signing this notification, otherwise you will receive an invoice immediately upon signing.

At the end of each initial subscription term and each subscription term thereafter, SchoolMint shall have the right to increase its prices for the services by up to 5% and will notify client of such increase prior to each renewal.

**To avoid service interruption, please return this signed renewal notification before  
2021-06-30**

**\*\* If a purchase order is being issued, please submit a copy along with this signed notification \*\***

**(Pricing information continued on next page)**



## Whetstone Renewal Quote for Robert E Abbott Middle School

Names of School Sites	Quantity
# of Users	70
Subscription Term	12 months

Product	Qty	Price	Subtotal
Instructional Observation Instructional User, includes non-hosted video hub	70	\$75.00	\$5,250.00
Hosted Video Hub	70	\$15.00	\$1,050.00

**Total** **\$6,300.00**

### Whetstone Usage Summary

To receive a summary of Whetstone account usage information such as user adoption information, please submit your request via email to: [whetstone-cs@schoolmint.net](mailto:whetstone-cs@schoolmint.net)

Thank you for being a loyal SchoolMint, Inc. customer!

1100 Bertrand Drive, Suite B, Lafayette, LA 70506





**Should there be specific invoice date or purchase order requirements, please notify us when signing this notification, otherwise you will receive an invoice immediately upon signing.**

Accepted and agreed by the authorized representative for the party:

Robert E Abbott Middle School

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

Name: Theresa Plascencia

Title: Superintendent

Date: 7/22/21

**Payment Options**

Payments can also be made by bank transfer to:

**Bank Name:** Webster Bank

**Bank Holder:** SchoolMint, Inc.

**Account No.:** 23135570

**ABA/Routing #:** 211170101

Please make all checks payable to:

SchoolMint, Inc.

1100 Bertrand Drive, Suite B

Lafayette, LA 70506

**Terms:** Net 30 days

Credit Card Payments subject to 3.5% convenience fee

Please call 305-749-1891, Option 1

Thank you for being a loyal SchoolMint, Inc. customer!

1100 Bertrand Drive, Suite B, Lafayette, LA 70506



## SUBSCRIPTION AGREEMENT

This Subscription Agreement (the "Agreement") is made effective as of Oct 8, 2020 (the "Effective Date") by and between Whetstone Education, Inc., a Delaware corporation (hereinafter referred to as "We," "Provider," or "Whetstone"), and Waukegan CUSD #60, an Illinois school district, whose principal place of business is located at 1201 N. Sheridan Rd, Waukegan, IL 60085 (hereinafter referred to as "You" / "Your" or "Subscriber" and together with Provider each a "Party" and collectively the "Parties").

This Agreement governs Your use of Provider's services identified during the ordering process, including but not limited to support services provided as the Subscriber of Provider's proprietary Whetstone™ software platform made available online through a unique website instance for Subscriber (the "Website"). The Whetstone™ platform is designed to make classroom observation easier and simplify data analysis so that school and Waukegan CUSD #60 leaders can provide data-driven professional development to educators. The Provider's support services, as outlined below, are included in This Agreement shall also govern services provided through other software developed, operated, and maintained by Provider, or ancillary online or offline products and services provided to You by Provider (collectively, the "Services").

If You are entering this Agreement on behalf of a company or other legal entity, You represent that You have the authority to bind such entity to these terms and conditions. If You do not have such authority, or if You do not agree with these terms and conditions, You must not accept this Agreement and may not use the Services. By accepting this Agreement, You agree to the terms of this Agreement as follows:

### 1. Definitions.

- (a) "Whetstone Technology" means Whetstone's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information) used to provide the Services.
- (b) "Whetstone Data" means any data or information of any kind whatsoever that is created, assembled, bought or stored using the Whetstone Technology, but excluding unaggregated Subscriber Data.
- (c) "Whetstone Reports" means all indices, ratios, analytics, etc. created from the aggregated Subscriber Data using the Whetstone Technology.
- (d) "Subscriber Data" or "Your Data" means electronic data and information submitted by You or Users pursuant to this Agreement and/or while using the Services.
- (e) "Users" means You, Your employees, representatives, consultants, contractors, or agents who are authorized to use the Services and have been supplied user identifications and passwords by You (or by Provider at Your request).
- (f) "Agreement" means this Subscription Agreement.
- (g) "Purchase Order(s)" means the form similar to the Order Form (or such other form as You and Provider may agree to use in place of the Order Form) evidencing the initial subscription for the Services and any subsequent Purchase Orders submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the Parties, each such Purchase Order to be incorporated into and to become a part of this Agreement.

### 2. Use Grant & Restrictions.

- (a) **License to Use Services.** Subject to Your compliance with the terms and conditions of this Agreement, Provider grants You and your Users a non-exclusive, non-transferable, revocable right to access and use the Services. You and your Users may use the Services only for Your own business purposes. User access is subject to acceptance of, and compliance with, the terms and conditions set forth in the Terms of Service and Privacy Policy, accessible at [www.whetstoneeducation.com](http://www.whetstoneeducation.com).
- (b) **Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, Provider reserves all rights, title and interest in and to the Services and associated Whetstone Technology, including all related intellectual property rights. No rights are granted to You hereunder other than as



expressly set forth herein. Provider reserves the right to make changes and updates to the functionality, performance and/or documentation of the Services from time to time.

- (c) **Proprietary Rights in Whetstone Data.** You recognize that Whetstone Data is proprietary and all intellectual property rights in and to the Whetstone Data belong solely to Whetstone. Provider shall possess and retain all right, title, and interest in and to Whetstone Data, which shall include, but not be limited to: (i) the aggregation of Subscriber Data; and (ii) all Whetstone Reports. You further recognize that your authorized Users only have the limited right to view and access Subscriber Data during the course of this Agreement, and any other purported rights to the Whetstone Data and/or Subscriber Data are expressly disclaimed by You upon execution of this Agreement.
- (d) **Non-Circumvention.** You shall not make any attempt to: (i) circumvent the Services, Provider's role and rights with respect to the Services, or the purpose and intent of any Provider agreement; or (ii) avoid the payment of, or otherwise reduce, all or any portion of the payments, fees and charges payable to Provider (whether by simulation, side agreement, or understating the consideration due) unless authorized under Section 6(c) of the Agreement.
- (e) **License Grant For Content.** Subject to the terms of this Agreement, You are granted non-exclusive rights to download and use the content available for download from this Website ("Content"), but only for Your own internal business purposes. You may copy the Content for archival purposes, provided that any copy must contain the original Content's proprietary notices in unaltered form. Without prior written consent, You may not: (i) permit others to use the Content; (ii) modify or translate the Content; (iii) merge the Content with another product; (iv) remove or obscure any proprietary rights notices or labels on the Content; or (v) resell, sublicense, or use the Content for any commercial use or purpose.
- (f) **Prohibited Uses.** You are not authorized to (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services, Whetstone Technology, Whetstone Data, or Content in any way; (ii) copy, modify or make derivative works based upon the Services, Whetstone Technology, Whetstone Data, or Content other than as provided for in this Agreement; (iii) create Internet "links" to the Services or "frame" or "mirror" the Services, Whetstone Technology, Whetstone Data, or Content on any other server or wireless or Internet-enabled device; (iv) access the Services solely for the purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purpose; (v) reverse engineer, decompile, or disassemble the Services or their enabling software for any purpose.

### **3. Use of the Services.**

- (a) **Your Responsibilities.** Subscriber is responsible for all activity occurring under Your User accounts and shall abide by all applicable local, state, national, and foreign, laws, treaties and regulations in connection with Your use of the Services, including those related to data privacy, international communications, and the transmission of technical or personally identifiable data and are responsible for Your Users' compliance with this Agreement.
- (b) **Account Information.** Registration is required for You and Your Users to establish an account at the Website. You agree (i) to provide current, complete, and accurate information about You and Your Users ("Registration Data") as specified by Provider during the onboarding process, and (ii) to maintain and update such Registration Data as required to keep such information current, complete and accurate. You warrant that Your and Your User's Registration Data is and will continue to be accurate and current, and that You are authorized to provide such Registration Data. You and Your Users are responsible for maintaining the confidentiality of all Whetstone login ID(s), password(s), and any additional information that We may provide to You and Your Users regarding Users accessing Your account(s). If You or Your Users knowingly share Your login ID and password with another person who is not authorized to use the Services, this Agreement is subject to termination for cause. You agree to immediately notify us of any unauthorized use of Your, or Your Users, login ID, password, or account or any other breach of security.

### **4. Subscriber Data Ownership.**

- (a) **Subscriber's Rights.** Subscriber possesses and retains all right, title, and interest in and to Subscriber Data. You, not Provider, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of or right to use all Subscriber Data.



(b) **Provider's Access & Use.** Unless it receives Subscriber's prior written consent, Provider: (i) will not access or use Subscriber Data other than as necessary to facilitate the use of the Services, which includes (but is not limited to) the creation of Whetstone Data using aggregated Subscriber Data; and (ii) will not give any third party access to Subscriber Data. Notwithstanding the foregoing, Provider may disclose Subscriber Data as required by applicable law or by proper legal or governmental authority. Provider will give Subscriber prompt notice of any such legal or governmental demand and reasonably cooperate with Subscriber in any effort to seek a protective order or otherwise to contest such required disclosure, at Subscriber's expense.

