



# Data Warehousing Analytics Assessment Solutions

## LinkIt! Software License Agreement

This Software License Agreement (this “Agreement”) is made and entered into as of the 1<sup>st</sup> day of July, 2018 (the “Effective Date”) by and between Advanced Assessment Systems, Inc. (d/b/a LinkIt), having an address of 80 5<sup>th</sup> Ave, Suite 1101, New York, NY 10011 (“Licensor”), and Franklin Lakes Public Schools (“Licensee”).

WHEREAS, Licensor is the publisher of the *LinkIt!*<sup>™</sup> Assessment Management and Analytics Platform, which enables the following core functions:

1. Development and management of K-12 assessments in all subject areas;
2. Assignment and delivery of assessments to students either online or via plain paper bubble sheets;
3. Generation of detailed diagnostic reports at all levels, including individual student, classroom, school, and district-wide information;
4. Linking of individual assessment items to standards, skills, difficulty and other analysis categories used for progress monitoring and performance evaluation;
5. Delivery of assessment content from a variety of sources, including content from Licensor, 3<sup>rd</sup> party publishers and user-generated content;
6. Direct connections from assessment data to instructional resource library;
7. Authoring and delivery of a variety of assessment item types, including technology-enhanced item types (TEIs);
8. Customization of the test-taking environment with preferences such as highlighting and drawing tools, various tool and symbol palettes and onscreen manipulatives;
9. Automatic scoring of most assessment item formats;
10. Comprehensive report generation and customization for the purpose of data disaggregation.

WHEREAS, Licensee desires to license the Software from Licensor for use in the Licensee’s school(s); and

WHEREAS, Licensor is willing to grant such license and to perform duties with respect to the Software, and Licensee is willing to accept such license, subject to the terms and conditions of this Agreement.

1. LINKIT!™ PRODUCT DESCRIPTION

- A. Linkit!™ is a secure, web-based data capture and analytics platform that may be accessed by authorized users with the Licensee's organization, subject to the terms of this Agreement. Student performance data is stored on a secure remote server (a Microsoft Sequel Server Database). Students, teachers and administrators can access the LinkIt! platform from any computer with an Internet connection, subject to the minimum technology requirements.

2. GRANT OF LICENSE/TERM

- A. Licensor hereby grants Licensee a renewable one (1) year non-exclusive license to utilize the Software, including all future upgrades, subject to earlier termination or extension pursuant to the terms hereof.
- B. Ownership of the Software shall remain vested in Licensor. Nothing in this Agreement shall be construed as transferring ownership of any intellectual property rights of Licensor in the Software to Licensee. Licensee will not copy, reverse engineer or decompile the Software, other as specifically permitted under this Agreement. Licensee will not create any copyrightable derivative works of the Software and waives all rights it may acquire in any such works.
- C. This Agreement may be terminated prior to the end of the Term as follows:
- (1) At any time by mutual written agreement of the parties;
  - (2) By either party if the other party commits any material breach of its obligations hereunder and fails within fifteen (15) days of written notice to cure the same. Any such termination shall be without prejudice to any other rights that may have accrued to it hereunder; or
  - (3) By either party immediately by written notice if the other party files a petition in bankruptcy, goes into liquidation, admits that it is insolvent, makes an assignment for the benefit of creditors, or has a petition in bankruptcy or receivership filed against it and such petition is not dismissed within thirty (30) days following filing.
- D. In addition to this Section 2, the obligations set forth in Sections 5, 6, 7, 9 and 10 shall survive termination of this Agreement and shall bind the parties and the legal representatives, successors, heirs and assigns.

3. SUPPORT SERVICES

Licensor agrees to provide the software maintenance and support services set forth on Appendix A attached hereto.

4. PAYMENT/COST PROPOSAL

Please refer to per annual licensing fees as well as training/start up data integration costs in appendix B. Licensee will pay Licensor within 60 days upon execution of this agreement.

