Statement of Work
Fayette County Public Schools

07/01/2023

Introduction/Background

This SOW is effective as of July 1, 2023 and extends through June 30, 2024. This SOW is hereby made a part of the Pearson Terms of Service (Attachment A) by and between NCS Pearson, Inc. ("Pearson") and Fayette County Public Schools ("Customer"). All capitalized terms not defined herein are as defined in the Pearson Terms of Service.

The use of the Assessment platform, ADAM, was approved by the Fayette County Public Schools' Board members in their meeting dated July 25, 2022.

Fayette County Public Schools (FCPS) is continuing to provide unique classroom level unit-based assessments per subject and grade. The assessments will provide classroom instruction guidance throughout each unit an assessment is required. Assessments will be Kentucky standard aligned as well as aligned to FCPS unit guides and/or pacing guides.

Services/Deliverables by Pearson

Pearson will continue to build custom unit assessments using Kentucky standards, FCPS pacing guides, and FCPS unit guides, when available. Pearson will utilize licensed item banks, aligned to Kentucky standards and FCPS unit or pacing guides, and provide proposed forms for each unit assessment for FCPS to review including:
- Ongoing project management
- Refresh platform trainings and professional learning (pre-administration and post-administration)
  - Up to 10 hours of training per year
- Basic dynamic TTS for all subjects and units
- 1 round of test specifications review/revision for each unit assessment for FCPS
- Item selection, test map development, and forms development
- 1 round of form review for each unit assessment for FCPS
- Final quality control (QC) for each unit assessment form
- Scheduling of the assessments and/or providing training as well as guidance for FCPS to schedule each unit assessment
- Reports will be generated by district users via ADAM post administration.

For year two (SY23-24) the following unit assessment forms will be created:
- Math grades 3-5 units 2 and 4 (6 total assessments),
- English Language arts grades 3-5 units 1 and 3 (6 total assessments),
- Science grades 3, 5, Chemistry, and Physics units 1-4, grades 6 and 8 units 2-8, and grade 4 units 2 and 4 (32 total assessments),
- Social Studies grades 3, 7, and 8 units 1-3/6, grade 5 units 1 and 3, grades 4 and 6 units 1-4, U.S. History units 1-7, World History units 2-5, and Government units 1-6 (29 total assessments)

Base support for the new unit assessment test specifications and associated fixed unit

assessment form is included in the one-time deliverable. Any requests to update or modify the assessments will be additional scope and handled as a scope change.

Pearson will also provide Fayette teachers/educators with access to a teacher item bank. Teachers/educators may use these items to build unique classroom level assessments. Pearson will not review these assessments for educators.

Pearson will also go back and add a Writing short answer response question to previously developed Language Arts assessments. The addition of this item to each assessment will follow a shortened process as outlined above.

Input by Customer

Fayette County Public Schools will provide the following:
- Updated rostering rules and support to remedy issues that may arise
    o Inclusive of technical support to set up and maintain Clever integration
- Unit assessment schedules, including instruction and assessment test windows
- Pacing guides
- Unit guides, as relevant
- 1 round of test specifications review/revision for each unit assessment
- 1 round of form review for each unit assessment

Software

A.ADAM

ADAM, Pearson's Assessment Delivery and Management platform is provided as a Software as a Service (SaaS) platform.

The full featured assessment platform includes innovative item authoring and banking capabilities, assessment form configuration, student data management, student rostering, assessment assignment, administration, assessment monitoring as well as robust reporting capabilities.

B. Item Banks

Pearson will provide Fayette County Public Schools with a license to assessment content to support the work in this SOW. All assessment content provided or developed by Pearson will be owned by Pearson.

License Period

July, 2023-June, 2024

Total Fees

$ 500,016.32 year 2 total

Area	Cost
ADAM System Fees	$330,050.00
Content Work	$99,794.40
Project Management	$2,400
Writing Assessments	$25,611.32
Teacher Item Bank	$42,160.60

Invoices will be sent twice throughout the cycle. One invoice will be sent in November 2023 for ($250,008.16) and the other will be sent in April of 2024 for ($250,008.16)

Project Contacts

Pearson:
Katie Wilczak (Program Manager)
    Pearson
    9200 Earhart Ln SW
    Cedar Rapids, IA 52404
    Katie.wilczak@pearson.com

Customer:
Brooke Stinson (Director of Assessment & MTSS)
    Fayette County Public Schools
    450 Park Place
    Lexington, KY 40511
    brooke.stinson@fayette.kyschools.us

Acceptance Criteria

The acceptance of this SOW by the Customer project contact will acknowledge the accuracy of all deliverables documented. Any deliverables and/or responsibilities that are not clearly documented as part of the SOW and Terms of Service are considered out-of-scope and require a separate or amended SOW. Such separate or amended SOW shall be executed by both parties and shall be effective as of the latest date of a party's signature.

