



Liberty Common School

1725 Sharp Point Dr. Fort Collins, CO 80525

Liberty Common High School

2745 Minnesota Dr. Fort Collins, CO 80525

EXHIBIT A

CONFIDENTIALITY, PRIVACY, AND SECURITY ADDENDUM

This Confidentiality Addendum (“Addendum”) is hereby incorporated into any Agreement between Liberty Common School (LCS) and NCS Pearson, Inc. (Contractor). Attached after the Addendum is the referenced Agreement. This Addendum is part of the Contract between LCS and the Contractor.

RECITALS

- A. LCS wishes to disclose certain information to Contractor pursuant to the work being performed by Contractor, some of which may constitute Student Personally Identifiable Information (PII) (defined below).
- B. LCS and Contractor intend to protect the privacy and provide for the security of Student PII (PII) disclosed to Contractor pursuant to this Contract. Contractor shall adhere to 22-16-101 *et. al.*, C.R.S.; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; and 34 C.F.R. Part 99.

The parties agree as follows:

A. Definitions

- 1. "Aggregate Data" means data collected and reported at the group, cohort, or institutional level that is aggregated using protocols that are effective for preserving the anonymity of each individual included in the data.

2. "Destroy" refers to data destruction, and means to remove Student PII from Contractor's systems, paper files, records, databases, and any other media regardless of format, in accordance with governing law and current industry standards, so that the Student PII is permanently irretrievable in the Contractor's and Subcontractor's normal course of business.
3. "Incident" means an accidental or deliberate activity that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources. Incidents include, but are not limited to (i) successful attempts to gain unauthorized access to a LCS system or Student PII regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a LCS system for the processing or storage of data; (iv) a material breach of the Contract that involves the misuse or unauthorized release of Student PII; or (v) changes to LCS system hardware, firmware, or software characteristics without LCS's knowledge, instruction, or consent.
4. "School Service" means an internet website, online service, online application, or mobile application that is designed and marketed primarily for use in a preschool, elementary school, or secondary school; is used at the direction of teachers or other employees of LCS; and collects, maintains, or uses Student PII. School Service does not include an internet website, online service, online application, or mobile application that is designed and marketed for use by individuals or entities generally, even if it is also marketed to a United States preschool, elementary school, or secondary school.
5. "School Service Contract Provider (Contractor)" means an entity, other than a public education entity or an institution of higher education that enters into a formal, negotiated contract with LCS to provide a School Service.
6. "Student PII" means information that, alone or in combination, personally identifies an individual student or the student's parent or family, and that is collected, maintained, generated, or inferred by a public education entity, either directly or through a School Service, or by a School Service Contract Provider. PII also includes other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.
7. "Subcontractor" means any third party engaged by Contractor to aid in performance of Contractor's obligations. LCS understands that Contractor will rely on one or more subcontractors to perform services under this Agreement. Contractor agrees that all subcontractors, and any successor entities, will be subject to state and federal laws and to the terms of the Agreement, and any data disclosed to subcontractors shall be revealed to LCS upon request.

8. "Targeted Advertising" means selecting and sending advertisements to a student based on information obtained or inferred over time from the student's online behavior, use of applications, or PII. Targeted Advertising does not include advertising to a student at an online location based on the student's current visit to that location or in response to the student's request for information or feedback and is without the collection and retention of a student's online activities over time. Targeted Advertising also does not include adaptive learning, personalized learning, or customized education.
9. "Data" means all Student PII and other non-public information. Data may not be used for any purposes other than the specific purposes outlined in this Agreement.

B. General Provisions

1. LCS reserves all right, title, and interest, including all intellectual property and proprietary rights, in and to system data, PII, and all related data and content provided by the LEP to the Contractor to fulfill the obligations in the underlying contract.
2. Contractor shall comply with all laws and regulations concerning confidentiality of PII.
3. Contractor shall, as soon as reasonably practicable, forward to LCS's principal representative any request or demand from a third party for PII in the possession of Contractor.
4. Upon written request of LCS, Contractor shall submit its data processing facilities for an audit of the measures referred to in this Addendum by LCS or by a LCS approved delegate.
5. Contractor shall send LCS a written notice, which includes a clear explanation of the proposed changes prior to making a material change to Contractor's privacy policies. Contractor shall require LCS's informed consent before any new privacy policies are implemented.

C. Subcontractors

1. Contractor shall not use a Subcontractor or disclose PII to a Subcontractor unless and until the Contractor contractually requires the Subcontractor to comply with C.R.S. §§22-16-108 through 22-16-110 and the requirements of this Addendum.
2. If Contractor discovers that Subcontractor or any subsequent subcontractor has committed a material breach of the contract between Contractor and Subcontractor that involves the misuse or unauthorized release of PII, Contractor acknowledges that LCS may terminate the contract with Contractor.
3. Upon discovering the misuse or unauthorized release of PII held by a Subcontractor or any subsequent Subcontractor, Contractor shall, as soon as reasonably practicable, notify LCS of such misuse or unauthorized release, regardless of whether the misuse or unauthorized release by the Subcontractor is a result of a material breach of the terms of the Contract or results in an Incident.

4. No later than thirty (30) days after the signing of this Contract, upon request of LCS, Contractor will provide LCS information detailing the purpose and the scope of the contract between the Contractor and all Subcontractors and the types and uses of PII that Subcontractor(s) holds under the Contract between the Contractor and Subcontractor(s).
5. Contractor shall not maintain or forward PII to or from any other facility or location except for backup and disaster recovery purposes. Any backup or disaster recovery contractor shall be considered a Subcontractor that must comply with the Subcontractor requirements in this Addendum.

D. End of Agreement

1. Should Contractor not comply with the requirements of this Addendum and that non-compliance results in the misuse or unauthorized release of PII by the Contractor, LCS may, upon thirty (30) day prior written notice, terminate the Contract as provided under this Contract and in accordance with C.R.S. Section 22-16-107 (2)(a).
2. Upon request by LCS made before or within thirty (30) calendar days after termination of the Contract, Contractor shall make available to LCS a complete and secure (i.e. encrypted and appropriately authenticated) download file of all data, including, but not limited to, all PII, schema and transformation definitions, or delimited text files with documented, detailed schema definitions along with attachments in its native format.
3. In compliance with the prescriptions of C.R.S. 22-16-110 (3), following the termination of this Contract, Contractor shall, within thirty (30) calendar days, destroy all PII and data collected, generated, or inferred as a result of this Contract. The Contractor shall notify LCS of the date upon which all PII is destroyed.
4. LCS retains the right to use the established operational services to access and retrieve PII stored on Contractor's infrastructure at its sole discretion.

E. Use

1. In compliance with C.R.S. 22-16-109 (1)(a), the Contractor shall not use or share PII beyond the purposes set forth as follows:
 - a. To only carry out the Contractor's responsibilities listed in Exhibit A, Statement of Work.
2. In the event the Contract requires Contractor to store, process or transfer PII, Contractor shall store, process, and transfer PII only in or to facilities located within the United States.
3. Contractor shall destroy student's PII upon request by LEP. Deletion requests should be in writing on LEP letterhead bearing the signature of a LEP official. Contractor may request additional information in order to confirm the validity of the request and to fulfill it. LEP shall include sufficient detail in the request for Contractor to determine, with specificity, the student PII that is to be deleted. Contractor shall then carry out the deletion request as soon as reasonably practicable, with reasonable

support and assistance from LEP, as necessary. LEP agrees that Contractor shall not be held responsible for the unintended deletion of student's PII, where such deletion is performed at the LEP's request.

4. If Contractor seeks to share or publicly release PII without complying with the requirements of this Addendum for Subcontractors, Contractor must de-identify or aggregate the PII prior to providing that information to a third party or releasing the data publicly. For data that is de-identified or aggregate, the following requirements apply:
 - a. PII that must be aggregated or de-identified shall include not only direct identifiers, such as names, student IDs or social security numbers, but also any other sensitive and non-sensitive information that, alone or combined with other information that is linked or linkable to a specific individual, would allow identification.
 - b. Simple removal of direct identifiers from the data to be released shall not constitute adequate de-identification.
 - c. Contractor shall de-identify data to remove cumulative re-identification risks.
 - d. Contractor shall remove all PII that in conjunction with previous data releases and other reasonably available information, including publicly available directory information and de-identified data releases from education records and other sources would allow for identification of a particular student.
 - e. Contractor shall have specific steps and methods used to de-identify or aggregate information to protect the confidentiality of the individuals. Contractor shall, at the request of LCS, provide LCS with a document that lists the steps and methods the Contractor shall use to de-identify the information.
 - f. Any aggregate or de-identified data that is not properly de-identified or aggregated and is transferred to a third party without the controls of this Addendum for subcontractors or publicly released will be considered an Incident, misuse of PII, or unauthorized disclosure of PII.

F. Incident

1. If Contractor becomes aware of an Incident, misuse of PII, or unauthorized disclosure involving any PII, it shall, as soon as reasonably practicable, notify LCS and cooperate with LCS regarding recovery, remediation, and the necessity to involve law enforcement, if any.
2. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person whose personal information may have been compromised by the Incident.

3. Contractor shall determine the cause of an Incident and produce a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present its analysis and remediation plan to LCS within ten (10) calendar days of notifying LCS of an Incident. LCS reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce its analysis and plan within the allotted time, LCS, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse LCS for the reasonable costs thereof.
4. Disclosure of PII by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, LCS, or their respective agents. Contractor shall indemnify, save, and hold harmless LCS, its employees, and agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Addendum, provided, however, that Contractor shall have no responsibility for any unauthorized disclosure that is caused by LEP. Contractor's indemnification obligation herein is expressly conditioned on LEP providing Contractor with prompt notice of any claim for which indemnification is sought, the opportunity to handle the defense and settlement of the claim, and with reasonable assistance and cooperation in defending against and resolving any such claim. Notwithstanding any other provision of this Contract, Contractor shall be liable to LCS for all direct, consequential, and incidental damages arising from an Incident caused by Contractor or its Subcontractors.
5. In the event of an Incident, Contractor shall provide LCS or its designated representatives with access seven (7) days a week, twenty-four (24) hours a day, for the purpose of evaluating, mitigating, or resolving the Incident.

G. Disallowed Activities

A Contractor that uses, creates, or acquires PII shall not knowingly engage in any of the following activities:

1. Contractor shall not collect, use or share PII for any purpose not specifically authorized by the Contract. Contractor may use PII for a purpose not strictly authorized by the Contract only with the written consent of LCS and with the written consent of the student (provided that the student is over the age of 18) or the student's parent or legal guardian.
2. Contractor shall not use PII in a manner or disclose PII to any third party that is materially inconsistent with the Contractor's privacy policy, except as stated in subsection 3, below, of this Section G.
3. Contractor may use PII in a manner that is inconsistent with Contractor's privacy policy without violating the terms of this Contract provided that the use does not involve selling or using PII for Targeted Advertising or creating a personal profile of the student, and the use is for one or more of the following purposes:
 - a. To ensure legal or regulatory compliance or to take precautions against liability.
 - b. To respond or to participate in the judicial process.

- c. To protect the safety of users or others on Contractor's website, online service, online application, or mobile application.
- d. To investigate a matter related to public safety.

If Contractor uses or discloses PII in accordance with Section G.3., Contractor shall, without undue delay, notify LCS of the use or disclosure of the PII.

4. Contractor shall not sell PII, except that this prohibition does not apply to the purchase, merger, or other type of acquisition of the Contractor, or any assets of the Contractor, by another entity, so long as the successor entity continues to be subject to the provisions of this Contract.
5. Contractor shall not use or share PII with any party for the purposes of Targeted Advertising to students.
6. Contractor shall not use PII to create a personal profile of a student other than for supporting the purposes authorized by LCS or with the consent of the student (provided that the student is over the age of 18) or the student's parent or legal guardian.

H. Data Security

1. Contractor shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of PII. At a minimum, the information security program shall include the requirements listed in this Section H – Data Security.
2. Contractor shall provide physical and logical protection for all related hardware, software, applications, and data that meet or exceed industry standards and requirements as set forth in this Contract. Contractor shall take full responsibility for the security of all PII in its possession, and shall hold LCS harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof, provided that, such unauthorized disclosure or loss occur due to an act or omission by Contractor, or its employees, agents, Subcontractors, or assignees. Contractor shall provide for the security of such PII, in a form acceptable to LCS, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, network firewalls, intrusion detection (host and network), data security logging and monitoring systems, and audits.
3. Contractor shall provide LCS or its designated representatives with access, subject to Contractor's reasonable access security requirements, for the purpose of inspecting and monitoring access and use of PII, maintaining LCS systems, and evaluating physical and logical security control effectiveness.
4. Contractor shall perform, in a form reasonably acceptable to LCS, current background checks on all of its respective employees and agents performing services or having access to PII provided under this Contract. The background checks must include, but are not limited to the following areas: County, State, National and Federal Criminal Records and a Sex Offender Registry Search. A background check

performed within thirty (30) calendar days prior to the date such employee or agent begins performance or obtains access to PII shall be deemed to be current.

5. Contractor shall have strong access controls in place.
6. Workstations and other data processing devices must automatically lock when not in use, and must be manually locked when left unattended.
7. Contractor shall protect all PII with a complex password. Contractor shall ensure passwords are confidential and prohibit the sharing of passwords. Passwords must not be written down or stored in an unsecure location. Contractor shall periodically change passwords and shall ensure passwords are not reused. Contractor shall have password locks for laptops and mobile devices.
8. Contractor shall disable and/or immediately delete unused and terminated user accounts. Contractor shall periodically assess account inactivity for potential stale accounts.
9. Contractor shall not share PII on display screens, during demonstrations or presentations, or when sharing screen shots for troubleshooting or other purposes.
10. Contractor shall implement annual intrusion penetration/vulnerability testing.
11. Contractor will encrypt PII in transit and PII at rest on central computing systems. Contractor shall also encrypt any backup, backup media, removable media, tape, or other copies. In addition, Contractor shall fully encrypt disks and storage for all laptops and mobile devices.
12. Contractor shall provide annual, mandatory security awareness and PII handling training for all of its employees/independent contractors handling PII pursuant to this Contract.
13. Contractor shall install and maintain on computers accessing or processing PII appropriate endpoint security anti-virus and anti-malware software. Contractor shall ensure all Contractor's data processing systems, servers, laptops, PCs, and mobile devices are regularly scanned and have all security patches applied in a timely manner.
14. Contractor shall use a secure method such as Secure File Transfer Protocol (SFTP) or comparable method to transmit PII. Contractor shall never send PII via email or transport PII on removable media.
15. Contractor shall have physical security in buildings housing PII, along with controlled physical access to buildings and/or data centers.
16. Contractor's devices used to copy or scan hard copies of PII must have encrypted storage. Contractor shall scrub storage devices when equipment is retired. Hard copies containing PII are discouraged and must be physically secured, not left unattended, and physically destroyed.
17. Contractor shall protect PII stored in cloud-based systems in the same manner as local

PII. Use of free cloud based services is prohibited. Contractor shall use secondary encryption to protect PII in cloud storage. Cloud environments, when employed by Contractor, must be fully documented by Contractor and open to LCS inspection and verification. Access to Contractor's cloud based computing environments is only permitted via restricted access, by VPN or least privileged access lists, and never accessible directly via the Internet.

I. Transparency Requirements

1. Contractor shall facilitate access to and correction of any factually inaccurate student PII in response to a request from a local education provider or from LCS.
2. Contractor acknowledges that LCS will post this Contract to LCS's website.
3. Contractor shall provide transparency to parents, school districts and the public about its collection and use of PII including posting the following information on its public website:
 - a. Contact information for an individual within Contractor's organization that can provide information on or answer questions related to the use of PII by Contractor.
 - b. An explanation of how the PII will be shared with Subcontractors or disclosed to any third party or successor entities.
 - c. The types of PII that are collected, generated, or used by the Contractor. This information must include all PII that is collected regardless of whether it is initially collected or ultimately held individually or in the aggregate.
 - d. An explanation of the PII, an explanation of how the PII is used, and the learning purpose for which the PII is collected and used.

Contractor shall update this information on its website as necessary to maintain accuracy.

4. Contractor shall, upon request from LCS, provide the names of Subcontractors, data elements accessible by Subcontractors, and Subcontractors use or planned use of sharing PII.

J. Exclusions:

This Addendum does not:

1. Impose a duty on a provider of an interactive computer service, as defined in 47 U.S.C Sec. 230, to review or enforce compliance with this Contract.
2. Impede the ability of a student to download, export, or otherwise save or maintain his or her own PII or documents.
3. Limit internet service providers from providing internet connectivity to public schools or to students and their families.

4. Prohibit a Contractor from marketing educational products directly to parents so long as the marketing does not result from the use of PII obtained by the Contractor as a result of providing its services under this Contract.
5. Impose a duty on a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this Contract on that software or those applications.

K. This Addendum does not prohibit Contractor's use of PII to:

1. Use adaptive learning or design personalized or customized education, so long as Contractor has agreed to the transparency requirements of this Agreement.
2. Maintain, develop, support, improve, or troubleshoot a Contractor's website, online service, online application, or mobile application.
3. Provide recommendations for school, education, or employment purposes, provided Contractor does not receive any payment or other consideration from a third party to make or support the recommendation.
4. Respond to a student's request for information or feedback provided Contractor does not receive any payment or other consideration from a third party for the information or feedback.
5. Identify, for a student, institutions of higher education or scholarship providers that are seeking students who meet specific criteria, only if Contractor has obtained the written consent of the student or the student's parent or legal guardian. Contractor may use PII for this purpose regardless of whether the institutions of higher education or scholarship providers provide payment or other consideration to the Contractor.
6. In accordance with the terms of this Contract, produce and distribute, free or for payment or other consideration, student class photos and yearbooks only to LCS, students, parents, or individuals authorized by parents.
7. Provide for the student, only with the express written consent of the student or the student's parent or legal guardian given in response to clear and conspicuous notice, access to employment opportunities, educational scholarships or financial aid, or postsecondary education opportunities, regardless of whether the Contractor receives payment or other consideration from one or more third parties in exchange for the PII. This exception applies only to Contractors that provide nationally recognized assessments that postsecondary institutions of higher education use in making admissions decisions.


THE PARTIES HERETO HAVE EXECUTED THIS ADDENDUM

Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that LCS is relying on their representations to that effect.

CONTRACTOR

By: Dan Merrill
Name of Authorized Individual

VP of US Sales for Clinical Assessment,
Title: a division of NCS Pearson, Inc.
Official title of Authorized Individual


*Signature
Date: 7-31-19

LCS

By: William Kranz
Name of Authorized Individual

Title: Director of IT
Official title of Authorized Individual

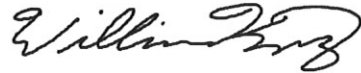

*Signature
Date: 6/20/2019

Exhibit B

aimswEBPlus
SUBSCRIPTION AND USER LICENSE AGREEMENT

This aimswEBPlus Subscription and User License Agreement ("Agreement") governs access to and use of the aimswEB fee-based products and services offered by NCS Pearson, Inc. ("PEARSON"). By accessing, using, printing, displaying or registering for such services or products, you ("CUSTOMER") agree to the terms of this Agreement in which, CUSTOMER receives a limited license to access, use, print, display or register for such services or products for an initial one school year (August 1 – July 31) period.

PLEASE CAREFULLY READ THIS AGREEMENT BEFORE ACCEPTING BELOW. PROCEEDING WITH REGISTRATION, OR ACCESSING, USING, PRINTING, OR DISPLAYING THE PRODUCTS OR SERVICES INDICATES THE CUSTOMER'S ACCEPTANCE OF THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE WITH THESE TERMS, CUSTOMER SHOULD DECLINE THE REGISTRATION AND CUSTOMER MAY NOT ACCESS, USE, PRINT, OR DISPLAY THE PRODUCTS OR SERVICES.

PEARSON has developed this proprietary universal screening and progress monitoring system for academics and behavior based on direct, frequent and continuous student assessment "aimswEBPlus" designed to monitor student achievement and instruction. In addition, aimswEBPlus establishes and maintains a database of student performance which provides access to students, parents, teachers and administrators via a web-based data management and reporting system for providing skill assessment protocols, testing materials and instructions; assessment probes for use in the classroom (collectively referred to in this Agreement as the "MATERIALS"). Some or all of the MATERIALS are copyrighted by NCS Pearson, Inc. All of the MATERIALS are proprietary. Use of the MATERIALS by any individual, organization, entity or enterprise is strictly prohibited except for a CUSTOMER entity authorized pursuant to this Agreement.

The MATERIALS, software, online software documentation, Implementation Training Manual and the *aimswEBPlus* support site (collectively the "Subscription Service") and any modifications, updates, revisions, or enhancements thereof are subject to the terms of this Agreement.

1. License Grant.

PEARSON hereby grants to CUSTOMER and CUSTOMER hereby accepts from PEARSON a limited, non-exclusive, non-transferable, revocable license to access, print and use the MATERIALS for the limited purposes of universal screening and progress monitoring for academics and behavior of each LICENSED USER associated with CUSTOMER (as defined below).

"CUSTOMER" is a person, organization, school, district, or Department of Education, public entity, business entity or enterprise which: (1) has paid a license fee to or is otherwise authorized by PEARSON to access, print and use the MATERIALS on behalf of a LICENSED USER; and (2) both CUSTOMER and LICENSED USER have agreed to be bound by the terms and conditions of this License Agreement.

"LICENSED USER" means:

- (a) If CUSTOMER is a corporation, or public body such as a School, or School District, Department of Education, or similar organization, a LICENSED USER may include an individual employee or agent to whom CUSTOMER has conferred the right to use the MATERIALS or to accept these license terms. Any such individual is subject to the terms and conditions of this Agreement, and must agree to be bound and has the right to bind their organization to the terms and conditions of this License Agreement.
- (b) If CUSTOMER is a post-secondary academic institution, academic library or similar research institution, a LICENSED USER may also include a post secondary student and an academic researcher, provided that CUSTOMER identifies each LICENSED USER to PEARSON and PEARSON consents to each LICENSED USER.

In this Agreement, all references to CUSTOMER shall also include LICENSED USER.

Upon expiration or termination of this Agreement, the nonexclusive limited license granted herein shall automatically and immediately terminate and CUSTOMER agrees not to access, print or use the MATERIALS and, upon request of

PEARSON, to return all MATERIALS then in possession of CUSTOMER to PEARSON or destroy and certify to PEARSON the manner and date of that CUSTOMER destroyed same.

2. Authorization.

The use of the MATERIALS is strictly limited to those provided for in this Agreement. The MATERIALS may be used only for their stated and published purposes including monitoring of student performance scores, comparison of student performance scores, individually and across various cohort groups.

CUSTOMER agrees that the MATERIALS will not be:

- (a) used for any "for-profit" commercial activities, unless specifically agreed in writing by PEARSON, including any use of any trademark of PEARSON;
- (b) copied, duplicated, modified, translated, adapted, publicly displayed, or publicly performed without the express written consent of PEARSON;
- (c) downloaded, transmitted, or re-transmitted or transferred for the purpose of evading the prohibition on copying, duplication or modification;
- (d) sold, transferred, conveyed, pledged licensed, or sub-licensed;
- (e) reverse engineered, decompiled, disassembled or subject to efforts to derive source code for any software and/or computer code components of the MATERIALS; or
- (f) exploited for any purpose different from or contrary to the rights and interests of PEARSON or inconsistent with the stated terms and purposes of this Agreement.

Notwithstanding the foregoing, some of the MATERIALS, including any assessment protocols, which include assessment probes, testing sheets and instructions and similar information, may be duplicated for the internal distribution and administration of student performance tests, and to train employees of CUSTOMER, including each LICENSED USER, consistent with this Agreement.

3. Ownership.

CUSTOMER is granted a non-exclusive limited license to use the MATERIALS under the terms of this Agreement. All right, title, and interest in and to the MATERIALS, the Subscription Services, and all intellectual property rights in and to the MATERIALS, the Subscription Services and the website of PEARSON, and all other materials shall remain solely vested in, to and with PEARSON. PEARSON is granted permission to use any student data received from CUSTOMER for research, development or normative purposes, as long as, such data does not contain any personally identifiable information.

4. Subscription Charges

aimswebPlus subscriptions are based on per student, per school year fees. The initial fee to activate Subscription is based on estimate by CUSTOMER of unique students that will have score data entered. PEARSON will run reconciliation reports in June of each subscription year and invoice for any overages at that time. Subscription fees are non-refundable for any reason at any time.

Certain "Subscription Services" are available only from PEARSON via a dedicated service subscription to which the following applies:

- (a) CUSTOMER agrees to pay, using a valid credit card, purchase order, or check which PEARSON accepts, the subscription fees set forth by PEARSON, applicable taxes, and other charges incurred on the account of CUSTOMER in order to access, print and use the Subscription Services. PEARSON reserves the right to change fees, or to institute new fees at the end of each subscription year, upon reasonable notice posted in advance on www.aimsweb.com or as otherwise provided. aimswebPlus subscription services must be renewed on an annual basis. PEARSON does not automatically renew subscriptions. In the event CUSTOMER chooses not to renew aimswebPlus Subscriptions, PEARSON reserves the right to terminate

CUSTOMER access to the Subscription Services. No refunds or credit will be granted for any cancellation or termination for any reason at any time.

- (b) In addition to the charges set forth above, CUSTOMER is responsible for all expenses and charges associated with accessing the internet; connecting to the Subscription Service; and any service fees associated with such access and connection. CUSTOMER is also responsible for providing all equipment necessary for CUSTOMER to make such connection, including without limitation, computer and modem and/or network connection. This includes all equipment and software used to load and print files saved in .pdf format.
- (c) For purposes of identification and billing, CUSTOMER agrees to provide PEARSON with accurate, current and complete information as required during registration for the Subscription Services, including, without limitation, the legal name, address, telephone number(s), e-mail address, and applicable payment data (e.g. credit card number and expiration date) for CUSTOMER and to maintain and update this information to keep it accurate, current and complete. Failure to provide and maintain accurate, current and complete information may, at the option of PEARSON, result in immediate suspension or termination of this Agreement and the Subscription Services.

5. Multi Customer Accounts

This license for each Subscription Service creates a single account. CUSTOMER may then create additional sub-accounts, and each sub-account that CUSTOMER creates shall be fully subject to this Agreement.

6. Password

As part of the registration process for Subscription Services, CUSTOMER will select a password. CUSTOMER is solely responsible for maintaining the confidentiality of the CUSTOMER password and agrees that PEARSON has no obligations with regard to the use by third parties of such password. CUSTOMER is entirely responsible for any activity occurring under the CUSTOMER account (and any sub-account) and password. CUSTOMER agrees to notify PEARSON immediately if CUSTOMER has any reason to believe that the security of CUSTOMER data or any password has been compromised.

Should CUSTOMER forget the password, PEARSON will reset it for CUSTOMER at CUSTOMER's request; however, in order to protect the privacy of CUSTOMER and the data of CUSTOMER, PEARSON may require CUSTOMER to provide specific information.

7. Privacy & Security

PEARSON has taken reasonable actions, including use of encryption and firewalls, to ensure that data and information of CUSTOMER is disclosed only to those designated by CUSTOMER, as set forth in the applicable [Privacy Policy](#) posted on the aimsweb site. However, CUSTOMER acknowledges that the Internet is an open system and PEARSON cannot and does not warrant or guarantee that third parties will not intercept same.

8. Server Availability and Scheduled Down Times

PEARSON schedules daily maintenance from 12:00 a.m. to 6:00 a.m. Central Standard Time, Monday through Sunday. In the event a mission-critical maintenance situation arises, PEARSON may be required to perform emergency maintenance at any time. During these scheduled and emergency maintenance periods, CUSTOMER may be unable to transmit and receive data. CUSTOMER agrees to accept the risk of such unavailability and to fully cooperate with PEARSON during the scheduled and emergency maintenance periods.

9. Indemnification

To the extent permitted by law, CUSTOMER hereby agrees to indemnify, defend, and hold harmless PEARSON from and against any and all claims, proceedings, damages, liability, and costs (including reasonable attorney fees) incurred by PEARSON in connection with any claim arising out of (i) any breach or alleged breach of any of CUSTOMER obligations set forth herein, (ii) any acts by CUSTOMER, or (iii) MATERIALS or information posted or transmitted by CUSTOMER in connection with the Subscription Service regardless of the type or nature of the claim. CUSTOMER shall cooperate as fully as reasonably required in the defense of any claim. PEARSON reserves the right, at its own expense, to assume the

exclusive defense and control of any matter otherwise subject to indemnification by CUSTOMER and CUSTOMER shall not in any event settle any matter without the written consent of PEARSON.

PEARSON will hold the CUSTOMER harmless and indemnify the CUSTOMER against any third party claim that the MATERIALS, in the form delivered by PEARSON to the CUSTOMER, infringes or violates any valid United States patents or copyrights of a third party existing at the time of delivery; provided that PEARSON must be given prompt, written notice of the claim and allowed, at its option, to control the defense and settlement of any such claim. PEARSON's obligations under this Section do not apply to any infringement arising out of the use of the MATERIALS in combination with systems, equipment or computer programs not supplied by PEARSON, or any unauthorized modification of MATERIALS.

10. Limitation of Liabilities and Remedies

THE MATERIALS AND THE SUBSCRIPTION SERVICES (INCLUDING ALL CONTENT, SOFTWARE AND FUNCTIONS) ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND "WITH ALL FAULTS" WITHOUT WARRANTY OF ANY KIND. PEARSON MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ANY AND ALL WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION, TITLE, SECURITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AVAILABILITY, OR UNINTERRUPTED ACCESS. PEARSON DISCLAIMS AND CUSTOMER WAIVES ALL LIABILITY ARISING FROM THE ACCESS, USE AND PRINTING OF THE MATERIALS AND PROVISION OF THE MATERIALS AND THE SUBSCRIPTION SERVICES.

IN NO EVENT SHALL THE LIABILITY OF PEARSON TO CUSTOMER OR ANY THIRD PARTY FOR DAMAGES FOR ANY CAUSE WHATSOEVER RELATED TO OR ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER TO PEARSON DURING THE PRECEDING TWELVE MONTHS. IN NO EVENT WILL PEARSON BE LIABLE FOR ANY LOST PROFITS, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE ANY MATERIALS OR THE SUBSCRIPTION SERVICE EVEN IF PEARSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT ANY CLAIM ARISING FROM USE OF OR ACCESS TO THE MATERIALS PROVISION OF ANY SUBSCRIPTION SERVICES MUST BE MADE WITHIN ONE (1) YEAR OF THE FIRST DATE SUCH CLAIM FIRST ACCRUED OR SHALL BE DISMISSED AS UNTIMELY AND FOREVER BARRED.

THIS LIMITATION OF LIABILITY APPLIES TO ANY EXPENSES, DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR OF OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF DATA RECORDS, WHETHER FOR BREACH OF CONTRACT, STRICT LIABILITY, TORTUOUS BEHAVIOR, NEGLIGENCE, OR FOR ANY OTHER CAUSE OF ACTION.

11. Term and Termination

This Agreement has a term of one (1) school year (August 1 – July 31) and must be renewed each following school years by CUSTOMER for continued service.

Either CUSTOMER or PEARSON may cancel or terminate this Agreement upon thirty (30) days written notice to the other via electronic mail or conventional mail, and all fees for the then-present term of this Agreement shall immediately become fully due and payable.

PEARSON reserves the right to restrict, suspend or terminate CUSTOMER access to the Subscription Services in whole or in part without notice and without liability, with respect to any breach or threatened breach of any portion of this Agreement. If PEARSON terminates this Agreement based on a breach of any portion of this Agreement, PEARSON reserves the right to refuse to provide Subscription Services to CUSTOMER.

Subject to the PEARSON Privacy Policy, if the Agreement is terminated by PEARSON for reasons other than breach of this Agreement by CUSTOMER, any student data entered by CUSTOMER will be made available to CUSTOMER either through a third party offsite vault storage provider or directly from PEARSON for up to ninety (90) days after termination. Charges may apply.

12. Modifications to License Agreement and Subscription Services

PEARSON reserves the right to modify this Agreement, and the software or policies associated with the Subscription Services and any MATERIALS at any time without advance notice to CUSTOMER. Any modification shall take effect immediately when same is posted to www.aimsweb.com. CUSTOMER may not assign, sell, distribute, lease, rent, sublicense, or transfer the Subscription Service or the license granted CUSTOMER herein or disclose the Subscription Service to any other person. CUSTOMER continued use of the Subscription Services following any modification shall be conclusively deemed an acceptance of all such modification(s). PEARSON reserves the right to modify, suspend or discontinue the Subscription Services or any portion thereof at any time, including the availability of any functional area of the Subscription Service. PEARSON may also impose limits on certain features and services or restrict CUSTOMER access thereto without notice or liability.

13. Student Data Escrow

CUSTOMER has the ability to export their data at any time. However, PEARSON will produce regular backups of any student data of CUSTOMER and will escrow these backups. Assuming all fees owed by CUSTOMER are current and have been paid, CUSTOMER may request that any of the student data of CUSTOMER be copied to physical data storage media and provided to CUSTOMER. Charges will apply for this service. This service (receiving data) will be available to CUSTOMER only during the term of this Agreement and for a maximum period of three (3) months following the termination or expiration of this Agreement. After the three (3) month period expires, all such data may be destroyed and not available to CUSTOMER.

14. Support

At no additional charge, each CUSTOMER may use a comprehensive online customer service and assistance service. PEARSON agrees to exert reasonable efforts to provide customer service to CUSTOMER, as well as toll-free telephone and e-mail support, but each form of support is provided "AS IS" and "AS AVAILABLE" basis and CUSTOMER acknowledges that use of such support is at the sole risk of CUSTOMER. The support services may be changed at any time without notice to CUSTOMER or may be discontinued in the sole discretion of PEARSON at any time.

15. Recommended Environment

Any modification, derivative work, translation, or adaptation to the MATERIALS or the Subscription Services by CUSTOMER shall be subject to a royalty-free, non-exclusive, irrevocable worldwide license to PEARSON in and to same. CUSTOMER agrees to promptly report to PEARSON all defects, inconsistencies, or issues arising from the MATERIALS and the Subscription Services. CUSTOMER acknowledges that additional maintenance fees and upgrade costs may accrue in the event that PEARSON provides support for and/or is requested by CUSTOMER to rectify issues related thereto.

16. Student Assessment

The use, accuracy and efficacy of the Subscription Service depend in large measure upon the accuracy and completeness of the data provided to PEARSON by CUSTOMER. CUSTOMER agrees that it will use the MATERIALS, and in particular the basic skill performance tests, protocols, reading passages, testing procedures, testing instructions and all similar documents and information in a manner consistent with this Agreement, and applicable guidelines and directions from PEARSON.

17. Software Documentation Manual

PEARSON provides a variety of documentation manuals in electronic form and PEARSON hereby agrees to permit CUSTOMER to access, use, reproduce, print and distribute each applicable Documentation Manual for the internal training, educational and assessment purposes of CUSTOMER.

18. Acceptance

This Agreement must be accepted by CUSTOMER and PEARSON. CUSTOMER may indicate acceptance of this Agreement by: (1) signing and returning to PEARSON the printed acceptance form; (2) by electronic acceptance indicating that CUSTOMER accepts the Agreement; or (3) by accessing, printing, displaying and/or use of the MATERIALS or ordering any of the packages of Subscription Services. If CUSTOMER submits a purchase order for any

products or services covered by this Agreement, CUSTOMER agrees that any pre-printed terms of such purchase order shall not apply or modify this Agreement and that this Agreement shall solely control and govern the transaction and such purchase order shall constitute acceptance of this Agreement.

The laws of the State of Minnesota shall govern this Agreement and the interpretation and issues of enforcement related thereto without regard to any conflicts of laws provisions therein. CUSTOMER agrees to the personal and subject matter jurisdiction of the court sitting in the State of Minnesota. In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall be valid and enforceable according to its terms. "*aimsweb*" and "*aimswebPlus*" design are trademarks of Pearson Education, Inc.

Exhibit C

aimswebPlus PRIVACY POLICY

YOU ARE REQUIRED TO READ THESE TERMS AND CONDITIONS OF USE CAREFULLY BEFORE USING THIS SITE.

Before using the aimswebPlus product and services (Site) please read this Privacy Policy and the Terms of Use for this Site carefully. By using this Site and its services, you acknowledge that you understand, accept and agree to the terms of this Privacy Policy and the Terms of Use for this Site. If you have any questions concerning this Privacy Policy or the Terms of Use for this Site, please contact Pearson at info@aimsweb.com.

Introduction

This Privacy Policy will tell you, as of the “Last Revised” date set forth at the end, what information Pearson collects, how we use that information, what choices you have concerning how such information is used and how we protect the information.

Please remember that any information (including personal and business information) that you post or otherwise reveal in a public forum (such as a bulletin board, message board or product discussion forum) is not subject to this Privacy Policy and will be seen by third parties not related to Pearson and may be used by them to contact you or for unauthorized purposes. In addition, if you link to a third party site from a Pearson site, any information you reveal on that site is not subject to this Privacy Policy. You should consult the individual privacy policies for each site you visit.

Purpose of this Site

aimswebPlus is an efficient and effective assessment, data management, and reporting system for grades K-8 that supports multi-tiered instructional models. aimswebPlus is designed to universally screen and progress monitor. aimswebPlus allows teachers and administrators to capture, manage, and report assessment data in one web-based system. It includes assessment programming; extensive reporting and monitoring tools designed for use by Education Agencies and School District and School authorized staff (“Educators”).

The Educational Purpose of the aimswebPlus features for Educators is to (a) benchmark students; (b) monitor student progress and intervene; (c) provide information to Educators on student progress. The aimswebPlus reporting feature can be used by Educators to provide reports to parents and students. Pearson collects and uses personal student data through this Site only to the extent required to monitor student progress and provide appropriate remediation and curriculum guidance to Educators.

Access

Access to the aimswebPlus Site is restricted by password to Educators only authorized by the school, district, or State Department of Education (“Educational Institution”) sponsoring the product. Educational Institutions are responsible for authorizing Educator access to this Site and maintaining all access information. No parent or student access is authorized through this Site.

Information Collection and Use

Educational Institution Personnel. To create a record for a student the following information must be collected from Educators through this Site: student’s name, grade, birth date, gender, student identification number, district, school, service code, ethnicity and free and reduced lunch status. The following additional information may be collected: Entry Grade, IEP, ESL, Section 504, After School, Correctional, Summer School, IDEA, Gifted/Talented, Intervention Level, Mobility, Behavior Disorder, Federal Disability Categories.

Upon initial login by an Educator the following personal information may be collected: name, school district, address, phone number, and email. If Pearson receives inquiries or emails about or through this Site from Educators, Pearson may keep a record of the email, correspondence and comments, including the individual’s name, school district or organization name and email address in order to reply to the communication, perform Site support and issue resolution and maintain business records concerning this Site.

Student Data: Students cannot access aimswebPlus. Any required student testing is conducted in a separate test platform, TestNav. Once a student completes testing in TestNav the student testing data is transferred to aimswebPlus. The student data collected in AimswebPlus will be used by Educators to assess student progress and provide necessary intervention and remediation appropriate for the specific student. Student testing data can be reported to Parents as a pdf file extract from aimswebPlus.

Parents and Students: Pearson cannot collect personal information directly from parents or students through this website. Parents and Students will not have login or access to AimswebPlus. Parents and Students may receive PDF report extracts from an Educator.

Parents and students should direct all inquiries related to this Site to their School or School District.

Information Access and Correction

Only an authorized Educator may enter data on a student’s record through this Site. An authorized Educator may review the student record on this Site, make

student record changes, review available assessment reports and otherwise review data for that student. An Educator may contact Pearson at info@aimsweb.com if the Educator believes there may be an issue with a student record, a report or encounters any issues in accessing or correcting information through this Site.

Information Use or Disclosure

Pearson will use the data provided by Educators through this Site to provide student specific remediation and intervention, create reports and records concerning students, provide targeted curriculum and perform other contractual obligations for the Educational Institution.

Except for the limited exceptions set forth below, Pearson will not share with, or disclose to, third parties, the names of users, students or other personally identifiable information collected through or in connection with this Site. Pearson may, however, use or disclose personally identifiable information:

- As requested or required by the Educational Institution in support of the Educational Purpose.
- In response to subpoenas, court orders or legal process, and as otherwise required by law;
- To protect student or user security, or the security of other persons, consistent with applicable laws;
- In connection with the sale, joint venture or transfer of some or all of the assets of NCS Pearson, Inc., subject to written approval from the Educational Institution; and/or
- To affiliated companies and contractors providing services for the Assessment Program who are obligated to take appropriate commercially reasonable steps to maintain the confidentiality of such information and use it solely for the purposes specified in this Privacy Policy.

Non-personally identifiable aggregated information collected through this website may be used for quality assurance and for research and development and may be disclosed to third parties in non-personally identifiable form upon receipt of written approval from the Educational Institution.

Security and Confidentiality

Subject to the other provisions of this Privacy Policy and contractual obligations, Pearson will take commercially reasonable steps to maintain the confidentiality of all personal information and student records collected and managed through this Site. For example, this Site currently uses industry-standard SSL-encryption to protect user account and password information and uses a secure connection to Pearson servers, which are protected by firewalls to prevent unauthorized break-ins. The administrative system and authentication mechanisms are protected

through the use of SSL encryption of data transmitted via HTTP. As other security methodologies become commercially available, Pearson may change its current security systems processes or substitute these systems with other security systems or processes.

Every Pearson employee is trained on our privacy and security procedures. Only authorized Pearson employees, agents or independent contractors working for Pearson are permitted to access information only if they have a business need and agree in writing to abide by our Privacy Policy. Employees that violate the Privacy Policy are subject to disciplinary action, up to and including termination.

Despite these security measures, Pearson does not represent or warrant that Business Information will be protected against loss, misuse, attacks or alteration by third parties.

Precautions to be Taken by Users

User Information and access to this Site is password protected for the privacy and protection of student personal and student assessment data. Educators are urged to keep confidential all user information and passwords. If storage of this information is required, it is recommended that it be kept in a secure location. To protect data, users should always logoff when exiting this Site and not divulge or share user identification or passwords with anyone.

Cookies and Do Not Track

The use of cookies is a common practice for Internet facing web applications. Cookies are small text files that a website transfers to your computer's browser. Cookies will provide the website with non-personally identifiable information, but does identify your computer, browser and Internet specifications. This Site uses cookies to measure traffic patterns, personalize content and control security.

This site does not respond to web browser "do not track" signals or comparable signals or mechanisms.

IP Addresses

An IP address is a number automatically assigned to your computer by your Internet service provider. This Site may collect IP addresses, the associated URLs, domain types, the browser type used to access the Site, the country, state and telephone area code where the users' Internet service provider's servers are located, the pages of this Site that users viewed during their visit, any search terms entered on the Site and any environment related information. Collection of IP addresses is for system administration purposes, to monitor the level of activity on the Site and for security reasons and to compute statistical information about the customers using these services in aggregate form.

Links to Other Sites

This Site may contain links to other websites related to the Educational Purpose on the Internet, which may include Educational Institution sites, or other Pearson websites. The information practices of those websites are not covered by this Privacy Statement or any other policies or terms applicable to this Site. You should read the terms and policies of those other websites before supplying information to that site or otherwise using the site.

Web Trend Information

We may use Google Analytics to obtain web trend information about user interaction with this site for system administration purposes and to identify problems and improve service. While Google Analytics collects and reports information on an anonymous basis, Google Analytics uses cookies and collects IP addresses to gather web trend information. For further information about Google Analytics, and for links to Google's Privacy Policy and an opt-out tool for Google Analytics, go to www.google.com/intl/en/analytics/privacyoverview.html

Changes to the Privacy Policy

This Privacy Policy and the Terms of Use for this Site may be revised from time to time through an updated posting. Revisions will only be made and apply if consistent with and in accordance with the aimswebPlus agreement between Pearson and the applicable Educational Institution. Authorized users will be notified of any material changes to this Privacy Policy at log-in, via email or through a comparable form of notification. Unless otherwise specified, continued use of this site following the posting and notification of such revisions or the designated effective date will indicate your acceptance of such revisions. If you have any questions or concerns about any changes, please contact info@aimsweb.com.

Contact Information

If you have questions or concerns about this Privacy Policy, please contact us at info@aimsweb.com. If you want us to respond to your comment or question, please provide your contact information in your message.

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