5. CONFIDENTIALITY

- A. Licensee hereby acknowledges and agrees all or a portion of the Software materials are subject to copyright protection of the Licensor. The Licensee agrees that it will not share in any way any Software materials, including but, not limited to, test items, proposals and training materials, provided under this agreement with any party that is not party to this agreement.
- B. Each party acknowledges that during the Term the other party may disclose confidential and proprietary business or technical information concerning the subject matter hereof to the other party. The receiving party agrees to hold such information in confidence and employ reasonable precautions (at least as protective as the precautions it uses to protect its own information) to protect the disclosing party's confidential information from unauthorized duplication, use or disclosure. "Confidential information" subject to these provisions shall not include information that the receiving party can establish (i) was known to the receiving party prior to disclosure hereunder without an obligation of confidentiality; (ii) was obtained by the receiving party from a third party having the right to disclose it; (iii) was or became generally available to the public without violation of this Agreement; (d) was disclosed with the written authorization of the disclosing party; or (e) was developed by the receiving party independent of any reference to the information and independent of the participation of any person who had access to the information.

6. REPRESENTATIONS AND WARRANTIES

- A. The Licensor represents and warrants to the Licensee that:
- (1) It controls the rights to all texts, art and photographs contained in the *Linkit!*<sup>TM</sup> Software Program; and
  - (2) It has the authority to license such rights to the Licensee on a non-exclusive basis.
- B. Each party hereby represents and warrants to the other that:
- (1) It has all requisite corporate power and authority (or if a party is not a corporation, such party represents and warrants that it has sufficient power and authority under its organizational documents or agreements) to enter into this Agreement and to carry out the transactions contemplated hereby;
  - (2) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate (or, as applicable, other entity) action on the part of such party;

- (3) This Agreement has been duly executed and delivered by such party and (assuming the due authorization, execution, and delivery hereof by the other party) is a valid and binding obligation of such party and enforceable against it in accordance with its provisions; and
- (4) Its entry into this Agreement does not violate or constitute a breach of any agreement to which it is a party or otherwise bound.

## 7. DATA SECURITY

- A. The Licensor represents and warrants to the Licensee that it will never sell, share, distribute or otherwise grant access to any confidential and personally identifiable student information to any 3<sup>rd</sup> party information without the explicit written consent of the Licensee.
- B. Licensor's security policy prohibits unsecure transfer of student data. Licensee agrees to convey student data to Licensor only via authorized templates and secure, authenticated, transfer methods, including, but not limited to the LinkIt! API (documentation available at [api.linkit.com](http://api.linkit.com)) and secure FTP (SFTP) transfer.
- C. The parties acknowledge that (a) Customer Data may include personally identifiable information from education records that are subject to FERPA ("FERPA Records"); and (b) to the extent that Customer Data includes FERPA Records, LinkIt! will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and will comply with FERPA.

## 8. COPYRIGHTED MATERIALS

- A. Licensee explicitly acknowledges that it will secure permission from any applicable 3<sup>rd</sup> parties prior to uploading copyrighted materials to Licensor's Software platform.
- B. Licensee acknowledges that it may elect to participate in optional Licensor service offerings such as LinkIt! *Prime*, either as part of this Agreement or extensions thereof, in which Licensor staff members will upload materials provided by Licensee directly to the Licensor's platform for use by authorized users in Licensee's organization. Licensee agrees to secure written permission from copyright holders *prior* to conveying such materials to Licensor for uploading.
- C. Whether uploaded directly by Licensee or by Licensor as part of a service offering, in no case will Licensor offer copyrighted materials to any 3<sup>rd</sup> party that is not a party to this Agreement without the explicit written consent of Licensee, nor will Licensor seek to monetize these materials by charging Licensee's users (or any other users) for access to the uploaded content.
- D. In the event that Licensee receives notification that copyrighted material has been posted to Licensor's platform without proper permission, Licensee agrees to a) provide Licensor with written evidence of permission, or B) promptly remove all such materials and hold Licensor harmless against any 3<sup>rd</sup> party claims resulting from the unauthorized posting of content. Licensee further agrees not to seek remuneration or reimbursement of any service fees in the event that such content is removed from the platform.

