

MASTER SUBSCRIPTION AGREEMENT

LINCOLNWOOD SCHOOL DISTRICT #74

This Agreement is between NWEA, an Oregon nonprofit public benefit corporation, and **Subscriber** and is effective as of the Effective Date.

The parties agree as follows:

1. **Definitions.** In this Agreement, capitalized words have the following meanings:

1.1 **Agreement:** means this master subscription agreement including applicable Schedule(s) and Supplemental Terms.

1.2 **Assessment Data:** means deidentified student assessment data and results, and other metadata, including but not limited to, testing response times, scores (e.g. goals, RIT, overall RIT, etc.), NCES codes, responses, item parameters, and item sequences that result from the Services. Assessment Data is considered deidentified when a reasonable person in the school community without personal knowledge of the relevant circumstances could not identify the student with reasonable certainty.

1.3 **Assessment System:** means, to the extent included in an applicable Schedule, the following assessment, reporting and administration systems: (i) Measures of Academic Progress® (MAP®); (ii) Skills Navigator®; or Children's Progress Academic Assessment™ (CPAA™). Assessment System excludes Subscriber's operating environment and any other systems not within NWEA's control.

1.4 **Content:** means test items, including images, text, graphs, charts, and pictures.

1.5 **Directory Information:** means identifying information contained in a Student Education Record, such as a student's name, address, gender, grade level, and birth date and place, and parents' names, mailing addresses, electronic mail addresses, and telephone numbers.

1.6 **Documentation:** means documentation made available to Subscriber by NWEA, which includes technical manuals, but excludes any marketing materials or brochures.

1.7 **Effective Date:** means the last date set forth on the signature page.

1.8 **FERPA:** means the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1), as amended from time to time.

1.9 **GRD:** means the Growth Research Database containing Assessment Data that are linked to Student Education Records. The GRD is used to generate norming studies and other research reports that Subscriber and all other subscribers receive.

1.10 **Legal Order:** means a valid order issued by a court or governmental agency of competent jurisdiction.

1.11 **NWEA Confidential Information:** means all NWEA Content, test scripts, underlying ideas, algorithms, item calibrations, concepts, procedures, processes, principles, know-how, and methods of operation that comprise the Services, including updates, enhancements, modifications, and improvements that are proprietary and confidential and contain trade secrets.

1.12 **Reporting:** means reports, the Learning Continuum (learning statements that provide an instructional starting point for teachers), and scoring.

1.13 **Schedule:** means one or more applicable order schedules or other order documents, including, upon renewal, any confirmation page listing generated by NWEA's online account renewal portal. Schedule(s) may be provided as a separate attachment to the same email from which this Agreement is sent.

1.14 **Security Breach:** means an unauthorized acquisition of or unauthorized use of Student Education Records. For the avoidance of doubt, unauthorized acquisition of or unauthorized use of Directory Information shall not be deemed a Security Breach.

1.15 **Services:** means certain assessments, Content, Documentation, product training, professional development, Reporting, scoring, Software, and other services as set forth in an applicable Schedule.

1.16 **Software:** means (i) any web-based or client-server software made available to Subscriber by NWEA; (ii) a lockdown browser sublicensed through NWEA from a third party that facilitates access to the Services; (iii) NWEA software that supports client server assessments; and (iv) any other software set forth in the Supplemental Terms.

1.17 **Student Education Record:** means personally identifiable records of Subscriber's students that are protected by FERPA and any applicable state law.

1.18 **Subscriber:** means the Board of Education of Lincolnwood School District No. 74.

1.19 **Supplemental Terms:** means the Services-specific terms that are attached hereto as Exhibit A. Any modification or amendment to the Supplemental Terms located at <http://legal.nwea.org/supplementalterms.html> that is made during the term of this Agreement shall not apply to this Agreement.

1.20 **Systems Administrator:** means the Subscriber-designated individual who, within the Assessment System, is authorized to: (i) modify assessment preferences for Subscriber; (ii) create and modify user profiles for roles including lead roles (i.e. data administrator, assessment coordinator); and (iii) declare testing complete for Subscriber.

2. **Grant of License.** NWEA grants to Subscriber a nonexclusive, nontransferable, limited license to access, use, display, and install or download a copy, as needed, of the Software solely for Subscriber's internal use. The license is effective for a period of 1 year commencing on the date NWEA makes the Software available to Subscriber, unless otherwise specified in an applicable Schedule. The Services extend only to the quantity of students licensed as indicated on an applicable Schedule. Subscriber acknowledges there are limitations on the number of test events per academic year by assessment type pursuant to the Supplemental Terms.

3. **Protection from Unauthorized Use or Access.** Subscriber shall not: (a) copy, distribute, reproduce, resell, publish, license, create derivative works, transfer, rent, lease, or sublicense any or all of the Services; (b) exploit for any commercial purposes any portion of the Services, in particular the Content and Reporting, or permit use of the Services by anyone not employed or under the control of Subscriber; (c) remove any proprietary notices or labels on the Services; (d) use the Services in an attempt to, or in conjunction with, any device, program, or service designed to circumvent technological measures employed to control access to, distribution of, or rights in, the Content or other work protected by the copyright laws of any jurisdiction. Subscriber shall use reasonably secure measures to prevent unauthorized use (e.g., copying test items) by its end users. Further, Subscriber shall reproduce all copyright, trademark, and other proprietary notices and legends on each copy, or partial copy, of the Services. Subscriber will deactivate and remove from any equipment under its control any prior versions of the Services.

