

LEVEL ALL
Malverne Union Free School District
AFFILIATION AGREEMENT

This AFFILIATION AGREEMENT is made as of May 1, 2023 ("**Effective Date**"), by and between Level All Inc., 152 West 57th Street, 19th Floor, New York, NY 10019, ("**Level All**") and Malverne Union Free School District ("**Organization**").

The parties agree as follows:

1. Scope

- (a) **Platform.** Subject to Organization's ongoing compliance with the terms of this Agreement, Level All grants Organization a non-exclusive, non-sublicensable, non-transferable license during the Term (as defined below) to access and use, and to allow Authorized Users (as defined herein) to access and use, Level All's hosted technology offering described in Exhibit A (the "**Platform**"), solely for educational purposes and in accordance with the terms of this Agreement. "**Authorized User**" means any individual authorized by Organization to access and use the Platform, including any student served by Organization (a "**Student**"), any parent or guardian of a Student (a "**Parent**"), or any educator, administrator, or counselor employed by, or working as a contractor for, Organization (an "**Employee**"). Level All shall supply to Organization certain access codes, protocols and/or passwords that will be required for Authorized Users to access the Platform ("**Access Protocols**"). Organization shall ensure that Authorized User login information is not shared or used by more than one Authorized User at a time. Organization is solely responsible for maintaining the confidentiality of Access Protocols, and Level All will not be liable for any activities undertaken by anyone using Organization's Access Protocols. Organization will immediately notify Level All of any unauthorized use of its Access Protocols or any other breach of security relating to the Platform known by Organization.
- (b) **Services.** Level All shall use commercially reasonable efforts to provide the services, including the provisioning and operation of the Platform described in Exhibit A (the "**Services**") to Organization in accordance with terms contained herein.
- (c) **Changes.** Level All may modify the features or functionality of, or the content it makes available via, the Platform or Services at any time. Level All shall provide Organization with commercially reasonable advance notice of any deprecation of any material feature, functionality, or content made available as part of the Platform or Services.
- (d) **Student Onboarding.**
 - i. Organization will have two options for granting Students access to the Platform:
 - A. *Sponsor Codes shared with Students.* Under this option, Level All provides Organization with Access Protocols, including ones needed for Employees authorized by Organization to serve as administrative users, who then will be responsible for sharing access codes with Students so that individual Students can register and create their own accounts on the Platform.
 - B. *Pre-populating Student Accounts with Delivery of Welcome Email.* Under this option, Organization is responsible for uploading into the Platform information needed to populate each Student's profile information (e.g., Student's name, email address, grade level, graduation year and name of school counselor) through a "mass importing" feature.

This feature supports the mass importing of Student profile information to create Student accounts, enables Organization to generate a welcome email that includes login information for each Student for which it has uploaded profile information, and enables Organization to automatically send the welcome emails to such Students.

Once a Student is registered and has an account, the Student can invite their Parents to register and create a Parent account. Students and Parents may only register and create an account if they review and accept the then-current version of the Level All Terms of Use and Privacy Policy. For Students onboarded under Section 1(d)(i)(A), they will be required to accept the then current version of the Level All Terms of Use and Privacy Policy when they first log into the Platform.

- ii. Support and Lesson Plans. Level All will support Organization's onboarding of Students by providing reasonable assistance to those Organization administrators or designated representatives that are responsible for overseeing Organization's use of the Services. As part of this assistance, Level All may make available to Organization and its educators written guidelines and best practices for educators to work with students and Parents using the Platform, including via in-person sessions, or video chat sessions. Such guidelines may include lesson plans developed by or on behalf of Level All (the "**Lesson Plans**"), which Organization may use solely in connection with use of the Platform and Services for educational purposes to support Students and Parents as contemplated under this Agreement.

(e) Personal Data and Usage and Performance Data.

i. Definitions.

A. "**Personal Data**" means information about a specific individual that is provided, submitted, or otherwise made available to Level All by or on behalf of Organization or any Authorized User in connection with any of the Services that constitutes "personal data", "personal information", "personally identifiable information" or similar term under applicable law.

B. "**Usage and Performance Data**" means any analytics or similar usage data collected, generated or processed by Level All in connection with Organization's and the Authorized Users' access to and use of the Platform (including technical performance data automatically generated by the Platform), which data does not contain any Personal Data.

