

SAN JOSÉ UNIFIED SCHOOL DISTRICT SERVICE AGREEMENT

This Service Agreement ("Agreement") is made this 25th day of July, 2019, between San José Unified School District ("District"), and Northwest Evaluation Association (NWEA) ("Contractor"), a Corporation

1. **SERVICES.** Contractor shall perform the following services ("Services"): To provide 21,080MAP Growth licenses per year for single subject Math and Spanish Math. Exhibit A includes yearly breakdown.

2. **LOCATION.** Work will be performed District – wide.

3. **COMPENSATION.** District agrees to pay Contractor for Services as follows:

In an amount not to exceed \$505,920.00, invoiced to the District yearly as Services are actually completed.

Payment shall be made for all undisputed amounts within thirty (30) days after the Contractor submits a detailed invoice to the District's Accounts Payable Department.

4. **TERM/TERMINATION** The term of this Agreement shall commence on August 14, 2019 and shall continue through June 30, 2022. The District may terminate this Agreement immediately for any reason at any time, by giving written notice to the Contractor. Such written notice shall be sufficient to stop further performance of services by Contractor. In the event of termination prior to the end of the term of this Agreement, Contractor shall invoice the District for any work performed and documented expenses incurred prior and up to the date of termination, and shall promptly return any District property or records, and any copies thereof, in its possession to the District. Termination shall not affect the rights and obligations of the Parties arising prior to the effective date of termination.

5. **INSURANCE.** Except as provided in District's Master Subscription Agreement and Schedule A with Contractor, Contractor shall be responsible for any damage, loss or other claim arising out of the performance of its services under this Agreement. Contractor shall carry the insurance indicated below throughout the term of this Agreement. The certificate of liability insurance must have San Jose Unified School District, 855 Lenzen Avenue, San Jose, CA 95126, as the Certificate Holder and as additional insured.

Commercial General Liability Insurance	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
Umbrella Excess Liability	Each Occurrence	\$5,000,000
	General Aggregate	\$5,000,000
Digital Technology & Professional	Per Claim	\$5,000,000
Workers' Compensation		Statutory limits

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Subcontractors

Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, and any other insurance required of Contractor under this Agreement, in a company or companies lawfully authorized to do business in California as admitted carriers, in like amounts and scope of coverage as that required of Contractor hereunder.

6. **TAXES; INDEPENDENT CONTRACTOR STATUS.** District shall not withhold or set aside income tax, Federal Insurance Contributions Act Tax, Unemployment Insurance, Disability Insurance, or any other Federal or State funds whatsoever. It shall be the sole responsibility of the Contractor to account for all of the above and Contractor agrees to hold District harmless from all liability for these taxes. While engaged in carrying out the Services Contractor is and shall be an Independent Contractor, and not an Officer, Employee, Agent, Partner, or joint venture of the District.

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- 7. COMPLIANCE WITH APPLICABLE LAW.** In performing services under this Agreement, Contractor shall comply with all applicable law, including but not limited to Education Code Sections [45125.1](#) and [49406](#). Contractor must complete and sign the Contractor Certification attached as Exhibit A. It shall be the sole responsibility of Contractor to obtain any needed business licenses, certificates, permits to conduct business to meet the terms of this Agreement.
- 8. INDEMNIFICATION.** Except as provided in District's Master Subscription Agreement and Schedule A with Contractor, Contractor shall defend, indemnify, and hold harmless the District and its agents, employees, Board of Education, and members of the Board of Education, from and against claims, damages, losses, and expenses (including, but not limited to attorney's fees and costs including fees of consultants) arising out of or resulting from performance of this Agreement including, but not limited to, the Contractor's use of the sites listed herein; the Contractor's completion of its duties under this Agreement; injury to or death of persons or damage to property or delay or damage to the District, its agents, employees, Board of Education, members of the Board of Education, for any act, omission, negligence, or willful misconduct of the Contractor or its respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or District described in this paragraph.
- 9. STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the Pupil Records Rider for Digital Records Storage or Digital Educational Software contract requirements Education Code [49073.1](#), Privacy of Pupil Records.
- 10. ENTIRE AGREEMENT; AMENDMENT.** This constitutes the entire Agreement between the District and Contractor supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. This Agreement may only be amended in writing executed by both parties and approved by the District's Board of Education.

This Agreement consists of:

- 11.1 Service Agreement
- 11.2 Exhibit A – Quote

- 11. NO ASSIGNMENT.** This Agreement may not be assigned by the Contractor, nor any part of the services hereunder subcontracted, without the express written permission of the District.
- 12. SEVERABILITY.** In the event that any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, no other provision of this Agreement will be affected by such holding, and all of the remaining provisions of this Agreement will continue in full force and effect, unless to do so would invalidate the intent of the parties in entering into this Agreement.
- 13. GOVERNING LAW; VENUE.** This Agreement shall be governed under the laws of the State of California. Any action to enforce the terms of this Agreement shall be brought in the appropriate court having jurisdiction over matters arising in Santa Clara County, California.
- 14. ATTORNEY'S FEES.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, expert fees, court costs and attorney's fees.
- 15. BOARD APPROVAL REQUIRED.** Agreements in excess of \$24,999 shall not be a valid and binding obligation of the District, and Contractor shall not be entitled to payment for services rendered, unless and until executed by both parties and approved by the District's Board of Education and/or Board of Education Designee.
- 16. CONTRACT EXECUTION.** Unless otherwise prohibited by law or District policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term 'electronic copy of a signed contract' refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term 'electronically signed contract' means a contract that is executed by applying an electronic signature using technology approved by the District.

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Executed by the parties at San Jose, California, on the day and year indicated below.

San José Unified School District

Northwest Evaluation Association (NWEA)

Dated:

Dated: 7/29/2019

By:

Print Name: Steve Adamo

Title: Director

SV

DocuSigned by:

By



Print Name: Geri Cohen

Title: Chief Financial Officer

***Federal Code of Regulations sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires Contractor's federal tax identification number or Social Security number, whichever is applicable.**

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“EXHIBIT A”
QUOTE

Product - Year 1	Sales Price	Quantity	Total Price
MAP Growth Single Subject (2-12)	\$8.00	21,080	\$168,640.00
Product - Year 2	Sales Price	Quantity	Total Price
MAP Growth Single Subject (2-12)	\$8.00	21,080	\$168,640.00
Product - Year 3	Sales Price	Quantity	Total Price
MAP Growth Single Subject (2-12)	\$8.00	21,080	\$168,640.00

Quote Subtotal	\$505,920.00
Estimated Tax	\$0.00
Grand Total	\$505,920.00