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School District End User Agreement

Fiscal Agent End User Subscription Agreement - Data Sharing

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 end user subscription agreement including applicable Schedule(s) and Supplemental Terms.

1.2**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.

1.3**Assessment System**: means, to the extent included in an applicable Schedule, the following assessment, reporting, and administration systems: (i) MAP® Growth; (ii) MAP® Skills; (iii) MAP® Reading Fluency; or (iv) MAP® Accelerator, each a product (“Product”). 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**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.

1.6**Documentation**: means Product 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, 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1), as amended from time to time.

1.9**Fiscal Agent**: means the State of Maine who has agreed to pay for the Services pursuant to the Fiscal Agent Agreement.

1.10**Fiscal Agent Agreement**: means the Agreement to Purchase Services dated [date] between NWEA and Fiscal Agent allowing Fiscal Agent to pay for the Services.

1.11**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.

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

1.13**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, 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.

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

1.15**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. Schedule(s) may be provided as a separate attachment to the same email from which this Agreement is sent.

1.16**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).

1.17**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.

1.18**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.

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

1.20**Subscriber**: means Maine School Administrative Unit or Maine private school indicated on the signature page or any individual persons using or accessing the Services on behalf of the school or school district.

1.21**Supplemental Terms**: means the Services-specific terms available at <http://legal.nwea.org/supplementalterms.html> or for MAP Accelerator, the terms available at: [https://legal.nwea.org/map-accelerator-supplemental-terms-and-conditions.html](https://legal.nwea.org/map-accelerator-supplemental-terms-and-conditions.html.). Some of these supplemental terms and conditions ( the "MAP Accelerator Terms") modify the terms of this Agreement.

1.22**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. 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 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**Use of Student Education Records**. Subscriber shall comply with all applicable federal and state laws regarding use, access, and disclosure of Student Education Records. The foregoing obligation includes but is not limited to, Subscriber’s compliance with its 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 create, access, secure, and maintain Student Education Records to perform the Services as further outlined in [NWEA Privacy and Security for Personally Identifiable Information](https://legal.nwea.org/nwea-privacy-and-security-for-pii.html). 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 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 and providing the Services.

6.2**Subscriber’s Ownership of Student Education Records**. Subscriber owns the Student Education Records.

6. 3**Requests for Disclosure of Student Education Records**. 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 disclosure 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 disclosure. Subscriber hereby consents to such disclosure by NWEA to Subscriber’s state education agency and its designated vendors. Subscriber shall indemnify NWEA in accordance with Section 18 of this Agreement for any consequences which may result from NWEA's disclosure of Student Education Records to Subscriber’s state educational agency and/or its designated vendors.

6.4 **Redisclosure to Fiscal Agent**. During the term of this Agreement, Subscriber grants NWEA permission to redisclose Student Education Records that are generated from test administrations under this Subscription to Subscriber’s Fiscal Agent but excluding any data from MAP Accelerator. Subscriber further agrees that the Student Education Records may be retained by the Fiscal Agent until the Fiscal Agent Agreement is terminated or expired. Pursuant to the Fiscal Agent Agreement, Fiscal Agent is obligated to destroy the Student Education Records upon such termination or expiration.

**7. FERPA**. In accordance with FERPA, NWEA may maintain and use Student Education Records to perform the Services and may disclose Anonymized Data to third parties for legitimate educational research with written subscriber permission. 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 the erroneous Student Education Record as directed by Subscriber in writing.

**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. 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 12, 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 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 15 of the Agreement, NWEA shall maintain commercially reasonable privacy and data security controls, including policies, procedures, and training, 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.

**10. 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.

**11. Publicity**. Reserved.

**12. 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. 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 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.

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

**14. 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](https://community.nwea.org/docs/DOC-2040)). NWEA may perform emergency maintenance at any time without notice.

**15. Limited 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 materially 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 or expressly contemplated under this Agreement; (b) modifications or enhancements to the Assessment System made by or on behalf of Subscriber except as otherwise authorized in writing by NWEA or expressly contemplated under this Agreement; (c) combining the Assessment System with products, software or devices not provided by NWEA; or expressly contemplated under this Agreement (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.

**16. Disclaimer**. **EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 15, 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 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 THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR** **DISRUPT SUBSCRIBER’S CONNECTIONS TO THE INTERNET. ALTHOUGH NWEA USES** **COMMERCIALLY 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.**
 **17.  Limitation**. **NWEA’s liability to the Fiscal Agent (including the Subscriber and any other subscriber granted a license under the Fiscal Agent Agreement), for damages sustained by the Department, as the result of NWEA’s default, or acts, or omissions, in the performance of work under this Agreement, except for NWEA’s indemnification obligations under the Section 16 of the Fiscal Agent Agreement, whether such damages arise out of breach, negligence, misrepresentation, or otherwise, shall be two times the amounts actually paid by the Fiscal Agent under the Fiscal Agent Agreement.**

**Notwithstanding the above, NWEA shall not be liable to the Fiscal Agent, the Subscriber or any subscriber for any indirect or consequential damages not covered by any of the insurances required under the Fiscal Agent Agreement.**

**18. Indemnification**.

18.1**By Subscriber**. Except 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 third party claims, damages, expenses, judgments, fines, and amounts paid in settlement in connection with any proceeding arising from any breach of this Agreement by Subscriber or any of its employees or agents..

