

## **WIDA MODEL ONLINE TERMS and DATA USE AGREEMENT**

The Board of Regents of the University of Wisconsin System, on behalf of the University of Wisconsin-Madison's Wisconsin Center for Education Research (WCER) is the "on-demand provider" of the WIDA MODEL Online English language proficiency assessment system ("WIDA MODEL Online"). WCER offers WIDA MODEL Online directly to school districts, schools and other educational agencies ("DISTRICT"). These WIDA MODEL Online Terms ("Terms") describe the parties involved in providing WIDA MODEL Online to DISTRICT and their respective roles and responsibilities for WIDA MODEL Online administration.

BY PURCHASING WIDA MODEL ONLINE FROM WCEPS VIA THE WIDA STORE, DISTRICT IS AGREEING TO THESE TERMS.

These terms have been updated and are effective as of July 25<sup>th</sup>, 2024.

### **The Parties.**

**WCER.** WCER is a research center/sub-unit of the University of Wisconsin System and therefore, is an agency of the State of Wisconsin Government. WCER is the home of WIDA, the developer and publisher of WIDA MODEL Online.

**MetriTech.** MetriTech, Inc. ("MetriTech") is WCER's vendor retained to provide the WIDA MODEL Online application and related support services directly to DISTRICT. MetriTech's obligations, in particular its obligations concerning student privacy and data security, are described in these Terms.

**WCEPS.** The Wisconsin Center for Education Products and Services ("WCEPS") has a license from WCER to sell WIDA MODEL Online through the WIDA Store. WCEPS is currently the sole source for purchasing WIDA MODEL Online. WCEPS IS NOT A PARTY TO THESE TERMS.

WCER is an independent contractor under these Terms and shall in no way be considered to be an agent, partner, or employee of, or joint venture with, DISTRICT. Neither WCER nor its employees, agents, affiliates, or subcontractors, including but not limited to MetriTech, will be entitled to any benefits, coverage, or other privileges made available to DISTRICT employees.

DISTRICT assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the WCER, its employees, agents, affiliates, or subcontractors by reason of these Terms.

**Additional Terms.** These Terms are the sole terms and conditions with respect to WCER providing WIDA MODEL Online to DISTRICT. WCER does not agree to incorporate DISTRICT's terms and conditions, addendum or other DISTRICT requirements, unless expressed in these Terms. WCEPS may apply separate terms of purchase when it sells WIDA MODEL Online to DISTRICT as it relates to the relationship between WCEPS and DISTRICT; however,

WCEPS cannot revise or modify these terms. Any attempts by DISTRICT to supersede any of the terms expressed in these Terms in a purchase agreement with WCEPS shall be void. For questions and support regarding a purchase of WIDA MODEL Online from WCEPS, please contact WCEPS.

**WIDA MODEL Online Application.** The WIDA MODEL Online application means the online content, including all assessment items and forms, training manuals, interpretive guides, use manuals and reports; and software provided by WCER for the administration of WIDA MODEL Online.

**WIDA MODEL Online Administration.** A WIDA MODEL Online administration means the one-time administration of the assessment to a single student. Purchased WIDA MODEL Online administrations are good for a period of two (2) years starting from the end the month of purchase.

**1. DISTRICT IT Requirements.**

The following OS and browsers are supported by WIDA MODEL Online application:

Test Administrator Workstation Requirements			
Platform	Compatible Browser(s)	Hardware Requirements	Minimum Screen Size
Microsoft Windows 7* or newer	Google Chrome Mozilla Firefox Microsoft Edge	<ul style="list-style-type: none"> <li>•Minimum RAM: 1GB of available RAM</li> <li>•Headset/speakers recommended for audio playback of Practice a Test</li> <li>•External keyboard recommended for text entry on tablets</li> </ul>	Minimum 1024x768
Apple Mac OS X 10.6 (Snow Leopard) or newer	Google Chrome Mozilla Firefox Apple Safari	<ul style="list-style-type: none"> <li>•Minimum RAM: 1GB of available RAM</li> <li>•Headset/speakers recommended for audio playback of Practice a Test</li> </ul>	Minimum 1024x768
Apple iPad iOS 9.3.2 or newer	Apple Safari	<ul style="list-style-type: none"> <li>•External keyboard recommended for text entry (on-screen keyboard functionality will work)</li> <li>•Headset/speakers recommended for audio playback of Practice a Test</li> </ul>	10 inch (not iPad Mini)

Chromebook OS 37 or newer	Google Chrome	<ul style="list-style-type: none"> <li>• Headset/speakers recommended for audio playback of Practice a Test</li> </ul>	10 inch or greater  Minimum 1024x768
Android Tablet 5.0 (Lollipop) or newer	Google Chrome	<ul style="list-style-type: none"> <li>• External keyboard recommended for text entry (on-screen keyboard functionality will work)</li> <li>• Headset recommended for audio playback of Practice a Test</li> </ul>	10 inch or greater  Minimum 1024x768
<p><b>* Microsoft support for Windows 7 ended 1/1/20. MODEL will continue to operate on Windows 7 machines. Upgrading to Windows 10 is strongly recommended.</b></p>			

