



## INDEPENDENT CONTRACTOR AGREEMENT FOR SERVICES OF \$5,000 OR MORE

WHEREAS, Adams 12 Five Star Schools in the County of Adams and State of Colorado (the "District") has the statutory authority to contract with persons, firms, consultants, and/or entities for the provision of services to the District; and WHEREAS, the District has determined that a need exists to retain a Contractor to provide the service hereinafter specified; and

WHEREAS, Northwest Evaluation Association (the "Contractor") is qualified to provide the services required by the District; and

WHEREAS, the District maintains certain confidential information including trade secrets, student records, and all other information not clearly known to the public and/or confidential pursuant to law. The District's trade secrets and other proprietary and confidential information includes the whole or any portion or phase of any of the following: student records, employee records, scientific or technical information, designs, processes, procedures, improvements, confidential business or financial information, other information relating to any of the District's business bids, techniques, operations, services, contracts, forms, and all other trade secret information not clearly known to the public ("Confidential Information"). Due to the value of the District's Confidential Information and the consequences if it is disclosed, taken or misused for any reason, the District seeks by this Agreement to protect the District's Confidential Information and any other confidential information the Contractor acquires as a result of the Contractor's provision of services to the District. The Contractor recognizes and respects the value of the District's Confidential Information.

NOW, THEREFORE, the parties desire to enter into this Agreement (also referred to as the "Contract") subject to the following terms and conditions:

1. **Scope of Services.** The Contractor shall perform the Services as follows: Web Base Measures of Academic Program (MAP) Assessments. See Attached Data Privacy Addendum attached to this contract and made a part hereof. The Contractor will provide the services consistent with generally accepted industry standards for the Contractor's customary services. On the effective date of this Agreement, and during the term of this Agreement, the Contractor will be fully qualified and will have all licenses, permits, certificates, registrations, and approvals needed to perform its obligations under this Agreement. Include the individual names of all service providers that will perform any of the services under this agreement (add additional pages as needed):

2. **Schedule.** The District and the Contractor agree that the services shall be provided at the following mutually agreed locations and times, or as agreed to in writing by the parties after the approval of this Agreement: Online

3. **Term.** The provision of services under this Agreement shall commence on 7/1/2016 and will terminate on 6/30/2017; however, under no circumstances will the Term exceed one fiscal year from the commencement date. The Contractor understands and agrees that the District has no obligation to extend this Agreement's term, or contract for the provision of any future services, and makes no warranties or representations otherwise.

4. **Remuneration.** The Contractor's fee the District is obligated to pay for the services rendered under this Agreement is as follows: \$265,200.00 and under no circumstances whatsoever shall the fee exceed \$265,200.00. The District shall process the Contractor's payment within thirty (30) days from the receipt of a valid invoice to the District's Accounts Payable office. District shall use its best efforts to determine the number of students to be tested by District and the payments due. Contractor will send an invoice to District based on Schedule A, and District shall pay the amount due within 30 days of the invoice date. District may contact Contractor at accountsreceivable@nwea.org for wire transfer instructions. If District overestimated the number of students tested, Contractor may, in its sole discretion, offer a credit in the amount of the overestimation, provided that any said credit is applied exclusively towards Subscriber's next annual renewal subscription fees. In the event NWEA offers said credit and Subscriber does not renew in the subsequent period following NWEA's issuance of the credit, Subscriber shall forfeit any said credit. Notwithstanding anything to the contrary, Contractor shall not be obligated to refund any

fees. If, however, District tests more students than the number District originally estimated and paid for, Contractor may submit an amended invoice to capture the additional students, and District agrees to pay the variance within 30 days of the invoice date. Invoices shall be submitted to the site administrator to be forwarded to Accounts Payable with the Voucher Request, the P.E.R.A. Retiree form and the Contractor's W-9 form.

- 5. Invoicing Requirements.** If applicable, Contractor shall furnish the following information within invoices that are submitted for request for payment to the District:
- a. Detailed description of the services or activities performed
  - b. If services were on a "fixed price" basis, a summary of provided milestones as per the scope of work shall be furnished
  - c. Names of the individuals providing services
  - d. Bill rate or compensation for the services rendered
  - e. All 'Other Direct Expenditures' shall include vendor name, expense type, expense description, and date of expense. (The District uses the prescribed Federal guidelines for travel reimbursement. For further information, please go to the District website and see Superintendent Policy 4150 for guidelines on accepted daily rates.)