Any discrepancies involving the completion of project tasks or disagreement between Pearson andCustomer will be referred to both organizations' leadership teams for review and discussion.

This SOW may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Signatures transmitted by facsimile or other means of electronic communication that are capable of retention, retrieval and reproduction shall be deemed

original.

Approved by:

Date:

By:
Position:
NCS Pearson, Inc.

I accept the SOW above. I have read and understood the Terms of Service provided by Pearson and attached to this SOW. I agree to the Pearson Terms of Service and agree that the Pearson Terms of Service are incorporated into and made a part of this SOW. I hereby warrant that I have all rights and authority necessary to enter into this Agreement and that there are no impediments to the execution of this Agreement, and I acknowledge that Pearson is relying on my representations to that effect.

Approved by:

Date:

By:
Position:
Customer: Fayette
County Public Schools

Attachment A
Terms of Service

These Terms of Service are between Customer, as defined in the SOW, and NCS Pearson, Inc. ("Pearson"). By agreeing to the SOW, the Customer is agreeing to these Terms of Service. Customer also agrees that its employees, agents, and end users will be bound by these Terms of Service.

1.   Definitions

1.1   "Data File" means one or more files which contain data that is input (including scoring data) by the Users while accessing the Software.

1.2   "Implementation Fee" means the amount of money listed in the SOW for implementation of the Software.

1.3   "License Fee" means the amount of money listed in the SOW for the Software license and incorporates a price per Response.

1.4   "License Period" means the time period listed in the SOW.

1.5   "Customization" shall mean those changes, requested by the Customer and implemented by Pearson, that are listed in the SOW.

1.6   "Generated Data" means any report created by a User from data in the Data File.

1.7   "Patches" means minor modifications to the Software that correct an existing problem and do not add any additional functionality. Patches are provided by Pearson at its discretion.

1.8   "Response" means a student answer to a single examination question that has been entered into the Software and can be scored.

1.9   "Software" means the software, assessment content, and documentation listed in the SOW.

1.10   "SOW" means the covering statement of work, and any exhibits thereto, for these Terms of Service and includes information on the Software, License Fee, License Period, and the number of licensed Responses, as well as other services provided by Pearson, and other fees.

1.11   "Support" means services provided by Pearson under these Terms of Service.

1.12   "Support Fee" means the amount of money listed in the SOW for Support of the Software.

1.13   "System Data" means data generated by the Software including data regarding user interaction with the Software, the underlying operating system, or other software though the accessing and use of the Software by Users. need to be able to evaluate data on a per project basis and across multiple projects.

1.14   "Technical Issue" means: a) a problem with Software; or b) a problem with accessing Software that is hosted on a computer or virtual machine that is owned or controlled by Pearson, where the problem affects a User's ability to make use of a major functionality of the Software and includes lack of access, reduced communications speed, functions not performing to specifications, corrupt data, errors appearing within the Software, or missing data on reports generated by the Software.

1.15   "User" means a person authorized by the Customer to use the Software.

1.16   "Updates" means minor version changes to the Software provided by Pearson at its discretion. Updates do not include new modules or new software products.

1.17   "Upgrades" means major version changes to the Software provided by Pearson at its discretion. Upgrades do not include new modules or new software products.

2.   Grant of License

2.1   Pearson grants Customer the non-exclusive, non-sub-licensable, limited right a) to access and use the Software installed on a computer or virtual machine owned or controlled by Pearson; and b) to permit an unlimited number of Users to access and/or use the Software for which the License Fee has been paid for the License Period; and c) to permit the User to enter up to the number of Responses into the Software for which the License Fee has

been paid, but only during the License Period.

2.2   Pearson grants Customer the non-exclusive, non-sub-licensable, limited right to use the Software to make, reproduce, publicly display, distribute or otherwise use Generated Data, but only for Customer's internal business purposes.

2.3   All rights not specifically granted under these Terms of Service are reserved by Pearson.

3.   Restrictions

3.1   Customer agrees, except as expressly permitted in the License, the Software may not be used, copied, translated, redistributed, retransmitted, published, sold, leased, marketed, sublicensed, assigned, disposed of, encumbered, transferred, altered, modified or enhanced, whether in whole or in part. Customer may not remove any proprietary notices, marks or labels from the Software.

