

UTAUS CN: 19073

SERVICES AGREEMENT

This Agreement between University and Contractor ("Agreement") is made and entered into by and between The University of Texas at Austin, an agency and institution of higher education established under the laws of the State of Texas ("University"), for and on behalf of the Charles A. Dana ("Department" or "University"), and Pearson Education, Inc., a Delaware corporation with offices at 2154 E. Commons Avenue, Suite 4000, Centennial, CO 80122 ("Contractor" or "Pearson").

University and Contractor hereby agree as follows:

1. Contractor Services.

Contractor will provide the services as set forth in **Exhibit A**, Statement of Work, attached hereto and incorporated for all purposes ("the Services"), to the satisfaction of University.

2. Compensation.

University will compensate Contractor for services in accordance with **Exhibit B**, Payment for Services.

3. Term.

This Agreement is effective as of the date the agreement is fully executed by both parties ("Effective Date") and will terminate on 12/31/2020 unless earlier terminated in accordance with Section 8. Pearson and University will have the option to renew this Agreement for 2 additional 2 year terms by mutual agreement in writing.

4. Licenses, Permits, Taxes, Fees, Laws and Regulations.

- 4.1 Contractor warrants that it will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for Contractor's performance of this Agreement.
- 4.2 Contractor will be responsible for the payment of all taxes, excises, fees, payroll deductions, employee benefits (if any), fines, penalties or other payments required by federal, state, or local law or regulation in connection with Contractor's performance of this Agreement.
- 4.3 Contractor will comply with, and will be responsible for requiring its officers and employees to comply with, all applicable federal, state, and local laws and regulations; the *Rules and Regulations* of the Board of Regents of The University of Texas System; and the rules and regulations of the University.

5. Ownership and Use of Work Material.

- 5.1 All drawings, specifications, plans, computations, sketches, data, records, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by University will belong to University. All drawings, specifications, plans, computations, sketches, data, records, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Pearson will belong to Pearson.

6. Confidentiality and Safeguarding of University Records; Press Releases; Public Information.

- 6.1 Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, "**University Records**"). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state and local, laws, regulations, and ordinances, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**"). If University Records are subject to FERPA, (1) University designates Contractor as a University official with a legitimate educational interest in University Records, and (2) Contractor acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor's exclusion from eligibility to contract with University for at least five (5) years. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to commercially reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, the Gramm-Leach-Bliley Act, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than best practices in the data security industry; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with the University's rules, policies, and procedures regarding access to and use of University's computer systems. Contractor represents, warrants and certifies that it complies with University's Vendor Access Requirements, Section 5.26, at <http://security.utexas.edu/policies/irusp.html>. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

- 6.1.1 **Notice of impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with

all information requested by University regarding the impermissible use or disclosure.

- 6.1.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.
- 6.1.3 **Disclosure.** If Contractor discloses any University Records to a permitted subcontractor or agent, Contractor will require the permitted subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.
- 6.1.4 **Press Releases.** The parties may agree in writing to issue a joint press release or referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project Pearson agrees not to release any information relative to the Project for publication or any other purpose without the prior written approval of University. Pearson acknowledges and agrees that no information issued to the public may contain any writings which could be construed as an endorsement of Pearson by the University.
- 6.1.5 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act ("TPIA")*, Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.
- 6.1.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement with notice and opportunity to cure within thirty business days.
- 6.1.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

7. **Independent Contractor.**

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance.

8. Termination.

- 8.1 If either party is in default of performance of any material obligation under this Agreement, the party that is not in default may give written notice of the default to the other party and if the party notified fails to correct the default within thirty (30) days or within such period fails to satisfy the party giving notice that the default does not exist, the party giving notice may terminate this Agreement upon expiration of the thirty (30) business days period.
- 8.2 University may terminate this Agreement immediately in the event of the filing by or against Contractor of a petition for relief in bankruptcy or for receivership, or in the event that Contractor becomes insolvent.
- 8.3 The termination of this Agreement will not affect any right or remedy that has accrued to either party at the time of termination.
- 8.4 Upon termination of this Agreement, Contractor will deliver to the appropriate representative of University all Work Material related to the services performed by Contractor in the format requested by the University together with any keys, identification badges, or equipment owned by University.
- 8.5 Termination under Sections 6.1, 8.1 or 8.6 will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 8.6 University may terminate this Agreement without cause upon 120 days written notice to Pearson.

9. Indemnification.

- 9.1 Contractor will indemnify and hold harmless University and The University of Texas System, and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents from all claims, demands, causes of action, and judgments for taxes, license fees, excises, fines, and penalties; for supplies, services, or merchandise purchased by Contractor; for wages and fringe benefits of Contractor's employees; and for injury or death of any person or damage to property that result directly or indirectly from the negligent or intentional acts or omissions of Contractor or its officers, agents, or employees in the performance of this Agreement.
- 9.2 To the extent authorized by the Constitution and laws of the State of Texas, University agrees to indemnify and hold Contractor and its respective officers, agents, and employees free and harmless from all liability, loss, damage, costs, and all other claims for expenses asserted against any of them which may arise

from injuries to persons or property occasioned by the negligent acts or omissions of University or its employees, acting within the scope of their employment and in performance of obligations under this Agreement

10. Insurance.

- 10.1 Contractor agrees to maintain, at Contractor's sole expense, and to cause its agents, suppliers and permitted subcontractors (if any) to maintain, at their sole expense, the following insurance coverage in at least the amounts specified:

- 10.1.1 Workers Compensation: Statutory Limits
- 10.1.2 Employer's Liability: \$1,000,000 per accident and employee
- 10.1.3 Commercial General Liability (including contractual liability): \$1,000,000 per occurrence
- 10.1.4 Product/Completed Ops: \$2,000,000 aggregate
- 10.1.5 Auto Liability: \$1,000,000 combined single limit
- 10.1.6 All other insurance required by state or federal law

- 10.2 All policies (except Workers' Compensation) will name University as an Additional Insured. A Waiver of Subrogation in favor of University and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements will be provided to University prior to commencement of any services under this Agreement. If a policy contains deductible provisions, Contractor will be responsible for payment of the deductible amount for any claim(s) or the pursuit of any claim(s) or asserted claim(s) against University, its agents, employees or representatives.

- 10.3 Verification of Insurance Coverage will be forwarded to:

Ms. Alisha Thompson
Charles A. Dana Center
1616 Guadalupe, Suite 3.206
Austin, Texas 78701-1222

11. Breach of Contract Claims.

To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of University will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.

12. Miscellaneous.

- 12.1 **Assignment.** Neither party may assign this Agreement, in whole or in part,

- without the prior written consent of the other party.
- 12.2 **Representations and Warranties by Contractor.** If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 12.3 **Tax Certifications.** If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code* ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 12.4 **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 12.5 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 12.6 **Loss of Funding.** Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
- 12.7 **Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by authorized representatives of University and Contractor.
- 12.8 **State Auditor's Office.** Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an

- audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
- 12.9 **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, strikes, epidemics, war, riots, civil unrest, flood, fire, tsunami, volcano, sabotage, air space closure, ground stop(s), a U.S. Department of State Travel Warning or any other circumstances of like character ("force majeure occurrence").
- 12.10 **Venue; Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
- 12.11 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <http://www.utexas.edu/policies/hoppm/04.A.04.html>, State of Texas Standards of Conduct and Conflict of Interest Provisions available at <http://www.utexas.edu/administration/oic/cts/cw100e/CEGOnline.pdf>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by State of Texas Standards of Conduct and Conflict of Interest Provisions, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board of Regents of The University of Texas System has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- 12.12 **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
- 12.13 **Access by Individuals with Disabilities.** Contractor represents and warrants (the "EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Agreement (collectively, the "EIRs") comply with the technical specifications detailed in the previously provided "Voluntary Product Accessibility Template", attached as Exhibit [X] of this Agreement. To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, then University may terminate this Agreement and Contractor

will refund to University all amounts University has paid under this Agreement within thirty (30) days after the termination date.

- 12.14 **Confidential Student Information.** "Confidential Student Information" is defined as information that is personally identifiable to a student who is or was enrolled at University ("Customer") by any of the following means: the Customer's name, the name of the Customer's parent or other family members; the address of the Customer or Customer's family; a personal identifier, such as a identification number, or biometric record; other indirect identifiers, including but not limited to the Customer's date of birth, place of birth, and mother's maiden name; or any other information that, alone or in combination, is linked or linkable to a specific Customer that would allow a reasonable person in the school community to identify the student with reasonable certainty and includes information supplied to Contractor by University as well as any information provided by University's students and third parties to the Contractor.

Contractor acknowledges that this Agreement allows the Contractor access to Confidential Student Information, and that access to and disclosure of Confidential Student Information is restricted by University policy and federal law, namely the Family Educational Rights and Privacy Act ("FERPA").

Contractor agrees to hold Confidential Student Information in strict confidence. Contractor will not use or disclose Confidential Student Information received from or on behalf of University (or its students) except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by University. Contractor agrees not to use Confidential Student Information for any purpose other than the purpose for which the disclosure was made. Contractor agrees that only Contractor's employees who have a legitimate business need in performing this Agreement will have access to the Confidential Student Information.

Upon termination, cancellation, expiration or other conclusion of the Agreement, Contractor will return all Confidential Student Information to University within thirty (30) days or, if return is not feasible, destroy any and all Confidential Student Information. Twenty (20) days before destruction of any Confidential Student Information, Contractor will provide University with written notice of Contractor's intent to destroy Confidential Student Information. Within seven (7) days after destruction, Contractor will confirm to University in writing the destruction of Confidential Student Information.

Contractor agrees that Contractor is under the direct control of University with respect to the use and maintenance of Confidential Student Information. If University reasonably determines in good faith that Contractor has materially breached any of its confidentiality obligations under this Agreement or has violated FERPA, University, in its sole discretion, will have the right to require Contractor to submit to a plan of monitoring and reporting; provide Contractor with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately. Before exercising any of these options, University will provide written notice to Contractor describing the violation and the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Contractor improperly disclosed personally identifiable

information obtained from University's education records, University may not allow the Contractor access to education records for at least five years.

Contractor will develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Student Information received from, or on behalf of University or its students. These measures will be extended by contract to all subcontractors used by Contractor.

Contractor will, within one day of discovery, report to University any use or disclosure of Confidential Student Information not authorized by this Agreement or in writing by University. Contractor's report will identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Student Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure. Contractor will provide such other information, including a written report, as reasonably requested by University.

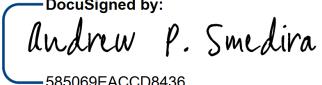
Contractor will defend and hold University harmless from all claims, liabilities, damages, or judgments involving a third party, including University's costs and attorney fees, which arise as a result of Contractor's failure to meet or breach any of its obligations under this Agreement.

The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

- 12.15 Undocumented Workers. The *Immigration and Nationality Act* (8 United States Code 1324a) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("**I-9 Form**") as the document to be used for employment eligibility verification (8 Code of Federal Regulations 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, University may terminate this Agreement in accordance with **Section 8**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

University and Contractor have executed and delivered this Agreement to be effective as of the Effective Date.

Pearson

By: 
Name: Andrew P. Smedira
Title: CFO
Date: 05 December 2014 | 09:10 MT

Attached:
Exhibit A – Statement of Work
Exhibit B – Payment for Services

The University of Texas at Austin

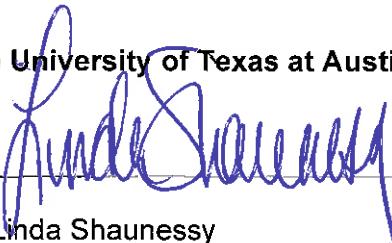
By: 
Name: Linda Shaunessy
Title: Business Contracts Administrator
Date: 12/4/2014

Exhibit A Statement of Work

Notwithstanding any other provision in this Agreement, Contractor's performance of the Services will (1) conform to the specifications and requirements of that certain Request for Proposal related to for The University of Texas at Austin, RFP No. 721-1428 (the "RFP"), which is incorporated by reference for all purposes, and (2) to the extent consistent with the RFP, will conform with Contractor's proposal, dated May 13, 2014 ("Contractor's Proposal") which was submitted by Contractor in response to the RFP and is incorporated by reference for all purposes.

I. Project:

The Charles A. Dana Center, a research unit in the College of Natural Sciences at The University of Texas at Austin, desires to outsource the concurrent development of a custom digital course solution for four (4) web-based course support systems, to be used by community college instructors to deliver primary face-to-face synchronous instruction via projection in the classroom with a maximum of thirty (30) students per section, and to be used by students synchronously and asynchronously for exploration, study, practice, and assessment.

The University has a ten (10) year commitment to the Texas Association of Community Colleges to continue this work.

The four (4) courses (each a "Course" and collectively, the "Courses" and as the Courses are further described in this Exhibit A) to be developed under this Agreement are:

A. Foundations of Mathematical Reasoning.

This noncredit bearing course surveys a variety of mathematical topics needed to prepare students for college level statistics or quantitative reasoning or for algebra-based courses.

The Foundations of Mathematical Reasoning course is not for college-level credit. Students in this course are required to take a co-requisite student success course. The course will be ready for use by July 1 2015. Initial Course development launch meeting between University and Pearson teams will need to take place by December 5, 2014. Course development schedules shall be mutually agreed upon within 5 business days of the initial Course development launch meeting between the University team and the Pearson team.

Topics include:

- Numeracy with an emphasis on estimation and fluency with large numbers;
- Evaluating expressions and formulas;
- Rates, ratios, and proportions;
- Percentages;
- Solving equations;
- Linear models;
- Data interpretations including graphs and tables; -
- Verbal, algebraic and graphical representations of functions;
- Exponential models.

B. Reasoning with Functions I

This college level course is the first of two college level courses designed to prepare students to enter calculus and succeed in STEM coursework that requires a thorough knowledge of functions and algebraic reasoning. It gives students a strong foundation in functions and their behavior by using multiple representations and explicit covariational reasoning to investigate and explore quantities, their relationships, and how these relationships change. Additionally, this course provides students with the algebraic tools necessary to analyze a variety of function types, including linear, quadratic, polynomial, power, exponential, and logarithmic functions.

Topics include:

- Relationships and functions
- Constant rate of change
- Average rate of change
- Linear functions
- Proportional relationships
- Power functions and polynomials
- Exponential and logarithmic functions
- Modeling constant percent change
- Half-life
- Doubling Time
- Transformations and operations on functions
- Function composition
- Inverse functions
- Gaussian elimination

This course will be ready for use by December 1, 2015. Initial course development launch meeting between University and Pearson teams will need to take place by March 1, 2015. Course development schedules shall be mutually agreed upon within 5 business days of the initial course development launch meeting between the University team and the Pearson team.

C. Quantitative Reasoning.

This credit bearing course serves students who are focused on developing quantitative literacy skills that will be meaningful for their professional, civic, and personal lives. Such reasoning is a habit of mind, seeking pattern and order when faced with unfamiliar contexts. In this course, an emphasis is placed on the need for data to make good decisions and an understanding of the dangers inherent in basing decisions on anecdotal evidence rather than data.

Topics include:

- Number, ratio, and proportional reasoning;
- Modeling;
- Probability;
- Statistics.

This course will be ready for use by December 1, 2015. Initial Course development launch meeting between University and Pearson teams will need to take place by March 1, 2015. Course development schedules shall be mutually agreed upon within 5 business days of the initial Course development launch meeting between the University team and the Pearson team.

D. Statistical Reasoning.

A first credit bearing course in Statistics for students in Business, Nursing, Allied Health, and the Social and Behavioral Sciences, or for any student that requires knowledge of the fundamentals of the collection, analysis and interpretation of data. Emphasis is placed on the development of statistical thinking, simulation, and the use of statistical software.

Topics include:

- Presentation and interpretation of univariate data via the use of graphical methods;
- Measures of central tendency and dispersion;
- Sampling methods;
- Fundamentals of probability and combinatorics;
- Discrete and continuous probability distributions;
- Linear regression;
- Statistical inference;
- Confidence intervals;
- Hypothesis testing.

This course will be ready for use by December 1, 2015. Initial Course development launch meeting between University and Pearson teams will need to take place by March 1, 2015. Course development schedules shall be mutually agreed upon within 5 business days of the initial Course development launch meeting between the University team and the Pearson team.

II. Services and/or Deliverables.

UNIVERSITY ROLES AND RESPONSIBILITIES

University 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 content development phase of the New Mathways Project:

- a) **Manuscript.** The University agrees to deliver one (1) copy of a detailed manuscript for each course including detailed manuscripts of any multimedia (animations, simulations, interactives) including indications of where the student should access the multimedia content within the course. The parties will agree as to the manuscript submissions which constitute the work for publication. The University agrees to furnish the following items as part of the work: information for the title page; a preface; a table of contents or its equivalent (down to the learning objective level) that accurately reflects the progression of the course and all the material the course is intended to cover); a 1-4 paragraph vision statement; an index or its equivalent; and all photographs, artwork and other illustrations, with captions, in camera ready copy or fully formatted electronic files, as requested by Pearson, or in any other format agreed upon by the University and Pearson. The manuscript should contain accurate mathematical notation for any equation displays and should also indicate where multimedia should be placed (if that has already been determined). For each element, overall statement of what the element is intended to convey is needed, along with a list of learning objectives to be covered in the multimedia element. Pearson also needs a written description (with sketches if possible) of what the multimedia element is intended to do, the narrative for the element, any student interactions that the element should contain and any hints,

branches, or other elements that should be contained in the multimedia element. If this level of detail manuscript does not exist, Pearson can work with the University to develop this level of detailed manuscript. Pearson and the University will mutually agree on the definition of animations, interactive exercises, simulations and videos and we will mutually agree on a presentation style for these categories of elements.

- b) **Subject Matter Experts.** For each course build, the University will be required to appoint one primary and one secondary content reviewer who has the subject matter expertise to assess and approve or request specific revision of any multimedia or interactive practice or assessment assets within each course during the build process. These reviewers will also need to accept or reject any changes to the manuscript as suggested by a development editor or other subject matter expert.

The University also agrees that the University will (a) furnish to Pearson within a reasonable time that Pearson and the University agree upon, and in a format Pearson agrees upon with the University: a foreword (if any); a glossary (if any); a bibliography (if any); an instructor's manual; exercises (if any); answers to exercises (if any); end of chapter materials (if any); a test item file (if any); a solutions manual (if any); and any other ancillary or supplementary materials and learning aids to complement the work, or any part(s) of the work (collectively, the "**Supplementary Materials**"); and (b) provide assistance to and consult with Pearson or any third parties engaged by Pearson to provide development or production services in connection with the publication of the work, the Supplementary Materials or any part(s) of the work.

If the University wishes to include any original unpublished material of any kind created by anyone other than the University, the University agrees to provide to Pearson with the University final manuscript a proper written grant from an authorized person granting. If any material from another published work protected by copyright is incorporated, the University agrees to provide to Pearson with the University's final manuscript written grants satisfactory to Pearson to use that material. The University agrees to obtain and pay for all these rights that must be granted to Pearson, and Pearson agrees to assist the University by providing required grant forms and guidance in obtaining these rights. Upon the University's request, Pearson will advance on the University's behalf reasonable permission fees approved by Pearson to the copyright owners of published materials and will recover all fees advanced from any sums due to the University.

The University agrees that with respect to the work (in all editions, revisions and versions), Pearson has the right to edit the work, provided that the meaning of the text is not materially altered. Pearson will meet with the University on a quarterly basis to meet by any means in order to discuss the methods and means used for advertising, marketing and selling work. The University agrees that Pearson will have the right to display the University's name in connection with the Course and any part of the Course and in promotional materials.

The University shall have the right to approve the final version of each Course and any modifications thereto prior to publication provided that the content of the Course is consistent with the accepted manuscript.

The parties will work in good faith to conform the courses developed hereunder to an accessibility standard to the sample VPAT attached hereto.

III. PEARSON ROLES AND RESPONSIBILITIES

Pearson 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 content development phase of the four online course listed in the Project section regarding the New Mathways Project. Pearson will complete all of the following tasks and the tasks listed in the project section for each of the four online courses, including:

- a) **Commercial Content.** Pearson will provide Pearson's commercial eBook products ("Pearson Content Products") for University's use within the New Mathways Project, where such Pearson Content Products may enhance the planned offerings. The specific Pearson Content Products made available to University under this Order shall be subject to the mutual agreement of University and Pearson.
- b) **Course Development.** Pearson will provide custom course development services (instructional designers, content development editors and learning design specialists) for the New Mathways Project, subject to the scope and timing parameters set forth below, and as mutually agreed to be the parties. All course content that is either supplied by Pearson, or represents a derivative work of content supplied by Pearson, is hereby agreed to be Pearson Materials (as that term is defined in the Agreement). All course content that is either supplied by the University, or represents a derivative work of content supplied by the University, is hereby agreed to be owned by The University. University shall be solely responsible for securing all third party consents, authorizations, permissions, approvals and licenses concerning University supplied or generated content. Pearson shall have the right to approve in writing the final manuscript for each Course. Submission of a Course manuscript according to an agreed upon schedule does not imply acceptance. Partial manuscript of a Course may be submitted for approval according to a mutually agreed upon schedule.
- c) **Web-based Course Support System.**

MyMathLab

Powered by MathXL (Pearson's online homework, tutorial, and assessment system), MyMathLab gives instructors the tools they need to deliver all or a portion of their course online, whether their students are in a lab setting or working from home. Easily customizable, MyMathLab provides students a personalized pathway through the course content enhanced by optional adaptive learning capability.

