

5ESSENTIALS® AGREEMENT

This 5Essentials® agreement (“Agreement”) is between UChicago Impact LLC, an Illinois not-for-profit corporation (“UChicago Impact”), and the client (“Client”) set forth in the Schedule A (Sales Order) or SOW, as applicable, between NWEA and Client (“Schedule A”) and is effective as of the Effective Date set forth in Schedule A. Each of UChicago Impact and Client may be referred to hereunder separately as a “Party” or together as the “Parties”. This Agreement is incorporated by reference into the Schedule A.

The Parties agree as follows:

Section 1. Definitions

The capitalized terms listed below and used in this Agreement shall have the following meanings:

- A. “Affiliate” means any corporation or other business, nonprofit or governmental entity that controls, is controlled by, or is under common control with a Party. A corporation or other entity shall be regarded as in control of another corporation or entity if it owns or directly or indirectly controls at least fifty percent (50%) of (i) economic interests of the other corporation or entity or (ii) voting rights of the other corporation or entity having the right to elect directors, or such lesser percentage that is the maximum permitted to be owned by a foreign entity in those jurisdictions where majority ownership by foreign entities is prohibited.
- B. “Derivative Work” means a work that is based on one or more pre-existing works, such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, or any other form in which such pre-existing work may be recast, transformed, or adapted, and, if prepared without authorization of the copyright owner of such pre-existing work, would constitute a copyright infringement. For purposes of this Agreement, a Derivative Work includes a compilation that incorporates such pre-existing work.
- C. “Force Majeure” means any cause beyond a Party’s control including, without limitation, acts of God; fire; explosions; storms; floods; acts of terrorism; destruction of facilities; riots or major civil or military disturbances; or acts of government or governmental agencies, including changes in law or regulations, in each case that materially and adversely impact the Party.
- D. “Material(s)” means (i) the hardcopy and physical items described in Exhibit A or containing reference to matters described in Exhibit A, (ii) the systems described in Exhibit A, and (iii) any changes that UChicago Impact elects to make in the Materials described in (i) or (ii) above that improves the manner in which the Materials described in (i) or (ii) above fulfills existing requirements or extends the ways to accomplish an existing function.
- E. “Reports and Data” means the 5Essentials Reports and the 5Essentials Data, each as described in Exhibit A.
- F. “Services” means (i) the support activities described in Exhibit A, (ii) the survey analysis services described in Exhibit A, and (iii) any changes that UChicago Impact elects to make

that improves the manner in which (i) or (ii) fulfills existing requirements or extends the ways to accomplish an existing function.

- G. “Timeline” means the schedule for delivery of the Materials and Services, which shall be mutually agreed to in writing by the Parties.
- H. “University” means The University of Chicago, an Illinois not-for-profit corporation and an Affiliate of UChicago Impact.

Section 2. License, Materials and Services

- A. Grant of License. Upon payment of the fees in accordance with the Schedule A and subject to and conditioned on:
 - (a) Client’s continuing compliance with the [5Essentials Privacy Policy](https://www.uchicagoimpact.org/privacy-policy) (<https://www.uchicagoimpact.org/privacy-policy>), which may, from time to time, be modified, altered, or updated by UChicago Impact in its sole discretion;
 - (b) Client’s continuing compliance with the terms and conditions of this Agreement; and
 - (c) timely responses from Client to UChicago Impact’s requests for information and assistance.

UChicago Impact hereby agrees to provide to Client:

- (i) the Materials solely for its own use during the Term of this Agreement; and
 - (ii) the nonexclusive right to reproduce and distribute the Reports and Data.
- B. Services. Upon payment of the fees in accordance with the Schedule A and provided timely responses are received from Client, UChicago Impact will use reasonable efforts to provide the Services to Client within the Timeline.
- C. Disclosure to NWEA. Client understands and agrees that UChicago Impact will disclose Client’s Reports and Data to NWEA, and hereby consents to such disclosure.
- D. Reservation of Rights. Each of UChicago Impact and University reserves the worldwide right to execute, reproduce, modify, create derivatives, distribute, and otherwise use the Materials and Services (and all aspects thereof) for any purpose it may choose at its own discretion and without any payment therefore by UChicago Impact or University. UChicago Impact and University shall each have the right to grant licenses to third parties to any aspect of the Materials or Services.
- E. No Other Rights. No rights in and to the Materials, Services or any other intellectual property other than those provided in this Section 2, express or implied, are conveyed by UChicago Impact. Except as expressly permitted under this Agreement, Client is granted no rights to (i) reproduce any parts of the Materials, (ii) modify any parts of the Materials, (iii) provide access to or enable use of any user identification or password by any person(s), (iv) rent, lease, loan, or sell access to the Materials, (v) copy, archive, store, rearrange, modify, adapt, upload, create derivate works from, perform, publish, distribute, redistribute, or

disseminate any Materials, (vi) access the Materials to build a product using similar ideas, features, functions, interface, or graphics of the Materials, (vii) access (or attempt to access) any service within the Materials by any means other than as permitted in this Agreement, or (viii) delete any copyright or other proprietary rights notice in the Materials.

- F. Ownership. University is the sole owner of all intellectual property relating to the Materials and Services existing as of the Effective Date. University will also be the sole owner of all Derivative Works developed at any time during the course of this Agreement. Client agrees to cooperate with University and UChicago Impact and to execute any grants and assignments of all rights as either University or UChicago Impact reasonably may request for the purpose of evidencing, enforcing, filing, registering or defending such ownership. Client shall comply with all copyright notices, information, and restrictions in the Materials and shall not alter, delete, or conceal any copyright, trademark, patent, or other notice on the Materials including notices on any part of any Material that is downloaded, displayed, printed, or reproduced. UChicago Impact may, at its sole discretion, use the Reports and Data created pursuant to this Agreement to inform and perform work that is outside the scope of this Agreement. Except as expressly permitted under in this Agreement, at no time will UChicago Impact distribute Reports and Data created pursuant to this Agreement for an individual school in a manner that compromises the individual school's or any individual student's identity without the explicit written permission of Client, the individual school, a representative of the individual school, the individual student, or a parent or legal guardian of the individual student. Except as otherwise required by law, all Reports and Data created pursuant to this Agreement will be owned by UChicago Impact.

Section 3. Payments

- A. Payments. Payment terms are set forth in the Schedule A.

Section 4. Diligence

- A. Efforts. Client shall use reasonable efforts to exploit the licenses granted herein by diligently utilizing the Materials and Services.

Section 5. Term and Termination

- A. Term. The Term of this Agreement is set forth in the Schedule A.
- B. UChicago Impact's Right to Terminate. UChicago Impact shall have the right to terminate this Agreement as follows, in addition to all other available remedies:
- i. If Client fails to make any payment when due, then upon the election of UChicago Impact in writing, this Agreement shall terminate effective ten (10) days after UChicago Impact's written notice to Client describing such failure, unless Client makes such payment within such ten (10) days.
 - ii. If Client breaches any obligation of this Agreement other than an obligation to make a payment when due, then upon the election of UChicago Impact in writing, this Agreement shall terminate effective thirty (30) days after UChicago Impact's written

notice to Client describing such failure, unless Client cures such failure to the satisfaction of UChicago Impact within such thirty (30) days.

- iii. If Client shall have filed by or against it a petition under any bankruptcy or insolvency law it shall immediately notify UChicago Impact, and such petition is not dismissed within sixty (60) days of its filing, or if Client makes an assignment of all or substantially all of its assets for the benefit of its creditors, then Client shall immediately notify UChicago Impact of such facts and UChicago Impact may in its sole discretion terminate this Agreement by written notice effective as of the (i) date of filing by Client of any such petition, (ii) date of any such assignment to creditors, or (iii) end of the sixty (60) days if a petition is filed against it and not dismissed by such time, whichever is applicable.
- iv. If Client shall be dissolved, liquidated or otherwise ceases to exist, other than for reasons specified in Section 5.B.iii above, this Agreement shall automatically terminate as of (i) the date articles of dissolution or a similar document is filed on behalf of Client with the appropriate government authority or (ii) the date of establishment of a liquidating trust or other arrangement for the winding up of the affairs of Client.

