

## MASTER SUBSCRIPTION AGREEMENT

This Agreement is between NWEA, an Oregon nonprofit public benefit corporation, and **Subscriber** and is effective as of the Effective Date.

The parties agree as follows:

1. **Definitions.** In this Agreement, capitalized words have the following meanings:

1.1 **Agreement:** means this master subscription agreement including applicable Schedule(s) and Supplemental Terms.

1.2 **Assessment Data:** means deidentified student assessment data and results, and other metadata, including but not limited to, testing response times, scores (e.g. goals, RIT, overall RIT, etc.), NCEs codes, responses, item parameters, and item sequences that result from the Services. Assessment Data is considered deidentified when a reasonable person in the school community without personal knowledge of the relevant circumstances could not identify the student with reasonable certainty.

1.3 **Assessment System:** means, to the extent included in an applicable Schedule, the following assessment, reporting and administration systems: (i) Measures of Academic Progress® (MAP®); (ii) Skills Navigator®; or Children’s Progress Academic Assessment™ (CPAA™). Assessment System excludes Subscriber’s operating environment and any other systems not within NWEA’s control.

1.4 **Content:** means test items, including images, text, graphs, charts, and pictures.

1.5 **Directory Information:** means information contained in a Student Education Record that would not generally be considered harmful or an invasion of privacy if disclosed.

1.6 **Documentation:** means documentation made available to Subscriber by NWEA, which includes technical manuals, but excludes any marketing materials or brochures.

1.7 **Effective Date:** means the last date set forth on the signature page.

1.8 **FERPA:** means the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1), as amended from time to time.

1.9 **GRD:** means the Growth Research Database containing Assessment Data that are linked to Student Education Records. The GRD is used to generate norming studies and other research reports that Subscriber and all other subscribers receive.

1.10 **Legal Order:** means a valid order issued by a court or governmental agency of competent jurisdiction.

1.11 **NWEA Confidential Information:** means all NWEA Content, test scripts, underlying ideas, algorithms, item calibrations, concepts, procedures, processes, principles, know-how, and methods of operation that comprise the Services, including updates, enhancements, modifications, and improvements that are proprietary and confidential and contain trade secrets.

1.12 **Reporting:** means reports, the Learning Continuum (learning statements that provide an instructional starting point for teachers), and scoring.

1.13 **Schedule:** means one or more applicable order schedules or other order documents, including, upon renewal, any confirmation page listing generated by NWEA’s online account renewal portal. Schedule(s) may be provided as a separate attachment to the same email from which this Agreement is sent.

1.14 **Security Breach:** means actual evidence of the unauthorized acquisition of or unauthorized use of Student Education Records. For the avoidance of doubt, unauthorized acquisition of or unauthorized use of Directory Information shall not be deemed a Security Breach.

1.15 **Services:** means certain assessments, Content, Documentation, product training, professional development, Reporting, scoring, Software, and other services as set forth in an applicable Schedule.

1.16 **Software:** means (i) any web-based or client-server software made available to Subscriber by NWEA; (ii) a lockdown browser sublicensed through NWEA from a third party that facilitates access to the Services; (iii) NWEA software that supports client server assessments; and (iv) any other software set forth in the Supplemental Terms.

1.17 **Student Education Record:** means personally identifiable assessment results of Subscriber's students that are protected by FERPA and any applicable state law.

1.18 **Subscriber:** means the school or school district or other subscribing entity indicated on the signature page and may also refer to a school or group of schools forming an educational entity or any individual persons using or accessing the Services on behalf of the school or school district.

1.19 **Supplemental Terms:** means the Services-specific terms available at <http://legal.nwea.org/supplementalterms.html>.

1.20 **Systems Administrator:** means the Subscriber-designated individual who, within the Assessment System, is authorized to: (i) modify assessment preferences for Subscriber; (ii) create and modify user profiles for roles including lead roles (i.e. data administrator, assessment coordinator); and (iii) declare testing complete for Subscriber.

**2. Grant of License.** NWEA grants to Subscriber a nonexclusive, nontransferable, limited license to access, use, display, and install or download a copy, as needed, of the Software solely for Subscriber's internal use. The license is effective for a period of 1 year commencing on the date NWEA makes the Software available to Subscriber, unless otherwise specified in an applicable Schedule. The Services extend only to the quantity of students licensed as indicated on an applicable Schedule. Subscriber acknowledges there are limitations on the number of test events per academic year by assessment type pursuant to the Supplemental Terms.