9. LICENSEE CREATED CONTENT

A. As between Licensor and Licensee, all content uploaded or otherwise placed on or entered into the LINKIT platform by or on behalf of Licensee ("Licensee Content") belongs solely to Licensee (or those parties who licensed Licensee to use it).

B. Licensor agrees that it shall not make any use of Licensee Content except for the limited purpose of assisting Licensee with Licensee's use of LINKIT, nor shall it provide access to Licensee Content to anyone who is not either (a) an employee of Licensee or (b) an employee of Licensor who is assisting Licensee with the use of the LINKIT platform.

C. Upon the expiration or termination of this Agreement, Licensor will remove all of Licensee Content from the LINKIT platform.

10. DISCLAIMER OF WARRANTIES

Except as specifically provided herein, each party disclaims all warranties, whether express, implied or statutory, including all implied warranties of merchantability and fitness for a particular purpose. In addition, Licensor does not warrant that the Software shall operate in combinations other than as specifically specified in writing by Licensor or that the operation of the Software shall be uninterrupted or error-free.

11. LIMITATION OF LIABILITY

In no event shall either party or its suppliers be liable for any special, indirect or consequential loss or damage arising out of or in any way relating to this Agreement, including, but not limited to, economic loss, loss of profits, loss of opportunity, even if such party has been advised of the possibility of such damages. The limitation of liability provided in this Section 11 shall apply even if the warranties provided in Section 6 fail of their essential purpose. Notwithstanding the foregoing, nothing in this Agreement shall operate to exclude or restrict either party's liability for: (i) death or personal injury resulting solely from the negligence of the defaulting party; (ii) breach of any applicable legislation; (iii) the fraud or willful default of the defaulting party; or (iv) the indemnification and third party consent obligations.

12. ASSIGNMENT

This Agreement may be assigned to a third party by the Licensor under the same terms and conditions contained herein. Licensee may not assign this Agreement to any third party without the prior written consent of Licensor. This Agreement shall be binding up and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

13. NOTICES

All notices, consents and other communications required or permitted under this Agreement shall be in writing and sent by electronic mail, registered or certified mail, postage pre-paid, transmitted by facsimile transmission confirmed by mail as set forth above or sent by overnight courier (if delivery is confirmed by the courier) to the addresses indicated on the first page of this Agreement, or such other address as either party may indicate by at least ten (10) days prior notice to the other party.

14. ENTIRE AGREEMENT AND AMENDMENT

This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof. This Agreement shall be binding on the parties and their respective successors and assigns. No modification of any of the terms of this Agreement will be valid unless in writing and signed by both parties.

15. WAIVER AND SEVERABILITY

The failure of a party to require performance by the other party of any provision hereof shall not affect the right to require performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and the invalid or unenforceable provision shall be changed and interpreted to best accomplish the provision within the limits of the law.

16. GOVERNING LAW AND JURISDICTION

This Agreement shall be deemed to have been entered into in the State of New Jersey and subject to the laws applicable to agreements executed and/or to performed therein. Each party hereby agrees to submit to the exclusive *in personam* jurisdiction of the courts of the State of New Jersey for the resolution of all disputes between them, or, if jurisdictional prerequisites exist at the time, to the sole and exclusive *in personam* jurisdiction of the federal courts of the State of New Jersey.

17. COUNTERPARTS

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.

18. RELATIONSHIP OF THE PARTIES

This Agreement does not constitute a partnership, joint venture or any other agency relationship or employment relationship between the Licensor and the Licensee.

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**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have caused this Software License Agreement to be duly executed on the date and year first above written.

**LICENSOR:**

LinkIt!

By:

Name: Chad Marcus

Title: Chief Academic Officer

A handwritten signature in black ink, appearing to read "Chad Marcus". The signature is written in a cursive style with a large initial "C" and "M".