C. Client's Right to Terminate. Client may notify UChicago Impact of its desire to terminate this Agreement at any time by giving UChicago Impact thirty (30) days prior written notice. The termination shall take effect thirty (30) days from UChicago Impact's receipt of written notice.

D. Survival. The following shall survive any expiration or termination of this Agreement for any reason: (i) all causes of action accruing to either Party under this Agreement; (ii) Client's obligation to pay all amounts payable under the Schedule A for Materials, Services or Reports and Data provided up to and including the expiration date or the effective date of termination, as applicable; and (iii) Sections 2.E, 4, 5.E, 6, and 7 of this Agreement.

E. Post Termination, Post Expiration Obligations of Client. Upon the termination of this Agreement for any reason, or the expiration of this Agreement, (i) all rights of Client to use the Materials and Services, and any other rights conferred to Client by this Agreement, with the exception of the use of Reports and Data provided pursuant to Section 2.A.ii, shall immediately thereafter cease, (ii) all payments including fees and costs due under the Schedule A and not yet paid shall become immediately due and payable, and (iii) NWEA and UChicago Impact shall be under no obligation to refund any fees paid by Client for the Materials and Services. Client shall not thereafter operate or conduct business under any name or mark or in any other manner that might tend to create the impression that this Agreement is still in force, including but not limited to any reference to UChicago Impact or University or any trademark or servicemark of UChicago Impact or University in describing its operations.

Section 6. Representations, Warranties, Covenants and Disclaimers

A. Representations, Warranties and Covenants. Client hereby represents, warrants and covenants that:

- i. Client is duly organized, validly existing and in good standing under the laws of the

state(s) in which it is located, and has the corporate power and authority to execute and deliver this Agreement, and perform its obligations under this Agreement.

- ii. The execution, delivery and performance of the Agreement have been duly and validly authorized by Client, and upon execution and delivery by Client, this Agreement will constitute a valid and binding agreement of Client enforceable in accordance with its terms.
- iii. Client has no other agreements that conflict with the obligations undertaken and rights and licenses granted in this Agreement.
- iv. Any use of the Materials by Client shall comply with and conform to all applicable specifications required by any state and federal laws, including but not limited to the Family Educational Rights and Privacy Act (FERPA) 20 USC 1232g et. seq.
- v. Client shall timely make all payments as required by Schedule A.

B. Disclaimer of Warranties. UCHICAGO IMPACT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT. IN PARTICULAR, UCHICAGO IMPACT DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MATERIALS AND SERVICES OR WITH RESPECT TO ANY COPYRIGHTS AND TRADEMARKS COVERING MATERIALS OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATIONS OR WARRANTIES ABOUT (I) THE ACCURACY, SAFETY OR USEFULNESS FOR ANY PURPOSE OF ANY INFORMATION PROVIDED BY UCHICAGO IMPACT TO CLIENT WITH RESPECT TO THE MATERIALS AND SERVICES OR WITH RESPECT TO ANY COPYRIGHTS OR TRADEMARKS COVERING MATERIALS OR SERVICES AND ANY PRODUCTS DEVELOPED FROM OR COVERED BY THEM; (II) WHETHER THE USE OF ANY MATERIALS OR SERVICE WILL OR MIGHT INFRINGE A PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT OWNED OR LICENSED BY A THIRD PARTY; OR (III) THE ACCURACY, SAFETY, OR USEFULNESS FOR ANY PURPOSE OF THE MATERIALS OR SERVICES. IN ADDITION, UCHICAGO IMPACT SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 7. Indemnification