**3. Protection from Unauthorized Use or Access.** Subscriber shall not: (a) copy, distribute, reproduce, resell, publish, license, create derivative works, transfer, rent, lease, or sublicense any or all of the Services; (b) exploit for any commercial purposes any portion of the Services, in particular the Content and Reporting, or permit use of the Services by anyone not employed or under the control of Subscriber; (c) remove any proprietary notices or labels on the Services; (d) use the Services in an attempt to, or in conjunction with, any device, program, or service designed to circumvent technological measures employed to control access to, distribution of, or rights in, the Content or other work protected by the copyright laws of any jurisdiction. Subscriber shall use reasonably secure measures to prevent unauthorized use (e.g., copying test items) by its end users. Further, Subscriber shall reproduce all copyright, trademark, and other proprietary notices and legends on each copy, or partial copy, of the Services. Subscriber will deactivate and remove from any equipment under its control any prior versions of the Services.

**4. Ownership.** The Services are owned by NWEA and are copyrighted and offered through this Agreement to Subscriber, except certain Software is sublicensed from a NWEA supplier. All right, title, and interest in the Services and all copies, updates, enhancements, modifications, and improvements, along with all associated intellectual property rights, remain with NWEA, regardless of either: (i) the source giving rise to the intellectual property; or (ii) despite any modifications or adaptations made for the benefit of Subscriber. The Services, and all updates, enhancements, modifications, and improvements, are protected by United States and international copyright laws and treaties, as well as other intellectual property laws. Subscriber is not granted any license to use any of NWEA's trade or service marks. Additionally, NWEA retains all right, title, and interest in its trade and service marks. Subscriber shall allow NWEA to use, without restriction or royalty obligation, any comments, suggestions, or contributions provided by Subscriber with respect to the Services. Subscriber grants and assigns to NWEA any intellectual property rights that Subscriber may incidentally obtain or have with respect to any such comments, suggestions or contributions.

**5. NWEA Confidential Information.** Subscriber shall keep NWEA Confidential Information strictly confidential subject to Subscriber's state public records law, if applicable. Subscriber shall not use, disclose, or distribute any Confidential Information, directly or indirectly, without the prior written consent of NWEA, except that NWEA authorizes Subscriber to disclose Confidential Information: (i) to Subscriber's employees or agents who have signed written confidentiality and nondisclosure agreements before such disclosure; and (ii) as required by applicable federal, state, or local law, regulation, or a Legal Order. Before making any disclosure under Section 5(ii), Subscriber shall provide NWEA: (a) Prompt written notice of such requirement so that NWEA may seek, at its sole cost and expense, a protective order or other remedy; and (b) Reasonable assistance, at NWEA's cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required in this Section, the

Subscriber remains subject to a Legal Order to disclose any NWEA Confidential Information, the Subscriber (or its representatives or other persons to whom such Legal Order is directed) may disclose no more than that portion of the NWEA Confidential Information which, on the advice of Subscriber's legal counsel, specifically requires the Subscriber to disclose. For any such disclosure, and upon NWEA's written request, Subscriber shall use best efforts to obtain assurances from the applicable court or agency that such NWEA Confidential Information will be afforded confidential treatment.

## **6. Student Education Records.**

6.1 **Use of Student Education Records.** Pursuant to its Student Education Records policy, Subscriber shall comply with any required parental and guardian consents for NWEA to provide Services to Subscriber under this Agreement. NWEA and Subscriber acknowledge that NWEA will have access to Directory Information and will create and maintain Student Education Records. NWEA shall have policies and practices to secure and keep Student Education Records confidential. Except as permitted under this Agreement, NWEA shall not (i) use Student Education Records for targeted student advertising; or (ii) resell or otherwise disclose to third parties any Student Education Records that NWEA creates or obtains during its performance under this Agreement without the written consent of Subscriber. Subscriber grants permission to NWEA and its contractors that have executed confidentiality agreements to use Student Education Records for maintaining, supporting, and troubleshooting the Services.

6.2 **Subscriber's Ownership of Student Education Records.** Student Education Records (excluding Assessment Data) are and will remain the property of Subscriber and under Subscriber's control.

6.3 **Requests for Disclosure of Student Education Records.** Except as otherwise described in this Section 6.3, NWEA shall not redisclose Student Education Records until Subscriber consents in writing to the redisclosure. If NWEA receives a request from a state educational agency for Student Education Records, NWEA shall notify Subscriber via email. Such notification to the Subscriber will provide Subscriber the ability to create and maintain a record of the request or redisclosure with the records of each student and have the record available to parents upon their request, as required by 34 CFR 99.32. Upon NWEA's email notification to Subscriber, NWEA may promptly respond to such requests for redisclosure. Subscriber hereby consents to such redisclosure by NWEA to its state education agency and its designated vendors for the purpose set forth under this section. Subscriber shall indemnify NWEA in accordance with Section 21 (Indemnification) of this Agreement for any consequences which may result from NWEA's redisclosure of Student Education Records to Subscriber's state educational agency and its designated vendors.