Student Workstation Requirements			
Platform	Compatible Browser(s)	Hardware Requirements	Minimum Screen Size
Microsoft Windows 7* or newer	Secure Student Brower	<ul style="list-style-type: none"> <li>• Minimum RAM: 1GB of available RAM</li> <li>• Headset recommended for audio playback</li> <li>• External keyboard recommended for text entry on tablets</li> </ul>	1024x768
Apple Mac OS X 10.6 (Snow Leopard) or newer	Secure Student Brower	<ul style="list-style-type: none"> <li>• Minimum RAM: 1GB of available RAM</li> <li>• Headset recommended for audio playback</li> </ul>	1024x768
Apple iPad iOS 9.3.2 or newer	Secure Student Brower	<ul style="list-style-type: none"> <li>• External keyboard recommended for text entry (on-screen keyboard functionality will work)</li> <li>• Headset recommended for audio playback</li> </ul>	10 inch (not iPad Mini)

Chromebook OS 37 or newer	Secure Student Brower	•Headset recommended for audio playback	10 inch or greater  Minimum 1024x768
Android Tablet 5.0 (Lollipop) or newer	Secure Student Brower	•External keyboard recommended for text entry (on-screen keyboard functionality will work)  •Headset recommended for audio playback	10 inch or greater Minimum 1024x768
* Microsoft support for Windows 7 ended 1/1/20. MODEL will continue to operate on Windows 7 machines. Upgrading to Windows 10 is strongly recommended.			
<b>Secure Student Browser available for download from the TAI menu at Training&gt;Training Materials&gt;Administration Files</b>			

Estimated concurrent test administrations at a site based on Internet bandwidth (Megabits per second)

Connection Type	Number of Concurrent Reading Students	Number of Concurrent Listening Students
T1: 1.5 Mbps	30	15
DSL: 3 Mbps or greater	60	30
Fiber or Cable: 10 Mbps or greater	200	100

DISTRICT is responsible for maintaining the latest updates and patches to supported OS and browsers. Some features of the WIDA MODEL Online application on some systems may require enabling security settings manually to ensure full functionality. DISTRICT will be directed to MetriTech customer support for further information.

## 2. Product and Service Specifications - Software

WCER, through MetriTech, will use best efforts to provide the WIDA MODEL Online application free of bugs or errors. WCER shall fix any bugs or errors in the WIDA MODEL Online application that materially affect the reliability, validity or security of the test at no cost to DISTRICT as soon as practicable. WCER may take WIDA MODEL Online offline until all material bugs or errors are fixed. WCER will fix all incidental bugs and errors that do not materially affect the reliability, validity or security of WIDA MODEL Online during the regularly scheduled maintenance period at no additional cost to DISTRICT.

**WIDA MODEL Online Availability.** Except for regularly scheduled and emergency maintenance, WCER will use best efforts to provide uninterrupted use of the WIDA MODEL

Online application. If the WIDA MODEL Online application becomes unavailable, WCER will use best efforts to bring it back online within 30 minutes. However, WCER makes no representations or warranties that WIDA MODEL Online will be uninterrupted.

**Regularly Scheduled Maintenance.** WCER may perform maintenance on the WIDA MODEL Online application. WCER, through MetriTech, will provide advanced notice to users of scheduled maintenance.

**Emergency Maintenance.** WCER may perform emergency maintenance at any time in order to bring the WIDA MODEL Online application back online as soon as practicable after an interruption to service. WCER will use best efforts in providing notice to users of the emergency maintenance.

**Force Majeure.** No party shall be responsible for any inability or failure to comply with these Terms due to causes beyond its control and without the negligence or malfeasance of such party. These causes shall include, but not be restricted to: fire, storm, flood, earthquake, explosion, acts of the public enemy, war, rebellion, insurrection, mutiny, sabotage, epidemic, pandemic, quarantine restrictions, labor disputes, embargoes, acts of God, acts of the United States or any other government, including the failure of any government to grant export or import licenses or permits. WCER shall, as soon as practicable considering the circumstances, publicly post and/or send email notification to DISTRICT if it experiences any causes beyond its control that prevent or delay performance of its responsibilities under these Terms.

### **3. User Accounts and Use of WIDA MODEL Online.**

A WIDA MODEL Online account with login information will be created upon the first purchase of WIDA MODEL Online by DISTRICT. DISTRICT shall assign one user to serve as the WIDA MODEL Online account administrator (the “Account Administrator”) for DISTRICT. DISTRICT shall ensure that all subsequent purchases of WIDA MODEL Online use the same WIDA MODEL Online account information that was used for the initial purchase in order to ensure that test administrations and DISTRICT assessment data from multiple purchases are within the same account. PLEASE NOTE: Multiple WIDA MODEL Online accounts cannot be linked at this time. If multiple schools within a DISTRICT purchase WIDA MODEL Online, then each purchasing school will be assigned its own WIDA MODEL Online account and those schools’ data will not be linked in the WIDA MODEL Online application for single DISTRICT access. DISTRICT’s Account Administrator shall serve as the main program contact for DISTRICT’s WIDA MODEL Online account. DISTRICT is responsible for maintaining current Account Administrator contact information for the DISTRICT’s WIDA MODEL Online account.

