

ADDENDUM NO. [4]

Parties: This Addendum is made effective as of March 17, 2020 between:

Customer	Pearson
Black Hawk College	Pearson Education, Inc.
6600 34th Avenue	221 River Street
Moline, IL 61265	Hoboken, NJ 07030

Background: Customer and Pearson entered into that certain Direct Digital Access Agreement dated October 27, 2017 (the “Direct Digital Access Agreement”) for the adoption and use by Customer of certain Pearson Products (as amended by the previous addendum). Customer and Pearson now desire to enter into this Addendum to amend and/or supplement one or more of the provisions contained in the Agreement.

In consideration of the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Capitalized terms used, but not otherwise defined, in this Addendum shall have the meanings given to such capitalized terms in the Agreement.
2. The Agreement shall be amended as follows:
The “Net Prices” section to the Agreement is deleted in its entirety and replaced with the revised “Direct Digital Access Prices per Enrollment”:

Direct Digital Access Prices Per Enrollment:

- eBooks (delivered via an authorized Fulfillment Provider):
 - The then-current Inclusive Access Price as set forth in Pearson’s Inclusive Access Catalog.
 - Digital Packages:
 - Twenty percent (20%) off the then-current Online Purchase Price for the corresponding nationally available Digital Learning Application with incorporated eText.
 - Digital Learning Applications:
 - Twenty percent (20%) off the then-current Online Purchase Price for the corresponding nationally available product.
 - Sequenced Courses using the same Digital Package or Digital Learning Application:
 - Twenty percent (20%) off the then-current Online Purchase Price for the corresponding nationally available Digital Learning Application with incorporated eText.
 - In the event that an Authorized Student User Enrolls in a sequenced Course after the first academic semester, the Inclusive Access Price for the academic semester in which the student is Enrolled shall apply; provided however that if the Inclusive Access Price per Enrollment is fully charged in the first academic semester, then the first academic semester Inclusive Access Price shall be charged for such Authorized Student User.
3. All other 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.

signature page follows

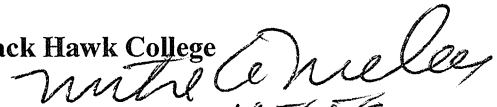
Acceptance & Authority: By signing below, each Party accepts this Addendum and represents that the individual executing this Addendum on behalf of a Party has been authorized by all necessary actions (corporate or otherwise) to bind such Party.

Pearson Education, Inc

Name: [PEARSON SIGNATORY NAME]
Title: [PEARSON SIGNATORY TITLE]

Date: _____

Black Hawk College


MIKE G. MELEG
DIRECTOR OF PURCHASING AND AUX
Name: [OTHER PARTY SIGNATORY NAME] SUGS
Title: [OTHER PARTY SIGNATORY TITLE]

Date: 4/22/20



**DIRECT DIGITAL ACCESS AGREEMENT
FOR ACCESS AND USE OF PEARSON DIGITAL LEARNING PRODUCTS**

This Direct Digital Access Agreement is made as of October 27, 2017 (the "*Effective Date*") between:

Customer (Institution or Institution's Bookstore)
Black Hawk College
6600 34 th Avenue
Moline, IL 61265

Pearson
Pearson Education, Inc.
221 River Street
Hoboken, NJ 07030

A. Definitions:

"*Academic Year*" means each twelve-month period commencing at the beginning of Institution's fall academic semester during the Term of this DDA Agreement.

"*Applicable Academic Year*" means the Academic Year in which a Pearson Product purchased under this DDA 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 withdrawn from the Course Section, or opted out of accessing 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 (i) an Authorized Student User, or (ii) an Institution's Agent who requires access to a Pearson Product for classroom or administrative purposes.

"*Course Section*" means a section of a course offered by the Institution, through any of its operating campuses, and for which a Pearson Product has been adopted.

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

"*DDA Agreement*" means this Direct Digital Access Agreement for Access and Use of Pearson Digital Learning Products.

"*DDA Price*" means the price set forth in the DDA Pricing Catalog for the Applicable Academic Year, to be charged to Customer for a Pearson Product during the Applicable Academic Year.

"*Digital Learning Application*" means a Pearson MyLab, Mastering or Revel product, which may incorporate the content of an associated Pearson Title ("*eText*").

"*Digital Version*" means an eBook or eText.