7. **FERPA.** In accordance with FERPA, NWEA may itself, through its employees or contractors: (i) maintain and use Student Education Records to perform the Services for the Subscriber; (ii) to use deidentified Student Education Records to improve its Services; and (iii) disclose Assessment Data to third parties for legitimate educational research provided such third parties execute confidentiality agreements. Subscriber is responsible for any notices to parents required under FERPA and for providing parents and guardians with an opportunity to inspect and challenge the contents of a Student Education Record. If NWEA receives a request from a parent or guardian challenging the content of a Student Education Record maintained by NWEA, NWEA shall contact Subscriber to validate the identity of the parent or guardian and student and request instructions regarding corrective action to be taken, if any. Once validated, NWEA shall correct erroneous the Student Education Record as directed by Subscriber in writing.

8. **GRD.** Subscriber authorizes NWEA to use Student Education Records in the GRD to provide research related Services to Subscriber. Such research Services include longitudinal studies, alignment studies, and norming studies. For additional fees, Subscriber may also order MAP Insight Growth Reports and other research reports. NWEA will handle Student Education Records in a manner that protects student anonymity. The authorization for use of Student Education Records in the GRD commences on the Effective Date or upon the date that Subscriber used or ordered Services, whichever is earlier. NWEA and Subscriber acknowledge that the permissions and obligations expressed in this Agreement survive the termination or expiration of this Agreement and any renewals. As described in Section 15 (Termination and Remedies), NWEA will maintain Student Education Records after expiration or termination of this Agreement for Subscriber's access to Reporting and research related Services and to validate the authenticity of data in such Reporting. If NWEA receives Subscriber's written request to opt out of participation in the GRD, NWEA will deidentify Student Education Records in the GRD. As a result of opting out of the GRD, certain research reports are unavailable to Subscriber due to the inability to accurately link student data with research data. Subscriber's written request must be sent via email to [legalservices@nwea.org](mailto:legalservices@nwea.org) and include the following: (i) requestor's name, title and contact information; (ii) the name of requesting school or entity with NCES #; (iii) a request to deidentify Student Education Records in the GRD; and (iv) an attestation that requestor is duly authorized and has legal capacity to execute the request.

## **9. Security and Privacy Obligations.**

9.1 **Subscriber Responsibilities.** Subscriber is solely responsible for configuring role-based access to Student Education Records within the Assessment System and for ensuring the security and availability of Subscriber's own computers, computer networks, and internet connections, including security patches, choice of browser, and browser configuration settings to be used with the Assessment System, email, and other transmissions. Subscriber acknowledges that its Systems Administrator controls the access and security points of the Assessment Systems. Annually, Subscriber shall remove any inactive Systems Administrators and confirm to NWEA the names of its active Systems Administrators. The Assessment System may contain mechanical or electronic methods to prevent unauthorized use or distribution of the Services. Subscriber shall not disable or circumvent such control devices.

9.2 **NWEA Responsibilities.** Subject to the limitations of warranty set forth in Section 18 (Limited Warranty) of the Agreement, within NWEA's sole discretion and to the extent commercially reasonable, NWEA shall maintain the necessary and appropriate privacy and data security controls to secure Student Education Records. NWEA has commercially reasonable policies and procedures and trains appropriate staff members to secure and maintain the confidentiality of Student Education Records. NWEA has an incident response program that specifies the actions to be taken when NWEA detects a Security Breach. In accordance with applicable state law, NWEA shall notify Subscriber by email or telephone, without unreasonable delay, after confirmation of a Security Breach. In the event of a Security Breach, Subscriber shall cooperate fully with NWEA so that NWEA can comply with its notification obligations to the affected parent(s), legal guardian(s) or eligible student(s) or any other parties for which notification by NWEA is required under applicable state law.

10. **Fees and Taxes.** Unless Subscriber is a tax-exempt entity, Subscriber shall pay the fees set forth on the applicable Schedule. Subscriber is solely responsible for any personal property taxes or local licensing fees related to or resulting from NWEA's delivery of Services under this Agreement.

11. **Billing and Payment.** Subscriber shall use its best efforts to determine the number of students to be tested by Subscriber. NWEA shall send an invoice based on the applicable Schedule to Subscriber, and Subscriber shall pay the amount due within 30 days of the invoice date by mailing a check or depositing the amount due via a wire transfer. Subscriber must contact NWEA at [accountsreceivable@nwea.org](mailto:accountsreceivable@nwea.org) for wire transfer instructions. If Subscriber overestimates the number of students tested, NWEA is not obligated to refund any fees. If, however, Subscriber underestimates the number of students tested, NWEA may submit an amended invoice to capture the additional students tested, and Subscriber shall pay the variance within 30 days of the amended invoice date.

12. **Amendments and Renewals.** Notwithstanding anything to the contrary, terms of any purchase orders or written authorizations issued by Subscriber or any other communications which are additional to or inconsistent with this Agreement are not binding unless NWEA expressly assents to such terms in writing. Such renewals and expansions are governed by this Agreement (including all NWEA order forms). The conditions of payment described in Sections 10 (Fees and Taxes) and 11 (Billing and Payment) apply to all renewals and expansions. Subscriber shall make all payments under this Agreement to NWEA.

13. **Product Training.** If Subscriber is new to the Services, Subscriber's teachers and staff administering the Services must, at Subscriber's cost, participate in NWEA introductory product training before testing begins (e.g. MAP Admin Workshop if Subscriber subscribes to Web-based or Client Server MAP). Before testing commences, Subscriber shall assign a member of its staff to coordinate the logistics of setting up the training. If Subscriber experiences staff change that affects the administration of the Services, Subscriber shall promptly notify NWEA in writing. NWEA may require Subscriber to send any new staff to introductory NWEA product training.

14. **Publicity.** Subscriber consents to NWEA's use of and references to Subscriber's name, directly or indirectly, in NWEA's marketing and training materials.

15. **Termination and Remedies.** This Agreement remains in effect until terminated in accordance with this section. Either party may terminate by providing the other party thirty (30) days written notice of its intent to terminate for convenience. NWEA may terminate immediately without prior notice to Subscriber upon Subscriber's breach of this Agreement. Upon termination for any reason, NWEA is under no obligation to refund any fees paid by Subscriber for the Services. NWEA may seek any legal or equitable remedy available against Subscriber for breach of the terms of this Agreement, including without limitation, injunctive relief and specific performance. After termination or expiration of the Agreement, NWEA shall continue to maintain Student Education Records, allowing Subscriber to continue to access Reporting, unless Subscriber notifies NWEA in writing to deidentify the Student Education Records. Subscriber acknowledges that NWEA will retain use of Assessment Data for research and improvement of products and services.

16. **Support.** NWEA will provide to Subscriber limited support, updates, enhancements, modifications, improvements, and maintenance services. Subscriber acknowledges that the validity and accuracy of the Reporting depends upon the accuracy and completeness of the class roster file Subscriber submits.

17. **Scheduled Maintenance.** NWEA has system maintenance periods throughout the year that affect Subscriber's use of the Services, including Subscriber's ability to (i) upload or download student and test data; (ii) access Reporting; or (iii) interact with any of NWEA's websites. NWEA provides notice of regularly scheduled maintenance at NWEA.org (<https://www.nwea.org>). NWEA may perform emergency maintenance at any time without advance notice.

18. **Limited Warranty.** NWEA warrants, during the subscription period, that the Assessment System, as delivered by NWEA and when used in accordance with the Documentation and the terms of this Agreement, will substantially perform in accordance with the Documentation. If the Assessment System does not operate as warranted and Subscriber has provided written notice of the non-conformity to NWEA within thirty (30) days of discovery of such non-conformity, NWEA shall at its option (i) repair the Assessment System; (ii) replace the Assessment System with a system of substantially the same functionality; or (iii) terminate the license to the non-conforming Assessment System and provide Subscriber a pro-rata refund representing the portion of any fees previously paid for the unused portion of the terminated license measured from the effective date of termination. The foregoing warranty specifically excludes defects in or non-conformance of the Assessment System resulting from (a) use of the Assessment System in a manner not in accordance with the Documentation except as otherwise authorized in writing by NWEA; (b) modifications or enhancements to the Assessment System made by or on behalf of Subscriber except as otherwise authorized in writing by NWEA; (c) combining the Assessment System with products, software or devices not provided by NWEA; (d) improper or inadequate maintenance of Subscriber's own computers, computer networks, operating environment, security programs, and internet connections; or (e) computer hardware malfunctions, unauthorized repair, accident, or abuse.

19. **Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 18 (LIMITED WARRANTY), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF (i) MERCHANTABILITY; (ii) FITNESS FOR A PARTICULAR PURPOSE OR USE; (iii) QUALITY; (iv) PRODUCTIVENESS; OR (v) CAPACITY, OR THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE SERVICES IS ERROR-FREE. EXCEPT AS PROVIDED HERE, THE ENTIRE RISK AND LIABILITY ARISING OUT OF USE OF THE SERVICES REMAINS WITH SUBSCRIBER. THERE IS NO WARRANTY FOR DATA SECURITY OR PERFORMANCE ISSUES (a) CAUSED BY FACTORS OUTSIDE OF NWEA'S REASONABLE CONTROL; OR (b) RESULTING FROM ANY ACTION OR INACTION OF SUBSCRIBER OR ANY THIRD PARTIES; OR (c) RESULTING FROM SCHEDULED MAINTENANCE PERIODS. NWEA CANNOT CONTROL PERFORMANCE OF SERVICES BASED ON THE FLOW OF DATA TO OR FROM NWEA'S NETWORK AND OTHER PORTIONS OF THE INTERNET, WHICH DEPEND IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT SUBSCRIBER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NWEA USES COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, NWEA DOES NOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NWEA DISCLAIMS ANY LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

