

CUSTOM MASTER SUBSCRIPTION AGREEMENT

This Custom Master Subscription Agreement (“Agreement”) is entered into by and between NWEA, a non-profit corporation with a business address located at 121 NW Everett Street, Portland, Oregon 97209 (“NWEA”), and **Subscriber** and is effective as of July 1, 2021 (“Effective Date”).

The parties agree as follows:

1. **Definitions**

1.1 Anonymized Data: means any Student Education Record rendered anonymous in such a manner that the student is no longer identifiable. For example, this includes non-identifiable student assessment data and results, and other metadata, testing response times, scores (e.g. goals, RIT), NCES codes, responses, item parameters, and item sequences that result from the Services.

1.2 Assessment System: means, to the extent included in an applicable Schedule, the following assessment, reporting, and administration systems: (i) MAP® Growth; (ii) MAP® Skills; or (iii) MAP® Reading Fluency, each a product (“Product”). Assessment System excludes Subscriber’s operating environment and any other systems not within NWEA’s control.

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

1.4 Deidentified Data (Pseudonymized Data): means a Student Education Record processed in a manner in which the Student Education Record can no longer be attributed to a specific student without the use of additional information, provided that such additional information is kept separately using technical and organizational measures.

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

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

1.7 GRD: means the Growth Research Database used to generate longitudinal studies, alignment studies, linking studies, norming studies, and other research reports that Subscriber and other subscribers may receive, provided that other subscribers do not receive Subscriber Student Education Records.

1.8 NWEA Confidential Information: means all NWEA non-public, proprietary or confidential information, in oral, visual, written, electronic or other tangible or intangible form, whether or not marked or designated as confidential, including without limitation all NWEA Content, test scripts, Master Subscription Agreement - Domestic

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.

1.9 Reporting: means Product reports, learning statements, research studies, and scoring.

1.10 Schedule: means one or more applicable order schedules or other order documents, including, upon renewal, any confirmation page generated by NWEA’s online account renewal portal, which are considered incorporated into this Agreement

1.11 Security Breach: has the meaning ascribed to that term by the applicable state law, or, if not defined by state law, means actual evidence of a confirmed unauthorized acquisition of, access to, or unauthorized use of any Student Education Record(s).

1.12 Services: means the Assessment System, Content, Documentation, Product training, professional learning, Reporting, Software, GRD, and other services as described in this Agreement and set forth in an applicable Schedule.

1.13 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.

1.14 Student Education Record: means personally identifiable information of Subscriber’s students as defined by FERPA and any applicable state law.

1.15 Supplemental Terms: means the Services-specific terms available at <http://legal.nwea.org/supplementalterms.html> which are incorporated herein by reference.

1.16 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 Services solely for Subscriber's internal use. The license is effective for a period of one (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 indicated on an applicable Schedule. Subscriber acknowledges Product limitations on the number of test events per academic year (see Supplemental Terms).

3. Protection from Unauthorized Use or Access. Subscriber shall not: (i) copy, distribute, reproduce, resell, publish, license, create derivative works, transfer, rent, lease, or sublicense any or all of the Services; (ii) exploit for any commercial purposes any portion of the Services or permit use of the Services by anyone not employed by or under the control of Subscriber; (iii) remove any proprietary notices or labels from the Services; (iv) 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 Services. 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 and copyrighted by NWEA and are licensed through this Agreement to Subscriber, except certain Software is sublicensed from an 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) 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 intellectual property laws and treaties. Subscriber is not granted any license to use NWEA's or its suppliers' 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, which does not include any Student Education Records. 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 provided by Subscriber with respect to the Services.

5. NWEA Confidential Information.

Subscriber shall not use, disclose, or distribute any NWEA Confidential Information, directly or indirectly, without the prior written consent of NWEA, except that NWEA authorizes Subscriber to disclose NWEA 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, Subscriber shall use best efforts to obtain written assurances from the applicable court or agency that such NWEA Confidential Information will be afforded confidential treatment.