**6. Independent Contractor.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the District. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the District and the District shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this agreement. The parties agree that the District will not:

- a. Require the Contractor to work exclusively for the District; and
- b. Establish a quality standard for the Contractor, or oversee the actual work or instruct the Contractor as to how the work is to be performed, except the Parties agree as stated in Paragraph 1 that the Contractor's services will be consistent with generally accepted industry standards for the Contractor's customary services and products; and
- c. Pay the Contractor a salary or hourly wage, but rather will pay only the compensation stated in Paragraph 4; and
- d. Terminate the Contractor's current services for particular work the Contractor accepts from the District unless the Contractor violates the terms of this Agreement or fails to produce a result that meets the specifications of this Agreement; and
- e. Provide more than minimal training for the Contractor; and
- f. Provide tools or benefits to the Contractor; and
- g. Dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established through a written agreement mutually acceptable to both Parties for particular work the Contractor accepts from the District; and
- h. Pay the Contractor individually if the Contractor is an individual; instead, the District will make all compensation checks payable to the trade or business name under which the Contractor does business; or
- i. Combine its business operations in any way with the Contractor's business, but instead both Parties will maintain their own operations as separate and distinct.

**7. No Agency Created.** The Contractor agrees and understands that no authority exists through this Agreement permitting the Contractor to enter into any third party contract, assume any obligation, or makes any representation to third parties on behalf of, or which may bind the District.

**8. Conflict of Interest.** The signatories aver that to their knowledge, no employee of the District has any personal or beneficial interest whatsoever in the service or property described in this agreement. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**9. No Unauthorized Use of Names.** Neither party will use the other's name in any advertisement, promotion, business card, or similar circumstance, without the other party's prior written consent.

**10. Assignment Prohibited.** The Contractor shall not assign any of the services that require performance under the Agreement. In this regard, the Contractor understands that the performance of the scope of work is considered personal services under this Agreement. District may not assign this Agreement to any third party without the prior written consent of Contractor.

**11. Compliance with Law and District Policies.** Contractor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices. Contractor shall also comply with all applicable District policies. Contractor shall complete a criminal background check on all employees who work under this Agreement and maintain records of such during the term of the Agreement. Those employees who have been convicted of, pled no contest to, or received a deferred sentence or deferred prosecution for any crime involving a child will not be allowed to work on District property, with District staff or students, or have access to District information. Contractor shall provide proof of background checks upon request by the District. Contractor will be responsible for following all federal, state, and local privacy and confidentiality requirements in performing background checks.

**12. Modification/Entire Agreement/No Prior Agreement.** This Agreement and Schedule A constitutes the entire understanding between the parties hereto and may not be modified and/or amended unless any such modification or amendment is reduced to writing and signed by both parties. The Contractor further understands and agrees that this Agreement supersedes any prior written or verbal agreement, promise, representation, understanding, or course of conduct between the parties.

**13. Termination/Revocation.** District may terminate this Agreement immediately without prior notice if any of the following occurs: (a) if the Contractor commits an act of fraud, dishonesty, or any other act of negligent, reckless or willful misconduct in providing services to the District; (b) if any contract by the District with any third party on which this Agreement substantially depends is terminated or the District is unable for any other reason to provide services for to the party/parties to that contract; or (c) If any circumstance beyond the District's control, including but not limited to financial constraints imposed by action of the federal government or the legislature or Governor of the State of Colorado, prevents it from providing services or otherwise hinders, delays, or prevents the District from receiving revenue or income or increases its overhead to an extent the District reasonably decides to reduce or modify its operations.

District may terminate this Agreement if Contractor commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and Contractor fails to cure such failure within thirty (30) business days after delivery of District's notice or such longer period as District may specify in such notice.

District may terminate this Agreement upon thirty (30) days written notice if, because of financial circumstances, the District does not fund, appropriate or designate expenditures at levels sufficient to pay for Contractor's services.

Contractor may terminate this Agreement and any license upon any breach of this Agreement or the license embedded within it by District. If District breaches any material term of this Agreement or the license embedded within it, Contractor will be under no obligation to refund any fees paid by District for Contractor's Program and related services. If terminating without cause (or unrelated to subsection a, b, and c above), District shall provide 30 days' written notice to Contractor. After termination or expiration of the Agreement, Contractor shall continue to maintain Student Information, allowing District to continue to access the data, in Contractor-augmented reporting form, including norms and learning statements.

