

MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT (this “Subscription”) is entered into effective as of the date set forth in attached Schedule A (the “Effective Date”) by and between NORTHWEST EVALUATION ASSOCIATION, an Oregon nonprofit corporation (“NWEA”), and the school district or other similar entity described below (the “Subscriber”). For purposes of this Subscription, the term “Subscriber” shall also refer to a school or group of schools forming an educational entity or any individual persons using or accessing the NWEA Program (as defined below) on behalf of the school or school district.

NWEA is a nonprofit corporation that provides certain testing and reporting services, commonly referred to as Measures of Academic Progress™ (“MAP™”), that are comprised of some or all of the items described on attached Schedule A (the “Services”) as well as on subsequent invoices, to school districts and other similar entities such as the Subscriber. The Subscriber wishes to affirm its subscription to the Services for the Term (as defined below), which may be renewed as provided in this agreement (the “Subscription”). In connection with the Subscription, NWEA will grant to the Subscriber a limited license to use the NWEA Program (as defined below) and related materials that implement the delivery of the Services. The parties agree as follows:

1. Subscription. The Subscriber hereby accepts the Subscription to the Services as described in Schedule A.

2. Definition. For purposes of this Subscription, the “NWEA Program” shall be defined as the product(s) and/or services listed on attached Schedule A, including, but not limited to, the original and all whole or partial copies of: (a) machine-readable instructions and data, (b) components, (c) content (such as images, text, graphs, charts, pictures, etc.), (d) related licensed materials, and (e) licensed documents or keys, and documentation and instructions, together with repair updates and related user manuals and accompanying media and materials, which may be amended and updated from time to time during the term of this Subscription.

3. Grant. NWEA hereby grants to the Subscriber a nonexclusive, nontransferable license to access, use and display the NWEA Program for the Subscriber’s internal use only for the term of this Subscription or the Subscription periods described on attached Schedule A (the “Term”). In the event the NWEA Program requires installation or downloading of a copy of all or any portion of software NWEA Programs (the “Software”), NWEA grants to the Subscriber a nonexclusive, nontransferable license to install or download the necessary portion of the Software for the Subscriber’s internal use only in connection with the Subscription and only during the

Term. The license granted in this Section 3 extends only to the number of students, number of users, and/or test events indicated on attached Schedule A.

4. Protection from Unauthorized Use or Access. The Subscriber may not: (a) copy (other than once for back-up purposes), distribute, transfer, rent, lease or sublicense any or all of the NWEA Program or any accompanying materials; (b) permit use of the NWEA Program by anyone not employed or in contract with the Subscriber; (c) modify, adapt, translate, reverse engineer, decompile or disassemble the Software; (d) remove any proprietary notices or labels on the NWEA Program; (e) use the NWEA Program 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, a content file or other work protected by the copyright laws of any jurisdiction. The Subscriber will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the NWEA Program. If the Subscriber acquires a newer or upgraded version of the NWEA Program, after the Subscriber installs the newer version or upgraded version, it may not use the prior version of the NWEA Program from which it upgraded or transfer it to another party. The Subscriber will ensure that anyone who uses the NWEA Program (accessed either locally or remotely) does so only for the Subscriber’s authorized use and complies with the terms of this Subscription.

5. Ownership. The NWEA Program may be comprised of all or any portion of the items described in attached Schedule A. The NWEA Program is owned by NWEA or an NWEA supplier, and is copyrighted and licensed, not sold to the Subscriber. All rights, title and interest in the NWEA Program, all copies, and all updates, enhancements, modifications, and improvements, along with all intellectual property rights related thereto, shall remain with NWEA, regardless of the source giving rise to the intellectual property and despite any modifications or adaptations made for the benefit of the Subscriber. The NWEA Program and all updates, enhancements, modifications, and improvements are protected by United States and international copyright laws and

treaties, as well as other intellectual property laws. The Subscriber is not granted any license to use any of NWEA's trade or service marks and NWEA retains all right, title and interest in its trade and service marks. The Subscriber agrees that NWEA may use, without restriction or royalty obligation, any comments, suggestions or contributions provided by the Subscriber with respect to the NWEA Program or Software during the course of its use, and the Subscriber, by this Subscription, grants and assigns to NWEA any intellectual property rights that the Subscriber may incidentally obtain or have with respect to any such comments, suggestions or contributions.