In addition to the Account Administrator, WCER offers three levels of WIDA MODEL Online users/administrators (“USER” or collectively “DISTRICT USERS”) that can perform WIDA MODEL Online administrations; one for district administrators, one for school administrators and

one for test administrators. The three levels of WIDA MODEL Online user accounts have different WIDA MODEL Online application access and administrative rights, with district administrators having the greatest, followed by school administrators and then test administrators. DISTRICT USERS are provided individual user accounts that should not be shared across multiple DISTRICT USERS.

The DISTRICT's Account Administrator is initially responsible for adding subsequent levels of DISTRICT USERS to the DISTRICT MODEL account, if desired. The Account Administrator and district administrators will have access to all data in DISTRICT. School administrators and test administrators have more limited access to data, since they only see the data for schools to which they are assigned. Any USER added by the account administrator, district or school administrator can be deleted by the account administrator at any time. Deletion of a USER does not affect the test administration data created by that USER.

WIDA MODEL Online administrations are good for a period of two (2) years starting from the end the month of purchase. At the end of this period, unused test administrations will expire. If DISTRICT does not purchase additional test administrations, DISTRICT USERS will have access to the WIDA MODEL Online application for two (2) additional years (the "Data Retention Period"), unless DISTRICT terminates its use of the WIDA MODEL Online application or any DISTRICT USERS earlier. All DISTRICT Data (as that term is defined in section 14, subsection 6 below) will be maintained in accordance with the Data Retention and Destruction section below.

Using the WIDA MODEL Online application does not give USER or DISTRICT ownership rights in WIDA MODEL Online. DISTRICT, however, will retain ownership and complete control over all DISTRICT Data. USER can only use WIDA MODEL Online and the content provided on the WIDA MODEL Online application for the sole purpose of assessing student English language proficiency in accordance with DISTRICT needs and the license granted in these Terms.

USER shall only use the WIDA MODEL Online application in accordance with these Terms, any WIDA MODEL Online test administrator policies and procedures displayed on the WIDA MODEL Online application and applicable laws. Any impermissible use of the WIDA MODEL Online application, actions in violation of these Terms or actions not permitted by law by USER shall be grounds for immediate termination of USER's account. WCER may, in its sole discretion, suspend all accounts associated with DISTRICT if any one USER of DISTRICT is in violation of this section. The account suspension will be lifted upon adequate remedy of any impermissible use or violation.

WCER shall not require any USER to accept any additional end-user terms in order to use the WIDA MODEL Online application. These Terms are the sole agreement between WCER, DISTRICT and DISTRICT's USERS. DISTRICT shall ensure that its USERS understand and

adhere to these Terms. Notwithstanding the foregoing, WCER may still require DISTRICT USERS to acknowledge any applicable privacy policies and WIDA MODEL Online application security requirements.

#### **4. Data Security, Student Privacy and FERPA compliance.**

The parties acknowledge that the disclosure of student records containing personally identifiable information is necessary for the administration of WIDA MODEL Online by DISTRICT. WCER and MetriTech shall remain in compliance with and follow the federal Family Education Rights and Privacy Act (“FERPA”) and will monitor applicable laws with respect to the protection of student privacy. In order to protect the privacy of students and parents, and to prevent the disclosure of DISTRICT’s confidential student records, WCER and MetriTech shall, and do hereby agree to, follow the WIDA MODEL Online Data Use Agreement, attached to the end of these Terms.

#### **5. Data Retention and Destruction Policy.**

MetriTech will retain DISTRICT Data in the WIDA MODEL Online application for the Data Retention Period, as defined in the User Accounts and Use of WIDA MODEL Online section, above, or shorter if directed by DISTRICT. At the end of DISTRICT’s Data Retention Period, or sooner if upon request from DISTRICT, all of DISTRICT’s data on the WIDA MODEL Online application will be destroyed and neither MetriTech nor WCER will retain a copy of DISTRICT’s data. DISTRICT is solely responsible for creating copies of its data for DISTRICT use prior to MetriTech’s destruction of DISTRICT Data. MetriTech will provide certification of data destruction upon DISTRICT request.

#### **6. Account Termination.**

WCER may terminate, in its sole discretion, a USER that is in violation of these Terms.

#### **7. Copyright and Trademark Ownership and License.**

WCER and the Board of Regents of the University of Wisconsin System, on behalf of WIDA, own and shall own the copyrights to all WIDA MODEL Online application content (collectively the “WIDA MODEL Online Content”) and subsequent updates, modifications and new editions. WCER does not convey any exclusive rights, title or interest in or to the WIDA MODEL Online Works to DISTRICT.

WCER shall and does hereby grant to DISTRICT and DISTRICT USERS a limited license to access and use the WIDA MODEL Online Content solely for the purpose of administering and assessing the English language proficiency of DISTRICT’s students, which may include the use of training by test administrators. DISTRICT and DISTRICT USERS shall not copy, create derivatives or publicly display the WIDA MODEL Online Content for any reason.

MetriTech owns and shall own the copyrights to the WIDA MODEL Online application software (collectively the “WIDA MODEL Online Software”) and subsequent updates, enhancements,

modifications and new features. MetriTech provides the WIDA MODEL Online Software to WCER, DISTRICT and DISTRICT USERS under a limited license for the sole purpose of administering WIDA MODEL Online. MetriTech shall and does hereby grant to DISTRICT and DISTRICT USERS a limited license to access and use the WIDA MODEL Online Software solely for the purpose of accessing and using the WIDA MODEL Online Content. DISTRICT and DISTRICT USERS shall not copy, create derivatives or publicly display the WIDA MODEL Online Software for any reason. MetriTech does not convey any exclusive rights, title or interest in or to the WIDA MODEL Online Software to DISTRICT.