**14. Fund Availability.** Financial obligations of the District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**15. Indemnification.** The Contractor agrees to indemnify, defend and hold the District harmless from and against any claim, cause of action, judgment, loss, demand, suit, or legal proceeding brought against the District or its

employees, representatives, or agents, which arises directly or indirectly from any act or omission of the Contractor, including but not limited to any misconduct or neglect by the Contractor and/or its employees, subcontractors, or agents. Furthermore, to the maximum extent permitted by law, the Contractor will defend the District from any claim and will indemnify the District against any liability for any Employee Benefits for the Contractor and/or any of its employees, subcontractors, or agents, imposed on the District; and the Contractor will reimburse the District for any award, judgment or fine against the District based on the position the Contractor and/or any of its employees, subcontractors or agents, who provides any services to the District related to this Agreement was ever the District's employee, and all attorneys' fees and costs the District reasonably incurs defending itself against any such liability.

**16. Governing Law.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations or which purports to negate this or any other provision of this Agreement in whole or in part shall be null and void.

**17. Severability.** If it is found by a court of competent jurisdiction or by operation of law that a term or provision of this Agreement is invalid or unenforceable, the remainder of the Agreement shall be unimpaired and continue in force and effect, and the invalid or unenforceable term or provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid or unenforceable term or provision.

**18. Governmental Immunity.** No term or condition of this agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

**19. Binding Arbitration Prohibited.** The District does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

**20. Insurance.** The District will not include the Contractor as an insured under any policy the District has for itself, including, without limitation, any liability, life, collision, comprehensive, health, medical, workers' compensation or unemployment compensation insurance policy. The Contractor shall provide the insurance as the service requires and no later than seven days after execution of this Agreement, the Contractor shall provide the District with certificates of insurance evidencing each of the types and amounts specified below:

- a. Standard Workers' Compensation coverage as required by Colorado law.
- b. Comprehensive General Liability Insurance for operations and contractual liability adequate to cover the liability assumed hereunder and with limits of not less than \$1,000,000 for each occurrence and \$500,000 for bodily injury or property damage, and \$5,000 for medical expenses for any one person.
- c. Automobile Liability Insurance in those instances where the Contractor uses an automobile, regardless of ownership, for the performance of Services.

Insurance coverage shall not be reduced below the limits described above or canceled without the District's written approval of such reduction or cancellation. The Contractor shall require that any of its agents and subcontractors who enter upon the District's premises shall maintain like insurance. Certificates of such insurance shall be provided to the District upon request. With regard to all insurance, such insurance shall (i) be primary insurance to the full limits of liability herein before stated; and (ii) should the District have other valid insurance covering the loss, the District insurance shall be excess insurance only; and (iii) not be canceled without thirty (30) days prior written notice to the District; and (iv) the District shall be named as an additional insured.

**21. No Waiver.** No assent, expressed or implied, by the District to any breach of any obligation or covenant by the Contractor shall be construed as a waiver of any subsequent or other breach by the Contractor. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, unless it is in a written document executed by the party against whom the waiver is sought to be enforced.

**22. Public Contracts for Services.** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this agreement and shall confirm the employment

eligibility of all employees who are newly hired for employment in the United States to perform work under this agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this agreement. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this agreement is being performed, (b) shall notify the subcontractor and the District within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the District a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the District may terminate this agreement for breach and, if so terminated, Contractor shall be liable for damages.

**23. Public Contracts with Natural Persons.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this agreement

**24. Paragraph Headings.** The captions and headings set forth herein are for convenience of reference only, and shall not be construed to limit or define the terms and provisions hereof.

**25. Conflict.** In the event of a conflict between the terms of the Agreement and any exhibits attached to this Agreement, the terms of this Agreement shall prevail, unless expressly agreed to in writing by the parties.

**26. Relief the District May Seek.** The Contractor further agrees that, if the Contractor violates Paragraph 27 of this Agreement, it would be difficult to determine the damages the District would suffer including, but not limited to, losses attributable to lost confidential information. Accordingly, the Contractor agrees that if the Contractor violates Paragraphs 27 of this Agreement, the District will be entitled to an Order for injunction relief and/or for specific performance, or their equivalent, from a court, including requirements that the Contractor take action or refrain from action to preserve the secrecy of the District's Confidential Information and to protect the District from additional damages, and the Contractor agrees the District does not need to post a bond to obtain an injunction and waives the Contractor's right to require such a bond.

