Contract RGA-125-14 between BCPS and Northwest Evaluation Association

Appendix contents:

Executed License Agreement
Software License Agreement

THIS SOFTWARE LICENSE AGREEMENT (the "Agreement") is entered into by and between Northwest Evaluation Association, with offices at 121 NW Everett Street, Portland, OR 97209 ("NWEA", or "Vendor"), and the Board of Education of Baltimore County on behalf of Baltimore County Public Schools (the "Client", "Board", or "BCPS") on the following terms and conditions:

1. Products and Services. Client engages Vendor to license the Vendor’s MAP assessment software ("MAP") and provide the workshop described in Schedule A ("Schedule A") dated February 1, 2012, which is hereby incorporated into this Agreement by reference (the "Services").

2. Term of Engagement. This Agreement shall commence on the subscription term set forth in the Schedule A and, unless terminated earlier in accordance with Section 7, shall continue in full force and effect until the subscription term expires (the "Term"). Termination or expiration of this Agreement shall have no effect on the Client’s obligation to pay to Vendor the applicable rate for Services that are performed prior to the effective date of termination and to pay any other amounts previously due and owed to Vendor.

3. Amendment. After the Agreement is mutually agreed to by the parties any changes to the Agreement shall require a written amendment mutually agreed to and signed by the parties. If any Services set forth in a Schedule A require the use or license of third party software or applications, the Client is solely responsible for obtaining all licenses necessary for the use of such third party software.

4. Price & Payment.

   (a) **Price for Services.** The applicable prices for Services shall be set forth in each applicable Schedule A. Payment for the MAP assessments described in the Schedule A shall be made within thirty (30) calendar days of the date of the Vendor’s invoice. Notwithstanding the foregoing, Client’s payment for the MAP assessments shall be due no later than July 1, 2012 for the initial subscription term described in the Schedule A.

   (b) **Out-of-Pocket Costs & Taxes.** All out-of-pocket expenses and costs, including travel, lodging, auto rental or local mileage, cab fare, photocopying, overnight courier, long-distance telephone and the like are included in the prices set forth in the Schedule A. However, the Client shall be solely responsible for, and shall indemnify and hold NWEA harmless from, all sales, use, gross receipts, GST, value-added, personal property or other tax or levy (including interest and penalties) imposed on the Services provided hereunder, other than taxes based on the net income or profits of NWEA.
(c) Invoices. Except for the MAP assessment fees set forth in Section 4(a), NWEA shall bill Client monthly for all other Services performed for the prior month. Payment shall be made by the Client within thirty (30) days after the date of each invoice.

(d) Payment. All on-site services, including training, are billed at per day rate (number of training days to be determined by BCPS). Software maintenance for NWEA’s MAP assessment system includes all bug fixes, patches and system updates. Changes and all other modifications are billed on a time and materials basis.

(e) The Client may not withhold or "setoff" any amounts due hereunder and NWEA reserves the right to cease work without prejudice and assert appropriate liens if amounts are not paid when due. The Client shall reimburse NWEA for any costs of collection (including legal fees) related to such late payments.


(a) All invoices are to be submitted to:

Baltimore County Public Schools
Elizabeth G. Chesney, Executive Director, Department of Research, Accountability and Assessment
9611 Pulaski Park Drive
Baltimore, Maryland 21220

(b) To expedite payments you must follow these guidelines:

i. All invoices must contain a valid Baltimore County Public Schools' purchase order number.

ii. Invoices shall be itemized and should fully describe the services provided.

iii. After review and approval, the invoices shall be submitted to the Office of Accounting for payment.

iv. Payment in full will only be made upon completion of contract.

6. Taxes.

Materials which are incorporated into work under formal or informal contracts are not exempt from the Maryland State Sales or Use Tax. NWEA shall be responsible for paying such taxes when purchasing materials.
7. **Termination.**

(a) **Termination for Non-Appropriation of Funds:** BCPS may terminate this contract, in whole or in part due to insufficient funding with thirty (30) calendar days written notice to NWEA. BCPS shall pay for all of the purchases, if any incurred up to the date of the termination notice.

(b) **Termination for Default:** Either party may terminate this Agreement (a) if the other party breaches any material provision hereof and fails to correct such default within thirty (30) days after receipt of written notice of such default or, if such correction could not reasonably be completed in thirty (30) days, commence corrective action reasonably acceptable to the aggrieved party and proceed with due diligence to completion, or (b) immediately upon written notice if the other party makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in Bankruptcy is filed with respect to other party and such action is not dismissed within thirty (30) days.

(c) **Termination for Convenience:** BCPS has the right to terminate this Agreement, without showing cause, by providing thirty (30) calendar days written notice to NWEA. BCPS shall pay all reasonable costs incurred by NWEA up to the date of termination. NWEA shall not be reimbursed for any anticipatory profits, which have not been earned up to the date of termination. NWEA agrees that NWEA does not have a right to termination for convenience.

8. **License and Ownership.** NWEA hereby grants to Client a nonexclusive, nontransferable license to access, use, and display the NWEA MAP assessment software and workshop materials for Client’s internal use only for the Term of this Agreement. If the NWEA MAP assessment software requires installation or downloading of a copy of all or any portion of the secure/lock down browser software (“Software”), NWEA grants to Client a nonexclusive, nontransferable sublicense to install or download the necessary portion of the Software for Client’s internal use only in connection with the Agreement and only during the Term. The MAP® license and Software sublicense extend only to the quantity of licenses indicated on Schedule A. In addition to the foregoing, DesCartes is subject to additional use restrictions (documented and updated at https://reports.nwea.org) for which Client is also responsible. Any loading or maintenance of DesCartes onto third party sites requires additional written permission from NWEA. The NWEA MAP assessment software is owned by NWEA or an NWEA supplier, and is copyrighted and offered through a subscription and not sold to Client. All rights, title, and interest in the NWEA MAP assessment software, all copies, and all updates, enhancements, modifications, and improvements, along with all intellectual property rights related thereto, shall remain with NWEA or an NWEA supplier, regardless of the source giving rise to the intellectual property and despite any modifications or adaptations made for the benefit of Client. The NWEA MAP
assessment software 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. Client 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.