(c) **Retention & Deletion.** In its handling of Subscriber Data, Provider will maintain technical and physical security safeguards designed to: (i) ensure the security and confidentiality of the data; (ii) protect against any anticipated threats or hazards to the security or integrity of the data; and (iii) protect against any unauthorized disclosure, access to, or use of the Subscriber Data. However, in no event shall Provider be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Subscriber Data. Upon termination of this Agreement or the Services, should You elect not to renew Your Whetstone subscription for a period of at least one Term Year, Whetstone has no obligation to retain any Subscriber Data. You shall have a one-time right to download Subscriber Data related to the Services within one (1) calendar week from the date of termination of this Agreement or the Services; *provided, however*, that You shall have no right to download Subscriber Data or any other data if the termination of this Agreement or the Services was the result of a breach of this Agreement by You.

#### 5. **Term, Services, Fees and Payment.**

(a) **Term.** This Agreement commences on the Effective Date and shall remain in effect until the end of the initial one-year Subscription Term (which shall begin on the Effective Date unless otherwise set forth in a Purchase Order), unless sooner terminated as provided herein (the "Agreement Term").

(b) **Services.** During the Term of this Agreement, Subscriber will have access to the Services included in the particular Subscription Level identified on the Purchase Order.

(c) **Training.** Within sixty (60) days of the Effective Date of this Agreement, or at a time and location mutually agreed to by the Parties, Provider will provide up to ten (10) hours of on-site training services per Subscription Term to platform administrator(s) designated by Subscriber to permit them to operate, administer, and maintain Subscriber's instance of the Whetstone™ platform. Subscriber agrees to pay for any on-site training performed by Provider per the following rate schedule: \$1,000 per Whetstone team member for a one-day training, and \$1,440 per Whetstone team member for a two-day training. If Subscriber opts out of the foregoing on-site training services, Provider will provide Subscriber up to five (5) instances of virtual training services (e.g., direct video training, small group training, webinars, etc.) per Subscription Term. In the event that Subscriber wishes to obtain additional training services, Subscriber and Whetstone shall agree upon a separate statement of work for such additional support services.

(d) **Onboarding.** Subscriber acknowledges that access to the Services during the term of its Subscription (the "Subscription Term") is dependent on Subscriber providing Registration Data pertaining to Subscriber and its Users in a timely fashion. Provider will make commercially reasonable efforts to provide User access to the Services within sixty (60) days from the date that complete Registration Data is provided by Subscriber. Should Provider be unable to provide User access to the Services within sixty (60) days from the date that complete Registration Data is provided by Subscriber, the start date of the Subscription Term shall be delayed until User access to the Services is provided.

(e) **Fees.** Subscriber will pay the annual service fees specified on the Purchase Order. Any renewals shall be at Provider's then-current subscription rates. You shall pay all fees or charges to Your account in accordance with the fees, charges, and billing terms in effect and listed on all Purchase Orders hereunder. All payment obligations are non-cancelable and all amounts paid are nonrefundable. All pricing terms are confidential, and You agree not to disclose them to any third party, except as required under the Illinois Freedom of Information Act.

(f) **New Feature Development.** Subscriber may request universal and/or custom feature development ("Universal Feature Development" and "Custom Feature Development") before and during the Subscription Term limited by the following scope:





- (i) Universal Feature Development is defined as the development of any feature that will add value to all Provider's users and aligns with the Provider's development priorities. Universal Feature Development is completed at the discretion of the Provider.
  - (ii) Custom Feature Development is defined as the development of any feature that will only add value to the Subscriber, (including but not limited to: adding logos, hosting on the Subscriber's internal network, maintaining an out of date version of the Whetstone™ platform for use by the Subscriber, etc.). Custom Feature Development does not include enhancements to current features (e.g., reports, forms), insofar as such enhancements do not change the nature of the feature. A fee will be negotiated for each specific instance of Custom Feature Development. In advance of any fee negotiation, Provider will notify the Subscriber that a request is considered Custom Feature Development, and such development will begin only after the Subscriber agrees to the cost.
  - (g) **Invoicing and Payment.** Unless otherwise specified in a Purchase Order, Provider will invoice Subscriber annually for subscription fees. All invoices will be submitted to the email address provided by You. Amounts due are exclusive of all applicable taxes, levies or duties, which will be Your responsibility, if applicable, and payable in the lawful currency of the United States. Payments are due as provided in the Illinois Local Government Prompt Payment Act, and penalties for late payment shall be as provided in that Act
  - (h) **Annual Audits.** At any time during the Subscription Term, Subscriber may allow new Users to access the Services by acquiring additional user licenses, with the additional user licenses being subject to the annual subscription fees specified on the Purchase Order. Provider shall have the right to audit User access during each Subscription Term and bill Subscriber for any new Users accessing the Services. Payments are due within thirty (30) days of the billing date specified on any supplemental invoice submitted to Subscriber following an audit.
  - (i) **Nonpayment and Suspension.** In addition to the other rights granted to Provider, Provider reserves the right to suspend or terminate this Agreement and User access to the Services if Your account becomes delinquent under the Illinois Local Government Prompt Payment Act.
  - (j) **Early Termination of Multi-year Subscriptions.** Annual subscription fees specified on the Purchase Order shall be payable in US dollars and are non-cancellable and non-refundable. Notwithstanding the foregoing, future, unaccrued terms of multi-year subscriptions shall be terminable by Subscriber by providing written notice at least thirty (30) days prior to the start date of the next Subscription Term and paying an early termination fee of 20% of the cumulative subscription fees owed for the remainder of the multi-year subscription as set forth in the Purchase Order.
  - (k) **Payment Disputes.** If You believe that any specific charge under this Agreement is incorrect, in order to obtain a credit, You must contact Provider in writing within thirty (30) days of invoice date setting forth the nature and amount of the requested correction. Otherwise, invoices are final.
  - (l) **Termination for Cause.** Any breach of Your payment obligations or unauthorized use of the Whetstone Technology or Services will be a material breach of this Agreement. Provider, in its sole discretion, may terminate Your password, account or use of the Services if You breach or otherwise fail to comply with this Agreement. You agree and acknowledge that Provider has no obligation to return or retain the Subscriber Data if You have materially breached this Agreement and such breach has not been cured within thirty (30) days of notice of such breach.
6. **Warranties and Disclaimers.**
- (a) **Provider Warranties.** Provider warrants that it has validly entered into this Agreement and has the legal power to do so and that the Services shall substantially conform to the terms, representations, warranties, obligations and agreements set forth herein and in any Purchase Orders hereunder. Provider also warrants that the Services do not infringe upon the intellectual property rights of another and that Provider has the right to grant You the rights granted herein.
  - (b) **Subscriber Warranties.** You represent and warrant that (i) You have validly entered into this Agreement and have the legal power to do so; and (ii) You and Your Users will utilize the Services only in strict compliance with applicable foreign and domestic laws and regulations, including, but not



limited to, privacy laws and regulations and those laws and regulations governing the collection, dissemination and use of personal data or personally-identifiable information, personal financial information, personal health information or other information protected by such laws and regulations.

- (c) **Uptime.** Provider will use commercially reasonable efforts to ensure continuous availability of the Services; provided, however, You acknowledge that Services may be unavailable for system maintenance, upgrades or circumstances beyond Provider's reasonable control, and You agree that Provider shall have no liability for such unavailability.

- (i) **Commitment.** Provider shall ensure that the Services are operating 98% of the time on an annualized basis (each, an "Uptime Commitment"), excluding scheduled downtime for maintenance (the "Scheduled Maintenance") or any delays, delivery failures, or other damage resulting from such problems beyond Provider's reasonable control. In the event that Provider deems necessary to have an emergency maintenance (meaning any scheduled downtime that is not planned Scheduled Maintenance), Provider will provide You with 24 hours notice and will perform such emergency maintenance outside of normal business hours, if possible.

- (ii) **Provider's Obligation to Remedy.** You must notify Provider in writing, within thirty (30) days of Your claim of any defect in the Services. If the Services are found defective by You and Provider, Provider's obligation under this warranty is to remedy such defect in a manner consistent with Provider's regular business practices. For a defect which materially adversely affects the performance of the Services ("Service Defect"), Provider shall use its commercially reasonable efforts to cure such Service Defect within fifteen (15) business days after receipt of Your notice. If Provider is unable to cure a Service Defect within fifteen (15) business days of receipt of Your notice, or within any additional time You shall permit, You may, as Your sole and exclusive remedy, be entitled to a service credit applied to the prices specified in the Purchase Order(s) governing the particular Services on which the Service Defect occurred.

Provider will provide the service credit based on the cost of the annual fee using the following schedule:

Failure Rate Up To 10% of applicable Uptime Commitment	Failure Rate Above 10% & Up To 20% of applicable Uptime Commitment	Failure Rate Exceeding 20% of applicable Uptime Commitment
10% reimbursement/annual fee	20% reimbursement/annual fee	50% reimbursement/annual fee

- (d) **Disclaimer of Warranties.** THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE BASIS" "WITH ALL FAULTS" AND WITHOUT WARRANTY OF ANY KIND. TO THE FULL EXTENT PERMITTED BY LAW, PROVIDER DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND SYSTEM INTEGRATION OR COMPATIBILITY. WITHOUT LIMITING THE FOREGOING, PROVIDER DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE CONTINUOUS, SECURE, RELIABLE, ACCESSIBLE, UNINTERRUPTED, OR ERROR-FREE. PROVIDER'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. PROVIDER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS BEYOND ITS CONTROL.
- (e) **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA AND/OR UNAUTHORIZED ACCESS OR ACQUISITION OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES, INCLUDING WITHOUT LIMITATION THE USE OR INABILITY TO USE THE SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES OR THE SITE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF



THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**7. Mutual Indemnification.**

(a) **Indemnification by You.** You shall indemnify and hold Provider, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Subscriber Data infringes the rights of, or has caused harm to, a third party; (ii) a claim which, if true, would constitute a violation by You of Your representations and warranties; (iii) a claim arising from the breach by You or Your Users of this Agreement; or (iv) any other third party claim, suit, action or proceeding arising, in whole or in part, from Your negligence. Your indemnification and hold harmless obligation shall not apply to the extent that any such third party claim arises out of, is related to, or is caused by the gross negligence or willful misconduct of Provider.

(b) **Indemnification by Provider.** Provider shall indemnify and hold You and Your parent organizations, subsidiaries, affiliates, members, officers, directors, employees, attorneys, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Services directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party, except that Provider will not be obligated to indemnify You to the extent that an infringement or misappropriation claim is based upon use of the Services in combination with other products not supplied or recommended by Provider or specified by Provider as being compatible with the Services, if such infringement or misappropriation would not have occurred but for such combined use; (ii) a claim, which if true, would constitute a violation by Provider of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Provider; provided that You (a) promptly give written notice of the claim to Provider; (b) give Provider sole control of the defense and settlement of the claim (provided that Provider may not settle or defend any claim unless it unconditionally releases You of all liability); (c) provide to Provider all available information and assistance; and (d) have not compromised or settled such claim. Provider shall have no indemnification obligation, and You shall indemnify Provider pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Services with any of Your products, service, hardware or business process(es). Provider's indemnification and hold harmless obligation shall not apply to the extent that any such third party claim arises out of, is related to, or is caused by Your gross negligence or willful misconduct.

**8. Confidentiality.** Subscriber agrees that all non-public information that Provider provides regarding the Services, including without limitation, its pricing, marketing methodology, and business processes, is proprietary confidential information. You agree to use this confidential information only for purposes of exercising Your rights as our customer while in strict compliance with this Agreement, and You further agree not to use or disclose this confidential information to third parties without Provider's prior written consent. Furthermore, Provider and Subscriber and their respective affiliates, employees, directors and advisers shall strictly maintain the existence of the Agreement and performance thereunder in confidence, provided that Provider (a) may disclose that the Whetstone™ software platform is the product of a compilation of data provided by subscribers derived from multiple sources, including the Subscriber; and (b) has the exclusive right to publish, license, sell or otherwise exploit the compiled data and Services in any form or media, whether now known or hereafter developed, to Provider customers and potential customers, including but not limited to brokers, analysts, investors, pension funds and the like, provided that Provider shall not disclose to persons other than its employees, consultants, advisers, agents and others who and which agree to hold the same in strictest confidence the name or identity of any Subscriber or User and shall use its commercially reasonable best efforts, consistent with methodologies employed by data aggregators to avoid disclosing information in a format which, by its nature and presentation, necessarily reveals such identities.

**9. General Provisions.**

(a) **Notices.** Notices may be sent to the Parties by facsimile, by electronic means (e-mail), or by registered or certified mail to the Parties at the following addresses:

If to the Provider:



Whetstone Education, Inc.  
1824 Oretha Castle Haley Blvd.  
New Orleans, LA 70113  
Attention: Zach Hollwedel, Director of Operations  
Email: zach@whetstoneeducation.com

If to the Subscriber:

Waukegan Community Unit School District #60  
1201 North Sheridan Road  
Waukegan, IL 60085  
Attention: Amanda Pryce  
Email: apryce@wps60.org

Such notice shall be deemed to have been given upon the expiration of forty eight (48) hours after mailing or posting (if sent by first class mail or pre-paid post) or twelve (12) hours after sending if sent by email.

- (b) **Force Majeure/Excused Performance.** Provider shall not be responsible for delays in performance or any failure to perform the services of this Agreement or any obligation hereunder, caused by strikes, hurricanes, floods or other natural catastrophe, lockouts, riots, epidemics, war, acts of terrorism, governmental regulations, fire, communication line failures, power failures, interruptions in the availability of the Services caused by outages of Essential Third Party Applications, acts of God or any other cause, beyond its control. Provider shall not be responsible for any interruptions in the Services attributable to problems experienced with hardware or third party software used by You.
- (c) **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- (d) **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- (e) **No Waiver.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right.
- (f) **Choice of Law & Jurisdiction.** This Agreement shall be governed by and construed under the laws of the State of Illinois, without regard to its principles of conflict of laws. Any dispute or claim from this Agreement shall be resolved exclusively in the Nineteenth Judicial Circuit Court of Illinois (Lake County), and the parties hereby irrevocably submit to the exclusive personal jurisdiction of said court and waive all defenses thereto.
- (g) **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.



# WHETSTONE

- (h) **Assignment; Change in Control.** This Agreement and the rights granted hereunder may not be assigned by Subscriber without the prior written approval of Provider. Provider may assign this Agreement without Your consent to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit Subscriber's ability to either divest or acquire real property assets in its sole discretion.
- (i) **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Purchase Orders, constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict therewith. However, to the extent of any conflict or inconsistency between the provisions of the body of this Agreement and any exhibit or addendum hereto or any Purchase Order, the terms of such exhibit, addendum or Purchase Order shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in other order documentation (excluding Purchase Orders) shall be incorporated into or form any part of this Agreement.
- (j) **Headings.** The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the meanings or interpretations of this Agreement.
- (k) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile counterpart signatures to this Agreement shall be acceptable and binding.

In witness whereof, the Parties have caused this Agreement to be executed as of the day, month, and year first written above.

WAUKEGAN CUSD #60  
("Subscriber")

By:

Name: Theresa Plascencia

Title: Superintendent

Date: 10/13/20

WHETSTONE EDUCATION, INC.  
("Provider")

By:

Name: Zach Hollwedel

Title: Director of Operations



## Exhibit A

### Whetstone Education, Inc. Privacy Notice

Last updated: April 16, 2019

What information about users does Whetstone collect?  
What about cookies and tracking technologies?  
How does Whetstone use the information it collects?  
When does Whetstone share user information?  
What choices are available?  
What about "Do Not Track?"  
What about Third-Party services?  
Are children allowed to use the Service?  
How does Whetstone comply with the Family Educational Rights and Privacy Act (FERPA)?  
What does Whetstone do for data security?  
Are privacy settings adjustable?  
Does Whetstone market to international visitors?  
What are your California Privacy Rights?  
What about changes and updates to this Notice and Terms of Service?  
What is Whetstone's contact information?

Welcome, and thank you for your interest in Whetstone Education, Inc. ("Whetstone", "we," or "us") and our Service. Our "Service" collectively refers to Whetstone's website, mobile application, API, and any other online services offered by Whetstone, its affiliates, or subsidiaries, as each may be updated, relocated, or otherwise modified from time to time, and all intellectual property contained therein. The Services enable schools, coaches, and administrators to provide educators with feedback and collect and analyze data about educator performance in the classroom. The Service also provides functionality to assist Educators in managing their lesson plans and meeting content.

This Privacy Notice (this "Notice") describes the information that we gather from you on the Service, how we use and disclose such information, and the steps we take to protect such information. By using the Service, you consent to the privacy practices described in this Notice.

This Notice is incorporated into and is subject to the Whetstone Terms of Service. Capitalized terms used but not defined in this Notice have the meaning given to them in the Whetstone Terms of Service.

#### **What information about users does Whetstone collect?**

- **User-provided Personal Information.** When you use the Service, you may provide and we may collect what is generally called personally identifiable information, or personal information, which is information that specifically identifies an individual. For the purposes of this Privacy Notice, we refer to such information as "Personal Information." Examples of Personal Information include name, address, email address, educational institution, job role, and images. Personal Information also includes other information, such as geographic area, or preferences, when any such information is linked to information that identifies a specific individual. You may provide us with Personal Information in various ways on the Service. For example, you provide us with Personal Information when you register for an account, use the Service, or send us customer service-related requests. You may also choose to upload certain content to the Service, including



content that may contain student data that is subject to the Family Educational Rights and Privacy Act (see below).

#### What about cookies and tracking technologies?

- **Cookies and Automatically Collected Information.** When you use the Service, we may send one or more cookies – small strings of text – to your device. A cookie cannot read data off your hard disk or read cookie files created by other sites. Cookies do not damage your system. Our cookies allow us to personalize your experience on the Service, make your visit more convenient, and understand how you and others are using our Service so that we can improve your experience. We may use both session cookies and persistent cookies. A session cookie disappears after you close your browser. A persistent cookie remains after you close your browser and may be used by your browser on subsequent visits to the Service. The Help feature on most browsers will tell you how to disable cookies, how to have the browser notify you when you receive a new cookie, and how to prevent your browser from accepting new cookies. Please note that if you delete, or choose not to accept, cookies from the Service, you may not be able to utilize the features of the Service to their fullest potential. We never place PII in cookies.

We may also automatically record certain information from your device by using various types of technology, including "clear gifs" or "web beacons." This automatically collected information may include your IP address or other device address or ID, Internet Service Provider name, web browser type, computer operating system, device type, screen size, and the dates and times that you visit, access, or use the Service. We also may use these technologies to collect information regarding the website to which you are headed when you leave our Services, and your interaction with messages, such as whether you opened, clicked on, or forwarded a message. Our web beacons are not used to track your activities unrelated to our services. We do not link analytical data from web beacons to Personal Information. We use automatically collected information to analyze trends among our users to help improve our Services.

- **Information from Other Sources.** We may obtain information, including Personal Information, from third parties and sources other than the Service like our partners. If we combine or associate information from other sources with Personal Information that we collect through the Service, we will treat the combined information as Personal Information in accordance with this Notice.

#### How does Whetstone use the information it collects?

We use information we collect on the Service in a variety of ways in providing the Service and operating our business, including the following:

- We use the information that we collect on the Service to operate, maintain, enhance and provide all features of the Service, to provide services and information that you request, to respond to comments and questions and otherwise to provide support to users. For example, we will contact you regarding requested custom demonstrations, and we may send you notifications of information changes. We also use information for internal business purposes to otherwise manage your relationship with Whetstone.
- We use the information that we collect on the Service to understand and analyze the usage trends and preferences of our users, to improve the Service, and to develop new products, services, features, and functionality.
- We may use your email address or other information we collect on the Service (i) to contact you for administrative purposes such as billing or (ii) to send communications relating to services offered by us or our affiliates, unless you have opted out of receiving such information. You can change contact preferences



at any time by unsubscribing to the email list. Generally, you have the ability to opt-out of receiving any promotional communications as described below under "What choices are available?."

- We may use cookies and automatically collected information we collect to: (i) personalize our Service, such as remembering your information so that you will not have to re-enter it during your visit or the next time you visit the Service; (ii) provide customized content, and information; (iii) monitor and analyze the effectiveness of Service; and (iv) track your submissions and status in any activities on the Service.

#### **When does Whetstone share user information?**

Except as described in this Notice, we will not disclose your information that we collect on the Service to third parties without your consent. We may disclose information to third parties if you consent to us doing so, as well as in the following circumstances:

- We work with third party service providers to provide application development, payment processing, hosting, maintenance and tracking, push notifications, and other services for us. These third parties may have access to or process your information as part of providing those services for us. Generally, we limit the information provided to these service providers to that which is reasonably necessary for them to perform their functions, and we require them to agree to maintain the confidentiality of such information. Whetstone does not sell, rent, or otherwise provide Personal Information to third parties for marketing purposes.
- We may make certain Personal Information available to third parties for various purposes, including (i) compliance with various reporting obligations; or (ii) to assist such parties in understanding our users' interests, habits, and usage patterns for certain programs, content, services, advertisements, and/or functionality available through the Service.
- We may disclose your information if required to do so by law or in the good-faith belief that such action is necessary to comply with state and federal laws, in response to a court order, judicial or other government subpoena or warrant, or to otherwise cooperate with law enforcement or other governmental agencies.
- We also reserve the right to disclose your information that we believe, in good faith, is appropriate or necessary to (i) take precautions against liability, (ii) protect ourselves or others from fraudulent, abusive, or unlawful uses or activity, (iii) investigate and defend ourselves against any third-party claims or allegations, (iv) protect the security or integrity of the Service and any facilities or equipment used to make the Service available, or (v) protect our property or other legal rights (including, but not limited to, enforcement of our agreements), or the rights, property, or safety of others.
- Any information that you voluntarily choose to provide as a client testimonial or to include in a publicly accessible area of the Service will be available to anyone who has access to that content, including other users. For example, Whetstone allows users to share their praise and success stories with regards to our Service via client testimonials. Such testimonials may include Personal Information.
- Information about our users, including Personal Information, may be disclosed and otherwise transferred in connection with an acquisition, merger, sale, or other transfer of all or any portion of our business.

#### **What choices are available?**

You may, of course, decline to share certain Personal Information with us, in which case we may not be able to provide to you some of the features and functionality of the Service. You may update, correct, or delete your account information and preferences. If you wish to access or amend Personal Information we hold about you, or to



delete your account, you may contact us at [help@whetstoneeducation.com](mailto:help@whetstoneeducation.com). Please note that while any changes you make will be reflected in active user databases within a reasonable period of time, we may retain all information you submit for backups, archiving, prevention of fraud and abuse, analytics, satisfaction of legal obligations, or where we otherwise reasonably believe that we have a legitimate reason to do so.

If you receive commercial email from us, you may unsubscribe at any time by following the instructions contained within the email. You may also opt-out from receiving commercial email from us, and any other promotional communications that we may send to you from time to time, by sending your request to us by email at [info@WhetstoneEducation.com](mailto:info@WhetstoneEducation.com) or by writing to us at the address given at the end of this Notice.

Please be aware that if you opt-out of receiving commercial email from us or otherwise modify the nature or frequency of promotional communications you receive from us, it may take up to ten business days for us to process your request, and you may receive promotional communications from us that you have opted-out from during that period. Additionally, even after you opt-out from receiving commercial messages from us, you will continue to receive administrative messages from us regarding the Service and your relationship with Whetstone.

#### **What about "Do Not Track?"**

Your browser may allow you to set a Do Not Track (DNT) signal on it so that Third-Party trackers know you do not want to be tracked. Our Services do not support (DNT) requests at this time. This means that we may collect information about your online activity both while you are using the Service and after you leave the Service. Some third-party online services do keep track of your browsing activities, including across other websites on the Internet, which enables these websites to tailor what they present to you. Do Not Track signals are set on a browser-by-browser basis, so you must set them on every browser you use if you do not wish to be tracked.

#### **What about Third-Party services?**

The Service may contain features or links to Web sites and services provided by third parties. Any information you provide on third-party sites or services is provided directly to the operators of such services and is subject to those operators' policies, if any, governing privacy and security, even if accessed through the Service.

The descriptions of our data privacy practices in this Privacy Notice do not cover the privacy and security practices and policies of third-party sites or services to which links or access are provided through the Service that such third parties themselves collect from you (like type of device, day and time of visit, etc.) or the methods used by third parties to collect that information (like cookies and other tracking technologies). Some third parties offer choices regarding their tracking technologies. We encourage you to learn about third parties' privacy and security policies before providing them with information.

#### **Are children allowed to use the Service?**

Our Service is a general audience platform intended for adults for purposes of teacher and classroom observation. It is not directed to children under the age of 13[MLW1] [MLW2]. We do not knowingly collect Personal Information from children. If you are under 13 years of age, then please do not use or access the Service at any time or in any manner. If we learn that Personal Information has been collected on the Service from persons under 13 years of age without verifiable parental consent, then we will take the appropriate steps to delete that information. If you discover that information regarding a child has been collected on the Service, then you may alert us at [help@whetstoneeducation.com](mailto:help@whetstoneeducation.com) to request that we delete that Personal Information from our systems.

#### **How does Whetstone comply with the Family Educational Rights and Privacy Act (FERPA)?**





FERPA protects personally identifiable information contained in students' education records from unauthorized disclosure. Consistent with FERPA, we will only use education records, as defined under FERPA, for the purpose of providing agreed services to a school, school district or teacher. We will never share or sell FERPA-protected information, or use it for any other purposes, except as otherwise directed or permitted by the school, school district or teacher. For clarity and without limitation, we will not use education records or any other student data to engage in targeted advertising.[MLW1] If a parent or eligible student requests access to education records that are hosted on our servers, we will help facilitate such access. Our terms of service contain additional terms addressing FERPA obligations.

#### **What does Whetstone do for data security?**

We use certain physical, administrative, and technical safeguards that are designed to secure Personal Information from unauthorized access, use, alteration and disclosure, and improve the confidentiality, integrity and availability of the Personal Information that we collect and maintain. For example, we use industry standard technologies, like encryption software, firewalls, and authentication tools when processing Personal Information. We cannot, however, ensure or warrant the security of any information you transmit to us via email or store on the Service, and you do so at your own risk. We strongly urge you to protect any password you may have for our Services and to keep that password confidential. You should always log out of our Service when not in use, especially when sharing a computer with someone else, or using a public computer. We cannot guarantee that such information may not be accessed, disclosed, altered, or destroyed by breach of any of our physical, administrative, or technical safeguards.

If we learn of a security systems breach, then we may attempt to notify you electronically so that you can take appropriate protective steps. We may post a notice through the Service if a security breach occurs.

#### **Are privacy settings adjustable?**

Although we may allow you to adjust your privacy settings to limit access to certain Personal Information, please be aware that no security measures are perfect or impenetrable. We are not responsible for circumvention of any privacy settings or security measures on the Service. Additionally, we cannot control the actions of other users with whom you may choose to share your information. Further, even after information posted on the Service is removed, caching and archiving services may have saved that information, and other users or third parties may have copied or stored the information available on the Service. We cannot and do not guarantee that information you post on or transmit to the Service will not be viewed by unauthorized persons.

#### **Does Whetstone market to international visitors?**

The Service is hosted in the United States and is intended for users located within the United States. If you choose to use the Service from other regions of the world with laws governing data collection and use that may differ from U.S. law, then please note that you are transferring your Personal Information outside of those regions to the United States for storage and processing. Also, we may transfer your data from the U.S. to other countries or regions in connection with storage and processing of data, fulfilling your requests, and operating the Service.