**27. Confidential Information Belongs Solely to the District.** The District's Confidential Information and all other confidential information and data relating to the District's business are the District's exclusive property, and the Contractor therefore agrees that:

- a. All notes, data, reference materials, sketches, drawings, memoranda, disks, documentation and records in any way incorporating or reflecting and of the Confidential Information and all proprietary rights in the Confidential Information, including copyrights, trade secrets and patents shall belong exclusively to the District;
- b. At all times while this Agreement is in effect, the Contractor will keep secret and will not disclose to any third party, take or misuse any of the District's Confidential Information, or any other confidential information the Contractor acquires or has access to because of its provision of services;
- c. At all times while this Agreement is in effect, the Contractor will not use or seek to use any of the District's Confidential Information for the Contractor's own benefit or for the benefit of any other person or business in any way adverse to the District's interests;
- d. The Contractor will cause each of its Employees who may gain access to any of the District's Confidential Information, to execute a confidentiality agreement reasonably acceptable to the District before disclosing any Confidential Information to that Employee or permitting that Employee to have access to any Confidential Information.

- e. On the District's request or on termination of this Agreement, the Contractor will promptly return to the District all its property, specifically including all documents, disks or other computer media or other materials in the Contractor's possession or control that contain any of the District's Confidential Information.
- f. After termination of this Agreement, the Contractor will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any of the District's Confidential Information; and
- g. The Contractor will promptly advise the District of any unauthorized disclosure or use of the District's Confidential Information by any person or entity.

The Parties agree this provision is intended to express the District's rights and the Contractor's duties to the District under the Colorado Uniform Trade Secrets Act, C.R.S. 7-74-101, et seq., and other applicable law. Additionally, the Contractor's obligation regarding the preservation and return of the District's Confidential Information will continue indefinitely, both during and after the time during which the Contractor may provide services and products to the District. Notwithstanding the foregoing, District authorizes Contractor to use Student Information in the GRD for research purposes, including but not limited to, norming studies, longitudinal, or alignment studies, provided that the data are handled in a manner that protects student anonymity. The authorization for use of Student Information is effective from the date when District first subscribed to the Contractor Program and services. Both Contractor and District acknowledge that the permissions and obligations expressed in this Contract shall survive the termination or expiration of this Contract and any renewals. Contractor shall maintain all Student Information derived under this Contract, allowing District to continue to access the data in Contractor-augmented reporting form, including norms and learning statements.

**28. Non-solicitation.** The Contractor shall not solicit directly or indirectly any of the District's employees for a period of two (2) years following the termination of this Agreement without prior written consent of the District.

**29. Attorneys' Fees, Experts' Fees, Costs.** Intentionally removed.

**30. Notices, Process.** Any notice this Agreement requires must be in writing and will be effective only if hand-delivered or sent by certified U.S. mail, return receipt requested, to the party entitled to receive the notice at the Contractor's address provided in this Agreement, while the District's Notice address is as follows: Adams 12 Five Star Schools, Chief Operating Officer, 1500 East 128<sup>th</sup> Avenue, Thornton, CO 80241; or at such other address that either party may provide later to the other party. Each party agrees to waive service of process in any action brought to enforce or to interpret this Agreement and the parties further agree that service of the complaint and any other pleading, discovery, order or document in any such action that would otherwise have to be served by personal service will be deemed served three (3) days after being sent to the other party and that party's attorney as provided above.

**31. Intellectual Property Indemnification.** Contractor will (i) defend District against any claims made by an unaffiliated third party that Contractor's Program infringes its patent, copyright, or trademark or misappropriates its trade secrets; and (ii) pay the amount of any resulting adverse final judgment against District (after any appeals) or settlement to which Contractor consents. District must notify Contractor promptly in writing of the claim. District must also give Contractor sole control over its defense or settlement. District agrees to provide Contractor with reasonable assistance in defending the claim. Contractor's obligations under this Section will not apply to the extent the claim (or adverse final judgment) is based on: (i) District using the Contractor's Program after Contractor has informed District to discontinue use due to such a claim; (ii) the combination or use of the Contractor's Program with non-Contractor information, data, or materials (other than as contemplated under this Contract); (iii) modification of the Contractor's Program other than as contemplated by this Contract; (iv) use of Contractor's trademark(s) without express written permission; or (v) any trade secret claim when acquired through improper or unauthorized means. If Contractor receives information about a claim under this Section related to the Contractor's Program, Contractor may do any of the following, at our expense and without obligation to do so: (i) procure the right to continue its use; (ii) replace it with a functional equivalent; (iii) modify it to make it non-infringing (if Contractor does this, District will stop using the allegedly infringing Contractor's Program immediately); or (iv) terminate this Contract (if Contractor does this, District will stop using the allegedly infringing Contractor's Program immediately). Notwithstanding anything to the contrary, Contractor's commitment under this Section is District's exclusive remedy for third-party infringement and trade secret misappropriation claims.

