



WESTMORELAND INTERMEDIATE UNIT

102 EQUITY DRIVE, GREENSBURG, PENNSYLVANIA 15601-7190
PHONE: 724-836-2460

WIU e-SERVICES FRAUD CHECK AGREEMENT

This Fraud Check Services Agreement ("Agreement") made this 14th day of November 2017 by and between:

WESTMORELAND INTERMEDIATE UNIT, with an address of 102 Equity Drive, Greensburg, Pennsylvania 15601 (hereinafter "WIU"),

- a n d -

Warren County School District with an address of 6820 Market Street, Russell, PA 16345-3406, (hereinafter "Customer").

WHEREAS, among the various services offered by the WIU to its member school districts are e-Services Fraud Check Services; and

WHEREAS, the Customer wishes to retain the WIU to provide said e-Services Fraud Check Services to the Customer and the WIU is agreeable to do so; and

WHEREAS, the WIU and the Customer have executed a License Agreement for e-Services Fraud Check Services, which is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the WIU and the Customer hereby set forth additional terms and conditions of their agreement for said e-Services Fraud Check Services.

NOW, THEREFORE, for and in consideration of the covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. **Term.** The Initial Term of this Agreement shall commence on November 14, 2017 (Effective Date) and expire on June 29, 2018. This Agreement shall automatically renew for successive one (1) year terms unless either party gives notice as enumerated in Section 12 of Exhibit "A".
2. **Duties of WIU.** During the term of this Agreement, the WIU shall be responsible for, and shall perform, those duties enumerated on Exhibit "A", including but not limited to providing access to the e-Services Fraud Check Application to Customer and Customer on behalf of Warren County School District (if Applicable), and support and maintenance services as more fully described in Section 8 of Exhibit "A".

3. **Duties of Customer.** During the term of this Agreement, the Customer shall comply with all terms and conditions enumerated in this Agreement and Exhibit "A".

4. **Compensation.**

(a) Initial Term. The Customer shall pay to the WIU as compensation for the services rendered during the Initial Term of this Agreement a fee of Five Hundred (\$500.00) Dollars. The WIU will invoice the Customer for these services upon execution of this Agreement.

(b) Successive Terms. The Customer shall pay to the WIU as compensation for the services rendered an annual fee of Five Hundred (\$500.00) Dollars payable per the terms and conditions of the WIU's invoice. The WIU reserves the right, on ninety (90) days written notice prior to the renewal of a successive term, to increase the cost of compensation by an amount which will compensate the WIU for increased costs for services to be provided.

5. **Force Majeure.** Neither party shall be responsible for delays or failure to perform caused by acts of God (including fire, flood, storm, or other natural disturbances), war, civil war, riot, epidemic, acts of foreign enemies, terrorist activities, government sanction, strikes or other labor disputes, interruption or failure of electric, telephone or similar service or other causes beyond such party's control.

6. **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania, and all obligations of the parties created under it are performable in Westmoreland County, Pennsylvania.

7. **Parties Bound.** This Agreement shall be binding on and inure to the benefit of the contracting parties and their respective successors and assigns.

8. **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, the language of this Agreement shall be construed in accordance with its fair meaning and not for or against any party. The parties acknowledge that each party and its solicitors have reviewed and had the opportunity to participate in the drafting of this Agreement and, accordingly, the rule of construction that would resolve ambiguities in favor of non-drafting parties shall not apply to the interpretation of this Agreement.

9. **No Third Party Beneficiaries.** Except as otherwise specifically provided in this Agreement, this Agreement is made for the sole benefit of the Customer and the WIU. No other person or entity shall have any rights or remedies by reason of this Agreement against any of the parties or shall be considered to be third party beneficiaries of this Agreement in any way.

10. **Assignment.** This Agreement may not be assigned without the written consent of WIU and the Customer.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior discussions, agreements, understandings and negotiations. Furthermore, there are no written or oral understandings, representations, or agreements, directly or indirectly connected with this Agreement, that are not incorporated herein.

12. **Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. **Indemnity.** Customer agrees to defend, release, indemnify, ad hold harmless the WIU, its successors and assigns, and its officers, Board of Directors, employees, agents and representatives from any and all claims, injuries, liabilities, damages, losses, cause of action, suits or any other rights that may inure to the Customer as a result of and/or in relation to the WIU's performance of the contracted services addressed by this Agreement and/or Customer's use of the e-Services Fraud Check Application, including any and all expense, legal or otherwise, incurred by the WIU in the defense of any such claim or the enforcement of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

ATTEST:

**WESTMORELAND
INTERMEDIATE UNIT,**

By _____
Executive Director,
Dr. Jason Conway

ATTEST:

