

DATA SHARING AND CONFIDENTIALITY AGREEMENT

Including

Lyncourt Union Free School District Bill Of Rights For Data Security And Privacy

and

Supplemental Information about a Contract Agreement between

Lyncourt Union Free School District and NCS Pearson, Inc.

This Data Sharing and Confidentiality Agreement ("DSC Agreement") is made and entered into by and between NCS Pearson, Inc., and the Lyncourt Union Free School District having its principal offices at 2707 Court Street, Syracuse, NY 13208 (collectively referred to as the "Parties").

1. Purpose and Term

(a) The Parties agree that Lyncourt Union Free School District will be deemed to have entered into a binding agreement with Vendor for use of the Vendor's **educational software** (or other Vendor educational curriculum products) on Vendor's **online platform** (collectively, the "Products") by members of Lyncourt Union Free School District instructional staff at such time that one or more Lyncourt Union Free School District staff members enroll online to use Vendor Products in their classrooms and have clicked to accept Vendor's online Terms of Service and/or Privacy Policies (collectively, "the TOS") on behalf of Lyncourt Union Free School District. This binding agreement shall be referred to herein as "the Contract." This DSC Agreement is entered into in order to confirm the Contract and the TOS to the requirements of New York State Education Law Section 2-d and Part 121 of the Regulations of the NYS Commissioner of Education (collectively referred to as "Section 2-d"). This DSC Agreement consists of the terms and conditions set forth herein, a copy of "Lyncourt Union Free School District Bill of Rights for Data Security and Privacy" signed by Vendor, and the "Supplemental Information about a Contract between Vendor and Lyncourt Union Free School District" that is required to be posted on Lyncourt Union Free School District website.

(b) By affixing their signatures to this DSC Agreement below, Lyncourt Union Free School District and Vendor agree that the term of this DSC Agreement shall commence as of the date of mutual execution of this DSC Agreement by the Parties, and shall continue through and until 11 :59 pm June 30, 2025 ("the Initial Term"). The Initial Term may be extended for successive renewal terms of three (3) years (each a "Renewal Term") only by mutual execution by the Parties of either a written Amendment to this DSC Agreement, or, a new DSC Agreement. Vendor shall comply with all terms, conditions and obligations as set forth in this DSC Agreement, including Lyncourt Union Free School District' Bill of Rights for Data Security and Privacy and the Supplemental Information about a Contract between Vendor and Lyncourt Union Free School District, throughout the duration of the Initial Term of this DSC Agreement, and any Renewal Term, and this DSC Agreement shall supersede and take the place of any previous DSC Agreement entered into or similar data sharing and confidentiality language agreed to by the Parties (within the Contract, TOS, or otherwise) prior to the date of mutual execution of this DSC Agreement.

(c) In the event that any term of the Contract, or Vendor's online or written Privacy Policies or TOS that would otherwise be applicable to its customers or users of its Product that is the subject of the Contract, conflicts with the terms of this DSC Agreement, the terms of this DSC Agreement will apply and be given effect.

2. **Definitions**

As used in this DSC Agreement:

- (a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Vendor receives from Lyncourt Union Free School District pursuant to the Contract.
- (b) "Teacher or Principal Data" means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that Vendor receives from Erie I BOCES pursuant to the Contract.
- (c) "Protected Data" means Student Data and/or Teacher or Principal Data to the extent applicable to Vendor's Product.
- (d) "NIST Cybersecurity Framework" means the U.S. Department of Commerce National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version I. I."

3. **Confidentiality of Protected Data**

- (a) Vendor acknowledges that it will receive Protected Data from Lyncourt Union Free School District pursuant to the Contract, and that such Protected Data may have been originally generated by the instructional and other programs operated by Lyncourt Union Free School District, and if Student Data, also by students' school districts of residence.
- (b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with applicable federal and state law (including but not limited to Section 2-d), Lyncourt Union Free School District policy on data security and privacy and this DSC Agreement, as may be amended by the Parties. Lyncourt Union Free School District will provide Vendor with a copy of its policy on data security and privacy upon request.

4. **Vendor's Data Security and Privacy Plan**

Vendor agrees that it will protect the confidentiality, privacy and security of the Protected Data it receives from Lyncourt Union Free School District in accordance with Lyncourt Union Free School District' Bill of rights for Data Privacy and Security, a copy of which has been signed by the Vendor and is set forth below.

Additional elements of Vendor's Data Security and Privacy Plan are as follows:

- (a) As required by the NIST Cybersecurity Framework, in order to implement all state, federal, and local data security and privacy requirements, including those contained within this DSC Agreement, consistent with Erie I BOCES' data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this DSC Agreement. In the event Vendor's policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.