**32. Subscription.** District affirms its subscription to the services for the term specified in Schedule A and Section 3 of the Contract (the "Term"). In connection with this subscription, Contractor grants to District a limited license to

use the software and materials ("Contractor Program") that implement the delivery of the services and District accepts the subscription to the services as described in Schedule A.

**33. Definition.** The Contractor Program includes the original and all whole or partial copies of (a) machine-readable instructions and data; (b) components; (c) content (such as test items, test scripts, images, text, graphs, charts, pictures, etc.); (d) related licensed materials such as DesCartes: A Continuum of Learning® statements ("DesCartes"), MAP® for Primary Grades Instructional Data statements, MAP® reports, Knowledge Academy, professional development workshops and coaching materials, and tutorials; 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 the Contract.

**34. Grant of License.** Contractor hereby grants to District a nonexclusive, nontransferable license to access, use, and display the Contractor Program for District's internal use only for the Term of the Contract. If the Contractor Program requires installation or downloading of a copy of all or any portion of the secure/lock down browser software ("Software"), Contractor grants to District a nonexclusive, nontransferable sublicense to install or download the necessary portion of the Software for District's internal use only in connection with this Contract and only during the Term. The MAP® license and Software sublicense extend only to the quantity of licenses indicated on Schedule A. The MAP® license is also limited to a maximum of three test events and one summer administration for each license per academic year. In addition to the foregoing, DesCartes is subject to additional use restrictions (documented and updated at <https://reports.nwea.org>) for which District is also responsible. Any loading or maintenance of DesCartes onto third party sites requires additional written permission from Contractor.

**35. Protection from Unauthorized Use or Access.** District shall not (a) copy (other than once for back-up purposes), distribute, transfer, rent, lease, or sublicense any or all of the Contractor Program or any accompanying materials; (b) permit use of the Contractor Program by anyone not employed or in contract with District; (c) modify, adapt, translate, reverse engineer, decompile, or disassemble the Contractor Program and accompanying Software; (d) remove any proprietary notices or labels on the Contractor Program; (e) use the Contractor 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. District shall reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Contractor Program. If District installs a newer or upgraded version of the Contractor Program or Software, it may not use the prior version of the Contractor Program or Software from which it upgraded or transfer it to another party. District will ensure that anyone who uses the Contractor Program and Software (accessed either locally or remotely) does so only for District's authorized use and complies with the terms of this Contract. Contractor provides its Contractor Program and Software to District pursuant to a subscription and/or license with third party vendors. District acknowledges that it will abide by the use restrictions under such subscription and/or licenses, as amended from time to time.

**36. Ownership.** The Contractor Program is owned by Contractor or a Contractor supplier, and is copyrighted and offered through a subscription and not sold to District. All rights, title, and interest in the Contractor Program, all copies, and all updates, enhancements, modifications, and improvements, along with all intellectual property rights related thereto, shall remain with Contractor or a Contractor supplier, regardless of the source giving rise to the intellectual property and despite any modifications or adaptations made for the benefit of District. The Contractor 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. District is not granted any license to use any of Contractor's trade or service marks and Contractor retains all right, title, and interest in its trade and service marks. District agrees that Contractor may use, without restriction or royalty obligation, any comments, suggestions or contributions provided by District with respect to the Contractor Program during the course of District's use. District hereby grants and assigns to Contractor any intellectual property rights that District may incidentally obtain or have with respect to any such comments, suggestions or contributions.

**37. Confidential Information.** District acknowledges that all test items, underlying ideas, algorithms, item calibrations, test scripts, concepts, procedures, processes, principles, know-how, and methods of operation that comprise the Contractor Program, including updates, enhancements, modifications, and improvements are confidential and contain trade secrets (collectively, "Contractor Confidential Information"), and District will respect

such confidentiality, and shall keep all such information confidential. District agrees not to use, disclose, or distribute any Contractor Confidential Information, directly or indirectly, without the prior written consent of Contractor, except that Contractor authorizes District to disclose Contractor Confidential Information to District's agents who have signed written confidentiality and nondisclosure agreements before such disclosure. This Section's rights and obligations shall survive the termination of the Contract.

