



**INDEPENDENT CONTRACTOR AGREEMENT FOR SERVICES OF \$5,000 OR MORE**

WHEREAS, Adams 12 Five Star Schools in the County of Adams and State of Colorado (the “**District**”) has the statutory authority to contract with persons, firms, consultants, and/or entities for the provision of services to the District; and

WHEREAS, the District has determined that a need exists to retain a Contractor to provide the service hereinafter specified; and

WHEREAS, **NCS Pearson, Inc.** (the “**Contractor**”) is qualified to provide the services required by the District; and

WHEREAS, the District maintains certain confidential information including trade secrets, student records, and all other information not clearly known to the public and/or confidential pursuant to law. The District’s trade secrets and other proprietary and confidential information includes the whole or any portion or phase of any of the following: student records, employee records, scientific or technical information, designs, processes, procedures, improvements, confidential business or financial information, other information relating to any of the District’s business bids, techniques, operations, services, contracts, forms, and all other trade secret information not clearly known to the public (“**Confidential Information**”). Due to the value of the District’s Confidential Information and the consequences if it is disclosed, taken or misused for any reason, the District seeks by this Agreement to protect the District’s Confidential Information and any other confidential information the Contractor acquires as a result of the Contractor’s provision of services to the District. The Contractor recognizes and respects the value of the District’s Confidential Information.

NOW, THEREFORE, the parties desire to enter into this Agreement subject to the following terms and conditions:

1. **Scope of Services.** The Contractor shall perform the Services as follows: **Provide Online Platform for NNAT3 Cognitive Assessment as required by the State of Colorado.** The Contractor will provide the services consistent with generally accepted industry standards for the Contractor’s customary services. On the effective date of this Agreement, and during the term of this Agreement, the Contractor will be fully qualified and will have all licenses, permits, certificates, registrations, and approvals needed to perform its obligations under this Agreement.
2. **Schedule.** The District and the Contractor agree that the services shall be provided at the following mutually agreed locations and times, or as agreed to in writing by the parties after the approval of this Agreement: **As needed, District Wide.**
3. **Term.** The provision of services under this Agreement shall commence on **July 1, 2020**, and will terminate on **June 30, 2021**, subject to any termination rights. The Contractor understands and agrees that the District has no obligation to extend this Agreement’s term, or contract for the provision of any future services, and makes no warranties or representations otherwise.
4. **Remuneration.** The Contractor’s fee the District is obligated to pay for the services rendered under this Agreement is as follows: **\$10.50 per license** and under no circumstances whatsoever shall the fee exceed **\$26,827.50**. The District shall process the Contractor’s payment within thirty (30) days from the receipt of a valid invoice to the District’s Accounts Payable office.
5. **Invoicing Requirements.** The Contractor shall furnish the following information within invoices that are submitted for request for payment to the District:
  - a. Dates of which services were rendered
  - b. Detailed description of the services or activities performed
  - c. If services were on a “fixed price” basis, a summary of provided milestones as per the scope of work shall be furnished
  - d. Bill rate or compensation for the services rendered
  - e. All ‘Other Direct Expenditures’ shall include-vendor name, expense type, expense description, and date of

expense.

**6. Independent Contractor.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the District. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the District and the District shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this agreement. The parties agree that the District will not:

- a. Require the Contractor to work exclusively for the District; and
- b. Establish a quality standard for the Contractor, or oversee the actual work or instruct the Contractor as to how the work is to be performed, except the Parties agree as stated in Paragraph 1 that the Contractor's services will be consistent with generally accepted industry standards for the Contractor's customary services and products; and
- c. Pay the Contractor a salary or hourly wage, but rather will pay only the compensation stated in Paragraph 4; and
- d. Terminate the Contractor's current services for particular work the Contractor accepts from the District unless the Contractor violates the terms of this Agreement or fails to produce a result that meets the specifications of this Agreement; and
- e. Provide more than minimal training for the Contractor; and
- f. Provide tools or benefits to the Contractor; and
- g. Dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established through a written agreement mutually acceptable to both Parties for particular work the Contractor accepts from the District; and
- h. Pay the Contractor individually if the Contractor is an individual; instead, the District will make all compensation checks payable to the trade or business name under which the Contractor does business; or
- i. Combine its business operations in any way with the Contractor's business, but instead both Parties will maintain their own operations as separate and distinct.