Except to the extent limited by applicable law, Client agrees to indemnify, defend and hold harmless UChicago Impact, its Affiliates, and the trustees, directors, officers, employees, fellows and agents of any of the foregoing (collectively the “Indemnified Persons”) from and against any and all claims, demands, loss, damages, penalties, costs or expenses (including attorneys' and witnesses' fees and costs) of any kind or nature, based upon, arising out of, or otherwise relating to this Agreement, including without limitation (i) any claim arising from the use of any Materials or Services and all activities associated therewith, or (ii) any use of information provided by UChicago Impact to Client. UChicago Impact shall be entitled to participate at its option and expense through counsel of its own selection, and may join in any legal actions related to any such claims, demands, losses, damages, costs, expenses,

penalties, costs or expenses. Client shall not enter into any settlement affecting any rights or obligations of any Indemnified Person or which includes an express or implied admission of liability, negligence or wrongdoing by any Indemnified Person, without the prior written consent of such Indemnified Person.

Section 8. Assumption of Risk and Insurance

- A. Assumption of Risk. THE ENTIRE RISK AS TO THE PERFORMANCE, SAFETY AND EFFICACY OF ANY MATERIALS AND SERVICES IS ASSUMED BY CLIENT. INDEMNIFIED PERSONS SHALL NOT, EXCEPT FOR THEIR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, BE RESPONSIBLE OR LIABLE FOR ANY INJURY, LOSS, OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, TO CLIENT OR ANY OTHER PERSON OR ENTITY, REGARDLESS OF LEGAL THEORY, FOR ANY ACTIVITY UNDERTAKEN IN CONNECTION WITH THIS AGREEMENT, THE MATERIALS AND SERVICES, INCLUDING THE USE OR OTHER DISPOSITION OF THE MATERIALS AND SERVICES AND ALL ACTIVITIES ASSOCIATED THEREWITH. THE ABOVE LIMITATIONS ON LIABILITY APPLY EVEN THOUGH THE INDEMNIFIED PERSON MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH INJURY, LOSS OR DAMAGE. CLIENT SHALL NOT MAKE ANY AGREEMENTS, STATEMENTS, REPRESENTATIONS OR WARRANTIES OR ACCEPT ANY LIABILITIES OR RESPONSIBILITIES WHATSOEVER WITH REGARD TO ANY PERSON OR ENTITY WHICH ARE INCONSISTENT WITH THIS SECTION 8.
- B. Insurance. Client agrees to maintain liability insurance that shall cover any claims for bodily injury, property, or other damage alleged to relate or actually relating to the Materials, Services or activities undertaken in connection with this Agreement, including the use or other disposition of the Materials or Services and all activities associated therewith.

Section 9. Miscellaneous

- A. Entire Agreement, Amendment, Waiver. This Agreement, together with its Exhibit A attached hereto and Schedule A, constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes all prior written or oral agreements or understandings (express or implied) between them concerning the same subject matter. This Agreement is incorporated by reference into the Schedule A. To the extent any of the terms and conditions in this Agreement are inconsistent with the terms and conditions in the Schedule A, this Agreement shall control as between UChicago Impact and Client. This Agreement may not be amended or modified except in a document signed by duly authorized representatives of each Party. No waiver of any default hereunder by either Party or any failure to enforce any rights hereunder shall be deemed to constitute a waiver of any subsequent default with respect to the same or any other provision hereof.
- B. Notice. Any notice required or otherwise made pursuant to this Agreement shall be in writing, sent by registered or certified mail properly addressed, or by facsimile with confirmed answer-back, to the other Party at the address set forth below or at such other address as may be designated by written notice to the other Party. Notice shall be deemed

effective three (3) business days following the date of sending such notice if by mail, on the day following deposit with an overnight courier, if sent by overnight courier, or upon confirmed answer-back if by facsimile.