6. Student Education Records.

6.1 Privacy - Student Education Records. Subscriber and NWEA shall comply with all applicable federal and California laws and regulations regarding use, access, and disclosure of Student Education Records. The foregoing obligation includes but is not limited to, compliance with FERPA, the California Student Online Personal Information Protection Act, California Education Code section 49073.1, the Children's Online Privacy Protection Act and Subscriber's policies regarding parental and guardian consents required for NWEA and its contractors to provide Services to Subscriber under this Agreement. NWEA and Subscriber acknowledge that NWEA will collect, use and disclose Student Education Records consistent with the [NWEA Privacy Policy – Assessment System](#) attached hereto as Attachment 1. Notwithstanding any provision in the NWEA Privacy Policy – Assessment System, NWEA may only disclose Student Education Records under the following circumstances:

- NWEA may share Student Education Records with third-party contractors to support the use of the Assessment System by Subscriber. NWEA utilizes a cyber supply chain risk management (SCRM) review process for third parties. The primary objective of the cyber SCRM is to identify and assess external parties to ensure

they meet or exceed NWEA's security profile (based on the NIST Cybersecurity Framework). As a part of this process, third parties are contractually committed to protect the availability, confidentiality, and integrity of Student Education Records as required by law and NWEA's Privacy Policy – Assessment System. Third parties are prohibited from engaging in targeted advertising and any other use beyond support of the Assessment System. A list of third-party contractors that maintain or have access to Student Education Records is available to Subscribers upon written request.

- NWEA may share Student Education Records if it is required to do so by law or legal process, such as to comply with a valid court order or subpoena. If permitted under the valid court order or subpoena, NWEA shall notify Subscriber of such court order or subpoena prior to disclosing or producing any Student Education Record pursuant to the court order or subpoena to enable Subscriber to seek a protective order.
- NWEA may sell, transfer, or otherwise share some or all its assets, including NWEA's license to use Student Education Records it collects to perform the services under its agreement with Subscriber, in connection with a merger, acquisition, reorganization, sale of assets, or in the event of bankruptcy, in which case the successor entity is subject to the same commitments set forth in this Agreement and NWEA's Privacy Policy – Assessment System.
- NWEA may share Student Education Records with third parties that a Subscriber has authorized in advance in writing.
- NWEA may also disclose Student Education Records to its legal counsel solely in connection with legal advice and subject to executed confidentiality agreements.

If any of the terms or provisions set forth in the NWEA Privacy Policy – Assessment System conflict with the terms or provisions of this Agreement, the terms and provisions of this Agreement shall prevail.

6.2 Subscriber's Ownership of Student Education Records. Subscriber owns the Student Education Records and Student Education Records are under Subscriber's control.

7. FERPA and Education Code section 49073.1. In accordance with FERPA, NWEA

may maintain and use Student Education Records to perform the Services for the Subscriber and may disclose Anonymized Data to third parties for legitimate educational research. Subscriber is responsible for any notices to parents required under FERPA and for providing parents/guardians and eligible students with an opportunity to inspect and challenge the contents of a Student Education Record. NWEA will not use or disclose any information in any Student Education Record or amass a profile about a student for any purpose other than those required under the law or specifically permitted or required by this Agreement. NWEA will not sell any student's personally identifiable information or use personally identifiable information in any Student Education Record to engage in targeted advertising. To the extent consistent with the functionality of the NWEA Services, students may retain possession and control of their own student-generated content and transfer student-generated content to a personal and/or family account (to be paid for by the student or parent/guardian separately), by submitting a written request to NWEA. In the event of a security breach of any privacy or security measures described herein or an unauthorized disclosure of one or more Student Education Records that has become known to NWEA, NWEA will notify the Subscriber thereof in writing in accordance with applicable California law or without reasonable delay, whichever is sooner, and use commercially reasonable efforts to remedy such breach. NWEA has implemented a security program to protect the personally identifiable information it collects from loss, misuse, and unauthorized access, disclosure, alteration, and destruction. Its security measures include the designation and training of responsible individuals and are designed to protect personal information, to limit the dissemination of personal information to only designated staff or third-party vendors as is reasonably necessary to the provision of the NWEA Services and/or Software. If NWEA receives a request from a parent/guardian or eligible student 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 the erroneous Student Education Record as directed by Subscriber in writing. This provision shall survive termination of the Agreement until Subscriber Student Education Records are deleted.