**7. No Agency Created.** The Contractor agrees and understands that no authority exists through this Agreement permitting the Contractor to enter into any third party contract, assume any obligation, or makes any representation to third parties on behalf of, or which may bind the District.

**8. Conflict of Interest.** The signatories aver that to their knowledge, no employee of the District has any personal or beneficial interest whatsoever in the service or property described in this agreement. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**9. No Unauthorized Use of Names.** Neither party will use the other's name in any advertisement, promotion, business card, or similar circumstance without the other party's prior written consent.

**10. Assignment Prohibited.** The Contractor shall not assign any of the services that require performance under the Agreement. In this regard, the Contractor understands that the performance of the scope of work is considered personal services under this Agreement.

**11. Compliance with Law and District Policies.** Contractor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices. Contractor shall also comply with all applicable District policies. Contractor shall complete a criminal background check on all employees who work under this Agreement and maintain records of such during the term of the Agreement. Those employees who have been convicted of, pled no contest to, or received a deferred sentence or deferred prosecution for any crime involving a child will not be allowed to work on District property, with District staff or students, or have access to District information. Contractor shall provide proof of background checks upon request by the District. Contractor will be responsible for following all federal, state, and local privacy and confidentiality requirements in performing background checks.

**12. Modification/Entire Agreement/No Prior Agreement.** This Agreement, along with Terms and Conditions of Sale and Use of Pearson Products (referred as "Terms of Use"), attached herewith as Exhibit A, constitutes the entire understanding between the parties hereto and may not be modified and/or amended unless any such modification or amendment is reduced to writing and signed by both parties. The Contractor further understands and agrees that this Agreement supersedes any prior written or verbal agreement, promise, representation, understanding, or course of conduct between the parties.

**13. Termination/Revocation.** Either party may revoke or otherwise terminate this Agreement, with or without cause, by notifying the other party in writing of its intention to take such action. Any such writing shall be sent to the other party by certified mail, return receipt requested, and shall be effective thirty (30) days after the date of mailing. In addition, either Party shall have to the right to terminate this Agreement, in whole or in part, if the other party breaches any of its obligations under this Agreement and fails to cure the same within thirty (30) days after receipt of written notice of such breach or default. Notwithstanding the above, there shall be no cure period for District's breach of Contractor's Intellectual Property Rights or the Terms of Sale and Use. In the event of termination, the District shall be obligated to pay the Contractor only for services rendered up to the effective date of termination. The District's obligations under this Agreement shall automatically terminate in the event of the insolvency, receivership, bankruptcy filing, or dissolution of Contractor. In addition, the District may terminate this Agreement immediately without prior notice if the Contractor commits an act of fraud, dishonesty, or any other act of negligent, reckless or willful misconduct in providing services to the District, or if any contract by the District with any third party on which this Agreement substantially depends is terminated or the District is unable for any other reason to provide services for to the party/parties to that contract.

**14. Fund Availability.** Financial obligations of the District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**15. Indemnification.** The Contractor agrees to indemnify, defend and hold the District harmless from and against any claim, cause of action, judgment, loss, demand, suit, or legal proceeding brought against the District or its employees, representatives, or agents, which was occasioned by the negligence or willful misconduct of the Contractor and/or its employees, subcontractors, or agents, provided that, Contractor is given prompt written notice of any such claim and is accorded the opportunity, at its own expense, to handle the defense against any such claim. The defense and/or settlement of any such claim by the District without such notice and opportunity to the Contractor shall relieve the Contractor of any further obligations with regard to any such claim.

**16. Governing Law.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations or which purports to negate this or any other provision of this Agreement in whole or in part shall be null and void.

**17. Severability.** If it is found by a court of competent jurisdiction or by operation of law that a term or provision of this Agreement is invalid or unenforceable, the remainder of the Agreement shall be unimpaired and continue in force and effect, and the invalid or unenforceable term or provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid or unenforceable term or provision.

**18. Governmental Immunity.** No term or condition of this agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

**19. Binding Arbitration Prohibited.** The District does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

**20. Insurance.** The District will not include the Contractor as an insured under any policy the District has for itself, including, without limitation, any liability, life, collision, comprehensive, health, medical, workers' compensation or unemployment compensation insurance policy. The Contractor shall provide the insurance as the service requires and no later than seven days after execution of this Agreement, the Contractor shall provide the District with certificates of insurance evidencing each of the types and amounts specified below:

- a. Standard Workers' Compensation coverage as required by Colorado law.
- b. Comprehensive General Liability Insurance for operations and contractual liability adequate to cover the liability assumed hereunder and with limits of not less than \$1,000,000 for each occurrence and \$500,000 for bodily injury or property damage, and \$5,000 for medical expenses for any one person.
- c. Automobile Liability Insurance in those instances where the Contractor uses an automobile, regardless of ownership, for the performance of Services.

