

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”), effective as of the date of signature of this Agreement, is by and between NCS Pearson, Inc., a Minnesota corporation, contracting through its Clinical Assessments business (“Pearson”), and the party signing as licensee below (“Licensee”).

WHEREAS, Pearson is the publisher of various assessments of cognitive ability, academic and speech/language ability, occupational and physical ability (single or multiple sets of assessments, a “Library” or “Libraries”), and offers these Libraries to its customers via a digital product known as Pearson Digital Assessment Library for Schools (together with a Library or Libraries, the “Product”); and

WHEREAS, Licensee wishes to purchase a license to the Product, and Pearson desires to license such Product to Licensee;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Upon the signing of this Agreement, Pearson grants to Licensee a limited, revocable license to access to the Product, via Pearson’s Q-Interactive and Q-Global platform(s), for Licensee’s unlimited use in assessing students within the Licensee’s district, whether for eligibility of services or progress monitoring (the “Licensed Use”). Unlimited use applies to the appropriate and intended use of an assessment as described in the specific assessment product’s administration manual. Any use or administration outside of the Licensed Use described in this paragraph is grounds for termination of this Agreement.
2. The Product licensed hereunder will be further defined in an addendum signed by the parties and attached to this Agreement (the “Addendum”) from time to time in the format of the attached Exhibit 1, incorporated into this Agreement by reference.
3. The Licensee may access and use the Product indicated in the Addendum solely for the Licensed Use and subject to the terms and conditions of this Agreement.
4. Licensee’s use of the Q-Interactive and Q-Global platforms is subject to the licenses located as follows:

Q-Interactive: <http://www.helloq.com/q-interactive-subscription-license.html>

Q-Global: <http://images.pearsonassessments.com/images/assets/qglobal/Q-global-License-agreement.pdf>

Such licenses may be updated or changed by Licensor from time to time without notice to the Licensee and any such updates or changes will inure to the benefit of this Agreement.

5. The Licensed Use specifically excludes the right to assess students not enrolled in Licensee’s district (with the exception of homeschooled students residing in Licensee’s district and students attending charter schools, private schools or other non-district schools for which the Licensee may be responsible for assessing), or to copy, distribute, translate, adapt, revise or reproduce the Product or the Libraries in any form, except as otherwise expressly provided herein.
6. The Licensee will take all necessary precautions to safeguard the Product and the Libraries by limiting access to only those individuals or agencies with a responsible, professional interest in the security of the Product and Libraries and who are appropriately qualified to access and administer the Libraries. Any access by third parties is prohibited unless the Licensee ensures that any such third parties are appropriately qualified and sign an agreement containing terms which are at least as restrictive as the terms contained in this Agreement.

7. All rights in the Product not granted to the Licensee by this Agreement are expressly reserved to Pearson.
8. (a) The rights granted herein will be for the period of time defined in the then-current signed Addendum (the “Term”), after which this Agreement and all rights to use the Product will cease. Any renewals require the written agreement of both parties in the form of a new Addendum specifying the Product and any Libraries licensed, the Term, and any related pricing. Any renewals will be based on the Licensee’s then-current number of Individualized Educational Programs (“IEPs”), as reported to the Office of Special Education and Rehabilitation Services (“OSERS”) either directly by the Licensee or through the Licensee’s state offices, and Pearson’s then-current license fee per each IEP, unless otherwise agreed to in writing between the parties.
- (b) Pearson may terminate this Agreement with thirty (30) days’ prior written notice to Licensee, or may terminate this Agreement if the Licensee fails to cure any material breach hereof, including without limitation a failure to perform its obligations under this Agreement or any misrepresentation of the correct number of IEP’s for that current term, within thirty (30) days after written notice of such breach is given to the Licensee.
- (c) Upon termination or expiration of this Agreement for any reason, Pearson will remove Licensee’s access to the Product and all Libraries. Licensee will be required to backup or download any and all completed assessment reports from the Product and Pearson will delete any and all such reports Licensee has created during the Term from the Product platform and Pearson’s hosting facility.
9. Licensee agrees to pay the license fee(s) set forth in the current Addendum for access to the specified Libraries and based on Licensee’s current number of IEPs. Upon execution of this Agreement and any subsequent Addendum, Licensee will provide Pearson with a purchase order indicating its most current number of IEPs as reported to OSERS and the associated license fees as set forth on the Addendum, and Pearson shall bill Licensee appropriately. In the event of a discrepancy in the number of IEPs reported to Licensor and the number of IEPs reported to OSERS, Licensee shall be responsible for payment of fees associated with the difference. Licensee shall pay the fees within thirty (30) days of receipt of an invoice from Pearson. The Licensee is responsible for any taxes which Licensee is required by law to pay under this Agreement.
10. The rights granted herein are non-exclusive and non-transferable to any third party without prior written permission from Pearson.
11. The representative of the Licensee whose signature appears in this Agreement represents and warrants that he/she has full power to enter into this Agreement on behalf of Licensee.
12. (a) The Product provided to Licensee herein is provided “**AS IS**” and **PEARSON DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- (b) **PEARSON SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST FUNDING, LOST SAVINGS OR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT, THE PRODUCT, OR OTHER ITEMS PROVIDED HEREUNDER, OR ARISING FROM THE USE OF OR INABILITY TO USE THE PRODUCT, EVEN IF PEARSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE LIABILITY OF PEARSON FOR ANY CLAIM UNDER THIS AGREEMENT EXCEED THE FEES PAID FOR THE PRODUCT OR OTHER ITEM OR SERVICE ON WHICH THE CLAIM IS BASED DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE LOSS OR INJURY.** Nothing in this paragraph will be deemed to limit Pearson’s obligation for indemnification as set forth in Paragraph (c) below.