**38. Student Information.** Contractor and District acknowledge that Contractor may have access to District's Student Information consistent with the provisions of this Agreement, the attached Data Privacy Addendum, District policy and state and federal law. Contractor agrees to respect such confidentiality and implement policies and practices to keep such information confidential. Contractor shall not disclose any Student Information regarding District's students or their families that Contractor may learn or obtain during the course of its performance under this Contract without the written consent of District. Absent negligent, reckless or intentional acts or omissions by Contractor, in no event will Contractor be liable for any disclosure of Student Information. District is solely responsible for ensuring the security and availability of District's own computers, computer networks, District's internet access policies, and internet connections, including security patches, choice of browser, and browser configuration settings to be used with the Contractor Program, email, and other transmissions. District acknowledges that its designated Systems Administrator controls the access and security points of the Contractor Program and may designate additional administrators with similar privileges. District must refer to the appropriate Contractor Program documentation for system and browser requirements and security and configuration settings. To receive the best service possible, District grants permission to Contractor to transfer Student Information to its contractors that have executed confidentiality agreements, for the sole purpose of maintaining, supporting and troubleshooting the Contractor Program and Software.

**39. FERPA.** Contractor shall maintain Student Information for and on behalf of District - in accordance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1) - for the primary purpose of providing assessment and research services pursuant to this Contract. Contractor may itself, through its own employees or employees of contractors, use the Student Information to conduct assessment and research activities, including, but not limited to, longitudinal studies, alignment studies, norming studies and the Growth Research Database ("GRD") for the benefit of District and/or for the collective benefit of multiple Districts. Personally identifiable information ("PII") derived from Student Information provided to Contractor may be disclosed only to Contractor employees or employees of contractors who have a legitimate educational interest in maintaining, organizing, or analyzing the data for uses authorized in this Agreement provided that such disclosure satisfies the requirements of the attached Data Privacy Addendum. District is responsible for any notices to parents required under FERPA and for providing parents/guardians with an opportunity to inspect and challenge the contents of the student records in question.

**40. Support.** Contractor will provide to District support, updates, enhancements, modifications, improvements, and maintenance services.

**41. Scheduled Maintenance.** Contractor has system maintenance periods throughout the year that will affect District's ability to upload or download student or test data, or to access reports, or to interact with any of Contractor's websites.

**42. Limited Warranty.** Contractor warrants to District that the Contractor Program, when properly installed and used, will perform substantially in accordance with the Software's documentation or as represented in writing by Contractor. The Contractor Program may include open source software components. This limited warranty is void if the failure of Contractor Program and Software results from (a) use of the Contractor Program or Software in connection with software or hardware not compatible with the Contractor Program or Software or not meeting the technical specifications provided by Contractor; (b) improper or inadequate maintenance; (c) accident, abuse, misapplication, or use by District of the Contractor Program other than as described in the documentation provided by Contractor; or (d) inadequate internet connectivity bandwidth. This limited warranty is void if the Contractor Program and Software is altered or modified in any way by anyone other than Contractor. Contractor does not warrant that the operation of the Contractor Program and Software or availability of the Services will meet District's requirements or be uninterrupted or error free. District is responsible for the results obtained and decisions made from its use of the Software and the Contractor Program. Contractor assumes no responsibility for the operating



environment or for District's security programs in which the Contractor Program or Software functions. Contractor will, at its sole option, either replace or, with its best efforts, correct the Contractor Program or Software, which fails to perform substantially in accordance with the documentation for the Contractor Program and Software or as represented in writing by Contractor upon written notice of such failure. If Contractor is unable to correct the error after using its best efforts, Contractor will, at its sole option, either replace the Contractor Program or Software with a functionally equivalent software program or refund the subscription fees paid on a pro-rated basis and cancel this Contract.