- ii. Usage and Performance Data. As part of the Services, Level All collects and tracks Usage and Performance Data to assist with the necessary operation and function of the Platform, to provide reporting to Organization and for internal purposes, including without limitation, to facilitate in the provision of updates, support, and invoicing, by Level All, its affiliates, and its agents, as well as research and development. Such Usage and Performance Data will be owned by Level All and may be used for any lawful purpose, provided Level All will only disclose Usage and Performance Data to third parties, including its subcontractors for the purposes of facilitating the Services, for internal purposes as described in this Agreement, to perform its other obligations and exercise its rights under this Agreement, or as otherwise required by law.

- iii. Personal Data. Level All's performance of the Services, and use of the Services by Organization and the Authorized Users, may involve the processing of Personal Data by Level All. In all cases, Level All shall process Personal Data in accordance with the terms and conditions of the Data Protection Addendum, attached hereto as Addendum A and its Privacy Policy, as applicable.

Level All shall limit its use of Personal Data to use solely (A) during the Term; and (B) for the purposes of (1) providing the Services; (2) enabling any Authorized User who is a Student or Parent who will no longer be served or enrolled by Organization to elect to convert the user's account to a personal account; (3) creating aggregated data or de-identified data (to the extent permitted under applicable law); and (4) as is otherwise necessary for Level All to comply with its contractual and legal obligations. Level All shall not use or re-disclose Personal Data except in compliance with applicable laws.

(f) Organization Responsibilities.

- i. Organization will use reasonable efforts to make available resources to Level All in order to facilitate an efficient smooth onboarding process.
- ii. As between Level All and Organization, Organization will:
 - A. Be responsible for Authorized Users' compliance with the terms of this Agreement;
 - B. Be responsible for the accuracy, quality and legality of any content, files, images, data and materials, including any Personal Data, that Organization makes available or uses in connection with the Services (collectively, the "**Organization Material**"), the means by which Organization acquired such Organization Material, and all use of such Organization Material, by Organization, the Authorized Users and, to the extent used in accordance with the terms of this Agreement, by Level All, in connection with the Services (including, for the avoidance of doubt, the provision of any required notices and acquisition of any necessary consents for the disclosure of any such Organization Material to Level All and for Level All's collection, use, disclosure and other processing of such Organization Material as provided for under this Agreement;
 - C. Use commercially reasonable efforts to prevent unauthorized, unlawful or accidental access to or use, disclosure or other processing of the Platform, the Services, or any content, files, images, data and materials made available by Level All to Organization or Authorized Users Parties through or in connection with the Services (collectively, the "**Level All Content**"), or Organization Material made available in connection the Services, and notify Level All promptly of any such unauthorized or unlawful access, disclosure, use or other processing; and
 - D. Use the Platform, the Services, or any Level All Content and Organization Material obtained or accessed therefrom only in accordance with this Agreement and applicable laws.

Any use of the Platform, the Services, or Level All Content, or Organization Material obtained or accessed therefrom in breach of the foregoing by Organization or Authorized Users that in Level All's judgment threatens the security, integrity, or availability of the Platform or the Services, or otherwise infringes or violates of the rights of any individual, may result in Level All's immediate suspension of Organization's and/or any Authorized User's access to the Platform, the Services, or the Level All Content or Organization Material made available in connection therewith, however Level All will use commercially reasonable efforts under the circumstances to provide Organization with notice and an opportunity to remedy such violation or threat prior to any such suspension.

- iii. Level All is not obligated to back up any portion of Organization Material uploaded into or maintained at any time in the Platform, whether uploaded by Organization, an Authorized

User or Level All. To the extent Organization desires such backup copies, it is solely responsible for creating them, at its sole cost and expense.