"*eBook*" means a stand-alone, digital version of a Pearson Title that is used in a Course Section that is fulfilled by a third party fulfillment partner authorized by Pearson (e.g., VitalSource, RedShelf).

"*EULA*" means the terms of use published on the website through which a Pearson Product is accessed, which governs an Authorized User's access to such Pearson Product.

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

"*Institution's Agent*" means a full-time or adjunct faculty member, employee, administrator or agent of Institution or its affiliates.

"*Institution LMS*" means a learning management system or online learning platform provided by Institution, or its third party partner, from which one or more Pearson Products may be accessed by Authorized Users.

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

"*Minimum Sell-Thru Rate*" means the minimum Sell-Thru Rate for the total purchases of a Pearson Product adopted for all Course Sections during the Applicable Academic Year. The Minimum Sell-Thru Rate for each Pearson Product purchased under this DDA Agreement during each Academic Year is ninety percent (90%) unless otherwise agreed to in writing by the Parties.

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

"*Pearson Products*" for purposes of this DDA 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.

"*Print Upgrade*" means a black and white, loose leaf (unless another format is otherwise agreed to by Pearson) printed version of the Digital Version incorporated into a Digital Learning Application.

"*Sell-Thru Rate*" means the percentage of all Authorized Student Users over total enrollment in all Course Sections that utilize a Pearson Product during the Applicable Academic Year.

B. Customer Orders: During the Term (as defined below), Customer may place orders for the Pearson Products solely for resale to Authorized Student Users pursuant to this DDA Agreement. This DDA Agreement is intended to provide Customer with the ability to adopt and utilize the Pearson Products offered hereunder at the terms, prices and conditions set forth herein in any of Customer's Course Sections during the Term (as defined below). This DDA Agreement does not limit or restrict the minimum or maximum number of Course Sections in which Customer may adopt a Pearson Product offered hereunder. Furthermore, this DDA Agreement does not specify that any one specific Course Section must utilize a Pearson Product offered hereunder during the Term (as defined below). Pearson reserves the right to annually adjust the DDA Prices (and related Maximum Resale Prices) effective at the commencement of each Academic Year. Prices are exclusive of all sales and use taxes applicable to the transactions covered by this DDA Agreement, for which Customer is responsible.

C. Reporting and Invoicing: As soon as reasonably practicable after the add/drop date of each Course Section, Customer will deliver to Pearson a report detailing the usage and resale prices (or materials fee) of the Pearson Products utilized in such Course Section (the "*Usage and Pricing Report*"). The Usage and Pricing Report will include for each Course Section: the name, ID, and the beginning and end dates of the Course Section; the number of students enrolled in the Course Section after the add/drop date (with a unique identification code for each Authorized Student User, which does not identify any personal information about such Authorized Student User); and the number of enrolled students who have "*opted out*" to access each Pearson Product adopted for such Course Section. The Usage and Pricing Report will also include, for each Pearson Product utilized in the Course Section, the resale price (or materials fee) charged to Authorized Student Users for access to such Pearson Products. The Usage and Pricing Report will be delivered via email to the designated Pearson representative, with a copy to custom.invoices@pearson.com. Pearson will then utilize such Usage and Pricing Report to invoice Customer for the Pearson Products accessed by Authorized Student Users in such Course Sections at the applicable DDA Prices. Customer shall maintain complete and accurate records substantiating all information provided to Pearson in the Usage and Pricing Report.

D. Payment: Customer agrees that it will pay all amounts invoiced within thirty (30) days of invoice date and will be responsible for any taxes in connection with its resale and/or distribution of the Pearson Products to Authorized Student Users. All payments must be made in U.S. Dollars.

E. Term: The term of this DDA Agreement ("*Term*") shall commence on the Effective Date and run for a period of one-year thereafter. The Term will automatically renew for successive one-year periods, unless either Party notifies the other Party in writing of its desire not to renew the DDA Agreement at least sixty (60) days prior to the end of the then-current one-year period.