Insurance coverage shall not be reduced below the limits described above or canceled without notification to District of such cancellation, in accordance with the policy provisions. Certificates of such insurance shall be provided to the District upon request. With regard to all insurance, such insurance shall (i) be primary insurance to the full limits of liability herein before stated; and (ii) should the District have other valid insurance covering the loss, the District insurance shall be excess insurance only; and (iii) the District shall be named as an additional insured.

**21. No Waiver.** No assent, expressed or implied, by either party to any breach of any obligation or covenant by the other party shall be construed as a waiver of any subsequent or other breach by that party. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, unless it is in a written document executed by the party against whom the waiver is sought to be enforced.

**22. Public Contracts for Services.** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5- 102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this agreement. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this agreement is being performed, (b) shall notify the subcontractor and the District within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the District a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the District may terminate this agreement for breach and, if so terminated, Contractor shall be liable for damages.

**23. Public Contracts with Natural Persons.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this agreement.

**24. Paragraph Headings.** The captions and headings set forth herein are for convenience of reference only, and shall not be construed to limit or define the terms and provisions hereof.

**25. Conflict.** In the event of a conflict between the terms of the Agreement and any exhibits attached to this Agreement, the terms of this Agreement shall prevail.

**26. Relief the District May Seek.** The Contractor further agrees that, if the Contractor violates Paragraph 27 of this Agreement, it would be difficult to determine the damages the District would suffer including, but not limited to, losses attributable to lost confidential information. Accordingly, the Contractor agrees that if the Contractor violates Paragraphs 27 of this Agreement, the District will be entitled to an Order for injunction relief and/or for specific performance, or their equivalent, from a court, including requirements that the Contractor take action or refrain from action to preserve the secrecy of the District's Confidential Information and to protect the District from additional damages, and the Contractor agrees the District does not need to post a bond to obtain an injunction and waives the Contractor's right to require such a bond.

**27. Confidential Information Belongs Solely to the District.** The District's Confidential Information and all other confidential information and data relating to the District's business are the District's exclusive property, and the Contractor therefore agrees that:

- a. All notes, data, reference materials, sketches, drawings, memoranda, disks, documentation and records in any way incorporating or reflecting and of the Confidential Information and all proprietary rights in the Confidential Information, including copyrights, trade secrets and patents shall belong exclusively to the District;
- b. At all times while this Agreement is in effect, the Contractor will keep secret and will not disclose to any third party, take or misuse any of the District's Confidential Information, or any other confidential information the Contractor acquires or has access to because of its provision of services;
- c. At all times while this Agreement is in effect, the Contractor will not use or seek to use any of the District's Confidential Information for the Contractor's own benefit or for the benefit of any other person or business in any way adverse to the District's interests;
- d. The Contractor will cause each of its Employees who may gain access to any of the District's Confidential Information, to execute a confidentiality agreement reasonably acceptable to the District before disclosing any Confidential Information to that Employee or permitting that Employee to have access to any Confidential Information.
- e. On the District's request or on termination of this Agreement, the Contractor will promptly return to the District all its property, specifically including all documents, disks or other computer media or other materials in the Contractor's possession or control that contain any of the District's Confidential Information.
- f. After termination of this Agreement, the Contractor will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any of the District's Confidential Information; and
- g. The Contractor will promptly advise the District of any unauthorized disclosure or use of the District's Confidential Information by any person or entity.

The Parties agree this provision is intended to express the District's rights and the Contractor's duties to the District under the Colorado Uniform Trade Secrets Act, C.R.S. 7-74-101, et seq., and other applicable law. Additionally, the Contractor's obligation regarding the preservation and return of the District's Confidential Information will continue indefinitely, both during and after the time during which the Contractor may provide services and products to the District.