20. **Limitation.** THE REMEDIES PROVIDED UNDER THE LIMITED WARRANTY ARE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDIES. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT IS NWEA LIABLE FOR ANY DAMAGES OR EXPENSES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES, OR PECUNIARY LOSS, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, EVEN IF NWEA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NWEA'S ENTIRE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER FOR THE RIGHT TO USE THE SERVICES IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THIS LIMITATION ALSO APPLIES TO NWEA'S DEVELOPERS AND SUPPLIERS OF THE SERVICES AND IS THE MAXIMUM FOR WHICH THEY AND NWEA ARE COLLECTIVELY RESPONSIBLE. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 21. **Indemnification.**

21.1 **By Subscriber.** To the extent limited by applicable law, Subscriber shall indemnify, defend, and hold harmless NWEA and NWEA's officers, directors, employees, agents, and representatives, from and against any claims, damages, expenses, judgments, fines, and amounts paid in settlement in connection with any proceeding arising from (i) any breach of the following Sections: 5 (NWEA Confidential Information), 6 (Student Education Records), 8 (GRD), and 9 (Security and Privacy Obligations); (ii) any use of the Services; or (iii) any other breach of this Agreement by Subscriber or any of its employees and agents.

21.2 **By NWEA.** Subject to Section 20 (Limitation), NWEA shall (i) defend Subscriber against any claims made by an unaffiliated third party that the Assessment System infringes its US patent, copyright, or trademark; and (ii) pay the amount of any resulting adverse final judgment against Subscriber (after any appeals) or settlement to which

NWEA consents. Subscriber must notify NWEA promptly in writing of the claim. Subscriber must also give NWEA sole control over its defense and settlement. Subscriber shall provide NWEA with reasonable assistance in defending the claim. NWEA's obligations under this Section will not apply to the extent the claim (or adverse final judgment) is based on: (i) Subscriber using the Assessment System after NWEA has informed Subscriber to discontinue use due to such a claim; (ii) the combination or use of the Assessment System with non-NWEA information, data, or materials except as otherwise authorized in writing by NWEA; (iii) modification of the Assessment System except as otherwise authorized in writing by NWEA; or (iv) use of NWEA's trademark(s) without express written permission. If NWEA receives information about a claim under this Section related to the Assessment System, NWEA may do any of the following, at its discretion and expense: (i) procure the right to continue its use; (ii) replace it with a functional equivalent; (iii) modify it to make it non-infringing (if NWEA does this, Subscriber will stop using the allegedly infringing Assessment System immediately); or (iv) terminate this Agreement. Notwithstanding anything to the contrary, NWEA's commitment under this Section is Subscriber's exclusive remedy for third-party infringement and trade secret misappropriation claims. Nothing in this section obligates NWEA to indemnify Subscriber from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable to the acts or omissions of Subscriber, its officers, employees, or agents.

## **22. Miscellaneous.**

22.1 **Force Majeure.** Neither party is liable for any delay or failure to perform any obligation hereunder due to causes beyond its control, including without limitation, war, riot, insurrection, civil commotion, terrorist activity, fire, industrial dispute, act of nature, computer crime including denial of service attacks, epidemic, act or omission of a third-party vendor or supplier, equipment failure, public enemy of government, failure of telecommunications, system malfunction, or other casualty.

22.2 **Waiver and Severability.** Waiver of any default or breach under this Agreement by NWEA does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any part of this Agreement is held illegal or otherwise unenforceable by a court of competent jurisdiction, the parties intend that the remainder of this Agreement nevertheless remains in full force and effect. Upon a determination that any term or provision is illegal or unenforceable, the court may modify this Agreement to effect the original intent of the parties as closely as possible.

22.3 **No Third-party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.

22.4 **Survival.** The following sections survive any termination or expiration of this agreement or the termination of any license granted under this agreement: 1 (Definitions); 3 (Protection from Unauthorized Use or Access); 4 (Ownership); 5 (NWEA Confidential Information); 6 (Student Education Records); 7 (FERPA); 8 (GRD); 9 (Security and Privacy Obligations); 17 (Scheduled Maintenance); 18 (Limited Warranty); 21 (Indemnification); and 22 (Miscellaneous).