9. Confidential Information.
   (a) Acknowledgment of Confidentiality. Each party hereby acknowledges that it may be exposed to, learn or receive confidential and proprietary information belonging or relating to the other party including, without limitation, source code, design materials, software, and other materials which may be confidential or trade secret (the “Confidential Information”). Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall a party use less than due diligence and care. Neither party shall alter or remove from any software, documentation or other Confidential Information of the other party (or any third party) any proprietary, copyright, trademark or trade secret legend. For purposes of this Section 10, Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the party, or (iii) information received by a party from a third party who was not subject to confidentiality obligations with respect to such information.

The term “confidential information” shall include all non-public documentation and information disclosed to NWEA in the course of performance of duties hereunder with respect to the past, present, and future Board operations, business and services. NWEA hereby agrees to maintain all such confidential information in confidence and agrees not to disclose such information to any person, firm, corporation, or entity during or after the term of this Agreement. Notwithstanding the foregoing, NWEA may disclose Confidential Information as follows: (i) as required by law; and (ii) to NWEA employees and contractors that have signed written confidentiality and nondisclosure agreements before such disclosure.

10. Student Privacy: Student education, medical, and psychological records; consents.

NWEA understands that all student data obtained during the performance of its obligations are subject to protection from disclosure under federal and state law. NWEA shall use industry standard efforts to safeguard the privacy of student data and to prevent disclosure to unauthorized parties. To receive the best service possible, Client grants permission to NWEA to transfer student data to its contractors that have executed confidentiality agreements, for the sole purpose of maintaining, supporting and troubleshooting the NWEA MAP assessment software. NWEA

NWEA shall maintain the confidentiality of all medical, psychological, and student records in compliance with the applicable federal and state laws.
NWEA shall keep student records in a secure location and prevent access by unauthorized individuals.

11. **Drug, Tobacco, and Alcohol.**

All BCPS properties are "drug, tobacco, and alcohol free zones" as designated by local and state laws. Neither NWEA nor any of his employees (or subcontractors) are permitted to have any drugs, tobacco, or alcohol product on school property. Use or possession of such items on school properties will result in immediate termination of the contract. Upon termination of the contract, NWEA will be paid for all services performed to date but will not be paid for any lost profit or anticipated profits due to termination of the contract. NWEA will also be removed from all bids with BCPS for a period of time not to exceed two years and BCPS will provide an "unsatisfactory" reference when inquiries are made.

12. **Warranties.** Covenant Not to Disclose. Each party hereby agrees that during the Term and at all times thereafter it shall not use, commercialize or disclose the other party's Confidential Information to any person or entity, except to (i) its own employees, contractors having a need to know such information in order for the party to meet its obligations pursuant to this Agreement or (ii) such other recipients as the other party may approve in writing. The Client shall not disassemble, decompile or reverse engineer the NWEA MAP assessment software and any information obtained in violation of this restriction shall be deemed Confidential Information owned exclusively by NWEA.

13. **Nonsolicitation.** During the Term and for a period of one (1) year thereafter, the Client agrees not to hire, solicit, nor attempt to solicit the services of any employee, consultant, agent or subcontractor of NWEA, nor induce such employee, consultant, agent or subcontractor to terminate their relationship with NWEA, without the prior written consent of NWEA. Violation of this Section shall, in addition to any other remedies available to NWEA in law or in equity, entitle NWEA to assert liquidated damages against the Client equal to one hundred fifty (150) percent of the solicited or hired person's annual compensation.

14. **Injunctive Relief.** The parties acknowledge that violation by one party of the provisions of Sections 9 or 10 would cause irreparable harm to the other party not adequately compensable by monetary damages. In addition to any other remedies available to such party in law or in equity, the parties hereto agree that equitable and injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of any such Sections.

15. **Non-infringement.** NWEA represents and warrants that, to the best of its knowledge and belief, the NWEA MAP assessment software, in the form delivered by NWEA to the Client and when properly used as contemplated herein, will not infringe any registered United States copyright, trademark or patent of any third persons. Upon being notified of an infringement claim, NWEA shall, at its option, (i) defend
through litigation or obtain through negotiation the right of the Client to continue using the NWEA MAP assessment software; (ii) rework the NWEA MAP assessment software so as to make it non-infringing while preserving the original functionality, (iii) replace the NWEA MAP assessment software with functionally equivalent software, or (iv) if none of the foregoing alternatives is economically feasible, NWEA may terminate the applicable Schedule A and refund to the Client the amounts paid hereunder with respect to the infringing NWEA MAP assessment software. Notwithstanding the foregoing, NWEA shall have no liability hereunder with respect to: (i) any changes or modifications made by the Client or a third party to the NWEA MAP assessment software that result in such infringement claim; (ii) use of the NWEA MAP assessment software in a manner other than as set forth in this Agreement and/or documentation provided by NWEA to Client. ANY CHANGES TO NWEA MAP ASSESSMENT SOFTWARE NOT AUTHORIZED BY NWEA WILL VOID THE INDEMNIFICATION PROVIDED UNDER THIS SECTION.

16. **Limited Warranty.** NWEA warrants to Client that the NWEA MAP assessment software, when properly installed and used, will perform substantially in accordance with its documentation or as represented in writing by NWEA. The NWEA MAP assessment software may include open source software components. This limited warranty is void if the failure of NWEA MAP assessment software results from (a) use of the NWEA MAP assessment software in connection with software or hardware not compatible with the NWEA MAP assessment software or not meeting the technical specifications provided by NWEA; (b) improper or inadequate maintenance by Client; (c) accident, abuse, misapplication, or use by Client of the NWEA MAP assessment software other than as described in the documentation provided by NWEA; or (d) inadequate internet connectivity bandwidth. This limited warranty is void if the NWEA MAP assessment software is altered or modified in any way by anyone other than NWEA. NWEA does not warrant that the operation of the NWEA MAP assessment software or availability of the NWEA MAP assessment software will meet Client’s requirements or be uninterrupted or error free. Client is responsible for the results obtained and decisions made from its use of the NWEA MAP assessment software. NWEA assumes no responsibility for the operating environment or for Client’s security programs in which the NWEA MAP assessment software functions. NWEA will, at its sole option, either replace or, with its best efforts, correct the NWEA MAP assessment software, which fails to perform substantially in accordance with the documentation for the NWEA MAP assessment 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 option, either replace the NWEA MAP assessment software with a functionally equivalent software program or refund the subscription fees paid on a pro-rated basis and cancel this Agreement.