**43. Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 38, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR 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, OR THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE CONTRACTOR PROGRAM WILL BE ERROR FREE. EXCEPT AS PROVIDED HEREIN, THE ENTIRE RISK AND LIABILITY ARISING OUT OF THE USE OF THE CONTRACTOR PROGRAM REMAINS WITH DISTRICT, INCLUDING, BUT NOT LIMITED TO, WHEN DISTRICT'S PRACTICES ARE INCONSISTENT WITH THE STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING (1999) BY THE AMERICAN EDUCATIONAL RESEARCH ASSOCIATION. THERE IS NO WARRANTY FOR PERFORMANCE ISSUES (a) CAUSED BY FACTORS OUTSIDE OF CONTRACTOR'S REASONABLE CONTROL; OR (b) THAT RESULTED FROM ANY ACTION OR INACTION OF DISTRICT OR DISTRICT'S THIRD PARTIES; OR (c) RESULTING FROM SCHEDULED MAINTENANCE PERIODS.

**44. Disclaimer of Actions Caused by and/or Under the Control of Third Parties.** CONTRACTOR DOES NOT AND CANNOT CONTROL PERFORMANCE OF SERVICES BASED ON THE FLOW OF DATA TO OR FROM CONTRACTOR'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 CONTRACTOR WILL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, CONTRACTOR CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, CONTRACTOR DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

**45. Limitation.** EXCEPT AS FOR CONTRACTOR'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 14 AND 28, THE REMEDIES PROVIDED UNDER THE LIMITED WARRANTY ARE DISTRICT'S SOLE AND EXCLUSIVE REMEDIES. EXCEPT TO THE EXTENT THE FOLLOWING LIABILITY LIMITATION IS PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL CONTRACTOR 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 DAMAGES, OR PECUNIARY LOSS, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE CONTRACTOR PROGRAM, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, CONTRACTOR'S ENTIRE LIABILITY UNDER THIS CONTRACT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY DISTRICT UNDER THIS AGREEMENT, INCLUDING ANY RENEWALS OR EXTENSIONS. THIS LIMITATION OF LIABILITY ALSO APPLIES TO THE CONTRACTOR PROGRAM DEVELOPERS AND SUPPLIERS. IT IS THE MAXIMUM FOR WHICH THEY AND CONTRACTOR ARE COLLECTIVELY RESPONSIBLE.

**46. Protection.** The Contractor Program may contain mechanical or electronic methods to prevent unauthorized use or distribution of the Contractor Program. District shall not disable or circumvent such control devices.

**47. Force Majeure.** Neither party shall be liable for any delay or failure to perform any obligation hereunder due to causes beyond its control, including without limitation, war, riot, insurrection, civil commotion, terrorist activity, fire, industrial disputes of whatever nature, acts of nature, computer crimes, epidemics, acts or omissions of third party vendors or suppliers, equipment failures, public enemies of government, failure of telecommunications, system malfunctions, fire, or other casualty.

**48. Survival.** All provisions of this Contract that would reasonably be expected to survive the termination of this Agreement will do so.

**49. Binding.** This Contract shall bind and inure to the benefit of the parties and their respective successors, and approved assigns, if any.

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

**51. Counterparts.** This Contract may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same Contract, notwithstanding that all of the parties are not signatory a single 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 were an original.

IN WITNESS OF THE PARTIES AGREEMENTS, the District and the Contractor have executed this Agreement on the date(s) indicated below:

Acknowledged Before Me

By Geri Cohen

This 1 day of September, 2016

Witness My Hand and Official Seal

My Commission Expires: 7/31/18

By: Margaret A. Miller  
Notary Public

CONTRACTOR: Northwest Evaluation Association

[Signature]  
Signature

Geri Cohen, Sr. VP & CFO  
Name and Title

121 NW Everett Street  
Address

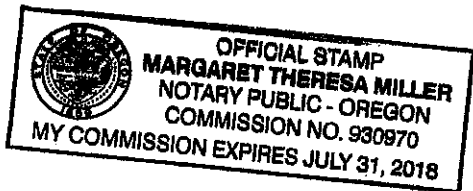
Portland OR 97209  
City, State, Zip

93-0686108  
Tax ID

9/1/16  
Date

I hereby certify that the individuals requested in this Agreement are not school district employees, and are not family members of mine. Any finding to the contrary may require repayment and/or further disciplinary action up to and including termination.

