

EDUCATION CODE SECTION 49073.1 AMENDMENT TO
NAGLIERI-3 USER LICENSE AGREEMENT BETWEEN
PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT AND
NCS Pearson

This Amendment (“Amendment”) to the *Naglieri-3 User License* Agreement by and between PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT, a public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California (“District”) and *NCS Pearson* (“Vendor”), dated *June 5, 2018* (“Agreement”) (a true and correct copy of which is attached hereto as Exhibit “A”), is hereby made and entered into as of *June 5, 2018* (“Effective Date”) as follows:

WHEREAS, Vendor provides *license services for the Naglieri-3 Mental Ability Test Online*;

WHEREAS, as a California public school district, the District is subject to the Education Code;

WHEREAS, Vendor is a “third party” under Education Code section 49073.1(6), which defines “third party” as a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records;

WHEREAS, Education Code section 49073.1 requires that any contract for the provision of services entered into between District and Vendor contain provisions specified in sections (b)(1) through (b)(9) of Education Code section 49073.1;

WHEREAS, the District and Vendor desire to amend the terms in their Agreement that will satisfy the requirements of Education Code section 49073.1.

NOW THEREFORE, DISTRICT AND VENDOR AGREE TO THESE TERMS IN COMPLIANCE WITH EDUCATION CODE SECTION 49073.1:

1. **Ownership and Control of Pupil Records.** Pupil records shall continue to be the property of and under the control of the District. For purposes of this Amendment and the Agreement, “pupil records” means both any information directly related to a pupil that is maintained by the District and information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employee. For purposes of this Amendment and the Agreement, “pupil records” does not mean deidentified information, including aggregated deidentified information, used by Vendor to improve educational products for adaptive learning purposes and for customizing pupil learning; to demonstrate the effectiveness of Vendor's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications. For purposes of this Amendment and the Agreement, “deidentified information” means information that cannot be used to identify an individual pupil.
2. **Ownership and Control of Pupil-Generated Content.** Pupils may retain possession

and control of their own pupil-generated content, or may transfer pupil-generated content to a personal account by notifying the **District's Assistant Superintendent, Educational Services/Designee** in writing of such request. The District will provide a written request to **Vendor's Account Representative** via and Vendor shall return the pupil-generated content in a format acceptable to the District within five (5) days of receiving the District's request. For purposes of this Amendment and the Agreement, "Pupil generated content" includes essays, research reports, portfolios, creative writing, music or other audio files, photographs, but does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

3. Use of Pupil Records. Vendor shall not use any information in the pupil records for any purpose other than those required or specifically permitted by this Amendment and the Agreement.
4. Review of Pupil Records. A parent, legal guardian, or pupil who has reached the age of 18 may review personally identifiable information in the pupil's records and correct erroneous information by notifying the District in writing of such request. The District will meet with parent, legal guardian, or pupil who has reached the age of 18 to review and correct any information in the pupil's records. The District will notify Vendor of the need to review pupil records and or make corrections to any pupil records in writing. Vendor shall provide such records and/or correct such errors within five (5) days of receipt of written notice. Vendor shall cooperate with the District to review and/or correct pupil records.
5. Security and Confidentiality of Pupil Records. Vendor agrees to hold pupil records in strict confidence. Vendor shall not use or disclose pupil records received from or on behalf of District except as permitted or required by this Amendment and the Agreement, as required by law, or as otherwise authorized in writing by District. Vendor agrees that it will protect the pupil records it receives from or on behalf of District according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Vendor will designate and train responsible individuals, to ensure the security and confidentiality of pupil records. Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted pupil records received from or on behalf of District. Pupil records shall not be stored or transmitted outside of the United States. These measures shall be extended by contract to all subcontractors used by Vendor.
6. Breach Notification Process. Vendor, within one (1) business day of discovery, shall report to District any use or disclosure of pupil records not authorized by this Amendment and the Agreement or in writing by the District. Vendor's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the pupil records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any effect of the

unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, requested by District. In the event of an unauthorized disclosure of a pupil's records, affected parents, legal guardians, or pupils who have reached the age of 18 will be notified in writing and provided with details and next steps to address the specific breach. Compliance with these requirements shall not, in itself, absolve Vendor of liability in the event of an unauthorized disclosure of pupil records.