4. **Ownership.** The Services are owned by NWEA and are copyrighted and offered through this Agreement to Subscriber, except certain Software is sublicensed from a NWEA supplier. All right, title, and interest in the Services and all copies, updates, enhancements, modifications, and improvements, along with all associated intellectual property rights, remain with NWEA, regardless of either: (i) the source giving rise to the intellectual property; or (ii) despite any modifications or adaptations made for the benefit of Subscriber. The Services, 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. Subscriber is not granted any license to use any of NWEA's trade or service marks. Additionally, NWEA retains all right, title, and interest in its trade and service marks. Subscriber shall allow NWEA to use, without restriction or royalty obligation, any comments, suggestions, or

contributions provided by Subscriber with respect to the Services. Subscriber grants and assigns to NWEA any intellectual property rights that Subscriber may incidentally obtain or have with respect to any such comments, suggestions or contributions.

5. **NWEA Confidential Information.** Subscriber shall keep NWEA Confidential Information strictly confidential subject to Subscriber's state public records law, if applicable. Subscriber shall not use, disclose, or distribute any Confidential Information, directly or indirectly, without the prior written consent of NWEA, except that NWEA authorizes Subscriber to disclose Confidential Information: (i) to Subscriber's employees or agents who have signed written confidentiality and nondisclosure agreements before such disclosure; and (ii) as required by applicable federal, state, or local law, regulation, or a Legal Order. NWEA understands and acknowledges that Subscriber is a public body subject to the Illinois Freedom of Information Act and that Subscriber is obligated to release certain information pursuant to requests under said Act. When practicable, Subscriber will make a reasonable effort to notify NWEA of any requests under said Act that would require Subscriber to disclose NWEA's Confidential Information. Accordingly, any release of information pertaining to the Agreement, specifically including NWEA Confidential Information, pursuant to a Freedom of Information request shall not be a breach of this Agreement.

6. **Student Education Records.**

6.1 **Use of Student Education Records.** Pursuant to its Student Education Records policy, Subscriber shall comply with any required parental and guardian consents for NWEA to provide Services to Subscriber under this Agreement. NWEA and Subscriber acknowledge that NWEA will have access to Directory Information and will create and maintain Student Education Records. NWEA shall have policies and practices to secure and keep Student Education Records confidential. Except as permitted under this Agreement, NWEA shall not (i) use Student Education Records for targeted student advertising; or (ii) resell or otherwise disclose to third parties any Student Education Records that NWEA creates or obtains during its performance under this Agreement without the written consent of Subscriber. Subscriber grants permission to NWEA and its contractors that have executed confidentiality agreements to use Student Education Records for maintaining, supporting, and troubleshooting the Services. NWEA shall ensure that its contractors and subcontractors that are provided access to Student Information maintain at least the same level of security over access to the Student Information as NWEA maintains and that such contractors and subcontractors are subject to the same terms and conditions as NWEA under this Agreement with regard to maintenance and use of Student Education Records.

6.2 **Subscriber's Ownership of Student Education Records.** Student Education Records (excluding Assessment Data) are and will remain the property of Subscriber and under Subscriber's control. NWEA shall not sell or attempt to re-identify any of the Assessment Data or Student Education Records without Subscriber's written permission.

6.3 **Requests for Disclosure of Student Education Records.** Except as otherwise described in this Section, NWEA shall not redisclose Student Education Records until Subscriber consents in writing to the redisclosure. If NWEA receives a request from a state educational agency or other third party for Student Education Records, NWEA shall notify Subscriber in writing.

7. **FERPA.** NWEA shall comply with the requirements of FERPA with respect to its maintenance of the Student Education Records. In accordance with FERPA, NWEA may itself, through its employees or contractors: (i) maintain and use Student Education Records to perform the Services for the Subscriber; and (ii) to use deidentified Student Education Records to improve its Services; and (iii) disclose Assessment Data to third parties for legitimate educational research provided such third parties execute confidentiality agreements. Subscriber is responsible for any notices to parents required under FERPA and for providing parents and guardians with an opportunity to inspect and challenge the contents of a Student Education Record. If NWEA receives a request from a parent or guardian challenging the content of a Student Education Record maintained by NWEA, NWEA shall contact Subscriber to validate the identity of the parent or guardian and request instructions regarding corrective action to be taken, if any. Once validated, NWEA shall correct erroneous the Student Education Record as directed by Subscriber in writing.

8. **Illinois School Students Records Act.** In addition to its obligation to maintain Student Education Records in accordance with FERPA, NWEA shall also maintain all Student Education Records obtained from Subscriber in accordance with the *Illinois School Student Records Act* (105 ILCS 10/1). Further, the disclosure of any

Student Education Records under this Agreement is being allowed to develop, validate or administer predictive tests, and provide reporting of test results and in such regard, NWEA agrees: (i) it will not disclose any Student Education Records to any individual other than to representatives of NWEA that have a legitimate interest in such information; (ii) it will gather Student Education Records in a manner that only permits representatives of NWEA that have a legitimate interest in such information access thereto; (iii) that it will notify Subscriber that the Student Education Records will be destroyed because it is no longer needed for the purposes for which it was gathered or as otherwise required under this Agreement, and that it will destroy the Student Education Records within sixty (60) days' of receipt of Subscriber's written confirmation that the Student Education Records may be destroyed; and (iv) it shall only use the Student Education Records to develop, validate or administer predictive tests and provide reporting and other Services to Subscriber.