#### **What about changes and updates to this Notice and Terms of Service?**

If you choose to use the Service, your interactions and any dispute over privacy is subject to this Notice and our Terms of Service, including limitations on damages, resolution of disputes, and application of the law of the State of Louisiana. When we modify this Notice, we will make it available through the Service, and indicate the date of the latest revision. Any changes we make to our Privacy Policy are effective as of this Last Updated date and replace any prior Privacy Policies. In the event that the modifications materially alter your rights or obligations hereunder, we will make reasonable efforts to notify you of the change. For example, we may send a message to your email address, if we have one on file, or generate a pop-up or similar notification when you access the Service for the first



time after such material changes are made. If you have any concern about privacy at Whetstone, please contact us with a thorough description, and we will try to resolve it. Our business changes constantly, and our Privacy Notice and the Terms of Service will change also. We may e-mail periodic reminders of our notices and conditions, but you should check our Service frequently to see recent changes. Your continued use of the Service after the revised Notice has become effective indicates that you have read, understood and agreed to the current version of this Notice. Unless stated otherwise, our current Privacy Notice applies to all information that we have about you and your account.

### **What are Your California Privacy Rights?**

Under California Civil Code Section 1798.83, California customers are entitled to request information relating to whether a business has disclosed Personal Information to any third parties for the third parties' direct marketing purposes. California users who wish to request further information about our compliance with this statute or who have questions more generally about our Privacy Notice and our privacy commitments to our customers and Service users should not hesitate to contact us at the address below.

### **Related Practices and Information**

Terms of Service <https://www.whetstoneeducation.com/terms>.

### **What is Whetstone's contact information?**

Please contact us with any questions or comments about this Notice, your Personal Information, our use and disclosure practices, or your consent choices by email at [help@WhetstoneEducation.com](mailto:help@WhetstoneEducation.com) or by using the Contact Us form as found through our Service.

**Whetstone Education, Inc.**  
1824 Oretha Castle Haley Blvd.  
New Orleans, LA 70113



Exhibit B

WHETSTONE TERMS OF SERVICE

*Last Updated: April 16, 2019*

*Effective Date: December 28, 2018*

Welcome, and thank you for your interest in Whetstone Education, Inc. ("**Whetstone**," "**We**," or "**Us**"). These terms of service ("**Terms**") establish the terms and conditions that apply to you when you use the Services (as defined below). Our Services include the website at <https://www.whetstoneeducation.com/> (the "**Site**").

BY USING THE SERVICES OR BY CLICKING "I AGREE" YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS AND YOUR AGREEMENT TO BE BOUND BY THESE TERMS, OUR PRIVACY POLICY, AND ALL APPLICABLE LAWS AND REGULATIONS. YOU ARE NOT PERMITTED TO USE THE SERVICES OR THE SITE IF YOU DO NOT AGREE TO THESE TERMS. THESE TERMS CAN BE CHANGED, MODIFIED, SUPPLEMENTED, OR UPDATED BY WHETSTONE AT ANY TIME; PROVIDED THAT WE WILL PROVIDE YOU WITH PRIOR NOTICE OF ANY MATERIAL CHANGES. YOUR CONTINUED USE OF THE SERVICES AFTER THE EFFECTIVE DATE OF THE MODIFICATION OF THESE TERMS MEANS THAT YOU ACCEPT ALL SUCH CHANGES. ACCORDINGLY, YOU ARE ADVISED TO CONSULT THESE TERMS EACH TIME YOU ACCESS THE SERVICES IN ORDER TO VIEW ANY CHANGES TO THESE TERMS. THESE TERMS WERE LAST MODIFIED AS OF THE DATE INDICATED ABOVE.

AS DESCRIBED BELOW, THESE TERMS PROVIDE FOR THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE. YOU CAN OPT-OUT OF THIS AGREEMENT TO ARBITRATE BY CONTACTING [HELP@WHETSTONEEDUCATION.COM](mailto:HELP@WHETSTONEEDUCATION.COM) WITHIN 30 DAYS OF FIRST ACCEPTING THESE TERMS AND STATING THAT YOU (INCLUDE YOUR FIRST AND LAST NAME) DECLINE THIS ARBITRATION AGREEMENT.

**1. Use of the Services**

a. The "**Services**" collectively refers to Whetstone's website, mobile application, API, and any other online services offered by Whetstone, its affiliates, or subsidiaries, as each may be updated, relocated, or otherwise modified from time to time, and all intellectual property contained therein. The Services enable schools, coaches, and administrators (collectively, "**Administrators**") to provide educators ("**Educators**") with feedback and collect and analyze data about educator performance in the classroom. The Service also provides functionality to assist Educators in managing their lesson plans and meeting content. Any person who accesses and/or uses the Service, whether as an Administrator or Educator, or on his or her own behalf or on behalf of any third party, will be referred to herein as a "**Whetstone User**." Access to paid features of the Services may be paid for by schools or other organizations who employ Whetstone Users and who have entered into a Subscription Agreement with Whetstone separately (each, a "**Subscriber**").

b. Subject to the terms and conditions of these Terms, Whetstone hereby grants you a non-exclusive, non-transferable, revocable right to access and use the Services solely for your own personal and internal use and for the internal use of the Subscriber who has paid for your subscription to the Services. Whetstone reserves the right at all times, for any reason, and without notice to: (i) restrict, deactivate, and/or terminate your access to the Services (or any portion thereof); and (ii) modify or discontinue providing the Services (or any portion thereof). You agree that Whetstone will not be liable to you or any third party for any termination or modification to the Services regardless of the reason for such termination or modification. You acknowledge that your only right with respect to any dissatisfaction with any modification or discontinuation of Services made by us is to terminate your use of the Services.

c. Whetstone's policy with respect to the collection and use of your personally identifiable information is set in our Privacy Policy. By accepting these Terms, you acknowledge





that you consent to the data handling and information security practices described in our [Privacy Policy](#).

## 2. Registration, Accounts, Passwords, and Security

a. Whetstone Users. In order to access certain functionality of the Services, you may be required to create an account. When you create an account, you may be required to provide us with some information about yourself, such as your e-mail address or other contact information. complete the registration process by providing Whetstone with current, complete and accurate information, as prompted by the applicable registration form. Alternately, you may be able to automatically register as a user of Whetstone using credentials from another platform you already have an account with. In which case, you authorize Whetstone to create an account for you using such credentials.

b. Accuracy of Information. You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. You acknowledge that in the event you provide any information to Whetstone which is untrue, inaccurate, not current or incomplete, Whetstone may terminate these Terms and your continued access and use of the Services.

c. Eligibility. You represent and warrant that you are at least 18 years of age and that you have not been previously suspended or removed from the Services. THE SERVICES ARE NOT FOR PERSONS UNDER THE AGE OF 18 OR ANY USERS PREVIOUSLY SUSPENDED OR REMOVED FROM THE SERVICES BY WHETSTONE. IF YOU ARE UNDER 18 YEARS OF AGE, PLEASE DO NOT USE OR ACCESS THE SERVICES AT ANY TIME OR IN ANY MANNER.

d. Credentials. As part of the registration process, you may be asked to select a username and password (your "Credentials"). You are entirely responsible for maintaining the security and confidentiality of your account and password. You agree to notify Whetstone immediately of any unauthorized use of your account or any other breach of security. To notify us, contact us at [help@whetstoneeducation.com](mailto:help@whetstoneeducation.com). You are responsible for all use of the Services occurring under your user name and all content posted in your profile or with your account elsewhere on the Services. You are responsible for keeping your password confidential and for notifying us if your password has been hacked or stolen. Whetstone will not be liable for any loss that you may incur as a result of someone else using your password or account, either with or without your knowledge.

3. Your Responsibilities. You may use the Services solely for lawful purposes, as intended through the provided functionality of the Services. You may not use the Services in any manner that could damage, disable, overburden, or impair our servers or networks, or interfere with any other party's use and enjoyment of the Services. You may not attempt to gain unauthorized access to the Services, user accounts, or computer systems or networks, through hacking, password mining or any other means. Without limiting any of the foregoing, you expressly agree that you will not (and you agree not to allow or assist any third party to):

a. upload or otherwise post any student personally identifiable information or any images or video of any students to the Services;

b. modify, alter, reproduce, or distribute the Services;

c. rent, lease, lend, sell, redistribute, or sublicense the Services;

d. copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of any portion of the Services, any updates, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or the terms of any Third Party Service (as defined below));



- e. attempt to disable or circumvent any security or other technological measure designed to protect the Services or any content available through the Services;
- f. remove or alter any copyright, trademark or other proprietary rights notices contained in or on the Services or in or on any content or other material obtained through the Services or the use of the Services;
- g. create user accounts by automated means or under false or fraudulent pretenses;
- h. use any robot, spider, screen or database scraper, site search or retrieval application, or other automated device, process or means to access, retrieve or index any portion of the Services;
- i. probe, scan, or test the vulnerability of any system or network or breach any security or authentication measures;
- j. reformat, mirror, or frame any portion of the web pages that are part of the Services;
- k. post or transmit (i) any content or information that is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable, contains offensive language (e.g., words that are customarily considered "curse words"), or nudity, (ii) any material, non-public information about individuals or companies without the authorization to do so, (iii) any trade secret of any third party, and/or (iv) any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities, or other unsolicited commercial communication (except as otherwise expressly permitted by us), or engage in spamming or flooding;
- l. transmit any software or other materials that contain any virus, worm, time bomb, Trojan horse, or other harmful or disruptive component; use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Services or its contents;
- m. harvest or collect information about other users without their prior written consent;
- n. otherwise engage in activities that could violate the privacy rights of others;
- o. harass, abuse, harm or advocate or incite harassment, abuse or harm of another person or group, including Whetstone employees and other users;
- p. create a new account with Whetstone, without Whetstone's express written consent, if Whetstone previously disabled an account of yours;
- q. violate any applicable federal, state or local laws, regulations or these Terms; nor
- r. use or access the Services to build a competing service.

