

SOFTWARE VENDOR AGREEMENT

This Agreement, made and entered into October 25, 2023, by and between NCS Pearson, Inc., a Minnesota corporation, with its corporate offices located at 5601 Green Valley Drive, Bloomington, MN 55437 and its affiliates a duly qualified consultant (“Pearson” or “Vendor”), and the Westmoreland Central School District, having an office at 5176 State Route 233, Westmoreland, New York 13490 (“District” or “School District”).

School District and Vendor individually referred as “Party” and together as “Parties”.

The Parties agree that this Agreement includes, without limitation, all additional agreements, documents, terms, and conditions referenced or described in Terms and Conditions of Sale and Use of Pearson Products which are viewable at

<https://www.pearsonassessments.com/footer/terms-of-sale---use.html>. If there is a conflict between the terms of this Agreement and Terms and Condition of Sale and Use, the Parties agree that Terms and Condition of Sale and Use shall controls.

In consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. License. Vendor hereby grants to School District, including to all School District’s authorized users, a non-exclusive, non-sublicensable, non-assignable and royalty-free license to access and use the service (the “Services”) solely for School District’s operations in accordance with the terms of this Agreement.

2. Data Accessed by Vendor. Vendor shall identify categories of all data accessed by Vendor or its subcontractors as part of this Agreement as set forth in Addendum B.

3. Term of Services. This Agreement begins on the Effective Date and will continue through June 10, 2026, unless terminated pursuant to Section 4 below (the “Term”).

4. Termination. This Agreement may be terminated as follows:

- (a)** By the either Party upon thirty (30) days prior written notice to other Party;
- (b)** By the School District in the event of breach by the Vendor by providing thirty (30) days prior notice to the Vendor from the date of termination and if the Vendor able to cure breach during such thirty (30) days’ notice period, the School District cannot terminate the contract on cause.; and
- (c)** By either Party upon written mutual agreement.

5. Payment. Payment shall be made in accordance with Addendum C attached hereto.

6. Protection of Confidential Data. Vendor shall provide its Services in a manner which protects Student Data (as defined by 8 NYCRR § 121.1(q)) and Teacher or Principal Data (as defined by 8 NYCRR § 121.1(r)) (hereinafter “Confidential Data”) in accordance with the requirements articulated under Federal, State and local laws and regulations, including but not limited to the foregoing:

- (a) Vendor will adopt technologies, safeguards and practices that align with or similar to the NIST Cybersecurity Framework.
- (b) Intentionally Omitted
- (c) Vendor will limit internal access to personally identifiable information to only those employees or subcontractors that need access to provide the contracted services.
- (d) Vendor will not use the personally identifiable information for any purpose not explicitly authorized in this Agreement.
- (e) Vendor will not disclose any personally identifiable information to any other party without the prior written consent of the parent or eligible student, unless otherwise authorized pursuant to applicable law.
- (f) Vendor will maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable information in its custody.
- (g) Vendor will use encryption to protect personally identifiable information in its custody while in motion or at rest.
- (h) Vendor will not sell personally identifiable information nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.
- (i) In the event Vendor engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on the Vendor shall apply to the subcontractor.

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 cost of legally required 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.

8. Indemnification. Vendor shall at all times (both during and after the Term of this Agreement), indemnify, defend and hold harmless the School District, its agents, employees, and students (collectively for purposes of this Section, “the School District”), from and against any and all settlements, losses, damages, costs, counsel fees and all other expenses relating to or arising from (a) Vendor’s failure to comply with the terms of this Agreement; and/or (b) the negligent operations, acts or omissions of the Vendor.

However, District will be responsible for its own negligent acts or omissions or those of its employees, officers or agents arising out of this agreement.

In no event shall Pearson be liable to the District to the extent that the alleged infringement is based on: (i) a modification of the Product or Work Product by anyone other than Pearson; or (ii) District’s use of the Product or Work Product in a manner contrary to the instructions given to the District or any of the terms of this Contract.

9. Compliance with Laws. Vendor, its employees and representatives shall at all times comply with all applicable Federal, State and local laws, rules and regulations.

10. Independent Relationship. It is expressly intended by the Parties hereto, and Vendor hereby specifically warrants, represents and agrees, that Vendor and the School District are independent entities. The Parties intend that this Agreement is strictly between two independent entities and does not create an employer/employee relationship for any purpose. Vendor shall perform the duties contemplated by this Agreement as an independent entity, to whom no benefits shall accrue except for those benefits expressly set forth in this Agreement.

11. Assignment. This Agreement is binding upon the Parties and their respective successors and assigns, but Vendor's obligations under this Agreement are not assignable without the prior written consent of the School District. Any assignment without the School District's consent shall be null and void. However, both Parties acknowledge that Pearson reserves the right to assign or transfer any interest under this Agreement to an affiliate or successor entity, without District's prior permission.

12. Governing Law and Venue. This Agreement and any Services provided hereunder shall be governed by the laws of the State of New York both as to interpretation and performance, without regard to its choice of law requirements. Any such action arising hereunder shall be venued in the Supreme Court of the State of New York, County of Oneida.