17. **Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 16, NWEA HEREBY EXPRESSLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF

Conflict of Interest. NWEA represents and warrants that there exists no actual or potential conflict of interest between NWEA’s performance under this Agreement and NWEA’s engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any extension thereof, NWEA shall immediately advise the Board thereof.

In accordance with '15-811 through 15-815 of the State Government Article of the Annotated Code of Maryland, the Board of Education of Baltimore County has promulgated Ethics Policies which cover conflict of interest, financial disclosure and lobbying. All Vendors are expected to comply with any and all Board Ethics Policies that may apply to them individually or as a business entity.

All Vendors should review carefully the conflict of interest policies. Specific attention should be accorded to the Board Ethics Policies (Board Policy 8363) prohibiting Baltimore County Public Schools employees from benefiting from business with the school system.

All Vendors are placed on notice that all questions/interpretations concerning the Board Ethics Policies may be submitted to the Ethics Review Panel in accordance with Board Policy 8366.


NWEA hereby warrants and represents that the professional services provided under this Agreement shall be performed competently and with due care, and in accordance with all applicable laws, codes, ordinances and regulations. Breach of this warranty constitutes a material breach of the Agreement.

20. Assignment.

NWEA shall not assign or transfer NWEA’s interest or obligation under this Agreement to any third party, without the prior written consent of the Board. Nothing herein shall be construed to create any personal or individual liability upon any employee, officer, elected official of the Board, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties to this Agreement.


NWEA shall not delegate NWEA’s duties under this Agreement without prior
written consent of the Board.

22. Integration.

This Agreement sets forth the entire agreement between the parties relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. No waiver, modification or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative(s) of the party sought to be bound thereby.

23. Fee Prohibition.

NWEA warrants and represents that he/she has not employed or engaged any person or entity to solicit or secure this Agreement, and that he/she has not paid, or agreed to pay any person or entity a fee or any other consideration contingent on the making of this Agreement.


NWEA agrees that it shall not unlawfully discriminate on the basis of race, color, religion, age, ancestry or national origin, sex, physical or mental disability, marital status or veteran’s status with respect to employment opportunity or access to program pursuant to this Agreement.

25. Background Investigation.

The Board in its sole discretion may require NWEA staff to have a criminal background investigation, including fingerprints, before NWEA begins providing services under this Agreement. In the event the Board requires such an investigation, the Board’s investigator shall perform the investigation. NWEA will pay all fees for the investigation.


NWEA shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate $100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reached $100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.
27. **Political Contribution Disclosure.**

NWEA shall comply with the provisions of Article 33, Section 30-1 through 30-4 of the Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year under which the person receives in the aggregate $10,000 or more, shall, on or before February 1 of the following year, file with the Secretary of State of Maryland certain specified information to include disclosure of political contributions in excess of $100 to a candidate for elective office in any primary or general election.

28. **Retention of Records.**

NWEA shall retain and maintain all records and documents relating to this contract for three (3) years after final payment by BCPS hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of BCPS or designed, at all reasonable times.

29. **Compliance With Proposal.**

NWEA shall abide by and comply with its proposal (if any) and not take advantage of any unintentional error or omission, but shall fully complete every part as the meaning of the drawings and specifications as described.

Where the requirements of the laws, ordinances, etc., are mandatory, they shall govern.

In case of any apparent conflict between the specifications and such laws, ordinances, etc., NWEA shall call the attention of the applicable BCPS designee(s) to such conflict for a decision before proceeding with any work.

30. **Liability for Loss Of Data.**

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 DAMAGES, 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.

31. **Delays, Extensions of Time.**

NWEA agrees to perform all work and provide all supplies or materials, in accordance with all the sections of this Agreement in a reasonable, timely, continuous and diligent manner in order to comply with the time requirements set forth in this Agreement. NWEA acknowledges and agrees that the only party that may grant a legally binding time extension or agree to a substitution of products, materials, equipment and/or supplies is BCPS. Any and all time extensions and/or changes/substitutions of products, materials, equipment and/or supplies must be requested in writing by NWEA before the extension and/or change takes place and approved in writing by BCPS. Notwithstanding the foregoing, NWEA shall not be liable for any delays caused by or arising from any act or omission of Client.

Delays by NWEA causing the completion of Projects to extend past the Commencement Date will not change the Commencement Date for Performance guarantee purposes.

32. **Annulments and Reservations.**

BCPS may conduct any reasonably necessary investigation to determine the ability of NWEA to perform the work, and NWEA shall furnish to the BCPS all such reasonably requested information and data. BCPS reserves the right to reject any proposal if the evidence submitted by NWEA or investigation of such NWEA fails to satisfy BCPS that such NWEA is properly qualified to carry out the obligations of the Contract and to complete all stipulated requirements.

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.

BCPS reserves the right to issue Blanket Purchase Orders to encumber, i.e. make available without obligating to spend, certain monies for Consultant's services. The Blanket Purchase Order dollar value does not in any way represent a guarantee of potential contracts, jobs, work assignments or monies during the course of the contract. The allocation of funds is at the discretion of BCPS.

33. **Limitation of Remedies & Liabilities.** The parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk. Except for certain injunctive relief authorized under Section 16, the Client's sole and exclusive remedies for NWEA's default hereunder shall be (i) the limited warranty set forth in Section 16; and (ii) the right to terminate this Agreement in accordance with Section 7.
34. Notices. Notices sent to either party shall be effective when delivered in person or transmitted by teletypewriter ("fax") machine, one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid to the address on the first page hereof or such other address as a party may give notice. A facsimile of this Agreement and notices generated in good form by a fax machine (as well as a photocopy thereof) shall be treated as "original" documents admissible into evidence unless a document's authenticity is genuinely in question.