We may take any legal action and implement any technical remedies to prevent the violation of these provisions and to enforce these Terms.

#### 4. Consent to Electronic Communications

a. Consent to Electronic Communications. By using the Services or providing Personal Information (as defined in the Privacy Policy) to us, you agree that we may communicate with you electronically regarding security, privacy, and administrative issues relating to your use of the Services. If we learn of a security system's breach, we may attempt to notify you electronically by posting a notice on the Services or sending an email to you, if we have your email address. You may have a legal right to receive this notice in writing. To receive free written notice of a security



breach (or to withdraw your consent from receiving electronic notice), please write to us at [help@whetstoneeducation.com](mailto:help@whetstoneeducation.com).

## 5. User Content

a. User Content Generally. Certain features of the Services permit Whetstone Users to upload content to the Services, including teacher evaluation rubrics, lesson plans, teacher evaluations, documentation, comments, photos, video, images, data, text, your likeness, and other types of works ("**User Content**").

b. Limited License Grant to Whetstone. By posting or publishing User Content, you grant Whetstone, our agents, licensees, and assigns a worldwide, non-exclusive, transferable, irrevocable, perpetual, royalty-free, fully paid right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, create derivative works of, modify for the purpose of formatting for display, distribute your User Content, in whole or in part, in any and all media or distribution methods (now known or later developed), and otherwise use your User Content. We will not give any third party access to User Content unless authorized by the Subscriber or as required by applicable law or by proper legal or governmental authority. The Subscriber shall have sole responsibility for the granting of third party access to User Content. Notwithstanding the foregoing, we may use User Content or disclose User Content to third parties solely if we do not specifically identify you as the source of that User Content.

c. Limited License Grant to Other Users. By posting or sharing User Content with other Whetstone Users or Subscribers (collectively, "**Users**"), you grant those Users a non-exclusive license to access and use that User Content as permitted by these Terms and the functionality of the Services. You further acknowledge and agree that Whetstone will not generally perform any editorial functions whatsoever on User Content, and will not be responsible for the actions of other users or third parties that post User Content or make use of the User Content you upload to the Services.

d. Usage Data. You agree that Whetstone may collect and use technical data and related information, including, but not limited to, UDID, and other technical information about your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support, and other services to you (if any) related to the Services, and to track and report your activity inside of the Services, including for analytics purposes. Please see the Privacy Policy for more details regarding the information Whetstone collects, and how it uses and discloses that information.

e. Restrictions: Data Retention. You agree that Whetstone will have no responsibility or liability with respect to any User Content that is processed, transmitted, disclosed, or stored in connection with the Services. Whetstone is not responsible for performing, and is not liable for any failure to perform, any back-up of any User Content provided, processed, or stored in or through the Services. Whetstone recommends that you perform regular exports and back-ups of your User Content.

f. User Content Representations and Warranties. You are solely responsible for your User Content and the consequences of posting or publishing User Content. By posting or publishing User Content, you affirm, represent, and warrant that:

i. you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize Whetstone and other Whetstone Users of the Services to use and distribute your User Content as necessary to exercise the licenses granted by you in this section, in the manner contemplated by Whetstone, the Services, and these Terms; and

ii. Your User Content, and the use of your User Content as contemplated by these Terms, does not and will not: (A) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right,



privacy right, right of publicity, or any other intellectual property or proprietary right; (B) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person or organization; or (C) cause Whetstone to violate any law or regulation.

g. User Content Disclaimer. We are under no obligation to edit or control User Content that you or other Whetstone Users post or publish, and will not be in any way responsible or liable for User Content. Whetstone may, however, at any time and without prior notice, remove or block any User Content that we have reason to believe, in our sole judgment, violates these Terms, violates applicable law, or is otherwise objectionable. You understand that when using the Services you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent, or objectionable. You agree to waive, and do waive, any legal or equitable right or remedy you have or may have against Whetstone with respect to User Content. We expressly disclaim any and all liability in connection with User Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, Whetstone does not permit copyright-infringing activities on the Services.

h. Additional Requirements re Student Data. A Whetstone User may choose to upload User Content to the Services that contains student data protected as student education records under the Family Educational Rights and Privacy Act (FERPA) ("**Student Data**"). As between us, you own all right, title and interest to all Student Data, and you are solely responsible for all Student Data, including all permissions and consents required to upload Student Data to the Services. Whetstone will protect Student Data in compliance with FERPA as described in Whetstone's [privacy notice](#).

i. Sending Messages. The Services may allow Whetstone Users to exchange messages ("**Messages**") with each other. Harmful, obscene, abusive, or offensive communications are not welcome in any Messages. If a user sends you an objectionable Message, please notify us by sending an e-mail to [help@whetstoneeducation.com](mailto:help@whetstoneeducation.com). You should exercise discretion, good sense, and sound judgment when sending a Message. You are solely responsible for the content of any Message you send. You agree that Whetstone may monitor Messages for compliance with these Terms, and therefore, Messages should not be considered confidential or proprietary. You hereby grant us an assignable, sublicensable, irrevocable license to reproduce and transmit your Messages in connection with facilitating transfer to the intended recipient through the Services and for such other purpose as Whetstone may deem appropriate in its sole discretion.

## 6. Term and Termination

a. Term. The term of these Terms (the "**Term**") will commence on the date on which you first access or utilize the Services in any way (the "**Effective Date**") and will continue so long as you continue to access or utilize the Services; provided that Whetstone reserves the right to take whatever lawful actions it may deem appropriate in response to actual or suspected violations of these Terms including, without limitation, the suspension or termination of the user's access and/or account, or blocking the user from access to the Services. Whetstone may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. Except as may be expressly limited by the Privacy Policy, Whetstone reserves the right at all times to disclose any information as Whetstone deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post, or to remove any information or materials, in whole or in part, in Whetstone's sole discretion.

b. Effect of Termination. The following Sections of these Terms will survive termination or expiration of the Agreement: 1.c, 2.c, 3, 5, 6.b, 7, 0 - 12, 14 - 23.

7. Ownership. You acknowledge and agree that: (i) the Services, including, without limitation, any Content, modifications, enhancements and updates, and any originals and copies thereof, in whole or in part, and all intellectual property rights therein (collectively, "**Proprietary Information**"), is owned by Whetstone and its licensors, as applicable; (ii) the Proprietary Information contains valuable copyrighted





and proprietary material of Whetstone; (iii) the Proprietary Information is licensed, rather than sold, to you pursuant to these Terms; and (iv) you have no rights in the Proprietary Information, other than the rights and licenses specifically granted to you pursuant to these Terms.

**8. Disclaimer of Warranty.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE SERVICES ARE PROVIDED "AS IS" WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. YOU ACKNOWLEDGE THAT, BECAUSE OF THE NATURE OF THE INTERNET, MOBILE NETWORKS, AND THE DEVICES WHICH ACCESS THE INTERNET AND/OR MOBILE NETWORKS, THE SERVICES MAY NOT BE ACCESSIBLE WHEN NEEDED, AND THAT INFORMATION, DATA, AUDIO AND VIDEO TRANSMITTED OVER THE INTERNET AND/OR MOBILE NETWORKS MAY BE SUBJECT TO INTERRUPTION OR THIRD PARTY INTERCEPTION AND MODIFICATION. NO INFORMATION TRAVELING OVER THE INTERNET CAN BE GUARANTEED TO BE SECURE. TO THE FULLEST EXTENT PERMITTED BY LAW, WHETSTONE DISCLAIMS ANY AND ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT, AND ABSENCE OF VIRUSES AND DAMAGING OR DISABLING CODE. TO THE FULLEST EXTENT PERMITTED BY LAW, NONE OF WHETSTONE, ITS AFFILIATES OR SERVICE PROVIDERS, WHETSTONE'S CONTENT PROVIDERS AND/OR THEIR RESPECTIVE AFFILIATES, SUBSIDIARIES NOR THE EMPLOYEES, AGENTS AND/OR CONTRACTORS (COLLECTIVELY, THE "**WHETSTONE PARTIES**") WARRANT THE ACCURACY, COMPLETENESS, OR TIMELINESS OF THE SERVICES. WHETSTONE CANNOT AND DOES NOT ASSUME ANY RESPONSIBILITY FOR ANY LOSS, DAMAGES OR LIABILITIES ARISING FROM THE FAILURE OF ANY TELECOMMUNICATIONS INFRASTRUCTURE, OR THE INTERNET OR FOR YOUR MISUSE OF ANY OF CONTENT AND INFORMATION ACCESSED THROUGH THE SERVICES. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICES AND YOUR RELIANCE UPON ANY OF THE RESPECTIVE CONTENT IS AT YOUR SOLE RISK.