WARREN COUNTY SCHOOL DISTRICT,

By _____
President,
Board of Directors or
Superintendent



WESTMORELAND INTERMEDIATE UNIT

102 EQUITY DRIVE, GREENSBURG, PENNSYLVANIA 15601-7190
PHONE: 724-836-2460

EXHIBIT A: LICENSE AGREEMENT

IMPORTANT – PLEASE READ CAREFULLY:

BY CLICKING THE “ACCEPT” BUTTON ASSOCIATED WITH THIS AGREEMENT (OR BY SIGNING BELOW) AND/OR BY INSTALLING, ACCESSING AND/OR USING THE WIU e-SERVICES APPLICATIONS (the “Software”), YOU, AN INDIVIDUAL ACTING ON BEHALF OF YOURSELF (“INDIVIDUAL LICENSEE”) OR YOU, AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY (“ENTITY LICENSEE,” AND TOGETHER WITH INDIVIDUAL LICENSEE, “LICENSEE”), ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE AGREEMENT (“AGREEMENT”).

IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT CLICK THE “ACCEPT” BUTTON (OR SIGN THIS DOCUMENT) AND LICENSEE IS EXPRESSLY PROHIBITED FROM INSTALLING, ACCESSING, OR USING THE SOFTWARE.

THE “EFFECTIVE DATE” OF THIS AGREEMENT IS THE DAY THAT LICENSEE CLICKS “ACCEPT” (OR SIGNS THIS DOCUMENT) AND/OR FIRST INSTALLS, ACCESSES, OR USES THE SOFTWARE.

1. **License Grant.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-assignable, nontransferable license, without the right to sublicense, to use the Software, in object-code form only, and Documentation, solely for Licensee’s internal business purposes. As used herein, “Documentation” means any user manuals or supporting documentation relating to the Software, if any, provided to Licensee by Licensor in electronic or other form.

2. **Reservation of Rights; Restrictions.** All rights not specifically granted to Licensee herein are expressly reserved by Licensor. Except as otherwise set forth in this Agreement, Licensee (or any third party acting on Licensee’s behalf) is expressly prohibited from any of the following, collectively referred to herein as “Prohibited Activities”: (i) assigning, sublicensing, selling, renting, leasing, loaning, conveying or transferring to any third party the Software or Documentation; (ii) copying, altering, translating or converting to another programming language, modifying, disassembling, decompiling and/or otherwise reverse engineering the Software, and/or circumvent any technological protective measures in the Software; (iii) disclosing any Licensor confidential information; and/or (iv) modifying, concealing, removing or deleting any copyright or other proprietary notice contained in the Software or related interfaces. Any attempt by Licensee to engage in such Prohibited Activities is void and will automatically terminate this Agreement.

3. **Reports.** Notwithstanding the restrictions set forth in Section 2, Licensee is granted a limited right to reproduce the reports ("Reports") generated by the Software in a print or print-like format, solely for internal use.
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5. **Third Party Information.** The Software may incorporate information, software, and/or other technology owned or controlled by third parties ("Third Party Information"). Such Third Party Information may require notices and/or additional terms and conditions, which are provided on Licensor's website, are made a part of and are incorporated herein by reference, and are enforceable by such third party.
6. **Fees and Payment.** The license fee for the license(s) granted in Section 1 (the "License Fee") and payment terms and conditions for such License Fee are specified on Licensor's invoice or in the price proposal provided by Licensor. License Fees paid to Licensor are non-refundable, unless expressly stated to the contrary on such invoice or in such proposal. Licensor may terminate this Agreement and inactivate the log-ins provided to Licensee pursuant to Section 12 in the event such License Fee is not timely paid in accordance with the terms and conditions described in this Section 6, or if Licensor reasonably determines that any billing or contact information provided by Licensee is false, fraudulent, or invalid. Licensee shall pay all taxes imposed by any United States federal, state, provincial, or local government entity or any non-United States government entity on the transactions contemplated by this Agreement, excluding taxes based upon Licensor's net income.
7. **Log-In Information.** Licensor shall issue Licensee log-in information via email, fax, US mail, or courier that sets forth the user name(s) and temporary passwords for each Authorized User to access the Software and any associated Documentation. As used herein, an "Authorized User" is the Individual Licensee or, in the case of an Entity Licensee, an employee, contractor, or agent of Entity Licensee who is authorized by Entity Licensee to use the Software and Documentation. For clarity, Entity Licensee hereby expressly acknowledges and agrees that it is responsible for compliance of all Authorized Users with the terms of this Agreement and shall be liable for any breach of such terms by such Authorized Users.
8. **Support and Maintenance.** In consideration of the License Fee, Licensor shall provide Licensee with reasonable access to Licensor's support personnel by telephone, mail, and/or electronic mail during Licensor's regular business hours of 7:30 AM to 3:30 PM EST for support services related to the Software. In addition, Licensor shall maintain the Software by providing Licensee with error corrections and "bug fixes" for deviations in the functionality of the Software. Licensee agrees that Licensor may collect and use technical information gathered as part of the support and maintenance services. Licensor may use this information solely to improve products and services and will not disclose this information in a form that personally identifies Licensee.