DISTRICT owns and shall own the copyrights to all DISTRICT Data. DISTRICT does not convey any exclusive rights, title or interest in or to DISTRICT Data. WCER and MetriTech's use of DISTRICT Data is strictly limited to the uses permitted in these Terms and the WIDA MODEL Online Data Use Agreement.

WIDA, the WIDA Consortium logo, and WIDA MODEL Online are trademarks of the Board of Regents of the University of Wisconsin System (collectively the "WIDA Trademarks"). Any use of the WIDA Trademarks shall inure to the benefit of WCER. DISTRICT acknowledges that WCER may, from time-to-time, issue trademark and copyright use guidelines and policies in order to maintain the proper use and integrity of the WIDA Trademarks and the quality of WCER services and products. DISTRICT shall assist WCER in implementing any trademark and copyright use guidelines for all uses by DISTRICT.

WCER shall not use DISTRICT's name, trademarks or logo for any marketing or promotional purposes nor shall DISTRICT's use of WIDA MODEL Online be construed or represented as an endorsement by DISTRICT of WIDA MODEL Online.

**Disclaimer.** THE WIDA MODEL ONLINE APPLICATION AND RELATED SERVICES WERE DEVELOPED AS PART OF THE NON-PROFIT RESEARCH AND EDUCATIONAL ACTIVITIES OF THE UNIVERSITY OF WISCONSIN-MADISON, AND ARE PROVIDED "AS IS" AS PART OF THE UNIVERSITY'S MISSION OF OUTREACH AND SERVICE TO THE EDUCATIONAL COMMUNITY. THE UNIVERSITY HAS NO REASON TO BELIEVE THAT THE WIDA MODEL ONLINE APPLICATION INFRINGES ON THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, OR ARE UNFIT FOR ANY SPECIFIC PURPOSE; HOWEVER, DUE TO THE NON-COMMERCIAL NATURE OF THE UNIVERSITY IT CANNOT PROVIDE WARRANTIES FOR THE WIDA MODEL ONLINE APPLICATION, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.



NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PROVISION OF WIDA MODEL ONLINE.

#### **8. Limitation of Liability.**

Neither party shall be liable for the acts or omissions of the other. Neither party shall hold harmless the other party from any loss, claim, damage, or liability of any kind except to the extent that the liability arises from the acts or omissions of a party's officers, employees or agents while acting within the scope of their employment and only to the extent that protection is afforded by the liable party's applicable law.

Any liability obligations imposed on either party pursuant to these Terms are only to the extent permitted by law and subject to appropriations from their respective funding authorities. Nothing herein or any other provision of these Terms shall be construed to abrogate, impair, or waive any defense, liability or damages limitation, or governmental immunity of either party pursuant to their respective state law, or otherwise.

#### **9. Insurance.**

WCER and the State of Wisconsin is self-funded for State liability purposes. The State's Self-funded Liability Program provides coverage against claims made as the result of the negligent acts of university officers, employees and agents. The State's liability protection is afforded under Wisconsin Statute § 895.46 (1) and extends to all employees in the course and scope of their duties. In addition to the State's Self-funded Liability Program, WCER has obtained and shall maintain cyber liability insurance sufficiently broad to cover all the duties and obligations required for the provision of WIDA MODEL Online.

MetriTech has been retained by WCER in accordance with State of Wisconsin and University of Wisconsin procurement laws and regulations. MetriTech, via its State of Wisconsin vendor agreement, is required to maintain and keep in force insurance, including, worker's compensation insurance; and commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in the carrying out of its contracted vendor duties. In addition to these vendor insurance requirements, MetriTech has obtained and shall maintain cyber liability insurance sufficiently broad to cover all the duties and obligations required for the provision of WIDA MODEL Online. NOTE: due to the on-demand provider nature of MetriTech's vendor agreement with WCER, it cannot add DISTRICT as an additional insured to its insurance policies.

#### **10. Audit and Record Retention.**

All financial records, regardless of physical form, and the accounting practices and procedures of WCER relevant to WIDA MODEL Online are subject to examination by DISTRICT. WCER will maintain these records for at least five (5) years following completion of WIDA MODEL Online administrations by DISTRICT. WCER shall permit DISTRICT, in DISTRICT's sole discretion

and expense, to audit, upon reasonable request and during WCER's regular business hours, any records related to WCER's provision of WIDA MODEL Online.

UNLESS OTHERWISE MUTUALLY AGREED TO BY THE PARTIES, THE PARTIES SPECIFICALLY AGREE THAT NO DISPUTE OR CAUSE OF ACTION ARISING OUT OF THESE TERMS SHALL BE SUBMITTED TO ARBITRATION OR MEDIATION.

### **11. Changes in Terms.**

WCER may modify these Terms to reflect changes in the law or WIDA MODEL Online. Changes will not apply retroactively to any existing purchases and shall become effective as stated in the change notice. DISTRICT's purchase of new WIDA MODEL Online administrations after the effective date of the change notification shall be construed as DISTRICT's acceptance of the new terms and shall apply to all of DISTRICT's remaining WIDA MODEL Online administrations, including from existing purchases.