18.2 **By NWEA**. NWEA provides the indemnification to the Fiscal Agent as described in the Fiscal Agent Agreement.

**19. Evaluation License**. This Section 19 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, LIABILITES, AND INDEMNIFICATION OBLIGATIONS OF ANY KIND.  IN THE EVENT OF A CONFLICT BETWEEN THIS SECTION 22 AND OTHER TERMS OF THIS AGREEMENT, THIS SECTION 22 WILL SUPERSEDE SUCH TERMS WITH RESPECT TO THE SERVICES LICENSED TO SUBSCRIBER FOR EVALUATION PURPOSES.

**20*.* Miscellaneous**.

20.1 **Force Majeure**. Either party may be excused from the performance of an obligation under this Agreement in the event that performance of that obligation by a party is prevented by an act of God, act of war, riot, fire, explosion, flood, or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, strike or labor dispute, provided that any such event, and the delay caused thereby, is beyond the control of, and could not reasonably be avoided by that party. Upon the occurrence of an event of force majeure, the time period for performance of the obligation excused under this section shall be extended by the period of the excused delay, together with a reasonable period, to reinstate compliance with the terms of this Agreement.

20.2 **Waiver and Severability**. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to this Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise an option or election under this Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option, or election, but the same shall continue in full force and effect. Use of one remedy shall not waive the Department’s right to use other remedies. Failure of the Subscriber to use a particular remedy for any breach shall not be deemed as a waiver for any subsequent breach. No waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies under this Agreement.

The invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the remainder of said provision, or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

20.3 **No Third-party Beneficiaries**. The parties do not intend to confer any right or remedy on any third party including the Fiscal Agent.

20.4 **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, 14, 15, and 18 and 20.

20.5 **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.

20.6 **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.

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

20.8**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.

20.9 **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.

20.10 **Notices**. All notices under this Agreement shall be deemed duly given: 1) upon delivery, if delivered by hand against receipt, or 2) five (5) business days following posting, if sent by registered or certified mail, return receipt requested. Either party may change its address for notification purposes by giving written notice of the change and setting forth the new address and an effective date..

**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 or if left blank, the address on file with NWEA**

20.11 **Controlling Law**. The parties intend that this Agreement be construed and controlled by the laws of the State of Maine, 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.

20.12 **Attorney Fees**. Reserved.

20.13 **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.

20.14 **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.

20.15  **Reserved**.

20.16 **Reserved**.

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| **NWEA** | **SUBSCRIBER****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Geri Cohen CFO & EVP, Corporate Services | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: Title:  |
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**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](https://legal.nwea.org/)").  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™.

“Student Education Record(s)” means student personally identifiable information as defined by Me. Rev. Stat. tit. 20-A, Section 952 and the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1),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](https://legal.nwea.org/).

**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 make a reasonable effort to notify Subscriber of such court order or subpoena.
* Consistent with 20 U.S.C 1232g(b)(1)(l), 34 C.F.R. 99.31(a)(10), 34 C.F.R. 99.36, 34 C.F.R. 99.32 and other applicable law, NWEA may share Student Education Records for health or safety emergencies purposes. If required by applicable law and permitted under the court order or subpoena, NWEA shall make a reasonable effort to notify Subscriber of such court order or subpoena.
* Consistent with 20 U.S.C. 1232g(b)(1)(F), 34 C.F.R 99.31(a)(6) and other applicable law NWEA may share Student Education Records to organizations conducting certain studies for educational institutions, provided any such studies are: (i) conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization that have legitimate educational interests in the information; (ii) the information is destroyed when no longer needed for which the purposes for which the studies were conducted; and (iii) NWEA enters into a written agreement with such party that: (a) specifies the purpose, scope and duration of the studies and the information to be disclosed; (b) disclosure that involves records or information about students from more than one district requires the informed written consent of the Department and any disclosure that involves one Subscriber requires the informed written consent of that Subscriber; (c) requires the party to use Student Education Records only to meet the purpose or purposes of the study as written; (d) requires the party to conduct the study in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization that have legitimate educational interests in the information; (e) requires the party to destroy all Student Education Records when the information is no longer needed for the purposes for which the study was conducted and specifics the time period in which the information must be destroyed; (f) requires the party to safeguard the information using industry standard security and privacy controls; and (g) requires the party to not sell any Student Education Records or use the information for targeted advertising as defined by applicable law.
* NWEA may share Student Education Records with third parties that a Subscriber has authorized.
* 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.organd 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](https://legal.nwea.org/nwea-map-growth-gdpr-overview.html) and our [International Master Subscription Agreement](https://legal.nwea.org/international-master-subscription-agreement.html). 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](https://legal.nwea.org/explicit-consent-to-process-data.html). 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](https://legal.nwea.org/nwea-privacy-and-security-for-pii.html). However, NWEA will not make material changes to this Policy without first providing notice to Subscriber as provided in the Master Subscription Agreement. Notwithstanding the foregoing, should laws and regulations change to regarding the collection, use, or distribution of Student Education Records, NWEA shall be permitted to make appropriate changes to this Policy to comply with the laws and regulations without issuing prior notice to Subscriber.

Additional questions regarding this Policy can be sent to:

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