3.2   No license is granted to System Data or the source code for the Software. Customer agrees not to reverse-engineer, de-compile or disassemble the Software, or make any attempt to discover the source code to the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

3.3   Customer agrees to not attempt to break or evade any access controls, copy-control protections, or encryption utilized in the Software.

3.4   Customer agrees not to assist others in doing what the Customer is prohibited from doing.

4.   Implementation. Upon payment of the Implementation Fee, Pearson shall undertake the services set forth in the SOW related to installation of the Software.

5.   Training. Customer may use Pearson's web-based training resources at Customer's discretion and may utilize other Pearson training resources as set forth in the SOW.

6.   Customization. Any Customization carried out by Pearson is covered under these Terms of Service.

7.   Maintenance. Pearson shall be responsible for maintaining the computer or virtual machine on which the Software is installed. Pearson shall not be responsible for maintaining the computers or virtual machines which are used to access the Software.

8.   Back-ups. Pearson shall be responsible for performing back-ups of the Software, the Data File, and System Data. Back-ups of the Data File shall be done nightly by Pearson and kept until sixty (60) days after the end of the Agreement. If Customer desires to maintain its backed-up the Data File for longer periods , it must arrange separate storage for itself. After sixty (60) days after the end of the Agreement, Pearson may delete all back-ups.

9.   Support

9.1   Customer may make unlimited number of Support Requests. Pearson will thoroughly investigate all problems reported by Customer. If the problem is a Technical Issue with the Software, Pearson will make commercially reasonable efforts to correct the Technical Issue and Pearson will provide: a) a solution; b) confirmation that the Software works per design specifications; or c) confirmation that the problem will not be fixed.

9.2   Pearson shall provide Support via telephone, email, and remote diagnosis and access tools during regular business hours (8:00 am - 5:00 pm Central Time) Monday through Friday except holidays. Pearson support staff may provide Support for Technical Issues outside of regular business hours at its discretion or as otherwise agreed to by the Customer. Pearson shall not be required to provide in-person Support and shall use remote diagnosis tools to deliver Support. To receive Support, Customer shall authorize Pearson's use of remote diagnosis tools and access to Customer's computers and networks.

9.3   Pearson has no obligation to support: a) Software that has been altered by Customer or a third party; b) any problem that is not a Technical Issue; c) third-party software; 4) Customer's backup procedures; d) hardware, or e) interconnectivity of the Software with third party software.

9.4   Support Requests will be prioritized by severity and handled in the order of most severe to least severe, with Technical issues ahead of other problems and questions. Priority is assigned in descending severity: the Software unavailable for processing; a portion of the Software is unavailable; operational questions that are holding up processing; operational questions that do not interfere with normal processing; enhancement suggestions/requests

and requests for custom applications.

10.   Patches, Updates, Upgrades and Customizations Customer shall have the right to receive Patches, Updates, Upgrades and/or Customizations as set forth in the SOW. Patches, Updates, Upgrades and Customizations shall be considered part of the Software.

11.   Availability of the Software

11.1   The Software will be available for use and access by Users 24 hours a day, 7 days a week, except a) for scheduled and noticed maintenance to take place at commercially reasonable times, and b) for violations of Pearson's acceptable use policy.

11.2   Credits for unavailability of the Software will not be given except as set forth in the SOW.

12.   Responsibilities of the Customer

12.1   Customer shall designate one primary contact and one backup contact, who will interact with Pearson. Pearson need not respond to or interact with any Customer employee or agent except the primary and backup contacts. The primary and backup contacts shall have sufficient technical skill and knowledge of Customer's computer systems and the Software to be able to assist Pearson in resolving Technical Issues.

12.2   Customer shall implement industry standard policies covering: a) data security, b) compliance with data security rules and regulations, c) data breach notification rules and regulations, and d) acceptably use of Customer's computing resources by Users.

12.3   Customer is responsible for the misuse of User authentication credentials.

12.4   When reporting a Technical Issue, Customer shall provide as accurate and complete description as possible and shall assist in Technical Issue resolution by providing Pearson with reasonably requested information.

12.5   Customer shall not enter any personally identifiable information (PII) into the Software. If Customer does enter PII into the Software, Customer shall defend, indemnify, and hold Pearson harmless from and against any loss, liability, cost, or expense, including reasonable attorney's fees, which may be incurred by Pearson against any claims, actions, or demands by a third party alleging improper use of PII by Customer.

13.   Ownership

13.1   Title, ownership rights and intellectual property rights in and to the Software and System Data shall remain with Pearson or other third parties. The Software is licensed, not sold, and Customer shall receive no ownership rights in the Software.