(b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the Contract, Vendor will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the Contract:

Data Security:

- Data-at-rest & data-in-transit is encrypted

- Data leak protections are implemented

Information Protection Processes and Procedures:

- Data destruction is performed according to contract and agreements
- A plan for vulnerability management is developed and implemented

Protective Technology:

- Log/audit records are ascertained, implemented, documented and reviewed according to policy
- Network communications are protected

Identity Management, Authentication and Access Control:

- Credentials and identities are issued, verified, managed, audited and revoked, as applicable, for authorized devices, processes and users
- Remote access is managed

(c) Vendor will comply with all obligations set forth in Lyncourt Union Free School District' "Supplemental Information about a Contract between Vendor and Lyncourt Union Free School District." below.

(d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving direct access to Student Data, as follows: Annually, Vendor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.

(e) Vendor [*check one*] **may** utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the Contract. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the Contract, it will require such subcontractors, assignees, or other authorized agents to comply with data privacy practices consistent with those imposed on Vendor by this DSC Agreement or Ed Law 2d.

(f) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this DSC Agreement.

(g) The vendor will implement procedures for the deletion and/or destruction of Protected Data at such time that the Contract is terminated or expires, as more fully described in the "Supplemental Information about a Contract between Vendor and Lyncourt Union Free School District," below.

5. Additional Statutory and Regulatory Obligations

Vendor acknowledges that it has the following additional obligations with respect to any Protected Data received from Lyncourt Union Free School District, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the terms of this DSC Agreement:

(a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).

(b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the Contract.

(c) Not use Protected Data for any purposes other than those explicitly authorized in this DSC Agreement.

(d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Vendor using the information to carry out Vendor's obligations under the Contract, unless:

- (i) the parent or eligible student has provided prior written consent, or
- (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Lyncourt Union Free School District no later than the time of disclosure unless such notice is expressly prohibited by the statute or court order.

(e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of Protected Data in its custody;

(f) Use encryption technology that complies with Section 2-d, as more fully set forth in the "Supplemental Information about a Contract between Vendor and Lyncourt Union Free School District," below.

(g) Provide notification to Lyncourt Union Free School District, to the extent required by law, of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.

(h) Promptly reimburse Lyncourt Union Free School District for the full cost of notification, in the event it is required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

6. Notification of Breach and Unauthorized Release

(a) Vendor shall promptly notify Lyncourt Union Free School District of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.

(b) Vendor will provide such notification to Lyncourt Union Free School District by contacting Brian DeBoyace, Data Security, Protection & Compliance Officer, Lyncourt Union Free School District directly by email at bdeboyace@lyncourtschool.org, or by calling (315) 313-7066 (office).

(c) Vendor will cooperate with Lyncourt Union Free School District and provide as much information as possible directly to Brian DeBoyace or his designee about the incident, including but not limited to and to the extent available: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of protected Data, and contact information for Vendor representatives who can assist Lyncourt Union Free School District if it has additional questions.

(d) Vendor acknowledges that upon initial notification from Vendor, Lyncourt Union Free School District, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department

("CPO"). Vendor shall not provide this notification to the CPO directly. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Lyncourt Union Free School District, Vendor will promptly inform Brian DeBoyace or his designee.

(e) Vendor will consult directly with Brian DeBoyace or his designee prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected school district.

7. Data Breach

In the event that Confidential Data is accessed or obtained by an unauthorized individual, Vendor shall provide notification to the School District without unreasonable delay and not more than seven (7) calendar days after the discovery of such breach. Vendor shall follow the following process:

(a) The security breach notification shall be titled "Notice of Data Breach," shall be clear, concise, use language that is plain and easy to understand, and to the extent available, shall include: a brief description of the breach or unauthorized release; the dates of the incident and the date of discovery; a description of the types of Confidential Data affected; an estimate of the number of records affected; a brief description of the Vendors investigation or plan to investigate; and contact information for representatives who can assist the School District with additional questions.

(b) The Vendor shall also prepare a statement for parents and eligible students which provides information under the following categories: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information."

(c) Where a breach or unauthorized release of Confidential Data is attributed to Vendor, and/or a subcontractor or affiliate of Vendor, Vendor shall pay for or promptly reimburse the School District for the full cost of notification to parents and eligible students of the breach.

(d) Vendor shall cooperate with the School District and law enforcement to protect the integrity of investigations into the breach or unauthorized release of Confidential Data.

(e) Vendor further acknowledges and agrees to have a written incident response plan that is consistent with industry standards and Federal and State laws for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Confidential Data or any portion thereof. Upon request, Vendor shall provide a copy of said written incident response plan to the School District.

IN WITNESS WHEREOF, the Parties have caused this DSC Agreement to be executed by their duly authorized representatives as of the dates set forth below.