9. **GRD.** Subscriber authorizes NWEA to use Student Education Records in the secure GRD to provide research related Services to Subscriber. Such research Services include longitudinal studies, alignment studies, and norming studies. For additional fees, Subscriber may also order MAP Insight Growth Reports and other research reports. NWEA will handle Student Education Records in a manner that protects student anonymity. The authorization for use of Student Education Records in the GRD commences on the Effective Date or upon the date that Subscriber used or ordered Services, whichever is earlier. NWEA and Subscriber acknowledge that the permissions and obligations expressed in this Agreement survive the termination or expiration of this Agreement and any renewals. As described in Section 16 (Termination and Remedies), NWEA will maintain Student Education Records after expiration or termination of this Agreement for Subscriber's access to Reporting and research related Services and to validate the authenticity of data in such Reporting. Notwithstanding anything in this Section or the Agreement to the contrary, NWEA shall not retain any Student Education Records from Subscriber beyond the term of this Agreement or any renewal thereof. If NWEA receives Subscriber's written request to opt out of participation in the GRD, NWEA will deidentify Student Education Records in the GRD. As a result of opting out of the GRD, certain research reports are unavailable to Subscriber due to the inability to accurately link student data with research data. Subscriber's written request must be sent via email to legalservices@nwea.org and include the following: (i) requestor's name, title and contact information; (ii) the name of requesting school or entity with NCES #; (iii) a request to deidentify Student Education Records in the GRD; and (iv) an attestation that requestor is duly authorized and has legal capacity to execute the request.

10. **Security and Privacy Obligations.**

10.1 **Subscriber Responsibilities.** Subscriber is solely responsible for configuring role-based access to Student Education Records within the Assessment System and for ensuring the security and availability of Subscriber's own computers, computer networks, and internet connections, including security patches, choice of browser, and browser configuration settings to be used with the Assessment System, email, and other transmissions. Subscriber acknowledges that its Systems Administrator controls the access and security points of the Assessment Systems. Annually, Subscriber shall remove any inactive Systems Administrators and confirm to NWEA the names of its active Systems Administrators. The Assessment System may contain mechanical or electronic methods to prevent unauthorized use or distribution of the Services. Subscriber shall not disable or circumvent such control devices.

10.2 **NWEA Responsibilities.** Subject to the limitations of warranty set forth in Section 19 (Limited Warranty) of the Agreement, NWEA shall maintain the necessary and appropriate privacy and data security controls to secure Student Education Records. NWEA has and shall maintain commercially reasonable policies and procedures and trains appropriate staff members to secure and maintain the confidentiality of Student Education Records. NWEA has and shall maintain an incident response program that specifies the actions to be taken when NWEA detects a Security Breach. In accordance with applicable state law, NWEA shall notify Subscriber in writing, without unreasonable delay, if NWEA reasonably suspects that there has been a Security Breach, and that the Security Breach has exposed Subscriber's Student Education Records to a third party. In the event of a Security Breach, Subscriber shall cooperate fully with NWEA so that NWEA can comply with its notification obligations to the affected parent(s), legal guardian(s) or eligible student(s) or any other parties for which notification by NWEA is required under applicable state law.

11. **Fees and Taxes.** Unless Subscriber is a tax-exempt entity, Subscriber shall pay the fees set forth on the applicable Schedule. Subscriber is solely responsible for any personal property taxes or local licensing fees related to or resulting from NWEA's delivery of Services under this Agreement.

12. **Billing and Payment.** Subscriber shall use its best efforts to determine the number of students to be tested by Subscriber. NWEA shall send an invoice based on the applicable Schedule to Subscriber, and Subscriber shall pay the amount due within 30 days of the invoice date by mailing a check or depositing the amount due via a wire transfer. Subscriber must contact NWEA at accountsreceivable@nwea.org for wire transfer instructions. If Subscriber overestimates the number of students tested, NWEA is not obligated to refund any fees. If, however, Subscriber underestimates the number of students tested, NWEA may submit an amended invoice to capture the additional students tested, and Subscriber shall pay the variance within 30 days of the amended invoice date.

13. **Amendments and Renewals.** Notwithstanding anything to the contrary, terms of any purchase orders or written authorizations issued by Subscriber or any other communications which are additional to or inconsistent with this Agreement are not binding unless NWEA expressly assents to such terms in writing. Such renewals and expansions are governed by this Agreement (including all NWEA order forms). The conditions of payment described in Sections 11 (Fees and Taxes) and 12 (Billing and Payment) apply to all renewals and expansions. Subscriber shall make all payments under this Agreement to NWEA.

14. **Product Training.** If Subscriber is new to the Services, Subscriber's teachers and staff administering the Services must participate in NWEA introductory product training before testing begins (e.g. MAP Admin Workshop if Subscriber subscribes to Web-based or Client Server MAP). Before testing commences, Subscriber shall assign a member of its staff to coordinate the logistics of setting up the training. If Subscriber experiences staff change that affects the administration of the Services, Subscriber shall promptly notify NWEA in writing. NWEA may require Subscriber to send any new staff to introductory NWEA product training.

15. **Publicity.** Subscriber consents to NWEA's use of and references to Subscriber's name, directly or indirectly, in NWEA's marketing and training materials.

16. **Termination and Remedies.** This Agreement remains in effect until terminated in accordance with this Section. Either party may terminate by providing the other party thirty (30) days written notice of its intent to terminate for convenience. NWEA may terminate immediately without prior notice to Subscriber upon Subscriber's breach of this Agreement. Upon any termination, except for cause by Subscriber's breach, NWEA shall refund any prepaid fees made by Subscriber. NWEA may seek any legal or equitable remedy available against Subscriber for breach of the terms of this Agreement, including without limitation, injunctive relief and specific performance. After termination or expiration of the Agreement, NWEA shall allow Subscriber to continue to access Reporting, unless Subscriber notifies NWEA in writing to deidentify the Student Education Records. Upon request of Subscriber, NWEA shall return all of Subscriber's Student Education Records in its possession and delete any copies thereof. Subscriber acknowledges that NWEA will retain use of Assessment Data for research and improvement of products and services.