7. Retention and Destruction of Pupil Records. Vendor certifies that a pupil's records shall not be retained or available to Vendor upon completion of the term of the Agreement. At the termination of the Agreement, pupil records in the possession of Vendor shall be returned and/or destroyed. Upon termination, cancellation, expiration or other conclusion of the Agreement, Vendor shall return all pupil records to District in a format acceptable to District, or if return is not feasible as determined by District in written notice to Vendor, destroy any and all pupil records. Vendor shall not destroy any pupil records without express written permission of District. Vendor shall comply with any litigation hold or order to preserve pupil records.
8. Compliance with Applicable Laws. The District and Vendor will jointly ensure compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) through following the confidentiality provisions as set forth in this Amendment and the Agreement, as well as applicable District Board policies. The parties acknowledge and agree that the District is subject to federal and local laws relating to the protection of personally identifiable information of students ("PII"), including FERPA, and that Vendor is obtaining such PII as a "school official" under Section 99.31 of FERPA for the purpose of providing the services hereunder. In addition to FERPA, Vendor shall comply with all federal, State and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Vendor; the services being provided by Vendor; Vendor's business, equipment and personnel engaged in operations covered by this Amendment and/or the Agreement; and the protection of pupil records and PII, including but not limited to Education Code section 49060 *et seq.*, the Children's Online Privacy Protection Act (COPPA) and the Student Online Personal Information Protection Act (SOPIPA). Vendor certifies that it is familiar with these laws, as well as any other applicable requirements for the storage and transmission of pupil records and Vendor will comply with all such requirements.
9. Prohibition on Targeted Advertising. Vendor shall not use PII in pupil records to engage in targeted advertising.
10. Insurance and Indemnity. Vendor shall obtain and maintain for the duration of the Agreement Five Million Dollars (\$5,000,000.00) in Cyber Liability Insurance to cover Security, Privacy, Business Interruption, Cyber Extortion, and Denial of Service. Vendor shall indemnify, defend and hold the District harmless from all claims, liabilities, damages or judgments involving a third party, including

District's costs and attorney's fees, which arise as a result of such unauthorized disclosures or misuse of pupil records, excluding those claims, liabilities, damages or judgments arising from the sole active negligence or willful misconduct of District.

11. Termination. If District reasonably determines in good faith that Vendor has materially breached any of its obligations under this Amendment or the Agreement, District, in its sole discretion, shall have the right to provide Vendor with written notice of a fifteen (15) day period to cure the breach. If Vendor fails to cure a breach within that period of time, District may terminate the Agreement immediately. If, in its sole discretion, District determines that cure is not possible, District may provide written notice of immediate termination of the Agreement.
12. Effect of Amendment. If any provisions of this Amendment to the Agreement conflict or are otherwise contrary to the original terms of the Agreement, the terms of this Amendment prevail.

Except as specifically modified herein, all other terms and conditions contained in the Agreement between the District and Vendor shall remain unchanged and in full force and effect.

Dated this 5th day of June 2018.

Kimberly Fricker, Ed.D.
Assistant Superintendent, Education Services
Palos Verdes Peninsula Unified School District

Cheryl McDougald
Cheryl McDougald (May 21, 2018)

Cheryl McDougald
Vice-President of Product Management
Authorized Representative

EXHIBIT "A"
AGREEMENT



Terms of Use

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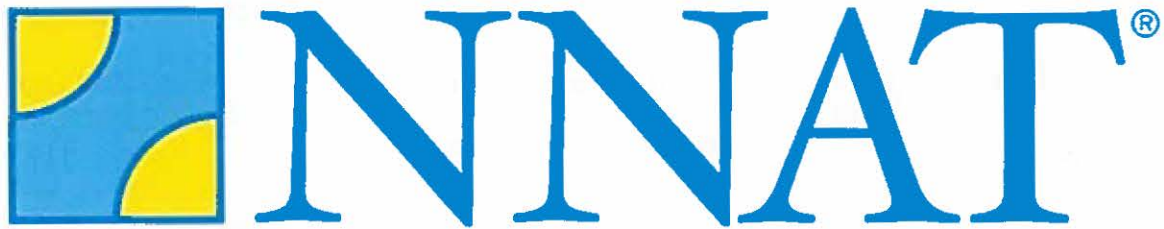
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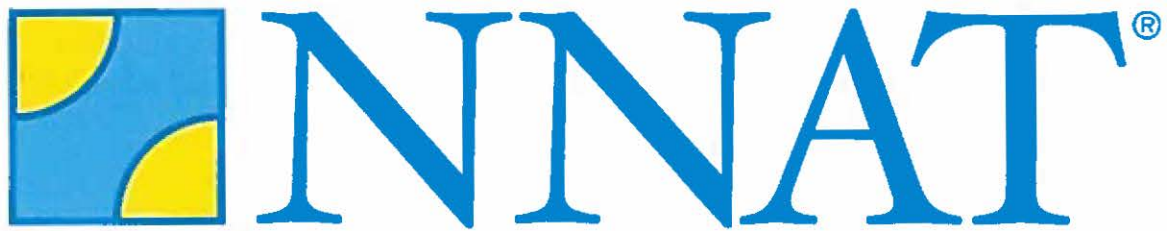
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DMCA Designated Agent – Legal Department
NCS Pearson, Inc.
5601 Green Valley Road
Bloomington, MN 55437
Fax: (952) 861-3066