Lyncourt Union Free School District:

Vendor: NCS Pearson, Inc.

Printed Name: Brian DeBoyace

Printed Name: Randall Trask

Title: Director of Technology and Innovation

Title: SVP- Clinical Assessments

Signature:  _____

Signature:  _____
Randall/trask (Sep 3, 2024 07:28 MDT)

Date: 9/16/24

Date: 09/03/2024

DATA SHARING AND CONFIDENTIALITY AGREEMENT (CONTINUED)

Lyncourt Union Free School District

BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY

Lyncourt Union Free School District is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, the BOCES wishes to inform the community of the following:

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record.
- (3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
- (4) A complete list of all student data elements collected by the State is available for public review at <http://www.nysed.gov/data-privacy-security/student-data-inventory>. or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- (5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website: <http://www.nysed.gov/data-privacy-security/report-improper-disclosure>.

By The Vendor: NCS Pearson, Inc.


Randall Frask (Sep 3, 2024 07:28 MDT)

Signature

SVP- Clinical Assessments

Title

09/03/2024

Date

DATA SHARING AND CONFIDENTIALITY AGREEMENT (CONTINUED)
SUPPLEMENTAL INFORMATION ABOUT A CONTRACT
BETWEEN NCS Pearson, Inc. AND Lyncourt Union Free School District

Lyncourt Union Free School District has entered into an online Contract with NCS Pearson, Inc. (Vendor name) which governs the availability to instructional and other programs operated by Lyncourt Union Free School District of the following Product(s): Q-interactive and Q-global.

Pursuant to this Contract, Lyncourt Union Free School District may provide to Vendor, and Vendor will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law ("Protected Data"). Vendor has also entered into a separate Data Sharing and Confidentiality Agreement ("DSC Agreement") with Lyncourt Union Free School District setting forth Vendor's obligations to protect the confidentiality, privacy and security of Protected Data it receives pursuant to the Contract.

Exclusive Purpose for which Protected Data will be Used: The exclusive purpose for which Vendor is receiving Protected Data from the District is to provide the District with the functionality of the products or services listed above. Vendor will not use the Protected Data for any other purposes not explicitly authorized above or within the Contract.

Oversight of Subcontractors: In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the Contract (including any hosting service provider), it will require those to whom it discloses Protected Data to comply with obligations consistent with Section 2-d of the New York State Education Law and data security and privacy standards required of Vendor under the DSC Agreement and applicable state and federal law.

Duration of Contract and Protected Data Upon Expiration:

- The Contract commences on [Date] and expires on [Date].
- Upon expiration of the Contract without renewal, or upon termination of the Contract prior to its expiration, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by the District, Vendor will assist the District in exporting all Protected Data previously received back to the District for its own use, prior to deletion, in such formats as may be requested by the District.
- In the event the Contract is assigned to a successor Vendor (to the extent authorized by the Contract), the Vendor will cooperate with the District as necessary to transition Protected Data to the successor Vendor prior to deletion.
- Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, or any de-identified Protected Data, on any storage medium whatsoever. Upon request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide the District with a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by Lyncourt Union Free School District to Vendor, by contacting Lyncourt Union Free School District regarding procedures for requesting amendment of education records it maintains under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of any APPR data provided to Vendor by following the appeal process in Lyncourt Union Free School District' applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States and Canada. The measures that Vendor will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: Vendor (and, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology that complies with Section 2-d of the New York Education Law.

1. Nothing in Education Law Section 2-d or Part 121 specifically requires an educational agency to include within its contracts with third-party contractors this list of obligations that are imposed on third-party contractors by the statute and/or its implementing regulations. However, many school districts and other educational agencies have considered it a best practice to include these statutory and regulatory obligations within their third-party contracts.
2. Each educational agency, including a school district, is required to publish a “Bill of Rights for Data Security and Privacy” on its website. See, Education Law Section 2-d(3)(a) and Part 121.3(a). The Bill of Rights [that is posted on a district’s website] must also include “supplemental information” for each contract that the school district enters into with a third-party contractor where the third-party contractor receives student data or teacher or principal data [protected by Education Law Section 2-d]. See, Education Law Section 2-d(3)(c) and Part 121.3(c). Nothing in Education Law Section 2-d or Part 121 requires an educational agency to post its third-party contracts on its website in their entirety. In addition, nothing in Education Law Section 2-d or Part 121 requires an educational agency to include the “supplemental information” about each contract, within the contract itself. However, many school districts and other educational agencies have considered it a best practice to include most or all of the required elements of “supplemental information” within each applicable contract, and have complied with the obligation to include the “supplemental information” for each applicable contract with their Bill of Rights, by posting the text from this page of this Exhibit from each applicable contract (or a link to this text) on their website in proximity to their Bill of Rights.