6. Confidential Information. The Subscriber acknowledges that all test items, underlying ideas, algorithms, concepts, procedures, processes, principles, know-how, and methods of operation that comprise the NWEA Program, including updates enhancements, modifications and improvements are confidential and contain trade secrets (collectively referred to as "NWEA Confidential Information"), and the Subscriber will respect such confidentiality, and shall use its best efforts to keep all such information confidential. To the extent permitted by law, the Subscriber agrees not to use, disclose, or distribute any NWEA Confidential Information, directly or indirectly, without the prior written consent of NWEA, except that the Subscriber shall be authorized to disclose Confidential Information to the Subscriber's employees or agents who have signed written confidentiality and nondisclosure agreements before such disclosure. Both NWEA and the Subscriber acknowledge that this obligation shall survive the termination of this Subscription.

7. Student Information. It is the responsibility of the Subscriber to have a policy in place to address the assessment of students and the use of and access to confidential student information ("Student Information"). NWEA and the Subscriber both acknowledge that NWEA may have access to the Subscriber's Student Information. NWEA agrees to respect such confidentiality, and shall use NWEA's best efforts to keep such information confidential. Absent reckless or intentional acts or omissions by NWEA, in no event will NWEA be liable for any disclosure of Student Information. The Subscriber is solely responsible for ensuring the security of the Subscriber's own computers, computer networks, internet connections, email and other transmissions. All documents containing the Student Information shall be clearly marked by the Subscriber as "confidential". To the extent permitted by law, NWEA agrees not to use, disclose, or distribute any of the Student Information, directly or indirectly, without the Subscriber's prior written consent, except that it shall be authorized to

disclose the Student Information to NWEA employees and agents who have signed written confidentiality or nondisclosure agreements before such disclosure. NWEA shall also be authorized to use the Student Information as part of "norming studies," such studies which are made available to all school districts using NWEA products and services; provided, that none of the Student Information contained in the "norming studies" is personally identifiable to individual students. In addition, NWEA is authorized to use the Student Information in the Growth Research Database maintained by NWEA ("GRD"), which is more particularly described on attached Schedule B and the permission is effective from the date when the Subscriber first subscribed to the NWEA Program and services. The Subscriber's participation in the GRD shall not in any way interfere with the regulations mandated by the Family Educational Rights and Privacy Act ("FERPA"). Both NWEA and the Subscriber acknowledge that the permissions and obligations shall survive the termination of this Subscription.

8. Subscriber Information. The Subscriber agrees to give permission for NWEA to use its schools' and district information to perform the obligations hereunder and to include such information in the GRD, which is more particularly described on attached Schedule B. Both NWEA and the Subscriber acknowledge that this permission shall survive the termination of this Subscription.

9. Protection. The NWEA Program may contain mechanical or electronic methods to control unauthorized use or distribution of the NWEA Program. The Subscriber shall not disable or circumvent such control devices.

10. Fees and Taxes. The Subscriber agrees to pay the fees for the Subscription to the Services set forth on attached Schedule A during the Term and any renewals thereof. The Subscriber shall be solely responsible for any personal property taxes or local licensing fees resulting from the Subscriber's agreement under this Subscription or in connection with the delivery of the Services under this Subscription.

11. Billing and Payment. The Subscriber agrees to pay 100 percent of the amount due (as set forth on attached Schedule A) upon signing of this Subscription. All payments due under this Term and for any subsequent renewals shall be based on Subscriber's best efforts to estimate the number of students to be tested by Subscriber. The Subscriber shall then pay the amount due for such periods immediately upon receipt of invoice from NWEA. The Subscriber agrees that all payments upon invoice shall

be net 30 days. In the event that the Subscriber overestimated the number of students to be tested, NWEA shall not be obligated to refund any Subscription fees. If, however, the Subscriber tests significantly more students than the number Subscriber originally estimated (Subscriber underestimates by more than 10%) and paid for, NWEA has recourse to submit an amended invoice to capture the additional students and Subscriber agrees to pay the variance within 30 days of receipt of invoice.

12. Subscription Renewals and changes. Future fees associated with adjustments including, but not limited to, the quantity of students tested, additional grade- or subject-specific assessments, supplemental products, and Subscription renewals or price increases will serve as amendments to the Subscription scope and price noted in a revised estimate. The Subscriber's issuance of a purchase order, written authorization, or payment of any Subscription renewal or Subscription expansion invoice will constitute acceptance of the adjusted Subscription scope and price. Such Subscription renewals and expansions will continue to be otherwise governed by this Subscription (including all NWEA order forms). The conditions of payment described above in Section 11 shall apply to all subscription renewals and expansions. All payments under this Subscription shall be payments to NWEA.

13. Professional Development. If the Subscriber is new to the NWEA Program, NWEA will require and provide professional development for the Subscriber's teachers and staff administering the NWEA Program before testing begins. Schedule A contains the pricing for these Services. The Subscriber is responsible for assigning a member of its staff to coordinate the logistics of setting up the training before testing begins. In the event that Subscriber experiences staff turnover that affects the administration of the NWEA Program, Subscriber will notify NWEA within 30 days of the change and may be subject to scheduling and sending the new staff to introductory professional development training. Subsequent ongoing professional development training is recommended by NWEA, but is at the discretion of the Subscriber.