17. **Support.** NWEA will provide to Subscriber limited support, updates, enhancements, modifications, improvements, and maintenance services. Subscriber acknowledges that the validity and accuracy of the Reporting depends upon the accuracy and completeness of the class roster file Subscriber submits.

18. **Scheduled Maintenance.** NWEA has system maintenance periods throughout the year that affect Subscriber's use of the Services, including Subscriber's ability to (i) upload or download student and test data; (ii) access Reporting; or (iii) interact with any of NWEA's websites. NWEA will provide notice of regularly scheduled maintenance when Subscriber enrolls in the NWEA Status Page. NWEA may perform emergency maintenance at any time without advance notice.

19. **Limited Warranty.** NWEA warrants, during the subscription period, that the Assessment System, as delivered by NWEA and when used in accordance with the Documentation and the terms of this Agreement, will substantially perform in accordance with the Documentation. If the Assessment System does not operate as warranted and Subscriber has provided written notice of the non-conformity to NWEA within thirty (30) days of discovery of such non-conformity, NWEA shall at its option (i) repair the Assessment System; (ii) replace the Assessment System with a system of substantially the same functionality; or (iii) terminate the license to the non-conforming Assessment System and provide Subscriber a pro-rata refund representing the portion of any fees previously paid for the unused portion of the terminated license measured from the effective date of termination. The foregoing warranty specifically excludes defects in or non-conformance of the Assessment System resulting from (a) use of the Assessment System in a manner not in accordance with the Documentation except as otherwise authorized in writing by NWEA; (b)

modifications or enhancements to the Assessment System made by or on behalf of Subscriber except as otherwise authorized in writing by NWEA; (c) combining the Assessment System with products, software or devices not provided by NWEA; (d) improper or inadequate maintenance of Subscriber's own computers, computer networks, operating environment, security programs, and internet connections; or (e) computer hardware malfunctions, unauthorized repair, accident, or abuse.

20. **Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY PROVIDED IN SECTION 19 (LIMITED WARRANTY), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF (i) MERCHANTABILITY; (ii) FITNESS FOR A PARTICULAR PURPOSE OR USE; (iii) QUALITY; (iv) PRODUCTIVENESS; OR (v) CAPACITY, OR THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE SERVICES IS ERROR-FREE. EXCEPT AS PROVIDED HERE, THE ENTIRE RISK AND LIABILITY ARISING OUT OF USE OF THE SERVICES REMAINS WITH SUBSCRIBER. THERE IS NO WARRANTY FOR DATA SECURITY OR PERFORMANCE ISSUES (a) CAUSED BY FACTORS OUTSIDE OF NWEA'S REASONABLE CONTROL; OR (b) RESULTING FROM ANY ACTION OR INACTION OF SUBSCRIBER OR ANY THIRD PARTIES; OR (c) RESULTING FROM SCHEDULED MAINTENANCE PERIODS. NWEA CANNOT CONTROL PERFORMANCE OF SERVICES BASED ON THE FLOW OF DATA TO OR FROM NWEA'S NETWORK AND OTHER PORTIONS OF THE INTERNET, WHICH DEPEND IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT SUBSCRIBER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NWEA SHALL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, NWEA DOES NOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NWEA DISCLAIMS ANY LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

21. **Limitation.** THE REMEDIES PROVIDED UNDER THE LIMITED WARRANTY ARE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDIES. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT IS NWEA LIABLE FOR ANY DAMAGES OR EXPENSES WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES, OR PECUNIARY LOSS, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, EVEN IF NWEA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NWEA'S ENTIRE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER FOR THE RIGHT TO USE THE SERVICES IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THIS LIMITATION ALSO APPLIES TO NWEA'S DEVELOPERS AND SUPPLIERS OF THE SERVICES AND IS THE MAXIMUM FOR WHICH THEY AND NWEA ARE COLLECTIVELY RESPONSIBLE.

22. **Indemnification.**

22.1 **Intentionally Deleted.**

22.2 **By NWEA.** Subject to Section 21 (Limitation), NWEA shall (j) defend Subscriber against any claims made by an unaffiliated third party that the Assessment System infringes its US patent, copyright, or trademark; and (ii) pay the amount of any resulting adverse final judgment against Subscriber (after any appeals) or settlement to which NWEA consents. Subscriber must notify NWEA promptly in writing of the claim. Subscriber must also give NWEA sole control over its defense and settlement. Subscriber shall provide NWEA with reasonable assistance in defending the claim. NWEA's obligations under this Section will not apply to the extent the claim (or adverse final judgment) is based on: (i) Subscriber using the Assessment System after NWEA has informed Subscriber to discontinue use due to such a claim; (ii) the combination or use of the Assessment System with non-NWEA information, data, or materials except as otherwise authorized in writing by NWEA; (iii) modification of the Assessment System except as otherwise authorized in writing by NWEA; or (iv) use of NWEA's trademark(s) without express written permission. If NWEA receives information about a claim under this Section related to the Assessment System, NWEA may do any of the following, at its discretion and expense: (i) procure the right to continue its use; (ii) replace it with a functional equivalent; (iii) modify it to make it non-infringing (if NWEA does this, Subscriber will stop using the allegedly infringing Assessment System immediately); or (iv) terminate this Agreement. Notwithstanding anything to the contrary, NWEA's commitment under this Section is Subscriber's exclusive remedy for third-party infringement and trade secret misappropriation claims. Nothing in this section obligates NWEA to indemnify Subscriber from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable to the acts or omissions of Subscriber, its officers, employees, or agents. In addition to the indemnification obligations in this Section, and subject to Section 21 (Limitation), NWEA shall also defend and indemnify Subscriber from any claims made by an unaffiliated third party resulting from NWEA's data breach or unauthorized disclosure of Student Education Records.