email: dmca.copyright.issues.ncspearson@pearson.com

To be effective, the Notice must include the following:

- A physical or electronic signature of the owner, or a person authorized to act on behalf of the owner, ("Complaining Party") of an exclusive right that is allegedly being infringed upon;
- Information reasonably sufficient to permit Pearson to contact the Complaining Party, such as an address, telephone number, and if available, an electronic mail address;
- Identification of the allegedly infringing material on the Site ("Infringing Material"), and information reasonably sufficient to permit Pearson to locate such material on the Site;
- Identification of the copyrighted work claimed to have been infringed upon ("Infringed Material"), or if multiple copyrighted works on the Site are covered by a single Notice, a list of each copyrighted work claimed to have been infringed (please be specific as to which Infringing Material is infringing on which Infringed Material);
- A statement that the Complaining Party has a good faith belief that use of Infringing Material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the Notice is accurate, and under penalty of perjury, that the Complaining Party is the owner or is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.



13. JURISDICTION

The Terms are governed by and shall be interpreted pursuant to the internal laws of the state of Minnesota, U.S.A without giving effect to the principles of conflicts law thereof and you consent to the jurisdiction and venue of the state and federal courts of Minnesota, Hennepin County.

14. CHANGES TO OUR WEBSITE TERMS & CONDITIONS

We reserve the right to add or change these Terms. Any changes will be posted to this page and it is your responsibility as a user to ensure that you are aware of any such changes from time to time.

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Any links provided to third party websites, or information supplied about third parties (third party information) on NCS Pearson's websites are supplied as a convenience. Linked sites are not under the control of NCS Pearson; and NCS Pearson is not responsible for any third party linked sites, the contents of such sites, any use of the same, or for third party information. The inclusion of a link or third party information does not imply endorsement by NCS Pearson of the linked site or third party information, any organization or person associated with the linked site or third party information, or any products or services offered or marketed through the linked site or by the third party.

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The Terms constitute the whole legal agreement between you and NCS Pearson and govern your use of the website and any content and completely replace and supersede any prior agreements between you and Pearson, whether written or oral, in relation to the website or any service thereof.

17. SEVERABILITY

If a provision of this Section is found to be invalid, illegal or unenforceable in any respect, the court may modify it to make such provision enforceable or in the alternative remove it without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.



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3. Collection and Use of Personal Information

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6. Information Access and Correction

Certain Personal Information relating to a User account may be accessed and updated by the User through this Site. Users may contact us at 800-328-5999 to access, correct or update other Personal Information submitted or collected through this Site or to opt out of receiving marketing materials about our Assessment products and services.

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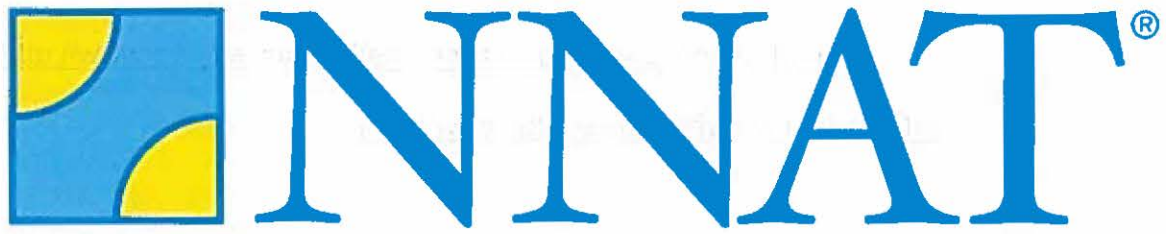
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12. Contact Information

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