WCER shall not make any material changes to the WIDA MODEL Online Data Use Agreement that weaken or alter any of its data security or privacy obligations.

**Notice.** Due to the nature of WIDA MODEL Online being an on-demand assessment, WCER does not provide written notice to individual schools and school districts, except as required by the WIDA MODEL Online Data Use Agreement. WCEPS provides the notices required by these Terms on the WIDA MODEL Online application, on WCER's or MetriTech's behalf, using the email address associated with DISTRICT's Account Administrator. Any notice to WCER in accordance with these terms shall be sent to WCER – WIDA MODEL, 1025 West Johnson Street, Madison, Wisconsin 53706, or to the email address: [widamodel@wcer.wisc.edu](mailto:widamodel@wcer.wisc.edu)

### **12. Subcontractors.**

WCER obtains all subcontractors (MetriTech) in accordance with State of Wisconsin and University of Wisconsin procurement laws and rules. Due to the multi-district nature of an on-demand assessment, WCER cannot require its subcontractors to meet each school or school DISTRICTS's specific subcontractor requirements. Additionally, WCER cannot include DISTRICT specific contract provisions in its subcontracts. WCER represents that MetriTech understands its obligations under these Terms and the WIDA MODEL Online Data Use Agreement and is in full compliance.

DISTRICT hereby consents to WCER's use of MetriTech as its subcontractor by purchasing WIDA MODEL Online. WCER will provide 120 days-notice, or as much as practicable, of any change in subcontractors in accordance with the Notice section.

### **13. Miscellaneous.**

WCER acknowledges that DISTRICT may, in DISTRICT's sole discretion, make these Terms (including the WIDA MODEL Online Data Use Agreement) publicly available, including posting on DISTRICT's website.

The parties shall provide notice of any failure to keep in force these Terms. In the event of a disagreement regarding the terms or implementation these Terms, the parties shall agree to discuss their dispute in good faith and make best efforts to achieve a mutually agreed-upon resolution. Each party shall notify the other party immediately upon receiving information at any time that lack of continued governmental funding or any other set of circumstances that may prevent the continuation of WIDA MODEL Online.

DISTRICT acknowledges that WCER is a research center/sub-unit of the University of Wisconsin System and therefore, is an agency of the State of Wisconsin Government. Because it is part of the State of Wisconsin Government, WCER does not consent to any legal jurisdiction or venue outside of the State of Wisconsin. Nothing in these Terms or any purchase order or agreement procuring WIDA MODEL Online shall be construed as waiving the sovereign immunity of the State of Wisconsin. As an agency of the State of Wisconsin, WCER does not register as a business in any foreign jurisdiction.

WCER acknowledges that DISTRICT may be subject to the laws of a state other than the State of Wisconsin. Nothing in these Terms shall be construed as DISTRICT consenting to any legal jurisdiction or venue outside of DISTRICT's home state or waiving its State sovereign immunity or governmental immunity, as described in the Limitation of Liability section, above.

DISTRICT, by purchasing WIDA MODEL Online expressly agrees that these Terms shall supersede any conflicting terms that DISTRICT may attach or incorporate to any purchase order or agreement procuring WIDA MODEL Online. These Terms shall take precedence in any contract document hierarchy between the parties. DISTRICT shall waive any terms in any procurement contract or purchase order that it issues that are in conflict with these Terms.

WCER shall comply with all federal and State of Wisconsin laws. WCER and its subcontractors shall comply with Federal and State of Wisconsin non-discrimination laws, including the Wisconsin Fair Employment Act and similar Federal law. WCER cannot be subject to or subject its subcontractors to another state's/municipalities' specific subcontracting, non-discrimination and employee relations laws unless it expressly assents to these requirements in writing.

WCER shall comply with all federal and State of Wisconsin public employee integrity, conflict of interest and ethics laws and regulations. WCER represents that its officers, employees or agents have not engaged in or been convicted of any unlawful conduct, including bribery, to influence or otherwise attempt any party to make any purchase or procurement decision. WCER represents that no official or employee of DISTRICT shall benefit from or receive any money as a result of purchasing WIDA MODEL Online.

WCER shall comply with all federal and State of Wisconsin Drug-Free Workplace laws.

WCER receives federal funds and is therefore subject to federal regulations regarding federal fund recipients. WCER certifies that it complies with all Federal funding certifications and assurances

required by the U.S. Office of Management and Budget. WCER certifies that it and its principal officers are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government. WCER certifies that it is in compliance with the Federal Immigration Reform and Control Act and that it verifies the employment eligibility of all of its employees.

#### **14. WIDA MODEL Online Data Use Agreement.**

The following provisions are incorporated into the WIDA MODEL Online Terms and shall constitute the data use agreement (“DUA”) between WCER and DISTRICT with respect to the disclosure of education records of students by DISTRICT and the use and protection of these records by WCER. This DUA forms a part of the agreement between WCER and DISTRICT with respect to DISTRICT’s purchase and use of the WIDA MODEL Online. Terms not defined in this DUA, including party names, are defined in the WIDA MODEL Online Terms.