**9. Limitation of Liability**

a. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH WHETSTONE USER IS SOLELY RESPONSIBLE FOR (I) HIS OR HER USE OF THE SERVICES, AND (II) ANY DAMAGES INCURRED BY HIM OR HER OR ANY THIRD PARTY THAT ARISE FROM OR ARE RELATED TO THE SERVICES. THE AGGREGATE LIABILITY OF THE WHETSTONE PARTIES FOR ANY DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, WILL BE LIMITED TO ACTUAL DAMAGES PROVED, AND NOT TO EXCEED THE AMOUNT PAID BY SUBSCRIBER TO WHETSTONE FOR THE SERVICES. TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, NONE OF THE WHETSTONE PARTIES WILL BE LIABLE FOR ANY PUNITIVE, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF WHETSTONE OR ITS CONTENT PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. TO THE FULLEST EXTENT PERMITTED BY LAW, NONE OF THE WHETSTONE PARTIES WILL HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSSES; COSTS OR DAMAGES OF ANY KIND INCURRED OR SUFFERED BY YOU AS A RESULT OF SERVICES PROVIDED BY ANY OF OTHER WHETSTONE USER PURSUANT TO THE SERVICES.

c. YOU REPRESENT THAT YOU HAVE INDEPENDENTLY INVESTIGATED THE ADVISABILITY OF USING THE SERVICES AND THE POSSIBLE RISKS INVOLVED IN USING THE SERVICES. YOU AGREE TO MAINTAIN YOUR OWN INSURANCE COVERING SUCH RISKS AND WILL LOOK SOLELY TO SUCH INSURANCE FOR REIMBURSEMENT OF ANY RESULTING DAMAGES.

**10. Third Party Disputes.** WHETSTONE IS NOT AFFILIATED WITH ANY OTHER WHETSTONE USER, CARRIER, SERVICE PROVIDER, OR THIRD-PARTY SERVICE, AND ANY DISPUTE YOU HAVE WITH ANY OTHER WHETSTONE USER, CARRIER, SERVICE PROVIDER, THIRD-PARTY SERVICE OR OTHER THIRD PARTY ARISING FROM YOUR USE OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, YOUR EMPLOYER, IS DIRECTLY BETWEEN YOU AND SUCH THIRD PARTY, AND YOU IRREVOCABLY RELEASE WHETSTONE (AND OUR OFFICERS, DIRECTORS, AGENTS,



SUBSIDIARIES, JOINT VENTURES, AND EMPLOYEES) FROM ANY AND ALL CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

11. **Force Majeure.** Whetstone will not be liable for any delay or failure to perform any obligation herein if the delay or failure is due to unforeseen events that are beyond Whetstone's reasonable control, such as strikes, blockade, war, terrorism, riots, natural disasters, epidemic, or governmental action, in so far as such an event prevents or delays Whetstone in fulfilling its obligations hereunder.

## 12. Indemnification and Release

a. In addition to the indemnity obligations set forth elsewhere in these terms, to the fullest extent permitted by law, you will defend, indemnify and hold Whetstone, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, members, employees, attorneys and agents, harmless against any loss or damage of any kind (including, without limitation, attorneys' fees and lost revenues) arising from: (i) any and all breaches by you of these Terms, Whetstone's Privacy Policy, or any representation, warranty or covenant contained herein; (ii) any and all use of the Services not specifically authorized hereunder and on the Services; and (iii) any and all claims and actions against Whetstone by other parties to whom you allow access to the Services.

b. To the fullest extent permitted by law, you further waive, release and forever discharge the Whetstone Parties from any and all responsibility or liability for injuries or damages resulting from any service obtained through the use of the Services, including injuries or damages caused by the negligent act or omission of the Released Parties or in any way arising out of or connected with the Services.

c. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim. You will not, in any event, settle any claim or matter without our written consent.

13. **Third-Party Software.** The software you download consists of a package of components, including certain third-party software ("Third-Party Software") provided under separate license terms (the "Third Party Terms"). Your use of the Third-Party Software in conjunction with the Services in a manner consistent with the terms of these Terms is permitted, however, you may have broader rights under the applicable Third Party Terms and nothing in these Terms is intended to impose further restrictions on your use of the Third-Party Software.

## 14. Dispute Resolution

a. **Generally.** In the interest of resolving disputes between you and Whetstone in the most expedient and cost-effective manner, you and Whetstone agree that any dispute arising out of or in any way related to these Terms or your use of the Services will be resolved by binding arbitration. Arbitration uses a neutral arbitrator instead of a judge or jury and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or in any way related to these Terms, Whetstone's Privacy Policy, or your use of the Services, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND WHETSTONE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS OR COLLECTIVE ACTION. YOU FURTHER UNDERSTAND THAT THESE DISPUTE RESOLUTION TERMS WILL APPLY TO YOU AND WHETSTONE UNLESS YOU CHOOSE TO OPT OUT PURSUANT TO SECTION 14.i BELOW.

Whether to agree to arbitration is an important business decision. It is your decision to make, and you should not rely solely on the information provided in these Terms as it is not intended to contain a complete

# WHETSTONE

explanation of the consequences of arbitration. You should take further steps to conduct research and to consult with others, including, but not limited to, an attorney, regarding the consequences of your decision, just as you would when making any other important business or life decision.

b. Exceptions. Despite the provisions of the Section entitled "Generally" directly above, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (i) bring an individual action in small claims court; (ii) bring an action in a court pursuant to the California Private Attorneys General Act of 2004, California Labor Code § 2698 et seq.; (iii) seek injunctive relief in a court of law; or (iv) to file suit in a court of law to address an intellectual property infringement claim.

c. Arbitrator. Any arbitration between you and Whetstone will be governed by the Federal Arbitration Act, and governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Whetstone. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.

d. Notice: Process. A party who intends to seek arbitration must first send a written notice of the dispute to the other party by U.S. Mail or electronic mail within the applicable statute of limitations period ("Notice"). Whetstone's address for Notice is: 625 Market St, Suite 500, San Francisco, CA 94105. The Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice is received, you or Whetstone may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Whetstone must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is finally resolved through arbitration in your favor, Whetstone will pay you the highest of the following: (i) the amount awarded by the arbitrator, if any; (ii) the last written settlement amount offered by Whetstone in settlement of the dispute prior to the arbitrator's award; or (iii) \$1,000.

e. Fees. If you commence arbitration in accordance with these Terms, Whetstone will reimburse you for your payment of the filing fee, unless your claim is for more than \$15,000 or as set forth below, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in New Orleans, Louisiana, but if the claim is for \$15,000 or less, you may choose whether the arbitration will be conducted: (i) solely on the basis of documents submitted to the arbitrator; (ii) through a non-appearance based telephone hearing; or (iii) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Whetstone for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

f. No Class Actions. YOU AND WHETSTONE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING (OTHER THAN ACTIONS UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004, CALIFORNIA LABOR CODE § 2698 ET SEQ. WHICH ARE NOT COVERED BY THIS SECTION 14). Further, unless both you and Whetstone agree otherwise, the



arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

g. Modifications to this Arbitration Provision. If Whetstone makes any future change to this arbitration provision, other than a change to Whetstone's address for Notice, you may reject the change by sending us written notice within 30 days of the change to Whetstone's address for Notice, in which case this arbitration provision, as in effect immediately prior to the changes you rejected, will continue to govern any disputes between you and Whetstone. If you do not send such written notice, your continued use of the Services following any such change means that you have consented to such change.

h. Enforceability. If the Section entitled "No Class Actions" is found to be unenforceable or if the entirety of this Section 14 is found to be unenforceable, then the entirety of this Section 14 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described directly below will govern any action arising out of or related to these Terms or your use of the Services.

i. Opt Out. Arbitration is not a mandatory condition of these Terms. If you do not want to be subject to this Dispute Resolution provision, you may opt out of this Dispute Resolution provision by notifying Whetstone in writing of your decision by sending, within 30 days of the date you receive these Terms, an electronic message to [help@whetstoneeducation.com](mailto:help@whetstoneeducation.com), stating clearly your full name and intent to opt out of the Dispute Resolution provision. Should you choose not to opt out of this Dispute Resolution provision within the 30-day period, you and Whetstone will be bound by the terms of this Dispute Resolution provision. You have the right to consult with counsel of your choice concerning this Dispute Resolution provision. You understand that you will not be subject to retaliation if you exercise your right to opt out of coverage under this Dispute Resolution provision.

**15. Protected Activity Not Prohibited.** You should understand that, insofar as permitted by applicable law, nothing in these Terms will in any way limit or prohibit you from filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding ("**Protected Activity**") that may be conducted by any federal, state or local government agency or commission ("**Government Agencies**"). You understand that in connection with such Protected Activity, you are permitted to disclose documents or other information as permitted by law, and without giving notice to, or receiving authorization from, Whetstone. Notwithstanding, in making any such disclosures or communications, you agree to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Whetstone confidential information to any parties other than the Government Agencies.

**16. Governing Law; Choice of Forum.** The laws of the State of New Orleans, excluding its conflicts of law rules, govern these Terms and your use of the Services. Your use of the Services may also be subject to other local, state, national, or international laws; provided, however, that the United Nations Convention on Contracts for the International Sale of Goods will not apply to any provision of these Terms. To the extent that any action relating to any dispute hereunder is permitted to be brought in a court of law, such action will be subject to the exclusive jurisdiction of the state and federal courts located in New Orleans, Louisiana and you hereby irrevocably submit to personal jurisdiction in such courts, and waive any defense of inconvenient forum.

**17. Feedback.** If you provide any feedback to Whetstone concerning the functionality and performance of the Services (including identifying potential errors and improvements), you hereby assign to Whetstone all right, title, and interest in and to such feedback, and Whetstone is free to use such feedback without payment or restriction.

**18. Entire Agreement; Variation.** These Terms set forth the entire agreement between Whetstone and you with respect to the Services. These Terms supersede and govern all previous oral and written communications regarding these matters, all of which are merged into these Terms. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret,





supplement, or alter these Terms. These Terms may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought.