23. **Miscellaneous.**

23.1 **Force Majeure.** Neither party is 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 dispute, act of nature, computer crime including denial of service attacks, epidemic, act or omission of a third-party vendor or supplier, equipment failure, public enemy of government, failure of telecommunications, system malfunction, or other casualty.

23.2 **Waiver and Severability.** Waiver of any default or breach under this Agreement by NWEA or Subscriber does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any part of this Agreement is held illegal or otherwise unenforceable by a court of competent jurisdiction, the parties intend that the remainder of this Agreement nevertheless remains in full force and effect. Upon a determination that any term or provision is illegal or unenforceable, the court may modify this Agreement to effect the original intent of the parties as closely as possible.

23.3 **No Third-party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.

23.4 **Survival.** The following sections survive any termination or expiration of this agreement or the termination of any license granted under this agreement: 1 (Definitions); 3 (Protection from Unauthorized Use or Access); 4 (Ownership); 5 (NWEA Confidential Information); 6 (Student Education Records); 7 (FERPA); 9 (GRD); 10 (Security and Privacy Obligations); 18 (Scheduled Maintenance); 19 (Limited Warranty); 22 (Indemnification); and 22 (Miscellaneous).

23.5 **Entire Agreement; Order of Precedence.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. If there is a conflict among any of the terms of this Agreement, the parties intend that it be resolved by giving precedence to Agreement documents in the following order (i.e. the earlier listing governing the later): (i) any Supplemental Terms to the extent related to Services described in an applicable Schedule; (ii) this Agreement without any Schedules or Supplemental Terms; (iii) the most recent Schedule; followed by (iv) any other Schedules in reverse chronological order.

23.6 **Assignment.** Subscriber may not assign this Agreement to any third party without the prior written consent of NWEA, which consent shall not be unreasonably withheld.

23.7 **Binding.** This Agreement binds and inures to the benefit of each party and its respective successors and approved assigns, if any.

23.8 **Merger or Sale of NWEA.** If either (i) NWEA and a third party merge; or (ii) NWEA is sold to a third party, then the surviving or resulting entity shall maintain the Student Education Records in accordance with this Agreement, if the entity is subject to this Agreement.

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

23.10 **Notices.** Any notice required under this Agreement shall be in writing and effective when (a) delivered personally against receipt, (b) deposited in the mail and registered or certified with return receipt requested, postage prepaid, (c) shipped by a recognized courier service and addressed to either party as designated in this Agreement, (d) delivered by email to an email address designated by the recipient, or (e) when delivered via any of the foregoing at such other address as may be provided by the recipient in accordance with this section.

Address for Notices to NWEA:

NWEA
121 NW Everett Street
Portland, OR 97209
Email: legalservices@nwea.org

Address for Notices to Subscriber shall be sent to the address set forth in Subscriber's signature box below.

23.11 **Controlling Law and Venue.** Unless the law of the jurisdiction where Subscriber is domiciled requires otherwise, the parties intend that this Agreement be construed and controlled by the laws of the State of Illinois, U.S.A., without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed and does not apply to this Agreement. Any litigation arising out of this Agreement must be conducted in courts located in Cook County, Illinois.

23.12 **Attorney Fees.** If any lawsuit is instituted to interpret, enforce, or rescind this Agreement, the prevailing party on a claim may recover, in addition to any other relief awarded, its reasonable attorney fees and other fees, costs, and expenses incurred in connection with the lawsuit, the collection of any award, or the enforcement of any order as determined by a judge.

23.13 **Counterparts.** The parties may execute this Agreement in counterparts, each of which is an original, and the counterparts constitute one and the same Agreement. The parties may also deliver and accept facsimile or electronically scanned signatures, which bind a party as if the signature were an original.

23.14 **Vendor Status and Independent Contractor.** NWEA provides Services within its normal business operations and operates in a competitive environment. The Services constitute a vendor relationship, as defined by OMB Circular A-133 and, therefore, any monies to pay for this Agreement are not subject to the federal audit requirements of OMB Circular A-133. NWEA is an independent contractor, and neither NWEA nor its employees are Subscriber's employees. Nothing contained in this Agreement creates or implies an agency relationship, joint venture, or partnership between the parties.

23.15 **Compliance with Laws.** In providing the Services, NWEA agrees to comply with all applicable laws rules and regulations.

23.16 **Insurance.** During the term of this Agreement and any renewal thereof, NWEA shall maintain a cyber-liability insurance policy insuring data breaches. Subscriber shall be named as an additional insured on such policy. Any damages limitations in this Agreement shall not apply to Subscriber in its capacity as an additional insured.