13.2   Title, ownership rights and intellectual property rights in the data stored in the Data File shall remain with Customer. Customer grants Pearson a license to use the Data File, and the data in the Data File, for: a) internal business purposes to evaluate the use and operation of the Software; and b) other purposes provided that any information shared with third parties is anonymized and/or aggregated so that Customer or any individual cannot be reasonably identified from the shared information.

14.   Transfer of Software Customer shall not transfer its rights under these Terms of Service without prior written consent from Pearson, where such consent shall not be unreasonably withheld.

15.   Termination of License These Terms of Service is in effect until terminated or the end of the License Period. Customer may terminate it at any time by notifying Pearson of Customer's intent to terminate. Pearson may terminate these Terms of Service if Customer fails to comply with these Terms of Service. Pearson is not obligated to provide an opportunity to cure. Upon termination or the end of the License Period, Customer agrees that Pearson may terminate access to the Software and the Data File without warning.

16.   Reports and Audit Rights Customer shall institute reasonable measures to ensure compliance with the terms and conditions of these Terms of Service. Customer acknowledges that Pearson may monitor the Data File and collect System Data in real time and produce reports relating to Customer's and Users' access and use of the Software. Upon reasonable request, Customer agrees to provide reports, and access to Customer's facilities and records, relating to Customer's use of the Software as necessary to demonstrate Customer's compliance with these Terms of Service. Interference with an audit by Customer is grounds for termination of these Terms of Service.

17.   Software Limited Warranty To the original customer only, Pearson provides the following warranties:

17.1   Limited Warranty PEARSON WARRANTS THAT FOR AS LONG AS THESE TERMS OF SERVICE ARE IN PLACE BETWEEN PEARSON AND CUSTOMER ("WARRANTY PERIOD") AS EVIDENCED BY CUSTOMER'S RECEIPT OR OTHER PROOF OF PURCHASE a) THE SOFTWARE, UNLESS MODIFIED OR OTHERWISE ALTERED BY CUSTOMER, WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE PUBLISHED SPECIFICATIONS FOR THE SOFTWARE, AND b) THE MEDIA ON WHICH THE SOFTWARE IS FURNISHED, IF ANY, WILL BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP UNDER NORMAL USE. Pearson does not warrant that the Software will meet Customer's requirements, or that Use of the Software will be uninterrupted or error-free. Pearson is not responsible for problems caused by changes in the operating characteristics of computer hardware or computer operating systems which are made after the release of the Software, nor for problems in the interaction of the Software with non- Pearson software. Some jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to Customer. The Limited Warranty gives Customer specific legal rights. Customer may have others.

17.2   Exclusive Remedy Pearson's entire liability, and Customer's exclusive remedy, shall be, at Pearson's option, either a) replacement of the defective media, b) repair or replacement of the Software that does not meet Pearson's Limited Warranty, or c) return of the License Fee paid and termination of these Terms of Service. This remedy is subject to return of the Software to Pearson with a copy of Customer's receipt within the Warranty Period or, solely for Software that was obtained electronically via "electronic software distribution", to delivery to Pearson of a Pearson -approved "certification of destruction" together with proof of purchase within the Warranty Period. This Limited Warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Any replacement Software will be warranted for the remainder of the original warranty period or thirty days, whichever is longer.

17.3   Further Warranties

17.3.1   Pearson warrants that it owns the Software or otherwise has sufficient rights to grant Customer the license in these Terms of Service.

17.3.2   Pearson warrants that it owns or otherwise has sufficient rights to grant Customer access to the Software on those computers or virtual machines.

17.3.3   Pearson warrants that, at the time of these Terms of Service, it is not aware of claims that the Software infringes any right of a third party.

17.3.4   After notice by Customer of such requirements, Pearson warrants that it shall abide by any data usage requirements imposed by law or regulation that govern use of the data in the Data File.

17.4   No Other Warranties THE ABOVE WARRANTIES ARE EXCLUSIVE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PEARSON AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND THOSE ARISING OUT OF USAGE OF TRADE OR COURSE OF DEALING, CONCERNING THE SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PEARSON, ITS AGENTS, DEALERS, DISTRIBUTORS OR EMPLOYEES SHALL INCREASE THE SCOPE OF THE ABOVE WARRANTIES OR CREATE ANY OTHER WARRANTIES.

