

## TRIAL AGREEMENT (International)

**THIS TRIAL AGREEMENT** (this “Agreement”) is entered into and effective once the Evaluation Period begins (as defined in Section 3 below). This Agreement is by and between NWEA, an Oregon nonprofit corporation, and the school or school district or other similar entity described in the Schedule A and/or in the signature page (“District”). The term District shall also refer to a school or group of schools forming an educational entity or any individual persons using or accessing the Program (as defined in Section 1 below) on behalf of the school or school district. By signing the Schedule A and/or this Agreement the District confirms that it has read and accepts this Agreement.

1. **License.** NWEA grants District a nonexclusive, nontransferable license to access, use, and display the Program (as defined below) and its reports and documentation for District’s internal use only during the Evaluation Period and solely for trial and evaluation purposes (the “License”). This License does not permit the District to use the Program for any purpose other than as expressly permitted by this Agreement, including, without limitation, any use of the Program for student evaluations or measurements, teacher evaluation or measurements, productive purposes or deployment of the Program in any commercial application or to provide the Program or disclose information resulting from the operation of the Program to any third party without NWEA’s prior written approval. For Web-Based MAP® trials, the District understands and agrees that no reports and/or data will be made available to District through this Agreement.

2. **Definition.** For purposes of this Agreement, the software and materials constituting the “Program” shall be the Children’s Progress Academic Assessment™ (CPAA), and/or Web-Based MAP®, and/or Skills Navigator® as identified in the Schedule A.

3. **Term.** The District’s License is effective for fourteen calendar (14) days (the “Evaluation Period”) beginning on the date identified below unless terminated earlier as set forth herein. NWEA provides District with a URL for Skills Navigator, CPAA and/or Web-Based MAP.

4. **Termination** The License terminates automatically if the District fails to comply with any of the limitations or other requirements described herein. At the end of the Evaluation Period (unless a Master Subscription Agreement is executed by and between the parties) or upon the request of NWEA, whichever is earlier, the License and this Agreement shall terminate and District shall make no further use whatsoever of the Program, except to the extent that may be permitted under any subsequent agreements between the District and NWEA. Upon expiration or termination of the Evaluation Period or upon the

request of NWEA, whichever is earlier, the District shall provide NWEA with information regarding the results of the trial in a format and level of detail reasonably requested by NWEA.

5. **Ownership Rights.** The Program is protected by United States patent and copyright laws and international treaty provisions. NWEA owns and retains all right, title and interest in and to the Program, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. The District’s use of the Program does not transfer any title to the intellectual property in the Program to it, and the District will not acquire any rights to the Program except the limited right to use it as expressly set forth in this Agreement.

6. **Restrictions.** The District may not rent, lease, loan, resell or otherwise transfer the Program. The District may not permit third parties to benefit from the use or functionality of the Program via a timesharing, service bureau or other arrangement. The District may not transfer or assign any of the rights granted under this Agreement. The District may not reverse engineer, decompile, or disassemble the Program, except to the extent the foregoing restriction is expressly prohibited by applicable law. The District may not modify or create derivative works based in whole or in part upon the Program. The District shall not copy the Program or documentation, or remove any proprietary notices or labels on the Program. All rights not expressly set forth in this Agreement are reserved by NWEA. NWEA may periodically conduct audits upon advance written notice to verify compliance with the terms of this Agreement.

7. **Privacy Laws.** The parties acknowledge and agree that as a school, school district or other educational organization, District is responsible for compliance with its local and national privacy laws and other applicable laws and regulations regarding the dissemination of information about students (collectively, the “Privacy Laws”). For purposes of meeting District’s obligations under the Privacy Laws NWEA represents as follows:

NWEA (including its contractors that have executed confidentiality agreements) may have access to District's confidential student information ("Student Information"). NWEA shall respect the confidentiality of the Student Information and implement policies and practices to keep it confidential. Subscriber is responsible for configuring roles-based access to Student Information in the NWEA Program in accordance with its policy. It is the responsibility of the District to comply with its local and national data/information privacy laws and, at a minimum, to obtain the necessary consents for use of and processing of the Student Information. NWEA shall not disclose any Student Information regarding District's students or their families that NWEA learns or obtains during the course of its performance under this Agreement without District's written consent. Absent reckless or intentional acts or omissions by NWEA, in no event is NWEA liable for any disclosure of Student Information. District is solely responsible for ensuring the security and availability of its own computers, computer networks, internet access policies, and internet connections, including security patches, choice of browser, and browser configuration settings to be used with the Program, email, and other transmissions.

