



Contract Addendum Student Data Privacy

This Data Privacy Agreement (“Agreement”) is between Collinsville Community Unit School District #10 (“School District”) and NCS Pearson, Inc. (“Company”) for the Company’s product, AIMSweb Plus.

1. Covered Data

As used in this Agreement, School District data 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 the Family Educational Rights and Privacy Act, 34 C.F.R. § 99.3, and the Illinois School Student Records Act, 105 ILCS 10/2 and other non-public information, including student data, meta-data, and user content.

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 Illinois School Student Records Act (ISSRA), 105 ILCS 10/1 et seq. & 23 IAC 375.

The Company acknowledges and agrees to comply with all requirements imposed by applicable state and federal law, including the Student Online Personal Protection Act, 105 ILCS 85/1 et seq.

The Company acknowledges for the purposes of this Agreement that it will be designated as a “school official” with “legitimate educational interests” in the School District data, as those terms have been defined under FERPA and ISSRA and their implementing regulations. The Company agrees it is performing an institutional service and/or function which the School District would otherwise use its own employees, under the direct control of the school, with respect to the use and maintenance of covered information. The Company affirms it is using the covered information only for an authorized purpose and may not re-disclose covered information to third parties or affiliates, unless otherwise permitted under the Student Online Personal Protection Act, without permission from the School District or pursuant to court order.

To the extent that the Company’s collection, use or disclosure of personal information from students is governed by the Children’s Online Protection Act (“COPPA”), the Company



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agrees that the Company's use of the School District data will be solely for the benefit of the School District's students and for the school system, and that the Company will not collect personal information from students for any purpose other than the School District's purpose, including any other commercial purpose.

With respect to the Company's collection, disclosure, or use of School District data as governed by the Protection of Pupil Rights Amendment ("PPRA"), the Company agrees that such collection, disclosure, or use, and any use of any School District data, shall be for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, the School District's students or educational institutions.

With respect to any "Covered Information" as defined by the Illinois Student Online Personal Protection Act, the Company agrees to comply with the terms of that Act and refrain from using the Covered Information in any way prohibited by this Agreement.

With respect to any "Personal Information" as defined by the Illinois Children's Privacy Protection and Parental Empowerment Act, the Company agrees to comply with the terms of that Act to the extent applicable to the services being provided by the Company under this Agreement.

3. Company Obligations:

3.1 *Uses and Disclosures as Provided in this Agreement.* The Company may use and disclose the School District data provided by the School District only for the purposes described in this Agreement and only in a manner that does not violate applicable local, state, or federal privacy laws and regulations. Only the individuals or classes of individuals will have access to the data that need access to the School District data to do the work described in this Agreement. The Company shall ensure that any subcontractors who may have access to School District data are bound by confidentiality obligations consistent with the confidentiality obligation provisions of this Agreement.

3.2 *Non-Disclosure Except as Provided in this Agreement.* The Company shall not use or further disclose the School District data except as stated in and explicitly allowed by this Agreement and applicable state and federal law. The Company does not have permission to re-disclose School District data to a third party except as provided for in this Agreement, as required by law, or as authorized in writing by the School District.

3.3 *Safeguards.* The Company agrees to take appropriate administrative, technical and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of School District data. The Company shall ensure that



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School District data are secured and encrypted to the greatest extent reasonably practicable during use, storage and/or transmission. The Company agrees to store and process the School District data in a manner that is no less protective than those methods used to secure the Company's own data. The Company agrees that School District data will be stored on equipment or systems located within the United States. The Company shall maintain complete and accurate records of these security measures and produce a summary of such records to the School District for purposes of audit upon reasonable prior notice during normal business hours. The School District reserves the right at its sole discretion to perform audits of the Company's storage of School District data no more than once during a twelve (12) month period at the School District's expenses to ensure compliance with the terms of this Agreement.

3.4 *Reasonable Methods.* The Company agrees to use "reasonable methods" to ensure to the greatest extent reasonably practicable that the Company and all parties under the Company's control accessing School District data are compliant with applicable state and federal law.

3.5 *Privacy Policy.* The Company must publicly disclose material information about its collection, use, and disclosure of covered information, including, but not limited to, publishing terms of service agreement, privacy policy, or similar document only to the extent required by applicable law. Any changes the Company may implement with respect to its privacy policies or terms of use documents shall be ineffective and inapplicable with respect to the School District and/or School District data unless the Company provides prior notice to the School District about any such changes. Access by students or parents/guardians to the Company's programs or services governed by this Agreement or to any School District data stored by the Company shall be handled in accordance with the provisions of the Family Educational Rights and Privacy Act 20 USC 1232g and 34 CFR Part 99 and ISSRA with reasonable assistance from the School.