**28. Notices, Process.** Any notice this Agreement requires must be in writing and will be effective only if hand-delivered or sent by certified U.S. mail, return receipt requested, to the party entitled to receive the notice at the Contractor's address provided in this Agreement, while the District's Notice address is as follows: Adams 12 Five Star Schools, Chief Operating Officer, 1500 East 128th Avenue, Thornton, CO 80241; or at such other address that either party may provide later to the other party. Each party agrees to waive service of process in any action brought to enforce or to interpret this Agreement and the parties further agree that service of the complaint and any other pleading, discovery, order or document in any such action that would otherwise have to be served by personal service will be deemed served three (3) days after being sent to the other party and that party's attorney as provided above.

**29. Work for Hire.** To the extent that this Agreement expressly or impliedly requires the Contractor to produce deliverable items which may be subject to patent, copyright, trade secret, or proprietary rights of any kind, submitted to the District by the Contractor under this Agreement belong exclusively to the District and subject to the applicable laws of the State of Colorado. For the avoidance of doubt, Contractor will retain all ownership and related licensed rights in any intellectual property, existing software, data, materials or products, and any mere enhancements, modifications, translations or revisions of any such intellectual property, software, data, materials, or products, which may be furnished by Contractor in furtherance of the products and services to the District. Pearson materials and services are provided under a limited license basis as governed by the Terms and Conditions of Sale and Use of Pearson Products and any applicable license agreements.

Contractors Authorized Contact for Agreement

Sandra Juarez, Assessment Representative  
Printed Name and Title

sandra.juarez@pearson.com  
Email Address

210-339-5681  
Phone Number

**IN WITNESS OF THE PARTIES AGREEMENTS**, the District and the Contractor have executed this Agreement on the date(s) indicated below:

Acknowledged Before Me

**CONTRACTOR: NCS PEARSON, INC.**

By Arthur Valentine

Arthur Valentine  
Signature

This 14 day of December, 2020

Arthur Valentine, Managing Director for Clinical Assessment  
Name and Title

Witness My Hand and Official Seal

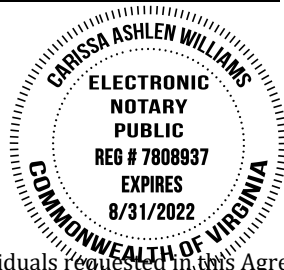
19500 Bulverde Road, Suite 201  
Address

My Commission Expires: August 31, 2022

San Antonio, TX 78259  
City, State, Zip

By: Carissa Ashlen Williams  
Notary Public

41-0850527  
Tax ID



04-385-6723  
DUNS Number (optional)

12/14/2020  
Date

I hereby certify that the individuals requested in this Agreement are not school district employees, and are not family members of mine. Any finding to the contrary may require repayment and/or further disciplinary action up to and including termination.

**ADAMS 12 FIVE STAR SCHOOLS  
IN THE CITY OF THORNTON, COUNTY OF ADAMS  
STATE OF COLORADO**

RECOMMENDED BY:

Priscilla Straughn  
Site Administrator's Signature

Priscilla Straughn, Chief Academic Officer  
Name and Title

Learning Services  
School or Department

12/22/2020  
Date

APPROVED BY:

Gail Gaskins  
Authorized Designee of the Board of Education

Gail Gaskins, Buyer  
Name and Title

1/4/21  
Date

This form must be completed in full, submitted to the District's Purchasing Department, and approved and executed by the duly authorized designee of the Board of Education prior to the commencement of the Contractor's provision of services. THE DISTRICT SHALL NOT BE LIABLE FOR PAYMENT FOR ANY SERVICES PERFORMED BY THE CONTRACTOR PRIOR TO SAID APPROVAL.

## EXHIBIT A

### TERMS AND CONDITIONS OF SALE AND USE OF PEARSON PRODUCTS

#### 1. Acceptance of Ts & Cs<sup>a</sup>

Sales of Pearson Products<sup>b</sup> and Other Publisher's Products<sup>c</sup> (together referred to as "Products") by Pearson's Clinical Assessment group<sup>d</sup> and the purchase and use of Products by Customer<sup>e</sup> are conditioned upon acceptance of these Ts & Cs. Customer agrees to these Ts & Cs by submission of a User Acceptance Form, order(s) for tests or scoring services, or by paying part or all of a Pearson Invoice. These Ts & Cs constitute the entire agreement between Pearson and Customer and supersede any purchase order terms associated with a Purchase Order (PO) number on any order. If any provision of the Ts & Cs is found to be illegal or unenforceable, the remaining provisions will be enforced. These Ts & Cs may not be waived or modified except by prior written agreement signed by a Pearson Vice President. Minnesota law will govern these Ts & Cs. Issues involving copyright and patent will be resolved under US Federal Law. **Provisions Not Applicable In New Jersey: Pursuant to the New Jersey Truth in Consumer Contract Warranty and Notice Act (TCCWNA), Sections 2, 5, 6, and 9 of these Terms of use do not apply to those persons covered by that law.**