Any notices required to be given under this Agreement shall be given, in writing, to the attention of the person identified below. Notice will be deemed to have been given when: it has been placed in the hands of the addressee, or it has been placed in the U.S. Mail, postage prepaid, certified and return receipt requested.

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<thead>
<tr>
<th>To the Board:</th>
<th>To NWEA:</th>
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<tbody>
<tr>
<td>Baltimore County Public Schools</td>
<td>Northwest Evaluation Association</td>
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<tr>
<td>Division of Business Services</td>
<td>121 NW Everett Street</td>
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<tr>
<td>Manager, Office of Purchasing</td>
<td>Portland, OR 97209</td>
</tr>
<tr>
<td>1940 G Greenspring Drive</td>
<td>Attn: Jeff Strickler</td>
</tr>
<tr>
<td>Timonium, MD 21093</td>
<td>Office: 503-624-1951</td>
</tr>
<tr>
<td>Attn: Rick Gay, CPPO, RSBO</td>
<td>Fax: 503-639-7873</td>
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<tr>
<td>Office: 410-887-4334</td>
<td></td>
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<tr>
<td>Fax: 410-887-7831</td>
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</tbody>
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35. Sections 4(d), 10, 14, 15, 16 and 41 shall survive any termination or expiration of this Agreement.

36. Choice of Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE UNITED STATES AND STATE OF MARYLAND, EXCLUSIVE OF CHOICE OF LAWS, AND ANY ACTION SHALL BE INITIATED AND MAINTAINED IN THE CIRCUIT COURT OF BALTIMORE COUNTY, OR THE FEDERAL DISTRICT COURT FOR THE NORTHERN DISTRICT OF THE STATE OF MARYLAND. THE PARTIES HERETO CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS LOCATED IN THE STATE OF MARYLAND AND EXPRESSLY WAIVE ANY CLAIMS WITH RESPECT TO FORUM NON-CONGENIENS, VENUE OR PERSONAL JURISDICTION.

37. Waiver of Jury Trial.

NWEA and Board hereby waive trial by jury in any action or proceeding to which the Board and/or NWEA are parties arising out of or in any way pertaining to this agreement. It is agreed and understood that this waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to this agreement. This waiver is
knowingly, willingly and voluntarily made by the Board and NWEA and the Board and NWEA hereby represent and warrant that no representations of fact or opinion have been made by an individual to induce this waiver of trial by jury or to in any way modify or nullify its effect. The Board and NWEA further represent and warrant that they have been represented or have had the opportunity to be represented, in the signing of this agreement and in the making of this waiver by legal counsel, selected of their own free will, and that they have had the opportunity to discuss this waiver with counsel.

38. **Independent Contractor Status.** The Client and NWEA are independent contractors and nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties. Each party shall remain responsible, and shall indemnify and hold harmless the other party, for the withholding and payment of all Federal, state and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements (under ERISA, state law or otherwise) now existing or hereafter enacted and attributable to such party and its respective employees, Vendor and agents.

39. **Security, No Conflicts.** Each party agrees to inform the other of any information made available to the other party that is classified or restricted data, agrees to comply with the security requirements imposed by any state or local government, or by the United States Government, and shall return all such material upon request. Each party warrants that its participation in this Agreement does not conflict with any contractual or other obligation of the party or create any conflict of interest prohibited by the U.S. Government or any other government and shall promptly notify the other party if any such conflict arises during the Term.

40. **Insurance, Indemnity.** Each party shall maintain adequate insurance protection covering its respective activities hereunder, including coverage for statutory worker's compensation, comprehensive general liability for bodily injury and tangible property damage, as well as adequate coverage for vehicles. It is understood that BCPS' insurance coverage is governed by state law.

41. **Insurance.**

In the event NWEA, as part of the award is responsible for installation and/or product demonstration, NWEA will be responsible for hiring personnel to perform such services at their own costs. Such personnel will be considered employees of NWEA and are under their control and direction. NWEA shall maintain Worker's Compensation in the statutory amount in accordance with the laws of the state in which the work of this contract is to be performed.

NWEA shall also maintain Employer's Liability Insurance with a limit of at least $100,000 for each occurrence to cover diseases and injuries excluded under the
Worker's Compensation Act.

Prior to the commencement of any work, or at any time during the term of this Agreement, NWEA may be required to submit a certificate of insurance evidencing Worker's Compensation and Employer Liability Insurance in the amounts required above. This certificate will indicate the amounts of insurance carried by NWEA of the following types: Comprehensive General Liability Insurance, Comprehensive Automobile Insurance, Excess Liability Insurance, and any other insurance coverage maintained by NWEA. The Certificates of Insurance will state that such insurance is in force and cannot be canceled or released except upon thirty (30) days prior written notice to the Board of Education of Baltimore County. The Certificate of Insurance must name the Board of Education of Baltimore County as an additional insured.

All required insurers allowed to do business in the State of Maryland and acceptable to the Board must underwrite insurance coverage. The insurers must also have a policyholders' rating of "B" or better, and a financial size of "Class VII" or better in the latest evaluation by A.M. Best Company. The Board hereby grants specific approval for the acquisition of workers compensation and employer's liability insurance from the Injured Worker's Insurance Fund of Maryland.

42. Indemnification.

NWEA shall indemnify and hold BCPS harmless from third party claims for bodily injury, death and tangible property damage resulting from the acts or omissions of NWEA's officers, agents, employees or representatives acting within the scope of their work provided that NWEA shall have no obligation to indemnify BCPS from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable to the acts or omissions of BCPS and their officers, employees or agents. It is understood that any indemnification provided by BCPS is expressly limited by the immunity it enjoys under state law.

43. Compliance with Export Regulations. The Client has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; shall indemnify and hold NWEA harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or Use of the technology to be developed or provided herein. The Client shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce. This provision and the assurances made herein shall survive termination of this Agreement.
44. **Severability.**

Should any part, term or provision of this Agreement be declared invalid, void, or unenforceable, all remaining parts, terms, and provisions hereof shall remain in full force and effect, and shall in no way be invalidated, impaired, or affected thereby.