NWEA:

SUBSCRIBER name and address:

Board of Education of Lincolnwood School District
No. 74, Cook County, Illinois
6950 N. East Prairie Rd.
Lincolnwood, IL. 60712

DocuSigned by:

By: _____
Geri Cohen, EVP & CFO

Date: 3/5/2020


By: 
Printed Name: SCOTT ANDERSON
Title: Board President
Date: 5/7/20

EXHIBIT A Supplemental Terms

(Note: all capitalized terms not defined in the supplemental terms below have the meanings ascribed to them in the Master Subscription Agreement)

Learning Continuum & DesCartes: A Continuum of Learning (collectively, the "Learning Statements")

By using the Learning Statements, Subscriber agrees to the following:

If the Learning Statements are downloaded to Subscriber's organization or school district via a secure password protected intranet or private workspace, it may reproduce the Learning Statements without NWEA's express written permission provided: (i) the use is for non-commercial purposes only; (ii) Subscriber does not modify any information or image; (iii) access is password protected and is limited only to Subscriber's authorized agents; and (iv) Subscriber includes the copyright notice contained in the Learning Statements, as applicable. Subscriber shall not use the Learning Statements as a basis for alignment to any third-party products or services. If Subscriber conducts unauthorized alignments, it shall hold NWEA harmless and indemnify NWEA from any claims or lawsuits that arise from its alignment. NWEA only supports the Learning Statements in their original format. NWEA is not obligated to support any changes to the Learning Statements made by Subscriber or any third party.

Keeping Learning on Track™ (KLT™)

By using Keeping Learning on Track™ (KLT™) and associated materials (the "KLT Materials"), Subscriber agrees to the following:

Notwithstanding anything to the contrary in the Agreement, Subscriber shall pay NWEA in full for all KLT Materials prior to NWEA delivering them to Subscriber. Consistent with Section 3, Protection from Unauthorized Use or Access, of the Master Subscription Agreement, no part of the KLT Materials may be reproduced, adapted, or transmitted in any form or by any means. However, Subscriber may reproduce those pages of the KLT Materials that include a legend that permits reproduction. Subscriber shall purchase individual copies of the KLT Materials for each participant in the program. NWEA disclaims responsibility for any actions or recommendations that Subscriber makes based on the KLT Materials.

Power of Teaching®

By using Power of Teaching® professional development program and associated materials (the "PofT Materials"), Subscriber agrees to the following:

Notwithstanding anything to the contrary in the Agreement, Subscriber shall pay NWEA in full for all PofT Materials prior to NWEA delivering them to Subscriber. Consistent with Section 3, Protection from Unauthorized Use or Access, of the Master Subscription Agreement, no part of the PofT Materials may be reproduced, adapted, posted online or transmitted in any form or by any means for any commercial use or use by third parties without prior written permission from NWEA; provided, however, Subscriber may reproduce the PofT Materials solely for Subscriber's non-commercial use. NWEA disclaims responsibility for any actions or recommendations that Subscriber makes based on the PofT Materials.

MAP® Skills

By using MAP® Skills, Subscriber agrees to the following:

MAP Skills requires installation of the secure/lock down browser ("Lockdown Browser"). Accordingly, NWEA grants to Subscriber a nonexclusive, nontransferable sublicense to install the Lockdown Browser for Subscriber's internal use only in connection with the Subscription and only during the period specified in an applicable Schedule. The Lockdown Browser sublicense extends only to the quantity of licenses indicated on an applicable Schedule. All MAP Skills Systems Administrators must complete one MAP Skills training session. During the period specified in an applicable Schedule, NWEA shall provide technical support for MAP Skills via telephone or email as described at <https://www.nwea.org/product-support/>.

Terms applicable to Subscriber's use of Knovation: As a user of the content, you acknowledge and agree that Knovation shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource. Knovation has no direct control over these linked sites, all of which have separate privacy and data collection practices, independent of Knovation. These links are only for your convenience and therefore you access them at your own risk. Furthermore, should you choose to register or create an account on other sites accessed from the Knovation Software Content, you have full responsibility for understanding and agreeing to their terms of use and privacy and security policies regarding any personally identifiable information you provide them and activities you perform on their sites. Knovation is not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

Children's Progress Academic Assessment™

By using Children's Progress Academic Assessment™ (CPAA™), Subscriber agrees to the following:

CPAA is comprised of web-enabled assessment software and web-based reporting, and includes: (i) machine-readable instructions and data; (ii) components; (iii) Content; (iv) related licensed materials, features, and functionality (such as reports, assessments, training and support materials, and tutorials); (v) licensed documents or keys; and (vi) Documentation listed below which NWEA may amend and update from time to time. If access to CPAA requires installation of any assessment software ("Software"), NWEA grants Subscriber a nonexclusive, nontransferable sublicense to install the Software for Subscriber's internal use only in connection with its CPAA subscription and only during the Term. Subscriber's CPAA license and Software sublicense extend only to the quantity of licenses indicated on Schedule A.

With regard to CPAA, "Documentation" means:

1. Technical Requirements–
https://assessment.childrensprogress.com/docs/CPAA_Technical_Requirements.pdf
2. Common Core and State Specific Alignments– available upon written request
3. The CPAA Scope & Sequence Documents– available upon written request

Client Server Measures of Academic Progress® (MAP®)

By using Client Server MAP® ("MAP®"), Subscriber agrees to the following:

Excluding Summer test administration, Subscriber shall not administer more than three MAP test events per license in a single academic year. Additionally, Subscriber may administer one Summer test event per license per academic year. Client server MAP requires installation or downloading of a copy of TestTaker software ("TestTaker Software"). Accordingly, NWEA grants to Subscriber a

nonexclusive, nontransferable license to install TestTaker Software for Subscriber's internal use only in connection with the Subscription and only during the period specified in an applicable Schedule. Subscriber shall provide to NWEA its student and class information in a Class Roster File ("CRF") for each test window in the approved format. Subscribers must submit the CRF via SFTP at least two (2) weeks before Subscriber's first day of testing.