- (g) Usage Restrictions. Organization will not, directly or indirectly, and will not permit any Authorized User or third party to: (i) sell, resell, license, sublicense, distribute, make available, rent or lease access to the Platform, the Services, or any Level All Content, or include any of the foregoing in a service bureau or outsourcing offering; (ii) alter or remove any trademarks or proprietary notices contained in or on the Platform, the Services, or any Level All Content; (iv) use the Platform or the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (v) use the Platform or the Services to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses; (vi) attempt to gain unauthorized access to the Platform, the Services, any Level All Content or any related systems or networks; (vii) circumvent or otherwise interfere with any authentication or security measures of the Platform, the Services, or any Level All Content, or otherwise interfere with or disrupt the integrity or performance of the foregoing; (viii) modify, copy, or create derivative works based on the Platform, the Services, any Level All Content, or any part, feature, function or user interface thereof; (ix) copy any Level All Content except as expressly permitted herein; (x) frame or mirror any part of the Platform, the hosted components of any Services, or Level All Content, other than framing on Organization's own intranets or otherwise for its own internal business purposes or as permitted in the Level All's documentation; (xi) except to the extent permitted by applicable law, disassemble, reverse engineer, decompile, or otherwise attempt to derive the source code, algorithms, or associated know-how of the Platform or other technology used by Level All to deliver the Platform, the Services or the Level All Content; or (xii) access the Platform, the Services or the Level All Content, or otherwise use any of the foregoing for the purpose of developing, distributing or making available products or services that are similar to or compete with the Platform, the Services or the Level All Content
- (h) Compliance with Law. Level All shall perform the Services in material conformance with all applicable Federal, State and local laws and rules, including but not limited to, all applicable licensing, certification and educational requirements in such laws and rules.

2. Term and Termination.

- (a) Term. This Agreement begins on the Effective Date and, unless terminated earlier in accordance with the terms herein, will continue in full force and effect for an initial period of one (1) year. The term of this Agreement will automatically renew for successive one (1)-year periods, unless one party provides the other with written notice of its intent not to renew at least thirty (30) days prior to the then-current term. The initial term, together with any renewal term and, if applicable, the Transition Period (as defined in Section 2(c)), is referred to herein as the "Term."
- (b) Termination Rights.
- i. Either party may terminate this Agreement in the event the other party has breached any material term or condition of the Agreement and such breach remains uncured for thirty (30) days following receipt of written notice from the non-breaching party specifying the breach.
 - ii. Either party may terminate this Agreement, with or without cause, upon sixty (60) days prior written notice to the other party.

(c) Transition Period. In the event that Organization terminates this Agreement for Level All's uncured material breach in accordance with Section 2(b)(i), above, or Level All terminates this Agreement pursuant to Section 2(b)(ii), unless the parties otherwise agree in writing, the parties will continue to work together to ensure that Students are served for the duration of the academic year in which the termination occurs, including that Level All shall continue to provide Students with access to the Platform during such period (such activities, the "Transition Activities," and the period in which the Transition Activities are to be carried out, the "Transition Period").

(d) Effects of Termination. Upon termination or expiration of this Agreement, (i) except as otherwise expressly provided herein, all rights and licenses granted to Organization to access and use the Platform, the Services, and the Level All Content will terminate, and Organization will promptly discontinue use of the Platform; (ii) Level All will provide Students and Parents with the option of either (A) terminating their accounts (in which case all information, including Personal Data associated therewith will be promptly deleted), or (B) having their accounts, which were associated with Organization, disassociated from Organization's subscription and converted to a personal account controlled by the Student or Parent, at which time Organization will have no access to or control of any data generated in connection with the account after the conversion and Level All's handling of such data will be in accordance with its Privacy Policy; and (iii) each party shall return or destroy any Confidential Information of the other party, and provide written verification of such return or destruction; provided, however, (A) either party and its representatives may retain copies of such Confidential Information for purposes of legal or regulatory compliance, and (B) Level All also may retain copies of Personal Data as necessary to the extent such Personal Data is associated with an Authorized User who continues accessing the Services after converting its account on the Platform to a personal account..

3. **Charges for Services**. At this time, Level All works with corporate partners that pay for qualifying schools and school districts to access the Services. As a qualifying school or school district, Organization and Authorized Users may access and use the Services at no charge. Level All reserves the right at any time to charge fees for access to some or all of the Services provided that in no event shall Level All charge Organization or Authorized Users any fees unless Level All obtains Organization's prior written agreement to pay such charges. If at any time Level All elects to charge a fee for any portion of the Services that is free as of the Effective Date, Level All will provide Organization with at least sixty (60) days' advance notice of its intent to charge for such Services and any such fees will not go into effect until the commencement of the subsequent term, if any.

4. **Proprietary Rights**

(a) Generally. Each party understands and agrees that its use of the other party's trademarks, service marks, logos, content, methodologies, software, technology or other materials (collectively, the "IP") in connection with this Agreement does and will not create any right, title or interest in or to such Materials. As between the parties, each party owns all rights in and to its IP and its respective product(s) and services and other IP, including any and all intellectual property rights associated therewith. Nothing contained in this Agreement will give either party any right, title or interest in or to any IP of the other party or its affiliates, except for the limited rights expressly granted hereunder. For the avoidance of doubt, Level All's IP includes the Platform, the Services, and all Level All Content, including without limitation any Lesson Plans generated hereunder, and Organization's IP includes Organization Material, including, without limitation, any Personal Data uploaded into the Platform by Authorized Users, including Student's Personal Data.