19. **Severability.** If any provision of these Terms is held invalid, illegal, or unenforceable, such provisions will be modified, or if not possible, severed, to reflect the fullest valid, legal, and enforceable expression of the intent of the parties and the remainder of these Terms will not be affected thereby.

20. **Relationship of Parties.** Nothing herein will be deemed to create an employer-employee relationship between Whetstone and you, nor any agency, joint venture or partnership relationship between the parties. Neither party will have the right to bind the other to any obligation, nor have the right to incur any liability on behalf of the other.

21. **Waiver.** No delay, omission, or failure to exercise any right or remedy provided herein will be deemed to be a waiver thereof or an acquiescence in the event giving rise to such right or remedy, but every such right or remedy may be exercised, from time to time as may be deemed expedient by the party exercising such remedy or right.

22. **Assignment.** Neither these Terms nor any of the rights granted to you herein may be assigned or transferred by you, whether voluntarily or by operation of law, without the express prior written permission of Whetstone and any attempt to do so will be null and void. However, Whetstone may assign or transfer these Terms at any time without your permission.

23. **Third-Party Beneficiaries.** The provisions of these Terms relating to the rights of Whetstone content providers are intended for the benefit of such content providers, and such content providers, as third-party beneficiaries, will be entitled to enforce such provisions in accordance with their terms, irrespective of the fact that they are not signatories to these Terms.

**NOTICE REGARDING APPLE.** You acknowledge that these Terms are between you and Whetstone only, not with Apple, and Apple is not responsible for the Services or the content thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Services. In the event of any failure of the Services to conform to any applicable warranty, then you may notify Apple and Apple will refund the purchase price for the relevant Services to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Services. Apple is not responsible for addressing any claims by you or any third party relating to the Services or your possession and/or use of the Services, including, but not limited to: (i) product liability claims; (ii) any claim that the Services fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Services or your possession and use of the Services infringes that third party's intellectual property rights. You agree to comply with any applicable third party terms, when using the Services. Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary of these Terms. You hereby represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. If Whetstone provides a translation of the English language version of these Terms, the translation is provided solely for convenience, and the English version will prevail.



Exhibit C  
Amendments to Privacy Policy

**How does Whetstone use the information it collects?**

The above section shall be amended to include the following point:

- We do not and will not sell users' personally identifiable information, including but not limited to names and email addresses, nor will we share users' information with third parties for advertising purposes.

**What does Whetstone do for data security?**

The above section shall be amended to read as follows:

If we learn of a security systems breach, then we shall notify you electronically so that you can take appropriate protective steps. We also shall take immediate action to remedy the situation, and shall advise you in writing as to what action we have taken. We may post a notice through the Service if a security breach occurs.



Exhibit D  
Amendments to Terms of Service

The second paragraph, which begins "By using these services..." shall be amended as follows:

BY USING THE SERVICES OR BY CLICKING "I AGREE" YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS AND YOUR AGREEMENT TO BE BOUND BY THESE TERMS, OUR PRIVACY POLICY, AND ALL APPLICABLE LAWS AND REGULATIONS, *UNLESS PROVIDED OTHERWISE BY THE SUBSCRIPTION AGREEMENT OR ANY APPROVED ADDENDUM TO THIS TERMS OF SERVICE OR OUR POLICY STATEMENT*. YOU ARE NOT PERMITTED TO USE THE SERVICES OR THE SITE IF YOU DO NOT AGREE TO THESE TERMS. THESE TERMS CAN BE CHANGED, MODIFIED, SUPPLEMENTED, OR UPDATED BY WHETSTONE AT ANY TIME; PROVIDED THAT WE WILL PROVIDE YOU WITH PRIOR *WRITTEN* NOTICE OF ANY MATERIAL CHANGES. YOUR CONTINUED USE OF THE SERVICES AFTER THE EFFECTIVE DATE OF THE MODIFICATION OF THESE TERMS MEANS THAT YOU ACCEPT ALL SUCH CHANGES. ACCORDINGLY, YOU ARE ADVISED TO CONSULT THESE TERMS EACH TIME YOU ACCESS THE SERVICES IN ORDER TO VIEW ANY CHANGES TO THESE TERMS. THESE TERMS WERE LAST MODIFIED AS OF THE DATE INDICATED ABOVE.

**Section 6a. Term,** shall be amended to read:

Term. The term of these Terms (the "**Term**") will commence on the date on which you first access or utilize the Services in any way (the "**Effective Date**") and will continue so long as you continue to access or utilize the Services *or terminate as provided in the Subscription Agreement*; provided that Whetstone reserves the right to take whatever lawful actions it may deem appropriate in response to actual or suspected violations of these Terms including, without limitation, the suspension or termination of the user's access and/or account, or blocking the user from access to the Services. Whetstone may cooperate with legal authorities and/or third parties in the investigation of any suspected or alleged crime or civil wrong. Except as may be expressly limited by the Privacy Policy, Whetstone reserves the right at all times to disclose any information as Whetstone deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post, or to remove any information or materials, in whole or in part, in Whetstone's sole discretion.

**Section 14e: Fees:** Jurisdiction shall be amended to reflect Waukegan, Illinois and not New Orleans, Louisiana.

**Section 16, Governing Law; Choice of Forum.**

The section that reads: The laws of the State of New Orleans, excluding its conflicts of law rules, govern these Terms and your use of the Services. Your use of the Services may also be subject to other local, state, national, or international laws; provided, however, that the United Nations Convention on Contracts for the International Sale of Goods will not apply to any provision of these Terms. To the extent that any action relating to any dispute hereunder is permitted to be brought in a court of law, such action will be subject to the exclusive jurisdiction of the state and federal courts located in New Orleans, Louisiana and you hereby irrevocably submit to personal jurisdiction in such courts, and waive any defense of inconvenient forum.

Shall be amended to read:



This Agreement shall be deemed to have been executed and delivered in the State of Illinois and shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to its principles of conflict of laws. Any dispute or claim from this Agreement shall be resolved exclusively in the Nineteenth Judicial Circuit Court of Illinois (Lake County), and the parties hereby irrevocably submit to the exclusive personal jurisdiction of said court and waive all defenses thereto.



November 19, 2020

Dear Theresa Plascencia,

Whetstone Education is excited to provide our observation platform to support Cooke Magnet's teacher observation, coaching, and evaluation process. In this packet, you will find Whetstone's Order Form and Subscription Agreement. First, though, we'd like to present our Partnership Agreement, which outlines Whetstone's approach to collaboration with partners.

**Our mission in partnering with Waukegan CUSD #60 is twofold:**

- To provide a customized technology solution to streamline and enhance Waukegan CUSD #60's teacher coaching and/or evaluation process
- To learn from Waukegan CUSD #60 in order to deepen our understanding of coaching and evaluation best practices, and innovate accordingly.

Whetstone is committed to making this partnership as **collaborative** and **iterative** as possible. Below you'll see a summary of the items Whetstone and its school partners commit to in order to make this partnership successful. We're thrilled to be thought partners with Waukegan CUSD #60 and look forward to learning from each other.

**PARTNERSHIP COMMITMENTS**

**1. Software**

**Whetstone commits to** configuring and securing a site containing Waukegan CUSD #60's:

- Evaluation & feedback instrument(s) (e.g., rubrics, forms, etc.)
- Data analysis & reporting requirements
- Instructional knowledge portfolio (e.g., coaching guides, action step bank, etc.)
- Organizational resource storage (e.g., videos, documents, etc.)
- Data-sharing & configurable permissions aligned to Waukegan CUSD #60's organizational hierarchy

**Waukegan CUSD #60 commits to**

- Meeting technical infrastructure requirements (e.g., wifi, browser updates, etc.) so that Whetstone can deliver optimum performance for all users
- Sharing instructional resources & updates with Whetstone in a timely manner so that Whetstone can plan and support any updates or changes.
- *Thought Partnership* with the Whetstone team to iterate solutions as Waukegan CUSD #60's process evolves

**2. Collaborative Configuration & Training**

**Whetstone and Waukegan CUSD #60 commit to**

- **Collaborative Configuration**, during which the site is aligned as closely to Waukegan CUSD #60's process as possible *before* implementation
- **Joint-Facilitation** of training to set all Waukegan CUSD #60 users up for success in implementation

**3. Ongoing Iteration & Customization**

**Whetstone and Waukegan CUSD #60 commit to** bi-weekly or monthly and end of pilot check-ins to share experiences and feedback to continually improve Whetstone's effectiveness (e.g., add/remove instructional tools, adjust settings, build reports, update features, etc.) to the extent allowable during a Pilot subscription.

**4. Active Feedback & Customer Support**

**Whetstone commits to** responding to any questions / requests within 24 hours.

**Waukegan CUSD #60 commits to** asking questions early and often, and sharing site performance problems as soon as they occur so that the Whetstone Support Team can fix them.

**5. Being a Joy to Work With**



We mean it. We really like what we do, and we really like working with educators. **Whetstone is committed** to bringing the "joy factor" as your classroom observation thought partners.

Again, we're thrilled to work with Waukegan CUSD #60. We believe our technology will enhance your teacher coaching and evaluation process, and that Waukegan CUSD #60's thought partnership will drive Whetstone to continue to iterate its technology to be truly transformational.

Best regards,

A handwritten signature in black ink, appearing to read 'Libby Fischer', with a stylized flourish at the end.

Libby Fischer, CEO