13. Waiver. No delay or omission of the School District to exercise any right hereunder shall be construed as a waiver of any such right and the School District reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

14. Addendums. The following Addenda are attached hereto and incorporated herein:

- Addendum A: Description of Specifications and Services
- Addendum B: Schedule of Data
- Addendum C: Payment Schedule
- Addendum D: School District's Parents' Bill of Rights
- Addendum E: Parents' Bill of Rights – Supplemental Information Addendum
- Addendum F: Vendor's Data Security and Privacy Plan

15. Severability. Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid.

16. Entire Agreement. This Agreement and its Addendums constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the Parties.

IN WITNESS WHEREOF, the Parties have signed this Agreement intending to be legally bound.

NCS Pearson, INC.

By: 

Name: **Randall Trask**
Title: **Senior Vice President**
Date: **10/27/2023**

Westmoreland Central School District

By: 

Name: **Rocco Migliori**
Title: **Superintendent of Schools**
Date: **10/31/2023**

Addendum A

DESCRIPTION OF SPECIFICATIONS AND SERVICES

Description of Services

Product Specifications

Technical Specifications

Addendum B**SCHEDULE OF DATA**

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses, Use of cookies etc.	X
	Other application technology meta data (specify):	X(country language)
Application Use Statistics	Meta data on user interaction with application	
Assessment	Standardized test scores	X
	Observation data	X
	Other assessment data (specify): <i>Student Personality Assessments</i>	X (Clinical Assessments)
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	X
	Place of Birth	
	Gender	X
	Ethnicity or race	
	Language information (native, preferred or primary language spoken by student)	X (Optional)
	Other demographic information (specify):	X (see full list)
Enrollment	Student school enrollment	
	Student grade level	
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
	Other enrollment information (specify):	
Parent/Guardian Contact Information	Address	
	Email	X
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents to students)	

Category of Data	Elements	Check if used by your system
Parent/Guardian Name	First and/or Last	X
Schedule	Student scheduled courses	
	Teacher names	
Special Indicator	English language learner information	
	Low income status	
	Medical alerts	
	Student disability information	
	Specialized education services (IEP or 504)	
	Living situations (homeless/foster care)	
	Other indicator information(specify): <i>First Generation College Student</i>	
Student Contact Information	Address	
	Email	
	Phone	
Student Identifiers	Local (School district) ID number	
	State ID number	
	Vendor/App assigned student ID number	
	Student app username	
	Student app passwords	
Student Name	First and/or Last	X
Student In-App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content, writing, pictures etc.	
	Other student work data (Please specify):	
Transcript	Student course grades	

Category of Data	Elements	Check if used by your system
	Student course data	
	Student course grades/performance scores	
	Other transcript data (Please specify):	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other transportation data (Please specify):	
Other	Please list each additional data element used, stored or collected by your application	X (see full list)

- Names of parents or guardians - if sending a parent rater form, then the parent name and email are required to send the remote on screen assessment
- Test results and raw scores - Q-global does not store scored data; only item entry/raw score entry are stored

Q-global Data Elements:

- Name - user's name is required; examinee name is optional
- Address - Q-global never collects nor stores addresses for users or examinees
- Phone number(s) - user's phone number and account contact phone number; never for examinee
- Email address - required for users; optional for examinee - only used when sending an ROSA to an examinee/rater
- Pearson qualification level - account owner's qual level is associated to the account
- Log-in ID and password - username and password for users (password is encrypted); never for an examinee
- Examinee ID - only required if examinee name is not provided
- Date of birth - required for every examinee
- Gender - only required for some assessments if gender norms are applicable
- Race and ethnicity - only required for some assessments if ethnicity norms are applicable
- Handedness - optional for some assessments
- Home language- optional for some assessments
- Clinical history - optional
- Education history and issues - optional
- Work and employment status, history and issues - optional
- Health conditions - optional
- Medications - optional
- Marital status - may be required for some assessments
- Family information and history - optional
- Living arrangements - optional

Addendum C

PAYMENT SCHEDULE

Addendum D

SCHOOL DISTRICT'S PARENTS' BILL OF RIGHTS

Westmoreland Central School Parent's Bill of Rights for Data Privacy and Security

Pursuant to Education Law section 2-d, BOCES and school districts are now required to publish, on their websites, a parents bill of rights for data privacy and security and to include such information with every contract entered into with a third party contractor where the third party contractor receives student data or teacher or principal data. The following is the Westmoreland Central School District's bill of rights for data privacy and security:

1. A student's personally identifiable information (PII) cannot be sold or released by the Westmoreland Central School for any commercial or marketing purposes.
2. Parents have the right to inspect and review the complete contents of their child's education record including any student data stored or maintained by the Westmoreland Central School. This right of inspection is consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA). In addition to the right of inspection of the educational record, Education Law §2-d provides a specific right for parents to inspect or receive copies of any data in the student's educational record. The New York State Department of Education (NYSED) will develop policies and procedures pertaining to this right.
3. State and federal laws protect the confidentiality of PII, 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 NYSED is available at <http://www.nysed.gov/data-privacy-security/student-data-inventory> and by writing to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234.