**LICENSEE:**

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By:

Name:

Title:

## **APPENDIX A**

### **Support Services**

Licensor will: (i) provide maintenance and support for the Software ("Maintenance Services"), (ii) provide data and data support relating to the Software ("Data Services") and (iii) provide operations to effect the Maintenance Services and the Data Services, as follows:

#### **1. MAINTENANCE SERVICES**

##### **1.1 SCOPE OF SERVICES**

(a) The following are the Maintenance Services that will be provided by Licensor in connection with the Software:

Licensor shall:

- (i) develop and provide corrections, changes, or workarounds ("Corrections") for any defects, errors, or malfunctions in the Software, (collectively, "Defects"), discovered by Licensee or Licensor, on a timely basis, given the nature and scope of the Defect;
- (ii) provide to Licensee all improvements, modifications enhancements ("Improvements", which term will not include improvements, modifications or enhancements (A) that contain significant new or improved functionalities available only through an upgrade to a paid version of LinkIt! Software or (B) that are developed by Licensor specifically for its other customers that are specific to the systems, content or software of such other customers and which Licensor does not have the right to license to its licensees) to the Software that Licensor shall make or acquire from time to time and which Licensor makes available to its licensees generally; and
- (iii) provide Licensee any upgrade releases ("Upgrade Releases") to the Software and all new Versions and Releases of the Software that Licensor makes available to its licensees generally; provided, however, that if any such Version or Release contains significant new or improved functionalities, Licensor shall have the right to make such Version or Release available to Licensee only upon the payment of additional license fees, or upon such other terms as the Licensor requires of its licensees generally therefore. "Versions" shall be designated by a change in the digits to the left of the decimal point, and "Releases" shall be designated by a change in the digits to the right of the decimal point.

(b) All computer programs delivered pursuant to the Maintenance Services shall be considered "Software" and subject to all the terms and conditions of the License Agreement.



(c) Licensor shall provide Maintenance Services directly to approved representatives of Licensee ("Power Users") but not to individual End Users such as teachers. Power Users will be the primary point of contact from the Licensee and will receive at minimum two (2) hours of additional training on various aspects of the Software.

(d) Licensor shall at all times provide Maintenance Services for at least the current Release of the Software; provided that such Release is available via auto-update upon launching the Software. In the event that such release is not available via auto-update upon launching the Software, Licensor shall be obligated to maintain a previous Release for a minimum sixty (60) days after the current Release was made available to Licensee.

## 1.2 BASIC MAINTENANCE

The Licensor shall maintain a technical support entry point via toll-free telephone and email address, which will be staffed by knowledgeable employees capable of providing technical assistance regarding the Software, its functionality, databases, operations, utilities and supporting documentation. Such telephone or e-mail assistance will be available to the Licensee on a daily basis during regular working hours (8:00 a.m. to 6:00 p.m. Eastern time Monday through Friday). This technical support entry point will also coordinate problem resolution and keep the Licensee informed of efforts to remedy any problem situation until complete restoration of the service. Notwithstanding the forgoing, the first line of support will be the Licensee's Power Users who will contact and escalate the problem to Licensor when necessary.

## 1.3 CHANGE MANAGEMENT

The LinkIt! Software platform is updated on a regular basis in an effort to add new features, improve existing features and general system performance. Licensor reserves the right to post updates in its sole discretion, but shall provide Licensee with notice of any material changes to the services provided hereunder or any changes that could materially affect Licensee's use of the Software as contemplated in this Agreement. Descriptions of such changes will be provided via the LinkIt! Insight quarterly newsletter and sent to designated account administrators via email and/or posted to the login page of the LinkIt! portal.

## 2. DATA SERVICES

### 2.1 SCOPE OF SERVICES

(a) Licensor maintains its data center in the Amazon.com EC2 (Elastic Compute Cloud) hosting facility (the "Hosting Facility", which shall include any other location to which Licensor may move its data center in the future), from which Licensor manages data on student assessment and provides such data to Licensee for use with the Software.