22.5 **Entire Agreement; Order of Precedence.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. If there is a conflict among any of the terms of this Agreement, the parties intend that it be resolved by giving precedence to Agreement documents in the following order (i.e. the earlier listing governing the later): (i) any Supplemental Terms to the extent related to Services described in an applicable Schedule; (ii) this Agreement without any Schedules or Supplemental Terms; (iii) the most recent Schedule; followed by (iv) any other Schedules in reverse chronological order.

22.6 **Assignment.** Subscriber may not assign this Agreement to any third party without the prior written consent of NWEA, which consent shall not be unreasonably withheld.

22.7 **Binding.** This Agreement binds and inures to the benefit of each party and its respective successors and approved assigns, if any.

22.8 **Merger or Sale of NWEA.** If either (i) NWEA and a third party merge; or (ii) NWEA is sold to a third party, then the surviving or resulting entity shall maintain the Student Education Records in accordance with this Agreement, if the entity is subject to this Agreement.

22.9 **Representation of Signatories.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement for its respective party.

22.10 **Notices.** Any notice required under this Agreement shall be in writing and effective when (a) delivered personally against receipt, (b) deposited in the mail and registered or certified with return receipt requested, postage prepaid, (c) shipped by a recognized courier service and addressed to either party as designated in this Agreement, (d) delivered by email to an email address designated by the recipient, or (e) when delivered via any of the foregoing at such other address as may be provided by the recipient in accordance with this section.

**Address for Notices to NWEA:**

NWEA  
121 NW Everett Street  
Portland, OR 97209  
Email: legalservices@nwea.org

**Address for Notices to Subscriber shall be sent to the address set forth in Subscriber’s signature box below.**

22.11 **Controlling Law and Venue.** Unless the law of the jurisdiction where Subscriber is domiciled requires otherwise, the parties intend that this Agreement be construed and controlled by the laws of the State of Oregon, U.S.A., without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed and does not apply to this Agreement. Any litigation arising out of this Agreement must be conducted in courts located in Multnomah County, Oregon.

22.12 **Attorney Fees.** If any lawsuit is instituted to interpret, enforce, or rescind this Agreement, the prevailing party on a claim may recover, in addition to any other relief awarded, its reasonable attorney fees and other fees, costs, and expenses incurred in connection with the lawsuit, the collection of any award, or the enforcement of any order as determined by a judge.

22.13 **Counterparts.** The parties may execute this Agreement in counterparts, each of which is an original, and the counterparts constitute one and the same Agreement. The parties may also deliver and accept facsimile or electronically scanned signatures, which bind a party as if the signature were an original.

22.14 **Vendor Status and Independent Contractor.** NWEA provides Services within its normal business operations and operates in a competitive environment. The Services constitute a vendor relationship, as defined by OMB Circular A-133 and, therefore, any monies to pay for this Agreement are not subject to the federal audit requirements of OMB Circular A-133. NWEA is an independent contractor, and neither NWEA nor its employees are Subscriber’s employees. Nothing contained in this Agreement creates or implies an agency relationship, joint venture, or partnership between the parties.

**NWEA:**

**SUBSCRIBER** name and address:  
(please print)

By: \_\_\_\_\_  
Geri Cohen, Sr. Vice President & CFO

\_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

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

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

# NWEA Privacy and Security Policy for Student Information

Northwest Evaluation Association (“NWEA”) honors the privacy of student information and recognizes the importance of protecting such sensitive information. NWEA strives to treat personally identifiable student data (“Personal Student Data”) according to applicable local laws that regulate securing the access, maintenance, and transfer of Personal Student Data. This Privacy Policy (“Policy”) describes the types of student information we receive from our subscribers of our products and services and may collect from students taking NWEA’s assessments and our practices for collecting, using, maintaining, protecting and disclosing that information.

## Personal Student Data Collected from Subscribers

In order to perform the services pursuant to an agreement, our subscribers provide and we collect information which varies with the activity but which typically includes items such as the following:

- Full Name
- Date of Birth
- Student Identification Number Assigned by Subscriber
- Assigned Classroom Teacher
- Classification Data (which may, but does not always, include race, ethnicity, gender, nationality, free/reduced lunch)
- Disability Status for accommodation

## Personal Student Data Collected from Students

As a result of students taking NWEA’s assessments, we collect the following information associated with each student:

- RIT scores used in system reports for subscribers
- Student Item Responses
- Growth projections

## Use and Disclosure of Personal Student Data

As a vendor to subscribing schools and districts, NWEA is subject to its subscribers’ privacy and security policies with regards to maintaining and transferring Personal Student Data. We are a research educational not-for-profit with a mission to partner with others to help all kids learn. We use Personal Student Data to perform services under our agreements with our subscribers and to fulfill our mission and do not repurpose Personal Student Data for sale to third parties for their commercial use. For example, we:

- Use Personal Student Data to create, generate, and deliver reports to our subscribers including custom reports as requested. In addition, we may use Personal Student Data, with subscribers’



written permission, for statistical studies and research by us or third parties to benefit our subscribers (e.g., virtual comparison group studies, linking and alignment studies)

- Subject to applicable law and under a separate permission agreement by our subscribers, we may share and transfer Personal Student Data to third parties to evaluate educational or research programs or to conduct research studies.
- Generate aggregate data, which does not identify students in particular but tends to reflect collective information about students (see below for Non-personal Student Data).
- Deal with legal processes such as subpoenas, claims of test security breach.

## **Non-Personal Student Data Collected**

We collect and use some information from NWEA’s assessments in aggregate form so that it cannot be manipulated to identify any particular individual user.

- Assessment response times
- Item response times
- Assessment behavior such as completed, paused, suspended and terminated tests

## **Use and Disclosure of Non-Personal Student Data**

As an educational research organization and as part of providing services to its subscribers, we use Non-Personal Student Data to:

- Conduct research and produce aggregate statistical studies and analysis related to our products and services by us or third parties as an added benefit our subscribers (e.g. Norming studies)
- To improve our products and services and our business systems and procedures, from time to time.

## **Retention of Data**

We retain Personal Student Data for the length of time necessary to meet our contractual and legal commitments to our subscribers. Most of the time, these commitments extend past the end date of our agreements since our subscribers may need continued access to Personal Student Data as evidence of educational data for reporting and many subscribers resume their subscriptions at a later date and want their historical Personal Student Data intact for longitudinal growth studies or for legal compliance. However, we honor subscribers’ requests to destroy data from our production systems upon written request.

Our customary practice is to retain Non-Personal Student Data indefinitely for the purposes stated above in “Use and Disclosure of Non-Personal Student Data” to further our mission.

## **Security of Data**

We have established technological, internal policies and practices and appropriate safeguards to help prevent unauthorized access to or misuse of Personal Student Data. To protect confidentiality, we employ policies and procedures around segregation of duties and personnel management to ensure Personal Student Data and other sensitive data remains secure. This includes practices around recruiting and hiring involving security clearance and background checks. All employees complete orientation and training regarding appropriate use of communications and software systems and

foundational information security policies. NWEA audits these controls regarding access, confidentiality and integrity yearly via an SSAE 16 audit, done by an outside independent auditing firm. We also endeavor to require our service providers and other contractors to provide similar protection appropriate for the nature of the data handled by the providers.

NWEA uses industry standard methods such as SSL (secure socket layer) or encrypted file transfer techniques to secure and protect Personal Student Data and other confidential information. A multi-layered security approach protects data in storage. Internal access to confidential or sensitive data is limited to those with a need to know and who have executed a confidentiality and non-disclosure agreement. Our test delivery applications provide security and role based access at various levels of entry, analysis, and reporting. Access to the assessment system and the reports website are made available by using passwords that our subscribers define and keep secure. These passwords help us verify the subscriber's identity before granting access or making corrections to any information. As such, subscribers should never disclose their passwords to anyone. Our subscribers are responsible for maintaining the secrecy of their passwords and any information reported to them by us.

More detailed information about our Privacy and Security practices, see the document Web-Based MAP Security Specifications.

### **Data Breach Notifications**

In the event of a security breach of Personal Student Information or other confidential information of our subscribers, we notify affected subscribers as soon as practicable in accordance with applicable laws. We have an Information Security Team that will monitor the recovery and repair of the technical or process vulnerability.

### **Contact Information**

For additional information or concerns, please contact NWEA at [Audit-Risk@nwea.org](mailto:Audit-Risk@nwea.org)

This Policy was last updated September 24, 2014.



## Web-Based MAP® System Security Policy

### Purpose

The purpose of this policy is to outline: (i) system security for the Web-Based MAP system; and (ii) the role users have in protecting their MAP personally identifiable information.

### Scope

The responsibilities under this policy apply to all NWEA personnel and contractors who have access to NWEA information assets covered under this policy.

Portions of this policy also apply to NWEA partners and users who access and utilize the NWEA Web-Based MAP system.