**ADAMS 12 FIVE STAR SCHOOLS  
IN THE CITY OF THORNTON, COUNTY OF ADAMS  
STATE OF COLORADO**



RECOMMENDED BY:  
[Signature]  
Site Administrator's Signature

Tracy Darland, CAO  
Name and Title

Learning Services  
School or Department

9/15/16  
Date

APPROVED BY:  
[Signature]  
Authorized Designee of the Board of Education

Pat Hamilton, Interim COE  
Name and Title

9-14-16  
Date

This form must be completed in full, submitted to the District's Purchasing Department, and approved and executed by the duly authorized designee of the Board of Education prior to the commencement of the Contractor's provision of services. THE DISTRICT SHALL NOT BE LIABLE FOR PAYMENT FOR ANY SERVICES PERFORMED BY THE CONTRACTOR PRIOR TO SAID APPROVAL.

## **Adams 12 Five Star Schools Data Privacy Addendum**

The provisions of this Data Privacy Addendum are a part of the Independent Contractor Agreement and apply to all Contractors that will or may have access to student information.

### **Covered Data**

Student PII means information collected, maintained, generated or inferred that alone or in combination personally identifies an individual student or the student's parent or family, in accordance with C.R.S. § 22-16-103(13) & 34 C.F.R. § 99.3 (defined as "PII").

### **Compliance with State and Federal Law**

All data sharing, use, and storage will be performed in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 as amended, 20 U.S.C. § 1232g & 34 C.F.R. § 99 ("FERPA") and C.R.S. § 22-16-101, *et seq.*

### **Contractor Obligations:**

1. *Uses and Disclosures as Provided in the Agreement.* Contractor may use and disclose the PII provided by the District only for the purposes described in the Agreement and only in a manner that does not violate local or federal privacy regulations. Only the individuals or classes of individuals will have access to the data that need access to the PII to do the work described in the Agreement. Contractor shall ensure that any subcontractors who may have access to PII are contractually bound to follow the provisions of the Agreement.
2. *Nondisclosure Except as Provided in the Agreement.* Contractor shall not use or further disclose the PII except as stated in and explicitly allowed by the Agreement and state and federal law. Contractor does not have permission to re-disclose PII to a third party.
3. *Safeguards.* Contractor agrees to take appropriate administrative, technical and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of PII. Contractor shall ensure that PII is secured and encrypted to the greatest extent practicable during use, storage and/or transmission. Contractor agrees that PII will be stored on equipment or systems located domestically.
4. *Reasonable Methods.* Contractor agrees to use "reasonable methods" to ensure to the greatest extent practicable that Contractor and all parties accessing data are compliant with state and federal law. Specifically, this means: 1. Only de-identified student data may be used for the purposes of educational research. 2. Contractor must protect PII from re-identification, further disclosures, or other uses, except as authorized by the District in accordance with state and federal law. Approval to use PII for one purpose does not confer approval to use it for another.
5. *Confidentiality.* Contractor agrees to protect PII according to acceptable standards and no less rigorously than they protect their own confidential information.
6. *Reporting.* Upon discovering the misuse or unauthorized release of PII, Contractor shall notify the District as soon as possible in accordance with applicable state law.

designed and marketed primarily for using in a school and collects, maintains or uses student personally identifiable information – the following provisions shall apply:

1. *Data Collection Transparency and Privacy Policy.* Contract shall provide clear information that is understandable by a layperson explaining the data elements of student PII that Contractor collects, the learning purpose for which it collects the student PII, and how Contractor uses and shares the student PII. The information must include all student PII that Contractor collects regardless of whether it is initially collected or ultimately held individually or in the aggregate. Contractor shall provide the District with a link to the information on a webpage maintained and updated by Contractor so that the District may post the link on its website.
2. *Notice Before Making Changes to Privacy Policy.* Contractor shall provide notice to the District before making material changes to Contractor's privacy policy that affects student PII.
3. *Access to Student Information.* Upon request by the District, Contractor agrees to provide in a readable electronic format a copy of all student PII maintained by the Contractor for individual students.
4. *Correction of Inaccurate Student PII.* Contractor shall facilitate access to and correction of any factually inaccurate student PII in response to a request for correction that the District receives consistent with the following process: If Contractor receives a request from a parent or guardian challenging the content of a student's record maintained by Contractor, Contractor shall contact District to validate the identity of the parent or guardian and student and request instructions regarding corrective action to be taken, if any. Once validated, Contractor shall correct erroneous student record as directed by District in writing.
5. *Grounds for Termination.* Contractor understands that any breach by Contractor or any subcontractor of this addendum, state or federal law regarding student information, or the Contractor's privacy policy described above, may be grounds for termination of the Agreement in accordance with C.R.S. § 22-16-107(2)(a).