17.5   No Liability for Damages EXCEPT FOR THE EXPRESS REMEDIES AND INDEMNITIES PROVIDED TO THE CUSTOMER UNDER THESE TERMS OF SERVICE, REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PEARSON OR ITS SUPPLIERS (OR THEIR RESPECTIVE AGENTS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES) BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION TO: CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, ECONOMIC, PUNITIVE OR SIMILAR DAMAGES, OR DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, LOSS OF BUSINESS INFORMATION OR ANY AND ALL OTHER COMMERCIAL OR PECUNIARY DAMAGES OR LOSSES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT , HOWEVER CAUSED AND ON ANY LEGAL THEORY OF LIABILITY (WHETHER IN TORT, CONTRACT OR OTHERWISE), EVEN IF PEARSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. CUSTOMER ACKNOWLEDGES THAT THE LICENSE FEE REFLECTS THIS ALLOCATION OF RISK. In any event, if any statute implies warranties or conditions not stated in these Terms of Service, Pearson's entire liability under any provision of these Terms of Service shall be limited to the greater of the amount actually paid by Customer to license the Software and Five United States Dollars (US$5.00), or, in the case of Support, providing such Support again or refunding the cost

thereof. Because some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to Customer.

17.6   **Infringement Indemnity** Pearson shall defend, indemnify, and hold Customer harmless from and against any loss, liability, cost, or expense, including reasonable attorney's fees, which may be incurred by Customer against any claims, actions, or demands by a third party alleging that the Software infringes a U.S. copyright or trademark, provided: a) Customer promptly notify Pearson in writing of the claim; b) Customer provide documents clearly describing the allegations of infringement; c) Pearson has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and d) Customer cooperates fully in the defense of the claim.

17.6.1   If the Software is found to infringe a U.S. copyright or trademark, Pearson shall, in its sole discretion, take commercially reasonable steps to obtain the necessary rights or modify the Software. In the alternative, Pearson may terminate these Terms of Service and Customer shall uninstall the Software. Pearson's liability shall then be to indemnify Customer as above and refund a pro-rata portion of any License Fee paid by Customer for the Software. No refund shall be paid for any price paid by Customer for Support.

17.6.2   Pearson shall have no obligation to defend Customer or to pay any resulting costs, damages, or attorneys' fees for any claims alleging direct or contributory infringement of the Software by a) combination of or integration with a product, process, or system not supplied by Pearson; b) material alteration by anyone other than Pearson; c) use after Customer have been notified of possible infringement; or d) use after modifications are provided or after these Terms of Service are terminated.

18.   Confidentiality

18.1   Each party agrees to keep confidential the terms and provisions of these Terms of Service and any other information with respect to the relationship among the parties; provided, however, that a party may reveal such information as required a) by law, regulation or court order, or b) in connection with such party's performance of its obligations under these Terms of Service.

18.2   Each party acknowledges that it will be provided with, or have access to, Proprietary Information belonging to the receiving party. The receiving party agrees to not: a) disclose Proprietary Information to any third party, except to the extent necessary to carry out the purpose of these Terms of Service; b) use or copy any Proprietary Information for any purpose other than for carrying out the purpose of these Terms of Service; or c) use Proprietary Information in any way adverse to the disclosing party's interests.

18.3   Proprietary Information is defined as any and all information not generally available to the public, and includes without limitation, all information related support, service level agreement, pricing, payment terms, customer lists, vendor lists, the Data File, data in the Data File, System Data, the Software and any other information that is a trade secret.

18.4   Proprietary Information shall not include information: a) already in the possession of the receiving party at the time of disclosure; b) already in the public domain at the time of disclosure; c) that becomes part of the public domain through no fault of the receiving party; or d) that was obtained in good faith by the receiving party from a third party on a non-confidential basis.

18.5   The receiving party agrees to destroy all Proprietary Information, including from backup archives, upon request from the disclosing party or upon expiration or termination of these Terms of Service. The receiving party shall not retain any copies of Proprietary Information and shall certify the destruction of same.

18.6   The receiving party agrees that its duties regarding use of Proprietary Information under these Terms of Service: a) do not cease with the expiration or termination of these Terms of Service; and b) cease only if the information no longer meets the definition of Proprietary Information.

19.   **Entire Agreement** The SOW and these Terms of Service constitutes the entire agreement between Pearson and Customer with regard to the Software and supersedes any and all prior agreements on this topic. To the extent that these Terms of Service conflict with the SOW, these Terms of Service shall control. These Terms of Service shall not be modified except by a written agreement between authorized representatives of Pearson and Customer.

20.   **Severability** If a court of competent jurisdiction determines that a provision of these Terms of Service is unenforceable in any jurisdiction, then such provision shall be deemed modified to the minimum extent necessary to make it comply with the applicable law of such jurisdiction.

21.   **Governing Law** These Terms of Service is governed by the laws of the State of Iowa and applicable U.S. federal law and the state and federal courts located in Cedar Rapids, Iowa, USA shall have exclusive jurisdiction and venue over any claim arising from these Terms of Service.