8. GRD. Subscriber authorizes NWEA to use Student Education Records in the GRD, commencing on the Effective Date or upon the date that Subscriber used or ordered Services, whichever is earlier. Except as expressly permitted under the terms of this Agreement, NWEA will not disclose or distribute any Student Education Record in or through the GRD to any user, subscriber, person or entity other

than the Subscriber. NWEA and Subscriber acknowledge that the permissions and obligations expressed in this Agreement survive the termination of this Agreement and any renewals. As described in Section 15, NWEA will maintain Student Education Records after termination of this Agreement for Services which may include, but are not limited to, 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 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 for its employees and authorized third parties to Student Education Records within the Assessment System and for ensuring the security and availability of Subscriber's own passwords, 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. Subscriber acknowledges that the validity and accuracy of the Reporting depends upon the accuracy and completeness of the class roster file Subscriber submits.

9.2 NWEA Responsibilities.

Subject to the limitations of warranty set forth in Section 18 of the Agreement, NWEA shall implement administrative, physical, and technical safeguards to protect Student Education Records from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than accepted industry practices to protect the confidentiality, integrity, and availability of Student Education Records. NWEA has an incident response program that specifies the actions to be taken in the event of a Security Breach. NWEA shall

notify Subscriber by email or telephone in accordance with applicable state law or without unreasonable delay, whichever occurs sooner, after 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), eligible student(s), or any other parties for which notification by NWEA is required under applicable state law. More information regarding NWEA's information security program can be found in our [MAP@ Growth™ Security Whitepaper](#).

10. Fees and Taxes. Subscriber shall pay the fees set forth on the applicable Schedule. Subscriber is solely responsible for any personal property taxes, value added taxes, local licensing fees, or local taxes related to or resulting from NWEA's delivery of Services under this Agreement. If Subscriber is a tax-exempt entity, Subscriber shall send NWEA written evidence of such tax exemption and any other documentation as NWEA may reasonably request related to assessing taxes applicable to Subscriber. Unless otherwise required by applicable laws governing the activities of Subscriber pursuant to this Agreement, the Subscriber shall collect, withhold, or otherwise pay all taxes, charges and financial assessments charged to Subscriber under this Agreement by any local, regional, or national government agency which are due and payable in the country where the Subscriber is located.

11. Billing; Payment; and Orders.

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 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. Any purchase order, credit card order, or other order document with sufficient information for NWEA to process the order that is accepted by NWEA will be governed by this Agreement, provided however, the terms and conditions in any purchase order accepted by NWEA shall not be binding upon NWEA and shall not modify the terms of this Agreement.

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 and 11 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 MAP Growth 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. Subscriber may revoke its consent in writing for NWEA's use of Subscriber's name at any time and for any reason or no reason at all, and such consent will automatically terminate upon expiration or termination of this Agreement.

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. If NWEA terminates this Agreement without Good Cause, as defined below, Subscriber shall be entitled to and NWEA shall provide Subscriber with a pro-rata refund of any costs, fees or charges paid to NWEA by Subscriber for the Services or Software under this Agreement and/or the Schedule from the date of termination to the end date specified in the applicable Schedule. If NWEA terminates this Agreement for Good Cause as defined below, NWEA is under no obligation to refund any fees paid by Subscriber for the Services. "Good Cause" exists when the Subscriber commits a material breach of this Agreement and, in the case of a material breach capable of being cured, fails to cure that breach within thirty (30) days after the receipt of a request in writing to cure such breach. Either party may seek any legal or equitable remedy available against the other party for material breach of the terms of this Agreement, including without limitation, injunctive relief and specific performance. After termination of the Agreement, NWEA shall continue to maintain Student Education Records until: (i) NWEA receives Subscriber's written request to destroy Student Education Records via email to legalservices@nwea.org that includes requestor's name, title, contact information, name of requesting school or entity with NCES #, and attestation that Subscriber is duly authorized and has legal capacity

to execute the request; and (ii) NWEA confirms the information in Subscriber's written request. Thereafter, NWEA shall destroy the Student Education Records without undue delay or as otherwise required under applicable state law. Subscriber understands and agrees that if NWEA destroys Subscriber's Student Education Records, NWEA will not be able to provide such data to Subscriber after its destruction.

16. Support. NWEA will provide to Subscriber limited support, updates, enhancements, modifications, improvements, and maintenance services.

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 notice.

18. Limited Warranty.

18.1 Performance Warranty.

NWEA warrants, during the subscription period, that the Product(s), 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 any Product 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 applicable Product; (ii) replace the applicable Product with a system of substantially the same functionality; or (iii) terminate the license to the non-conforming Product and provide Subscriber a pro-rata refund representing the portion of any fees previously paid for the unused portion of the terminated license for such Product 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.