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3.6 *Data Return/Destruction.* Upon expiration of the term of this Agreement, or upon the written School District's request, the Company covenants and agrees that it promptly shall destroy the School district data. School District data must be destroyed in a secure manner. The Company agrees to send a written certificate that the data was properly destroyed within 90 days of the end of the Agreement or within 90 days of the School District's written request for destruction. In the event the School District provides a written request for destruction of certain School District data, the School District agrees (i) such written request shall include specific details to permit the Company to identify the requested School District data and (ii) the School District agrees not to hold the Company responsible for unintended deletion. The Company shall destroy School District data in such a manner that it is irretrievable in the normal course of business.

3.6.1 The Company shall, within a reasonable time period, delete a student's covered information upon written request by the School District so long as the deletion would not violate state or federal laws, including FERPA and ISSRA and so long as the School District provides reasonable assistance to the Company with regard to such request.

3.7 *Minimum Necessary.* The Company attests that the data requested by the Company from the School District in order for the School District to access the Company's products or services represent the minimum necessary data for the services as described in this Agreement and that only necessary individuals or entities who are familiar with and bound by obligations consistent with this Agreement will have access to the School District data in order to perform the work.

3.8 *Authorizations.* When necessary, the Company agrees to secure individual authorizations to maintain or use the School District data in any reasonable manner beyond the scope or after the termination of this Agreement in accordance with its standard retention period.

3.9 *Data Ownership.* The School District is the data owner. The Company does not obtain any right, title, or interest in any of the data furnished by the School District.



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- 3.10 *Misuse or Unauthorized Release.* The Company shall notify the School District as soon as reasonably possible upon discovering the misuse or unauthorized release of School District data held by the Company or one of its subcontractors in connection with this Agreement, provided, that the misuse or unauthorized release is not the result of breaches of this Agreement caused by others and/or matters outside of the Company's control.
- 3.11 *Data Breach.* In the event of a data breach, which means an unauthorized disclosure, access, alteration, or use of School District data entrusted to the Company in connection with this Agreement, the Company shall promptly institute the following: (1) notify the School District by telephone and email as soon as practicable, but in no event later than thirty (30) calendar days, after the Company becomes aware of the data breach; (2) provide the School District with the name and contact information for an employee of the Company who shall serve as the Company's primary security contact; (3) reasonably assist the School District with any investigation, including interviews with Company employees and review of all relevant records; and (4) assist the School District with any legally required notification the School District deems necessary related to the security breach. The Company shall not, unless required by law, provide any notices except to the School District without prior written permission from the School District. The Company shall reimburse the School District for any reasonable costs imposed on the School District, including reimbursement of reasonable fees paid by the School District related to (1) providing any notifications or fulfilling requirements required by the State Board or any other state or federal laws, provided that, the School District reasonably consults, cooperates and coordinates with the Company in connection with such notifications; and (2) providing credit monitoring to affected individuals for one (1) year in the event of a data breach arising out of a breach of the Company's obligations under this Agreement and (3) payment of legal fees, audit costs, fines, and other fees or damages imposed on, incurred by, or undertaken by the School District as a result of the security breach.
- 3.12 *Access to Data.* Any School District data in the possession or under the control of the Company shall be made available to the School District upon request by the School District. The Company shall be responsible to provide copies of or access to School District's data in the possession or under the control of the Company to the School District within a reasonable time frame and in all cases within time frames that will allow timely compliance by the School District with any statutorily or court-ordered deadline. This includes requests under the Illinois Freedom of Information Act ("FOIA"), requests for student records under FERPA or ISSRA, requests for records in discovery in state or federal court or administrative proceedings, or any other request.



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3.13 *Service Levels.* The Company's products or services are provided 24 hours per day, 7 days per week. The Company shall ensure 99.5% up-time, Monday through Friday between 6 a.m. and 6 p.m. US Central Time ("Up-time"), provided that the Company schedules daily maintenance from 9:00 a.m. to 5:00 p.m. Central Standard Time, Tuesdays and Thursdays. In the event a mission-critical maintenance situation arises, the Company may be required to perform emergency maintenance at any time. During these scheduled and emergency maintenance periods, the School District may be unable to transmit and receive data. The School District agrees to accept the risk of such unavailability and to fully cooperate with the Company during the scheduled and emergency maintenance periods.