(b) Licensee maintains its data center(s) (the "Licensee Facility") including media labs/computers/scanners/LAN/servers/SIS/LMS, and all other hardware and software on its own premises.

(c) The operation of the Hosting Facility (including all software running in such facilities) are the sole responsibility of Licensor and the operation of the Licensee Facility is the sole responsibility of Licensee.

- (d) As part of the data management services provided hereunder, Licensor will:
- (i) Receive and manage student information uploads to the Software, including class rosters and assessment data, provided that these downloads are submitted in electronic format via FTP transfer or other secure method, in accordance with formatting templates provided by the Licensor, and consistent with guidelines established by FERPA and COPPA. Student information uploads received in formats other than those provided in Licensor's formatting templates or via unsecured methods may not be accepted.
  - (ii) Process such data such that it is in a form suitable for use with the Software within seven (7) working days of receipt of said data.
  - (iii) Conduct training for authorized Power Users designated by the Licensee to upload class roster data, make changes to student data, and perform other routine data management functions directly.

### 3. OPERATIONS SERVICES

#### 3.1 HOSTING FACILITY

Licensor will operate and maintain the Hosting facility via Web-based controlled panels provided by Amazon. Such operation and maintenance will include, without limitation, the acquisition, installation, maintenance, upgrading, monitoring and all aspects of the operation of all servers, databases and software instances and all services related thereto. Any problem with the Hosting Facility itself may fall out of the control of Licensor. In such cases, Licensor will work directly with representatives from the Hosting Facility to ensure a prompt resolution of the problem in accordance with the terms of a separate service agreement between Licensor and Hosting Facility.

#### 3.2 COMMUNICATIONS

(a) The Licensor will receive data at the Hosting Facility and transmit data from said facility via the Internet. Licensor shall at all times maintain agreements for high-speed connections for the receipt and transmission of such data (except that Licensee acknowledges that Licensor does not have direct control of Licensees Internet access, connection speed, network configuration or other local factors which may affect use of the Software).

(b) Licensee expressly acknowledges that the flow of data to or from the Hosting Facility will depend in large part on the performance of hardware, software and services provided or controlled by third party communications providers, including providers previously contracted by the Licensee. Licensor disclaims any and all liability resulting from or related to Licensee's inability to communicate with the Hosting Facility (via the Software), to the extent such inability is the result of the failure of hardware, software or services provided by such third party communications provider.