18.2 Disclaimer. EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 18, TO THE MAXIMUM EXTENT

PERMITTED BY APPLICABLE LAW, THESE 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 SERVICES IS ERROR-FREE. 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 THE SERVICES BASED ON THE FLOW OF DATA TO OR FROM NWEA'S NETWORK OR OVER THE INTERNET, WHICH DEPEND IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRDPARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT SUBSCRIBER'S CONNECTIONS TO THE INTERNET. 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. THE REMEDIES SET FORTH IN THIS SECTION 18 ARE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDIES AND NWEA'S SOLE AND EXCLUSIVE LIABILITY REGARDING THE PRODUCTS AND SERVICES FAILURE TO PERFORM AS WARRANTED IN THIS SECTION 18.

19. Limitation of Liability. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT IS EITHER PARTY LIABLE TO THE OTHER PARTY 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 SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 20, EACH PARTY'S ENTIRE LIABILITY UNDER THIS AGREEMENT IS LIMITED

TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER FOR THE RIGHT TO USE THE PRODUCT IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM. 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.

20. Indemnification.

20.1 By Subscriber. Except to the extent limited by applicable law, Subscriber shall indemnify, defend, and hold harmless NWEA and NWEA's officers, directors, and employees from and against any third party claims, damages, expenses, judgments, fines, and amounts paid in settlement in connection with any proceeding ("Claims") arising from (i) any breach of this Agreement by Subscriber or any of its employees or agents; (ii) any violation of applicable California or federal law or regulation by Subscriber or any of its employees or agents relating to the Services or Software. NWEA must notify Subscriber promptly in writing of the Claim. NWEA must also give Subscriber sole control over its defense and settlement. NWEA shall provide Subscriber with reasonable assistance in defending the claim. Nothing in this section obligates Subscriber to indemnify NWEA from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable to the acts or omissions of NWEA, its officers, employees, or agents..

20.2 By NWEA.

Except to the extent limited by applicable law, NWEA shall indemnify, defend, and hold harmless Subscriber and Subscriber's officers, directors, and employees, from and against any Claims arising from any violation of applicable California or federal law or regulation by NWEA or any of its employees or agents relating to the Services or Software.

If all the conditions in this section are met, NWEA shall also (i) defend Subscriber against claims made by an unaffiliated third party that the Assessment System infringes its US patent, copyright, or trademark ("Infringement Claim"); and (ii) pay the amount of any resulting adverse final judgment against Subscriber (after any appeals) or settlement to which NWEA consents.

20.2 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 to indemnify Subscriber for Infringement Claims under this Section will not apply to the extent the

Infringement Claim (or adverse final judgment) is based on: (a) Subscriber using the Assessment System after NWEA has informed Subscriber to discontinue use due to such an Infringement Claim; (b) the combination or use of the Assessment System with non-NWEA information, data, or materials except as otherwise authorized in writing by NWEA; (c) modification of the Assessment System except as otherwise authorized in writing by NWEA; (d) use of NWEA's trademark(s) without express written permission; or (e) Subscriber's acts or omissions which result in an Infringement Claim under this Section. If NWEA receives information about an Infringement Claim under this Section related to the Assessment System in whole or in part, NWEA may do any of the following, at its discretion and expense: (i) procure the right to continue its use; (ii) replace the infringing portion of the Assessment System with a functional equivalent; (iii) modify the infringing portion of the Assessment System to make it non-infringing (if NWEA does this, Subscriber will stop using the allegedly infringing portion of the 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 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.

21. Evaluation License. This Section 21 applies if NWEA has provided the Services (including but not limited to Assessment System, Reporting, and/or Software) to Subscriber for evaluation purposes. NWEA grants Subscriber a thirty (30) day (or as otherwise indicated by NWEA in writing) limited license to use such Services solely for the purposes of evaluation. NWEA is not obligated to provide support for the evaluation Services. **SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE SERVICES PROVIDED FOR EVALUATION MAY FUNCTION FOR A LIMITED PERIOD OF TIME, HAVE LIMITED FEATURES, AND HAVE OTHER LIMITATIONS NOT CONTAINED IN A COMMERCIAL VERSION OF THE SERVICES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NWEA IS PROVIDING THE SERVICES "AS IS", AND NWEA DISCLAIMS ANY AND ALL WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND STATUTORY WARRANTIES OF NON-INFRINGEMENT, LIABILITIES, AND INDEMNIFICATION OBLIGATIONS OF ANY KIND. IN THE EVENT OF A CONFLICT BETWEEN THIS SECTION 21 AND OTHER TERMS OF THIS AGREEMENT, THIS SECTION 21 WILL SUPERSEDE SUCH TERMS WITH RESPECT TO THE SERVICES**

LICENSED TO SUBSCRIBER FOR EVALUATION PURPOSES.