- (b) License to Level All Content. Subject to the terms and conditions of this Agreement, during the Term, Level All hereby grants to Organization a non-exclusive, non-transferable (except as permitted under Section 9(b)) royalty free, fully paid license, without the right to sublicense, to view, download, reproduce, and disclose to Authorized Users the Level All Content solely for Organization's internal business purposes and Authorized Users' educational purposes.
 - (c) License to Organization Material. Organization hereby grants Level All a nonexclusive, worldwide, royalty-free and fully-paid license, with the right to sublicense, to use, reproduce, modify, create derivative works of, distribute, and display Organization Material, during the Term for purposes of (i) providing the Services and ensuring proper operation of the Services and associated systems in accordance with this Agreement for and on behalf of Organization; (ii) generally providing and improving the Services, and (iii) creating aggregated data or de-identified data and using or disclosing to third parties such data provided such use and disclosure otherwise complies with applicable law; provided, in all cases, that with respect to any Personal Data contained therein, Level All complies with Section 1(e)(iii).
 - (d) Feedback. Level All will treat any feedback or suggestions that Organization or any Authorized User provides to Level All regarding the Platform or the Services as non-confidential and non-proprietary. Level All reserves the right to use any such feedback or suggestions in any manner and for any purpose without any obligation to compensate Organization or any Authorized User.
5. **Confidentiality**. Each party acknowledges that it may have access to certain confidential information of the other party that is reasonably understood to be confidential to such party, including, with respect to Level All as the disclosing party, information regarding the nature of Level All's third party sponsorships ("**Confidential Information**"). Neither party may use or disclose to any third party (except as required by law or expressly permitted by the other party), any of the other party's Confidential Information, and shall take reasonable precautions to protect the confidentiality of such information. Information will not be deemed Confidential Information if such information: (a) is known to the receiving party prior to receipt from the disclosing party; (b) becomes known to the receiving party from a source other than one having an obligation of confidentiality to the disclosing party; (c) becomes publicly known or part of the public domain; or (d) is independently developed by the receiving party. A receiving party may disclose the Confidential Information of the disclosing party to the extent that such disclosure is expressly approved in writing by the disclosing party or is required by law or court order, provided that the receiving party promptly notifies the disclosing party in writing of such required disclosure and cooperates with disclosing party, at the disclosing party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

6. Warranties; Disclaimers

- (a) Level All represents and warrants that it will provide the Services and perform its other obligations under this Agreement in a professional and workmanlike manner in accordance with generally accepted industry standards, and all applicable laws. Although Level All has implemented certain measures designed to ensure the proper operation and integrity of the Platform, Level All does not warrant or represent that access to or use of the Platform will be error-free, uninterrupted, or that the use of the Platform will meet Organization's requirements.
- (b) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6(a), THE SERVICES, THE PLATFORM, AND THE LEVEL ALL CONTENT ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, AND LEVEL ALL AND ITS LICENSOR(S) DISCLAIM ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING,

BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

7. Indemnification

- (a) Level All will defend at its expense any claim, demand, suit or proceeding ("Claim") brought by a third party against Organization that arises from or is based on (i) an allegation that any part of the Services (other than any Organization Material contained therein) misappropriates any trade secret recognized under the Uniform Trade Secrets Act or infringes any copyright or United States patent issued as of the date of delivery of such Services; or (ii) bodily injury or death or injury to tangible or real property caused by the gross negligence or willful misconduct of Level All in performing any Services on Organization's premises. Level All will indemnify Organization from any damages, attorney fees and costs finally awarded against Organization as a result of, or for any amounts paid by Organization under a settlement approved by Level All in writing of, such Claim, provided Organization (A) promptly gives Level All written notice of the Claim; (B) gives Level All sole control of the defense and settlement of the Claim (except that Level All may not settle the Claim unless it unconditionally releases Organization of all liability); and (C) gives Level All all reasonable assistance requested by Level All in connection with the defense or settlement of the Claim, at Level All's expense. Notwithstanding the foregoing, Level All shall have no obligation under this section or otherwise with respect to any infringement claim based upon any use of the Services not in accordance with this Agreement; any use of the Services in combination with other products, equipment, software or data not supplied by Services; or any modification of the Services by any person other than Level All or its authorized agents. This Section 7(a) states the sole and exclusive remedy of Organization and the entire liability of Level All, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.
- (b) Organization will, to the extent permitted under applicable law and at its expense, defend Level All and its affiliates from and against any Claim brought by a third party against Level All that arises from or is based on (i) an allegation that any Organization Material (including any Personal Data) uploaded into or made available through the Services by Organization or Authorized Users, or use of any of the foregoing by Organization, the Authorized Users or Level All as permitted hereunder infringes or misappropriates such third party's intellectual property rights or otherwise violates any applicable law or Organization's obligations under this Agreement; or (ii) use by Organization or the Authorized Users of the Services, the Level All Content, or any Personal Data in a manner either not authorized under this Agreement or in violation of applicable law. Organization will indemnify Level All from any damages, attorney fees and costs finally awarded against Level All as a result of, or for any amounts paid by Level All under a settlement approved by Organization in writing of, such Claim, provided Level All (A) promptly gives Organization written notice of the Claim; (B) gives Organization sole control of the defense and settlement of the Claim (except that Organization may not settle the Claim unless it unconditionally releases Level All of all liability); and (C) gives Organization all reasonable assistance requested by Organization in connection with the defense or settlement of the Claim, at Organization's expense. The above defense and indemnification obligations do not apply if the Claim arises from Level All's breach of its obligations, representations or warranties under this Agreement.
- 8. LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS,

COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. EXCEPT FOR A BREACH OF SECTION 5 (CONFIDENTIALITY) OR A PARTY'S INDEMNIFICATION OBLIGATIONS, THE CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED \$1,000. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

9. General Provisions

- (a) Notices. Any notices provided for under this Agreement will be deemed received when delivered in person, as of the time of electronic transmission by facsimile (with electronic transmission confirmation) or email, or five (5) days after being mailed by registered mail to the intended recipient's address set forth in the preamble to this Agreement, to the attention of such party's signatory hereto. Either party may change its address or contact for the receipt of notices, requests or other communications hereunder by written notice duly given to the other party in accordance with this Section.
- (b) Assignment. This Agreement may not be assigned by either party without the prior written consent of the other; provided, however, that either party may assign this Agreement, without such consent, to the acquiring or surviving entity in connection with the acquisition of all or substantially all of such party's assets or ownership interests, whether by merger, consolidation, stock sale, asset sale or otherwise. This Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns.
- (c) Governing Law. This Agreement and any dispute arising from or relating to this Agreement will be governed in accordance with the laws of the state of New York, without reference to its conflicts of law principles; provided, however, that if Organization is a United States public educational institution domiciled in a state within the United States that expressly requires a different choice of law other than New York law, then the laws of the state in which Organization is located will apply. The parties agree that the exclusive jurisdiction of any actions arising out of this Agreement will be in the state or federal courts, as applicable, located in New York, New York; provided, however, that if Organization is a United States public educational institution domiciled in a state within the United States that expressly requires venue or jurisdiction of a different state, then Organization's state's required venue and jurisdiction will apply.
- (d) Miscellaneous. This Agreement, inclusive of any exhibits or addenda, together, constitute the entire agreement between the parties regarding Level All's provision of, and Organization's use of, the Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. This Agreement may not be modified or altered except by a written instrument duly executed by both parties. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or

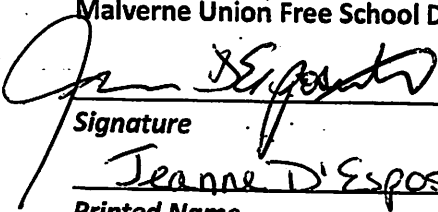
render unenforceable such term or provision in any other jurisdiction. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

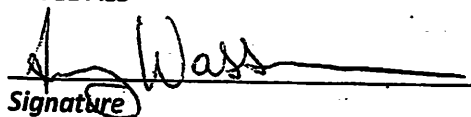
(e)

By signing below, each party agrees to be bound by this Agreement as of the Effective Date:

Malverne Union Free School District

LEVEL ALL


Signature


Signature

Jeanne D'Esposito
Printed Name

Greg Wasserman
Printed Name

Board President
Print Title

VP of Research
Print Title

5/9/2023
Date

5/1/23
Date