MyMathLab provides a rich and flexible set of course materials, featuring free-response exercises that instructors can assign for online homework, quizzes, and tests. These exercises regenerate algorithmically for unlimited practice and mastery, and in homework and practice modes, each exercise is accompanied by an interactive guided solution and sample problem. MyMathLab provides students with additional multimedia resources, such as video lectures, animations, and an eBook, to independently improve their understanding and performance. MyMathLab's online grade book automatically tracks all student results and gives the instructor control over how to calculate final grades.

- d) **Project Management.**

Pearson will designate an appropriate number of project managers and developmental editors to ensure consistency of writing style and established standards for reading level and terminology.

- e) **Market Viability**

Pearson may assess course content viability for the Texas and National markets by conducting market research and peer review. Other methods Pearson may deem necessary will be mutually agreed upon with the University. Pearson, in consultation with the University, shall develop a process, determine applicable standards, and obtain necessary resources for such course content assessment.

IV.

DISTRIBUTION OF ONLINE NEW MATHWAY PROJECT

Distribution Rights. The University grants to Pearson a non-exclusive right and license during the Term of this Agreement, to reproduce, print, distribute, market, promote, publish, sell, broadcast or transmit the University Materials solely as a component of the Course in all channels of distribution throughout the Distribution Territory (as defined below).

During the term of the Agreement, the Dana Center shall not market, or sell directly any work that contains the same material which is the subject matter of the Courses in this Agreement and which could conflict or interfere with Pearson's exercise of its rights under this Agreement of the Courses in the Higher Education Market. "**Higher Education Market**" shall mean, throughout the world, (a) any or all for-profit and not-for-profit undergraduate, graduate or other post-secondary programs, schools or other institutions of learning, including, without limitation, all two- or four-year colleges or universities, proprietary schools, trade schools, vocational schools, or professional or other graduate or post-graduate schools or programs; (b) any or all teachers, faculty, instructors, professors, administrators, students or other representatives of any such school, program or institution; and (c) any or all means or channels of distribution to any such person, entity, program or institution, including, without limitation, book stores, retailers, wholesalers, direct mail and on-line services. Pearson acknowledges and agrees that the University has developed and will continue to develop works for the K-12 market and that such works shall not constitute a violation of any restrictive covenant herein.

Upon termination the University will allow a student to continue to finish course up to 24 months or 2 years.

- a) **Distribution Territory:** Initially the State of Texas, with the national distribution rights to be added after execution of the Distribution Agreement (with international rights to be added at a later date), through an addendum to that Distribution Agreement.
- b) **Pricing and Royalties:**
 - i. Within the State of Texas, pricing will be initially set at \$62 per course per student, with a \$10 per course per student royalty payable to the University.
 - ii. National Price: University and Pearson will mutually agree upon the National distribution price,
 - iii. No fees or royalties for instructor or administrator access.
 - iv. All payments shall be based on Net Sales (Gross Revenues actually received less returns)
 - v. [Future Pricing and Royalties]
- c) **Printing:** Students will not be assessed a fee by Pearson or the University for downloading and printing materials directly from the web-based course support system.
- d) **Training, Support and Implementation:** University will provide all faculty and staff training regarding the content of the Online New Mathways Project. Faculty and staff training on all technology solutions will be facilitated by Pearson training specialists and the parties will develop a training program that meets the anticipated needs of the Texas community college market and national markets, respectively. Pearson has a dedicated customer service group that is available 24 hours a day, 7 days a week. Users can search a knowledge base or select options to chat with a representative, send an e-mail or speak with a support technician. The Pearson 24/7 support group has a pre-defined set of escalation policies involving their front line support agents, tier 2 agents and support management.

**Exhibit B
Payment for Services**

Payments:

Pearson will be paid the following:

a) Pricing and Royalties:

- i. Within the State of Texas, pricing will be initially set at \$62 per course per student, with a \$10 per course per student royalty payable to the University. Pearson will receive \$52 per course per student.
- ii. National Price: University and Pearson will mutually agree upon the National distribution costs, if applicable.
- iii. No fees or royalties for instructor or administrator access.
- iv. All payments shall be based on Net Sales (Gross Revenues actually received less returns)

b) Invoicing:

Upon completion of a deliverable (task, item, etc) and acceptance by University, Contractor will submit a quarterly invoice setting forth amounts due to Contractor. Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount. University will, within thirty (30) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If University approves the amount or any portion of the amount, University will promptly pay to Contractor the amount approved so long as Contractor is not in default under this Agreement. If University disapproves any invoice amount, University will give Contractor specific reasons for its disapproval in writing.

Contractor shall submit payment and documentation to University as follows:

**Alisha Thompson
Charles A. Dana Center
The University of Texas at Austin
1616 Guadalupe Street, Suite 3.206
Austin, TX 78701
athompson32@austin.utexas.edu**

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into on this day of October 8, 2018 (“Effective Date”) by and between NCS Pearson, Inc., a Minnesota corporation, with its corporate offices located at 5601 Green Valley Drive, Bloomington, MN 55437 (hereinafter referred to individually and collectively as “Pearson”) and The University of Texas at Austin, a Texas public university, with offices located at 1 University Station, Austin, TX 78712 (“Licensee”).

WHEREAS, Pearson is the owner of a copyright, or has obtained a license from the owner of the copyright, under which Pearson may itself, or may allow others to, use, publish, translate and distribute the Test(s) (as hereinafter defined);

WHEREAS, Licensee, from time to time, may desire to obtain a non-exclusive, non-transferable limited license from Pearson in order to adapt, use, reproduce and administer the Test(s); and

WHEREAS, Pearson is willing to grant to Licensee a non-exclusive, non-transferable, non-sublicensable limited license under the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual agreements contained herein, the parties agree as follows: definitive

TERMS AND CONDITIONS

1. **Definitions**. For purposes of this Agreement the following definitions will apply:
 - 1.1. “Additional License Fee” means the fee, as specified in a SOW, that Licensee will pay to Pearson for any Use of the Test(s) in excess of the number specified in the SOW.
 - 1.2. “Contractor” means any individual or organization other than the Licensee that performs any portion of the Research Project as described in Section 2.2 of this Agreement.
 - 1.3. “Change Order” means written notice to the other party, in the form of Exhibit B, of any proposed change, modification or amendment to any SOW.
 - 1.4. “Intellectual Property (IP) Rights” means all intellectual property rights and interests including, without limitation: (i) all copyrights and copyrightable subject matter, including any and all worldwide applications, registrations, renewals, and extensions thereof and all rights of reproduction and publication, rights to create derivative works and all of the rights incident to copyright ownership; (ii) all trade secrets, defined as any and all confidential information, technology, ideas, know-how, and proprietary processes and formulae; (iii) all inventions, designs, models, mask works, patents, and pending patent applications; (iv) all trademarks,

tradenames, service marks, logos, and other commercial symbols of Pearson or its licensors, associated at any time with the Licensed Materials, whether registered or unregistered, and pending trademark applications applicable to the Licensed Materials; and (v) all causes of action heretofore and hereafter accrued in favor of the owner of such intellectual property rights for infringement of any one or all of the aforesaid intellectual property rights. For clarification, IP Rights do not include any rights relating to any participant data (participant responses) collected by Licensee a part of the Research Project, if any.

- 1.5. **“License”** means a non-exclusive, non-transferable, non-refundable, non-sublicensable limited license granted by Pearson to Licensee pursuant to a SOW to use the Licensed Materials subject to the terms of this Agreement and the applicable SOW.
- 1.6. **“License Expiration Date”** means the date upon which the License expires as specified in the applicable SOW.
- 1.7. **“License Fee”** means the non-refundable fee, as specified in an executed SOW, that is to be paid by Licensee to Pearson for the License.
- 1.8. **“Licensed Materials”** means, with respect to each License, the Test(s) identified in the applicable SOW and the intellectual property related to such Test(s).
- 1.9. **“Licensed Use”** means the permission granted by Pearson to the Licensee in the applicable SOW.
- 1.10. **“Research Project”** means the study identified in a SOW and approved by Pearson.
- 1.11. **“Research Site(s)”** means the territories or remote locations, identified in a SOW, where the Test(s) will be administered or scored by Licensee.
- 1.12. **“Statement of Work” or “SOW”** means the form, attached as Exhibit A, to be completed by Licensee and approved by Pearson, containing details of the Research Project, the Licensed Materials and other terms relating to the grant of a License.
- 1.13. **“Test(s)”** means the Pearson measure or scale, as well as associated intellectual property, related to clinical outcome assessments (COA), either in whole or in part, identified in a SOW.
- 1.14. **“Test(s) IP”** means all Test items and related material created for or derived from the administration, scoring, reporting and analysis of the Test(s); including but not limited to scales; raw scoring tables, algorithms, or instructions; normative data; item weights; profiles; standard-score conversion tables; reference-sample norming tables; reporting formats; results (both published and unpublished), scoring data,

standardization data and experimental data, together with all revisions of any of the foregoing, and includes words, numbers, letters, or other verbal or numerical symbols of indicia and the combinations and compilations of the foregoing, used to express or represent concepts, relationships, facts or other information in any language format or medium now or hereafter known or developed.

- 1.15. **“Use of the Test(s)”** means a single administration of the Test(s) in the modality specified in the applicable SOW to a single participant in a Research Project and the scoring of the results.

2. Grant of License.

- 2.1. **Statement of Works.** Licensee shall submit all requests for Licenses to Pearson by using a Statement of Work. Upon approval, a SOW becomes effective on the date of last signature when signed by authorized representatives of both parties.
- 2.2. **License.** Subject to the terms and conditions of this Agreement, every SOW upon becoming effective as aforesaid, shall constitute the grant of a License.
- 2.3. **Contractor’s Confirmation.** If Licensee employs or otherwise engages a Contractor to perform any task for which the Licensee would have required a License had Licensee performed the task itself, Licensee must obtain from each Contractor, and provide to Pearson, a written confirmation that the Contractor agrees to be bound by the provisions of Sections 5 through 9 of this Agreement as if all references to Licensee therein were references to Contractor.

Term. The term of this Agreement will begin on the Effective Date and will expire three (3) years thereafter (the “Expiration Date”). Any Research Project with an active SOW which has not expired as of the Expiration Date may continue until the end date indicated in the applicable SOW executed by both parties. No new SOWs will be accepted or granted after the Expiration Date of this Agreement. Except as provided in this Section 2, Licensee agrees, without qualification of any kind, to cease all activities covered by this License upon the Expiration Date of this Agreement, except as may be required in order to continue performing those activities pursuant to any and all surviving SOW(s), if any. Licensee agrees, without qualification of any kind, to cease all activities covered by this Agreement upon the earlier to occur of (i) the Expiration Date, or (ii) termination of this Agreement, in accordance with Section 13.

3. License Fees; Payments; Reporting; and Audit.

- 3.1. **License Fee and Additional License Fee.** In exchange for the grant of the License, Licensee agrees to pay Pearson the License Fee(s), and Additional License Fee, if any, in accordance with Section 5.2.

- 3.2. Payment. The License Fee, and Additional License Fees, if any, will be payable within thirty (30) days from the date the invoice is received by Licensee. Pearson will send invoices electronically or by Postal Service to the following physical address and/or email address located in the applicable SOW.
- 3.3. Reporting. Within sixty (60) days after the earlier to occur of (i) the Expiration Date, or (ii) termination of this Agreement, in accordance with Section 13 ("Report Due Date"), Licensee will deliver to Pearson a true and accurate report of the activities and number of Uses of the Test(s) conducted by Licensee, pursuant to the License granted under this Agreement, so as to show a statement and accounting for each Use of the Test(s) ("Report"). All Use(s) of the Test(s) in excess of the number specified in the applicable SOW will be accounted for in the Report and any Additional License Fees shall be payable to Pearson as specified in this Agreement.
- 3.4. Books and Records. Licensee will maintain books of account and records pertaining to its exercise of the rights granted under this Agreement in accordance with generally accepted accounting principles.
- 3.5. Audit Rights. Pearson will have the right to inspect and audit Licensee's books of accounts and business records and operations relating to Licensee's fulfillment of its obligations and exercise of the License, at the sole expense of Pearson. Any such inspection and audit will be conducted during normal business hours, at a time reasonably acceptable to Licensee, at the place(s) where such books, records and operations are normally maintained. The provisions of this Section 5.5 will survive for a period of three (3) years after termination of this Agreement.

6. Proprietary Rights.

- 6.1 Proprietary Rights in the Licensed Materials. Licensee acknowledges that Pearson and its licensors claim valuable proprietary rights in the Licensed Materials including copyrights and/or trade secret rights. Licensee agrees that all Intellectual Property Rights in the Licensed Materials will be and remain in Pearson and its licensors. No ownership rights in and to the Licensed Materials are transferred to Licensee under this Agreement. Licensee will take such reasonable actions as may be required to protect the right, title, and interest of Pearson and its licensors in the Licensed Materials.
- 6.2 Licensee will immediately report to Pearson any infringement or unauthorized use of, or challenge to, the Licensed Materials or other Intellectual Property Rights of Pearson or its licensors of which Licensee becomes aware. All notifications should be sent to: LegalTSC@pearson.com, with a physical copy sent to:

Pearson Transaction Services Center
Attention: Bryan McMichael/Katie Steffen
2510 N. Dodge Street
Iowa City, Iowa 52245

Notifications should include: the license, the study, Test(s) (including translations), dates, and entities involved

- i. Pearson has the sole discretion in determining whether any action will be taken on account of any infringement, unauthorized use, or challenge of such Licensed Materials or other intellectual property rights. Pearson will have no obligation or liability to Licensee with respect to any act or failure to act with respect to such infringement, unauthorized use, or challenge. Pearson will have the sole control over any legal actions it decides to bring.
 - ii. At the request of Pearson, Licensee will execute and deliver any instruments and documents and render such assistance and do such acts as may be necessary or advisable, in the opinion of Pearson, to protect and maintain the right, title, and interest of Pearson and its licensors in the Licensed Materials and in the other intellectual property rights.
- b. Proprietary Rights in the Results of the Research Project. Subject to Pearson and/or Pearson's licensors' proprietary rights in and to the Test(s), Test(s) IP, and subject further to the terms and conditions of this Agreement, Pearson agrees that Licensee will own all intellectual property and proprietary rights in and to the results of the Research Project ("Research Results").
7. Limitations on Exercise of Proprietary Rights. Licensee agrees to the following limitations on its exercise of proprietary rights in and to the Licensed Materials except with the express written authorization of Pearson:
- 7.1 Licensee agrees not to assign, license, or otherwise transfer to another, in any way, any rights to reproduce, publish, distribute, create derivative works of, or otherwise exercise proprietary rights in and to the Licensed Materials without the express written consent of Pearson;
 - 7.2 Licensee agrees not to copy the Licensed Materials or create any derivative works of the Licensed Materials, except as expressly permitted by this Agreement.
 - 7.3 Licensee agrees to cease all use of the Licensed Materials (including, but not limited to, all rights of reproduction, publication and distribution) upon any termination or expiration of this Agreement.

- 7.4 The limitations of this Section will not apply to any materials or intellectual property or any materials contained in Licensee's Research Project which are not based on or derived from the Licensed Materials.
8. Proprietary Rights Notice. Licensee agrees to include proprietary, copyright, and trademark notices as specified on the SOW on the Licensed Materials and any other document derived from or incorporating any part of the Licensed Materials whether fixed in a written, electronic, or other storage format in Licensee's possession or control.
9. Ethical Standards. Licensee shall use the Licensed Materials in accordance with the principles of Ethical Standards of Psychologists established by the American Psychological Association. Licensee further agrees that in exercising the rights under this Agreement it shall maintain the standards of test security, confidentiality and quality required by Licensee's own profession for the content, condition, and accuracy of all individual score reports prepared by Licensee.
10. Warranties.
- 10.1 Warranty of Pearson.
- 10.1.1 TO THE EXTENT ALLOWED BY TEXAS LAW AND THE CONSTITUTION, PEARSON MAKES NO WARRANTIES WITH REGARDS TO THE USE OF ANY PREVIOUSLY TRANSLATED VERSION(S) OF THE TEST(S) AS MAY BE IDENTIFIED IN A SOW. SUBJECT TO THE FOREGOING, PEARSON WARRANTS THAT IT HAS THE RIGHT TO GRANT THE LICENSE SPECIFIED HEREIN TO LICENSEE AND THAT THE TEST(S) IP DOES NOT INFRINGE ON ANY VALID UNITED STATES LETTERS PATENT, COPYRIGHTS, TRADE SECRETS OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTY ENFORCEABLE IN THE UNITED STATES, PROVIDED, HOWEVER, THAT THIS WARRANTY AND REPRESENTATION WILL NOT APPLY TO INFRINGEMENT RESULTING FROM (A) ANY ADDITIONS, MODIFICATIONS OR REVISIONS MADE BY LICENSEE; OR (B) THE COMBINATION OF THE TEST(S) IP WITH OTHER ITEMS, SYSTEMS OR MATERIALS NOT SUPPLIED BY PEARSON. PEARSON MAKES NO OTHER WARRANTIES.
- 10.1.2 EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE EXTENT ALLOWED BY TEXAS LAW AND THE CONSTITUTION, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARISING OUT OF THIS AGREEMENT ARE HEREBY DISCLAIMED.

10.2 **Warranty of Licensee.** Licensee shall be responsible for the content and quality of any materials produced pursuant to the License grant contained herein (including but not limited to the answer sheets, record forms, booklets and other Test(s) administration materials). Licensee warrants that such materials will be prepared in accordance with generally-accepted applicable professional standards, including, specifically, the *Guidelines for Computer-based Testing* published by the Association of Test Publishers and the *Standards for Educational and Psychological Testing* published by the American Psychological Association. Licensee further warrants that any other modifications to the Test(s) as prepared by Licensee, and permitted under the terms of this Agreement, will not infringe on any valid United States patent, copyright, trade secrets, or any other proprietary rights of any third party enforceable in the United States.

11. **Indemnification.**

11.1 **Indemnification Responsibility of Pearson.** PEARSON AGREES TO INDEMNIFY AND HOLD LICENSEE HARMLESS FROM ANY AND ALL THIRD-PARTY CLAIMS (INCLUDING ATTORNEYS' FEES INCURRED IN DEFENSE OR AWARDED BY A COURT OF COMPETENT JURISDICTION) ARISING OUT OF ANY BREACH OF THE WARRANTY AGAINST INFRINGEMENT MADE BY PEARSON IN SECTION 10.1 OF THIS AGREEMENT.

12. **Termination.**

12.1 **Termination for Default.** Either party ("Non-Breaching Party") will have the right to terminate this Agreement in the event the other party ("Breaching Party") is in material breach of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice from the Non-Breaching Party specifying, in reasonable detail, the breach. Notwithstanding the foregoing, Pearson will have the right to terminate this Agreement immediately, upon prior written notice and a ten (10) day right to cure, in the event Licensee is the Breaching Party with respect to any of the provisions contained in Sections 2, 5, or 16.3 of this Agreement.

12.2 **Termination for Insolvency and Business Dissolution.** This Agreement may be terminated by either party upon written notice to the other in the event the other party (i) becomes insolvent or bankrupt, (ii) if any proceedings are instituted by or against it for relief under laws relating to bankruptcy or insolvency, (iii) upon a general assignment by the other party for the benefit of its creditors, (iv) upon the appointment of a receiver or trustee or any of such party's property or assets, (v) if such party's business is dissolved, or (vi) if such party ceases to do business.

- 12.3 Termination for Assignment of Rights. This Agreement may be terminated by Pearson in the event Licensee assigns or transfers to any third party, any rights granted hereunder. In the event Licensee, or the assets of Licensee, are acquired by a third party, an assignment of rights will be deemed to have occurred and Pearson may, at its sole discretion, terminate the Agreement.
 - 12.4 Other Termination. Pearson will have the right to terminate this Agreement upon thirty (30) days advance written notice to Licensee if Pearson's right to sublicense the Licensed Materials to Licensee is or is about to be terminated for any reason. Termination of this Agreement pursuant to this Section will not be deemed a breach of contract and all rights and responsibility will revert to the copyright owner.
 - 12.5 Both parties will have the right to terminate this Agreement for no cause with 30 days notice.
13. Survival of Rights and Obligations. In the event of any termination of this Agreement, all rights, obligations and duties under this Agreement will terminate, provided, however, that:
 - 13.1 Subject to the limitations contained in this Agreement, termination of this Agreement will not constitute any waiver of a party's rights or remedies at law or in equity to redress any breach of this Agreement by the other party.
 - 13.2 Those Sections that by their nature are intended to survive termination or expiration of this Agreement shall so survive.
 14. Effect of Termination. Upon the earlier to occur of (i) the Expiration Date, or (ii) termination of this Agreement, in accordance with Section 13, Licensee acknowledges or agrees to the following:
 - 14.1 To immediately cease all exercise of any rights granted under this Agreement, including Use of the Licensed Materials, and destroy the Test(s) IP and all unused copies of the Test(s), including but not limited to all test administration materials.
 - 14.2 Licensee may save one (1) print copy and two (2) electronic backup copies of the Test(s) for archival purposes only. Licensee may only access the archival copy of the Test(s) if required by regulatory agencies or by Licensee solely for the purposes of an audit; provided, however, if Licensee requires further Use of the Test(s) for analysis of the Research Project after the License Expiration Date, then Licensee shall deliver to Pearson a request in writing at least fourteen (14) days prior to such use which Pearson may grant in its sole discretion. For such use of the Test(s) or Translated Test(s) past the expiration of the SOW as outlined in this Section 15.2, Pearson hereby disclaims Section 10.1 ("Warranty of Pearson"), and Pearson is released of any and all liability in connection with any proprietary right or contractual rights granted under this Agreement.