## APPENDIX B



### Franklin Lakes Public Schools Summary Cost Proposal



July 1, 2018- June 30, 2019

Data Warehousing and Reporting			Annual Cost
LinkIt! Assessment and Data Dashboard - @ \$3 / student - (annual software license)	grades K-12	1,050 students	\$3,150
<i>Warehouse all assessment data Build and administer assessments across all grades and subjects Efficiently collect performance and offline data via custom Data Locker Results Entry module Analyze results and generate reports for administrators, teacher and students</i>			
SGO Manager @ \$1,500 / school		4 school(s)	\$6,000
<i>Manage and automate all facets of SGO development, approval, monitoring and scoring</i>			
Data Processing @ \$500 / test		1 test(s)	\$500
<i>High Stakes Data/3rd Party Assessments - PARCC</i>			
Subtotal			\$9,650
Analytics (LinkIt! Navigator + Consultative Services)			Annual Cost
Elementary Benchmarks @ \$5,950 / school		3 school(s)	\$12,000
Middle School and High School Benchmarks @ \$7,500 / school		1 school(s)	\$4,500
<i>LinkIt! and other benchmarks correlated to PARCC achievement levels for predictive purpose Measure growth (drilling down to school, grade, subject, teacher, class, student, standard, programs, demographics) Track at-risk student populations</i>			
Eligibility and Rostering @ \$1,500 / school		4 school(s)	\$4,000
<i>Create groups and identify students based on multiple data points and other criteria</i>			
Attendance and Behavior, Report Card Subjectivity @ \$1,500 / school		4 school(s)	\$0
<i>Correlate diverse data sets for contextual and predictive purposes</i>			
Multi-Year PARCC Trends Analysis (district and school) and State/County/DFG Comparison Report		Complimentary	
Subtotal			\$20,500
Assessment Solutions			Annual Cost
LinkIt! Benchmarks @ \$2 / student		1,050 students	\$2,100
<i>K-HS assessments: 3 matched forms (A,B, &amp; C) in ELA/Math</i>			
LinkIt! Progress Monitors and Probes @ \$1 / student		1,050 students	\$1,050
<i>K-8 ELA/Math progress monitoring quizzes and banks, foundations of literacy tools, and math fact automaticity quizzes</i>			
LinkIt! Algebra Readiness Screener @ \$1 / student - <b>NEW FOR 18-19</b>		100 students	\$0
<i>Auto-graded screener to objectively identify students with the potential to be successful in a higher-level middle school math course</i>			
LinkIt! Grammar Assessment Series @ \$0.50 / student - <b>NEW FOR 18-19</b>		800 students	\$0
<i>Pre and post G3-G8 auto-graded paper-based and online assessments to measure students' command of conventions of Standard English</i>			
Certica Formative Assessment Item Bank @ \$3 / student		Notify if Interested	\$0
<i>90,000+ NJSLs aligned questions and pre-made quizzes across ELA, math, SS, and science</i>			
K-8 Learning Library @ \$1 / student		1,050 students	\$0
<i>Resources for Instruction and Intervention</i>			
LinkIt! Prime @ \$500 / school		Notify if Interested	\$0
<i>Unlimited test and answer key uploading (Word, PDF)</i>			
Subtotal			\$3,150
Support			Annual Cost
Onsite Training @ \$1,200 / day		3 day(s)	\$3,600
Customer, Technical Support, and Web-Based PD (Required) @ \$250 / school		4 school(s)	\$1,000
Student Information System Integration @ \$1,000 configuration			\$1,000
Help Resources - free on-demand print/video tutorials and data engagement activities			Free
Subtotal			\$5,600
Total Cost			\$38,900

LinkIt!  
80 5th Ave  
#1101  
New York, NY 10011

## **APPENDIX C**

### CLIENT LICENSE AGREEMENT TERMS AND CONDITIONS

Distributor must assure that its Clients execute a written License Agreement with terms and conditions respecting the FAIB and Certica substantially similar to, and no less restrictive than, the following:

**LICENSE GRANT:** The Distributor's Client (the "Licensee") is hereby granted a limited, non-exclusive, non-transferable right and license to access and use the FAIB within the State in which the Licensee is organized, authorized and resides (the "Licensee Territory") to provide noncommercial access to and use of any or all of the items from Certica Solutions, Inc.'s Formative Assessment Item Bank (referred to herein as the "FAIB" or individual items, materials associated with the items such as reading passages and graphics, and scoring materials from the FAIB as "Items" ) to students registered within the Licensee's schools/districts for the sole purpose of performing formative assessments of those students (the "License"). The Licensee is strictly prohibited from using or promoting any Items in the FAIB as high stakes assessments. The results of high-stakes assessments are used for purposes other than improving instruction and student learning, such as graduation tests, college admissions tests and teacher evaluation assessments. All rights, licenses and privileges not expressly granted to the Licensee under the License will remain exclusive to Certica Solutions, Inc. ("Certica"). Without limiting the generality of the foregoing, the Licensee acknowledges that Certica retains all rights under copyright and all other intellectual property rights in and to the FAIB, all Items included therein, all revisions, modifications, translations, or other adaptations or transformations of the FAIB or the Items, including assessments, and other derivative works created there from (collectively the "Derivative Works"). The Licensee's rights to access and use the FAIB, the Items and all Derivative Works thereof shall terminate upon the earlier of (i) termination of the agreement between the Licensee and Distributor granting this License, or (ii) termination of Distributor's right and license to distribute the FAIB. Licensee acknowledges that use of the FAIB, the Items and all Derivative Works, thereof after termination of the License is strictly prohibited and would constitute infringement of Certica's proprietary rights.

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