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

15. Termination. This Subscription shall automatically renew at the end of the term as indicated in Schedule A unless Subscriber provides 30 days written termination notice prior to the end of the applicable term or earlier upon any breach of this Subscription and license by the Subscriber, or by

cancellation pursuant to the Limited Warranty provided herein. In the event of the Subscriber's breach, NWEA will be under no obligation to refund any fees paid by the Subscriber for the NWEA Program and related services. 30 days written notice is required for termination without cause. Upon termination for any reason, the Subscriber must delete or destroy the Software and all materials related to the NWEA Program, or, at NWEA's option, immediately return any media and materials to NWEA. NWEA reserves the right to seek any legal or equitable remedy available against the Subscriber for violation of the terms of this Subscription, including, without limitation, injunctive relief and specific performance. The terms of Sections 6, 7, 8 and 15, shall survive any termination of this Subscription or the termination of any license granted under this Subscription.

16. Support. NWEA shall provide to the Subscriber limited support, updates, enhancements, modifications, improvements and maintenance services under the terms and conditions of this Subscription. Subscriber agrees to provide student and class information in a Class Roster File (CRF), for each test window, in the approved format as described in the CRF Template. The CRF must be submitted during the time period that is posted on NWEA's website prior to Subscriber's first day of testing. Subscriber acknowledges that the validity and accuracy of its reports depends upon the quality of the data in the CRF.

17. Scheduled Maintenance. NWEA has system maintenance periods throughout the year that will affect Subscriber's ability to upload or download student or test data, access reports, or interact with any of NWEA's websites. However, Subscriber's ability to test during the scheduled maintenance periods will not be affected. The dates and hours for the system maintenance periods are posted at <http://www.nwea.org/support/details.aspx?content=893>.

18. Limited Warranty. NWEA warrants to the Subscriber during the Term that the Software, when properly installed and used, will perform substantially in accordance with the Software's documentation or as represented in writing by NWEA. This limited warranty is void if the failure of Software results from (a) use of the Software in connection with software or hardware not compatible with the Software or not meeting the technical specifications provided by NWEA; (b) improper or inadequate maintenance; or (c) accident, abuse, misapplication or use of the Software other than as described in the documentation provided by NWEA. This limited warranty is void if the Software is altered or modified in any way by anyone other than NWEA. NWEA does not warrant

that the operation of the Software will meet the Subscriber's requirements or be uninterrupted or error free. The Subscriber is responsible for the results obtained from the use of the Software and the NWEA Program. NWEA assumes no responsibility for the operating environment in which the Software functions. NWEA will, at its sole option, either replace or, with its best efforts, correct any Software, which fails to perform substantially in accordance with the documentation for the Software or as represented in writing by NWEA upon written notice of such failure. If NWEA is unable to correct the error after using its best efforts, NWEA will, at its sole and exclusive option, either replace the Software with a functionally equivalent software program or refund the fees paid for licensing the Software on a pro-rata basis and cancel the license granted in this Subscription. THIS IS THE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF ANY WARRANTY IN THIS SECTION.

19. Disclaimer. EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE NWEA PROGRAM IS PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, QUALITY, PRODUCTIVENESS OR CAPACITY, THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE NWEA PROGRAM WILL BE ERROR FREE. EXCEPT AS PROVIDED HEREIN, THE ENTIRE RISK ARISING OUT OF THE USE OF THE NWEA PROGRAM REMAINS WITH THE SUBSCRIBER.

20. Limitation. THE REMEDIES PROVIDED UNDER THE LIMITED WARRANTY ARE THE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDIES. EXCEPT TO THE EXTENT THE FOLLOWING LIABILITY LIMITATION IS PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL NWEA BE LIABLE FOR ANY DAMAGES OR EXPENSES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PECUNIARY LOSS, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE NWEA PROGRAM, EVEN IF NWEA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, **NWEA'S ENTIRE LIABILITY UNDER THIS SUBSCRIPTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE SUBSCRIBER FOR THE RIGHT TO USE THE NWEA PROGRAM.** THIS LIMITATION OF LIABILITY ALSO APPLIES TO THE NWEA PROGRAM DEVELOPERS AND SUPPLIERS. IT IS THE MAXIMUM FOR WHICH THEY AND NWEA ARE COLLECTIVELY RESPONSIBLE.

21. Indemnification. The Subscriber agrees to indemnify, defend and hold harmless NWEA and NWEA's officers, directors, employees, agents and

representatives, from and against any and all claims, damages, expenses, judgments, fines, and amounts paid in settlement in connection with any proceeding arising from the Subscriber's breach of this Subscription or its use of the NWEA Program.