9. **DISCLAIMER OF WARRANTIES.** LICENSOR AND ITS LICENSORS PROVIDE THE SOFTWARE "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE PROVIDED HEREUNDER IS TO LICENSEE. SHOULD THE SOFTWARE PROVE UNWORKABLE OR DEFECTIVE, LICENSEE ASSUMES THE COST OF ALL NECESSARY SERVICING, REPAIR AND/OR CORRECTION.
10. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ITS LICENSORS BE LIABLE TO LICENSEE FOR ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE (INCLUDING BUT NOT LIMITED TO LOSS OF DATA OR DATA BEING RENDERED INACCURATE OR LOSSES SUSTAINED BY LICENSEE OR THIRD PARTIES OR A FAILURE OF THE SOFTWARE TO OPERATE WITH ANY OTHER SOFTWARE), EVEN IF LICENSOR OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LICENSOR'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE LICENSE FEES PAID BY LICENSEE TO LICENSOR FOR THE SOFTWARE AND DOCUMENTATION.
11. **Indemnification.** Licensee agrees to defend, indemnify, and hold harmless Licensor and its third party licensors, and each of their respective officers, directors, and employees, from and against any lawsuits, claims, losses, damages, fines and expenses (including attorneys' fees and costs) arising out of Licensee's use of the Software or breach of this Agreement.
12. **Termination.** This Agreement shall automatically be renewed for successive one (1) year terms, unless either party gives at least sixty (60) days' written notice of termination to the other party prior to expiration of the term then in effect. Licensor may terminate this Agreement immediately, without notice, if Licensee breaches any term of this Agreement. Upon termination of this Agreement, the rights and licenses granted to Licensee pursuant to this Agreement shall immediately and automatically terminate, Licensor may immediately inactivate the log-in information for each Authorized User, and Licensee shall immediately cease any and all use of the Software and Documentation. Sections 2, 4, 5, 9, 10, 12, 14, and 15 of this Agreement shall survive termination.
13. **Compliance.** Licensee agrees to comply with all applicable laws, rules, regulations, and guidelines relating to the export, re-export or redistribution of software.
14. **Government End Users.** If the Software and Documentation are supplied to or purchased by or on behalf of the United States Government, then the Software is deemed to be "commercial software" as that term is used in the Federal Acquisition Regulation system. Rights of the United States shall not exceed the minimum rights set forth in FAR 52.227-19 for "restricted computer software". All other terms and conditions of this Software License apply.
15. **General.** This Agreement sets forth the entire agreement between Licensor and Licensee with respect to the Software and Documentation and the subject matter hereof and, with the exception of any agreement which incorporates this Agreement by reference or any agreement or representation described in Section 6, supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this Agreement. Licensor reserves the right, in its sole discretion, to amend this Agreement from time to time by posting amendments to the Licensor's web site. Licensee may not assign this Agreement or any of its rights under this Agreement without the prior written

consent of Licensor and any attempted assignment without such consent shall be void. Licensor may deliver any notice required by this Agreement via pop-up window, dialog box or other device, even though Licensee may not receive the notice unless and until Licensee launches the Software. Any such notice will be deemed delivered on the date Licensor first makes it available through the Software, irrespective of the date of receipt. This Agreement is governed by and construed under the laws of the Commonwealth of Pennsylvania and the United States of America, without regard to any conflict of law principles. Licensee agrees to personal and exclusive jurisdiction by and venue in the courts located within Westmoreland County, the Commonwealth of Pennsylvania, USA, and Licensee expressly waives any claim of improper venue and any claim that such courts are an inconvenient forum. If any provision of this Agreement is held by a court of competent jurisdiction to be void, invalid, illegal, or unenforceable, the remaining provisions of this Agreement will continue in full force and effect. Failure or neglect by either party to enforce at any time any of the provisions of this license Agreement shall not be construed or deemed to be a waiver of that party's rights under this Agreement. The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs. Neither party shall be deemed in default hereunder or liable for any loss or damage resulting from delays in performance or from failure to perform or comply with the terms of this Agreement due to any causes beyond its reasonable control, which causes include but are not limited to acts of God or the public enemy; riots and insurrections, war, accidents, fire, strikes and other labor difficulties (whether or not the Party is in a position to concede to such demands), embargoes, judicial action, lack of or inability to obtain export permits or approvals, necessary labor, materials, energy, components or machinery acts of civil or military authorities.

CLICK THE "ACCEPT" BUTTON BELOW (OR SIGN THIS DOCUMENT) TO INDICATE YOU HAVE READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ABIDE BY THESE TERMS, CLICK THE "REJECT" BUTTON BELOW AND YOU WILL NOT BE AUTHORIZED TO USE THE SOFTWARE.

Warren County School District

Westmoreland Intermediate Unit

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____