#### 2. Warranty

Pearson warrants that the Pearson Products published directly or under license by Pearson in their standard form will not infringe any valid, third-party, U. S. patents or copyrights existing at the time of publication. This warranty does not extend to any Other Publisher's Product or to any infringement arising from the use of the Pearson Products in combination with any systems, software, or equipment supplied by a third party. If Customer promptly notifies Pearson of an infringement claim concerning a Pearson Product and accords Pearson the right, at its sole option and expense, to handle the defense of the infringement claim, Pearson will indemnify and hold Customer harmless from/against such infringement claim related solely to that Pearson Product. Pearson may, in its sole discretion, furnish Customer with a non-infringing replacement product within sixty (60) days or repurchase the remaining unconsumed Pearson Product. Except as stated herein, Pearson makes no other warranties, express or implied, with respect to the products. All other warranties, including implied warranties of merchantability and fitness for a particular purpose, are disclaimed.

#### 3. Geographical embargoes and restrictions

Please note that Pearson may restrict the sale of certain test materials within specific geographic regions because of various contractual arrangements or governmental restrictions. If the Product(s) have been rightfully obtained within the United States, Customer warrants and represents that neither the products nor any technical data received by the Customer from Pearson will be exported outside of the United States, except as authorized by the laws and regulations of the United States.

#### 4. Risk of loss and returns

Shipping within the USA is FOB Destination with freight from Pearson's warehouse charged to Customer. Returns are to be made in accordance with the [Returns Policy](#).

#### 5. Limitation of liability and limitation on claims

In no event will Pearson be liable for any indirect, incidental, consequential, exemplary, or special damages arising out of these t's & c's, purchase, or use of Pearson products or services. Notwithstanding any other provision or agreement between customer and Pearson, Pearson's total liability to any party, arising out of these t's & c's, purchase, or use of products, except as it relates to Pearson's willful misconduct, will not exceed the amount paid by customer for the products or services.

#### 6. Copyright and trade secrets

Pearson Products are protected by various intellectual property laws, including trade secrets, copyright, and trademark. Printing or reproducing copyright-protected materials or content, whether the reproductions are sold or furnished free for use, including reproduction of test items, scales, scoring algorithms, scored directions, or other content, is strictly prohibited by law and by these Ts & Cs. Pearson software outputs, including but not limited to reports, are protected as trade secrets. Trade secrets are exempt from disclosure in response to requests made pursuant to HIPAA or to any other data disclosure law that exempts disclosure of information or documents protected as trade secrets.

Customer acknowledges and agrees that the use or disclosure of Pearson trade secrets or confidential information may cause Pearson irreparable harm for which remedies other than injunctive relief may be inadequate. If Customer is required to disclose secure test materials pursuant to a subpoena or court order, please refer to Pearson's Legal Policies at [pearsonclinical.com/legal.html](http://pearsonclinical.com/legal.html).

## 7. Test security

Customer agrees to comply with the following basic principles of minimum test security:

- Test takers must not be coached using the test or receive test answers before beginning the test
- Test materials (text, graphic images, or the oral reading of items) may not be displayed, reproduced, or performed (for example, filming an administration) in any manner, electronically or otherwise, including posting on any mass media or social media site, without the prior written permission of Pearson
- Access to test materials must be limited to qualified persons with a responsible, professional interest who agree to safeguard their use
- Test materials and scores may be released only to persons qualified to interpret and use them properly
- If a test taker or the parent of a minor child who has taken a test wishes to examine test responses or results, the parent or test taker may be permitted to review the test and the test answers in the presence of a representative of the school, college, or institution that administered the test
- Test materials must not be resold, re-licensed, transferred, or otherwise redistributed for any purpose without prior written permission from Pearson.