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-related crimes (including, but not limited to, 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 either party 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 affect 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 of this Agreement or the termination of any license granted under this agreement: 1, 3, 4, 5, 6, 7, 8, 9.1, 14, 15, 18, 19, 20.1, 22.2, 22.3, 22.4, 22.5, 22.9, 22.10, 22.11, and 22.12.

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. The terms of this Agreement apply to all order documents, including but not limited to purchase orders and credit card orders, accepted by NWEA, and this Agreement will supersede any inconsistent or different pre-printed terms of any such order document. 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. This Agreement shall only be modified by a written document expressing an intent to modify this Agreement signed by an authorized representative from each party. NWEA shall provide 30 days prior

written notice of any material changes to the Privacy Policy – Assessment System.

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 such person 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 (i) delivered personally against receipt, (ii) deposited in the mail and registered or certified with return receipt requested, postage prepaid, (iii) shipped by a recognized courier service and addressed to either party as designated in this Agreement, (iv) delivered by email to an email address designated by the recipient, or (v) when delivered via any of the foregoing at such other address as may be provided by the recipient in accordance with this section.

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 California, U.S.A., without giving effect to principles of conflict of laws. Notwithstanding anything to the contrary, the United Nations Convention on Contracts for the International Sale of Goods, Uniform Commercial Code, and Uniform Computer Information Transactions Act are specifically disclaimed and do not apply to this Agreement. Any litigation arising out of this Agreement must be conducted in courts located in Contra Costa County, California.

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.

22.15 UK Bribery Act. Each party agrees to comply with the UK Bribery Act. Subscriber acknowledges and agrees that Subscriber has not received, requested, been offered, agreed, paid or promised, any offer, promise or gift of any financial or other advantage from and to any person that would constitute a violation under the UK Bribery Act, or which would have influenced or secured any business or other advantage to NWEA.

22.16 Insurance. Without in anyway limiting NWEA's liability pursuant to the Agreement, NWEA will maintain policies of workers compensation, automobile liability, general liability, professional liability and errors and omissions insurance applying to the Services provided by NWEA to Subscriber for the entire duration of the term of the Agreement. If any policies are written on a claims-made form, NWEA agrees to maintain such coverage continuously throughout the term of the Agreement and, without lapse, for a period of at least one year beyond the expiration of the term, such that should occurrences during the term give rise to claims made after expiration of the term, such claims shall be covered. NWEA's workers compensation insurance policy as required by this Agreement shall meet the minimum legal requirements and include employer's liability insurance in the amount \$1,000,000 per accident for bodily injury and disease. Such insurance (other than workers' compensation) shall have a minimum combined single limit of liability of no less than one million dollars (\$1,000,000) per occurrence and a general aggregate limit of at least two million dollars (\$2,000,000). Such insurance shall be issued by an insurance company or companies authorized to engage in such insurance business in the State of California and rated not less than A-VIII in Best's Insurance Guide, unless otherwise agreed by Subscriber in writing. NWEA shall maintain a policy of cyber liability coverage, with a minimum combined single limit of liability of no less than one million dollars (\$1,000,000) per occurrence and a general aggregate limit of at least two million dollars (\$2,000,000). NWEA shall provide thirty (30) days advance written notice to Subscriber of cancellation, non-renewal or reduction in coverage. General Liability and Business Automobile Liability policies must provide the

following: (1) name as Additional Insured Making Waves Academy, its Board, officers, directors, authorized volunteers, agents, and employees and the Contra Costa County Office of Education; and (2) that such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against who claim is made or suit is brought. Before any payment is due to NWEA by Subscriber, NWEA must provide Subscriber with the certificates of

insurance (Accord Form 25-S or equivalent) signed by the insurer's representative, and additional insured policy endorsements in form (CG 20 10 11 85 or its equivalent) as applicable, evidencing all coverages set forth above and shall furnish complete copies of policies promptly upon Subscriber request. NWEA also understands and agrees that Subscriber may withhold payment for services or products for any violation of or noncompliance with these insurance obligations.