1. **Binding effect on WCER vendor MetriTech.** WCER expressly acknowledges that all requirements of this DUA apply to WCER and its assessment vendor MetriTech. WCER assumes all responsibility for MetriTech’s use of data disclosed by DISTRICT under this agreement. For avoidance of doubt, both WCER and MetriTech are subject to the requirements of this DUA even though, at times, this DUA may only mention WCER.
2. **Designation of authority.** DISTRICT is outsourcing an institutional function, namely the assessment of English language proficiency via WIDA MODEL Online. DISTRICT considers WCER and MetriTech a school official for the sole purpose of providing WIDA MODEL Online. DISTRICT has determined that WCER and MetriTech’s personnel who are assigned to perform work duties for the provision of WIDA MODEL Online and are subject to the same confidentiality obligations of this DUA have legitimate educational interests in the student records disclosed under this DUA.
3. **DISTRICT’s direct control.** WCER and MetriTech shall be under the direct control of DISTRICT with respect to the use and maintenance of all education records disclosed under this DUA.
4. **Scope of education records.** Education records of students disclosed under this DUA shall include the student demographic information described in the MODEL Student Information table, at the end of this DUA, student responses to assessment items, and DISTRICT USERS “Metadata,” which includes information collected by MetriTech related to an individual’s time spent to perform a task within the WIDA MODEL Online application.
5. **Acknowledgment of disclosure of personally identifiable information and description of use.** The parties acknowledge that the education records that DISTRICT is disclosing under this DUA contain personally identifiable information as provided in the MODEL Student Information table (“PII”). All PII that is given in the MODEL Student Information table to be disclosed by DISTRICT under this DUA is necessary for the WIDA MODEL Online administration. Student responses and Metadata will be directly linked to PII by MetriTech in order to facilitate the administration, scoring and reporting of WIDA MODEL Online. Additionally, MetriTech, under the direction of WCER, may use the PII and linked data for quality assurance purposes solely related to monitoring and improving the reliability of the WIDA MODEL Online application, and verifying and maintaining the validity and integrity of the WIDA MODEL Online administration. See also, the Creation and Use of De-identified Records section, below. DISTRICT and DISTRICT USERS shall not provide any PII other than the PII described in the MODEL Student Information table.

6. **Confidentiality of DISTRICT Data.** All information provided by DISTRICT (“DISTRICT Data”), including the education records of students or teacher or other DISTRICT personnel information, whether maintained individually or aggregated, shall be deemed as confidential by DISTRICT, unless explicitly stated otherwise in this DUA.
7. **Ownership of DISTRICT Data.** DISTRICT is and shall remain the sole owner of DISTRICT Data. Except for the specific permissions granted in this DUA for the sole purpose of providing the WIDA MODEL Online, DISTRICT does not grant any license to use DISTRICT Data for any purpose.
8. **Limitations on use of DISTRICT Data.** WCER’s use of DISTRICT Data is strictly limited to the sole purpose of providing WIDA MODEL Online to DISTRICT and the uses described in this DUA. No other use of DISTRICT Data is authorized by DISTRICT. WCER acknowledges that misuse or unauthorized release of DISTRICT Data; any violation of the Prohibited Uses section, below, by WCER or MetriTech; or any other violation of this DUA may be determined to be a material breach of this DUA and grounds for termination of WIDA MODEL Online services as well as subject WCER and MetriTech to other legal action.
9. **Confidentiality and data security requirements.**
  - a. WCER and MetriTech shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of DISTRICT Data. An overview of WCER’s Standard Security Policies and Procedures is included at the end of this DUA. Details of WCER’s Standard Security Policies and Procedures are available upon request.
  - b. WCER shall not share DISTRICT Data with anyone, except those employees of WCER and WCER’s subcontractor MetriTech (“Authorized Users”) that are directly involved and have a legitimate educational interest in providing WIDA MODEL Online services according to the terms of this DUA and the WIDA MODEL Online Terms, above.
  - c. WCER shall require all Authorized Users to comply with FERPA and other applicable state and federal student privacy law. WCER shall require and maintain confidentiality agreements with each Authorized User of DISTRICT Data. The terms of the Authorized User confidentiality agreements shall contain, at a minimum, the terms and conditions of this DUA. WCER shall perform and cause its subcontractors to perform background checks on all of its employees and agents that are Authorized Users, prior to providing authorized access to DISTRICT Data. All background checks will be performed in accordance with the State of Wisconsin/University of Wisconsin background checks for employees and contractors.
  - d. WCER certifies that it has the capacity to restrict access to DISTRICT Data solely to Authorized Users and ensure that the DISTRICT Data is accessed only for the purposes described in this DUA. WCER shall protect DISTRICT Data in a manner that does not permit personal identification of students and their parents by anyone except those bound by this agreement and DISTRICT.