MAP® Growth

By using MAP® Growth, Subscriber agrees to the following:

Excluding Summer test administration, Subscriber shall not administer more than three MAP test events per license in a single academic year, except for MAP Growth K-2 Skills Checklist which can be administered without such academic year limitation. Additionally, Subscriber may administer one Summer test event per license per academic year. MAP Growth requires installation of the secure/lock down browser ("Lockdown Browser"). Accordingly, NWEA grants to Subscriber a nonexclusive, nontransferable sublicense to install the Lockdown Browser for Subscriber's internal use only in connection with the Subscription and only during the period specified in an applicable Schedule. The Lockdown Browser sublicense extends only to the quantity of licenses indicated on an applicable Schedule. Subscriber shall provide to NWEA its student and class information in a Class Roster File ("CRF") for each test window in the approved format. Subscribers must import the CRF at least one (1) week before Subscriber's first day of testing.

MAP® Reading Fluency

By using MAP® Reading Fluency, Subscriber agrees to the following:

Subscriber is responsible for providing all hardware, including headsets with boom microphones, necessary to complete the test administration. For the avoidance of doubt, built in microphones and in-line microphones are not supported. MAP Reading Fluency is supported on (i) any Chrome browser on any desktop, laptop, or Chromebook; and (ii) via an iOS application for testing on an iPad or iPad Mini or as otherwise set forth in applicable technical specifications. Notwithstanding anything to the contrary in the Agreement, training for MAP Reading Fluency is optional.

Growth Report

This report contains Student Education Records that may be subject to Subscriber's student data privacy and security policies and applicable state and federal student privacy laws.

In addition to Section 19 (Disclaimer) of the MSA, neither NWEA nor its vendors warrant the accuracy, completeness, or usefulness of this report and NWEA expressly disclaims all liability and responsibility arising from reliance on the report.

Insights Report

The Insight Report does not contain any Student Education Records but does contain the names of those schools where the data is generated. In addition to Section 19 (Disclaimer) of the MSA, neither NWEA nor its vendors warrant the accuracy, completeness or usefulness of the MAP Insight Reports and NWEA expressly disclaims all liability and responsibility arising from any reliance placed on the information in such reports. NWEA uses current NWEA norms and Subscriber's MAP data to produce graphics and supporting analysis provided in the report.

Instructional Report

The Instructional Report does not contain any Student Education Records but does contain the names of those schools where the data is generated. In addition to Section 19 (Disclaimer) of the MSA, neither NWEA nor its vendors warrant the accuracy, completeness or usefulness of the

Instructional Report and NWEA expressly disclaims all liability and responsibility arising from any reliance placed on the information in such reports.

Similar Schools Report

This report contains Student Education Records that may be subject to Subscriber's student data privacy and security policies and applicable state and federal privacy laws. In addition to Section 19 (Disclaimer) of the MSA, neither NWEA nor its vendors warrant the accuracy, completeness, or usefulness of this report and NWEA expressly disclaims all liability and responsibility arising from reliance on the report.

PREMIUM PARTNER SERVICES SUPPLEMENTAL TERMS

General Terms. Premium Partner Services includes (i) Technical Consulting; (ii) Onsite Product Training; (iii) Technology Readiness; (iv) Expedited Implementation Services; and (v) Program Management Services (collectively, the "Partner Services"). NWEA does not offer refunds for unused Partner Services Subscriber purchases. Subscriber may purchase Partner Services at the fixed fees set forth in an applicable Schedule A. Per the MSA, Subscriber is responsible for designating a single point of contact, preferably the Subscriber's Systems Administrator, and will ensure such individual is available to NWEA. Additionally, Subscriber's contact shall ensure NWEA has access to all Subscriber's site(s) where Partner Services will be performed. Subscriber acknowledges that failure or delay in responding to NWEA requests in a timely manner may result in delays or inability for NWEA to perform the requested Partner Services. Scheduling of Partner Services is subject to availability of NWEA personnel.

Onsite Product Training

NWEA will provide standard modular format training, in which Subscriber will learn (i) the benefits of the NWEA assessment solution; (ii) how to proctor and/or manage test sessions; (iii) how to troubleshoot common issues; (iv) how to access reports; and (v) helpdesk product training regarding common issues and troubleshooting processes. Any deviation from this standard training is subject to negotiations.

Virtual Applying Reports; Virtual Professional Learning (International); Virtual MAP Skills Basics; Virtual MAP Reading Fluency Basics; Virtual Custom Workshops or Virtual PL Consultations

NWEA may cancel a workshop for any reason whatsoever, inclement weather, strikes, wars, acts of God, or any other circumstance that may make the workshop inadvisable. In those instances, Subscriber will not be charged a cancellation fee and the workshop will be rescheduled.

- If Subscriber cancels a workshop or consultation less than 2 weeks before the scheduled date of the session, Subscriber shall pay \$200 processing fee to NWEA. This includes instances of no shows.
- Rescheduling is subject to facilitator availability. Workshop sessions must be scheduled three weeks in advance and all sessions completed within 18 months the Term start date listed in Subscriber's Schedule A.

NWEA is not responsible for any expenses incurred on your behalf in preparing for the workshop, including nonrefundable fares or penalties.

Technical Consulting

Technical Consulting may include: (i) general support during testing including assisting proctors; (ii) troubleshooting technical issues related to NWEA assessment solutions; (iii) real time product

training and support during testing to Subscriber's proctors, helpdesk, technology and assessment staff; (iv) Onsite product training and support to principals and school administrators; (v) assistance in escalating issues to NWEA technical support and/or engineers; (vi) consulting with Subscriber to identify key areas of support needs; (vii) product training for data administrators; (viii) support with rostering (creation and upload to NWEA systems), user management, and student management; (ix) assistance with exporting data from Subscriber's Student Information Systems; (x) assistance with automating roster imports and exports of comprehensive data file; Technical Consulting does not include: (a) making changes to NWEA's assessment solutions on behalf of the Subscriber; (b) conducting rostering work; (c) creating or implementing coding or scripting, network changes, or auto-rostering; (d) configuration changes or updates to workstations or network devices; (e) hardware setup; (f) report or data usage training; or (g) IT support or training not specifically related to NWEA assessment solutions.