- 14.3 Upon Pearson's request, Licensee will provide Pearson with written certification with respect to Licensee's compliance with the terms of this Section 15.
- 14.4 The rights specified in this Section 15 may be exercised only if Licensee is not in default or breach of this Agreement and only to the extent that this Agreement has not been terminated pursuant to Section 13 due to breach or other default by Licensee.

15. General.

- 15.1 Relationship of the Parties. Pearson is the Licensor of this Agreement to the Licensee and is not a vendor or Contractor. Further, the relationship between the parties established by this Agreement is that of independent contractors, and does not involve any community of interest, joint venture, or partnership between the parties. Pearson and Licensee will each conduct its respective businesses at its own initiative, responsibility and expense, and will have no authority to incur any obligations on behalf of the other. Neither party intends there to be any third-party beneficiaries to this Agreement.
- 15.2 Governing Law: This Agreement will be governed by, construed, and interpreted exclusively in accordance with the laws of the State of Texas.
- 15.3 Assignment. Neither this Agreement nor any right, license or privilege with respect to the intellectual property licensed hereunder may be assigned, conveyed, sublicensed or otherwise transferred by Licensee to a third party, without the express written consent of Pearson. Any attempt to do so will be void. Subject to the limitations of this Section, this Agreement will be binding on and will inure to the benefit of, the parties and their respective successors and assigns.
- 15.4 Obligation to Monitor: Licensee has the obligation to monitor its facilities, including any client and/or contractor facilities, and Research Site(s) to ensure that no Use of the Test(s) other than that authorized by the Agreement occurs. Pearson will have the right to make the final determination, in its sole discretion, as to whether Licensee's facilities are engaged in commercial scoring and other unauthorized use.
- 15.5 Paragraph Headings. The paragraph and section headings throughout this Agreement are for reference purposes only and will not be held to explain or aid in the interpretation, construction or meaning of the provisions of this Agreement.
- 15.6 Modifications and Amendments. Licensee or its Contractor, if applicable, shall have no right to make modifications to the Test(s) without the express written authorization of Pearson. Neither this Agreement, nor any of the provisions hereof

can be changed, waived, discharged or terminated, except by an instrument in writing signed by the parties, unless another procedure for modification of a provision of this Agreement or the Exhibits hereto is specifically authorized by this Agreement.

- 15.7 **Publications.** Licensee is hereby granted permission to use the Test(s) names in any publication containing the results of the Research Project.
- 15.8 **Severability.** In the event any clause or provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby and shall be enforced to the maximum extent possible. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provisions as is possible, legal, valid and enforceable.
- 15.9 **Equitable Relief.**
- 15.10 **Waiver.** A term, provision, covenant, representation, warranty, or condition of this Agreement may be waived only by written instrument executed by the Party waiving compliance. No waiver of any provisions of this Agreement, nor any failure or delay of any party in the enforcement or exercise of the rights granted under this Agreement will be deemed to be an ongoing waiver of such provision or rights nor shall it be considered as a basis for estoppel.
- 15.11 **Timeliness of Execution.** If this Agreement is not signed by Licensee and returned for countersignature within thirty (30) days from receipt, the terms of this offer will be withdrawn, and the Agreement will be void and of no effect.
- 15.12 **Notices.** All notices required or permitted under this Agreement will be made in writing and will be deemed to have been duly given, when delivered, to the addresses set forth below:

If to Pearson:	If to Licensee:
Pearson Transaction Services Center Attention: Bryan McMichael/Katie Steffen 2510 N. Dodge Street Iowa City, Iowa 52245 LegalTSC@Pearson.com	The University of Texas at Austin 1 University Station Austin, TX 78712

- 15.13 **Entire Agreement.** This Agreement (including any exhibits, annexes, schedules or addendums hereto) contains the entire agreement between the parties related to the matters set forth herein and supersedes all previous agreements, proposals,

negotiations and correspondence between the parties whether oral or written related to the subject matter of this Agreement.

- 15.14 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties agree that execution of this Agreement by electronic signature shall have the same legal force and effect as the exchange of original signatures and will constitute a properly executed, delivered, and binding agreement, and that in any proceeding arising under or relating to this Agreement, each party hereby waives any right to raise any defense or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed Agreement electronically.
- 15.15 **Joint Preparation.** This Agreement shall be deemed for all purposes as prepared through joint efforts of the parties and shall not be construed against any one party as a result of the preparation, submittal, or other event of negotiation, drafting, or execution hereto.
- 15.16 **Further Assurances.** Each Party will take any actions necessary and will sign any documents necessary to implement the terms of this Agreement. Unless otherwise provided in this Agreement, all Parties within (30) days of their receipt of a written request for such documents from a Party shall prepare and execute such documents.

IN WITNESS WHEREOF, the parties have agreed and executed this Agreement as of the date the Agreement is signed below by Pearson.

NCS PEARSON, INC.

By: _____

Authorized Signature

Name: _____

Title: _____

Date: _____

THE UNIVERSITY OF TEXAS AT AUSTIN

By: _____

Authorized Signature

Name: _____

Title: _____

Date: _____

EXHIBIT A**Statement of Work (SOW) No. [SOW_____]
to License Agreement No. 10815**

This SOW is made pursuant to License Agreement No. 10815 dated October 8, 2018 between the parties identified below (the "Agreement"). Capitalized terms used in this SOW and not defined herein are used with the meanings ascribed to them in the Agreement.

Study Tracking Information (Sections 1-5 and Table 1 to be completed by Licensee)**1. Research Project Information**

- a. Study Sponsor Name: _____
- b. Research Project Name/Number and Description: _____
- c. Research Project Start Date: _____
- d. Research Project End Date (*this will constitute the License Expiration Date*):

- e. Research Site Location(s): _____
- f. License Contact Information (name, telephone, e-mail):
 - Name: _____
 - Title/Position: _____
 - Organization: _____
 - Phone: _____
 - Email: _____

2. Licensed Use

- a. Adaption Description (modification, translation, case report formatting, etc.):

- b. Administration method (paper or electronic): _____
- c. Scoring method (hand-scoring or electronic [network hosting, tablet, etc.]):

- d. URL (if online): _____

3. Billing

- a. Billing Address and E-mail Address (if applicable):

Organization: _____

Attention To: _____

Street: _____

City, State, Postal Code: _____

Country: _____

Email: _____

b. Is a Purchase Order required (Y/N)? _____

i. Purchase Order Number (if available): _____

4. Test Usage Details (Licensee to complete Table 1 and Table 2)

Table 4-1. Page Reproductions. For page reproductions (manuals and stimulus books), please indicate the specific page numbers, total number of pages, and number of sets that will be made. *Please note for paper administration: Pearson will give permission for adaptation and reproduction of said adaptation, but Licensee must purchase published materials from the respective publishers unless adapting electronically or into case report format.* (Add rows if needed.)

Test Acronym/ Component	Pages Numbers to be Reproduced	Total Number of Pages	Number of Sets	Fee
Table 1 Total Fees				

Table 4-2. Test Usage Details (Add additional rows if required).

Test Acronym	Territory/Language	Number of Uses	Usage Fee	Subtotal of Fee
Table 2 Total Usage Fees				

5. Pricing and Fees

Table 5-1. License Fee.

Type of Fee	Amount (\$USD)

Project License Fee	
Content Delivery Fee	
Table 1 Subtotal of Fees	
Table 2 Total Usage Fees	
Total License Fee	

Payment terms set forth in Section 5.2 of the Agreement and applicable exhibits, addenda, and schedules.

6. Trademark and Copyright Notices (to be added by Pearson business requestor):

Table 6-1. Pearson Published Test(s):

Language	Territory	Copyright

Table 6-2. Previously Translated Test(s):

Language	Territory	Copyright

Table 6-3. Test(s) to be Translated:

Language	Territory	Copyright

For this SOW, Agreement terms and conditions continue in full force and effect.

IN WITNESS WHEREOF, the parties have agreed and executed this SOW as of the date signed below by Pearson.

NCS PEARSON, INC.

By: _____

Authorized Signature

Name: _____

Title: _____

Date: _____

THE UNIVERSITY OF TEXAS AT AUSTIN

By: _____

Authorized Signature

Name: _____

Title: _____

Date: _____

EXHIBIT B**Change Order No.: []**

to

Statement of Work No.: []

to

License Agreement No.: 10815

This Change Order is made pursuant to Section 3 of the License Agreement (“Agreement”) dated October 8, 2018 between the parties identified below (the “Change Order”) and concerns Statement of Work No. [] (the “SOW”) under the Agreement.

Capitalized terms used in this Change Order and not defined in this Change Order are used with the meanings ascribed to them in the Agreement or SOW, as the case may be.

[] (the “Requesting Party”) hereby requests [] (the “Recipient Party”) to approve the following change(s) to the terms of SOW.

Recipient Party’s response to this Change Order shall be made in accordance with the applicable provisions of Section 3 of the Agreement.

Requesting Party wishes to make the following changes to the SOW:

1. Description of change requested:

- Extend Study End Date to: _____
- Add Uses (Administrations): _____
- Add the following languages: _____
- Add reproduction of manuals and/or stimulus books (page range: _____)
- Other: _____

2. Costs associated with this change order in addition to the Subtotal Licensing Fees identified below:

Test Usage Details (Licensee to complete Table 1 and Table 2)

Table 2-1. Page Reproductions. For page reproductions (manuals and stimulus books), please indicate the specific page numbers, total number of pages, and number of sets that will be made. *Please note for paper administration: Pearson will give permission for adaptation and reproduction of said adaptation, but Licensee must purchase published materials from the respective publishers unless adapting electronically or into case report format.* (Add rows if needed.)

Test Acronym/Component	Pages Numbers to be Reproduced	Total Number of Pages	Number of Sets	Fee
				\$0
				\$0
				\$0
Table 1 Total Fees				

Table 2-2. Test Usage Details (Add additional rows if required). Note: all uses for the same Test may be combined on the first line entry for that Test if there is more than one Territory/Language

Test Acronym	Added Territory/Language	Additional Uses	Usage Fee	Subtotal of Fee
Table 2 Total Usage Fees				

3. Pricing and Fees

Table 3-1. License Fee.

Type of Fee	Amount (\$USD)
Project License Fee	
Content Delivery Fee	
Table 1 Subtotal of Fees	
Table 2 Total Usage Fees	
Total License Fee	

Payment terms set forth in Section 5.2 of the Agreement and applicable exhibits, addenda, and schedules.

4. Trademark and Copyright Notices (to be added by Pearson business requestor):

Table 4-1. Pearson Published Test(s):

Language	Territory	Copyright

Table 4-2. Previously Translated Test(s):

Language	Territory	Copyright

Table 4-3. Test(s) to be Translated:

Language	Territory	Copyright

All work is to be performed under the same terms and conditions as specified in the Agreement. This Change Order will serve as an amendment to SOW upon execution hereof by an authorized representative of both parties.

NCS PEARSON, INC.

By: _____
Authorized Signature

Name: _____

Title: _____

Date: _____

**THE UNIVERSITY OF TEXAS AT
AUSTIN**

By: _____
Authorized Signature

Name: _____

Title: _____

Date: _____

**Statement of Work (SOW) No. 001
to License Agreement No. 10815**

This SOW is made pursuant to License Agreement No. 10815 dated October 8, 2018 between the parties identified below (the “License Agreement”). Capitalized terms used in this SOW and not defined herein are used with the meanings ascribed to them in the License Agreement.

Study Tracking Information (Sections 1-5 and Table 1 to be completed by Licensee)

1. Research Project Information

- a. If a CRO, Sponsor Name: Dr. Nathan Clemens,
- b. Research Project Name/Number and Description: Dr. Clemens will be performing a Pearson approved research study for 300 students using 2 Aimsweb Pro probes (reading passages) for RCBM and MAZE.
- c. Research Project Start Date: October 15, 2018
- d. Research Project End Date (*this will constitute the License Expiration Date*): October 14, 2019
- e. Research Site Location(s): University of Texas, Austin
- f. Contact Information (name, telephone, e-mail): (512) 475-6557
nathan.clemens@austin.utexas.edu

2. Licensed Use

- a. Adaption Description (modification, translation, etc.): Pearson will provide Dr. Clemens PDFs of the 2 passages requested and Pearson will invoice in advance before delivering the forms.
- b. Administration method (paper or electronic): Paper
- c. Scoring method (hand-scoring or electronic [network hosting, tablet, etc.]): hand-scoring
- d. URL (if online): N/A

3. Billing

- a. Billing Address/E-mail Address:

Nathan Clemens, PhD | Department of Special Education
The University of Texas at Austin
SZB 408 M | (512) 475-6557
1 University Station D5300
Austin, TX 78712
nathan.clemens@austin.utexas.edu

- b. Is a Purchase Order required (Y/N)? No Payment in Advance of fulfillment
 - i. Purchase Order Number (if applicable):

4. Test Usage Details (Licensee to complete Table 1 and Table 2)

Table 1. Page Reproductions. For page reproductions (manuals and stimulus books), please indicate the specific page numbers, total number of pages, and number of sets that will be made. *Please note for paper administration: Pearson will give permission for adaptation and reproduction of said adaptation, but Licensee must purchase published materials from the respective publishers unless adapting electronically or into case report format.* (Add rows if needed.)

Test Acronym/ Component	Pages Numbers to be Reproduced	Total Number of Pages	Number of Sets	Fee (\$/page x ## Pages xx ## Sets)
AimsWeb Plus Probes	1 – 159	159 across 8 Probe sets	600	\$ 1.00 Per Set
Table 1 Total Fees				\$ 600.00

Table 2. Test Usage Details (Add additional rows if required).

Test Acronym	Territory/Language	Number of Uses	Usage Fee	Subtotal of Fee
				\$0.00
Table 2 Total Fees				\$0.00

5. Pricing and Fees

Table 1. License Fee.

Type of Fee	Amount (\$USD)
Project License Fee	\$0.00
Content Delivery Fee (\$XXX Each x ## Languages)	\$0.00
Table 1 Subtotal of Fees	\$600.00
Table 2 Subtotal of Fees	\$0.00
Total License Fee	\$600.00

Payment terms set forth in Section 4.2 of the Agreement and applicable Exhibits.

6. Trademark and Copyright Notices (to be added by Pearson business requestor):

Table 1. Pearson Published Test(s):

Language	Territory	Copyright

Table 2. Previously Translated Test(s):

Language	Territory	Copyright

Table 3. Test(s) to be Translated:

Language	Territory	Copyright

For this SOW, License Agreement terms and conditions continue in full force and effect.

IN WITNESS WHEREOF, the parties have agreed and executed this SOW as of the date signed below by Pearson.

NCS PEARSON, INC.

By: _____
Authorized Signature

Name: _____

Title: _____

Date: _____

**THE UNIVERSITY OF TEXAS AT
AUSTIN**

By: _____
Authorized Signature

Name: Nathan Clemens, PhD

Title: _____

Date: _____



PEARSON INCLUSIVE ACCESS AGREEMENT

Parties: This Pearson Inclusive Access Agreement ("Agreement") is made between:

Customer	Pearson
The University of Texas at Austin	Pearson Education, Inc.
110 Inner Campus Drive	221 River Street
Austin, TX 78705	Hoboken, NJ 07030
Customer's Bookstore:	
University Co-Op	

A. Definitions: Definitions used in this Agreement are set forth on the attached Schedule A.

B. Customer Orders: During the Term (as defined below), Pearson offers Customer or Customer's Bookstore the right to purchase Pearson Products at the then-current Inclusive Access Price as set forth in Pearson's Inclusive Access Catalog, unless otherwise agreed to in writing by Pearson and Customer or Customer's Bookstore. Pearson Products purchased under this Agreement shall be used solely by Authorized Users, pursuant to the terms and conditions of this Agreement. Pearson reserves the right to annually adjust the Inclusive Access Prices (and related Maximum Resale Prices) under this Agreement, effective at the start of Customer's next fall academic semester. Pearson agrees to communicate any such upcoming adjusted Inclusive Access Prices (and related Maximum Resale Prices) to Customer during the prior spring academic semester. Any price adjustments will not increase more than an aggregate of four percent (4%) annually.

C. Census & Pricing Reports: Within ten (10) business days of the established Census Date of each Course Section, Customer or Customer's Bookstore will deliver to Pearson the Census and Pricing Report via email to custom.invoices@pearson.com and the Deactivation Report, if applicable, via email to DDAoptout@pearson.com, both with a copy to the assigned Services representative.

D. Billing and Payment: Pearson will invoice Customer or Customer's Bookstore for the applicable Inclusive Access Price of each Pearson Product utilized in a Course Section multiplied by the Billable Enrollment in such Course Section in each academic semester, as validated by Pearson. All amounts due to Pearson are payable within thirty (30) days of invoice date. Prices are exclusive of all sales and use taxes applicable to the transactions covered by this Agreement. If Customer claims tax-exempt status, Customer or Customer's Bookstore will provide Pearson with evidence of such tax exemption upon signing this Agreement. All payments must be made in U.S. Dollars. Customer or Customer's Bookstore shall be responsible for any taxes in connection with its resale and/or distribution of the Pearson Products.

E. Term: The term of this Agreement shall commence as of January 1, 2022 (the "Effective Date") and shall terminate on August 31, 2025. continue for a period of three-years thereafter unless terminated earlier in accordance with the terms herein (the "Term").

F. Termination for Sales Above Maximum Resale Price: Pearson shall have the right to terminate this Agreement, and in doing so terminate the continuing right to purchase Pearson Products under this Agreement, in the event that Customer resells access to (or charges a materials fee for) any Pearson Product above the applicable

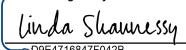
UTAUS CN: 2022_2106

Maximum Resale Price. Upon termination of this Agreement by Pearson, Customer shall no longer have the right to purchase the Pearson Products under this Agreement.

G Additional Terms and Conditions: Additional terms and conditions applicable to this Agreement and the use of Pearson Products are attached hereto as Exhibit A and Exhibit B and are hereby expressly incorporated herein.

Acceptance & Authority: By signing below, each Party accepts 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.

Customer (Institution or Institution's Bookstore)

DocuSigned by:

 Linda Shaunessy
 Printed Name
Business Contracts Administrator
 Title
 2022-09-01 | 09:38:22 PDT
 Date of Signature

Customer ID

Attached:

SCHEDULE A – DEFINITIONS
 EXHIBIT A - ADDITIONAL TERMS AND
 CONDITIONS
 EXHIBIT B – ADDENDUM TO
 AGREEMENT

Pearson Education, Inc.

DocuSigned by:

 Matthew Kernan
 Printed Name
Finance Director
 Title
 2022-09-01 | 15:41:21 CDT
 Date of Signature

UTAUS CN: 2022_2106

**SCHEDULE A
DEFINITIONS**

“Contract Year” means each twelve-month period during the Term of this Agreement commencing at the Contract Effective Date.

“Applicable Contract Year” means the Contract Year in which a Pearson Product purchased under this Agreement is made available to an Authorized Student User.

“Authorized Student User” means a single student enrolled in a Course Section, unless the student has dropped/withdrawn from the Course Section, or chosen not to access (via Inclusive Access) the Pearson Product adopted for such Course Section, in each case prior to the end of the Institution’s published add/drop period for such Course Section.

“Authorized User” means an Authorized Student User or faculty member, administrator, or agent of Customer who is authorized by Customer to access (via Inclusive Access) to a Pearson Product for classroom or administrative purposes.

“Billable Enrollment” means, for Customers that follow an opt-out model, the number of Authorized Student Users registered in one Course Section minus the number of Authorized Student Users who have opted-out. For Customers that follow an opt-in model, the Billable Enrollment means the number of Authorized Student Users who have opted-in for one Course Section. For Customers that follow neither an opt-out or opt-in model, the number of Billable Enrollments is driven by the adds/drops in the Course Section; Authorized Student Users who have dropped the Course Section are not a Billable Enrollment.

“Census and Pricing Report” means a report detailing the number of Billable Enrollments and the contracted net prices of the Pearson Products utilized in such Course Section and includes the name, ID, Section of the Course, and the Course start and end date.

“Census Date” means the last day, mutually agreed upon by Pearson and the Customer, of which students are able to elect to participate, or not, in the Inclusive Access program at the academic institution.

“Course Section” means a section of a course offered by the Institution, through any of its operating schools or campuses, during one academic semester, and for which a Pearson Product has been adopted for use by Authorized Student Users.

“Customer” means the academic institution named above, or such institution’s owned or operated bookstore, that agrees to purchase Pearson Products under this Agreement for distribution to Authorized Users.

“Deactivation Report” means a report detailing the student users who need to have their subscription to the Pearson Product removed because they are not being charged for the content. Reasons for deactivation include student decision to opt-out, student decision not to opt-in, or student drop/withdrawal from the Course Section. At a minimum this report must include student first name, student last name, student email address and course identifier sent to DDAoptout@pearson.com. A copy of the Pearson template will be provided by the Account Manager.

“Digital Learning Application” means a Pearson MyLab, Mastering, or Revel product, which may incorporate an eText or a standalone Learning Application.

“eBook” means a standalone, digital version of a Pearson Title that is fulfilled by an authorized Fulfillment Provider.

“eBook Fulfillment Services” means providing, via an online hosting and delivery platform, an Authorized User the means of gaining access to standalone eBooks (whether by or through permanent or time-limited download or web access, as applicable), and managing authorized subscription periods (as applicable) and applicable access and usage restrictions, all as specified by Pearson.

“eText” means a digital version of a Pearson Title incorporated into a Digital Learning Application.

“Fulfillment Provider” means the third party, approved by Pearson, that provides eBook Fulfillment Services.

“Inclusive Access” means Pearson’s Inclusive Access Program.

UTAUS CN: 2022_2106

"Inclusive Access Catalog" means the list of products available at Inclusive Access Prices to Customers who can fulfill the business requirements of the Inclusive Access model and who have signed an agreement which includes such pricing. This list includes the Net Prices at which Pearson will sell these products to Customers as well as a Maximum Resale Price at which Customers can sell the products to students. The Inclusive Access Catalog is available from your designated Pearson sales representative.

"Inclusive Access Price" means the price per Billable Enrollment set forth in Pearson's Inclusive Access Catalog, payable to Pearson for the use of a Pearson Product. The applicable Inclusive Access Price shall be the price applicable at the time the Pearson Product is purchased.

"Institution" means the academic institution who seeks to purchase, through itself or its owned or operated bookstore, Pearson Products under this Agreement for distribution to Authorized Users.

"Learning Application" means a standalone version of Learning Catalytics, Live Response, MediaShare, Pearson Prep, Pearson Writer, StatCrunch, Writing Space, or Writing Solutions.

"Maximum Resale Price" means the maximum resale price set forth in Pearson's Inclusive Access Catalog during the Applicable Contract Year, at which a Pearson Product purchased under this Agreement at the applicable Inclusive Access Price may be resold (or charged as a materials fee) to an Authorized Student User during the Applicable Contract Year.

"Parties" means Customer and Pearson, and *"Party"* means one of them as the context provides.

"Pearson eText" means a standalone, digital version of a Pearson Title delivered through a Pearson platform.

"Pearson Products" for purposes of this Agreement means eBooks and Digital Learning Applications.

"Pearson Title" means a text or educational material published by Pearson for the U.S. Higher Education market, which can be found at <https://www.pearson.com/us/higher-education/products-services-teaching/course-content/textbooks-and-etexts.html>.

Exhibit A - Additional Terms and Conditions

Last updated: August 1, 2019

1. DEFINITIONS AND INTERPRETATION

1.1 These Additional Terms and Conditions shall be incorporated into and made part of the Inclusive Access Agreement or Pearson Product Agreement and shall, together with such Inclusive Access Agreement or Pearson Product Agreement (as the case may be), and the Addendum to Agreement, be collectively referred to as the “Agreement”.

1.2 No variation or addition to these Additional Terms and Conditions will be effective except by a writing signed by Customer and Pearson, and any additional or alternative terms that a party may seek to impose will be void and/or unenforceable.

1.3 A person who is not a party to this Agreement will not have any rights under it.

1.4 In this Agreement words and phrases have the meanings given to them in the Inclusive Access Agreement or Pearson Product Agreement and this Section 1.4:

- a) “Customer Information” means data provided by Customer to Pearson, either directly or via Authorized Users, which is subject to FERPA.
- b) “Customer Materials” means Marks and content provided to Pearson by Customer, whether directly or indirectly (such as by placement of assessments and the results thereof by faculty within an LMS or Pearson’s systems);
- c) “EULA” means the End Authorized User License Agreement provided by Pearson on the platform through which a Pearson Product is accessed.
- d) “FERPA” means the Family Educational Rights and Privacy Act.
- e) “LMS” means a learning management system.
- f) “Marks” means trade names, trademarks and logos.
- g) “Party” means each of Pearson and Customer, as applicable.
- h) “Pearson Materials” means content, materials, technology, Marks and data contained in the Pearson Products and any derivative works thereof.

2. ACCESS AND USE

2.1 Each Pearson Product may be made available by Customer solely to Authorized Users, who may access such Pearson Product upon accepting Pearson’s EULA and Privacy Policy, provided that in all cases, Pearson’s EULA and Privacy Policy will be subject to Texas law and specifically, any limitation placed on them by any laws or regulations applying to Customer. In the event of any conflict between the Pearson’s EULA or Privacy Policy, on the one hand, and the terms of this Agreement, on the other, the terms of this Agreement will govern, including matters related to limitation of liability, indemnity, and governing law.

2.2 To the extent a Pearson Product is made available to Authorized Users via a Learning Tools Interoperability (LTI) link from a Customer LMS, Customer (by itself or through its third-party provider) will ensure that only Authorized Users access the Pearson Product and that such Customer LMS applies digital rights management and other protections necessary to prevent copyright infringement, misappropriations and misuse of the Pearson Product.

2.3 If a Customer LMS incorporates a single sign-on feature that enables Authorized Users to directly access a Pearson Product without further registration or log-on, then Customer (by itself or through its third-party provider) shall require Authorized Users to access and use the Pearson Product in a manner consistent with the terms of Pearson’s EULA and Privacy Policy.

2.4 Pearson may suspend access to Pearson Products, in whole or in part, if in Pearson’s reasonable discretion there is an emergency situation, including but not limited to a breach of security or unauthorized use of Pearson Products.

3. RESTRICTIONS ON USE

Customer acknowledges that the Pearson Products are intended solely for distribution to Authorized Users for personal, non-commercial use in their respective Courses. Customer will not sell, resell, license, sublicense, distribute, make accessible, rent

UTAUS CN: 2022_2106

or lease Pearson Products to any students, individuals, institutions or third parties who are not Authorized Users.

4. OWNERSHIP

UTAUS CN: 2022_2106

4.1 All right, title and interest in and to the Pearson Products and the Pearson Materials are expressly reserved by Pearson, except for Customer Information and Customer Materials contained in the Pearson Products, if any.

4.2 Except as expressly set forth in an Inclusive Access Agreement or Pearson Product Agreement, neither Customer nor its agents may resell, publish, distribute, share, sublicense, provide access to, copy, adapt, translate, modify, enhance or use Pearson Products or the Pearson Materials contained therein without the express written permission of Pearson. Customer will be responsible for any losses to Pearson arising out of Customer's or its agents' unauthorized distribution, alteration or use of the Pearson Products.

5. SECURITY AUDIT

Pearson has the right to audit and inspect the systems and processes of Customer and its third-party partners for compliance with this Agreement. Pearson may stop distributing Pearson Products to Customer if at any time Pearson determines that Customer's or its third-party partners' direct or indirect practices for protecting Pearson Products from unauthorized use are inadequate. If Customer is not able to remedy such practices to Pearson's reasonable satisfaction within 10 days, Pearson will be entitled to terminate this Agreement immediately for material breach.

6. BOOKS AND RECORDS

6.1 Customer will maintain (or require its Approved Distributor to maintain, as applicable) complete and accurate books of account and records covering all use of Pearson Products under the Agreement, as well as all Course enrollment information.

6.2 Pearson will have the right to inspect and copy such records upon reasonable notice in order to confirm Customer's use of the Pearson Products and to verify the Usage and Pricing Reports.

6.3 Customer shall pay any shortfall that results from Pearson's inspection of such records in accordance with the Texas Prompt Pay Act. If Customer has underreported by five percent (5%) or more any amounts owed to Pearson for any six-month billing period, Customer shall reimburse Pearson for its reasonable expenses of any such inspection.

7. ACCESSIBILITY

Pearson incorporates technically feasible accessibility features into certain Pearson Products. The provision of additional accessibility features shall be provided at Pearson's discretion and may be subject to additional costs.

8. TERMINATION OF ACCESS

8.1 The use of Pearson Products by an Authorized User is subject to any EULA and Privacy Policy associated with such Pearson Products. Customer will promptly notify Pearson of any actual or suspected violation discovered by Customer and will cooperate with Pearson regarding any violation, including termination of the violator's access to the Pearson Products. Pearson reserves all rights against the violator, including the right to bring legal or equitable action as Pearson deems appropriate.

8.2 Pearson may require Customer and its Authorized Users to stop (within 3 business days) using any Pearson Product if: (i) Pearson notifies Customer that Pearson no longer has the necessary rights to the Pearson Product 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 additional to Customer, any affected Pearson Products with other materials for Customer to use in accordance with the Inclusive Access Agreement or Pearson Product Agreement.

9. PAYMENT

Payments due to Pearson under this Agreement shall be paid in accordance with the Texas Prompt Pay Act. If Customer (or its Approved Distributor, as applicable) fails to make any payment due to Pearson pursuant to the Agreement and such failure continues for fifteen (15) days following the provision of written notice detailing such failure to Customer, unless Customer has provided Pearson with notice that Customer in good faith disputes the amount of such

UTAUS CN: 2022_2106

payment, Pearson may, at its discretion, (i) suspend all further use and distribution of Pearson Products or (ii) terminate the Agreement and require all amounts to be paid thereunder.

10. USE OF MARKS

Each Party owns certain Marks, and such Marks are and will remain the exclusive property of such Party. The Agreement gives the other Party no rights therein, and the other Party will never assert any rights therein. Customer further agrees not to remove or alter any Pearson Mark or other proprietary notice in or on any Pearson Product.

11. TERM AND TERMINATION

11.1 This Agreement may be terminated:

- a) immediately if the other fails to remedy a material breach within 60 days' after receiving notice asking it to remedy the breach; or
- b) immediately if the other becomes bankrupt, ceases or threatens to cease to do business, or is the subject of any actual or threatened insolvency event.

11.2 Customer may terminate this Agreement for no cause upon sixty (60) days' prior written notice.

11.3 On termination Customer and its Authorized Users will have no further right to access or use any Pearson Products. Any amounts due under this Agreement as at the date of termination will be paid in accordance with the Texas Prompt Pay Act.

12. CUSTOMER MATERIALS

If Customer or its Authorized Users provide Pearson with Customer Materials, then:

- a) Customer grants Pearson a non-exclusive license to access, use, copy, transmit and prepare derivative works from the Customer Materials in order to supply the Pearson Products and to supply analysis and feedback to Customer on the Authorized Users' usage of the Pearson Products; and
- b) Customer represents and warrants that it owns the Customer Materials or has obtained the necessary rights so that Pearson's use of the Customer Materials in order to supply the Pearson Products to Customer and Authorized Users will not violate the intellectual property or other rights of a third party.

13. CUSTOMER RESPONSIBILITY

Customer agrees to cooperate with Pearson in connection with the implementation and use of Pearson Products, including, without limitation, providing Pearson with reasonable access, at no cost, to Customer's LMS or any other Customer or third-party systems that are required to integrate with and/or enable access to the Pearson Products. In the event that there are any delays by Customer or its third-party partners in fulfilling its responsibilities as stated above, or there are errors or inaccuracies in the information provided, Pearson shall be entitled to appropriate schedule adjustments in delivery and/or access to Pearson Products.

14. INTENTIONALLY OMITTED

15. CONFIDENTIAL INFORMATION

15.1 Customer acknowledges that the prices being offered to Customer for Pearson Products, and the conditions of such price offers, contained in the Agreement (and any related purchase offers) is the confidential information of Pearson, and that the public disclosure of such confidential information could cause substantial competitive harm to Pearson. Consequently, Customer agrees that it shall, and shall require its officers, directors, employees, distributors and agents to, keep confidential and not disclose such confidential information except to its authorized legal and financial representatives with a need to know and then only for purposes of representing Customer's interests hereunder.

15.2 Customer will not issue any press release or make a public announcement relating in any way whatsoever to the Agreement or the relationship established by the Agreement, without the prior written consent of Pearson.

UTAUS CN: 2022_2106

15.3 Notwithstanding the foregoing, Customer shall be permitted to respond to third party requests made pursuant to state and federal freedom of information statutes; provided that Customer (i) provides Pearson with prompt written notice that a third party has requested disclosure of the Agreement (or any portions thereof), a related purchase order or any other materials or information in connection herewith or therewith; (ii) allows Pearson an opportunity to object to such request prior to the disclosure; and (iii) in any event, discloses only such information that Customer is legally required to disclose and then only to the extent specifically requested by such third party.

16. DISCLAIMER

Pearson makes no warranty that its platforms or systems or Customer's use of them will be uninterrupted or error-free. Except as set out in these Additional Terms and Conditions, to the extent permitted by the Constitution and laws of the State of Texas, 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 or any present or future use, integration or compatibility with any other products or services. 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 express warranties provided in this Agreement.

17. LIMIT OF LIABILITY

17.1 To the extent permitted by the Constitution and laws of the State of Texas, neither party will be liable to the other for any indirect, special, incidental, or consequential damages, including without limitation any lost data, lost profits and costs of procuring substitute goods or services, arising out of or related to this Agreement, or the use of or inability to use the Pearson Products, whether arising in contract, tort or otherwise, even if it has been advised of the possibility of such damages.

17.2 To the extent permitted by the Constitution and laws of the State of Texas, Pearson's total aggregate liability to Customer for all damages arising out of or related to this Agreement or Customer's, its agents' or Authorized Users' use of the Pearson Products will not exceed the amount paid by Customer for the specific Pearson Product giving rise to the claim in the 12-month period immediately preceding the claim.

17.3 The limitations set forth in this Section 17 shall apply whether such liability is asserted on the basis of contract, tort, or otherwise, even if the Party has been warned of the possibility of any such loss or damage, and even if any of the limited remedies in the Agreement fails of their essential purpose.

18. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing any of its obligations under this Agreement to the extent such failure or delay results from any event or circumstance beyond its reasonable control. This provision shall not apply to a Party's payment obligations.

19. THIRD PARTY PRODUCTS

During the Term, Customer will have time limited access to those Third-Party Products identified in a Pearson Product Agreement, solely for use by Authorized Users, pursuant to the terms, prices and conditions of this Agreement. Customer acknowledges that the Third-Party Products are provided by Pearson's third-party partners ("Third Party Partners"). Prior to accessing a Third-Party Product, Authorized Users may be required to acknowledge and accept the Third-Party Partner Terms as found in the platform or website offering such Third-Party Products, which terms are hereby incorporated herein, provided that in all cases, such terms will be subject to Texas law and specifically, any limitation placed on them by any laws or regulations applying to Customer. In the event of any conflict between the Third-Party Partner Terms, on the one hand, and the terms of this Agreement (not including Third-Party Partner Terms), on the other, the terms of this Agreement will govern, including matters related to limitation of liability, indemnity, and governing law. The Third-Party Partner will be responsible for providing Authorized Users with customer service support for technical and substantive Third-Party Product questions. Pearson is not responsible for providing any technical service, hosting, maintenance or support for the Third-Party Products. Customer agrees to provide to the Third-Party Partner all information reasonably requested to enable the Third-Party Partner to activate enrollments for Authorized Users.

20. ASSIGNMENT

The 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 the Agreement to any third party without the prior written consent of Pearson.

21. ENTIRE AGREEMENT

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

22. COUNTERPARTS

The Agreement may be executed in one or more 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.

23. ELECTRONIC SIGNATURES

The 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 the 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, PDF and electronic signatures shall be considered valid signatures as of the date hereof.

24. GOVERNING LAW

The Agreement will be governed by the laws of the State of Texas, excluding principles of conflicts of law. Any action or proceeding arising from or relating to the Agreement may be brought by a Party against the other Party only in a federal or

UTAUS CN: 2022_2106

state court located in the jurisdiction of such other Party's principle office as listed in the Inclusive Access Agreement or Pearson Product Agreement.

25. NOTICES

Any notice given under this Agreement must be in writing and delivered to the following address, or to such other address as one Party may notify to the other from time to time:

If to Pearson: To the correspondence address identified on the Inclusive Access Agreement or Pearson Product Agreement, with a courtesy copy to:

Associate General Counsel, North America Pearson
221 River Street
Hoboken, NJ 07030

If to Customer:

Senior Vice President and Chief Financial Officer
110 Inner Campus Drive
Austin, Texas 78712
Attention: Darrell Bazzell

EXHIBIT B - ADDENDUM TO AGREEMENT

The following terms and conditions are incorporated into and form a part of the agreement to which they are attached (**Agreement**) for all purposes. **University** means The University of Texas at Austin. **Contractor** means Pearson Education, Inc.

Representations and Warranties by Contractor. Contractor represents and warrants Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

Tax Certification. If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#), then Contractor certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

Payments. So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing, University will pay Contractor for goods and services in accordance with [Chapter 2251, Texas Government Code](#). University (a state agency) is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, Texas Tax Code](#), and [Title 34 Texas Administrative Code \(TAC\) §3.322](#).

Payments by Electronic Funds Transfer. [§51.012, Texas Education Code](#), authorizes University to make payments through electronic funds transfer methods. Contractor agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor's banking information to University in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, University will confirm Contractor's banking information. Changes to Contractor's bank information must be communicated to University in writing at least thirty (30) days before the effective date of the change and must include an IRS Form W-9 signed by an authorized representative of Contractor.

Payment of Debt or Delinquency to the State. Pursuant to §§[2107.008](#) and [2252.903](#), *Texas Government Code*, Contractor agrees any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency Contractor owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.

Confidential Student Information. "Confidential Student Information" is defined as information that is personally identifiable to a student who is or was enrolled at University by any of the following means: the student's name, the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as an identification number, or biometric record; other indirect identifiers, including but not limited to the student's date of birth, place of birth, and mother's maiden name; or any other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community to identify the student with reasonable certainty and includes information supplied to Contractor by University as well as any information provided by University's students and third parties to the Contractor.

Contractor acknowledges that this Agreement allows the Contractor access to Confidential Student Information, and that access to and disclosure of Confidential Student Information is restricted by University policy and federal law, namely the Family Educational Rights and Privacy Act ("FERPA").

Contractor agrees to hold Confidential Student Information in strict confidence. Contractor will not use or disclose Confidential Student Information received from or on behalf of University (or its students) except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by University. Contractor agrees not to use Confidential Student Information for any purpose other than the purpose for which the disclosure was made. Contractor agrees that only Contractor's employees who have a legitimate business need in performing this Agreement will have access to the Confidential Student Information.

Upon termination, cancellation, expiration or other conclusion of the Agreement, Contractor will return all Confidential Student Information to University within thirty (30) days or, if return is not feasible, destroy any and all Confidential Student Information. Twenty (20) days before destruction of any Confidential Student Information, Contractor will provide University with written notice of Contractor's intent to destroy Confidential Student Information. Within seven (7) days after destruction, Contractor will confirm to University in writing the destruction of Confidential Student Information.

Contractor agrees that Contractor is under the direct control of University with respect to the use and maintenance of Confidential Student Information. If University reasonably determines in good faith that Contractor has materially breached any of its confidentiality obligations under this Agreement or has violated FERPA, University, in its sole discretion, will have the right to require Contractor to submit to a plan of monitoring and reporting; provide Contractor with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately. Before exercising any of these options, University will provide written notice to Contractor describing the violation and the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Contractor improperly disclosed personally identifiable information obtained from University's education records, University may not allow the Contractor access to education records for at least five years.

Contractor will develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Student Information received from, or on behalf of University or its students. These measures will be extended by contract to all subcontractors used by Contractor.

Contractor will, within three (3) days of discovery, report to the University and its Chief Information Officer, any use or disclosure of Confidential Student Information not authorized by this Agreement or in writing by University. Contractor's report will identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Student Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure. Contractor will provide such other information, including a written report, as reasonably requested by University.

Confidentiality and Safeguarding of University Records; Location of Data. Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, "**University Records**"). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state and local, laws, regulations, and ordinances, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**"). If University Records are subject to FERPA, (1) University designates Contractor as a University official with a legitimate educational interest in University Records, and (2) Contractor acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor's exclusion from eligibility to contract with University for at least five (5) years. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to commercially reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, the Gramm-Leach-Bliley Act, as well as the Payment Card Industry Data Security Standards); (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

Notice of Impermissible Use. If an impermissible use or unauthorized disclosure of any University Records occurs, Contractor will provide written notice to the University and its Chief Information Officer, within three (3) days after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.

Return of University Records. Contractor agrees that upon request, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed.

Disclosure. If Contractor discloses any University Records to a permitted subcontractor or agent, Contractor will require the permitted subcontractor or agent to comply with restrictions and obligations that are substantially similar to those imposed on Contractor by this Section.

Location of Data. Intentionally omitted.

Press Releases. Except when defined as part of the Services, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.

Payment Card Industry Standards. University is required to validate compliance on a periodic basis with applicable Payment Card Industry Data Security Standards (**PCI DSS**), including Payment Application Data Security Standards (**PA DSS**), promulgated by the Payment Card Industry Security Standards Council (**PCI SSC**). The compliance validation process requires University to undergo an assessment of (1) system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) related processes used to process, store or transmit cardholder data, (**System Components in Scope**). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with term that are substantially similar to those terms of this Section applicable to Contractor. Contractor will achieve and maintain compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. Contractor will provide to University (1) on or before the date this Agreement is signed by University, and (2) upon request, a copy of Contractor's annual attestation of compliance signed by a Qualified Security Assessor (**QSA**) as more particularly described on the PCI SSC website.

If Contractor is unable to provide the required attestations of compliance, Contractor will permit University or University's QSA to assess all System Components in Scope that are hosted or managed by Contractor or by Contractor's agents or subcontractors. Contractor will create and maintain reasonably detailed, complete and accurate documentation describing the systems, processes, network segments, security controls, and dataflow used to receive, transmit, store and secure cardholder data. The documentation will conform to the most current version of PCI DSS. Contractor will, upon written request by University, make the documentation available to (1) QSAs, forensic investigators, consultants and attorneys retained by University to facilitate the validation of University's PCI DSS compliance, and (2) University's information technology, information security, audit, compliance and other staff.

Contractor will retain the documentation for at least one (1) year after termination of this Agreement.

Insurance. Contractor agrees to maintain, at Contractor's sole expense, and to cause its agents, suppliers and permitted subcontractors (if any) to maintain, at their sole expense, the following insurance coverage in at least the amounts specified:

Workers Compensation: Statutory Limits

Employer's Liability: \$1,000,000 per accident and employee

Commercial General Liability (including contractual liability): \$2,000,000 per occurrence

Product/Completed Ops: Included in Commercial General Liability Policy

Auto Liability: \$1,000,000 combined single limit if Contractor comes on the campus

All other insurance required by state or federal law

All policies (except Workers' Compensation) will include University as an Additional Insured. A Waiver of Subrogation in favor of University is included in Contractor's commercial general liability and auto policies.. Certificates of insurance verifying the foregoing requirements will be provided to University prior to commencement of any services under this Agreement. If a policy contains deductible provisions, Contractor will be responsible for payment of the deductible amount for any claim(s) or the pursuit of any claim(s) or asserted claim(s) against University, its agents, employees or representatives.

The following additional insurance is required: Cyber Liability Insurance with limits of not less than \$5,000,000 for each wrongful act. This policy must cover:

- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
- Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Liability for technological products and services;
- PCI fines, fees, penalties and assessments;
- Cyber extortion payment and response costs;
- First and Third-Party Business Interruption Loss resulting from a network security failure;
- Liability for technological products and services;
- Costs of restoring, updating or replacing data; and
- Liability losses connected to network security, privacy, and media liability.

If this policy is written on a claims-made basis, (a) the "retroactive date" must be prior to the commencement of Work under this Agreement; and (b) if this policy is cancelled, terminated or non-renewed at any time during the Term, Contractor will purchase an "extended reporting period" for at least a period of two (2) years beyond the termination or expiration of the Term.

~~Contractor's policy will provide a carve back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.~~

Liability and Insurance. It is the stated policy of the University not to acquire commercial general liability insurance for torts committed by employees of the University who are acting within the scope of their employment. Rather, Contractor must look to the Texas Tort Claims Act for relief with respect to property damage, personal injury, and death proximately caused by the wrongful act or omission or negligence of University or its employees, acting within the scope of their employment. The University does not provide insurance coverage or accept liability for the intentional or negligent acts or omissions of guests, invitees, and other persons not employed by the University.

Refund of Deposit/Prepayment. In the event this Agreement is canceled by Contractor for reason not attributable to University or if canceled by University for default of performance by Contractor or Force Majeure, then within thirty (30) days after termination, Contractor will reimburse University for all advance payments paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that the University did not receive from Contractor prior to termination.

Invoicing. The outstanding balance, excluding disputed charges, will be overdue on the 31st day after the later of: a) the completion of completion of services or delivery of goods, or b) receipt of invoice by University. Upon resolution of any disputed charges, the Contractor shall invoice such remaining charges to the University. Payment of the revised charges shall be overdue on the 31st day after receipt of invoice by University. The rate of interest that accrues on an overdue payment is defined in Texas Government Code, Chapter 2251.025, INTEREST ON OVERDUE PAYMENT, which is generally stated as Prime Rate (on July 1st) plus 1% effective the following September 1st.

University Marks and Logos. Contractor acknowledges: (1) use of University's trademarks, service marks, trade names, logos or other commercial or product designations ("Marks") is governed by the policies and regulations found at <https://www.utexas.edu/trademarks/>, (2) separate prior written approval from the Director of the Office of Trademark Licensing may be required by either party to utilize University Marks, (3) the University cannot sponsor, act as a reference for, or otherwise publicly express a viewpoint or opinion on products or services, and (4) the representative executing this Agreement on behalf of the University does not have any authority to convey any right or interest in University Marks.

Texas Family Code Child Support Certification. Pursuant to [§231.006, Texas Family Code](#), Contractor certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Contractor Certification regarding Business with Certain Countries and Organizations. Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Contractor Certification regarding Boycotting Israel. If (1) this Agreement has a total value in excess of \$100,000, and (2) Contractor is a for-profit business with at least ten (10) employees, then pursuant to [Chapter 2270, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Contractor Verification regarding Discrimination against Firearm Entities or Trade Associations. If (1) this Agreement has a total value in excess of \$100,000 and will be paid wholly or partly from public funds, and (2) Contractor is a for-profit business with at least ten (10) employees, then, if applicable, pursuant to Chapter 2274, *Texas Government Code (enacted by SB 19, 87th Texas Legislature, Regular Session (2021))*, Contractor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

Contractor Verification regarding Boycotting Energy Companies. If (1) this Agreement has a total value in excess of \$100,000, and (2) Contractor is a for-profit business with at least ten (10) employees, then, if applicable, pursuant to Chapter 2274, *Texas Government Code (enacted by SB 13, 87th Texas Legislature, Regular Session (2021))*, Contractor verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.

Access by Individuals with Disabilities. Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement. Contractor will provide all assistance and cooperation necessary for performance of accessibility testing conducted by University or University's third party testing resources, as required by [1 TAC §213.38\(g\)](#).

Venue; Governing Law. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

Breach of Contract Claims. To the extent that [Chapter 2260, Texas Government Code](#), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief financial officer of University will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims. The parties specifically agree (i) neither execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.

Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire Agreement and understanding between the parties with respect to its subject matter. This Agreement and each of its provisions will be binding upon the parties, and may not be waived, modified, amended or altered, except by a writing signed by University and Contractor.

Loss of Funding. Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate necessary funds, then University will issue written notice to

Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond University's control.

State Auditor's Office. Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. §§[51.9335\(c\)](#), [73.115\(c\)](#) and [74.008\(c\)](#), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested that are reasonably related to Contractor's performance under this Agreement.

Limitations. THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

Ethics Matters; No Financial Interest. Contractor and its employees, agents, representatives understand applicable state ethics laws and rules at <https://www.utsystem.edu/offices/systemwide-compliance/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will knowingly assist or cause University employees to violate applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Public Information. University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act (TPIA)*, [Chapter 552, Texas Government Code](#). In accordance with §§[552.002](#) and [2252.907](#), *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.

Texas Public Information Act – Subchapter J Requirements. Pursuant to [Section 552.372, Texas Government Code](#), for agreements with a total value in excess of \$1,000,000, Contractor must: (1) preserve all contracting information (ref. [Section 552.003\(7\), Texas Government Code](#)) related to this Agreement as provided by the records retention requirements applicable to University for duration of this Agreement; (2) promptly provide to the University any contracting information related to this Agreement that is in the custody or possession of Contractor on request of the University; and (3) on completion of this Agreement, either (A) provide at no cost to the University all contracting information related to this Agreement that is in the custody or possession of Contractor, or (B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to the University.

The requirements of [Subchapter J, Chapter 552, Government Code](#) ("Subchapter J") may apply to this Agreement and Contractor agrees that the Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of Subchapter J.

University may not accept a bid for a contract described by [Section 552.371, Texas Government Code](#) or award the contract to an entity that the University has determined has knowingly or intentionally failed to comply with Subchapter J in a previous bid or contract described by Section 552.371 unless the University determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J.

If Contractor fails to comply with the requirements of Subchapter J applicable to Contractor, then University shall provide written notice to Contractor stating the requirement(s) of Subchapter J that Contractor has violated. Such notice will also advise Contractor that University may terminate this Agreement without further obligation to Contractor if (a) Contractor does not cure the violation on or before the 10th business day after the date the University provides the notice, (b) the University determines that Contractor has intentionally or knowingly failed to comply with a requirement of that Subchapter J, and (c) the University determines that Contractor has not taken adequate steps to ensure future compliance with the requirements of Subchapter J. For purposes of the above, Contractor has taken adequate steps to ensure future compliance with Subchapter J if: (1) Contractor produces contracting information requested by the University that is in the custody or possession of Contractor not later than the 10th business day after the date the University makes the request and (2) Contractor establishes a records management program to enable Contractor to comply with Subchapter J.

Subcontracting. If this Agreement has a Historically Underutilized Business Subcontracting Plan (**HSP**), Contractor will use good faith efforts to subcontract work performed under this Agreement in accordance with the HSP. If this Agreement has a HSP, except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Agreement, in whole or in part. This Agreement is subject to [34 TAC §20.285](#). Contractor will comply with all of its duties and obligations under [34 TAC §20.285](#). In addition to other rights and remedies, University may exercise all rights and remedies authorized by [34 TAC §20.285](#).

Agreement. This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement ("External Terms"). The External Terms are null and void and will have no effect under this Agreement, regardless of whether University or its employees, contractors, or agents express assent or agreement to the External Terms. The External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

Cybersecurity Training Program. If Contractor and/or its subcontractors, officers, or employees will have an account on a state computer system (for example, an account to an application, database, or network), then pursuant to Section 2054.5192, Texas Government Code, Contractor and its subcontractors, officers, and employees must complete a cybersecurity training program certified under [Section 2054.519](#), [Texas Government Code](#) and selected by the University. The cybersecurity training program must be completed by Contractor and its subcontractors, officers, and employees during the term and any renewal period of this Agreement. Contractor shall verify completion of the program to the University.

Responsibility for Individuals Performing Services. Each individual who is assigned to perform the Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Services under this Agreement. Contractor agrees that no individual assigned to perform the Services under this Agreement will be present on University property.

Debarment and Suspension. Under Presidential [Executive Order 12549](#) and [Executive Order 12689](#), The University of Texas at Austin may not contract with parties listed on the General Services Administration's [System for Award Management \(SAM\)](#). SAM identifies (via active exclusions) entities that have been debarred, suspended, or excluded from receiving federal contracts, subcontracts, or federal assistance and benefits. Contractor certifies, to the best of its knowledge, Contractor and/or any of its principals are not suspended or debarred. Further, Contractor certifies that it is not subject to a vendor hold by the State of Texas.

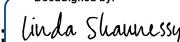
Addendum Controlling. If there is a conflict between the terms and conditions of the agreement to which this Addendum is attached and this Addendum, this Addendum controls.

Contractor:

By: 
Matthew Kernan
Name: _____
Title: Finance Director

Date: 2022-09-01 | 15:41:21 CDT

The University of Texas at Austin

By: 
Linda Shaunessy
Name: Linda Shaunessy
Title: Business Contracts Administrator

Date: 2022-09-01 | 09:38:22 PDT

UTAUS CN: 22611

AMENDMENT NO.2
TO THE SERVICES AGREEMENT

THIS AMENDMENT NO. 2, dated as of November 20, 2015("Amendment No. 2"), by and between Pearson Education, Inc. ("Pearson"), and The University of Texas at Austin, an agency and institution of higher education for and on behalf of the Charles A. Dana Center ("University") will serve to amend the Agreement dated as of December 5, 2014 between Pearson and University ("Agreement"), and as amended.

RECITALS

WHEREAS, the parties entered into the Agreement for the development and distribution of certain courses based on the New Mathways Project ("Course" or "Courses"), as such terms are defined in the Agreement; and

WHEREAS, the parties hereto wish to add a newly developed Course to the Exhibit A – Statement of Work; and

WHEREAS, the parties hereto with to address the sharing of certain fees and costs for the clearance of certain text research and image/photo permissions related to the Courses;

NOW, THEREFORE, in consideration of the mutual premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Capitalized terms used herein and not otherwise defined shall have their respective meanings specified in the Agreement.
2. Exhibit A – Statement of Work, Section I is hereby amended by inserting the following new Section I., E. as follows:

"E. Reasoning with Functions II

This college-level course is designed for students who have completed Reasoning with Functions I and intend to take Calculus or other technical or STEM coursework. Reasoning with Functions II builds students' geometric and trigonometric reasoning skills using active learning approaches that allow students to explore dynamic geometric situations as well as build and use mathematical models which incorporate trigonometric functions. The ability to reason from multiple perspectives and representations is emphasized.

Units of study will include:

Geometric Reasoning
Pythagorean Theorem
Distance
Length, area, and volume
Arc length
Similarity
Trigonometry
Right triangle trigonometry
The unit circle

Proving trigonometric identities
Properties of trigonometric functions
Modeling with trigonometric functions
Law of Sines
Law of Cosines
Inverse trigonometric functions
Functions
Modeling with algebraic and transcendental functions

This first iteration of this course shall be considered a pilot. This Course will be ready for use as a pilot by July 1, 2015. Initial Course development launch meeting between University and Pearson teams will need to take place by March 11, 2016. Complete course launch will be by December 2, 2016. Course development schedules shall be mutually agreed upon within five ("5") business days of the Initial Course development launch meeting between the University team and the Pearson Team."

3. Exhibit A – Statement of Work, Section III is hereby further amended by inserting the following new Section III, f) as follows:

"f) Sharing of Permissions Clearance Costs and Fees.

Notwithstanding anything set forth in Exhibit A - Statement of Work or the Services Agreement to the contrary, Pearson agrees to pay, at its own expense, fifty percent ("50%") of all reasonable text research and image/photo permission fees that are approved in advance by Pearson for the first edition of each of the five ("5") Courses listed in this Statement of Work (Foundations of Mathematical Reasoning, Reasoning with Functions I, Reasoning With Functions II, Quantitative Reasoning & Statistical Reasoning) up to the maximums described below, as follows:

Pearson Per-Course Limitation: Notwithstanding anything to the contrary contained herein, Pearson's total obligation on a per-course basis shall be limited to Five Thousand Dollars ("\\$5,000") in the aggregate for all pre-approved text research and image/photo permissions costs and fees combined. University shall be solely responsible for any amounts in excess of this per-course limitation.

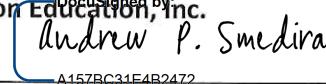
Pearson Total Obligation: For the avoidance of doubt, Pearson's maximum contribution towards permission fees across both categories combined shall not exceed an aggregate total of Twenty Five Thousand Dollars ("\\$25,000") based upon a maximum of Five Thousand Dollars (\\$5,000) per course multiplied by the five courses contained in this Statement of Work.

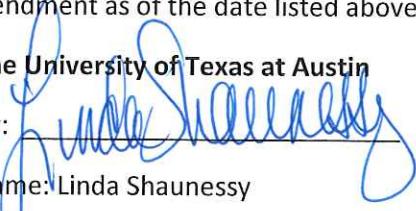
First Edition Only: Pearson's obligation to pay for text research and image/photo permission costs and fees under the terms of this Agreement shall apply to the first edition of the Course only. Pearson shall not be responsible for paying any such permissions fees related to any revised and/or any subsequent editions and versions of the Course, however Pearson will make reasonable efforts to clear permissions for future editions at the time clearances are obtained for the First Edition(s).

Cost Control: Pearson and the University will work together in good faith to control costs, using Pearson-proposed vendors for photo/image and text research permissions and University-proposed vendors based on suitability on a case-by-case basis."

4. Except as set forth herein, the terms and conditions of the Agreement shall remain in full force and effect and each party hereto agrees to be bound by the terms thereof .

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date listed above.

Pearson Education, Inc.
By: 

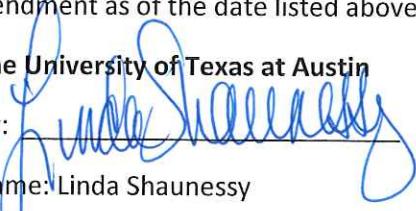
By: 
A157BC31E4B2472...

Name: Andrew P. Smedira

Title: VP Finance

Date: 01 December 2015

The University of Texas at Austin

By: 

Name: Linda Shaunessy

Title: Business Contracts Administrator

Date: 11/23/2015

Pearson VUE Authorized Test Center Agreement

Will there be a PVTC at the below address? Yes No
If "No" skip to the signature block below and complete all a separate Exhibit B for the PVTC.

Commercial Name The University of Texas at Austin, on behalf of Testing and Evaluation Services

Legal Name The University of Texas at Austin

Physical Address 1912 Speedway, Room 547

City Austin State/Prov/Country Texas Postal Code 78705

Contact Name Thereisa Coleman Email Address thereisa.coleman@austin.utexas.edu

Telephone 512-475-6626 Fax 512-475-7933 Web Address

<https://testingservices.utexas.edu/dev>

On-site Technical/Installation Contact Name Nazy Sheikhzadeh

Phone 512-232-7593, Ext Cell Email Address n.sheikhzadeh@austin.utexas.edu

PVTC Administrator Contact Name Nazy Sheikhzadeh

Phone 512-232-7593 Email Address n.sheikhzadeh@austin.utexas.edu

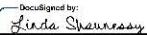
Business Office / Accounting Contact Name Urban Arredondo

Phone 512-232-2769 Email Address urban.arredondo@austin.utexas.edu

Address 2901 N. IH-35, Room 2.426 City Austin State/Prov/Country Texas Postal Code 78722

NCS Pearson, Inc., with offices located at 5601 Green Valley Drive, Bloomington, Minnesota 55437 ("Pearson VUE"), contracts for and Company agrees to provide the facilities and services of a testing center in accordance with this PVTC Agreement and any attached Exhibits, including but not limited to Exhibit A and Exhibit B, if applicable, which are incorporated in and made a part of this Pearson VUE Authorized Center Agreement ("Agreement").

**Company acknowledges it has read,
understands and is bound by this Agreement.**

Signature  DocuSigned by:
<https://www.docusign.com/en-US/transaction/109411042>

Print Name Linda Shaunessy

Title Business Contracts Administrator Date

2019-04-30 12:50:14 PDT

Email Address _____

NCS Pearson, Inc.

 Signature Ryan Ulwelling (May 8, 2019)

Print Name Ryan Ulwelling

Title Director, Global Selects Date

190430

MASTER
Site ID # _____

(Pearson VUE INTERNAL USE ONLY)

Pearson VUE Authorized Test Center Agreement

OBJECT OF THE AGREEMENT

Pearson VUE is in the business of contracting to provide various services for the benefit of organizations known as Sponsors which have established certain levels of education, training and/or testing experience necessary to qualify for a specified certification or other form of recognized position, title or status. Sponsors require that dependable, high quality, secure, and uniform testing be available to be delivered electronically throughout the world. Pearson VUE furnishes testing services to Sponsors by contracting with companies which provide one or more testing centers. The testing centers provide a secure and uniform testing environment, high quality service and dependability.

Company is an organization which provides facilities for electronic testing. This Agreement sets forth the terms and conditions, responsibilities, rights and remedies which Company and Pearson VUE accept and intend to govern their relationship. Company will use Pearson VUE software and applications appropriately, operate its PVTC(s) responsibly, deliver the electronic Tests successfully, and upload Candidate results proficiently. Company shall perform Services in accordance with this Agreement, which includes, but is not limited to, the Guide.

DEFINITIONS

1. DEFINITIONS

These definitions apply to this Agreement:

- a. **Administrator**—PVTC employee(s) who has been certified under Pearson VUE's Certified Administrator Program.
- b. **Agreement**—This PVTC Agreement which includes the Guide, the Exhibits, Schedules and other related documents referred to herein.
- c. **Candidate**—An individual who registers for a Test.
- d. **Company**—The organization contracting with Pearson VUE to provide facilities for the electronic delivery of Tests and who may be engaged by Pearson VUE to collect Candidate Personal Data on behalf of Pearson VUE in accordance with Pearson VUE's instructions, and the terms of this Agreement.
- e. **Data Processor**—is Pearson VUE and Company.
- f. **Effective Date**—The date signed by both parties and will be effective by the date the earliest party signed.
- g. **Enhanced Equipment**—Signature pad, digital camera, camera stand, or any additional equipment as required by Pearson VUE for delivery of Tests by Company.
- h. **Guide(s)**—*Pearson VUE Authorized Test Center Policies and Procedures Guide; PVTC Policies and Procedures Guide; Regulatory Policies and Procedures Guide; and Exam Sponsor Procedures for Pearson VUE Authorized Test Centers and Regulatory Exam Sponsor Documentation*, all of which are inclusive, and, that set forth the testing policies and procedures, the Sponsors' requirements, and explains the use of Pearson VUE's applications. The Guides will change at Pearson VUE's sole discretion upon reasonable notice to Company. The Guides and changes to the Guides shall be found at <https://vss.pearsonvue.com>, or other site as communicated by Pearson VUE in writing. If there is a conflict between this Agreement and the Guide with respect to a nonmaterial change, the Guide(s) will govern.
- i. **Mobile Site**—PVTC that is not a fixed location and is furnished by Company for delivery of electronic testing.
- j. **Personal Data or Candidate Personal Data**—Any information relating to an identified or identifiable Candidate.
- k. **Processing**—Any operation or set of operations which is performed upon Candidate Personal Data, whether or not by automatic means, such as collection, use, recording, organization, storage, retrieval, or disclosure by transmission, ("Process", "Processes" and "Processed" shall have the same meaning).
- l. **PVTC**—The facilities furnished by Company for delivery of electronic testing at a specific and fixed location.
- m. **RMA**—Pearson VUE Remote Maintenance Agent software that allows for the transfer of data (registrations, Tests, scores) to and from Pearson VUE.
- n. **Services**—Those actions and obligations which are to be performed by Company as specifically described in this Agreement.

Pearson VUE Authorized Test Center Agreement

- o. **Site Manager** – Pearson VUE software application that provides Candidate scheduling and site information.
- p. **Software** – All or any part of Pearson VUE owned proprietary software or non-restricted third party software, including any updates and related documentation thereto, that is licensed or sublicensed to Company.
- q. **Sponsor or Data Controller**– Organizations that determines the purpose and means of the Processing of Candidate Personal Data and have established certain levels of education, training and/or testing experience necessary to qualify for a specified certification or other form of recognized position, title or status and who have contracted with Pearson VUE to provide electronic testing services to Candidates who are seeking to demonstrate those qualifications. In addition Pearson VUE delivers computer based Tests on behalf of itself and may from time to time be the Sponsor or Data Controller and a Data Processor.
- r. **System** – Pearson VUE's computerized system, Software and applications designed for registration, scheduling, delivery of Tests and testing. The System includes the Software, test drivers, test files, documentation and other related materials and information as specified and described in this Agreement including any documentation made a part of this Agreement.
- s. **Test** – A computer administered exercise, authorized by a Sponsor, designed to examine a Candidate's progress or test qualification or knowledge.

RESPONSIBILITIES OF THE PARTIES

A. COMPANY RESPONSIBILITIES

1. READINESS FOR TEST DELIVERY

To begin offering testing to Candidates at the earliest possible date, Company agrees to make best efforts to see that all elements of its PVTC are installed and the PVTC is fully ready for Test delivery within 30 days from receipt of the installation kit. If the PVTC is not installed within 30 days, or as otherwise mutually agreed upon in writing, Pearson VUE will have the right to terminate this Agreement.

2. PVTC/CANDIDATE OPERATIONS

- a. Company will (i) furnish facilities and Services including, but not limited to, furnished building(s), testing equipment, facilities management, Candidate orientation, Test delivery, and provide testing for a variety of Candidates and Pearson VUE's Sponsors and (ii) operate its PVTC, all in accordance with this Agreement and the requirements of the most recent version of the Guide. Further, Company will comply with the Software License in this Agreement.
- b. PVTC may be located at Company's street address indicated on the signature page of this Agreement and/or the additional location(s) shown on Exhibit B, if applicable, which will be attached to this Agreement by the mutual written agreement of the parties. Each PVTC will be operated and equipped as required in this Agreement and the Guide. Company must notify Pearson VUE in writing at least 30 days in advance of any intended relocation of a PVTC or for any name change.
- c. Company acknowledges that it shall only be authorized to deliver Tests as approved by Pearson VUE and/or its individual Sponsors. The parties may mutually agree to only deliver Tests for certain Sponsors. Tests can be added and deleted by Pearson VUE or Sponsor, at their sole discretion at any time.
- d. PVTC must have a minimum of one PVTC Administrator certified and trained for Test delivery at all times. An Administrator must pass a Pearson VUE required administration certification exam and recertify **annually**, maintain strict security, follow all instructions from Pearson VUE, and adhere to the Rules of Conduct and Certification Agreement. Administrator is responsible for fulfilling all duties associated with the operation of the PVTC in accordance with the Guide.
- e. Sponsors prohibit PVTC Administrator's serving as a PVTC Administrator for a Test that they hold a Sponsor certification or will be taking a Sponsor certification. Consult the *Exam Sponsor Guide* for specific Sponsor requirements and restrictions, including but not limited to, GED Testing Service LLC, Microsoft, Cisco and Adobe. One such example is an Administrator shall not administer a Cisco exam if they hold a Cisco certification or are a Cisco certified instructor, including those that intend to pursue such certification.
- f. PVTC will provide and continually update its own testing availability schedule using Pearson VUE'S Site Manager. PVTC(s) will be open during the business hours Company establishes for testing. In addition, PVTC must notify Pearson VUE in Site Manager as follows: (i) any certified Test Administrator

Pearson VUE Authorized Test Center Agreement

- is added or deleted personnel, (ii) any Test Administrator is added or deleted personnel, (iii) any on-site technical and installation personnel, and (iv) any business office and accounting personnel.
- g. If PVTC anticipates changing its time(s) and/or date(s) of Test delivery, PVTC is responsible for determining whether there are any Candidates scheduled during that time(s) and/or date(s), and making the necessary arrangements to deliver such Tests or to reschedule such Tests accommodating reasonable Candidate's requests. All such accommodations must be undertaken promptly to the reasonable satisfaction of the Candidate.
 - h. PVTC will regularly check the Pearson VUE website and run the PVTC Report Card report detailing Candidate feedback on their testing experience. Company will make every effort to improve areas that do not meet Pearson VUE's criteria.
 - i. PVTC will continuously monitor Candidates during the entire testing process by having the Administrator be able to view all Candidates directly, or by video, **at all times**. The Administrator must be aware of all activities in the test room and be alert for any misconduct. Further, Company will not facilitate and will discourage any actions by Candidates that could be construed as cheating and will not allow any Candidate to copy or misuse the Systems or Software, applications, and any related Test materials or documentation. PVTC will monitor and administer the delivery of Tests as specified in the Guide.
 - j. Pearson VUE furnished Test exhibits and/or erasable noteboards, (if required) will be given to Candidates before testing begins and will be collected at the end of the Test. Company will keep the exhibits and/or erasable noteboards in good condition and use its best efforts to prevent loss or theft of any such exhibits, including compact disks, and/or erasable noteboards.
 - k. PVTC will provide each Candidate with a score report upon completion of the testing session, if applicable.
 - l. To provide for Candidate's testing needs and meet the Sponsors' requirements, PVTC will meet or exceed the minimum specifications in the Guide.
 - m. Provide access to testing services by disabled persons at least to levels required by the American with Disabilities Act or similar laws in force in the country where the PVTC is located.
 - n. PVTC will make all reasonable efforts to resolve Candidate problems, questions or issues, but will not counsel a Candidate on Test content.
 - o. Within 24 hours of delivery of any Test at either a fixed or mobile PVTC, PVTC will report the results to Pearson VUE by running RMA software provided by Pearson VUE in accordance with the Guide.
 - p. Pearson VUE, its authorized representatives, or any Sponsor whose Tests are being administered at the PVTC, may periodically inspect and audit the PVTC operations and records during testing hours without advance notice. Company Administrators will cooperate fully with all such inspections and allow complete access to the PVTC and all equipment, software, systems and records. PVTC will refer any questions about the inspection to Pearson VUE Support Services. Pearson VUE may integrity shop or audit PVTC, one or more times during each year. Company understands that it will receive no Test delivery or registration compensation for such integrity shop.
 - q. PVTC will provide Pearson VUE with remote access to the administrator workstation and/or testing server for the purpose of recovering Test results and related records and supporting or auditing the system, except where explicitly prohibited by law.
 - r. PVTC will maintain strict security in the storage and distribution of the Systems or Software and any copies to protect the copyright and/or trade secret rights therein, and not provide, permit access to or otherwise make available, the Systems or Software, documentation or related materials (or copies, summaries, notes or modified versions thereof), to any other party or for any other use.
 - s. Enhanced Equipment will be required to be used to provide Pearson VUE testing services at PVTC. Enhanced Equipment is not to be moved from designated Company or PVTC without Pearson VUE's prior express written consent, as long as this Agreement is valid. Company understands and agrees that Company owns the Enhanced Equipment as described in this Agreement, unless otherwise stated. Notwithstanding anything contained in the Agreement, in no event will any of Pearson VUE's proprietary Software, printed materials, processes, databases, confidential information, enhancements to such information or software, materials, and related information and equipment become the property of Company and the same are expressly excluded from any transfer of ownership, or other arrangement, under the Agreement. Any changes or modifications to the Pearson VUE software or materials suggested or provided by Company are hereby assigned by Company to Pearson VUE, and Pearson VUE will own solely all rights, title, and interest, including copyrights, in such changes and modifications. Company understands and agrees that it will, at Company's expense, keep and maintain Enhanced Equipment in good working order, repair and appearance, and make or arrange any and all necessary repairs and

Pearson VUE Authorized Test Center Agreement

replacements thereto in order that Enhanced Equipment will continue to fulfill its intended function or use. Should any Enhanced Equipment be damaged for any reason, and be capable of repair, Company will promptly repair the same at Company's expense or replace the Enhanced Equipment.

- t. PVTC must open a PVTC Incident in accordance with Pearson VUE's procedures provided in the Guide, or when an unusual situation occurs, including, but not limited to, any cheating, copying or misuse of any Systems or Software, applications and any related Test materials or documentation. Incidents are created using the Pearson VUE Support Services Web page. In addition, Company shall call Pearson VUE Support Services immediately upon discovery of any cheating, copying or misuse of any Systems or Software, applications and any related Test materials or documentation and/or theft or misplacement of any confidential information or materials (exhibits, software, applications and the like) as well as any computer media or hardware.
- u. PVTC will be required to obtain parental consent for those Candidates that are considered minor's by the local laws.
- v. If PVTC collects Candidate personal information then Company attests that it has obtain or will have obtained the requisite express and explicit consent of each Candidate to create, on behalf of such Candidate, the Candidate's Pearson VUE profile, that contains personal information of such Candidate, for purposes of registering and scheduling the Candidates to take a Test. Company will inform all Candidates and obtain the requisite express and explicit consent of Candidates that they understand, acknowledge, agree, and accept the Pearson VUE , a business of NCS Pearson, Inc.'s, Privacy and Cookies Policy including the collection of their data and the monitoring of their entire testing session through the use CCTV and the Terms and Conditions regarding our use of cookies and the processing operations of their personal data to support their testing experience. Company confirms that all Candidates that it is creating a profile for or will create a profile for have been informed and have provided their express and explicit consent for their personal information to be collected, used, transferred, processed, and stored by Pearson VUE located in the U.S., its authorized third parties which may be located in the U.S. or outside of the country where the Candidate is located, and the Sponsor that may be located outside of the country where the Candidate is located.

3. PVTC SYSTEM SPECIFICATIONS

This Agreement incorporates the then-current technical and system requirements for PVTC sites, located at the following link http://www.pearsonvue.com/pvtc/technical_reqs.pdf, or other site as communicated by Pearson VUE in writing. Company agrees to meet the system requirements and specifications for testing stations, administrator station, shared file storage, software licenses, virus prevention, internet access, printers and other peripherals as provided in the most recent revision of the Guide. Company understands and hereby acknowledges that such incremental enhancements of hardware and software are inherent and essential to the provision of electronic test delivery services and that the system requirements and specifications required at the PVTC will change periodically, in response to Sponsor's and/or Pearson VUE's need to maintain industry standards. Company agrees to update its hardware and software to meet or exceed such requirements.

4. OBLIGATIONS OF COMPANY

Company agrees and warrants:

- a. On behalf of the Sponsor and Pearson VUE (when acting in the capacity as the Sponsor), Pearson VUE instructs Company to process Candidate Personal Data (as applicable) for the purposes of (a) Candidate test registration and scheduling, (b) collection of the test registration fee only as permitted and in compliance with the Agreement, and (c) transmission of Candidate Personal Data to Pearson VUE. Such processing shall continue for the duration of the PVTC Agreement. Types of Candidate Personal Data may include Candidate name, address, identification, palm vein scan, test scores; and all other Candidate Personal Data as directed by Pearson VUE.
- b. Company will process the Candidate Personal Data only on behalf of Pearson VUE and its Sponsors in compliance with Pearson VUE's instructions and as set forth in this Agreement; if Company cannot comply for whatever reasons, Company agrees to promptly inform Pearson VUE of its inability to comply, in which case Pearson VUE may suspend all Services provided by Company.
- c. Company confirms that it has no reason to believe that it is prevented, for any reason, from fulfilling its obligations under the Agreement. In the event that Company becomes aware that it is prevented from fulfilling its obligations under the Agreement, Company will promptly notify Pearson VUE, and Pearson VUE may have the right to immediately suspend all Services being provided by Company and Pearson VUE, may in its sole discretion, terminate this Agreement.

Pearson VUE Authorized Test Center Agreement

- d. Notwithstanding anything in the Agreement, Company confirms that it has implemented and will maintain appropriate organizational, administrative, physical, and technical security measures (collectively "technical and organizational security measures") for the protection of Candidates Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access and against all other unlawful forms of processing.
- e. Company shall ensure that all Company personnel authorised to Process Candidate Personal Data are obligated to keep Candidate Personal Data confidential.
- f. To work in good faith and respond properly to all inquiries from Pearson VUE relating to Company's processing of Candidate Personal Data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the Candidate Personal Data transferred.
- g. Company understands, acknowledges, and agrees that Candidates will be entitled to take action, against Company, as limited to Company's own processing activities, and to receive compensation from Company arising out of (i) a breach by Company due to Company's violation for not complying with instructions received by Company from Pearson VUE, (ii) Company's violation of applicable international and data protection laws; (iii) failure by Company to implement or maintain technical and organisational security measures as described in the Agreement; (iv) failure by Company to promptly notify Pearson VUE about any legally binding request for disclosure of Personal Data by law enforcement unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation; (v) any accidental or unauthorised access to Candidate Personal Data; and (vi) failure by Company to disclose promptly to Pearson VUE a request received directly from a Candidate, unless Company has been otherwise authorised to handle (collectively "third party beneficiary rights").
The Company agrees that if the Candidate invokes against it third-party beneficiary rights and/or claims compensation for damages under the Agreement, the Company will accept the decision of the Candidate: (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority; (b) to refer the dispute to the courts in the Member State in which the Sponsor or Pearson VUE (in the role of the sponsor) is established. The parties agree that the choice made by the Candidate will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.
- h. Where requested, the Company shall provide assistance as requested by Pearson VUE and the Sponsor in connection with this Agreement, including but not limited to notifying the appropriate parties of a Candidate Personal Data breach, or, carrying out a data protection impact assessment.
- i. The parties agree that on the termination of its data-processing services, the Company shall, at the choice of the Pearson VUE, return, if any, all Candidate Personal Data transferred and any and all copies thereof to Pearson VUE or Company shall destroy all of the Candidate Personal Data and certify to Pearson VUE that it has done so, unless legislation imposed upon Company prevents it from returning or destroying all or part of the Candidate Personal Data transferred. In that case, the Company warrants that it will guarantee the confidentiality of the Candidate Personal Data transferred and will not actively process Candidate Personal Data transferred anymore.

5. TEST FEES

Sponsors determine the maximum testing fees for each of their Tests. Company will not collect from Candidates a sitting fee, administration charge, or any other fee, payment, cost, or charge over and above the testing fee determined by Sponsor, except for a country-wide or regional value added tax (VAT) pursuant to the laws of the applicable jurisdiction.

B. PEARSON VUE RESPONSIBILITIES

1. SUPPORT MATERIALS

Pearson VUE will provide the Tests, operating procedures, Test Administrator training and support for the operation of the PVTC. Pearson VUE will furnish testing exhibits (written and electronic), if any, to Company. Pearson VUE will furnish training materials to Company to provide training to Company's Test Administrators.

2. CANDIDATE SCHEDULE AND INCIDENT REPORTING SYSTEM

Pearson VUE will electronically provide Company with access to Candidate Schedule and provide a browser accessible incident reporting system and report card data.

GENERAL TERMS AND CONDITIONS

Pearson VUE Authorized Test Center Agreement

1. TERM

The term of this Agreement ("Term") will commence on the Effective Date and will expire twelve months after the Effective Date, unless terminated earlier as provided in this Agreement. Following the initial Term, this Agreement will automatically renew on the same terms and conditions for successive periods of one year each, unless terminated earlier as provided in this Agreement. Nothing in this Agreement shall be interpreted as requiring either party to renew or extend this Agreement.

2. SUSPENSION / DEACTIVATION

If Pearson VUE determines, or has a reasonable basis to believe that Company, or its representatives, have committed or permitted misconduct or failed to comply with responsibilities, specifications, technical specifications, or other requirements in this Agreement or the Guide, Pearson VUE may suspend testing until it is resolved to Pearson VUE's satisfaction.

3. TERMINATION / DEAUTHORIZED

- a) Either party may terminate this Agreement, or an Exhibit B (additional or mobile sites), without cause by giving the other at least 30 days prior written notice. For any actual or threatened breach of this Agreement, or with cause of any kind, Pearson VUE may immediately terminate this Agreement. Termination will be in addition to any other remedies either party may have.
- b) Subject to any right of set off or other remedy, termination will not affect: (i) payment for Services furnished prior to termination; (ii) Company's and Pearson VUE's compliance with this Agreement for Services actually furnished; or (iii) payment/reimbursement from Company to Pearson VUE for any Candidate Testing Fees collected or vouchers purchased by Company from Pearson VUE.
- c) If Company subcontracts, sells, or otherwise transfers or assigns, Company's business, or any part thereof, including responsibility for the Services described in this Agreement, without Pearson VUE's prior written consent, Pearson VUE may, in its sole discretion, temporarily suspend testing, and immediately terminate this Agreement.
- d) Notwithstanding any provision contained in this Agreement to the contrary, a party to this Agreement may immediately terminate this Agreement, upon written notice to the other party in the event that the other party makes an assignment for the benefit of its creditors; is unable to pay its debts as they become due; files a voluntary petition in bankruptcy; is adjudicated to be a bankrupt or an insolvent debtor; files a petition seeking for itself any reorganization; or consents to or acquiesces in the appointment of a trustee, receiver or liquidator. In the event a proceeding seeking involuntary reorganization, or similar relief is filed against one of the parties to this Agreement, which is not dismissed within one (1) month after filing, or if any trustee, receiver or liquidator of a party or any substantial part of a party's business assets, or properties is appointed without the party's consent or acquiescence and such appointment is not vacated within one (1) month after such appointment, then in such event, the other party shall have the right to terminate without notice.
- e) At the expiration or termination of this Agreement, Company agrees to abide by the expiration or termination steps in the Guide.

4. CONFIDENTIALITY

Company acknowledges and agrees that: (a) confidentiality and security of Tests, exhibits and other materials related to Tests, and other materials related to Sponsor's standards, requirements and testing is highly confidential to Sponsor and to Pearson VUE; and (b) information and data identifying or describing Candidates, Candidates' scores and performance, Candidates' participation in testing and other information relating to each Candidate is private, confidential information of Candidate and is highly confidential to Candidate, Sponsor and Pearson VUE; and (c) the System, software, applications, Test files, manuals, the Guide, PVTC materials and related materials in any medium provided by Pearson VUE are private and confidential business information of Pearson VUE, and accordingly, Company will scrupulously maintain the security of the Tests, testing information and Candidate data and information described in (a) and (b) above, and will undertake all necessary and appropriate efforts, but never less than reasonable care, to protect the confidentiality of all of the information and materials described in this Section and to prevent any unauthorized use or disclosure. Confidential information also includes other information that should reasonably have been understood because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be confidential information. Confidential information shall expressly include any and all information derived from a party's proprietary information and the terms and conditions of this Agreement. Pearson VUE's confidential information shall include any software provided hereunder. No information or materials provided under and pursuant to this Agreement will be used, disclosed or permitted to be used by Company for any purpose not expressly provided for in this Agreement. Company acknowledges and agrees that the requirements set forth in this Section are of the most critical importance

Pearson VUE Authorized Test Center Agreement

to Pearson VUE, Sponsors and Candidates and that any breach will likely result in severe damage. Each party acknowledges that it acquires only the right to use the confidential information of the other party under the terms and conditions of this Agreement for as long as this Agreement is in effect and does not acquire any rights of ownership or title in the confidential information. Each party agrees not to use such confidential information for any purpose not reasonably required by this Agreement. The requirements of this Section are perpetual and will survive the termination or expiration of this Agreement for any reason. The receiving party shall protect the disclosing party's Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as the receiving party uses to protect its own Confidential Information of a like nature. Except as may be authorized by the disclosing party in writing, the receiving party will (a) not disclose Confidential Information to any person who is not a party to this Agreement; (b) limit dissemination of Confidential Information only to its employees or agents having a "need to know"; and (c) have an appropriate written agreement with its employees and agents requiring that they comply with all of the provisions of this Agreement.

If Company or PVTC is required by law or court order to disclose Personal Data or Candidate Personal Data, Company or PVTC agrees to provide Pearson VUE prompt written notice of such requirement so that an appropriate protective order of other relief may be sought prior to any disclosure. In the event that the receiving party or its agents are compelled or believed to be compelled to disclose any Confidential Information pursuant to a valid order of a court or other government body, the receiving party will promptly notify the disclosing party and provide reasonable cooperation to the disclosing party in connection with the disclosing party's efforts to lawfully avoid or limit disclosure and preserve the confidentiality of the Confidential Information in such circumstances.

Company recognizes and acknowledges that any use or disclosure of any confidential information by Company in a manner inconsistent with the provisions of this Agreement may cause Pearson VUE irreparable damage for which remedies other than injunctive relief may be inadequate, and Company agrees that in any request by Pearson VUE to a court of competent jurisdiction for injunctive or other equitable relief seeking to restrain such use or disclosure, Company will not maintain that such remedy is not appropriate under the circumstances. The parties further agree that in the event such equitable relief is granted in the United States, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States judgments.

5. USE OF MARKS, ETC.

Company may use or make reference to Pearson VUE or any trade names, trademarks, service marks, logos or other designations of Pearson VUE only to the extent and in the manner which is expressly provided for in writing by Pearson VUE, which will be subject to modification or rescission by Pearson VUE at any time. All use which is not in the exact manner provided by Pearson VUE will be submitted to Pearson VUE for prior approval in writing before any publication thereof. Use by Company of any trade names, trademarks, service marks, logos or other designations of Sponsors will be strictly subject to express prior written permission of the Sponsor or Pearson VUE. Upon expiration or termination of this Agreement, Company will cease any reference to Pearson VUE permitted by this Agreement and any reference to, or use of, any Pearson VUE trade names, trademarks, service marks, logos or other designations.

6. INSURANCE COVERAGE

- a. General Liability. During the Term, and any renewals or extension, Company will maintain a Commercial General Liability Insurance policy with a limit for each occurrence of at least \$1,000,000 USD. The policy will include Pearson VUE as an additional insured.
- b. Evidence of Insurance. Prior to commencing any performance under this Agreement, Company will provide Pearson VUE with a standard Certificate of Insurance as evidence that the insurance coverage required herein is in full force and effect. If any such insurance renews or is terminated during the Term, Company will provide Pearson VUE with certificates of insurance as evidence that such coverage has been renewed or replaced with insurance that complies with these provisions.
- c. Insurers, Policies. All policies of insurance required of Company hereunder will be issued by financially responsible insurers, with an A.M. best rating of A- or better.

7. LIABILITY

Notwithstanding anything contained in this Agreement, in no event shall Pearson VUE be liable to Company for any incidental, consequential, special, exemplary or other indirect damages, or for lost profits, lost revenues, or loss of business arising out of this Agreement, regardless of the cause of action, even if Pearson VUE has been advised of the likelihood of damages. Pearson VUE's aggregate liability for any claim arising under this Agreement shall not in any event exceed an amount equal to the Test delivery and

Pearson VUE Authorized Test Center Agreement

registration fees paid by Pearson VUE to Company during the twelve months preceding the date of the claim.

8. EXCLUSION OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE. SOFTWARE PROVIDED BY PEARSON VUE IS NEITHER WARRANTED NOR EXPECTED TO BE FREE FROM ERRORS.

9. MONITORING PERFORMANCE

Company hereby acknowledges and agrees that Pearson VUE may monitor Company's compliance with this Agreement directly, or through subcontractors, by using Candidates instructed to intentionally engage in activities requiring Company to perform certain functions as part of its obligations under this Agreement. Company authorizes either Pearson VUE, or Pearson VUE's subcontractors, to use Candidates for such purposes and further agrees that using such Candidates, either directly or through subcontractors, is a valid method of monitoring Company's compliance with this Agreement.

10. GENERAL PROVISIONS

- a. Company may not assign, subcontract or otherwise transfer its rights or obligations under this Agreement without Pearson VUE's prior written consent. Any prohibited assignment will be void. Company will advise Pearson VUE promptly of any anticipated transfer or other material change in the status of Company or the PVTC. Subject to the foregoing limitations, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs and assigns.
- b. This Agreement will be governed by and construed and enforced in accordance with the laws of the state of Minnesota, USA. Any action to enforce this Agreement will be brought in the State or Federal courts in Hennepin County, Minnesota, USA. If any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect, the court may modify such provision to make it valid, legal, and enforceable. All remaining provisions of this Agreement shall remain in full force and effect to the maximum extent possible. Failure of either party to enforce its rights on one occasion will not operate as a waiver of said rights or any other rights on any other occasion.
- c. This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled, or waived in whole or in part, except by written amendment duly executed by the parties hereto.
- d. This Agreement is the entire agreement of the parties and supersedes all prior oral or written proposals and communications related to this Agreement. Company acknowledges it has not been induced to enter into this Agreement by any oral or written representations or statements not contained in this Agreement.
- e. Neither party is responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control and without its fault or negligence, provided that, as promptly as reasonably possible: (i) notice of any actual or anticipated failure is given; and (ii) such cause is eliminated and failure cured.
- f. Payment of Taxes
 - i) Taxes on Sales by Company - Company has the sole responsibility for the collection and remittance of all applicable taxes (including any sales tax, use tax, value-added tax, consumption tax, goods and services tax, gross receipts tax and any other tax lawfully imposed on fees or other amounts associated with Company's sales transactions) based on any sales by Company, including the sale of Tests.
 - ii) Taxes on Fees paid by Pearson VUE to Company - It is Company's responsibility to invoice Pearson VUE, if Pearson VUE is required to pay any applicable tax on any fee Pearson VUE pays to Company under this Agreement, (including any sales tax, use tax, value-added tax, consumption tax, goods and services tax, gross receipts tax and any other tax lawfully imposed on fees or other amounts associated with Pearson VUE's payment of fees to Company).
- g. Company warrants:
 - i) they will comply with all applicable laws, regulations and standards (including, but not limited to, the United States Office of Foreign Asset Control ("OFAC") regulations, Specially Designated Nationals or Blocked Persons ("SDN") list or similar federal, state or other countries' legislation on international trade law, and the American with Disabilities Act or similar federal, state or other countries' disability or human rights laws), and with industry safety and security rules when performing services;
 - ii) that its performance under this Agreement will not compromise any relationships or create a conflict of interest for Company, nor, to the best of Company's knowledge and belief, for Pearson VUE or any other party. Company will notify Pearson VUE of any potential conflicts of interest;

Pearson VUE Authorized Test Center Agreement

- iii) that its Services under this Agreement will be performed in accordance with all applicable United States federal, state, and local laws and regulations, and with all applicable laws and regulations in the country where the PVTC is located;
- iv) it shall (a) conduct business in conformance with sound ethical standards of integrity and honesty and in compliance with all applicable laws; (b) conduct business in such a way as to not give the appearance of impropriety, even when the behavior or activity is in compliance with the law; (c) not achieve business results by illegal acts or unethical conduct; (d) comply with U.S. and local anti-bribery laws, such as the United States Foreign Corrupt Practices Act, United Kingdom Bribery Act, and any other similar local laws, regulations or rules; (e) prohibit the Company, its employees, agents and subcontractors (and all contractors of the Company) from directly or indirectly offering, paying or authorizing financial or other advantage to be given to any official or employee of any government or political party, political candidates or employees of government enterprises (each, an Official) for the purposes of (1) obtaining an improper business advantage; (2) influencing such Official to take, or not to take, any action or decision; or (3) inducing such Official to use his or her influence to affect any act or decision of a government; and (f) provide employees and any contracted individuals engaged by a party with a work environment free of coercion and harassment (These laws include, but are not limited to, laws governing international business, trade embargoes, boycotts, import and export administration, housing and health, processing or transmission of personal data, laws guaranteeing nondiscrimination against persons based on sex, race, creed, physical disability or other protected category.);
- v) that all software, excluding Pearson VUE Software, used in performing its obligations under this Agreement will have been legally obtained from legitimate sources; and
- vi) Company will indemnify, defend, and hold Pearson VUE harmless from all claims of other parties for breach of these warranties in Subsections i-v above.
- h. Company will indemnify, defend and hold Pearson VUE harmless against, all claims or demands of any nature brought by others against Pearson VUE, (including, but not limited to, reimbursement of reasonable costs incurred by Candidates scheduled but unable to take a Test), unless and to the extent the failure to test is due to the fault of Pearson VUE, the Candidate, the Sponsor or Force Majeure, which may arise from alleged or actual acts, representations, or omissions which, if proven, would constitute Company's breach of its duties under this Agreement.
- i. Company will indemnify, defend and hold Pearson VUE harmless against any liability for injury or damage caused by Company to persons or property during the performance of this Agreement and all claims of loss or damage arising from Company's or Candidate's use of the PVTC. Neither the existence of, nor the assent of Pearson VUE to, the types or limits of insurance carried by Company will be considered a waiver or release of Company's liability or responsibility under this Agreement.
- j. Any notice to be given under this Agreement will be in writing and will be deemed given and effective (i) when delivered personally, by fax, or telex, or (ii) when received if sent by overnight express or mailed by certified, registered mail, postage prepaid, return receipt requested, addressed to a party at its address indicated on the signature page, or to such other address as such party may designate by written notice in accordance with the provisions of this Section. Email notice may be considered written notice if receipt of such notice is confirmed by reply email or other electronic means.
- k. Company and Pearson VUE are independent contractors under this Agreement and are not part of a partnership, employment, principal-agent, franchisor-franchisee or similar relationship.
- l. The prevailing party in any legal proceedings arising out of this Agreement will be entitled to recover reasonable attorneys' fees and costs from the other party.
- m. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to create any rights in, be deemed to have been executed for the benefit of, nor confer upon any other person or entity not a party hereto any remedy, claim, liability, reimbursement, cause of action or other rights.
- n. In the event there are translated versions of the Agreement, the parties understand and agree that the English version of the contract will control and govern if there are any discrepancies between the English and translated versions.

SOFTWARE LICENSE

1. GRANT

Pearson VUE Authorized Test Center Agreement

Pearson VUE grants Company, who hereby acknowledges and accepts, a personal, non-transferable, non-sublicenseable, non-assignable and nonexclusive limited term license or sublicense ("License") to use one copy of the Software provided by Pearson VUE to Company, on a single or multiple processor within Company's PVTC and to store in, transmit through or display the Software on peripheral units directly associated with Company's delivery of Services to Candidates.

2. TERM OF AGREEMENT

The Software License term is concurrent with Company's appointment as a PVTC for Pearson VUE under this Agreement and all rights and privileges hereunder will terminate when such appointment terminates or expires. If Company or PVTC received the software in advance of the execution of this Agreement, the parties understand, agree, and ratify that by signing this Agreement, it will be considered effective from the date the software was received to the date Pearson VUE signed this Agreement.

3. TITLE

Software title and ownership, including any modifications, will remain at all times with Pearson VUE or Pearson VUE's licensor.

4. PROVIDING SOFTWARE

Pearson VUE shall provide to Company a copy of the Software in machine-readable object code and user documentation. Revisions deemed appropriate by Pearson VUE will be provided by Pearson VUE to Company at no additional cost.

5. USE

Company agrees to the following restrictions on its use of the licensed or sublicensed Software:

- a. To use the Software exclusively to administer Tests provided by Pearson VUE as described in and subject to the terms and conditions of this Agreement.
- b. To limit the use of all Software copies and versions thereof to the use provided for herein.
- c. To include appropriate copyright notices on all copies of the Software and documentation, and to explicitly follow Pearson VUE's additional instructions, if any, relating to copyright protection of the Software, documentation and related materials.
- d. To maintain strict security in the storage and distribution of the Software and any copies to protect the copyright and/or trade secret rights therein, and not provide, permit access to or otherwise make available, the Software, documentation or related materials (or copies, summaries, notes or modified versions thereof), to any other party or for any other use.
- e. Not to reverse engineer, decompile, disassemble, create derivative works from, alter, modify or otherwise vary the Software without the express, written consent of Pearson VUE (such authorized alteration or modification not to limit or alter the copyright or trade secret rights).

6. TERMINATION

If Company attempts to sell, remove, duplicate without authorization, transfer, encumber, part with possession of, or sublet the Software, or any portion thereof, or any modification or version thereof; or upon discontinuance of the use of the Software by Company, the Software License granted by this Agreement shall terminate automatically and all copies of the Software and documentation (in any medium and including summaries, notes and the like) shall be immediately removed, destroyed, deleted or returned to Pearson VUE at Company's sole cost and expense, including reasonable attorney's fees, if any. Upon termination for any reason by either party, and within ten days of such termination, all copies of the Software and documentation (in any medium and including summaries, notes and the like) shall be returned to Pearson VUE by Company without delay by delivering all such items to Pearson VUE's place of business, complete and in good order and condition, removed, destroyed, or deleted and proof provided to Pearson VUE upon request. If Company fails to return such Software or documentation, Pearson VUE may take such action as may be reasonably necessary to recover such Software or documentation and Company shall reimburse Pearson VUE's reasonable costs and expenses.

7. LIABILITY

Company, having possession of and control over the Software, shall be responsible for its use, operation, storage, management and safety. Consequently, except to the extent that damage or injury is caused by Pearson VUE's negligence or the intentional misconduct of Pearson VUE's employees, Company assumes the risk and sole responsibility for damage or injury to equipment, Software, personal property or to third parties caused by Company's use or possession of the Software, and Company shall be obligated to protect itself and Pearson VUE against any such occurrences, including claims by Company's employees or any other persons or organizations with which Company does business, all at Company's sole cost and expense.

8. PEARSON VUE REMEDIES

Pearson VUE Authorized Test Center Agreement

It will be a default and breach of the Agreement if Company fails to perform any of its obligations under this Software License, or if Company becomes insolvent or makes any assignment for the benefit of its creditors, or if any proceeding under the bankruptcy laws or comparable statute is commenced by or against Company, or a writ of attachment or execution is levied on any item of the Software and such proceeding is not terminated or such writ is not satisfied or released within 15 days after attachment of levy. On Company's default, Pearson VUE may require Company to return any or all copies of the Software and documentation (in any medium and including summaries, notes and the like) and pursue any other remedy at law or in equity. Any taking of possession of the Software shall not release Company from any of its obligations hereunder unless Pearson VUE, or its assignee, notifies Company in writing. If it is necessary for Pearson VUE to enforce this Software License or any of its terms, Company shall pay all costs related to such enforcement, including reasonable attorneys' fees.

9. GENERAL

Without Pearson VUE's prior written consent, Company will not sell, assign, sublet, pledge, otherwise encumber or permit a lien to exist against any interest in this Software License, or remove the Software from its place of installation.

Pearson VUE Authorized Center Agreement

Exhibit A - Payment Schedule

Company Name _____
Company Site ID MASTER

All other Exhibit A, if there are any, are deleted in their entirety and replaced with this Exhibit A effective as of the date signed by Pearson VUE.

This Exhibit A – Payment Schedule is governed by and incorporated by reference into the Pearson VUE Authorized Center Agreement (“Agreement”) as executed between Company and NCS Pearson, Inc. (“Pearson VUE”).

1. PAYMENTS

a. Payments

The parties agree that any payment language in the Agreement is hereby superseded by this Exhibit A. If there is a conflict between the Agreement and Exhibit A, Exhibit A will supersede respectively. Company and Pearson VUE agree that the Agreement is amended as follows:

i. Monthly Volume

Pearson VUE will pay Company the Delivery and Registration Fees per PVTC in accordance with the monthly volume schedule shown below.

Monthly Test Delivery Volume Per PVTC	Delivery Fee Per Test Delivered	Registration Fee Per Test Registered by Testing Center
1 through 15 Tests	No fee paid*	No fee paid*
16 through 75 Tests	USD 5.00	USD 7.00
76 through 500 Tests	USD 7.00	USD 7.00
501+ Tests	USD 13.00	USD 7.00

*A fee will be paid for the first 15 Tests in a month if the monthly volume for that month is 16 or more Tests.

Pearson VUE will **NOT** pay Company Hourly Test Fees for Tests: (i) cancelled on or before the day for which the Test was scheduled; (ii) at private and/or mobile as designated in Pearson VUE's sole discretion; **OR** (iii) for any integrity shop or audit of PVTC. For any Candidate who does not take a scheduled Test before the end of the day on which it was scheduled to be taken, Pearson VUE will pay Company 50% of the Delivery and Registration Fees.

ii. Hourly Test Fees

Pearson VUE will pay Company the Delivery per PVTC in accordance with the Agreement, for Tests that are designated solely by Pearson VUE as receiving per hour compensation (“Hourly Compensation”), Pearson VUE shall pay Company USD 5.00 per hour for such Hourly Compensation Tests. Pearson VUE pays Company USD 5.00 per hour in quarter hour increments, which is rounded to the nearest quarter hour.

Pearson VUE will **NOT** pay Company Hourly Test Fees for Tests: (i) cancelled on or before the day for which the Test was scheduled; (ii) at private and/or mobile as designated in Pearson VUE's sole discretion; **OR** (iii) for any integrity shop or audit of PVTC. For any Candidate who does not take a scheduled Test before the end of the day on which it was scheduled to be taken, Pearson VUE will pay Company 50% of the Delivery and Registration Fees.

iii. GEDTS Test Fees

Notwithstanding anything else herein, for Tests that are designated solely by Pearson VUE as delivered on behalf of GED Testing Service LLC (“GEDTS”) Company's **ONLY** compensation for GEDTS Test delivery will be USD 5.00 per hour for each GEDTS Test delivered. For GEDTS Tests **ONLY** For any Candidate who does not take a scheduled Test before the end of the day on which it

Pearson VUE Authorized Center Agreement

was scheduled to be taken, Pearson VUE will pay Company 100% of the Delivery. Pearson VUE pays Company USD 05.00 per hour in quarter hour increments, which is rounded to the nearest quarter hour.

iv. GEDTS Practice Test Fees

Notwithstanding anything else herein, GED Testing Service has practice and/or diagnostic tests for training, preparation, exercise, rehearsal and other purposes which include but are not limited to the GED Ready™, the Official Practice Test of the GED® test ("GED Practice Test(s)"). The GED Practice Tests do not qualify for compensation or credit or any kind and Company acknowledges that no compensation or credit will be paid for delivery of the GED Practice Tests. For clarity, Pearson VUE **WILL NOT** compensate Company for delivery of any GEDTS Practice Tests. Pearson VUE **WILL NOT** pay Company for GEDTS Practice Test Fees for Tests: (i) cancelled on or before the day for which the Test was scheduled; (ii) delivered at private and/or mobile Test center as designated in Pearson VUE's sole discretion; (iii) for any integrity shop or audit of PVTC; **OR** (iv) that is a GEDTS Practice Test. Pearson VUE **WILL NOT** pay Company or PVTC for any Monthly Volume Fees for Registration Fees for **ANY** GEDTS or GEDTS Practice Test and Tests **WILL NOT** count towards Company's delivery of Monthly Volume delineated in the table above.

b. Payment of Fees by Pearson VUE to Company

Tests will be accounted for based on the number of Candidate records received for scheduled Tests in the Pearson VUE database. Pearson VUE will make commercially reasonable efforts to pay Test delivery and Candidate registration fees to Company in accordance with this Exhibit A within 30 days following the end of the month in which the corresponding Test was administered. Payment is subject to prompt reporting of Candidate records by Company to Pearson VUE in accordance with the Guide. Test registration fees are earned by Company only for a Test that is administered and for which Company initially registers the Candidate on the Pearson VUE registration system running at the PVTC.

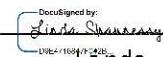
c. Payments by Company to Pearson VUE

If Company owes any payment to Pearson VUE in connection with, or pursuant to, this Agreement, Company agrees to pay Pearson VUE, in full, within 30 days of the invoice.

Exhibit A is subject to modification by Pearson VUE from time to time in its sole discretion, but no reduction in fees will be implemented on less than 45 days prior written notice to Company.

Except as explicitly amended by this Exhibit A, all terms and conditions of the Agreement, as amended, remain unchanged and fully enforceable to the extent permitted under applicable laws.

Company

Signature 
 Print Name Linda Shaunessy
 Title Business Contracts Administrator
 Date 2019-04-30 | 12:50:14 PDT
 Email Address _____

NCS Pearson, Inc.

Signature 
 Print Name _____
 Title Ryan Ulwelling
 Date Director, Global Selects
 190430

Pearson VUE Authorized Center Agreement

PVTC Academic Amendment

Site ID MASTER

Site Name _____

Company Name The University of Texas at Austin, on behalf of Testing and Evaluation Services

Street Address 1912 Speedway, Room 547

City Austin State Texas Country USA Postal Code 78705

Amendment to Pearson VUE Authorized Center Agreement ("Agreement") as executed between the parties ("PVTC Academic Amendment"). If there is a conflict between the Agreement and/or the Guides and/or PVTC Academic Amendment, PVTC Academic Amendment will supersede respectively. Company and Pearson VUE agree that the Agreement is amended as follows:

RESPONSIBILITIES OF THE PARTIES

COMPANY RESPONSIBILITIES

1. Section 4 entitled "Obligations of Company" is deleted in its entirety and replaced with the following:

"4. OBLIGATIONS OF COMPANY"

On behalf of the Sponsor and Pearson VUE (when acting in the capacity as the Sponsor), Pearson VUE instructs Company to process Candidate Personal Data (as applicable) for the purposes of (a) Candidate test registration and scheduling, (b) collection of the test registration fee only as permitted and in compliance with the Agreement, and (c) transmission of Candidate Personal Data to Pearson VUE. Such processing shall continue for the duration of the PVTC Agreement. Types of Candidate Personal Data may include Candidate name, address, identification, palm vein scan, test scores; and all other Candidate Personal Data as directed by Pearson VUE."

GENERAL TERMS AND CONDITIONS

1. Section 6 entitled "Insurance Coverage" is deleted in its entirety and replaced with the following:

"6. Insurance Coverage"

Company is self-insured and Pearson VUE understands that Company participates in a formal self-insurance program to fund the potential legal liability associated with those exposures that may otherwise be covered by Commercial General Liability Insurance."

2. Section 7 entitled "Liability" is deleted in its entirety and replaced with the following:

"7. Liability"

In no event shall either party be liable to the other party for any incidental, consequential, special, and exemplary or other indirect damages, or for lost profits, lost revenues, or loss of business arising out of this Agreement, regardless of the cause of action, even if such party has been advised of the likelihood of damages. Pearson VUE's aggregate liability for any claim arising under this Agreement shall not in any event exceed an amount equal to the Test delivery and registration fees paid to Company during the twelve months preceding the date of the claim. Notwithstanding anything contained herein, the parties agree that the following sections and subsections shall be excluded from this Section, Subsections 2(d), 2(j), 2(n), 3(e), 4(a), 4(d), the entire Section 4 entitled "Confidentiality" contained in the General Terms and Conditions, Subsections 10(a), 10(g), 10(h), 10(i), and the entire Section 5 entitled "Use" contained in the Software License."

3. Section 10 entitled "General Provisions", Subsection (b) is deleted in its entirety and replaced with the following:

"(b) This Agreement will be governed by and construed and enforced in accordance with the laws of the state of where PVTC is located in the United States. If any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect, the court may modify such provision to make it valid, legal, and enforceable. All remaining provisions of this Agreement shall remain in full force and effect."

Pearson VUE Authorized Center Agreement

4. Section 10 entitled "General Provisions", Subsection (g) is deleted in its entirety and replaced with the following:
- "(g) Company warrants:**
- i) they will comply with all applicable laws, regulations and standards (including, but not limited to, the United States Office of Foreign Asset Control ("OFAC") regulations, Specially Designated Nationals or Blocked Persons ("SDN") list or similar federal, state or other countries' legislation on international trade law, and the American with Disabilities Act or similar federal, state or other countries' disability or human rights laws), and with industry safety and security rules when performing services;
 - ii) that its performance under this Agreement will not compromise any relationships or create a conflict of interest for Company, nor, to the best of Company's knowledge and belief, for Pearson VUE or any other party. Company will notify Pearson VUE of any potential conflicts of interest;
 - iii) that its Services under this Agreement will be performed in accordance with all applicable United States federal, state, and local laws and regulations, and with all applicable laws and regulations in the country where the PVTC is located;
 - iv) it shall (a) conduct business in conformance with sound ethical standards of integrity and honesty and in compliance with all applicable laws; (b) conduct business in such a way as to not give the appearance of impropriety, even when the behavior or activity is in compliance with the law; (c) not achieve business results by illegal acts or unethical conduct; (d) comply with U.S. and local anti-bribery laws, such as the United States Foreign Corrupt Practices Act, United Kingdom Bribery Act, and any other similar local laws, regulations or rules; (e) prohibit the Company, its employees, agents and subcontractors (and all contractors of the Company) from directly or indirectly offering, paying or authorizing financial or other advantage to be given to any official or employee of any government or political party, political candidates or employees of government enterprises (each, an Official) for the purposes of (1) obtaining an improper business advantage; (2) influencing such Official to take, or not to take, any action or decision; or (3) inducing such Official to use his or her influence to affect any act or decision of a government; and (f) provide employees and any contracted individuals engaged by a party with a work environment free of coercion and harassment (These laws include, but are not limited to, laws governing international business, trade embargoes, boycotts, import and export administration, housing and health, processing or transmission of personal data, laws guaranteeing nondiscrimination against persons based on sex, race, creed, physical disability or other protected category.); and
 - v) that all software, excluding Pearson VUE Software, used in performing its obligations under this Agreement will have been legally obtained from legitimate sources."
5. Section 10 entitled "General Provisions", Subsection (h) is deleted in its entirety and replaced with the following language:
- "(h) To the extent authorized by the Constitution and laws of the state of Texas, Company will indemnify and hold Pearson VUE harmless against, all claims or demands of any nature brought by others against Pearson VUE, (including, but not limited to, reimbursement of reasonable costs incurred by Candidates scheduled but unable to take a Test), unless and to the extent the failure to test is due to the fault of Pearson VUE, the Candidate, the Sponsor or Force Majeure, which may arise from alleged or actual acts, representations, or omissions which, if proven, would constitute Company's breach of its duties under this Agreement."**
6. Section 10 entitled "General Provisions", Subsection (i) is deleted in its entirety and replaced with the following language:
- "(i) To the extent authorized by the Constitution and laws of the state of Texas, Company will indemnify and hold Pearson VUE harmless against any liability for injury or damage caused by Company to persons or property during the performance of this Agreement and all claims of loss or damage arising from Company's or Candidate's use of the PVTC. Neither the existence of, nor the assent of Pearson VUE to, the types or limits of insurance carried by Company will be considered a waiver or release of Company's liability or responsibility under this Agreement."**

Pearson VUE Authorized Center Agreement

7. Section 10 entitled "General Provisions", Subsection (l) is deleted in its entirety.

SOFTWARE LICENSE

1. Section 6 entitled "Termination" is deleted in its entirety and replaced with the following:

"6. TERMINATION"

If Company attempts to sell, remove, duplicate without authorization, transfer, encumber, part with possession of, or sublet the Software, or any portion thereof, or any modification or version thereof; or upon discontinuance of the use of the Software by Company, the Software License granted by this Agreement shall terminate automatically and all copies of the Software and documentation (in any medium and including summaries, notes and the like) shall be immediately returned to Pearson VUE. Upon termination for any reason by either party, and within ten days of such termination, all copies of the Software and documentation (in any medium and including summaries, notes and the like) shall be returned to Pearson VUE by Company without delay by delivering all such items to Pearson VUE's place of business, complete and in good order and condition."

2. Section 7 entitled "Liability" is deleted in its entirety and replaced with the following:

"7. LIABILITY"

Company, having possession of and control over the Software, shall be responsible for its use, operation, storage, management and safety. Consequently, except to the extent that damage or injury is caused by Pearson VUE's negligence or the intentional misconduct of Pearson VUE's employees, Company assumes the risk and sole responsibility for damage or injury to equipment, Software, personal property or to third parties caused by Company's use or possession of the Software, and Company shall be obligated to protect itself against any such occurrences, including claims by Company's employees or any other persons or organizations with which Company does business, all at Company's sole cost and expense."

3. Section 8 entitled "Pearson VUE Remedies" is deleted in its entirety and replaced with the following:

"8. PEARSON VUE REMEDIES"

It will be a default and breach of the Agreement if Company fails to perform any of its obligations under this Software License, or if Company becomes insolvent or makes any assignment for the benefit of its creditors, or if any proceeding under the bankruptcy laws or comparable statute is commenced by or against Company, or a writ of attachment or execution is levied on any item of the Software and such proceeding is not terminated or such writ is not satisfied or released within 15 days after attachment of levy. On Company's default, Pearson VUE at its sole option may require Company to return any or all copies of the Software and documentation (in any medium and including summaries, notes and the like) or pursue any other remedy at law or in equity. Any taking of possession of the Software shall not release Company from any of its obligations hereunder unless Pearson VUE, or its assignee, notifies Company in writing."

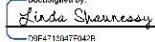
PVTC SELECT AMENDMENT

1. The preamble of the PVTC Select Amendment is deleted in its entirety and replaced with the following: "Amendment to Pearson VUE Authorized Test Center Agreement ("Agreement") as executed between the parties ("PVTC Select Amendment"). If there is a conflict between the Agreement and/or the Guides and/or PVTC Select Amendment, respectively, this PVTC Select Amendment will supersede. Company and Pearson VUE agree that the Agreement is amended as follows:"
2. Section 9 entitled "Pearson VUE Testing Equipment", Subsection (b)(ii) is deleted in its entirety and replaced with the following:
 "(ii) In event of termination of this Amendment by Pearson VUE or Company for any reason, Company will immediately return Pearson VUE Testing Equipment to Pearson VUE, unless the Pearson VUE informs Company in writing of specific arrangements for Pearson VUE Testing Equipment. Return of Pearson VUE Testing Equipment does not release Company from its obligations hereunder, unless notified of such release in writing by Pearson VUE."

Pearson VUE Authorized Center Agreement

Except as provided in this Amendment, all terms and conditions of the above referenced Agreement and Guides will remain in full force and effect.

**The University of Texas at Austin
On behalf of Testing and Evaluation Services**

Signature 
Name Linda Shaunessy
Title Business Contracts Administrator
Date 2019-04-30 | 12:50:14 PDT

NCS Pearson, Inc.

Signature 
Name Ryan Ulwelling
Title Director, Global Selects
Date 190430

Pearson VUE Authorized Center Agreement

PVTC Select Amendment for Site ID MASTER

Company Name The University of Texas at Austin, on behalf of Testing and Evaluation Services

Street Address 1912 Speedway, Room 547

City Austin State Texas Country USA Postal Code 78705

Amendment to Pearson VUE Authorized Center Agreement ("Agreement") as executed between the parties ("PVTC Select Amendment"). If there is a conflict between the Agreement and/or the Guides and/or PVTC Select Amendment, respectively, this PVTC Select Amendment will supersede. Company and Pearson VUE agree that the Agreement is amended as follows:

1. Company

Company wishes to be a select Pearson VUE Authorized Center that requires additional Pearson VUE Testing Equipment (as defined below), security, procedural, and technical requirements ("PVTC Select"), and as such Company agrees to the additional obligations and requirements delineated in this PVTC Select Amendment or relevant Guide. "Select Tests" shall mean those Tests designated as Select Tests by Pearson VUE in its sole discretion. Select Tests delivered by PVTC shall **ONLY** be compensated as an hourly or flat fee Test, as designated solely by Pearson VUE, in Exhibit A attached to the Agreement. The obligations and requirements herein are only in relation to the delivery of Select Tests and do not apply to the delivery of other Tests for other Sponsors for which the Agreement and the Guides govern.

Guides as defined in Agreement should be deemed to include, but not limited to, PVTC Select Minimum Technical Requirements, PVTC Select Minimum Sponsor Technical Requirements, PVTC Select Policies and Procedures Guide, PVTC Regulatory Policies and Procedures Guide, PVTC Exam Sponsor's Guide, and PVTC Select Exam Sponsor's Guide, that set forth the testing policies and procedures, the Sponsors' requirements, and explains the use of Pearson VUE's applications. If Company does not accept the additional Guides within a reasonable time frame, which shall never last longer than 30 days, then the Company will be deemed to have accepted such additional Guides.

2. Term and Termination

The term for this Amendment commences as of the last date it is executed by both parties, and, unless terminated earlier, will terminate when the Agreement Term terminates or expires ("Amendment Term"). Without cause, either party may terminate this Amendment and testing activities associated therewith without causing the termination of the Agreement by: (i) providing ninety (90) days written notice, if by Company to Pearson VUE; or (ii) providing thirty (30) days written notice, if by Pearson VUE to Company. For any actual or threatened breach of this Amendment, or with cause of any kind, Pearson VUE may immediately terminate this Amendment.

Company understands and agrees that during the term of this Amendment that the notice period for termination of the Agreement delineated in Section 3(a) of the Agreement is hereby deleted and replaced therewith the following:

"Pearson VUE may terminate this Agreement without cause by giving Company at least thirty (30) days prior written notice. Company may terminate this Agreement without cause by giving Pearson VUE at least ninety (90) days prior written notice."

3. Operational Readiness and Availability

Company must comply with all additional obligations and requirements delineated in this Amendment and in Guides. Company must complete preparations for Tests within thirty (30) days from the effective date of this PVTC Select Amendment or as mutually agreed upon by the parties. Company must maintain flexibility in scheduling and be open and available for the volume of business forecasted for their location by Pearson VUE.

- a. Standard Scheduling - Company must commit to the following scheduling requirements:
 - (i) specific open dates on a twelve (12) month advance rolling basis;
 - (ii) a minimum of two (2) days per month or available to meet candidate demand;
 - (iii) to provide Pearson VUE with additional dates that may be opened as mutually agreed upon by the parties; and
 - (iv) initial seat number requirements for Select Testing _____.
- b. Requests to Close

Pearson VUE Authorized Center Agreement

If Company has already agreed to and posted its availability but is required to close, then Company will provide a written request for such closure on that specific day and such closure will have to be approved in writing within five (5) business days by Pearson VUE. If Pearson VUE does not respond to such request within five (5) business days, then such request will be deemed to be denied.

c. Unplanned Closures

- (i) Company will notify Pearson VUE immediately of any unplanned outage or closure caused by a force majeure.
- (ii) In the event of an unplanned closure or outage, Company will make every effort to restore operations within two (2) business days.
- (iii) If Select Test Candidates were prevented from testing as a result of such closure or outage, Company will provide the necessary number of additional open dates within fifteen (15) days or as otherwise agreed to by Pearson VUE.
- (iv) Company is responsible for reimbursement of reasonable costs incurred by Candidates scheduled but unable to take a Select Test, unless and to the extent the failure to test is due to the fault of Pearson VUE, the Candidate, the Sponsor or otherwise precluded by other provisions of the Agreement. In addition to other remedies available to Pearson VUE, Company will be liable for any penalties incurred by Pearson VUE from Sponsors due to test cancellation or delay to the extent arising from Company's failure to comply with the provisions of the Agreement and this Amendment.

4. Administrative Requirements

Company must have a minimum of two (2) Test Administrators ("TAs") certified and trained for Select Test delivery. All TAs must be certified for Select Test delivery before any Select Test is delivered. TAs must pass the Select TA certification exam and recertify annually, maintain strict security, follow all instructions from Pearson VUE, and adhere to the Rules of Conduct and Certification Agreement. Company must notify Pearson VUE if at any time a certified and trained TA is added or deleted for Select Test delivery.

5. Candidate Monitoring

On days that Select Tests are scheduled, at least one (1) TA certified for Select Test delivery must be physically on-site at all times to administer Tests and proctor Candidates continuously during Select Test delivery. Unless otherwise specified in writing by Pearson VUE, all Candidates taking Select Tests must be monitored using audio/visual monitoring and recording equipment. Company will not modify or distribute recordings of Select Testing Candidates, and must return such recordings to Pearson VUE in a manner and within a timeframe as requested by Pearson VUE. All recordings must be retained for a minimum of thirty (30) days, unless otherwise authorized by Pearson VUE in writing or as otherwise compelled by law, regulation or order of a government authority.

6. Candidate Accommodations

Company is responsible for the following:

- a. making legally required accommodations for Candidate testing at its expense;
- b. for complying with reasonable Pearson VUE or Sponsor requests for Candidate accommodation at Pearson VUE's expense; and
- c. for providing a testing facility that is accessible and in compliance with applicable access and accommodations regulations and laws.

7. Facility Requirements

Company must meet the following facility requirements:

- a. Location and Building – suitable by local standards for Select Testing and approved as such by Pearson VUE.
- b. Parking and Transportation – adequate parking and/or access to some form of public transportation (to include trains, buses, taxis, etc.).
- c. Building Signage – signage must clearly indicate the location of the Company within its building.
- d. Accessibility – provide access by disabled persons at least to the extent required by applicable local laws and regulations.
- e. Bathroom – convenient access to a washroom/toilet facility, either within Company or within the same facility as the Company.
- f. Check-in Area – must have the following characteristics:
 - (i) separate from but near to the Testing Room;
 - (ii) a workspace for TA, Administrator Workstation and Testing Equipment which includes signature pad, digital camera, palm vein or other human identity authentication device in accordance with the Guides;

Pearson VUE Authorized Center Agreement

- (iii) adequate seating for waiting Candidates;
- (iv) a seat next to the Administrator Workstation with a neutral background and adequate overhead lighting where Candidates will sit to have their photos taken; and
- (v) one locker per Delivery Workstation for storage of personal belongings, with its own key provided to Candidate.
- g. Testing Room – must have the following characteristics:
 - (i) separate from but near to the Check-in Area with a door that can be closed, and located in a low-traffic area;
 - (ii) clean, comfortable, adequately lit and smoke-free;
 - (iii) used only for testing when test sessions are in progress, with all other equipment and materials removed;
 - (iv) the number of Delivery Workstations required for Select Testing as mutually agreed upon by Pearson VUE and Company;
 - (v) each Delivery Workstation must be placed on a flat, clean workspace at least 1.2m (4') wide with no obstructions overhead or underneath;
 - (vi) workstations must be separated by solid privacy partitions or walls at least 1.5m (5') in height and extend outward from the wall at least 1.2m (4');
 - (vii) each workstation must have a comfortable, height-adjustable office style chair; and
 - (viii) location of Delivery Workstations must provide the TA with an unobstructed line of sight to each Candidate while testing is in progress.
- h. Separate Room – a separate, lockable, climate-controlled room or data closet (accessible only to authorized personnel) to securely house, any required Pearson VUE testing server and audio/visual equipment.

8. Technology Requirements

Company must meet the then-current PVTC Select minimum technical requirements, (or any mutually agreed upon higher specifications required by specific Sponsors that may be provided by Pearson VUE), for the Pearson VUE Testing System ("Testing System"):

- a. Installation Scenario – Testing System must be installed in a "Server Scenario" (also referred to as "Scenario 3") as listed in the Guides.
- b. Dedicated Server – When required and advised by Pearson VUE, the Testing System must be installed on a file server that is dedicated to Pearson VUE testing.
- c. Administrator Workstation – in addition to meeting the then-current Minimum System Requirements as delineated in the Guides, the Administrator Workstation must have the following characteristics:
 - (i) at least one (1) USB interface hub to allow for the minimum number of required interface ports;
 - (ii) always on, with the Pearson VUE Application Wrapper service installed and configured to manage Remote Maintenance Agent ("RMA") connections to the Pearson VUE hub as required; and
 - (iii) connected to the Internet via a broadband connection (e.g. cable, DSL, ISDN, frame relay, etc.) with at least a minimum speed meeting the then-current Minimum System Requirements or any higher specifications that may be, located in the Guides, required to deliver specific Sponsor Tests.
- d. Delivery Workstation(s) – in addition to meeting the then-current Minimum System Requirements as delineated in the Guides or located at the following link https://home.pearsonvue.com/Documents/Test-center/pearsonvue_technical_reqs.aspx, or other site as communicated by Pearson VUE in writing.
- e. Audio/Visual Equipment – Company or Pearson VUE will provide audio/visual monitoring and recording equipment, consisting of one (1) or more cameras connected to a monitor and recording equipment.
- f. Printer, Fax, and Scanner – in addition to meeting the then-current Minimum System Requirements for the Printer as delineated in the Guides, Company must also have a scanner and fax machine.

9. Pearson VUE Testing Equipment

Any testing-related equipment provided by Pearson VUE ("Pearson VUE Testing Equipment") to Company, exclusively for Pearson VUE testing purposes, in exchange for Company's explicit agreement to the additional obligations of this Amendment.

- a. Limitations on Use
Pearson VUE testing equipment shall be used exclusively to provide and promote Pearson VUE testing services at Company. Pearson VUE testing equipment is not to be moved from designated Company without Pearson VUE's prior express written consent.
- b. Ownership of Pearson VUE Testing Equipment

Pearson VUE Authorized Center Agreement

- (i) Company understands and agrees that Pearson VUE owns testing equipment provided by Pearson VUE and Company owns Testing Equipment if Company purchased the Testing Equipment. Notwithstanding anything contained in this Agreement, in no event will any of Pearson VUE's proprietary software, materials and related information and equipment become the property of Company and the same are expressly excluded from any transfer of ownership, or other arrangement, under the Agreement and this Amendment.
- (ii) In event of termination of this Amendment by Pearson VUE or Company for any reason, Company will immediately return Pearson VUE Testing Equipment to Pearson VUE, unless the Pearson VUE informs Company in writing of specific arrangements for Pearson VUE Testing Equipment. Company will be responsible for all costs associated with packaging and shipping of Pearson VUE Testing Equipment. Return of Pearson VUE Testing Equipment does not release Company from its obligations hereunder, unless notified of such release in writing by Pearson VUE.
- c. **Upkeep/Insurance of Pearson VUE Testing Equipment**
Company understands and agrees that it will, at Company's expense, keep and maintain Pearson VUE Testing Equipment in good working order, repair and appearance, and make or arrange with Pearson VUE to make any and all necessary repairs and replacements thereto in order that Pearson VUE Testing Equipment will continue to fulfill its intended function or use. Should any Pearson VUE Testing Equipment be damaged for any reason, and be capable of repair, Company will promptly repair or arrange with Pearson VUE to repair the same at Company's expense, except to the extent that such damage or loss of service is due to normal "wear and tear" or arise from actions of Pearson VUE or a Sponsor.. For normal "wear and tear" and minor repairs, Company should contact Pearson VUE for repair and/or replacement at Pearson VUE's discretion.
- d. **Taxes, if applicable**
Company shall pay all fees, tariffs, taxes or any other such assessments on Pearson VUE Testing Equipment or the use or operation thereof, now or hereafter imposed, levied or assessed by any state, federal or local government agency. All such assessments will be paid by the Company before the same shall be in default or subject to the payment of any penalty or interest. Company will provide Pearson VUE with receipts or other evidence of payment satisfactory to Pearson VUE.

10. Access to Testing Equipment

Company will provide Pearson VUE with remote access to the Testing Server, if applicable, and Audio/Visual Equipment for the purpose of recovering Test results and related records and/or auditing the system, to the extent permitted by applicable laws.

11. Monitoring Compliance

Company agrees to monitoring by Pearson VUE for the purpose of measuring initial suitability for Select Test delivery as well as ongoing compliance with the facility, equipment, procedural, and security requirements specified in this Amendment, the Agreement and the Guides. Company agrees to immediately implement any and all corrective actions recommended as a result of such monitoring, and understands that failure to demonstrate satisfactory performance as measured by such monitoring, or failure to implement corrective actions recommended as a result of such monitoring, constitutes grounds for immediate termination of this Amendment and/or the Agreement. Monitoring will take various forms, including (but not necessarily limited to):

- a. **Background Checks** – to include checks on business registration, business background check, and background checks on owners and/or principal office holders scheduled or unscheduled.
- b. **On-Site Audits** – periodic, scheduled audits of Company operations conducted by Pearson VUE (or its authorized third party). Company agrees to fully cooperate with Pearson VUE and its auditors during such audits.
- c. **Integrity Shops** – conducted in the manner described in the Agreement one or more times during each year. Company understands that it will receive no Test Delivery or Registration compensation for Integrity Shops.

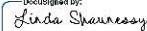
12. Select Test Training Programs

During the Amendment Term, Company shall not, individually or jointly with others, directly or indirectly, develop or deliver any training program designed to assist or prepare Candidates for any Select Tests that Company delivers for or on behalf of Pearson VUE, unless specifically agreed upon in writing by Pearson VUE.

Pearson VUE Authorized Center Agreement

Except as provided in this Amendment, all terms and conditions of the above referenced Agreement and Guides, as amended, will remain in full force and effect.

Company

Signature  Linda Shaunessy
DocuSigned by:
DocID:171581770420..

Name Linda Shaunessy

Title Business Contracts Adminstrator

Date 2019-04-30 | 12:50:14 PDT

NCS Pearson, Inc.

Signature  Ryan Ulwelling (May 8, 2019)

Name Ryan Ulwelling

Title Director, Global Selects

Date 190430



The parties agree to the provisions of the Addendum to the Agreement which is attached and hereby incorporated by reference.

ADDENDUM TO AGREEMENT

The following terms and conditions are incorporated into and form a part of the agreement to which they are attached (the "Agreement") for all purposes. "University" or "Company" means The University of Texas at Austin and "Pearson VUE" means NCS Pearson, Inc.

Representations and Warranties by NCS Pearson, Inc. If NCS Pearson, Inc. is a corporation or a limited liability company, NCS Pearson, Inc. warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of NCS Pearson, Inc. has been duly authorized to act for and bind NCS Pearson, Inc..

Contractor Certification regarding Boycotting Israel. Pursuant to Chapter 2270, Texas Government Code, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate

Contractor Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

NCS Pearson, Inc.

By: 

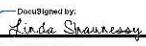
Ryan Ulwelling

Name: _____

Title: Director, Global Selects

Date: 190430

The University of Texas at Austin

By: 

Linda Shaunessy

Name: Linda Shaunessy

Title: Business Contracts Administrator

Date: 2019-04-30 | 12:50:14 PDT