NWEA:

Making Waves Academy, Inc.:
4123 Lakeside Dr
San Pablo, CA 94806

By: _____
Geri Cohen, CFO & EVP, Corporate Services

By: _____

Printed Name:

Title:

Date: _____

Date: _____

Attachment 1

To Master Subscription Agreement

NWEA Privacy Policy - Assessment System

Introduction

NWEA recognizes the importance of protecting the privacy and security of its Subscribers and Users of the Assessment System. The purpose of this Privacy Policy ("Policy") is to inform Subscribers and Users of NWEA's policies and procedures regarding the collection, use, and disclosure of Student Education Records, Deidentified Data, and Anonymized Data. Nothing in this Policy grants any Subscriber or User the right to use or access the Assessment System. Subscribers and Users only have the right to use and access the Assessment System as set forth in the agreement(s) entered into between a Subscriber and NWEA (the "[Master Subscription Agreement](#)"). By using the Assessment System, Subscribers and Users agree to this Policy.

Definitions

"Use" means Subscriber's students, teachers, administrators, and other individuals licensed to use the Assessment System under the Master Subscription Agreement.

"Assessment System" means MAP® Growth™ and MAP® Skills™.

Except as set forth in this Policy, all other capitalized terms in this Privacy Policy shall have the meaning set forth in the Master Subscription Agreement between the parties, which can be found [here](#).

Subscriber Control and Choices Regarding Student Education Records

The collection, input, use, retention, disposal, and disclosure of Student Education Records by Users via the Assessment System are controlled solely by the Subscriber. The Subscriber is responsible for providing all necessary notices and obtaining all necessary consents from Users to collect, use, disclose, and submit the Student Education Records via the Assessment System for NWEA to use in accordance with the Master Subscription Agreement, including, if applicable, any notices and/or consents required under the Federal Educational Records Privacy Act (FERPA), the Children's Online Privacy Protection Act (COPPA) and applicable international laws, including, but not limited to, the General Data Protection Regulation (GDPR)

NWEA will not delete, change, or divulge any Student Education Records from its Assessment System controlled by the Subscriber except as outlined in this Policy. If a User has questions regarding control of Student Education Records related to the Assessment System licensed by the Subscriber, then User shall contact User's applicable school, district, or educational entity (i.e. Subscriber). If a User desires to revoke User's consent or "opt-out" of a particular use of User's Student Education Records, User shall contact User's applicable school, district, or educational entity. If NWEA receives a request from a User to "opt-out" it shall forward the request to the applicable school, district, or educational entity for handling. The applicable school, district, or educational entity is solely responsible for handling the User's "opt-out" in the Assessment System.

Information Collected & Maintained

NWEA collects and maintains the following information:

- [Usage Details](#). When Users access the Assessment System, NWEA may automatically collect certain details of the User's access to and use of the Assessment System, including traffic data, geographic location data, logs and other communication data, and the resources that Users access and use on or through the Assessment System. This information is Anonymized Data
- [Cookies \(or mobile cookies\)](#). A cookie is a small file placed on computing devices such as computers, tablets, and smartphones. NWEA may use cookies to collect usage details for authentication purposes.

For authentication purposes, cookies allow Users to navigate across multiple parts of the Assessment System without needing to re-authenticate. It may be possible to refuse to accept cookies by activating the appropriate setting on the computing devices. However, selection of these settings may disable access to certain parts of the Assessment System. The information collected via cookies is Deidentified Data. NWEA does not use Deidentified Data from cookies to identify Users. Data from cookies may be collected by NWEA using Google Analytics™ or other third-party tools in the Assessment System. Google Analytics™ and these other third-party tools do not collect, store, transit, use, or have access to Student Education Records.