Supplemental Technical Services

Supplemental Technical Services (the "Supplemental Services") is a product offered by the Technical Consultant team that provides a designated technical contact for district leadership. The Supplemental Services may include: (i) troubleshooting technical issues related to Assessment System; (ii) real time product training and support during testing for Subscriber's named key contacts; (iii) assistance in escalating issues to NWEA technical support and/or engineers; (iv) consulting with Subscriber to identify key areas of support needs; (v) product training for key contacts; (vi) support with rostering (creation and upload to Assessment System), user management, and student management; (vii) assistance with exporting data from Subscriber's Student Information Systems; (viii) product training and assistance with the setup and configuration of the NWEA environment; and (ix) assistance with automating roster imports and exports of comprehensive data file. The Supplemental Services do not include: (x) making changes to the Assessment System on behalf of the Subscriber; (xi) conducting rostering work; (xii) creating or implementing coding or scripting, network changes, or auto-rostering; (xiii) configuration changes or updates to workstations or network devices; (xiv) hardware setup; (xv) report or data usage training; (xvi) IT support or training not specifically related to the Assessment System; (xvii) support to district personnel outside the identified key contacts; or (xviii) travel to or onsite work at Subscriber's location. Supplemental Technical Services is a limited time engagement. The Supplemental Services will be offered between 7:00 A.M. and 5:00 P.M. (local time).

Subscriber acknowledges that all fees paid are non-refundable and all payment obligations non-cancellable.

Technology Readiness

NWEA will visit designated Subscriber locations to test and evaluate workstations and devices to determine if they meet NWEA technical requirements. NWEA may evaluate the following technical requirements: OS version, primary browser and version, CPU, RAM, screen resolution, wired or wireless connection, and a point in time bandwidth test. Additional technical requirements may be captured upon Subscriber's request; provided, however, certain requests may require administrative access to Subscriber's systems. As part of the Technology Readiness, NWEA expressly does not: (i) make changes or software updates to workstations or devices; (ii) configure networks or make changes to network infrastructure; (iii) provide product training or support; or (iv) provide troubleshooting services or resolve issues or potential issues discovered during the Technology Readiness.

Supplemental Implementation Services (Expedited & Re-implementation)

NWEA provides, at no additional cost to Subscriber, an implementation support specialist to guide and support the implementation of the Assessment System. This service is typically included as part

of a Subscriber's initial licensing of the Assessment System and is available through the completion of the first testing term. Once the initial testing term is complete, the account manager assumes ongoing management of the Subscription from the implementation support specialist. Additionally, the Subscriber has ongoing access to support resources, including toll-free phone, email, and chat support via Partner Support and self-directed support via in-product Help and Destination PD.

- Expedited Implementation Services

NWEA recommends a timeline of approximately four (4) weeks from the date of sale to the beginning of testing in order to provide NWEA and Subscriber adequate time to implement the Assessment System. If Subscriber opts to implement within two (2) weeks from the date of sale, Subscriber may purchase Expedited Implementation Services. Expedited Implementations Services do not include: (i) an Implementation Support Specialist who is exclusive to Subscriber; (ii) rostering; (iii) Onsite Product Training; (iv) Technical Consulting; or (v) Technology Readiness. For the avoidance of doubt the two (2) week expedited delivery applies to the Expedited Implementation Services only and to no other products specified on an applicable order.

- Re-implementation Services

If, after the initial testing term, Subscriber requires continued access to an implementation support specialist, Re-implementation Services are available. Re-implementation Services are offered remotely using teleconferencing and email communications. Re-implementation Services may include (i) assessing Subscriber's needs related to product configuration, training, and general test administration preparation (e.g. lab readiness plans, timelines for rostering students and staff, staff training plans, district and school communication plans); (ii) developing, with Subscriber, a plan to meet identified needs; (iii) guiding Subscriber through its implementation of the plan for one (1) testing term; (iv) providing training on available resources for future testing term preparation; and (v) providing district administrators with product training and assistance with setup and configuration of the NWEA environment (test terms, test windows, school names, grade designations and special programs). Re-implementation Services do not include onsite support, an implementation support specialist who is exclusive to the Subscriber, rostering, Onsite Product Training, Technical Consulting, or Technology Readiness.

Program Management Services

As part of the standard Program Management Services ("PM") offering, the PM team is available to: (i) plan and coordinate project kickoff meeting; (ii) establish and implement the program work plan; (iii) lead the planning and scheduling of tasks with NWEA internal teams; (iv) work directly with the designated Subscriber contacts to coordinate efforts, maintain work schedules, and meet deadlines; (v) establish, track, and monitor implementation tasks, professional development, and technical training; (vi) manage change orders; (vii) identify and document potential program risks; (viii) support NWEA's on-site professional development and training; (ix) create and update program partnership site; (x) create, order, and deliver standard and custom administrative reports; (xi) coordinate with non-PM NWEA personnel to address program-wide technical issues; and (xii) plan and coordinate project closing meetings. PM will be performed remotely; provided, however, that parties may agree to an onsite kickoff meeting. If the parties agree to an onsite kickoff meeting, the fees paid for PM include travel if Subscriber provides NWEA a minimum of two (2) weeks' notice prior to travel. Otherwise, Subscriber is responsible for travel expenses.