45. **Multi-Agency Procurement.**

BCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not limited to private schools, parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that require these goods, commodities and/or services. This is conditioned upon mutual agreement of all parties pursuant to special requirements, which may be appended thereto. The supplier/contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested. A copy of the contract pricing and the bid requirements incorporated in this contract will be supplied to requesting agencies.

Each participating jurisdiction or agency shall enter into its own contract with NWEA and this contract shall be binding only upon the principals signing such an agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and NWEA. BCPS does not assume any responsibility other than to obtain pricing for the specifications provided.

Each participating jurisdiction and/or local education agency (LEA)/public school district has the right to withdraw from the terms of the contract, without showing cause, be providing sixty (60) calendar days written notice to NWEA(s). The participating jurisdiction/LEA shall pay all reasonable costs incurred by NWEA(s) up to the date of termination. NWEA(s) shall not be reimbursed for any anticipatory profits, which have not been earned up to the date of termination.

Language to support Termination for Convenience by NWEA(s) shall be so stipulated in the contract document between jurisdiction/LEA and NWEA(s). Such language, when included, shall take precedence over the language of this specification.
46. **Certification Regarding U.S. Government Debarment, Suspension, Ineligibility, and Voluntary Exclusion.**

NWEA certifies, by the signing of this contract, that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State or Local government department or agency. Under the STATE FINANCE AND PROCUREMENT, ARTICLE 16-309 “If a person or business is debarred or suspended based on an offense listed in 16-202 (Bribery), the person or business may not be considered for the award of, be awarded, or perform directly or indirectly, a contract with a public body during the time period of debarment.” Where NWEA is unable to certify to any of the statements in this certification, NWEA shall attach an explanation to this contract as Schedule B.

47. **Miscellaneous.** This Agreement and the Statement(s) of Work attached hereto constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This Agreement may be modified or amended only by a writing signed by the party against whom enforcement is sought. Except as specifically permitted herein, neither this Agreement nor any rights or obligations hereunder may be transferred or assigned by the Client without NWEA's prior written consent and any attempt to the contrary shall be void. Neither party shall be liable for delays caused by events beyond its reasonable control. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions. Headings are for reference purposes only and have no substantive effect.
IN WITNESS WHEREOF, for adequate consideration and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Accepted by:

Northwest Evaluation Association

[Signature]
Owner/Partner/Corporate Officer

Typed/Printed Name and Title

5/18/2012

Accepted by:

BOARD OF EDUCATION OF BALTIMORE COUNTY

[Signature]
Joe A. Hairston
Superintendent of Schools
Baltimore County Public Schools

Lawrence E. Schmidt
President
Board of Education of Baltimore County

APPROVED FOR LEGAL FORM AND SUFFICIENCY*
(Subject to Execution by a Duly Authorized Superintendent and President of the Board of Education of Baltimore County)

OFFICE OF LAW
*Approval of Legal Form and Sufficiency Does not Convey Approval or Disapproval Of the Substantive Nature of this Transaction. Approval is based upon Typeset Document-All Modifications Require Re-Approval.
SCHEDULE A

2/1/2012

Baltimore County Public Schools
Attn: Renee Foose
Deputy Superintendent
Towson, Maryland 21204

Dear Dr. Foose:

The following table outlines the MAP student license and workshop discussed in our prior meetings and calls. The quote highlights the $7.50 discount pricing for one year of administration for this pilot. The price will increase to $10.50 per student license if district moves forward after this pilot year with district wide implementation. The attached document details each line item as well as the professional development and trainings offered.

Subscription term 3/1/2012 – 2/28/2013

<table>
<thead>
<tr>
<th>Product Name</th>
<th>Quantity</th>
<th>Price</th>
<th>Discount</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-Site Admin Workshop</td>
<td>1</td>
<td>$3,700.00</td>
<td></td>
<td>$3,700.00</td>
</tr>
<tr>
<td>Web Based MAP for Primary Grades Assessments - Full Year Subscription</td>
<td>1,000</td>
<td>$12.50</td>
<td>$5,000.00</td>
<td>$7,500.00</td>
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<tr>
<td>Web Based MAP Assessments - Full Year Subscription</td>
<td>14,000</td>
<td>$12.50</td>
<td>$70,000</td>
<td>$105,000.00</td>
</tr>
<tr>
<td>Grand Total</td>
<td></td>
<td></td>
<td></td>
<td>$116,200.00</td>
</tr>
</tbody>
</table>

The terms identified here are valid for 90 days from the date above. Subscription fees are determined based on the number of students shown and cover the period of time noted in the subscription term.

Included in the subscription are the following:
* State aligned MAP® assessments (Reading, Mathematics, and Language Use)
* End of course tests (Algebra I, II, Geometry and Integrated Math)
* Standard Instructional and student reporting
* Descartes, a Continuum of Learning® Instructional Resources
* The Lexile® Framework for Reading
* Ongoing support

For more information, please contact me at 843.301.9318.

Best regards,

Sherry
Sherry DeSimone

121 NW Everett Street, Portland, OR, 97209
Tel. 503-624-1951 / Fax: 503-639-7873 / www.nwea.org
NWEA Proposed Pricing

Schedule A – February 1, 2012

Baltimore County Public Schools

NWEA’s pricing approach and philosophy differentiates us from other assessment vendors because we do not charge extra for items such as standard reports, account management, or technical support. Services that are provided at no additional charge for all partners include:

- A comprehensive set of standard online reports, most available the day after tests are administered.
- NWEA Knowledge Academy online training courses to help teachers and administrators refresh their knowledge, and to help guide new staff in administering MAP assessments and interpreting reports.
- Technical Support for the duration of the contract. The Support team is available by phone or email Monday through Friday, 7 AM to 8 PM Eastern Time.
- Partner Support including an Implementation Support Representative and a Senior Account Executive who provides ongoing account management.