22. Miscellaneous.

22.1 Force Majeure. NWEA shall not be liable for any failure to perform any obligation hereunder, or from any delay in the performance thereof, due to causes beyond its control, including without limitation war, riot, insurrection, civil commotion, terrorist activity, fire, industrial disputes of whatever nature, acts of nature, computer crimes, public enemies of government, failure of telecommunications, system malfunctions, fire or other casualty.

22.2 Severability. If any part of this Subscription shall be held invalid or unenforceable, the remainder of this Subscription will nevertheless remain in full force and effect.

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

22.4 Survival. All provisions of this Subscription that would reasonably be expected to survive the termination of this agreement will do so.

22.5 Entire Agreement. This Subscription contains the entire understanding of the parties regarding the subject matter of this Subscription and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Subscription.

22.6 Binding. This Subscription will be binding on the parties and their respective successors, and permitted assigns, and will inure to their benefit.

22.7 Representation of Signatories. Each person signing this Subscription represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Subscription.

22.8 Notices. Any notice required under this Subscription shall be in writing and effective when (a) delivered personally against receipt, (b) deposited in the mail and registered or certified with return receipt requested, postage prepaid, (c) shipped by a recognized courier service and addressed to either party as designated in this Subscription, (d) delivered by e-mail or other electronic transmission to an e-mail

address designated by the recipient, or when delivered via any of the foregoing at such other address as may be provided by the recipient in accordance with this Section.

Address for Notices to NWEA:

Northwest Evaluation Association
5885 SW Meadows Road, Suite 200
Lake Oswego, OR 97035-3256

Address for Notices to the Subscriber shall be sent to the address set forth on Schedule A of this Subscription.

22.9 Governing Law. This Subscription shall be construed and controlled by the laws of the State of Oregon, U.S.A., without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed and shall not apply to this Subscription.

22.10 Attorneys Fees. If any arbitration or lawsuit is instituted to interpret, enforce or rescind this Subscription, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other

fees, costs and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68A(2), incurred in connection with the arbitration or lawsuit, the collection of any award or the enforcement of any order as determined by the arbitrator or judge.

22.11 Counterparts. This Subscription may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same agreement, notwithstanding that all of the parties are not signatory to the original or the same counterpart. The parties may also deliver and accept facsimile or electronically scanned signatures, which shall be binding upon the parties as if the signature was an original.

22.12 Vendor Status. The NWEA Program is provided by NWEA within its normal business operations and is operated in a competitive environment. The NWEA Program offered under this Subscription constitute a vendor relationship, as defined by OMB Circular A-133 and therefore, any monies to pay for this Subscription, are not subject to the federal audit requirements of OMB Circular A-133.

22.13 Assignment. The Subscriber may not assign this Subscription to any third party without the prior written consent of the NWEA.

NWEA:	SUBSCRIBER:
NORTHWEST EVALUATION ASSOCIATION	
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____

SCHEDULE A

DESCRIPTION OF SUBSCRIBER, NWEA PROGRAM, PRICING AND TERM

SCHEDULE B

GROWTH RESEARCH DATABASE ACKNOWLEDGEMENT

Overview

The Growth Research Database (“GRD”) houses a District’s test data for each student in a secure database for legitimate educational research purposes. The GRD is generally populated with NWEA Achievement Level Test (“ALT”) and Measures of Academic Progress™ (“MAP”) results, and other information related to these results, including but not limited to, each student’s identification number, grade, gender, ethnicity, school name, RIT scores, subject areas tested, and participation in special or categorical programs (e.g., Title 1, Special Education, English as a Second Language, Talented and Gifted).

The GRD provides NWEA with essential data that enables the production of specialized reports for schools, including but not limited to, virtual comparison group reports. These reports permit tailored comparisons of a district’s students in relation to groups of students that share similar performance and demographic characteristics. Advanced longitudinal analysis of students and complex measures of student growth are available only if schools participate in the GRD.

Confidentiality of the GRD

NWEA will protect and will not print or release information stored in the GRD to the public or to any persons not otherwise subject to an executed Confidentiality Agreement. NWEA will only share information from the GRD with approved researchers that uphold the same confidentiality guidelines as NWEA and who have signed a Confidentiality Agreement with NWEA. No student-identifiable information will be shared with these researchers without express written consent of the school district. National Center For Education Statistics District ID numbers, however, will be provided to selected and approved researchers provided that they do not release or publish school or district names without express written permission from the affected schools and districts. Participation in the GRD shall in no way interfere with the regulations mandated by the Family Educational Rights and Privacy Act (“FERPA”).