(c) Pearson will indemnify Licensee against any and all claims of infringement related to the Product licensed hereunder; 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 paragraph do not apply to any infringement arising out of the use of Product in combination with systems, equipment or computer programs not supplied by Pearson, or any unauthorized modification of the Product. In addition, if Licensee's use of the Product is restricted as the result of a claim of infringement, Pearson will, at its option, either: (a) substitute other equally suitable Product; (b) modify the allegedly infringing Product to avoid the infringement; (c) procure for Licensee the right to continue to use such Product free of the restrictions caused by the infringement; or (d) take back such Product, refund to Licensee the license fee previously paid for such Product depreciated on a straight line basis over twelve (12) months, and terminate Licensee's license to use such Product.

13. This Agreement and any Addendum or Product license(s) contains the entire agreement between the parties and there are merged herein all prior and collateral understandings and agreements. No amendment or modification of this Agreement will be valid unless in writing and signed by both parties.

14. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but which all together will be deemed to constitute one and the same instrument. Transmission and receipt of this Agreement via electronic means will be treated as original signatures for all purposes hereof and will have the same legal effect as receipt of the original executed document by mail or any other acceptable means of delivery.

15. All notices and other communications under this Agreement shall be given in writing and shall be sent by and deemed to have been sufficiently given or served for all purposes as of the date it is delivered by hand, received by overnight courier, or within five (5) business days of being sent by registered or certified mail, postage prepaid to the parties at the following addresses (or to such other address as hereafter may be designated in writing by such party to the other party):

To Pearson:

NCS Pearson, Inc.
Clinical Assessments
Attention: Managing Director
19500 Bulverde Road
San Antonio, Texas 78259

With a copy to:

NCS Pearson, Inc.
Legal Department
Attention: Vice President and Senior Counsel
19500 Bulverde Road
San Antonio, Texas 78259

To Licensee:

Campbell Co School District 1

Attention: Stephanie Zickefoose
1000 West 8th St
Gillette, Wyoming 82716-3423

16. Regardless of the place of its physical execution or performance, this Agreement will be governed by and interpreted under the laws of the State of Wyoming.

IN WITNESS WHEREOF, Pearson and Licensee have caused this Agreement to be executed by their duly authorized representatives as of the date of the last signature below.

Licensee

NCS Pearson, Inc.

Campbell Co School District 1

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Customer Address:

EXHIBIT A

ADDENDUM to License Agreement

During the Term (as defined below) and subject to the terms of the Agreement to which this Addendum is attached and any associated Product license(s), Licensee will have unlimited access to the Product and Libraries selected below on Pearson's Q-Global and Q-Interactive digital platforms through new Licensee accounts to be established in association with this Addendum and the Agreement, at the license fee indicated.

I. Term.

This Addendum will be effective from August 1, 2018 through July 31, 2019 (the "Term").*

The Term may be renewed for subsequent periods by mutual agreement of the parties upon execution of a new Addendum between Licensee and Pearson.

II. Library, License Fees.

During the Term, the Libraries available to Licensee on Pearson's Q-Global and Q-Interactive digital platforms and the associated license fees will be as follows [selected with an X]:

X	Libraries	Assessments Included	Price/IEP
	Ability	GRS, KABC-II (scoring/ reporting only), WAIS-IV, WISC-V, WPPSI-IV. Scheduled for release in 2017: WISC-V Spanish	\$6.00
	Academic/ Achievement	KTEA-3, WIAT-III, WRMT (scoring/ reporting only)	\$6.00
	Psych (behavior, executive function, mental health)	BASC-3, BYI-II, Vineland-3, CVLT-C, CVLT-II, D-REF, WMS-IV, select subtests from CMS, D-KEFS and NEPSY-II, and MACI, MAPI, M-PACI and MMPI-A-RF. Scheduled for release in 2017: SSIS-SEL, CVLT-3 and RBANS	\$5.00
	SLP/ OT/ PT	CELF-5, GFTA-3, KLPA-3, PPVT-4 and scoring and reporting for CELF-5 Meta and EVT-2. Scheduled for release in 2017: GFTA-3 Spanish	\$5.00
X	Complete Library for Schools	Includes all libraries and assessments identified above to be delivered through Q-interactive and Q-global	\$15.00

III. License Fee Calculation.

At the start of the Term, Licensee will pay to Pearson the license fee for the Library or Libraries indicated above multiplied by the most current number of reported Individualized Education Programs (IEPs) in place at Licensee's district.

As of the signing of this Addendum, the Licensee's most current IEP enrollment as reported to the Office of Special Education and Rehabilitation Services ("OSERS") either directly by the Licensee or through the Licensee's state offices is **1168**.

A credit may be applied for any consumable digital inventory [licenses and subscriptions (to be pro-rated), report usages and subtest usages] existing in any active Q-interactive and/ or Q-global account associated with the Licensee, if so elected by the Licensee prior to entering into the License. If elected, the Licensee's existing accounts will be reviewed, the consumable digital inventory removed from the account, and a credit for such inventory issued within the first thirty (30) days of this Addendum and the Agreement.

ACKNOWLEDGED AND AGREED TO:

Licensee

NCS Pearson, Inc.

Campbell Co School District 1

By: _____
Signature

By: _____
Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

BILL TO ADDRESS:

**Campbell Co SD 1
P.O. Box 3033
Gillette, Wyoming 82717-3033**

The following account numbers will be governed by this agreement:

Q-interactive Account Number: _____

Q-global Account Number: _____