Parents have the right to file complaints with Westmoreland Central School about possible privacy breaches of student data by the Westmoreland Central School's third-party contractors or their employees, officers, or assignees, or with NYSED. Complaints regarding student data breaches should be directed to:

1. Matt Cieri (mcieri@westmorelandschool.org)
2. Colby Utter (cutter@westmorelandschool.org)

Data Protection Officers-(315) 557-2649

All complaints must be accompanied by a Breach or Unauthorized Release of Student Data Complaint Form and submitted in person to the superintendent's office. A

complaint can also be submitted to the New York State Chief Privacy Officer using an online form at: <http://www.nysesd.gov/data-privacy-security/report-improper-disclosure>.

For purposes of further ensuring confidentiality and security of student data — as well as the security of personally-identifiable teacher or principal data — the Parents' Bill of Rights (above) and the following supplemental information must be included in each contract that a school district or BOCES enters into with a third-party contractor with access to this information:

1. The exclusive purposes for which the student data, or teacher or principal data, will be used;
2. How the third party contractor will ensure that the subcontractors, persons or entities that the third party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements;
3. When the agreement with the third party contractor expires and what happens to the student data or teacher or principal data upon expiration of the agreement;
4. If and how a parent, student, eligible student, teacher or principal may challenge the accuracy of the student data or teacher or principal data that is collected; and
5. Where the student data or teacher or principal data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted;

Westmoreland Central School maintains an inventory of all software and services utilized within the district that collect, store, or process student information. In order to make this information as easily accessible as possible to our community and comply with requirements outlined in law and regulation, we have posted our inventory and supplemental information related to the contracts for those products and services on our website. We will update the inventory periodically to reflect any changes in product or service usage. The information can be accessed at:

<https://dpit.riconedpss.org/supplemental-information/02d9d2af98c045c102f4>

In addition, the Chief Privacy Officer, with input from parents and other education and expert stakeholders, is required to develop additional elements of the Parents' Bill of Rights to be prescribed in the Regulations of the Commissioner. Accordingly, this Bill of Rights will be revised from time to time in accordance with further guidance received from the Chief Privacy Officer, the Commissioner of Education and NYSED.

Colby Utter
Data Protection Officer
5176 State Route 233
P.O. Box 430
Westmoreland, New York 13032
(315) 697-6300
cutter@westmorelandschool.org

Addendum E

PARENTS' BILL OF RIGHTS – SUPPLEMENTAL INFORMATION ADDENDUM

- 1. EXCLUSIVE PURPOSES FOR DATA USE:** The exclusive purposes for which “student data” or “teacher or principal data” (as those terms are defined in Education Law Section 2-d and collectively referred to as the “Confidential Data”) will be used by NCS Pearson, Inc. (the “Contractor”) are limited to the purposes authorized in the contract between the Contractor and Westmoreland Central School District (the “School District”) dated October 25, 2023 (the “Contract”).
- 2. SUBCONTRACTOR OVERSIGHT DETAILS:** The Contractor will ensure that any subcontractors, or other authorized persons or entities to whom the Contractor will disclose the Confidential Data, if any, are contractually required to abide by all applicable data protection and security requirements, including but not limited to, those outlined in applicable State and Federal laws and regulations (e.g., Family Educational Rights and Privacy Act (“FERPA”); Education Law § 2-d; 8 NYCRR § 121).
- 3. CONTRACT PRACTICES:** The Contract commences and expires on the dates set forth in the Contract, unless earlier terminated or renewed pursuant to the terms of the Contract. On or before the date the Contract expires, protected data will be exported to the School District in **[insert data format]** format and/or destroyed by the Contractor as directed by the School District.
- 4. DATA ACCURACY/CORRECTION PRACTICES:** A parent or eligible student can challenge the accuracy of any “education record”, as that term is defined in the FERPA, stored by the School District in a Contractor’s product and/or service by following the School District’s procedure for requesting the amendment of education records under the FERPA. Teachers and principals may be able to challenge the accuracy of APPR data stored by School District in Contractor’s product and/or service by following the appeal procedure in the School District’s APPR Plan. Unless otherwise required above or by other applicable law, challenges to the accuracy of the Confidential Data shall not be permitted.
- 5. SECURITY PRACTICES:** Confidential Data provided to Contractor by the School District will be stored United States and Canada]. The measures that Contractor takes to protect Confidential Data will align with the NIST Cybersecurity Framework, including but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.
- 6. ENCRYPTION PRACTICES:** The Contractor will apply encryption to the Confidential Data while in motion and at rest at least to the extent required by Education Law Section 2-d and other applicable law.

Addendum F

VENDOR'S DATA SECURITY AND PRIVACY PLAN

[See Attached PDF]