NWEA shall use and maintain Student Information for and on behalf of District for the primary purpose of providing assessment services (including evaluation of the Product) pursuant to this Agreement. NWEA may itself, through its own employees or employees of contractors, use the Student Information for maintenance and improvement of NWEA's products and services and to conduct assessment activities for the benefit of District, the collective benefit of multiple districts that subscribe to the CPAA System or both. Personally identifiable information ("PII") derived from Student Information provided to NWEA may be disclosed only to NWEA employees or employees of contractors who have a legitimate educational interest in maintaining, organizing, or analyzing the data for uses authorized in this Agreement. NWEA does not distribute information obtained in the performance of services under this Agreement to third parties for purposes of marketing to student users or making contact with student users and, except as allowed under the Privacy Laws or as authorized by District or this Agreement, NWEA shall not further disclose to third parties PII derived from Student Information. District is responsible for any notices to parents and guardians required under the Privacy Laws and for providing parents and guardians with an opportunity to inspect and challenge the contents of the student records in question.

District authorizes NWEA to use the Student Information for maintenance and improvement of NWEA's products and services. This authorization for use of Student Information is effective from the date District first uses the Program. Both NWEA and District acknowledge that the permissions and obligations expressed in this Section 7 survive the termination or expiration of this Agreement. NWEA shall maintain all Student Information derived under this Agreement in such a way as to allow District to access the data in NWEA-augmented reporting form. NWEA shall destroy all PII derived from Student Information when no longer needed for the assessment and augmented reports.

**8. Exclusion of Warranties.** THE PROGRAM IS PROVIDED TO DISTRICT "AS IS", AND ANY USE BY DISTRICT OF THE PROGRAM DURING THE EVALUATION PERIOD, WHETHER IN A TEST ENVIRONMENT OR OTHERWISE, IS AT DISTRICT'S SOLE RISK. NWEA MAKES NO WARRANTIES RELATING TO THE PROGRAM AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO DISTRICT. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**9. Limitation of Liability.** EXCEPT TO THE EXTENT THE FOLLOWING LIABILITY LIMITATION IS PROHIBITED BY APPLICABLE LAW, IN NO EVENT IS NWEA LIABLE FOR ANY DAMAGES OR EXPENSES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER DIRECT, 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 PROGRAM, EVEN IF NWEA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, NWEA'S ENTIRE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO ONE HUNDRED DOLLARS. 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.

**10. Disclaimer of Actions Caused by and/or Under the Control of Third Parties.** NWEA DOES NOT AND CANNOT CONTROL PERFORMANCE OF SERVICES BASED ON THE FLOW OF DATA TO OR FROM NWEA'S NETWORK AND OTHER PORTIONS OF THE INTERNET, WHICH DEPENDS 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 DISTRICT'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NWEA WILL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, NWEA CANNOT GUARANTEE

THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NWEA DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

11. **Indemnification.** Subject to applicable law, District shall 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 District's breach of this Agreement or its use of the Program.

12. **Miscellaneous.** This Agreement is governed by the laws of the State of Oregon, without reference to conflict of laws principles. This Agreement sets forth all rights for the user of the Program and, together with the Master Subscription Agreement, if executed, is the entire agreement between NWEA and the District and supersedes any other prior or contemporaneous agreements or communications with

respect to the Program and documentation. This Agreement may not be modified except by a written addendum issued by NWEA. No provision of this Agreement is deemed waived unless the waiver is in writing and signed by NWEA. If any provision of this Agreement is held invalid, the remainder of this Agreement continues in full force and effect.

13. **Survival.** Sections 4-13 of this Agreement will survive the completion, expiration, termination or cancellation of this Agreement.

14. **Signatures.** This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.

IN WITNESS WHEREOF, duly authorized representatives of NWEA and the District have executed this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

NWEA:

District:

\_\_\_\_\_  
By: Jeff Strickler

\_\_\_\_\_  
Its: President and Chief Operating Officer

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

\_\_\_\_\_  
Its: