



### Non-Networked License Agreement

This Agreement is entered into between Pearson Education, Inc., through its Longman, ELT Division, located at 10 Bank Street, Suite 900, White Plains, NY 10606 ("Pearson"), and University of Texas at El Paso 500 West University Ave with offices at EL PASO TX 79968-0505 ("Licensee").

The parties hereby agree as follows:

#### 1. Definitions

- a. "Software" means the computer program and software known as Focus on Grammar Interactive level 3, ISBN 0-13-190005-X and Focus on Grammar Interactive level 4, ISBN 0-13-191316-6 Lab Workstation
- b. "Documentation" includes the installation instructions provided with the Software, the information contained in the help section located on the CD ROM, and all electronic pedagogical material included in the Software.
- c. "Site" means Licensee's building, or cluster of buildings, or one campus, housing Licensee's Work Stations, (as hereinafter defined).
- d. "Support Coordinator" and "Alternative Support Coordinator" are the individuals identified below authorized to serve as Licensee's on- Site contacts under this Agreement, and to act on Licensee's behalf in connection with this Agreement:

Support Coordinator	Alternative Support Coordinator
Name: John Fahey Address: 500 W. University Ave. El Paso Phone: 915 747-7877	Name: Alfredo Urza Address: Same Phone: 915-747-5767

- g-e. "License" shall mean the license granted in Section 2, below, such License authorizing Licensee to make the Software available on one Work Station (as hereinafter defined) per each copy of the Software purchased, as indicated in Section 2.
- h-f. "License Fee" is the fee to be paid to Pearson by the Licensee in consideration for the License granted under this agreement. Licensee acknowledges that it shall have no rights whatsoever under this agreement until the License Fee is paid in full.
- g. "Work Stations" shall mean non-networked computer work stations owned, leased, or otherwise used by Licensee and located on the Site, including, without limitation, single-user microcomputers and software or hardware emulators.



## 2. Grant of License

- a. Effective upon Pearson's receipt of the License Fee and the execution of this agreement by both parties, Pearson Education, Inc. hereby grants to Licensee a non-exclusive, non-assignable License, to use the Software, for its intended purpose as described in the Documentation and for no other purpose, such License authorizing Licensee to make the Software available on one (1) Work Station for each of the Software compact disk/s purchased by Licensee.
- b. This license includes permission to Licensee to print the Documentation, but only for on-Site use in connection with the educational activities contemplated by the Software, and only in amounts commensurate with the number of Work Stations licensed hereunder. **All documentation reproduced hereunder must contain all of the copyright notices and claims of confidentiality which appear on the original Documentation, and may not be distributed except to Work Station users.**

## 3. Proprietary Rights Reserved

This agreement grants only the rights expressly described in Section 2, and does not, expressly or by implication, convey or grant to Licensee any other rights whatsoever, included but not limited to any proprietary right of any kind in or to the Software and/or the Documentation. The Software includes confidential, proprietary information in which Pearson, the authors, and other developers claim trade secret rights. The Software and the Documentation are and shall continue to be protected by copyright and other laws, and no copying or distribution of either is permitted except as expressly authorized under Section 2, above. In particular, and without limitation, the Licensee is not authorized to modify, reverse engineer, decompile, or disassemble the Software, and may not deliver copies of, sell, rent, lease, or sublicense the Software or the Documentation to any third party, or otherwise make any use of the Software or the Documentation which is not expressly authorized herein.

## 4. Support

Licensee agrees that all usage and application questions relating to the Software and arising from Licensee's individual users will be referred to the Support Coordinator, or to the Alternate Support Coordinator. Pearson will respond to usage and application questions only to the extent that they come from the Support Coordinator or Alternate Support Coordinator. Licensee agrees that direct support of or contact with individual users of the Software is neither required nor expected of Pearson under this license. For technical support, please call 800-862-7778 x4357 or email [epsupport@pearsoned.com](mailto:epsupport@pearsoned.com) to reach User Services of Pearson Education in White Plains, NY.

## 5. Limited Warranty on Compact Disk/s

- (a) Pearson warrants to Licensee, but to no one else, including Licensee's users, that the compact disk/s delivered to Licensee on which the Software is recorded is and will be free from faulty workmanship and defects in materials under normal use. Licensee's sole and exclusive recourse under this warranty shall be free replacement of the defective compact disk/s by Pearson. If an original compact disk/s is defective, it may be returned to Pearson postage prepaid, addressed to: Pearson Education, Inc., ELT Group, Help Desk, 10 Bank Street, Suite 900, White Plains, NY 10606, and Pearson will replace the defective compact disk/s without charge to Licensee. This warranty excludes compact disks damaged, modified, or misused after delivery to Licensee.
- (b) The warranty expressed in the preceding paragraph is Pearson's only warranty, express or



implied, in connection with the Software, the Documentation, the compact disk/s on which the Software is recorded, or in connection with any other aspect of this agreement whatsoever. The Software itself is licensed "as is," and without any express or implied warranties whatsoever, including but not limited to warranties of merchantability of fitness for a particular purpose.

## 6. General

This agreement, together with the "Terms of Use" contained on the Software CD ROM, which are incorporated herein by reference and attached to this Agreement for ease of reference as Exhibit A, is the only and the entire agreement between the parties concerning the Software and the Documentation. -This agreement may be modified only in a writing signed by both parties.

Neither this agreement nor the license expressed herein may be assigned or transferred, in whole or in part, by Licensee; there are no intended or incidental third party beneficiaries of this agreement.

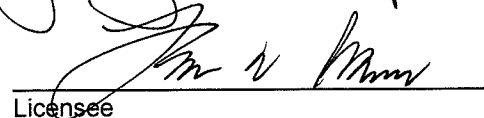
Licensee agrees and acknowledges that the terms and conditions of this agreement itself constitute confidential, proprietary information of Pearson, and Licensee agrees not to use this agreement or its terms or conditions for any commercial purposes of Licensee or others. Licensee further agrees not to disclose the terms of this agreement to any third party other than those employees of Licensee having a need to know in connection with the execution, delivery or admission of this agreement.

This agreement shall be governed by and construed in accordance with the laws of the State of New York, and any action to enforce or interpret or for breach of this agreement shall be brought in the State or Federal courts of New York, and Licensee agrees that such courts shall have exclusive jurisdiction of the matter, and waives any objection to that court on the grounds of inconvenient form or similar objections.

Pearson may terminate this agreement and the license granted herein, and may retain the License Fee, in the event that Licensee breaches this agreement and fails to cure that breach within a reasonable time after receiving written notice of that breach from Pearson Education, Inc. Licensee acknowledges that upon termination of the License, Licensee must purge its computer systems of, and destroy all disk/s containing, and print and electronic copies of the Software and Documentation.

IN WITNESS THEREOF, each party has executed this agreement as of the date indicated next to that party's signature below.

  
Pearson Education, Inc.

  
Licensee

12-18-08  
Date


Retain the other completed, signed original copy of this agreement for your files.


### EXHIBIT A: TERMS OF USE AGREEMENT

#### TERMS AND CONDITIONS

Unless otherwise indicated, this CD-ROM and the associated computer-delivered English language course (the "Course") and all of their materials and contents (the "Contents") are the property of Pearson Education, Inc., through its Longman ELT division and/or its subsidiaries, affiliates, or assigns (collectively "Longman") and are protected, without limitation, pursuant to U.S. and foreign

and UTEP purchase order 

Subject to terms and conditions of Texas Public Information Act, TX Gov't Code, Chapter 552 

Changes to Texas 



copyright and trademark laws.

#### GENERAL TERMS

1. Use of this CD-ROM and Course is restricted to authorized instructors, administrators and students. In consideration of the amounts paid by you for access to this CD-ROM and Course, Longman grants to you a limited, non-exclusive, non-transferable license to access and use the Contents for your personal, educational, non-commercial use only. In doing so, you may not remove or in any way alter any trademark, copyright, or other proprietary notice.

You are solely responsible for obtaining and configuring the necessary personal computer and electronic equipment to install, display and use this CD-ROM and Course, consistent with published System Requirements. Longman accepts no liability for equipment failures attributable to you, to your computer equipment or to any operating system software, or for any event of Force Majeure (as defined below) affecting the availability of the Course and the Contents.

YOU MAY NOT MODIFY, COPY, DISTRIBUTE, REPUBLISH, OR COMMERCIALY EXPLOIT ANY OF THE CONTENTS OF THIS CD-ROM WITHOUT THE PRIOR WRITTEN CONSENT OF LONGMAN. NO INTELLECTUAL PROPERTY OR OTHER RIGHTS IN AND TO THE CONTENTS, OR THIS CD-ROM, OTHER THAN THE LIMITED RIGHT TO USE AS SET FORTH ABOVE, ARE TRANSFERRED TO YOU. In particular, but without limitation:

2. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LONGMAN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CD-ROM.

3. To the fullest extent permitted by applicable laws, Longman and its employees, agents, suppliers, and contractors shall in no event be liable for any claims, charges, demands, damages, liabilities, losses, and expenses of whatever nature and howsoever arising, including without limitation any compensatory, incidental, direct, indirect, special, punitive, or consequential damages, loss of use, loss of data, loss caused by a computer or electronic virus, loss of income or profit, loss of or damage to property, claims of third parties, or other losses of any kind or character, even if Longman has been advised of the possibility of such damages or losses, arising out of or in connection with the use of this CD-ROM, the Course, or the Contents. You assume total responsibility for establishing such procedures for data back-up and virus checking as you consider necessary. In the event any claim relating to the performance or non-performance by Longman, or in any other way relating to the CD-ROM, the Course or the Contents, is made by you, the actual damages to which you may be entitled shall be limited to the amount paid by you for the CD-ROM.

#### FORCE MAJEURE

4. Neither you nor Longman will be deemed to be in breach of this license, or otherwise be liable to the other, for any delay in the performance or the non-performance of obligations hereunder, to the extent that the delay or non performance is due to any statute, rule, regulation, or is due to strikes, lock-outs or industrial action of any kind, fire, accident, civil disturbance, severe weather, Act of God, power failures, network or telecommunication outages,

equipment failure not under the control of either of us or any other circumstances beyond the reasonable control of either of us, but each party agrees to use all reasonable efforts to overcome all such impediments.

#### TERMINATION

5. Longman may terminate this license immediately if you fail to comply with any of the terms and conditions of this license. In no event will Longman be in any way liable to you for termination in such circumstances.

6. Upon termination of this license for any reason, your access to the CD-ROM, the Course and the Contents will be revoked and you shall immediately destroy all copies of any materials provided to you in connection with the Course.

#### INDEMNIFICATION

7. To the fullest extent permitted by applicable laws, you hereby agree to indemnify and hold harmless Longman from and against any and all claims, charges, demands, damages, liabilities, losses, expenses, and liabilities of whatever nature and howsoever arising (including but not limited to any legal or other professional fees and the costs of defending or prosecuting any claim and any loss of profit, goodwill, and any other direct or consequential loss) incurred or suffered by Longman directly or indirectly by reason of any act or omission which you commit in breach of these terms and conditions and the obligations and warranties contained in them.

#### GENERAL

8. If any of these terms and conditions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term or condition shall to that extent be severed from the remaining terms and conditions which shall continue to be valid to the fullest extent permitted by law.

9. THE TERMS AND CONDITIONS OF THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS. ~~You shall not assign this Agreement, or any of its rights or obligations arising therefrom, and any such attempted assignment shall be null, void and without effect.~~

Change to Texas

## Pearson Learning Solutions Agreement

**Parties:** This Agreement is made between:

Effective Date: September 12, 2013

Customer
The University of Texas El Paso
Professional and Public Programs
102 Kelly Hall, 500 W. University Ave.
El Paso, TX 79968

Pearson
Pearson Education, Inc.
Operating as Pearson Learning Solutions
501 Boylston Street, Suite 900
Boston, MA 02116

**Background:** The parties wish to collaborate on developing products and services aimed at Customer's non-degree seeking students in a variety of job and industry specific areas such as allied health, business and information technology. In doing so, Pearson will provide content, technology and services to help Customer launch its online workforce education courses in accordance with the terms of this Agreement. Pearson may provide a variety of content, digital resources and custom curriculum, in each case as described in an Addendum to this Agreement. The parties will agree on the content that needs to be included for each of Customer's courses listed in an Addendum.

**Pearson Products Available (further defined below):**

**\*Courseware** — includes Pearson Workforce Education Online Courses containing digital assets, course material, and course management, delivered electronically

**Master Agreement:** Pearson shall review Customer's needs and present to Customer proposals for Customer to utilize Pearson Products in courses offered by Customer ("Courses"). Upon approval by Customer in the form of an executed Addendum to this Agreement, Pearson shall provide, and Customer shall utilize, such Pearson Products in accordance with the terms of this Agreement and such Addendum.

**Use:** Each Addendum will require the use of certain Pearson Products for an Initial Usage Period and at a Minimum Usage Rate (if any). The Initial Usage Period will commence on the Effective Date of each Addendum. Any use of the Pearson Products shall be governed by the terms of this Agreement, and the Addendum relating to such Pearson Products. Should Customer fail to achieve the Minimum Usage Rates set forth in an Addendum, if any, Pearson will have the right to extend the Initial Usage Period for one additional year for that Addendum. If the Minimum Usage Rates are not achieved by the end of such additional year, Customer will utilize the Pearson Products listed in such Addendum until the Minimum Usage Rates are achieved under such Addendum.

**Pricing:** Pearson will charge a Net Price per unit for access to each Pearson Product. The "Net Price" means the price per unit at which Pearson will provide each Pearson Product hereunder. The Net Price for each Pearson Product shall be listed in each Addendum. Net Prices are exclusive of sales and use taxes applicable to the transactions covered by this Agreement, which Customer will pay.

**Payment:** Customer will pay all amounts invoiced under each Addendum within thirty (30) days of invoice date and will be responsible for any taxes in connection with the resale of the Pearson Products to permitted users. All payments must be made in USD. To the extent Customer fails to pay any invoices when due, Customer will be responsible for any legal fees incurred by Pearson relating to the enforcement of this Agreement.

**Term:** The term of this Agreement shall commence on the Effective Date and continue and unless otherwise terminated as set forth herein, ends when a party terminates such Agreement for its convenience by providing the other party with written notice, which notice shall become effective ten (10) business days after receipt thereof. Any termination for convenience shall not have any effect on any party's obligations set forth in an Addendum to this Agreement.

**Acceptance & Authority:** By signing below, each party accepts this Agreement (including Attachments 1 & 2), agrees to all the obligations and limitations set forth in this Agreement, and represents that the individual executing this Agreement on behalf of the party has been authorized by all necessary actions (corporate or otherwise) to bind that party.

The University of Texas El Paso

Signature

Diane N. De Hoyos

Printed Name

Director of Purchasing and General Services

Title

Date of Signature

Tax ID / Status

Pearson Education, Inc.

Signature

Thomas E. Darling

Printed Name

National Director of Workbooks

Title

Date of Signature

Attachment 1:

**ADDENDUM NO. 1**  
Dated: September 12, 2013

Specifications of Use of Pearson Products

Course Name/ID	Pearson Product	ISBN	Initial Net Price per Unit
Mobile Applications: HTML 5	Pearson Workforce Education online course w/ eBook	1256894613	\$119.00
Mobile Applications: Android	Pearson Workforce Education online course w/ eBook	125689463X	\$118.99
CompTIA N+	Pearson Workforce Education online course w/ eBook	1256873926	\$323.99
Patient Access Specialist Bundle	Pearson Workforce Education online course w/ eBook	1256947466	\$668.25
Patient Access Specialist	Pearson Workforce Education online course	1256905321	\$99.00
Health Insurance II	Pearson Workforce Education online course w/ eBook	1256881112	\$141.77
Health Insurance I	Pearson Workforce Education online course w/ eBook	1256906697	\$141.77
Customer Service for Health Care	Pearson Workforce Education online course w/ eBook	1256504165	\$147.60
Certified Professional Medical Auditor	Pearson Workforce Education online course w/ eBook	1256640190	\$199.00
Certified Professional Health Care Compliance Officer	Pearson Workforce Education online course	1256640174	\$149.00
Certified Nursing Assistant	Pearson Workforce Education online course w/ eBook	1256911194	\$419.17
LEED 205- Green Building and LEED, Preparing for the LEED Green Associate Exam	Pearson Workforce Education online course w/ eBook	1256894516	\$221.45
LEED 205- Green Building and LEED, Prepare for the LEED Green Assoc. Exam, Spanish 2.0	Pearson Workforce Education online course w/ eBook	1256894699	\$221.45
Welding Technician	Pearson Workforce Education online course w/ eBook	1256504092	\$346.35

**Initial Usage Period:**

1 year, commencing September 13, 2013 to September 12, 2014

**Net Price:**

As described in the Table above.

**Access and Use:**

- The Pearson Products will be made available to students who are enrolled in the Course requiring such Pearson Products, solely for personal use (collectively, "Authorized Users").

- Authorized Users may access and use the Pearson Products only in accordance with the terms and conditions set forth in this Agreement and any Terms of Use contained in the Pearson Products.
- Customer acknowledges that the Pearson Products are intended solely for distribution to Authorized Users only, for their respective Courses, and may not be distributed or made accessible in any manner to other students, individuals, institutions or third parties.
- The terms set forth in Attachment 2 are incorporated by reference.

**Pearson Workforce Education Online Courseware:**

- The Pearson Workforce Education Online Courseware ("PWE Courseware") will be made accessible via the MyLab Mastering New Design platform ("MMND Platform").
- Pearson will provide Customer with the access codes for the PWE Courseware for distribution to Authorized Users only.
- An Authorized User will have access to his/her respective PWE Courseware via the MMND Platform for the duration of their enrollment in a Course requiring such PWE Courseware.
- If an eBook is embedded in the PWE Courseware, Customer acknowledges that such eBook may not include third-party material that appears in the print versions of the eBook, for which Pearson has not obtained all required electronic permissions.

**Billing and Invoicing:**

Pearson will provide access codes to Customer in the quantities ordered by Customer or its authorized distributors, upon receipt of a written request or purchase order from Customer or such distributors. Pearson will then invoice Customer or such distributors, as applicable, for each access code delivered. None of the access codes are returnable, but may be retained for future use if not used or activated.

**Termination of Access:**

The use of the Pearson Products is subject to the terms of this Agreement and any Terms of Use associated with each Pearson Product or Platform, including Customer's payment of all fees due hereunder. Customer will promptly notify Pearson of any actual or suspected violation that Customer may discover. Upon the request of Pearson in connection with any such violation, Customer will cooperate with Pearson regarding the violation, up to and including termination of the violator's access to the Pearson Products. Pearson reserves all rights against the violator including the right to bring any legal or equitable action deemed appropriate by Pearson.

**Acceptance & Authority:** By signing below, each party accepts this Addendum to the Agreement, and represents that the individual executing this Addendum on behalf of the party has been authorized by all necessary actions (corporate or otherwise) to bind that party.

The University of Texas El Paso

*Diane N. De Hoyos* 9/17/13

Signature

Diane N. De Hoyos

Printed Name

Director of Purchasing and General Services

Title

Date of Signature

Tax ID / Status

Pearson Education, Inc.

*Thomas B. Loring*

Signature

THOMAS B. LORING

Printed Name

National Director of Workforce Ed.

Title

Date of Signature

9/16/13



Attachment 2:

**General Terms & Conditions**

**Termination.** This Agreement may be terminated by either party in the event of a material breach hereof by the other party, effective on sixty (60) days' prior written notice; provided that, during such sixty (60) day notice period, the breaching party fails to cure the breach to the reasonable satisfaction of the non-breaching party. Pearson may also terminate this Agreement upon Customer's dissolution, liquidation, financial reorganization or recapitalization with creditors, assignment for the benefit of creditors, or the appointment of a receiver, trustee, custodian, or similar agent for Customer's business or property. On expiration or termination of this Agreement, each party shall promptly remit to the other all unpaid monies due, or to become due, under this Agreement. Customer further agrees to cease all access and use of the Pearson Products, and provide written notification from an officer of Customer to that effect. Those provisions which by their nature are intended to survive any termination or expiration of this Agreement shall survive such termination or expiration.

**Ownership; Restrictions on Use.** All right, title and interest in and to the Pearson Products and the content, materials, technology and data contained therein, and any derivative works thereof is expressly reserved by Pearson (collectively, the "Pearson Materials"). Nothing in this Agreement will be construed to prevent Pearson from selling, licensing, using, repurposing or permitting any third party to use the Pearson Materials. Except as expressly set forth in this Agreement, all rights with regards to the Pearson Products offered herein are reserved by Pearson and under no circumstances shall Customer or any students, faculty or agents of Customer resell, publish, transfer, distribute, sublicense, provide access to, copy, adapt, translate, reproduce, modify, enhance, or use the Pearson Products or the content contained therein without the express written permission of Pearson. Each party will provide the other with notice of any third party claim regarding the distribution, alteration or unauthorized use of the Pearson Products in any manner and to any extent not authorized in this Agreement. Pearson will have the right to defend and settle any such claim with counsel of its choosing or to tender the defense to Customer. Customer agrees to cooperate with Pearson, its insurers and attorneys, and provide reasonable assistance in defending against any such claim.

**Reservation of Rights.** Except as specifically set forth in this Agreement, Customer agrees that it acquires no rights to use, display, market, license or promote (including but not limited to marketing tools, promotional or preview use allowances, printing allowances, cut/paste allowances or lending or sharing rights) Pearson Products in connection with its rights under this Agreement or any Authorized Users' use of the Pearson Products. Unless otherwise agreed to in writing by the parties, in no event will Customer or its Authorized Users have the right to further distribute, display or transmit the Pearson Products to anyone else including (i) in any physical form (CDs, DVDs, portable media, etc.), or (ii) in portions or in parts less than the complete Pearson Product and (iii) in or as any derivative work.

**Security Audit.** Pearson will have the right to audit and inspect the systems and processes of Customer and its third party partners for compliance with any and all requirements and limitations imposed under this Agreement. Pearson will have the right to stop distributing Pearson Products to Customer if at any time, Pearson notifies Customer of any violation of this Agreement that is not remedied to the satisfaction of Pearson, within 10 days after such request, or if Pearson otherwise determines that Customer's or its third party partners' direct or indirect practices for protecting the Pearson Products from unauthorized use are unsatisfactory or inadequate.

**Personal Use Only.** Customer agrees that the online Pearson Products are intended to be used solely by Authorized Users solely for individual, personal, non-commercial and non-transferable use in accordance with this Agreement and are not otherwise to be shared, copied, distributed, used concurrently or hosted online. Customer agrees that it will notify Authorized Users of these restrictions.

**Cessation of Use.** Notwithstanding Customer's rights to use the Pearson Products, Pearson may require Customer to promptly cease (within three business days) using any Pearson Products, if (i) Pearson notifies Customer that Pearson no longer has the necessary rights to the Pearson Materials contained therein or the Pearson Product has been discontinued, (ii) Pearson believes cessation is necessary to limit or avoid liability or (iii) Pearson is otherwise required by law or court order to cease and desist. In such events, Pearson will use commercially reasonable efforts to replace, at no cost to Customer, any affected Pearson Products with other materials to be used by Customer pursuant to the terms of this Agreement.

**DISCLAIMER.** EXCEPT AS SET FORTH IN THIS AGREEMENT, PEARSON EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. PEARSON DOES NOT WARRANT THAT THE PEARSON PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESSED WARRANTIES PROVIDED IN THIS AGREEMENT.

**Use of Marks.** Each party owns certain trade names and trademarks (collectively, "Marks"), and such Marks are and will remain the exclusive property of such party. This Agreement gives the other party no rights therein, and the other party will never assert any rights therein; provided, however, that Customer grants to Pearson a non-exclusive, non-royalty bearing license to reproduce Customer's Marks in conjunction with the publication and sale of the Pearson Products. Customer further agrees not to remove or alter any trademark or other proprietary notice in or on any Pearson Product.

**LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST DATA, LOST PROFITS AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE USE OF OR INABILITY TO USE THE PEARSON PRODUCTS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PEARSON'S TOTAL AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR CUSTOMER'S USE OF THE PEARSON PRODUCTS WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SPECIFIC PEARSON PRODUCT GIVING RISE TO THE CLAIM. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSIONS OF LIMITATIONS OF INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO THE PARTIES.

**Assignment.** This Agreement will be binding on the parties and their respective successors and permitted assigns. Customer may not assign its rights or delegate its obligations under this Agreement to any third party without the prior written consent of Pearson.

**Third Party Beneficiaries.** Pearson's licensors and other third party providers are intended third party beneficiaries of this Agreement. The disclaimers and exclusions and limitations of liability set forth in this Agreement shall also extend to the benefit of such third parties.

**Confidentiality.** Customer shall keep confidential and shall not disclose the terms and conditions of this Agreement except to its authorized legal and financial representatives with a need to know and then only for purposes of representing Customer's interests hereunder. In addition, Customer will not issue any press release or make a public announcement relating in any way whatsoever to this Agreement or the relationship established by this Agreement without the advance written consent of Pearson.

**Force Majeure:** If the performance of this Agreement is interfered with, delayed or prevented as a result of an act of God or any other reason beyond the reasonable control of Pearson, including without limitation on account of strikes, labor conditions, shortages in materials or equipment, riots, insurrection, war, terrorism, acts of civil or military authority, governmental action, unavailability of energy or communication resources, unavailability of internet service, network outages, insolvency or inability of a Pearson Product platform vendor, then the party affected shall be excused from such performance to the extent of such interference (and the other party shall likewise be excused from performance to the extent such party's obligations are related to the performance so interfered with), provided that the party so affected shall use commercially reasonable efforts to remove such causes of non-performance.

**Governing Law.** This Agreement will be governed by the United States of America law, excluding principles of conflicts of law.

**Entire Agreement.** This Agreement, together with any attachments and schedules hereto, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement will not be modified except by a subsequently dated written amendment signed on behalf of Pearson and Customer by their duly authorized representatives.

**Counterparts.** This Agreement may be executed in counterparts by the execution of duplicate signature pages hereof, each of which shall be deemed the execution of the original Agreement and read together and construed as one and the same agreement.

**Electronic Signatures.** This Agreement and related documents may be accepted in electronic form (e.g., by scanned copy of the signed document, an electronic or digital signature or other means of demonstrating assent) and each party's acceptance will be deemed binding on such party. Each party acknowledges and agrees it will not contest the validity or enforceability of this Agreement and related documents, including under any applicable statute of frauds, because they were accepted or signed in electronic form or via facsimile copy. Facsimile and electronic signatures shall be considered valid signatures as of the date hereof.

**Managed Online Programs Order  
between The University of Texas at El Paso and eCollege.com (Pearson)**

The University of Texas at El Paso ("UTEP") and eCollege.com (hereinafter referred to as "**Pearson**"), hereby enter into this Managed Online Programs Order (the "**Order**") effective as of the 18th day of December, 2013 (the "**Effective Date**"), and subject to the Online Education Services Agreement (RFP No. BOR-07-08-11) ("**Agreement**") by and between The University of Texas System, an agency and institution of higher education established under the laws of the State of Texas ("**University**" or "**UT System**"), and Pearson. Subject to the terms and conditions set forth in the Agreement, this Order and in any attached Exhibits and addenda, if any, the parties hereby agree as follows:

**1. PURPOSE AND SCOPE**

UTEP and Pearson will work to develop and promote UTEP's online education programs (the programs developed and/or promoted by Pearson under this Order are collectively referred to as the "**Managed Programs**" and are subject to the mutual agreement of Pearson and UTEP). UTEP hereby agrees that during the term of this Order, and except as expressly set forth in this Order or otherwise agreed to in writing between UTEP and Pearson, all of UTEP's online education degree programs, certificate programs, and degree-completion programs (whether provided under UTEP's online brand or not) that lead to a recognized education credential from UTEP, whether at the graduate or undergraduate level, will be Managed Programs. For the purposes of this Order, existing or future online core courses required for successful completion of a Managed Program are considered to be part of the Managed Programs. Online educational programs not covered by this Order and not considered Managed Programs:

- RN-BSN program
- M.A. in Leadership Studies

Once a UTEP program becomes a Managed Program, that program shall continue to remain in the Managed Programs for the remaining term of the Order. UTEP will begin to transition its existing and planned online education programs to be Managed Programs with the goal to launch in its Spring 2015 academic term, which will at a minimum include the specific programs set forth below. The addition of each new program to be a Managed Program shall be subject to the prior approval of Pearson in each instance, and in the event that Pearson does not approve such new program to be a Managed Program, UTEP in its sole discretion may offer the program on its own or through another vendor or service provider. These programs must be (a) attractive to students, with high enrollment potential, (b) national in scope and appeal, (c) open to both in-state and out-of-state students, and (d) full programs that allow for first time in college, degree-completion students or graduate students.

2015	2016	2017	2018 and beyond
BBA in General Business	BA Media and Advertising	Principal Certification Program	MA Criminal Justice (New Degree)
BS Health Promotion	Graduate Certificate in Public Health Certificate	Ed.D. Educational Leadership & Administration	MS Engineering (Engineering Education track)
BA Organizational and Corporate Communication	MS Systems Engineering	MS Information Technology (Cyber Security track)	
Bachelor of Multidisciplinary Studies (BMS)	Master of Business Administration (MBA)	Doctor of Nursing Practice (DNP)	
BA Criminal Justice	MS Construction Management		
MFA Creative Writing			
Master of Defense and Strategic Studies (MDSS)			

BA Security Studies (New Degree)			
Graduate Certificate in Technical and Professional Writing			
UG Certificate GIS (fall)			
Grad Certificate GIS (fall)			
MSN in Nursing Ed			
MSN in System Management			
ME.d in Bilingual Ed			
ME.d in Early Childhood Ed			
MSN with Nurse Practitioner (NP) concentrations (FNP, ACNP, PNP)			

Additionally, UTEP will transition its existing online courses for use on the LearningStudio, for launch on that platform in its Spring 2015 academic term, and will launch all future non-Managed Programs online courses on the LearningStudio during the term of this Order (collectively, the "**Additional UTEP Courses**"). UTEP hereby commits to continue using the LearningStudio as its exclusive virtual learning environment for the delivery of the Additional UTEP Courses to its students until the conclusion of UTEP's 2020 Spring academic term. Further, the Additional UTEP Courses will be considered to be Managed Programs for purposes of this Order, except where specified otherwise.

## 2. TERM

The term of this Order commences on the Effective Date and shall remain in effect until the conclusion of UTEP's 2020 Spring academic term (with each of the following time periods being referred to as a "**Contract Year**" for purposes of this Order).

- Effective Date – December 31, 2014 (referred to as "2014")
- January 1, 2015 – December 31, 2015 (referred to as "2015")
- January 1, 2016 – December 31, 2016 (referred to as "2016")
- January 1, 2017 – December 31, 2017 (referred to as "2017")
- January 1, 2018 – December 31, 2018 (referred to as "2018")
- January 1, 2019 – December 31, 2019 (referred to as "2019")

## 3. UTEP ROLES AND RESPONSIBILITIES

UTEP shall be responsible for, and shall provide and perform at its sole cost and expense, the following roles and responsibilities, as they relate to the Managed Programs:

- Core Academic Functions.** UTEP will have sole control, discretion and oversight authority for the academic components of the Managed Programs, including but not limited to managing all academic matters and student affairs related to the Managed Programs. UTEP retains control and decision-making authority over all academic content of the Managed Programs, consistent with UTEP's academic standards, principles and policies. UTEP will provide institutional and academic guidance, evaluation and oversight for the Managed Programs.
- Administrative Services.** UTEP will be responsible for and perform all administrative services that are related to the official student services component of the Managed Programs (for example, administrative

services relating to financial aid, admission and enrollment). UTEP will use its best efforts to transition relevant student-facing administrative services to be wholly available online by August 1, 2014, with a firm commitment to availability by the Spring 2015\_ academic term. Additionally, the following administrative services must be wholly available for each academic term offered within the Managed Programs:

- UTEP will provide all program level requirements for each degree offering provided online for external audiences, including required GPA, restrictions or guidelines for transfer of credits, appeals processes, transcript requirements, interview schedules and requirements (if required), and any unique aspects of the program that should be disclosed during the admissions process such as the requirement to complete an externship (as an example).
  - UTEP will provide the ability for students to complete all admission, payment and registration requirements online and without live assistance.
  - UTEP will provide the ability for students to access advising online.
- c) **Executive Leadership.** UTEP will appoint a dedicated executive of online learning for the Managed Programs.
- d) **Program Development and Support.** UTEP shall be responsible for developing, maintaining and operating the Managed Programs in conjunction with Pearson (as detailed in Section 4 of this Order) in accordance with its academic standards, principles and policies, and it will offer an appropriate number and selection of programs and courses (taking into consideration recommendations and guidance from Pearson, including the establishment of shorter and more frequent term structures), as needed to accommodate all prospective students generated through UTEP's and Pearson's efforts under this Order. UTEP will retain control and decision-making authority over all academic content and programmatic components of the Managed Programs.
- e) **Program Consistency and Continuity.** UTEP will provide support to the Managed Programs in alignment with support provided to other UTEP programs.
- f) **Accreditation, Authorization and Licensure.** UTEP is responsible for filing all necessary accreditation-related notices and obtaining all necessary accreditor approvals or consents under applicable standards and policies of accreditation agencies having jurisdiction over UTEP relative to the Managed Programs. Nothing in the Order will imply or extend accredited status to Pearson, and Pearson will not claim for itself or infer any such accredited status for the Managed Programs other than through a description of UTEP's accredited status. UTEP is responsible for obtaining all necessary education-related licensure and authorization in every applicable U.S. or foreign jurisdiction that may be relevant to the Managed Programs; provided, however, that UTEP is not responsible for obtaining such licensure or authorization in states where, at UTEP's sole discretion, it is cost-prohibitive to do so. Pearson and UTEP will work in good faith to identify states where obtaining education-related licensure or authorization will not serve the shared interests embodied in this Order. Notwithstanding the foregoing, UTEP represents that it has attained and will maintain licensure and authorization for the Managed Programs in Texas, New Mexico, Arizona and California. Pearson will provide ongoing guidance and consultation to facilitate UTEP's efforts in these areas. UTEP shall take all actions necessary to comply with all applicable laws, regulations, and accrediting body standards, possess all required educational approvals and accreditations, maintain Title IV eligibility, and comply with all terms of its program participation agreement with the U.S. Department of Education then in effect.
- g) **Faculty Selection.** UTEP will be responsible for the selection, appointment, promotion, coordination and regulation of all Managed Program faculty and instructors, including for review and verification of their credentials, appointment and coordination of Managed Program course instructor(s), and their staff and their activities. UTEP will also be responsible for ensuring that the appropriate quality and quantity of faculty are available to meet the needs of the Managed Programs and projected student enrollment.

- h) **Course Instruction.** UTEP will be responsible for all instruction, including pedagogical approaches and teaching and learning techniques to accompany the Managed Program courses, and related student and academic support activities and functions.
- i) **Content and Curriculum.** UTEP shall provide, and exercise control over the content and quality of, the curriculum and related course materials for the Managed Programs, and UTEP will in good faith and in its sole discretion decide whether to adopt recommendations from Pearson regarding course and curriculum supplements and related course materials.
- j) **Admissions.** UTEP shall have full authority and responsibility for all admissions policies, procedures, conditions, criteria and for all decisions regarding the admissions of students to a Managed Program and registration of students in Management Program courses. UTEP will provide admissions resources that are dedicated solely to the Managed Programs. UTEP commits to complete and communicate the results of all official admissions decisions for the Managed Programs within 48 hours of receipt of the respective student's completed file (excluding weekends and holidays).
- k) **Financial Aid.** UTEP will be responsible for all tasks and functions related to the financial aid process. UTEP will facilitate the application of students in the Managed Programs for federal student financial aid that is authorized under Title IV of the Higher Education Act ("Title IV") to the same extent that it facilitates Title IV aid to students in other UTEP programs, in accordance with applicable Title IV eligibility and other legal requirements. UTEP shall also ensure that access to such financial aid is available equally for all academic terms within the Managed Programs. UTEP shall be responsible for all functions and decision-making related to the student financial aid process. UTEP will provide financial aid staffing that is dedicated solely to the Managed Programs. UTEP commits to complete a review of, and communicate the results of all financial aid applications for the Managed Programs within five (5) business days of receipt of a completed application.
- l) **Tuition and Ancillary Fees.** UTEP will collect all revenues and ancillary fees and will be responsible for making distributions to Pearson as set forth herein.
- m) **Academic Credit and Degree.** UTEP shall be responsible for evaluation of student progress and performance and for recording or issuance of any credit, certificates, degrees or diplomas for students in the Managed Programs in accordance with UTEP's established academic policies and in its sole discretion. The decision whether and how to issue academic credit and degrees rests solely with UTEP.
- n) **Records.** UTEP will be responsible for processing and maintaining all academic, administrative and financial aid records for students who are enrolled in or seeking enrollment in a Managed Program in accordance with its existing obligations with students, UTEP's policies and practices and in compliance with all applicable laws and regulations.
- o) **Access to UTEP Enrollment and Marketing Systems, Documents and Training.** UTEP will provide Pearson with immediate and ongoing access to all UTEP enrollment and marketing systems (including pertinent documentation and training) as may be needed to facilitate Pearson's performance of its roles and responsibilities under this Order, and will work in good faith with Pearson to facilitate any requests that Pearson may make to extend or enhance such access. At a minimum, this will include:
  - UTEP shall: (i) provide Pearson access to a CNAME for a 3<sup>rd</sup> level sub-domain off UTEP's main utep.edu domain that points to an IP address on Pearson's server strictly for the purpose of providing the Pearson Services. Specifically, UTEP will provide (a) one utep.edu URL for each e-Learning Program and (b) one URL for the creation of the online.utep.edu site, and (ii) provide a CNAME that points to a Pearson service IP address for the purposes of the e-Learning Program, which means UTEP shall provide Pearson a universal resource locator (URL) name associated with UTEP's web URL, the content of which will reside on Pearson's server, and UTEP will designate an email domain affiliated with the same web address.
  - UTEP will provide Pearson with access to application lifecycle data (i.e. access to a UTEP admissions portal where all processes and key documents are housed for student admittance)

including all information gathered in the student application, date received, current application review status (in review, accepted, denied, etc.), financial aid application status, academic advising status if applicable, receipt of transcripts, transfer credit approvals and all other relevant data that indicates the progress and current status of a student's application for admission, financial aid and course registration.

- UTEP will provide Pearson with the ability to export UTEP's application lifecycle data into useable and readable data formats, including, as requested by Pearson, interfaces that allow real-time access to lifecycle information.
  - UTEP will provide Pearson with access to internet "cookies" and "breadcrumbs" and other electronic tracking information for all received RFIs, in real time as RFIs arrive.
  - UTEP will provide a unique identifier appended to every lead in the lead generation process, with this identifier reflected in the enrolled student's SIS record so that leads can be tracked through to retention and completion.
  - UTEP will provide Pearson a report showing volume of leads generated each month, to be delivered the week following month end.
- p) **Marketing and Lead Generation.** UTEP will provide coordination and support of marketing efforts between UTEP's traditional academic programs and the Managed Programs and ensure coordination of efforts with Pearson's student recruitment activities under this Order. UTEP further agrees that Pearson shall be a provider of marketing services for the Managed Programs (excluding the Additional UTEP Courses, for which Pearson has no obligations under this Section 3(p)) and that if UTEP provides its own marketing services for the Managed Programs, UTEP will work with Pearson to ensure that the messaging and creative associated with such marketing are aligned to Pearson's efforts prior to their use or dissemination, including the identification of any other third-party marketing vendors used by UTEP and reconciliation to Pearson's satisfaction of the campaigns used by such vendors. Upon generation of a lead, UTEP will be responsible for all additional aspects of the student recruitment process, including but not limited to: collect, respond to, qualify and manage all inquiries related to the Managed Programs; provide follow-up contact; provide enrollment counseling and facilitate prospect decision-making; and provide guidance and support for application submission (applications will be submitted through University's existing applications processes).

UTEP further authorizes Pearson to bid on, organically rank and drive traffic for relevant keywords (including branded, non-branded, online-specific and generic keywords) for use by Pearson in both national and geo-targeted marketing campaigns. UTEP agrees that such traffic will be directed to uniquely designed landing pages and/or independent Managed Programs web sites that will be designed, developed and hosted by Pearson. In order to ensure proper representation of the Managed Programs, UTEP agrees to place links to Managed Programs landing pages on relevant high traffic pages within UTEP's web sites in a manner, and in specific locations, mutually agreeable to the parties. UTEP shall provide Pearson with all consents and take all actions necessary to effectuate the authorizations and permissions in this section.

UTEP shall provide Pearson with access to and guidance on any innovative media, course topics, subject matter experts, unique teaching approaches, etc. that could be used in marketing collateral to further prospective student marketing efforts.

UTEP agrees to provide Pearson with the following information for the purpose of promoting and marketing of the e-Learning Programs:

- All UTEP alumni lists and databases.
- Prospective students who inquired into, or expressed interest in, UTEP but did not apply for admission.
- Prospective students who applied for admission to UTEP but were not admitted.
- Prospective students who were admitted to UTEP but did not enroll in UTEP courses.
- UTEP students who have not enrolled in UTEP courses for a period longer than 3 months.



UTEP shall provide the following resources in order to successfully carry out its student recruitment responsibilities under this Order:

- Dedicated online marketing budget.
- Training and tailored materials for online representatives.
- Recruitment portal for applicants and inquiries that features specific program information.
- Online orientation portal for enrolled students.
- Integrated financial aid packaging so that students are packaged prior to start of first term.
- CRM and automated admissions process to help track and improve conversions at each stage of the pre-enrollment process (lead to contact, contact to application, application to enrollments and enrollment to start).

- q) **Brand Usage.** UTEP hereby grants Pearson the right and license to reproduce, display and use the name, trade names, trademarks, service marks, logos, symbols and trade dress (collectively “**UTEP Trademarks**”) owned or licensable by UTEP to facilitate student recruitment and to support and service the Managed Programs, provided that any and all uses of UTEP Trademarks are submitted to UTEP for prior review and written approval; this includes the use of UTEP Trademarks in advertising and marketing plans and samples of representative marketing materials. UTEP commits to complete, and communicate the results of its review of each submission within 48 hours of receipt of the applicable materials (excluding weekends and holidays).
- r) **Staffing Commitment.** UTEP is responsible for providing sufficient resources and staffing as may be needed to accomplish and fulfill its roles, responsibilities, commitments and objectives under this Order, which shall include at a minimum the following resources which must be in place within ninety (90) days after the Effective Date:
- A dedicated project manager to facilitate and manage technology and integration projects related to the Managed Programs, as well as to provide coordination with Pearson on all such activities.
  - A dedicated project manager to facilitate and manage course development projects related to the Managed Programs, as well as to provide coordination with Pearson (including with regards to UTEP faculty) on all such activities.
    - Designation of one of the dedicated project managers above as the single point of contact for overall Managed Programs project manager activities.
  - A dedicated single point of contact to provide coordination with Pearson with regards to all admissions processes and activities, including admissions, advising, financial aid, and registration.
  - Named single points of contact to provide coordination with Pearson in each of the following areas:
    - Marketing review, as detailed in Sections 3(q) and 4(k) of this Order.
    - Website content development and maintenance (including approval and acquisition of appropriate content).
    - Information technology
    - Admissions
    - Student advising
    - Financial aid
    - Student registration
    - Student retention
  - Named single points of contact within each UTEP school or college that participates in the Managed Program, to facilitate and manage coordination with Pearson. These individuals will be accountable to the UTEP dedicated executive of online learning for the Managed Programs, with respect to their involvement in the Managed Programs.
  - An administrative group dedicated solely to the Managed Programs.
  - Dedicated online marketing and recruitment resources, sufficient to meet the following recruitment team staffing levels:

- Dedicated Marketing Director to oversee online lead generation and communications.
- One Recruitment Services Manager/Director per 10 FTEs managed
- One Retention Manager/Director per 10 FTEs managed
- One enrollment advisor (FTE) per 50 leads per week
- One retention specialist (FTE) per every 225 students per term
- One financial aid advisor (FTE) per 450 students per year
- One employee (FTE) in student accounts per 1,050 students per year
- One employee (FTE) in Registrar's office per 750 students per year

Pearson will provide UTEP with annual funding that will be allocated specifically for the Recruitment Services Manager/Director and Retention Manager/Director positions, in the following amounts:

Contract Year	Services Manager/Director	Retention Manager/Director
2014	\$23,333	\$23,333
2015	\$72,100	\$72,100
2016	\$74,263	\$74,263
2017	\$76,491	\$76,491
2018	\$78,786	\$78,786
2019	\$78,786	\$78,786

All references to "dedicated" in this Section 3(r) shall be understood to mean fully dedicated in terms of focus and responsibilities, even if the individual is not part of an organizational structure that is itself fully dedicated to the Managed Programs. All references to Managed Programs in this Section 3(r) are meant to exclude the Additional UTEP Courses from the defined scope of coverage.

- s) **Cooperation and Assistance.** UTEP will cooperate with Pearson and provide assistance as reasonably requested by Pearson to support Pearson in performance of its duties under this Order, and will work in good faith with Pearson to identify and implement process improvements and other changes that reflect operational best practices and the unique aspects of online learning programs

#### 4. PEARSON ROLES AND RESPONSIBILITIES

Pearson shall be responsible for, and shall provide and perform at its sole cost and expense (except as otherwise specified or limited in this Order), the following roles and responsibilities (the "**Pearson Services**"), as they relate to the Managed Programs:

- a) **LearningStudio Access.** Pearson will provide UTEP and UTEP's faculty, students and administrative staff (collectively, "**Authorized Users**") with access to and use of applicable and appropriate portions (in Pearson's sole discretion) of Pearson's LearningStudio virtual learning environment, which will be hosted and maintained on Pearson servers and accessed via the Internet through a single sign-on online campus, for educational, instructional and related administrative purposes. The specific content, features and functionality reflected in the LearningStudio are subject to change and discontinuation by Pearson in its sole discretion, provided however, that the core features and functionality which are material to the functioning and use of the LearningStudio, will be maintained by Pearson during the term of this Agreement.
- b) **Integration to UTEP Systems.** Pearson will provide UTEP with access to and use of the LearningStudio's standardized integration options for user and course provisioning with student information systems. Additional customization and extension of the user experience, as the parties may agree upon, will be provided through existing or enhanced application programming interfaces within the LearningStudio. Pearson agrees to expose applicable existing APIs for use by UTEP, as well as providing applicable documentation and technical guidance, to support UTEP's efforts to integrate its student information system to the LearningStudio.

- c) **Learning Outcomes.** Pearson will provide functionality within the LearningStudio that will allow faculty to: (i) track and grade learning outcomes within courses; (ii) track student activity; and (iii) track student grades through the LearningStudio gradebook.
- d) **Enterprise Reporting Analytics.** Pearson will provide functionality within the LearningStudio that will allow access to select data assets, enabling data monitoring, predictive models and multi-dimensional analysis. This will give UTEP access to data and reports related to student achievement and success, faculty effectiveness, enrollment data and course completion rates.
- e) **Technical Support.** Pearson will provide telephone and online support (via chat and email) to UTEP's faculty, students and staff who need technical assistance associated with their use of the LearningStudio. This support will be provided on a 24 hours a day, 7 days a week basis. Technical Support does not include support related to the use of UTEP's or other third parties' technology, technical issues associated with outside ISPs, networks or third-party software or issues related to user inexperience with systems and settings other than the LearningStudio.
- f) **Operational Support.** Pearson will provide UTEP with a single point of contact for the day-to-day operations and support of the Managed Programs. Additionally, Pearson will provide UTEP with the following standardized operational support services packages:

Readiness Assessment and Consulting

- Institutional Readiness Assessment (Contract Year 2014)
  - Program Scalability Workshop (annually)
  - Market Viability Research for Programs (as mutually agreed)
- g) **Training.** Pearson will provide appropriate (to be determined by Pearson in consultation with UTEP) training regarding the use of the LearningStudio, to UTEP faculty and staff on an as needed basis. Additionally, Pearson will provide UTEP with standardized services training for UTEP personnel, in accordance with the following:

Best Practices Training and Ongoing Support

- Recruitment Services – UTEP CRM Training (up to 40 hours; Contract Year 2014 only)
- Recruitment Services – Training of UTEP Manager (up to 40 hours; Contract Year 2014 only)
- Recruitment Services – Initial UTEP Staff Training (up to 120 hours; Contract Year 2014 only)
- Recruitment Services – Annual UTEP Refresher Training (up to 40 hours of training; 4 times per Contract Year)
- Recruitment Services – Annual Best Practices Workshop (up to 40 hours of training annually beginning in Contract Year 2015)
- Recruitment Services – Monthly Reconciliation and Assessment by Director of Recruitment (up to 8 hours of assessment once a month)
- Student Services – UTEP CRM Training (up to 40 hours; Contract Year 2014 only)
- Student Services – Training of UTEP Manager (up to 40 hours; Contract Year 2014 only)
- Student Services – Initial UTEP Staff Training (up to 120 hours; Contract Year 2014 only)
- Student Services – Annual UTEP Refresher Training (up to 40 hours of training; 4 times per year)
- Student Services – Annual Best Practices Workshop (up to 40 hours of training annually beginning in Contract Year 2015)
- Student Services – Monthly Reconciliation and Assessment by Director of Recruitment (up to 8 hours of assessment once a month)

Change Management

*First Contract Year:* Pearson will facilitate conversations with UTEP to define a mission statement with supporting bullets defining the reasons UTEP decided to make the change to the Pearson learning environment and the LearningStudio platform with up to four 90-minute web-based consulting sessions.

Pearson will also coordinate the translation of these broad mission statements into measurable outcomes which the parties can use to track the overall health of the engagement with a two-day campus workshop followed by up to three 90-minute consulting sessions to review, socialize and sign off on engagement metrics. Once these outcomes have been established, Pearson will work with UTEP to define a communication plan to ensure all stakeholder groups (admins, course developers, teaching faculty, students, academic advisors) are aware of the goals for the change and that communication takes place at appropriate times to get ahead of the change. Pearson will co-facilitate up to ten communication work-stream meetings with the customer and will deliver a communication template along with a timeline for key stakeholder groups. Pearson will work with the customer to identify and document any known pain points that need to be addressed as UTEP transitions from the legacy system to the Pearson environment. This documentation should be complete a minimum of two weeks prior to the first platform training event. Additionally, a UTEP representative must kick off all initial training events to facilitate a discussion about why the change was made. Pearson will then incorporate a crosswalk of known challenges faculty will face as they transition from UTEP's legacy platform onto LearningStudio as part of all new trainings Pearson delivers for UTEP.

**Subsequent Contract Years:** Pearson will host annual project health meetings with UTEP stakeholders with up to three 90-minute consulting sessions to review progress toward the goals and outcomes established in the previous Contract Year. Pearson will then work with the customer to create an action plan to address prioritized areas for improvement and provide up to 50 hours of support to facilitate the execution of the continuous improvement action plan.

#### **LearningStudio Onboarding Package**

UTEP will receive a tailored set of services specified below from Pearson's Academic Training & Consulting team to facilitate UTEP's onboarding process for migration to the LearningStudio platform. Pearson and UTEP shall establish a mutually agreeable schedule and project plan for faculty training. UTEP understands and acknowledges that the exact date and timing of implementation activities will depend upon the scheduling and availability of applicable Pearson personnel and other resources. All training and implementation services over those identified below must be pre-approved by UTEP and will be invoiced separately by Pearson.

#### **Platform Training (first Contract Year):**

- Fifteen hours of upfront discovery and customization consulting to determine activities and materials that best fit UTEP's needs.
- One day, face-to-face LearningStudio Train-the-Trainer onboarding sessions for up to 15 participants at UTEP location.
- Follow-up one day on-campus support for UTEP's trainers to support them in the onboarding of teaching faculty prior to initial term start.
- 100 hours of iSupport which provides 24/7 1x1 faculty support and scheduled expert consultation.

**Enterprise Reporting Implementation:** Pearson will provide training and implementation services for Enterprise Reporting ("ER"), as more fully described in a separate Statement of Work between UTEP and Pearson which will establish a mutually agreeable schedule and project plan in accordance with the general parameters outlined below:

#### ***First Contract Year***

##### **Enterprise Reporting Query Studio Training:**

- Provide up to three 90-minute consulting sessions to UTEP to identify appropriate stakeholders for the ER implementation and to agree on targeted actions for ad-hoc reports that will be generated within Query Studio during the Training Phase.
- Lead UTEP stakeholders through an ER Query Studio Training Phase. Training will be customized to support individual users with the requisite skills according to assigned role (Consumer or Author) in the ER application.
- Within two months following the Query Studio Author ER Workshop, Pearson will schedule up to two 90-minute consulting sessions to conduct a post-training retrospective that will:

- Evaluate the effectiveness of the ER implementation in meeting the goals established during the Needs Analysis phase.
- Assess UTEP's ability to execute the targeted actions for ad-hoc reports as identified in the Needs Analysis phase.

Enterprise Reporting (Dashboards, Custom Reports, Report Scheduling): UTEP will have 50 hours remaining following the ER Query Studio training phase. These hours can be used for the following options:

- To develop requirements for custom reports that Pearson's report writers can create using advanced ER capabilities. Examples include but are not limited to the following:
  - Tailored reports that use unique program or campus requirements to identify at-risk students for distribution to faculty or student services staff working on interventions.
  - Identification of faculty who are not meeting minimum thresholds for administrators.
  - Operational reports to identify courses that have not been assigned a professor or to summarize student drops by course, term, etc.
  - Reports that require data from more than one ER data package (Monitoring, Outcome Analytics, Surveys).
- To schedule reports (standard or custom) to run on a recurring basis and be transferred to an SFTP site for broader consumption.
- Consultation with Pearson data specialists on how to integrate data from the LearningStudio ecosystem into intentional at-risk intervention and curricular improvement programs.
- Support with ongoing report authoring questions.

#### *Subsequent Contract Years*

UTEP will receive 50 hours of services per Contract Year from Pearson's Academic Training & Consulting team that can be used for any combination of the following:

- Onboarding of new ER users or retraining of existing users who need a refresher.
- To develop requirements for custom reports that Pearson's report writers can create using advanced ER capabilities.
- To schedule reports (standard or custom) to run on a recurring basis and be transferred to an SFTP site for broader consumption
- Consultation with Pearson data specialists on how to integrate data from the LearningStudio ecosystem into intentional at-risk intervention and curricular improvement programs.
- Support with ongoing report authoring questions.

**Learning Outcome Manager Implementation:** Pearson will provide training and implementation services for Learning Outcome Manager ("LOM"), as more fully described in a separate Statement of Work between UTEP and Pearson which will establish a mutually agreeable schedule and project plan in accordance with the general parameters outlined below:

#### *First Contract Year*

Implementation includes Needs Analysis, Readiness, Pilot Workshop, Post-Pilot Retrospective, and Integration Workshop phases. Needs analysis will include coordination with Pearson Custom Curriculum to integrate program / course learning outcomes into the course development process. Pilot & Integration Workshops are conducted face to face. Following the initial implementation, Pearson will provide tailored ongoing assessment cycle and implementation support to be conducted via a maximum of three 90-minute consulting sessions and a subsequent two-hour web-based workshop with mutually determined stakeholders along with a facilitated, deep-dive, outcome data consumption and course improvement workshop for faculty and academic leaders.

#### *Subsequent Contract Years*

Annual services and support to include an annual planning session to discuss goals, needs, process, stakeholders and timelines around additional implementation activities. Support also includes web-based data usage workshops with stakeholders and tailored guidance on incorporating product enhancements into established implementation approach. 50 hour limit per year.

Any portion of a training package not used during the designated Contract Year will be automatically forfeited by UTEP at the end of that Contract Year.

- h) **Tutoring.** Pearson will provide UTEP with access to and use of Pearson's Smarthinking tutoring service for Managed Programs students, which shall be accumulated at a rate of 0.1 hours of Smarthinking tutoring for each Enrollment in a course within the Managed Programs. As UTEP's students use the Smarthinking tutoring, time will be deducted in accordance with the table set forth below. Any portion of the accumulated hours not used during the Contract Year in which they were accrued will be automatically forfeited by UTEP at the end of that Contract Year.

Service Used	Charge to UTEP Account
Real Time Interaction with e-structor	Metered to the minute, plus 7 minutes per session for processing and archiving
Submission to Online Writing Lab	42 minutes (or 67 minutes if page count is 10 or more)
Pre-scheduled Session with e-structor*	30 minute minimum increments, plus 7 minutes per session for processing and archiving.
Paragraph/Asynchronous Question Submission	27 minutes

- i) **General Management.** Pearson will provide an experienced program management, technical and operations team to support UTEP in the management, facilitation and coordination of the Managed Programs. This team will develop timelines for each phase of the mutually agreed upon business plan and provide an acceptable reporting structure to ensure transparency and effective decision-making between UTEP and Pearson. The parties will work in good faith toward the migration of the programs identified in Section 1 of this order to the Managed Programs. Except as expressly set forth in this Order, Pearson will retain discretion in determining the appropriate levels of effort, investment and resources (staffing and otherwise) applied by Pearson to carry out its obligations under the Order; provided, however, that the foregoing shall not be construed to change the standard to which Pearson must perform, but rather applies only to the means by which Pearson satisfies its obligations.
- j) **Promotion and Marketing.** Pearson shall be responsible for promoting and marketing the Managed Programs (excluding the Additional UTEP Courses, for which Pearson has no obligations under this Section 4(j)). In this role, Pearson will work with UTEP to develop all messaging and will receive prior approval from UTEP for all campaign-level messaging for advertisements and marketing and promotional materials, but Pearson will retain ultimate decision-making authority (including spending levels) on the volume, frequency, methodology, delivery channels and mix with respect to such approved advertising and marketing and promotional materials.
- k) **Course Conversion.** Pearson will convert and optimize up to 150 of UTEP's currently existing online courses (not to exceed an average 25 hours of total effort per course) to work with the LearningStudio, such that the converted courses will have materially the same functionality as the source course (i.e. feature-to-feature or unit-to-unit), excluding any features not currently supported by the LearningStudio. Optimizations may include :
- Dynamic instructional collaboration with UTEP resulting in recommended optimizations
  - Mirror visual styling
  - Retain or improve student experience
  - Retain or improve instructor workflow
  - Platform course tool set up (Dropbox, Gradebook, etc.)

Pearson and UTEP shall establish a mutually agreeable schedule and project plan for the course conversion activities (based on a mutually agreed-to prototype course standard and in accordance with Pearson's standard efforts, scope and methodology for similar projects with other customers and in consideration of UTEP's priorities and capacity). The maintenance of this schedule shall be both parties' joint responsibility, and UTEP will review and have the right to approve the courses at various

stages of the process. UTEP shall be solely responsible for securing all third party consents, authorizations, permissions, approvals and licenses concerning UTEP supplied or generated content.

- l) **Commercial Content.** Pearson will provide Pearson's commercial eBook products ("**Pearson Content Products**") for UTEP's use within the Managed Programs, where such Pearson Content Products may enhance the existing offerings (subject to the additional fees set forth in Section 5 of this Order). The specific Pearson Content Products made available to UTEP under this Order shall be subject to the mutual agreement of UTEP and Pearson. All materials provided for UTEP's use hereunder are hereby agreed to be Pearson Materials.
- m) **Course Development.** Pearson will provide custom course development services for the Managed Programs excluding the Additional UTEP Courses, for which Pearson has no obligations under this Section 4(m)), subject to the scope and timing parameters set forth below. UTEP shall be solely responsible for securing all third party consents, authorizations, permissions, approvals and licenses concerning UTEP supplied or generated content.
- **Gold Level:** (up to 161 courses) major course revisions or new course development:
    - Budgeted for 10 courses in 2014
    - Budgeted for 50 courses in 2015
    - Budgeted for 73 courses in 2016
    - Budgeted for 28 courses in 2017
  - **Silver Level:** (up to 65 courses) the adaptation of Pearson CourseConnect courses to scoped and sequenced to align with UTEP course structure and materials.
    - Budgeted for 23 courses in 2014
    - Budgeted for 30 courses in 2015
    - Budgeted for 12 courses in 2016

Pearson and UTEP shall establish a mutually agreeable schedule and project plan for the creation and delivery of the courses (based on to a mutually agreed-to prototype course standard and in accordance with Pearson's standard development efforts, scope and methodology for similar projects with other customers and in consideration of UTEP's priorities and capacity). The maintenance of this schedule shall be both parties' joint responsibility, and UTEP will review and have the right to approve the courses at various stages of the process.

Additionally, Pearson will provide course maintenance for the developed courses, in accordance with the following:

- **Content:** Relates to issues with the accuracy of course content with a direct and material impact to student learning. Examples include, but are not limited to, incorrect lecture materials or assessments. Content revisions will be addressed as soon as feasible via the standard course development process.
- **Functionality:** Relates to issues involving non-functioning course components with a direct and material impact to the ability of end users to utilize course resources as intended. Examples include, but are not limited to, course access issues and inability to access or utilize eBook or other media resources. Functionality issues will be addressed as soon as feasible via the standard course development process.
- **Preference:** Relates to requests or suggestions for course improvements and/or revisions that reflect up to a 20% change in course content, and which should occur no sooner than 18 months after launch of the initial course build by Pearson. Examples include, but are not limited to, removal of existing course resources, integration of additional course resources or change in delivery of existing content. Preference revisions will be addressed via a mutually agreed upon revision schedule. UTEP will have access to course content and will have the ability to make editorial changes to content throughout the courses as well. Notwithstanding the foregoing, UTEP

acknowledges and understands that Pearson content products may have standardized digital rights management and other technological features and functions that inhibit and restrict the ability to make revisions to such content products.

- n) **Implementation.** The use of and access to the LearningStudio and the Pearson Services will be subject to implementation by Pearson, in accordance with Pearson's standard development efforts, methodology and timelines for similar projects with other customers, and as deemed appropriate by Pearson for the activities covered under this Order. Activities required for the integration of the LearningStudio and the Pearson Services to other UTEP or third party systems or services is not included, unless otherwise expressly specified in the Order.
- o) **Statement of Work.** Additional services may be contracted for pursuant to a statement of work, on terms agreed to by the parties, which shall be governed by the terms and conditions of this Order.

## 5. FEES AND PAYMENT

In consideration of Pearson providing the Pearson Services to UTEP, UTEP shall pay Pearson for services rendered as set forth below.

- a) **Enrollment Fees.** The fees owed by UTEP to Pearson for the Pearson Services performed under this Order will be determined as follows:
  - i) **Census Date.** An official census of enrolled students will be taken by Pearson for each Managed Program course, on the official University census date of the applicable academic term (the "**Census Date**"). A student will be counted as an Enrollment for purposes of this Order if Pearson has not received notification prior to the Census Date that the student has withdrawn. Pearson shall deliver the census data to UTEP for review and reconciliation. Any discrepancies shall be reported to Pearson within five business days or such data will be deemed agreed to by the parties. Notwithstanding the foregoing, UTEP and Pearson will work diligently and in good faith to continue to refine the reconciliation process, with the goal of reducing this five business day feedback commitment to a 48 hour process. The term "**Enrollment**" shall mean one student registered in one online course within the Managed Programs (e.g. if a student is enrolled in two such courses, that would be two Enrollments for purposes of this Order) at the time of the applicable Census Date for that course.
  - ii) **Student Fees for Managed Programs Courses.** Following the official Census Date for each academic term, UTEP will pay to Pearson a fee per Enrollment in the Managed Programs for that term, upon invoicing by Pearson, in accordance with the table below. Enrollment fees shall be calculated for all Managed Programs courses at the time of the official Census Date for each such course within the Managed Programs.

Scenario	Fee per Enrollment
Students enrolled in a Managed Program (excluding students only enrolled in Additional UTEP Courses) prior to the effective date of termination or expiration of the Order	\$240 per Enrollment
Students who are not enrolled in a Managed Program but take a course within the Additional UTEP Courses prior to the effective date of termination or expiration of the Order	\$68 per Enrollment
Students who enroll in an Additional UTEP Course after the effective date of termination or expiration of the Order*	\$110 per Enrollment

\* See Section 7(b) of this Order document.



Additionally, during the term of this Agreement (i.e. prior to any expiration or termination) Pearson will make eBooks available to UTEP, subject to a separate \$50 fee of per eBook per student. However, that fee will be assessed and handled through means other than the procedures set forth in this Order (e.g. through UTEP's bookstore).

- b) **Due Date and Payment.** Subject to applicable law, rules and regulations, UTEP shall pay all invoices issued by Pearson within thirty (30) days of the date of the invoice. All fees are quoted in U.S. Dollars and all payments shall be made in U.S. Dollars. Payment shall be remitted per the instructions on the invoice or as instructed by Pearson from time to time. UTEP shall not make deductions of any kind from any payments due to Pearson. Pearson may accept any payment without prejudice to Pearson's right to recover any remaining balance or to pursue any other remedy provided in the Agreement or this Order, or by applicable law. In the event that any invoice is not paid in full within thirty (30) days of the invoice date, UTEP shall pay simple interest at the rate of 1.5% per month beginning thirty (30) days after the date of the invoice. If UTEP fails to pay an invoice within ninety (90) days after the date of the invoice, Pearson may, after providing seven (7) days written notice to UTEP, suspend the provision of products and services, including turning off UTEP's access to the LearningStudio and the Pearson Services. Pearson reserves the right at any time to condition provision of the Pearson Services on reasonable assurance of payment.

## 6. PERFORMANCE INDICATORS.

Pearson will track key performance indicators for the Managed Programs, to measure the success of the Managed Programs against certain defined targets, as set forth below. For purposes of clarification, the Additional UTEP Courses are excluded from any measurements or other commitments set forth in this Section 6. The parties acknowledge and agree that their failure to meet any of the performance targets listed in Sections 6(a)-(c) will not be deemed a breach of the Agreement or this Order:

- a) **Lead-to-Start Conversion Rate.** The lead-to-start conversion rate shall be calculated as the percentage of leads (total leads, even if not fully qualified) that enroll in a Managed Program within the same Contract Year in which they are generated. For example, if a total of 1,000 leads are generated in the 2015 Contract Year and 100 of those leads enroll in a Managed Program by the end of the same Contract Year, the lead-to-start conversion rate for the 2015 Contract Year would be calculated at 10%. A qualified lead is hereby defined to be a lead with all necessary information available for outreach and inquiry follow up, as well as meeting the basic minimum requirements for UTEP admission. If the lead-to-start conversion rate is measured as less than 6% during a particular Contract Year, Pearson will review the data and make appropriate operational adjustments within the following two (2) academic terms. If the lead-to-start conversion rate is less than 6% during four (4) of any six (6) consecutive academic terms, Pearson and UTEP will negotiate an appropriate adjustment to this relationship in good faith, up to and including but not limited to amendment of this Order, or mutual termination of the Order. If the lead-to-start conversion rate is less than 6% during a particular Contract Year, Pearson may terminate this Order upon ninety (90) days prior written notice to University.
- b) **Term-to-Term Persistence Rate.** The term-to-term persistence shall be calculated as the percentage of unique students enrolled in one term that continue into the following term. New students and students returning after a hiatus from the Managed Programs are not considered in this calculation. If the term-to-term persistence rate for the Managed Programs is less than rates set forth below (with each category assessed separately) for the applicable term-to-term measuring period (collectively, the "Minimum Persistence Rate"), Pearson and UTEP will review the data and UTEP will make appropriate operational adjustments within the following two (2) terms. If the Minimum Persistence Rate (with each category assessed separately) is not met during two (2) of any three (3) consecutive academic terms, Pearson and UTEP will negotiate an appropriate adjustment to this relationship in good faith, up to and including but not limited to amendment of this Order, or mutual termination of the Order. If the Minimum Persistence Rate (with each category assessed separately) is not met during four (4) of any six (6) consecutive terms, Pearson may terminate this Order upon ninety (90) days prior written notice to University.

Academic Terms	Undergraduate	Graduate
Term 1 to Term 2	78%	87%
Term 2 to Term 3	80%	89%
Term 3 to Term 4	82%	92%
Term 4 to Term 5	85%	95%
Term 5 to Term 6	90%	95%
All Other Terms	95%	95%

- c) **Total Enrolled New Students.** The number of new students enrolled in the Managed Programs shall be calculated as the number of unique students enrolled in a course (at the time of the applicable Census Date) within the Managed Programs for the first time during the applicable Contract Year (Note: each unique student is only counted once for purposes of this calculation, even if that student takes more than one course during the Contract Year). If the number of new students enrolled in the Managed Programs is less than the minimums set forth below (with each category assessed separately, and in accordance with the assumption set forth below the table) for any Contract Year, (i) Pearson and UTEP will work in good faith to take corrective actions, including the addition of courses and programs, the addition of sections and/or the transition of unmanaged courses and programs to be included in the Managed Programs and (ii) Pearson may terminate this Order upon ninety (90) days prior written notice to University.

Contract Year	UTEP*	Pearson*	Total*
2015	305	131	436
2016	660	661	1,321
2017	889	1,333	2,222
2018	940	2,192	3,132
2019	1021	3,063	4,084

\* Assumption: At least 75% of student population are undergraduate students; 25% are graduate students (exception: first Contract Year where 100% of students are expected to be undergraduate students).

- d) **Terms per Contract Year.** UTEP will work increase its number of academic terms to six (6) per Contract Year in time for the 2015 Contract Year.
- e) **Staffing-to-Student Ratios.** On an annual basis, Pearson and UTEP will review projected student enrollment growth and UTEP's staffing levels. Based on data and information presented by Pearson as well as UTEP data and information, UTEP will adjust its staffing levels to meet the objectives established by this Order and the overall needs of the Managed Programs.
- f) **Regulatory Activity.** The Parties acknowledge that governmental authorities, including but not limited to the U.S. Department of Education or other applicable bodies or entities (whether governmental or otherwise), having jurisdiction over this Order and/or the Managed Programs may impose on UTEP, Pearson or the Managed Programs, regulations, rules, policies or guidance that (i) could materially and adversely affect the ability of the Parties to perform their respective obligations under this Order, including but not limited to the ability to market, promote, recruit, enroll and retain students in the Managed Programs, and (ii) may affect the method of payment provided in this Order. If such regulations, rules, policies or guidance, in the reasonable opinion of either UTEP or Pearson, significantly affect any material aspect of this Order, the Parties will negotiate an appropriate adjustment to this relationship in good faith, up to and including but not limited to amendment of this Order, or

mutual termination of the Order. UTEP further agrees that it will use its best efforts to reach compliance status with all applicable state authorization requirements by the start of its Fall 2014 academic terms.

## 7. TERMINATION

- a) **Provision of Services upon Expiration of the Order.** At least 180 days prior to the expiration of this Order (either at the end of the initial term, or the end of any additional renewal terms that the parties may agree to in writing, as applicable), UTEP will provide written notice to Pearson of UTEP's intent to either renew the Order or allow it to expire. Pearson may discontinue all services provided for under this Order, other than those specified in Sections 4(a) to 4(e), 4(h), 4(l) and 4(m) (excluding any commitments for additional course development or maintenance activities set forth in Section 4(m)) for the 120 day period prior to Order expiration if either (a) UTEP provides written notice to Pearson of its intent to allow the Order to expire in accordance with the forgoing sentence, or (b) UTEP and Pearson have not formally extended the Order by mutual written agreement by the 120th day prior to expiration of the Order.
- b) **Transition Services.** UTEP's obligations to Pearson under Section 5 of this Order shall survive any expiration or termination of the Order and Pearson will be entitled to continue to receive (a) the applicable Enrollment fees for all students enrolled in the Managed Programs as of the effective date of termination, for so long as such students remain enrolled in online courses at UTEP (regardless of whether those online courses are supported by Pearson or the Pearson Services at that time), and (b) all other fees associated with actual use of the Pearson Services by UTEP (including by students in the Additional UTEP Courses) for a time period after termination or expiration and ending at the conclusion of UTEP's 2020 Spring academic term. Pearson will continue providing the Pearson Services contemplated in Sections 4(a) to 4(e), 4(h), 4(l) and 4(m) (excluding any commitments for additional course development or maintenance activities set forth in Section 4(m)), for a time period after termination or expiration and ending at the conclusion of UTEP's 2020 Spring academic term, and UTEP agrees to continue using such Pearson Services during that time period for all Additional UTEP Courses, provided, however, that in the case of termination for breach for (i) UTEP's failure to pay undisputed fees to Pearson, (ii) the infringement of Pearson's intellectual property rights by UTEP, (iii) or for activities by UTEP which if allowed to continue would have the potential to incur material legal liability for Pearson, in Pearson's reasonable opinion, Pearson will provide such access only for a time period sufficient to complete any academic terms already ongoing at the time of the termination. In all cases Pearson will continue to provide such access for an additional ninety (90) days after the last student completes the academic term or program, as applicable, solely for the purpose of allowing UTEP to use the administrative functions of the LearningStudio to manage and extract the UTEP Information and data found within the LearningStudio and its related components. In all such instances, UTEP shall continue to be responsible for payment of all associated fees to Pearson for such continued use of the Pearson Services, in accordance with Section 5 of this Order. Additional transition services beyond those set forth in this Order may be supplied by Pearson on a fee basis to UTEP, upon UTEP's request for such services and mutual agreement of Pearson and UTEP.

## 8. GENERAL TERMS AND CONDITIONS

- a) **Notice.** Subject to the notice provisions found in the Order:

Notice to UTEP. Unless hereinafter changed by written notice to Pearson, any notice to UTEP, other than invoices and notice with respect to invoices, shall be delivered or mailed to:

To UTEP:       The University of Texas at El Paso  
500 W. University Ave  
Kelly Hall 3<sup>rd</sup> Floor  
El Paso, Texas 79968  
Attention: Diane N. De Hoyos  
Director of Purchasing and General Services

With copies to: The University of Texas at El Paso  
500 W. University Ave  
Kelly Hall 1<sup>st</sup> Floor Room 117  
El Paso, Texas 79968  
Attention: Michael R. Smith, J.D., Ph.D.  
Vice Provost

Unless changed by written notice to Pearson, invoices and notice regarding invoices to UTEP shall be delivered or mailed to:

To UTEP: The University of Texas at El Paso  
500 W. University Ave  
Kelly Hall 1<sup>st</sup> Floor, Room 117  
El Paso, Texas 79968  
Attention: Michael R. Smith, J.D., Ph.D.  
Vice Provost

With copies to: The University of Texas at El Paso  
500 W. University Ave  
Kelly Hall 1<sup>st</sup> Floor, Room 119  
El Paso, Texas 79968  
Attention: Lilia B. Abbud  
CAO, Extended University

Notice to Pearson. Unless hereinafter changed by written notice to UTEP, any notice to Pearson shall be delivered or mailed to:

Pearson  
Attn: Legal Department  
2154 E. Commons Ave., Suite 4000  
Centennial, CO 80122, USA

- b) **Non-Exclusive Services.** Pearson provides products and services to other educational institutions that may be similar to, or the same as, those offered as part of the Pearson Services. As such, UTEP acknowledges and agrees that Pearson may enter into relationships with educational institutions offering the same or similar academic programs as UTEP, so long as such efforts do not adversely affect the level of resources Pearson has committed to UTEP in support of the Managed Programs, as detailed in this Order.
- c) **Non-Disparagement.** During the term of this Order and for twenty-four (24) months thereafter, each party agrees to refrain from making any negative, disparaging or derogatory public or private statements, written or verbal, about the other party, or take any action which is intended, or would reasonably be expected to, injure the business or reputation of the other party or which would reasonably be expected to lead to unwanted or unfavorable publicity to such other party, or its officers, managers, members, directors, partners, agents or employees.

IN WITNESS WHEREOF, the persons executing this Order for and on behalf of the parties hereto represent that they are fully authorized to do so for and on behalf of their respective principals.

Pearson

By: 

Printed Name: \_\_\_\_\_

Title: Donald C. Kilburn  
~~Vice-Chairman of Pearson U.S. Higher Ed~~  
CEO of Pearson Learning Solutions

Date: \_\_\_\_\_

The University of Texas at El Paso

By: 

Printed Name: Cynthia Vizcaino Villa

Title: Vice President of Business Affairs

Date: 12/20/13

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# Statement of Work

University of Texas at El Paso

**Project Name:** UTEP: Six year Learning Outcome Manager (LOM) Implementation

**Effective Date:** April 30, 2014

**Expiration Date:** December 31, 2019

**Project Codes:** 710PS231

**Version Number:** 2

*This Statement of Work (SOW) is made pursuant to and subject to the terms and conditions of the Master Services and License Agreement dated December 18, 2013 between University of Texas at El Paso ("Customer") and eCollege.com (a Pearson company and hereinafter referred to as "Pearson"), for the delivery of online educational services (the "Agreement") and is incorporated therein by reference. It is understood and agreed by the parties hereto that Pearson shall retain all right, title and interest, including all intellectual property rights therein, in and to any computer code, work product or any other work of authorship or invention conceived of, developed or created by Pearson under the terms of this SOW.*

## Project Description

As requested and agreed to by the parties, Pearson shall perform the following services (the "Services") under this SOW.

### First Contract Year

Element	Details	Delivery modality
Readiness Phase	<p>Pearson will provide up to three (3) consulting sessions. Implementation team will utilize the following LOM readiness checklist to guide the Pilot Workshop.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Convene implementation team</li> <li><input type="checkbox"/> Identify goal(s) for pilot</li> <li><input type="checkbox"/> Identify goal(s) for implementation</li> <li><input type="checkbox"/> Identify pilot program(s)</li> <li><input type="checkbox"/> Select pilot course(s)</li> <li><input type="checkbox"/> Determine pilot LS</li> <li><input type="checkbox"/> Existence of LS rubrics</li> <li><input type="checkbox"/> *LS to LS hierarchical map (Optional)</li> <li><input type="checkbox"/> LS to assignment mapping</li> <li><input type="checkbox"/> Identify desired data output</li> <li><input type="checkbox"/> Establish target in-course assessment start date</li> <li><input type="checkbox"/> Identify Pilot Workshop date</li> </ul> <p>Deliverables for each item in the checklist are defined in the LOM Pilot Workshop Readiness Checklist document (included as Exhibit A below).</p>	Phone/WebEx

Effective Date: 4/30/2014

Project Code: 710PS231

Version Number: 1

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Pilot Workshop	<b>Day 1</b> <ul style="list-style-type: none"> <li>• LOM Admin and In-Course Functionality Training with generic data</li> <li>• Discuss any outstanding Readiness issues in preparation for configuration of EP pilot LOM environment</li> </ul> <b>Day 2</b> <ul style="list-style-type: none"> <li>• Configure EP pilot LOM environment</li> </ul>	Face to Face
Outcome Analytics Phase	Following completion of Customer's first academic term using LOM, Pearson will work with Customer to schedule a final training session to review the Outcome Analytics tool within LOM. This session will be scheduled as soon as possible after the end of the term to ensure actual data is available for the training.	Phone/WebEx
Pilot Review / Integration Planning Phase	<p>Within one month following the Outcome Analytics training, Pearson will schedule up to two 90 minute consulting sessions to conduct a post-pilot retrospective and to plan for the Integration Workshop.</p> <p>The output of this phase will be a retrospective summary document along with an action plan that builds an agenda for the one day Integration Workshop.</p>	Phone/WebEx
Integration Workshop	The parties will schedule a one day (up to 7 contact hours) Integration Workshop to be held on the Customer's campus. Agenda will vary by customer as defined in the Pilot Review / Integration Planning Phase.	Face to Face

**Years 2 – 6:**

Annual services and support, in the amount of and not to exceed 50 hours per year, to include an additional planning session to discuss goals, needs, process, stakeholders and timelines around additional implementation activities. Support also includes web-based data usage workshops with stakeholders and tailored guidance on incorporating product enhancements into established implementation approach. Unused annual services and support hours will not roll into the next contract year.

All requests, activities, services or deliverables not listed above are hereby excluded from the scope of this SOW.

***Project Billing***

The fees for the work described herein, valued at \$71,500 are **\$0**, including pre-approved travel and related expenses if listed above, as applicable.

Fees under this SOW will be invoiced upon signature of this SOW. Expenses, if any, will be invoiced monthly.

Fees and expenses for any terminated or suspended SOW will be invoiced immediately based on work completed through such termination or suspension date, plus any non-cancellable expenses, and unused portions of prepaid services will be credited towards Customer's account.

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***Project Initiation, Suspension, Completion, & Acceptance***

Upon execution of this SOW by the parties, Pearson will work with Customer to finalize the services commencement date under this SOW. Pearson cannot commence Services or finalize schedules/resource availability until this SOW has been executed.

Customer may temporarily suspend Services under this SOW by providing Pearson with written notice, upon receipt of which Pearson will immediately suspend Services under this SOW. Customer may then request that Services be resumed by providing Pearson with at least thirty (30) days' prior notice of the requested resumption date. Pearson will endeavor to schedule resources based on the requested resumption date, subject to availability. Customer acknowledges that Pearson cannot guarantee resource availability when a SOW has been suspended.

This SOW shall be considered complete upon a) provision of the Services specified in this SOW, b) provision of hours authorized to be performed under this SOW, or c) notice of termination by either party, whichever occurs first. This SOW will automatically terminate if suspended by Customer for longer than 45 days and Pearson has not received a request for resumption within that period of time.

Upon completion of the Services specified in this SOW, Pearson may request that Customer acknowledge acceptance of such. Customer agrees to provide such an acknowledgement to Pearson within five (5) business days of receipt of the request unless Customer provides written reason why the Services are not accepted. After five (5) business days, if Customer has not provided Pearson an acceptance acknowledgement or provided reasons why the Services are not accepted, all of the Services specified in the SOW will be deemed accepted.

***Project Change Request Process***

Either party may request changes to the scope, deliverables, outcomes or timeline under this SOW by submitting such requested changes in writing to the other party, along with a description of the requested change and the reasons for the request. For changes requested by Customer, Pearson will investigate the impact to the SOW, including impact to cost, schedule, and other terms of the SOW, and if the change is feasible, Pearson will submit a change request form documenting such changes to Customer for review and approval.

A written change request form must be signed by authorized representatives from both parties to authorize implementation of the investigated changes. Until a change is agreed in writing, both parties will continue to act in accordance with the latest agreed version of the SOW. Pearson may include charges for the time spent scoping such changes within such change requests.



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**Authorization**

The persons executing this SOW for and on behalf of the parties hereto represent that they are fully authorized to do so for and on behalf of their respective principals.

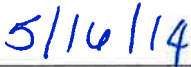


University of Texas at El Paso  
Cynthia Vizcaino Villa  
Vice President for Business Affairs

DocuSigned by:



Pearson  
Stephen Dalla Betta  
VP, Professional Services



Date

5/21/2014

Date

Please sign and return this SOW via electronic signature or fax to **303.496.6202**. This SOW offer shall expire if not signed and returned by Customer within 30 days from the Effective Date.

<b>710PS231</b>	Price: \$0 Value: \$71,500	<b>Waived</b>	2	Vicki Harsh
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Effective Date: 4/30/2014

Project Code: **710PS231**

Version Number: 1