- **Web Beacons.** A web beacon is a small electronic file such as a clear gif, pixel tag, or single-pixel gif. NWEA may use web beacons to collect usage details. It may be possible to refuse to accept web beacons by activating the appropriate setting on the computing devices. However, selection of these settings may disable access to certain parts of the Assessment System. The information collected via web beacons is Anonymized Data that is aggregated. Data from web beacons may be collected by NWEA using Google Analytics™ or other third-party tools in the Assessment System. Google Analytics™ and these other third-party tools do not collect, store, transit, use, or have access to Student Education Records.
- **Device Information.** NWEA may collect information about a User's computing device, mobile device, and network or Internet connection; including the device's unique device identifier, IP address, operating system, browser type, geographic location, and mobile network information. This information is Anonymized Data that is aggregated.
- **Information input by Users.** As part of the rostering process, Users may provide Student Education Records to the Assessment System that may include:
 - First, Last, and Middle Name;
 - Date of Birth;
 - Student Identification Number;
 - Personal Characteristics (which may, but does not always, include race, grade, ethnicity, gender, nationality, and language);
 - Economically Disadvantaged Status;
 - English Language Learner or Migrant Status;
 - Homeless Status;
 - Disability, Accessibility, or Accommodation Status;
 - Email Address
 - Name of School and Date of Enrollment;
 - Telephone Number; and
 - Assigned Courses and Instructors.
- **Information generated from using the Assessment System.** Users' use of the Assessment System generates Deidentified or Anonymized Data, which may include:
 - Assessment scores;
 - Assessment responses and response times;
 - Item responses and response times;
 - Growth and norming information; and
 - Assessment interaction behavior such as completed, paused, suspended, or terminated tests.

Use of Information Collected

NWEA only uses the information, including Student Education Records, it collects pursuant to this Policy and the Master Subscription Agreement. The most common of those uses are as follows:

- To provide Subscribers and Users with access to the Assessment System and its contents and any other information, products, or services that Subscriber requests from NWEA;
- To communicate with Users as necessary to fulfill NWEA's obligations to Subscribers;
- To provide Subscriber with notices about its account, including expiration and renewal notices;
- To carry out the Subscriber's and NWEA's respective obligations and enforce NWEA's rights arising from the Master Subscription Agreement, including for billing and collection;
- To notify Subscriber of changes to any products or services NWEA offers or provides;

- To improve performance, availability, and functionality of the Assessment System.
- To estimate Subscriber size and usage patterns; and
- To store information about Subscriber preferences, allowing NWEA to customize its services.

Deidentified and Anonymized Data

NWEA aggregates information it collects, including Deidentified and Anonymized Data, and uses such aggregated information and other non-personally identifiable information it collects as follows:

- To conduct legitimate educational research or produce aggregate statistical studies and analysis related to NWEA's products and services, by NWEA or third parties, as an added benefit to NWEA's Subscribers, which may be distributed publicly (e.g., norming studies, research papers, etc.);
- For third party legitimate educational research;
- To improve performance, availability, and functionality of the Assessment System;
- To state educational agencies for legitimate educational purposes; and
- For general research and to develop new products, features, and technologies.

Disclosure of Student Education Records

NWEA agrees to adhere to the disclosure requirements under FERPA and will not disclose any Student Education Records from the Assessment System to any third-party except as set forth in this Policy or as allowed by applicable law.

Generally, NWEA may disclose Student Education Records under the following circumstances:

- NWEA may share Student Education Records with third-party contractors to support the Assessment System. NWEA utilizes a cyber supply chain risk management (SCRM) review process for third parties. The primary objective of the cyber SCRM is to identify and assess external parties to ensure they meet or exceed NWEA's security profile (based on the NIST Cybersecurity Framework). As a part of this process, third parties are contractually committed to protect the availability, confidentiality, and integrity of Student Education Records. Third parties are prohibited from engaging in targeted advertising and any other use beyond support of the Assessment System. A list of third-party contractors that maintain or have access to Student Education Records is available to Subscribers upon written request.
- Consistent with 20 U.S.C. 1232g(b), 34 C.F.R 99.31(a)(9) and other applicable law, NWEA may share Student Education Records if it is required to do so by law or legal process, such as to comply with a court order or subpoena. If required by applicable law and permitted under the court order or subpoena, NWEA shall notify Subscriber of such court order or subpoena.
- NWEA may sell, transfer, or otherwise share some or all its assets, including NWEA's license to use Student Education Records it collects to perform the services under its agreement with Subscriber, in connection with a merger, acquisition, reorganization, sale of assets, or in the event of bankruptcy, in which case the successor entity is subject to the same commitments set forth in this Policy.
- NWEA may share Student Education Records with third parties that a Subscriber has authorized in advance in writing.
- NWEA may also disclose Student Education Records to its legal counsel solely in connection with legal advice and subject to executed confidentiality agreements.

NWEA does not sell Student Education Records to third parties for their commercial use and does not use such data to target advertisement at students. NWEA does not share, sell, rent, or transfer Student Education Records other than as described in the Master Subscription Agreement and this Policy.

NWEA does not publicly disseminate Student Education Records submitted by Users. NWEA permits Users to share comments and feedback in the Assessment System. NWEA does not publicly disseminate those comments and feedback outside of the Assessment System. Third-parties are prohibited from storing Student Education Records outside the borders of the United States of America.

Erasure, Rectification, Access & Portability of Student Education Records

Users or parents of such Users (if a User is a minor) may review and amend Student Education Records of such User by contacting the Subscriber and following the Subscriber's procedures for amending such User's Student Education Records. NWEA will not make any changes to any Student Education Records without the applicable Subscriber's express written permission, and then, only in accordance with applicable law.

Security

NWEA develops and implements privacy and information security measures aligned to NIST Cybersecurity Framework to protect the confidentiality, integrity, and availability of partner personal data. In doing so, personal data is stored and processed in a manner that is designed to ensure the appropriate security of Student Education Records, including protection against unauthorized or unlawful processing and against accidental loss, destruction, or damage, using appropriate technical and organizational measures. Further information on NWEA's data security measures can be found here: <https://legal.nwea.org/map-growth-information-security-whitepaper.html>.

Please be aware that despite NWEA's efforts, no data security measures can guarantee 100% security. Users should take steps to protect against unauthorized access to their password, phone, and computer by, among other things, signing off after using a shared computer, choosing a robust password that nobody else knows or can easily guess, and keeping your log-in and password private. NWEA is not responsible for any lost, stolen, or compromised passwords or for any activity on a User's account via unauthorized password activity.

Data Retention & Destruction

NWEA retains Student Education Records for the length of time necessary to meet NWEA's contractual and legal commitments to Subscribers. These commitments generally extend past the end date of contractual agreements as Subscribers may need continued access to Student Education Records and educational data for reporting; and many Subscribers resume their subscriptions later and want their historical Student Education Records intact for longitudinal growth studies or legal compliance. All Student Education Records are stored in facilities located within the borders of the United States of America.

NWEA honors Subscribers' requests to delete Student Education Records. To request that Student Education Records relating to a particular Subscriber and/or User(s) be deleted, Subscriber shall send a written request to NWEA via email to legalservices@nwea.org and include the following: (i) requestor's name, title, and contact information; (ii) the name of requestor's school or entity with NCES number (if available); (iii) a request to delete Subscriber's Student Education Records; and (iv) an attestation that requestor is duly authorized and has legal capacity to execute the request. NWEA will subsequently contact Subscriber to confirm the destruction request before executing the destruction request. NWEA retains Anonymized Data indefinitely for the purposes stated in this Policy.

Links to Third-Party Websites and Services

Users accessing the Assessment System, NWEA documentation, and/or NWEA sites may find links to external websites and applications owned and operated by other organizations. NWEA is not responsible for and has no control over the content or privacy policy of any linked site. NWEA encourages Users to read the privacy statements of any linked site as its privacy policy may differ from NWEA's.

General Data Protection Regulation (GDPR)

NWEA complies with all applicable laws governing international partners, including the GDPR. Information regarding GDPR compliance is described in the [NWEA MAP® Growth™ GDPR Overview](#) and our [International Master Subscription Agreement](#). Subscribers subject to the GDPR need to obtain informed consent for the collection, processing, and transfer of personal data under our agreement with them. NWEA's Explicit Consent to Process Data Form can be found [here](#). Subscribers should submit these completed forms to legalservices@nwea.org.

Updates

NWEA may periodically revise this Policy from time to time and will make updated version of this Policy available [here](#). However, NWEA will not make material changes to this Policy without first providing notice to Subscriber as provided in the Master Subscription Agreement.

Additional questions regarding this Policy can be sent to:

Jacob Carroll – Sr Director, Privacy & Information Security

NWEA

121 NW Everett Street

Portland, Oregon 97209

503-624-1951

legalservices@nwea.org

Document Effective Date: November 15, 2020

Last Modified: October 14, 2020 (with Subscriber revisions herein)

NWEA's previous Privacy Policy - Assessment System can be found here: [MAP® Growth™ and Skills™ Privacy Policy October 2019](#).