## 8. Indemnification

To the extent permitted by law, Customer agrees to hold harmless, indemnify, and defend Pearson from and against any and all claims, charges, demands, damages, liabilities, losses, expenses, and liabilities of whatever nature and howsoever arising (including but not limited to any legal or other professional fees and the costs of defending or prosecuting any claim and any loss of profit, goodwill, and any other direct or consequential loss) incurred or suffered by Pearson directly or indirectly by reason of any act or omission that the Customer commits in breach of these Ts & Cs and the obligations and warranties contained therein.

## 9. Requests for permission to license Pearson intellectual property

Requests to reproduce, translate, modify, or adapt any Pearson Product must be submitted in writing and directed to: Intellectual Property Licensing by e-mail at [pas.licensing@pearson.com](mailto:pas.licensing@pearson.com).

## 10. Payment

Pearson will invoice institutional Customers if orders are received on official purchase orders with tax exempt certificate on file at Pearson (if applicable). All invoices are payable net 30 days. Payment must accompany other orders. Pearson accepts payment by check or money order; Credit cards (Visa, MasterCard, American Express, or Discover) are accepted for online or phone orders only. Credit cards are not accepted with email, fax, or mail orders in order to protect customer privacy. Prepayment is required for all new accounts. Charges not paid when due are subject to a late charge accruing from the due date of 1-1/2% per month or the maximum permitted by law, whichever is less. Customer is responsible for any reasonable attorney or collection fees incurred by Pearson in collecting charges not paid when due. Payment must be made in US dollars. Customer is responsible for all taxes and tariffs related to intercountry shipments. Pearson will collect and report state and local taxes applicable to the Customer's shipping address.

## 11. Orders on hold

Please note that Pearson may place your order on hold for issues relating to credit, insufficient customer information for processing the order, lack of or incomplete qualifications or other issues that would restrict the sale of an assessment. Our team is dedicated to clearing these issues as fast as possible so that you can receive your order.

## 12. Modifications of terms and conditions

Pearson reserves the right to amend pricing and these Ts & Cs at any time without prior written notice. Pearson, without any penalty or liability, reserves the right to (a) publish or replace current products with new, revised, or updated products at any time; and (b) place any product "out of print" or discontinue offering the product for purchase. The most current Ts & Cs will be posted at Pearson's Website.<sup>f</sup>

## 13. Qualifications

Customer agrees that it is Customer's responsibility to use any Products in accordance with Pearson's Qualification Policies and applicable professional guidelines<sup>g</sup>. Customer understands and agrees that the Products are intended to be used as tools in the overall assessment process, are not to be used for self-guidance, and are not designed to be used alone or to replace Customer's professional judgment. Pearson is not responsible for any claims or damages incurred in connection with Customer's or any third party's use or misuse of the Products. Customer agrees to guard against the improper use of the Products in order to retain the right to purchase those Products.



To protect their security and value, Products may not be resold, re-licensed, transferred or otherwise further distributed without prior written permission from Pearson. Reselling on any online site or by any other method is strictly prohibited and will disqualify Customer from future purchases of Pearson Products or services. Customer's purchase of Pearson Products does not grant Customer a right to reproduce additional copies of materials or content or enter any content into a computer medium, such as non-Pearson scoring system or software. However, if Customer licenses and uses Pearson software, Customer may excerpt portions of output reports, limited to the minimum text necessary to accurately describe the qualified User's significant core conclusions, for incorporation into a written evaluation of the individual, in accordance with Customer's profession's citation standards, if any. No adaptations, translations, modifications, or special versions may be made without prior permission in writing from Pearson (see Section 10). Violation of these Ts & Cs may result in the revocation of a Customer's right to purchase as a qualified Customer.

#### 14. Organizational accounts

Pearson's website and business systems include both individual and organizational level accounts. Users may purchase on behalf of themselves as an individual or be connected to one or several organizations. Being linked to an organization account and making purchases on the organization's behalf requires that a user either work for or at the behest of that organization and has prior authorization from the organization. If a user finds that they were added to an incorrect account they must contact customer support to request being removed from that account.

By being part of an organizational account, qualified users agree to allow others within that organization to purchase on their behalf. Purchases made within an organizational account may be viewed by organizational administrators. Administrators may also view any users (including their name, email address, and qualification level) that are connected to their organization's account.

If a user does not agree to these terms they must request to be removed from an organizational account by contacting Customer Support.

#### 15. Definitions and notes

<sup>a</sup> "Ts & Cs" means Pearson Terms and Conditions of Sale and Use and the Qualifications and return policies referenced in these Ts & Cs. A printed copy of the Ts & Cs, including the referenced policies, is available by calling 800-627-7271. These terms may be viewed in 12 point type at our Website.

<sup>b</sup> "Pearson Product(s)" means assessment instruments (including those formerly published by AGS Publishing and Harcourt Assessment, Inc.) and/or materials (including but not limited to software, administration and user reference materials, manipulatives, reports and services) published by Pearson.

<sup>c</sup> "Other Publisher's Products" means assessment instrument(s) and/or material(s) (including but not limited to software, administration and user reference materials, manipulatives, reports, and services not published by Pearson.

<sup>d</sup> "Pearson" means the Clinical Assessment business unit of NCS Pearson, Inc.

<sup>e</sup> "Customer" means the purchaser and qualified User of a Product.

<sup>f</sup> "Website" means PearsonAssessments.com, PearsonClinical.com, and/or Pearsonassess.com

<sup>g</sup> "applicable professional guidelines" include but are not limited to the Standards for Educational and Psychological Testing, published by the American Educational Research Association (AERA), American Psychological Association (APA), and the National Council on Measurement in Education (NCME), Pearson software license (if applicable) and all federal, state, and local laws and regulations, including, but not limited to HIPAA and FERPA. Use of psychological tests in employment-related situations may be subject to certain laws including Title VII of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act of 1990, as amended; and other federal, state, and local laws and regulations.

#### 16. Product License Agreements and Terms

In addition to the Ts and Cs herein, the following Product specific license Terms and Conditions are incorporated into this agreement and apply only to the purchase and use of those specific Products:

- [Q-Interactive](#)
- [Q-Global \(PDF | 85.82 KB\)](#)
- [Digital Assessment Library \(PDF | 43.05 KB\)](#)

\*\*Terms and conditions also includes these additional [Legal Policies](#), [Website Terms of Use](#), [Privacy Statement](#), [Patent Notice](#), and [Accessibility policies](#).

***Last updated: June 3, 2020***

## **Adams 12 Five Star Schools Data Privacy Addendum**

The provisions of this Data Privacy Addendum are a part of the Independent Contractor Agreement and apply to all Contractors that will or may have access to student information.

### **1. Covered Data**

As used in this addendum, student personally identifiable information (PII) means any and all data or information collected, maintained, generated or inferred that alone or in combination personally identifies an individual student or the student's parent or family, in accordance with C.R.S. § 22-16-103(13) & 34 C.F.R. § 99.3.

### **2. Compliance with State and Federal Law**

All data sharing, use, and storage will be performed in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 as amended, 20 U.S.C. § 1232g & 34 C.F.R. § 99 ("FERPA") and the Colorado Student Data Transparency and Security Act, C.R.S. § 22-16-101, *et seq.*

### **3. Contractor Obligations:**

- 3.1 *Uses and Disclosures as Provided in the Agreement.* Contractor may use and disclose the student PII provided by the District only for the purposes described in the Agreement and only in a manner that does not violate local or federal privacy regulations. Only the individuals or classes of individuals will have access to the data that need access to the student PII to do the work described in the Agreement. Contractor shall ensure that any subcontractors who may have access to student PII are contractually bound to follow the provisions of the Agreement.
- 3.2 *Nondisclosure except as Provided in the Agreement.* Contractor shall not use or further disclose the student PII except as stated in and explicitly allowed by the Agreement and state and federal law. Contractor does not have permission to re-disclose student PII to a third party.
- 3.3 *Safeguards.* Contractor agrees to take appropriate administrative, technical and physical safeguards, consistent with industry standards, reasonably designed to protect the security, privacy, confidentiality, and integrity of student PII. Contractor shall ensure that student PII is secured and encrypted to the greatest extent practicable during use, storage and/or transmission.
- 3.4 *Reasonable Methods.* Contractor agrees to use "reasonable methods" to ensure to the greatest extent practicable that Contractor and all parties accessing student PII are compliant with state and federal law. Specifically, this means that only de-identified student PII may be used for the purposes of educational research and Contractor must protect student PII from re-identification, further disclosures, or other uses, except as authorized by the District in accordance with state and federal law. Approval to use student PII for one purpose does not confer approval to use it for another.
- 3.5 *Data Destruction.* Student PII must be destroyed in a secure manner or returned to the District at the end of the work described in the Agreement. Contractor agrees to send a written certificate that the data was properly destroyed or returned within Ninety (90)

days of the end of the work as described in the proposal. Additionally, during the term of the Agreement, Contractor shall destroy student PII upon request of the District as soon as practicable. Contractor shall destroy student PII in such a manner that it is permanently irretrievable in the normal course of business.

- 3.6 *Minimum Necessary.* Contractor attests that the student PII requested represents the minimum necessary data for the services as described in the Agreement and that only necessary individuals or entities who are familiar with and bound by this addendum will have access to the student PII in order to perform the work.
- 3.7 *Authorizations.* When necessary, Contractor agrees to secure individual authorizations to maintain or use the student PII in any manner beyond the scope or after the termination of the Agreement.
- 3.8 *Data Ownership.* The District is the data owner. Contractor does not obtain any right, title, or interest in any of the data furnished by the District.
- 3.9 *Misuse or Unauthorized Release.* Contractor shall notify the District as soon as possible upon discovering the misuse or unauthorized release of student PII held by Contractor or one of its subcontractors, regardless of whether the misuse or unauthorized release is the result of a material breach of the Agreement.
- 3.10 *Data Breach.* In the event of a data breach, Contractor will be responsible for contacting and informing any parties, including students, which may have been affected by the security incident. Contractor will promptly notify the District upon the discovery of any data breach.

#### **4. Prohibited Uses**

- 4.1 Contractor shall not sell student PII; use or share student PII for purposes of targeted advertising; or use student PII to create a personal profile of a student other than for accomplishing the purposes described in the Agreement.
- 4.2 Notwithstanding the previous paragraph, Contractor may use student PII to ensure legal or regulatory compliance or take precautions against legal liability; respond to or participate in the judicial process; protect the safety of users or others on Contractor's website, online service, or application; or investigate a matter related to public safety. Contractor shall notify the District as soon as possible of any use described in this paragraph.

#### **5. School Service Contract Provider Additional Provisions**

If Contractor is a School Service Contract Provider – defined in C.R.S. § 22-16-103 as an entity that enters into a contract with the District to provide a website, online service, or application that is designed and marketed primarily for using in a school and collects, maintains or uses student PII – the following provisions shall apply:

- 5.1 *Data Collection Transparency and Privacy Policy.* Contractor shall provide clear information that is understandable by a layperson explaining the data elements of student PII that Contractor collects, the learning purpose for which it collects the student PII, and how Contractor uses and shares the student PII. The information must include a description of all student PII that Contractor collects regardless of whether it is initially collected or ultimately held individually or in the aggregate. Contractor shall provide the District with a

link to the information on a webpage maintained and updated by Contractor so that the District may post the link on its website.

- 5.2 *Notice Before Making Changes to Privacy Policy.* Contractor shall provide notice to the District before making material changes to Contractor’s privacy policy that affects student PII.
- 5.3 *Access to Student PII.* Upon request by the District, Contractor agrees to provide in a readable electronic format a copy of all student PII maintained by the Contractor for individual students.
- 5.4 *Correction of Inaccurate Student PII.* Requests by a student or a parent or legal guardian of a student for review and/or correction of Student Data shall be submitted to District. District shall review the request for review and/or correction for appropriateness and determine whether District can fulfill the request. If District requires reasonable support and assistance from the Contractor in order to fulfill the request, District shall submit a request for assistance in writing to the associated Contractor’s support team. Contractor may request additional information from District in order to confirm the validity of the request and to provide the assistance requested. District agrees that Contractor shall not be held responsible for the unintended production or modification of Student Data, where such production or modification is performed at District’s request.
- 5.5 *Grounds for Termination.* Contractor understands that any breach by Contractor or any subcontractor of this addendum, state or federal law regarding student PII, or the Contractor’s privacy policy described above, may be grounds for termination of the Agreement in accordance with C.R.S. § 22-16-107(2)(a).

**NCS Pearson, Inc.**

Vendor Name

  
Adam Gierl (Dec 16, 2020 14:13 CST)

Signature

Adam Gierl, Director of Sales for Clinical Assessment

Name and Title

12/16/2020

Date

**ADAMS 12 FIVE STAR SCHOOLS  
IN THE CITY OF THORNTON, COUNTY OF ADAMS  
STATE OF COLORADO**



Site Administrator’s Signature

Gail Gaskins, Buyer

Name and Title

12/22/20

Date