If to UChicago Impact:

UChicago Impact, LLC.
The University of Chicago
1313 E. 60th Street
Chicago, Illinois 60637

If to Client:

At the address specified in the Schedule A or SOW

- C. Assignment. This Agreement shall be binding on the Parties hereto and upon their respective successors and assigns. Client may at any time, upon written notice to UChicago Impact, assign or delegate to a successor to all or substantially all of its business any of its rights and obligations hereunder, provided that any such assignment or delegation shall in no event relieve Client of its primary responsibility for its obligations hereunder. Any such assignment or delegation shall be conditioned on and shall not be effective until the assignee or transferee has executed and delivered a written agreement assuming and undertaking all of the duties and obligations of the assignor or transferor under this Agreement. Except as provided above, Client may not assign or delegate any right or obligation hereunder without the prior written consent of UChicago Impact, which consent shall not be unreasonably withheld, and any attempted assignment or delegation in violation thereof shall be void. UChicago Impact may assign this Agreement at any time to any third party on written notice to Client. In the event of an assignment by UChicago Impact, the assignee shall be substituted for UChicago Impact as a party hereto, and UChicago Impact shall no longer be bound hereby.
- D. Governing Law. Unless the law of the jurisdiction where Client is domiciled requires otherwise, the interpretation and performance of this Agreement shall be governed by the laws of the State of Illinois.
- E. Force Majeure. Neither Party will be liable to the other if, and to the extent that, the performance of any of its obligations under this Agreement (other than an obligation of one Party to pay any sum due under the Schedule A) is prevented, restricted, delayed or interfered with due to Force Majeure. The Party claiming an event of Force Majeure will promptly (and in any event no later than twenty (20) days after discovery of the event) notify the other Party in writing, and provide particulars of the cause or event. In the event of any such occurrence, deliveries of any order placed and accepted under this Agreement or the Schedule A or the appropriate portion of such delivery will be suspended for the duration of the Force Majeure, provided that no such act or occurrence will relieve Client from its obligations of payment under the Schedule A.

- F. Independent Contractors. The Parties agree that the relationship of UChicago Impact and Client established by this Agreement is that of independent contractors. Furthermore, the Parties agree that this Agreement does not, is not intended to, and shall not be construed to, establish a partnership or joint venture, nor shall this Agreement create or establish an employment, agency or any other relationship. Neither Party shall have any right, power or authority, nor shall they represent themselves as having any authority, to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other Party, or to otherwise act as an agent for the other Party for any purpose.
- G. No Use of Name. Except for uses required in connection with implementation of the Services, each Party agrees not to use the other Party's name in any commercial activity, marketing, advertising or sales brochures except with the prior written consent of the other Party, which consent will not be unreasonably withheld. Client agrees not to use the name of any UChicago Impact employee(s) in any commercial activity, marketing, advertising or sales brochures, or for any other purpose other than internal reporting and record keeping, without the prior written consent of UChicago Impact, which UChicago Impact may withhold in its sole discretion. This Agreement does not grant Client any rights to use any name or marks of the University.
- H. Waiver. No term or provision of this Agreement shall be waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No waiver of a breach shall be deemed to be a waiver of a different or subsequent breach.
- I. Execution. This Agreement may be executed by the Parties in any number of identical counterparts, each of which, for all purposes shall be deemed to be an original, and all of which shall constitute, collectively, one instrument.
- J. Severability. If any provision of this Agreement shall be held illegal, unenforceable, or in conflict with any laws of any federal, provincial, state, or local government that may exercise jurisdiction over this Agreement, (i) the validity of the remaining portions or provisions shall not be affected thereby and (ii) the enforceability of such provisions in other jurisdictions shall not be affected thereby.
- K. Third Party Beneficiaries. All rights, benefits and remedies under this Agreement are solely intended for the benefit of UChicago Impact and Client, and no other person or entity shall have any rights whatsoever to (i) enforce any obligation contained in this Agreement; (ii) seek a benefit or remedy for any breach of this Agreement; or (iii) take any other action relating to this Agreement under any legal theory, including but not limited to, actions in contract, tort (including but not limited to negligence, gross negligence and strict liability), or as a defense, setoff or counterclaim to any action or claim brought or made by the Parties.

EXHIBIT A
to 5ESSENTIALS AGREEMENT
Materials and Services

Section 1. 5Essentials Administration

UChicago Impact will administer the 5Essentials School Improvement Survey (the “Survey”) to all schools specified in Schedule A provided that school rosters are cleaned and received by the roster deadline set forth in the Timeline. The Surveys will be administered using the 5Essentials Survey Administration Tool. This tool provides online access to the 5Essentials Student, Teacher, and Parent Surveys.