- e. WCER shall notify DISTRICT in accordance with the details provided below if it learns of any of the following incidents:
  - i. A use of DISTRICT Data by anyone that is inconsistent with the terms of this DUA or for a use not authorized under this DUA;
  - ii. A security breach to any system containing DISTRICT Data; or
  - iii. Any disclosure of DISTRICT Data to anyone other than an Authorized User or DISTRICT officials authorized to access and receive DISTRICT Data.
- f. WCER shall maintain a responsive secure data breach policy.
  - i. Definitions.
    - 1. Breach shall mean any situation where education records and/or PII are accessed by someone other than an Authorized User, for anything other than an authorized purpose.
    - 2. High-risk security incident shall mean any incident that poses an immediate or possible compromise to the integrity of a secure WCER data system containing educational records with PII. Any incident where the exposure to system integrity is unknown shall be deemed a high-risk security incident.
  - ii. The breach policy shall 1) establish a clear chain of control over the WCER response to all high-risk security incidents involving WCER secure systems; 2) ensure notification to data owner[s] as soon as possible regarding any breaches to WCER secure systems and/or their data; and (3) outline the roles, responsibilities and procedures to ensure an effective response and resolution to any breaches to WCER secure systems and/or their data.
  - iii. WCER shall provide DISTRICT a detailed copy of its breach policy upon request.
- g. WCER shall cooperate and take all reasonable means prescribed by DISTRICT to secure any breaches as soon as practicable.
- h. WCER shall not store, process or transfer DISTRICT Data outside the United States.
- i. WCER shall not redisclose DISTRICT Data to any party not authorized under this DUA. If WCER becomes legally compelled to disclose any DISTRICT Data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then WCER shall use all reasonable efforts to provide DISTRICT with prior notice before disclosure so that DISTRICT may seek a protective order or other appropriate remedy to prevent the disclosure; provided, however, that WCER will use all reasonable efforts to maintain the confidentiality of DISTRICT Data. If a protective order or other remedy is not obtained prior to when any legally compelled disclosure is required, WCER will disclose only that portion of DISTRICT Data that it is legally required to disclose.

- 10. Data Destruction.** WCER shall adhere to its Data Retention and Destruction Policy described in the WIDA MODEL Online Terms. WCER shall destroy all DISTRICT Data within 45 calendar days upon any data destruction triggers stated in this policy. Destroy shall mean to remove DISTRICT Data from WCER’s systems, paper files, records, databases, and any other media regardless of format so that the DISTRICT Data is permanently irretrievable in the WCER’s and MetriTech’s normal course of business.
- 11. Audit.** WCER shall maintain appropriate records to demonstrate that it and MetriTech are complying with the terms of this DUA and the WCER Standard Security Policies and Procedures. WCER shall permit DISTRICT, in DISTRICT’s sole discretion and expense, to audit, upon reasonable request, that it is complying with the requirements of this DUA and/or that it has destroyed the DISTRICT Data as verified. WCER shall reasonably cooperate with DISTRICT in the performance of any audit. WCER shall provide DISTRICT, upon reasonable request, a summary of any audits, scans, or tests performed in furtherance of the WCER Standard Security Policies and Procedures.
- 12. Prohibited Uses.**
- a. WCER shall not sell or rent DISTRICT’s Data, use DISTRICT’s Confidential Data for purposes of targeted or untargeted advertising to students or any party, or use DISTRICT’s Confidential Data, including persistent unique identifiers, to create a personal profile of a student other than supporting the Evaluation Services described in this Contract. “Targeted Advertising” means selecting and sending advertisements to a student based on information obtained or inferred over time from the student’s online behavior, use of applications, or PII.
  - b. WCER shall not use Confidential Data to measure, capture, record or analyze any biological characteristics that can be used for automated recognition of an individual. WCER shall not create or maintain any biometric records, as defined by FERPA, using PII disclosed, captured or received during the course of providing Evaluation Services to DISTRICT.
  - c. WCER shall contractually require any subcontractor that it discloses DISTRICT’s Confidential Data in accordance with this contract to comply with the requirements of this prohibited uses subsection.
- 13. Creation and Use of De-identified Records.**
- a. DISTRICT expressly acknowledges that MetriTech will create a copy of DISTRICT Data where all personally identifiable information, including all direct and indirect personal identifiers, has been permanently removed (“De-identified MODEL Data”), provided, however, that there is no reasonable basis to believe that the remaining information in the records can be used to successfully link the de-identified information to an identifiable individual or to the DISTRICT. MetriTech will share De-identified MODEL Data aggregated with all WIDA MODEL Online student responses with WCER for the purpose of verifying and maintaining the validity and integrity of WIDA MODEL Online. MetriTech shall not provide any data elements for any student record to WCER that would permit WCER to, either directly or indirectly, personally identify any individual in the De-identified MODEL Data.



- b. WCER and MetriTech shall permit DISTRICT, upon DISTRICT’s reasonable request, the De-identified MODEL Data created in accordance with this section to make a determination that no student’s identity is personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information.
  - c. WCER and MetriTech shall not take any action or attempt to determine the personal identity of any individual contained in the De-Identified MODEL Data for any reason or to transfer the De-Identified MODEL Data to any party unless that party agrees not to attempt to re-identify the De-Identified MODEL Data.
  - d. Neither WCER nor MetriTech shall share with any individual or entity outside the DISTRICT, without prior review and approval from the DISTRICT, any report, data, or research findings that are based on DISTRICT Data or De-Identified MODEL Data that could be linked to an identifiable DISTRICT staff member, student, parent/guardian, school, or the DISTRICT as a whole.
14. **DISTRICT’S Remedies.** WCER acknowledges that the breach of this DUA on its part may result in irreparable and continuing damage to DISTRICT for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this DUA by WCER, DISTRICT, in addition to any other rights and remedies available to it at law or in equity, may be entitled to preliminary and permanent injunctions, enjoining and restraining the breach or threatened breach.
15. **Waiver.** The failure by one party to require performance of any provision of this DUA shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this DUA constitute a waiver of any subsequent breach or default or a waiver of the provision itself. No modification, amendment, waiver or release of any provision of this DUA or of any right, obligation, claim or cause of action arising from this DUA shall be valid or binding for any purpose unless in writing and duly executed by the party against whom they are asserted.
16. **Severability.** Any provision of this DUA that is declared invalid by a court of competent jurisdiction or by operation of law, shall not affect the validity or enforceability of any other provision of this DUA.
17. **Term.** This DUA shall remain in effect as long as WCER maintains DISTRICT Data and shall not terminate until WCER has fulfilled all of its obligations describe herein.
18. **Data Custodians.** The following individuals are the designated data custodians for their respective entities with respect to this DUA:

*For WCER – WIDA Consortium Assessment operational uses*

H. Gary Cook  
Senior Director of Assessment  
1025. W Johnson St., MD#23  
Madison, WI 53706  
Phone: 608-890-0471  
Email: [hcook@wisc.edu](mailto:hcook@wisc.edu)

*For MetriTech Inc. - Assessment platform vendor*

Susan C. Feldman

President

4106 Fieldstone Road

Champaign, IL 61822

Phone: 217-398-4868 ext 119

Fax: 217-398-5798

Email: [sfeldman@metritech.com](mailto:sfeldman@metritech.com)

## 15. WCER Standard Security Policies and Procedures – Overview

WCER's Standard Security Policies and Procedures consists of the following components:

- Information Technology Asset Management. Centralized administration of all hardware and software assets; monitor and perform maintenance, updates, and patches of all hardware and software assets; oversee user base and administer system for authorizing system/user access to restricted information; provide and monitor physical and electronic security of all hardware and software assets; and oversee staff compliance and training with respect to the WCER Standard Security Policies and Procedures.
- Network Management. Implement and maintain hardware firewall; monitor with intrusion detection system; and analyze network activity.
- User Authentication and Authorization. All users within managed domain assigned unique active directory account; secure access to systems controlled by multi-factor authentication and complex password policies; authorizations are controlled by system administration staff and require supervisory approvals; authorizations are evaluated upon change in employee status and/or change in duties; and security configurations for authorized access based on national standards and best practices.
- Security Practices for Sensitive Data. Implement additional policies and procedures, based on National Center for Education Statistics (NCES) security practices and audit procedures for authorized access to sensitive data, including PII. No DISTRICT Data, including but not limited to PII, is maintained or stored on mobile computing devices, e.g. laptops or tablets.
- Use of Anti-virus and Security Update Software. Centrally managed and automatically updated software; regularly scheduled scans and remote monitoring of software.
- Data in Transit. All network traffic is encrypted in transit using industry recognized strong encryption algorithms.
- Data at Rest. All servers are housed within secure access-restricted data centers that are monitored with round-the-clock surveillance. Data at rest is stored on a Storage Area Network (SAN) encrypted with cyber security industry recognized strong encryption algorithms to protect the data.
- Transportation of Data. Encryption of all physical media and use of either secure FTP, SSH or encrypted VPN for network transmission.
- Data Backup. Use of advanced enterprise level data and information management system; implement protocols for regular backups and retention of backup copies to ensure integrity of data and remote recovery in the event of catastrophic loss.
- Periodic Vulnerability Scanning. Perform and log periodic vulnerabilities on ongoing basis; review and analyze scan results; and perform corrective activities as determined necessary.
- Potential Security Incident Assessment. Maintain and implement a secure data breach policy; detailed procedures for timely reporting and investigation of incidents; and dedicated information technology incident response team.

### 16. MODEL Student Information:

Personally Identifiable Information in MODEL	Required or Optional	Demographic Definition
Student First Name	Required (can be pseudonymised by the school)	Student First Name
Student Last Name	Required (can be pseudonymised by the school)	Student Last Name
Grade Level	Required	Grade 1–12 (two digits)
School Name	Required	School Name
District Name (Site if not in U.S.)	Required	District name
District Number	Required (generated by the MODEL system)	Unique number identifying the District within the DISTRICT
DISTRICT Name (Country if not U.S.)	Required	2 character DISTRICT designation
School Number	Optional	Unique identifying number within the District
Student Middle Initial	Optional	Student Middle Initial
Birth Date	Optional	MMDDYYYY - 01122002 (January 12, 2002) or 00000000 = Unknown
Gender	Optional	M = Male, F = Female, or Blank
DISTRICT Student ID	Optional	Unique DISTRICT number or Blank

### 17. MODEL Administrator Information:

Personally Identifiable Information in MODEL	Required or Optional	Demographic Definition
Administrator First Name	Required (can be pseudonymised by the school)	Administrator First Name
Administrator Last Name	Required (can be pseudonymised by the school)	Administrator Last Name
User Name	Required	Unique within the MODEL system
Email	Required	Email
School Name	Required	School Name
District Name (Site if not in U.S.)	Required	District name
District Number	Required (generated by the MODEL system)	Unique number identifying the District within the DISTRICT
DISTRICT Name (Country if not U.S.)	Required	2 character DISTRICT designation
School Number	Optional	Unique identifying number within the District