Cost

The table below shows the anticipated cost for the pilot year 3/20/2012- 2/2012 for implementing MAP assessments for 15,000 students. Costs include the following:

- NWEA Student License Fees. Per-student license fees for MAP assessments and MAP for Primary Grades. The MAP tests are appropriate for students in grades 2 through 12. MAP for Primary Grades assessments are appropriate for grades K-2. The tests can be administered once in the spring, summer, fall and winter between now and March 1, 2013.

  - NWEA offers a pro-rated, pilot year MAP license fee per student for the contract dates of March 1, 2012 through February 28, 2013. The fee is: $7.50 per student.

  - Subsequent years will be priced at a full year license and include reading, math, and language usage at a per student rate for administration up to 4 times per year; with the possibility of a district wide implementation. The full year license fee for a district wide assessment will be: $10.50.
NWEA On-Site Professional Development Workshops. Descriptions of the available workshops are provided in an attachment to this proposal.

- NWEA's professional development workshops are designed as train-the-trainer sessions to provide stronger context and sustainability, as well as to increase cost efficiency.
- For MAP implementation at 10 schools in 5 feeder programs in 5 regions, NWEA recommends 1 of the MAP Administration Start-Up Training. This would accommodate up to 3 staff members from each school and a few support personnel from the district office.
- One NWEA facilitator is provided for every 40 workshop participants. The cost for this workshop is $3,700.

NWEA Administrator and District Office Introduction/Training

- NWEA will offer up to 8 hours of training free of charge to meet with district level staff and/or building level administrators. NWEA believes that school leaders need the knowledge to lead their teachers with the use of MAP and MAP data. No charge for this training.

NWEA Technical Support Training

- NWEA will provide onsite technical training to the BCPS technical support staff at no cost to BCSD. NWEA believes in training the local help desk in order to establish a system of technical support for MAP systems.
- NWEA will set up approximately 3 days to be onsite for technical training. No charge for this training.

NWEA will collaborate with BCPS to develop a training plan and a MAP implementation plan for the pilot as well as the full MAP implementation district wide if requested by Baltimore County Public Schools.

TOTAL Cost for Pilot Year 3/2012 – 2/2013 is $116,200 for student license and training.
<table>
<thead>
<tr>
<th>School Year</th>
<th>Annual Cost for Assessment Program</th>
<th>Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contract dates</td>
<td>3/1/2012-2/28/2013</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15,000 students @ $7.50 for a pilot year license</td>
<td>3-4 staff members from each school (including the designated MAP Coordinator and IT personnel)</td>
</tr>
<tr>
<td></td>
<td>MAP Start-Up Training: $3,700 1 workshops Up to 40 participants</td>
<td>District Office Technical Support Staff and 1 representative from each school designated as the IT contact for MAP</td>
</tr>
<tr>
<td></td>
<td>IT and Technical Support Staff Training</td>
<td>District Leadership (REA, CI, IT, Staff Development) and School Leaders</td>
</tr>
<tr>
<td></td>
<td>2-3 hour session for Leadership Staff</td>
<td>The same 3-4 staff members from each school (including the designated MAP Coordinator)</td>
</tr>
<tr>
<td></td>
<td>Optional Professional Development Workshops: $3,700 per workshop One facilitator for every 40 participants NWEA recommends the Stepping Stones to Using Data workshop after BCPS has completed the first testing season</td>
<td></td>
</tr>
</tbody>
</table>

2012
Contract dates
3/1/2012–2/28/13

$112,500 - 15,000 Student licenses
$3,700 - 1 MAP Start Up Professional Development Day

TOTAL = $116,200
**CERTIFICATE OF LIABILITY INSURANCE**

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER LIC. 60833370**
Edgewood Partners Insurance Centers (EPIC)
[San Ramon Branch]
P. O. Box 5063
San Ramon, CA 94583

**CONTACT NAME:** Edgewood Partners Insurance Center
**PHONE:** 1-925-244-7700
**FAC.:** JAC. # Exp. (925) 244-7700
**FAX:** JAC. # Exp. (925) 901-0671
**EMAIL:** EPICexter@edgewoodins.com

**INSURERAFFORDING COVERAGE**
**NAIC #**
**INSURER A:** FEDERAL INS CO* 20301
**INSURER B:** GREAT NORTHERN INS CO* 20303
**INSURER C:** NORTHEASTERN PACIFIC INS CO* 20338
**INSURER D:** EXECUTIVE RISK INS CO* 35161
**INSURER E:**

**COVERAGES**

**CERTIFICATE NUMBER:** 2718662

**REVISION NUMBER:**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

<table>
<thead>
<tr>
<th>INSURER</th>
<th>TYPE OF INSURANCE</th>
<th>LIMITS</th>
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<tr>
<td>A</td>
<td>GENERAL LIABILITY</td>
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<td></td>
<td>COMMERCIAL GENERAL LIABILITY</td>
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<td>CLAIMS-MADE</td>
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<td>GEN. AGGREGATE LIMIT APPLIES PER:</td>
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<td>B</td>
<td>AUTOMOBILE LIABILITY</td>
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<td>UMBRELLA LIABILITY</td>
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<tr>
<td></td>
<td>EXCESS LIABILITY</td>
<td></td>
</tr>
</tbody>
</table>

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**

**ADDITIONAL INSURED:** Board of Education of Baltimore County

**CERTIFICATE HOLDER**

Board of Education of Baltimore County
1940 Greenspring Drive, Suite B
Timonium, MD 21093

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE**

[Signature]

**ACORD 25 (2010/05)** The ACORD name and logo are registered marks of ACORD

rjohansson
2718662
SUPPLEMENT TO CERTIFICATE OF INSURANCE

NAME OF INSURED: Northwest Evaluation Association

Additional Description of Operations/Remarks from Page 1:

Additional Information:

THE FORMS AND ENDORSEMENTS ATTACHED TO THIS CERTIFICATE ARE APPLICABLE ONLY WHERE REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT ISSUED PRIOR TO LOSS.
Supplementary Payments (continued)

b. release attachments;
but only for bond amounts within the available Limit Of Insurance. We do not have to
furnish these bonds.

C. reasonable expenses incurred by the insured at our request to assist us in the investigation or
defense of such claim or suit, including actual loss of earnings up to $100 per day because of
time off from work.

D. costs taxed against the insured in the suit, except any:
   1. attorney fees or litigation expenses; or
   2. other loss, cost or expense;
in connection with any injunction or other equitable relief.

E. prejudgment interest awarded against the insured on that part of a judgment we pay. If we
   make an offer to pay the applicable Limit Of Insurance, we will not pay any prejudgment
   interest based on that period of time after the offer.

F. interest on the full amount of a judgment that accrues after entry of the judgment and before
   we have paid, offered to pay or deposited in court the part of the judgment that is within the
   applicable Limit Of Insurance.

Supplementary Payments does not include any fine or other penalty.

These payments will not reduce the Limits Of Insurance.

Our obligation to make these payments ends when we have used up the applicable Limit Of
Insurance.

Coverage Territory
This insurance applies anywhere, provided the insured's responsibility to pay damages, to which
this insurance applies, is determined in a suit on the merits brought in the United States of America
(including its possessions and territories), Canada or Puerto Rico, or in a settlement to which we
agree.

Who Is An Insured
Sole Proprietorships

If you are an individual, you and your spouse are insureds; but you and your spouse are insureds
only with respect to the conduct of a business of which you are the sole owner.

If you die:

* persons or organizations having proper temporary custody of your property are insureds; but
they are insureds only with respect to the maintenance or use of such property and only for
acts until your legal representative has been appointed; and

* your legal representatives are insureds, but they are insureds only with respect to their
duties as your legal representatives. Such legal representatives will assume your rights and
duties under this insurance.
Who Is An Insured

(continued)

Partnerships Or Joint Ventures

If you are a partnership (including a limited liability partnership) or a joint venture, you are an insured. Your members, your partners and their spouses are insureds; but they are insureds only with respect to the conduct of your business.

Limited Liability Companies

If you are a limited liability company, you are an insured. Your members and their spouses are insureds; but they are insureds only with respect to the conduct of your business. Your managers are insureds; but they are insureds only with respect to their duties as your managers.

Other Organizations

If you are an organization (including a professional corporation) other than a partnership, joint venture or limited liability company, you are an insured. Your directors and officers are insureds; but they are insureds only with respect to their duties as your directors or officers. Your stockholders and their spouses are insureds; but they are insureds only with respect to their liability as your stockholders.

Employees

Your employees are insureds; but they are insureds only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, no employee is an insured for:

A. bodily injury, advertising injury or personal injury:

1. to you, to any of your directors, managers, members, officers or partners (whether or not an employee) or to any co-employee while such injured person is either in the course of his or her employment or while performing duties related to the conduct of your business;

2. to the brother, child, parent, sister or spouse of such injured person as a consequence of any injury described in subparagraph A.1. above; or

3. for which there is any obligation to share damages with or repay someone else who must pay damages because of any injury described in subparagraphs A.1. or A.2. above.

With respect to bodily injury only, this limitation does not apply to:

• you or to your directors, managers, members, officers, partners or supervisors as insureds; or

• your employees, as insureds, with respect to such damages caused by cardiopulmonary resuscitation or first aid services administered by such an employee; or

B. property damage to any property owned, occupied or used by you or by any of your directors, managers, members, officers or partners (whether or not an employee) or by any of your employees.

This limitation does not apply to property damage to premises while rented to you or temporarily occupied by you with permission of the owner.
Who Is An Insured (continued)

Volunteers

Persons who are volunteer workers for you are insureds; but they are insureds only for acts within the scope of their activities for you and at your direction.

Real Estate Managers

Persons (other than your employees) or organizations acting as your real estate managers are insureds; but they are insureds only with respect to their duties as your real estate managers.

Permissive Users Of Mobile Equipment

With respect to mobile equipment registered in your name under a motor vehicle registration law:

A. persons driving such equipment on a public road with your permission are insureds; and

B. persons or organizations responsible for the conduct of such persons described in subparagraph A. above are insureds; but they are insureds only with respect to the operation of the equipment and only if no other insurance of any kind is available to them.

However, no person or organization is an insured with respect to:

• bodily injury to any co-employee of the person driving the equipment; or

• property damage to any property owned or occupied by or loaned or rented to you, or in your charge or the charge of the employer of any person who is an insured under this provision.

Vendors

Persons or organizations who are vendors of your products are insureds; but they are insureds only with respect to their liability for damages for bodily injury or property damage resulting from the distribution or sale of your products in the regular course of their business and only if this insurance applies to the products-completed operations hazard.

However, no such person or organization is an insured with respect to any:

• assumption of liability by them in a contract or agreement. This limitation does not apply to the liability for damages for bodily injury or property damage that such vendor would have in the absence of such contract or agreement;

• representation or warranty unauthorized by you;

• physical or chemical change in your products made intentionally by the vendor;

• repackaging, unless unpacked solely for the purpose of inspection, demonstration or testing, or the substitution of parts under instruction from the manufacturer and then repacked in the original container;

• failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the distribution or sale of your products;

• demonstration, installation, servicing or repair operations, except such operations performed on the vendor's premises in connection with the sale of your products; or

• of your products which, after distribution or sale by you, have been labeled or relabeled or used as a container, ingredient or part of any other thing or substance by or for the vendor.
Who Is An Insured

Vendors
(continued)

Further, no person or organization from whom you have acquired your products, or any container, ingredient or part entering into, accompanying or containing your products, is an insured under this provision.

Lessors Of Equipment

Persons or organizations from whom you lease equipment are insureds; but they are insureds only with respect to the maintenance or use by you of such equipment and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

However, no such person or organization is an insured with respect to any:

- damages arising out of their sole negligence; or
- occurrence that occurs, or offense that is committed, after the equipment lease ends.

Lessors Of Premises

Persons or organizations from whom you lease premises are insureds; but they are insureds only with respect to the ownership, maintenance or use of that particular part of such premises leased to you and only if you are contractually obligated to provide them with such insurance as is afforded by this contract.

However, no such person or organization is an insured with respect to any:

- damages arising out of their sole negligence;
- occurrence that occurs, or offense that is committed, after you cease to be a tenant in the premises; or
- structural alteration, new construction or demolition operations performed by or on behalf of them.