A. School Rosters and Confidentiality

- i. Client is responsible for providing rosters to UChicago Impact in the correct format for all a) schools, b) principals, c) students and d) teachers. Any Client that does not submit rosters that provide all appropriate and applicable data will not be able to use the Survey.
- ii. Student and teacher identification will be kept confidential and stored on secure servers for both outreach and Survey administration. Only UChicago Impact staff and agents necessary for administration of the Survey will have access to student and teacher identifiers during administration.
- iii. Once data collection is complete, student and teacher names will be permanently deleted, as will teacher email addresses. UChicago Impact will never transmit student or teacher identifiers to anyone; the only identifiers that will exist for students and teachers are an internal random ID that is used for scoring; this ID is not connected to their identity or to their responses in subsequent Survey administrations.

B. Survey Coordinators

In addition to the principal, each school may designate a coordinator to assist with facilitation of the Survey. The principal and coordinator will receive a short manual detailing their roles and responsibilities for Survey administration.

C. Student Survey Administration

Students will login to their Survey using a district/school assigned student ID and their birth date. Students have the right to omit responses to any question. The Survey will be available to students in grades 4-12.

D. Teacher Survey Administration

Teachers will access the Survey using a randomly assigned username and password issued by the 5Essentials Survey Administration Tool. The Survey will be available to all Pre-kindergarten to High School teachers. Teachers have the right to omit responses to any question.

E. Parent Survey Administration

Parents will access the Survey using an anonymous login on the 5Essentials Survey Administration Tool. The Survey will be available to all parents who have at least one (1) child

enrolled at the school. The parent count for each school is equivalent to the number of students rostered and assigned to that school.

F. Response Rate Monitoring

The 5Essentials Survey Administration Tool will provide weekly response rate updates to Client, district/charter administrators, principals and Survey coordinators. The 5Essentials Survey Administration Tool will also allow users to check response rates at any time.

- i. To receive teacher data, schools must have at least 50% of teachers start the Survey and have at least eight (8) valid respondents per item.
- ii. To receive student data, schools must have at least 50% of students start the Survey and have at least 10 valid respondents per item.
- iii. To receive parent data, schools must have at least 20% of parents submit the Survey.

Section 2. 5Essentials Scoring

UChicago Impact will score Survey data from participating schools using a process developed at the University of Chicago Consortium on School Research (UChicago Consortium). The 5Essentials Scoring process creates school-level scores that minimize error by removing invalid responses using Rasch Analysis. 5Essentials Scoring allows school results to be compared from one year to the next and puts all schools within a grade level on the same scale, allowing schools with strengths and challenges to be identified.

Section 3. Survey Implementation Support

UChicago Impact will provide recorded webinar support for participating schools' leadership teams. The first webinar is an orientation to the 5Essentials and provides participants with a deeper understanding of the history, research, and mechanics of the 5Essentials, including information to support a successful Survey administration and promote high levels of participation. The second webinar prepares school leadership teams to receive their results by discussing the scoring process and providing a demonstration walkthrough of the 5Essentials Reporting Site.

Section 4. 5Essentials Reports

Schools receive individualized, web-based reports that offer a comprehensive picture of school quality and provide a framework for understanding the hundred-plus Survey questions. These reports include:

- A. Performance on the 5Essentials, shown in color-coded, easy to read diagrams.
- B. Beginning in the second year, changes in school performance over time on individual Measures and Essentials.
- C. A license to access their report online during the Term. Reports may be saved to PDF or printed at any-time during the Term. Upon renewal, schools will receive additional access during the renewal Term.

Section 5. Report Release

Reports will be available on a password protected basis to Client and participating schools' staff members at the end of the 6-8-week scoring window. Access to the reports will be available to district administrators and principals prior to a broader release. Reports will be made publicly available upon request; the final release date will be determined by Client.

Section 6. 5Essentials Data

UChicago Impact will provide Client with data files in Microsoft Excel format. These files include school-level response rates and results on Measures and Essentials.