

TRIAL AGREEMENT

This Agreement is between NWEA, an Oregon nonprofit public benefit corporation, and the **District** 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 trial agreement including applicable Schedule(s) and Supplemental Terms.
- 1.2 **District:** means the school or school district or other subscribing entity indicated on the signature page and may also refer to a school or group of schools forming an educational entity or any individual persons using or accessing the Program on behalf of the school or school district.
- 1.3 **Effective Date:** means the date NWEA provides District with a URL for a Program.
- 1.4 **Evaluation Period:** means the fourteen (14) calendar days commencing on the Effective Date.
- 1.5 **License:** means the license granted to the Program in Section 2.
- 1.6 **Privacy Laws:** means collectively the Children's Online Privacy Protection Act (COPPA), the Family Educational Rights and Privacy Act of 1974 (FERPA), and other applicable laws and regulations regarding the dissemination of information about students.
- 1.7 **Program:** means the Children's Progress Academic Assessment™ (CPAA), and/or Web-based MAP®, and/or Skills Navigator® as identified in the Schedule A.
- 1.8 **Student Education Records:** means personally identifiable assessment results of Subscriber's students that are protected by FERPA and any applicable state law.
- 1.9 **Supplemental Terms:** means the Program specific terms available at: <https://legal.nwea.org/supplementalterms.html>.

2. License. NWEA grants District a nonexclusive, nontransferable license to access, use, and display the Program and its reports and documentation for District's internal use only during the Evaluation Period and solely for trial and evaluation purposes. This License does not permit 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, District acknowledges that no reports or data are available to District through this Agreement.

3. Term. District's License is effective for the Evaluation Period, unless terminated earlier as set forth herein, NWEA provides District with a URL for a Program.

4. Termination. This License terminates automatically if District fails to comply with any of the limitations or other requirements described here. At the end of the Evaluation Period or upon the request of NWEA, whichever is earlier, the License and this Agreement terminate and District shall make no further use of the Program, except to the extent permitted under a subsequent agreement between District and NWEA. Upon expiration or termination of the Evaluation Period or upon the request of NWEA, 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. District's use of the Program does not transfer any title to the intellectual property in the Program to it, and District will not acquire any rights to the Program, except the

limited right to use it as expressly granted in this Agreement.

6. **Restrictions.** District shall not rent, lease, loan, resell or otherwise transfer the Program to anyone else. District shall not permit third parties to benefit from the use or functionality of the Program via a timesharing, service bureau or other arrangement. District shall not transfer or assign any of the rights granted under this Agreement. District shall not reverse engineer, decompile, or disassemble the Program, except to the extent the foregoing restriction is expressly prohibited by applicable law. District shall not modify or create derivative works based in whole or in part upon the Program. 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.** As a school, school district or other educational organization, District is responsible for compliance with the Privacy Laws. For purposes of meeting District's obligations under the Privacy Laws, the parties agree:

NWEA (including its contractors that have executed confidentiality agreements) may have access to Student Education Records. NWEA shall respect the confidentiality of the Student Education Records and implement policies and practices to keep it confidential. NWEA shall not disclose any Student Education Records 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 Education Records. However, 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 Education Records 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 Education Records 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 Programs. Student Education Records 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. 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 Education Records in question.

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

8. **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PROGRAM IS 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 PROGRAM INCLUDED WITHIN THE PROGRAM IS ERROR-FREE. THE ENTIRE RISK AND LIABILITY ARISING OUT OF USE OF THE PROGRAM REMAINS WITH DISTRICT. 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 DISTRICT OR ANY THIRD PARTIES; OR (c) RESULTING FROM SCHEDULED MAINTENANCE PERIODS. NWEA CANNOT CONTROL PERFORMANCE OF PROGRAM BASED ON THE FLOW OF DATA TO OR FROM NWEA'S NETWORK AND OTHER PORTIONS OF THE INTERNET, WHICH DEPEND IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT DISTRICT'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NWEA USES COMMERCIALY REASONABLE EFFORTS TO

REMEDY AND AVOID SUCH EVENTS, NWEA DOES NOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NWEA DISCLAIMS ANY LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

9. **Limitation.** EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT IS NWEA LIABLE FOR ANY DAMAGES OR EXPENSES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES, OR PECUNIARY LOSS, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PROGRAM, EVEN IF NWEA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NWEA'S ENTIRE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO ONE HUNDRED DOLLARS. THIS LIMITATION ALSO APPLIES TO NWEA'S DEVELOPERS AND SUPPLIERS OF THE PROGRAM 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.

10. **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 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.

11. **Miscellaneous.**

11.1. **Controlling Law and Venue.** This Agreement is governed by the laws of the State of Oregon, without reference to conflict of laws principles.

11.2. **Entire Agreement.** 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 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.

11.3. **Waiver and Severability.** 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 parties intend that remainder of this Agreement continues in full force and effect.

11.4. **Survival.** Sections 4-11 of this Agreement will survive the completion, expiration, termination or cancellation of this Agreement.

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

11.6. **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.

[signature page follows]

NWEA:

DISTRICT name and address:
(please print)

By: _____
Geri Cohen, Sr. Vice President & CFO

By: _____

Printed Name: _____

Title: _____

Date: _____

Date: _____