3.14 *Limited Liability.* **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. THE COMPANY MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ANY AND ALL WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION, SECURITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, 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 EXCEPT AS PROVIDED IN PARAGRAPH 3.11.**

IN NO EVENT SHALL THE LIABILITY OF THE COMPANY TO THE SCHOOL DISTRICT OR ANY THIRD PARTY FOR DAMAGES FOR ANY CAUSE WHATSOEVER RELATED TO OR ARISING OUT OF THE AGREEMENT OR THIS AGREEMENT EXCEED THE AMOUNT PAID BY THE SCHOOL DISTRICT TO THE COMPANY DURING THE PRECEDING TWELVE MONTHS. IN NO EVENT WILL THE COMPANY 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 THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE SCHOOL DISTRICT 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.

EXCEPT AS PROVIDED IN PARAGRAPH 3.11, 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



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CONTRACT, STRICT LIABILITY, TORTUOUS BEHAVIOR, NEGLIGENCE, OR FOR ANY OTHER CAUSE OF ACTION.

4 Prohibited Uses

4.1 The Company shall not sell School District data; use or share School District data for purposes of targeted advertising; or use School District data to create a personal profile of a student other than for accomplishing the purposes described in the Agreement.

4.2 Notwithstanding the previous paragraph, the Company may use School District data 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 the Company's website, online service, or application; or investigate a matter related to public safety. The Company shall notify the School District as soon as possible of any use described in this paragraph. The parties recognize that the use of de-identified data, which contains no personally identifiable information, is needed by the Company to provide, evaluate, maintain and improve its products and services. The provisions of this Agreement shall not be construed to restrict the Company from maintaining or using de-identified data (including de-identified aggregated data).



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5. Miscellaneous

- a. *Indemnification and Insurance.* The Company agrees to indemnify, defend and hold harmless School District and its officers, directors, employees, agents, attorneys and assigns, against any third party claims, demands, actions, arbitrations, losses and liabilities resulting from a breach of this Agreement caused by the Company employees, contractors, or subcontractors in performing the obligations under this Agreement, provided that the Company must be given prompt, written notice of the claim and allowed, at its option, to control the defense and settlement of any such claim. The Company's obligations under this section do not apply to any infringement arising out of the use of the products under this Agreement in combination with systems, equipment or computer programs not supplied by the Company, or any unauthorized modification of the products under this Agreement. The Company shall maintain liability insurance evidencing that the Company has workers compensation insurance as required by law and general liability insurance with a minimum limit of \$2,000,000. All insurers shall be licensed by the State of Illinois and rated A+-VII or better by A.M. Best or comparable rating service. The comprehensive general liability shall include the School District, its Board, Board members, employees, agents, and successors as an additional insured with a waiver of subrogation in favor of the School District. The Company shall provide the School District with certificates of insurance evidencing the existence of the coverage described above *prior to commencing its performance hereunder, and promptly thereafter upon any renewal or replacement of any required policy.* The failure to provide acceptable insurance shall be deemed a breach of this Agreement and the School District may terminate this Agreement following written notice to the Company and an opportunity to cure. If such certificates of insurance of the above-described policies are canceled before the expiration date thereof, notice will be delivered to the School District in accordance with the policy provisions.

- b. *No Indemnification or Limitation of Liability by School District.* Any provision included in this Agreement that requires the School District to indemnify the Company or any other party is deleted and shall not apply to the School District.



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- c.
- d. *Taxes.* The School District is a tax-exempt organization. The federal excise tax does not apply to the School District and State of Illinois Sales Tax does not apply. The amounts to be paid to the Company hereunder are inclusive of all other taxes that may be levied, including sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Company shall be responsible for any taxes levied or imposed upon the income or business privileges of the Company.
- e. *Payments.* The School District shall make payments to the Company in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1. If the School District is late in making a payment it shall make interest payments at the maximum amount permitted under the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4.
- f. *Governing Law.* This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles. Jurisdiction and venue for all disputes hereunder shall be the Circuit Court located in Madison, Illinois, or the federal district court for the Southern District of Illinois.
- g. *Renewal of Agreement.* The parties may renew this Agreement in writing. Any provisions in this Agreement that provides for an automatic renewal of the Agreement are deleted.
- h. *Termination.* The School District may terminate this Agreement upon notice to the Company if the School District makes a determination that the Company has breached a material term of this Agreement.
- i. *Posting.* The School District shall publish a copy of this Agreement on the District's website to the extent required by applicable law.

[Signature page follows]



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Effective Date. This Agreement shall be deemed dated and become effective on the date the last of the parties signs as set forth below the signature of their duly authorized representatives.

Company Name:

NCS Pearson, Inc.

School District:

Collinsville Community Unit School District #10

By: Randall t. Trask
Randall t. Trask (Aug 29, 2020 18:21 CDT)
Its Duly Authorized Agent

Title: Senior Vice President for
Clinical Assessment

Printed Name: Randall T. Trask

Date: 08/29/2020

By: Derek Turner

Title: Director of Technology

Printed Name: Derek Turner

Date: 7/14/20