### System Security

The Web-based MAP® system protects users' personally identifiable MAP data by:

- Storing the MAP application system and its data in a highly available and secure off-site co-location data center located in the United States.
- Conducting regular database back-ups, which are stored in a second geographically separate secure off-site co-location facility located in the United States.
- Employing industry standard environmental controls in our data center locations, including:
  - Environmental monitoring (cooling and power);
  - UPS power;
  - Backup generator;
  - Data center fire detection and suppression; and
  - 24 hour monitored physical security.
- Encrypting MAP data in transit using Secure Sockets Layer (SSL) over Hyper Text Transfer Protocol (HTTP).
- Ensuring that MAP data is stored in privately addressed networked devices that have no direct interaction with public networks.
- Routing all incoming and outgoing traffic through a firewall, which is managed by NWEA engineers.
- Maintaining business continuity and disaster recovery plans in the event of an emergency or natural disaster that including the following:
  - Available recovery times.
  - Conducts 24x7 system monitoring that is capable of detecting potential outages.

- Plans for File-level, Database and server recovery after a component/system failure, damage, or compromise.
- Geographical separation between data centers hosting production, backup and redundant system elements.
- Includes recovery/mitigation procedures for all managed sites.
- Includes provisions for at least the following events:
  - Fire;
  - Natural disaster;
  - Sabotage;
  - Accidental human error;
  - Flooding;
  - Equipment failure; and
  - Application/database failure.
- Utilizing change management processes.
- Utilizing Microsoft Active Directory to provide administrative security boundaries for NWEA engineers, clients, and staff. All workstations are members of NWEA domains and restrict user rights to authorized business needs.
- Maintaining privacy incident and breach notification procedures.
- Conducting system level testing for new functionalities that are added to the Web-Based MAP® system to reconfirm system security measures are retained and functional.
- Conducting regular penetration testing of the system to verify security controls are working as designed.
- Employing user authentication policies that give your organization control of user names and passwords, with several special characters accepted and a password requirement of at least 8 characters.
- Deploying denial of service attack mitigation services.
- Including component and system level fault tolerance and redundancy in system design including but not limited to:
  - Redundant disk configurations on critical file systems;
  - Redundant disk controllers;
  - Dual power supplies on all critical application servers; and
  - Clustered application servers.
- System monitoring and alerting for errors, performance, CPU utilization, and storage.
- Providing an inactivity time-out feature that logs users off the Web-Based MAP® system who have been inactive or exceeded a maximum number of login attempts.
- Encrypting user passwords in any data storage location and obfuscating password entry fields in any entry interface controlled by the discloser.
- Securing transmission of login credentials.
- Enforcing role-based access based on several roles, each with specific permissions, to control implementation, configuration, data management, testing, and reporting.
- Maintaining MAP data in accordance with the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1) – for the primary purpose of providing assessment and research services pursuant to your agreement with NWEA.

- Notifying you of any written third party requests for disclosures of your MAP personally identifiable information. Only you may authorize actual disclosures of such personally identifiable information to third parties.
- Conducting criminal history screening of employees with access to your MAP personally identifiable information.

## **Protecting Personally Identifiable Information**

Users are responsible for:

- Ensuring that their personnel and technology that access the Web-based MAP® system keep student data secure and comply with the Family Educational Rights and Privacy Act (FERPA).
- Password security policies, including disabling password-saving on all of your devices. Saving passwords on a shared computer can cause a security breach, making student data available to anyone who can access the computer. Saving passwords could lead to a violation state and federal regulations.
- Ensuring the security and availability of your own computers, computer networks, and Internet connections, including security patches, choice of browser, and browser configuration settings to be used with the Web-based MAP product, e-mail, and other transmissions.
- Maintaining policies to address student assessment and the use of, and access to, confidential student information.
- Configuring roles based access to MAP data in the NWEA Web-Based MAP® system in accordance with your applicable policy.
- Providing an annual notice to parents under FERPA, that (a) MAP data shall be maintained in part on behalf of you by NWEA and its contractors in order to provide assessment and research services to you; (b) NWEA employees and employees of NWEA's contractors shall be deemed school officials for the purpose of access to personally identifiable information derived from MAP data only if they have a legitimate interest in maintaining, organizing, or analyzing the data for assessment and research purposes consistent with your agreement with NWEA; and (c) personally identifiable information derived from student education records and maintained by NWEA shall not be further disclosed to third parties, except as allowed by FERPA and authorized by you or by your agreement with NWEA. You are responsible for any notices to parents required under FERPA and for providing parents/guardians with an opportunity to inspect and challenge the contents of the student records in question.
- Authorizing actual disclosures of your personally identifiable information from MAP data to third party organizations and maintaining a record of the request or disclosure with the records of each student and providing the record to parents upon request, as required by 34 CFR 99.32. If you authorizes a disclosure for a study to improve instruction, it shall authorize NWEA to enter into the required agreement with the third party organization on its behalf, consistent with 34 CFR 99.31(a)(6)(i)(C).

### **Ownership and Review**

The NWEA Information Security Committee is responsible for any and all changes to this policy.