Subsidiary Or Newly Acquired Or Formed Organizations

If there is no other insurance available, the following organizations will qualify as named insureds:

- a subsidiary organization of the first named insured shown in the Declarations of which, at the beginning of the policy period and at the time of loss, such first named insured controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization; or
- a subsidiary organization of the first named insured shown in the Declarations that such first named insured acquires or forms during the policy period, if at the time of loss such first named insured controls, either directly or indirectly, more than fifty (50) percent of the interests entitled to vote generally in the election of the governing body of such organization.

Limitations On Who Is An Insured

A. Except to the extent provided under the Subsidiary Or Newly Acquired Or Formed Organizations provision above, no person or organization is an insured with respect to the conduct of any person or organization that is not shown as a named insured in the Declarations.

B. No person or organization is an insured with respect to the:

1. ownership, maintenance or use of any assets; or
2. conduct of any person or organization whose assets, business or organization;
Who Is An Insured

Limitations On Who Is An Insured
(continued)
you acquire, either directly or indirectly, for any:

• bodily injury or property damage that occurred; or

• advertising injury or personal injury arising out of an offense first committed;

in whole or in part, before you, directly or indirectly, acquired such assets, business or organization.

Limits Of Insurance

The Limits Of Insurance shown in the Declarations and the rules below fix the most we will pay, regardless of the number of:

• insureds;

• claims made or suits brought; or

• persons or organizations making claims or bringing suits.

The Limits Of Insurance apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

General Aggregate Limit

Subject to the Each Occurrence Limit, the General Aggregate Limit is the most we will pay for the sum of:

• damages for bodily injury and property damage, except damages included in the products-completed operations hazard; and

• medical expenses.

Products-Completed Operations Aggregate Limit

Subject to the Each Occurrence Limit, the Products-Completed Operations Aggregate Limit is the most we will pay for the sum of damages for bodily injury and property damage included in the products-completed operations hazard.

Advertising Injury And Personal Injury Aggregate Limit

The Advertising Injury And Personal Injury Aggregate Limit is the most we will pay for the sum of damages for advertising injury and personal injury.

Each Occurrence Limit

The Each Occurrence Limit is the most we will pay for the sum of:

• damages for bodily injury and property damage; and

• medical expenses;

arising out of any one occurrence.

Any amount paid for damages or medical expenses will reduce the amount of the applicable aggregate limit available for any other payment.
Conditions

Duties in The Event Of Occurrence, Offense, Claim Or Suit (continued)

F. Knowledge of an occurrence or offense by an agent or employee of the insured will not constitute knowledge by the insured, unless an officer (whether or not an employee) of any insured or an officer's designee knows about such occurrence or offense.

G. Failure of an agent or employee of the insured, other than an officer (whether or not an employee) of any insured or an officer's designee, to notify us of an occurrence or offense that such person knows about will not affect the insurance afforded to you.

H. If a claim or loss does not reasonably appear to involve this insurance, but it later develops into a claim or loss to which this insurance applies, the failure to report it to us will not violate this condition, provided the insured gives us immediate notice as soon as the insured is aware that this insurance may apply to such claim or loss.

Legal Action Against Us

No person or organization has a right under this insurance to:

- Join us as a party or otherwise bring us into a suit seeking damages from an insured; or
- Sue us on this insurance unless all of the terms and conditions of this insurance have been fully complied with.

A person or organization may sue us to recover an agreed settlement or on a final judgment against an insured obtained after an actual:

- Trial in a civil proceeding; or
- Arbitration or other alternative dispute resolution proceeding;

but we will not be liable for damages that are not payable under the terms and conditions of this insurance or that are in excess of the applicable Limits Of Insurance.

Other Insurance

If other valid and collectible insurance is available to the insured for loss we would otherwise cover under this insurance, our obligations are limited as follows.

Primary Insurance

This insurance is primary except when the Excess Insurance provision described below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in the Method of Sharing provision described below.

Excess Insurance

This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis:

A. that is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar insurance for your work;

B. that is insurance that applies to property damage to premises rented to you or temporarily occupied by you with permission of the owner;

C. if the loss arises out of aircraft, autos or watercraft (to the extent not subject to the Aircraft, Auto Or Watercraft exclusion);
Conditions

Other Insurance (continued)

D. that is insurance:
   1. provided to you by any person or organization working under contract or agreement for you; or
   2. under which you are included as an insured; or

E. that is insurance under any Property section of this policy.

When this insurance is excess, we will have no duty to defend the insured against any suit if any other insurer has a duty to defend such insured against such suit. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of loss, if any, that exceeds the sum of the total:
   • amount that all other insurance would pay for loss in the absence of this insurance; and
   • all deductible and self-insured amounts under all other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not negotiated specifically to apply in excess of the Limits Of Insurance shown in the Declarations of this insurance.

Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this method each insurer contributes equal amounts until it has paid its applicable limits of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limits of insurance to the total applicable limits of insurance of all insurers.

Premium Audit

We will compute all premiums for this insurance in accordance with our rules and rates.

In accordance with the Estimated Premiums section of the Premium Summary, premiums shown with an asterisk (*) are estimated premiums and are subject to audit.

In addition to or in lieu of such designation in the Premium Summary, premiums may be designated as estimated premiums elsewhere in this policy. In that case, these premiums will also be subject to audit, and the second paragraph of the Estimated Premiums section of the Premium Summary will apply.

Separation Of Insureds

Except with respect to the Limits Of Insurance, and any rights or duties specifically assigned in this insurance to the first named insured, this insurance applies:
   • as if each named insured were the only named insured; and
   • separately to each insured against whom claim is made or suit is brought.
Conditions (continued)

Transfer Or Waiver Of Rights Of Recovery Against Others

We will waive the right of recovery we would otherwise have had against another person or organization, for loss to which this insurance applies, provided the insured has waived their rights of recovery against such person or organization in a contract or agreement that is executed before such loss.

To the extent that the insured's rights to recover all or part of any payment made under this insurance have not been waived, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

This condition does not apply to medical expenses.