F. Termination for Failure to Meet Minimum Sell-Thru Rate or Sales Above Maximum Resale Price: Pearson shall have the right to terminate this DDA Agreement, and in doing so terminate the right to purchase Pearson Products under this DDA Agreement, in the event that either (i) the aggregate purchases of a Pearson Product under this DDA Agreement during an Academic Year fall below the Minimum Sell-Thru Rate, or (ii) Customer resells (or charges a materials fee for) any Pearson Product above the applicable Maximum Resale Price. Upon termination of this DDA Agreement by Pearson, Customer shall no longer have the right to purchase the Pearson Products at the DDA Prices set forth in the DDA Pricing Catalog.

G. Print Upgrade Purchases: Provided that a Pearson Title is not a "*Print Rental Only*" title available through Pearson's Print Rental Program, or a "*Digital Only*" Revel product, Customer may purchase, for use in Course Sections, Print Upgrades of the Digital Versions incorporated into the Digital Learning Applications, at the prices set forth in Paragraph H below. Pearson shall have the right to limit the number of Print Upgrades ordered hereunder to no more than fifteen percent (15%) of the total number of Authorized Student Users enrolled in the Course Section utilizing such Pearson Product.

H. Print Upgrade Pricing: Unless otherwise agreed to in writing by the Parties prior to any Print Upgrade orders being submitted to Pearson, Customer will be invoiced forty dollars (\$40) per unit, plus shipping costs, for a Print Upgrade of a Digital Version incorporated into a MyLab or Mastering Product, and seventeen dollars (\$17) per unit, plus shipping costs, for a Print Upgrade of a Digital Version incorporated into a Revel Product. Pearson reserves the right to annually adjust such Print Upgrade pricing effective at the commencement of each Academic Year.

I. Restrictions on Print Upgrades Distribution and Sales: The right to purchase and distribute Print Upgrades from Pearson is subject to the following conditions: (i) the distribution and sale of Print Upgrades are limited to one Print Upgrade per Authorized Student User enrolled in a Course Section in which the corresponding Digital Version is incorporated into a Digital Learning Application adopted for such Course Section; (ii) Print Upgrades may only be resold (or charged as a materials fee) to Authorized Student Users at a resale price (or materials fee) that incorporates no more than a twenty-five percent (25%) margin above the price paid for such Print Upgrade; (iii) Authorized Student Users wishing to purchase Print Upgrades shall be required to present verification of their enrollment in a Course Section in which the corresponding Digital Version is incorporated into a Digital Learning Application adopted for such Course Section; (iv) upon Pearson's request, Customer will provide Pearson with sufficient documentation to evidence compliance with the foregoing restrictions; and (v) Pearson's standard return policies for printed textbooks shall apply to the return of Print Upgrades.

J. Additional Terms and Conditions: Additional Terms and Conditions applicable to this DDA Agreement and the use of the Pearson Products offered herein can be found at <https://www.pearson.com/us/additional-terms.html> and are hereby expressly incorporated herein, except that the Additional Terms and Conditions are amended as follows.

1. The "*Security Audit*" Section is hereby amended by deleting the first sentence and replacing it with the following: "*Pearson will have the right to request written evidence sufficient to verify the Customer LMS's compliance with any and all security requirements and limitations imposed under the Agreement.*"

K. Insurance: Upon written request of Customer, Pearson shall provide a Certificate of its Professional Liability Insurance with limits of two million dollars (\$2,000,000) for each claim. The Professional Liability Insurance includes coverage for credit monitoring services post breach for one year in the event of breach or unauthorized disclosure of an Authorized User's financial information. In addition, Pearson maintains a Blanket

Additional Insured endorsement, a copy of which can be provided to Customer. In the event of change or cancellation of the Professional Liability Insurance policy, Pearson will provide Customer with thirty (30) days' prior written notice.

Acceptance & Authority: By signing below, each Party accepts this DDA Agreement and represents that the individual executing this DDA 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)

Mike G Meleg
Signature
MIKE G MELEG
Printed Name
POUCHASING MANAGER
Title
11/20/17
Date of Signature

Pearson Education, Inc.

Robert Klein
Signature
Robert Klein
Printed Name
Finance Director
Title
Nov 21, 2017
Date of Signature

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Additional Terms and Conditions

Products. Subject to the terms and conditions set forth in the Agreement for Access and Use of Pearson Products that references this URL, and these Additional Terms and Conditions (hereinafter collectively referred to as the “*Agreement*”), Pearson agrees to provide the Pearson Products purchased by Customer. Capitalized terms not defined herein shall have the meanings ascribed thereto in the Agreement.

Access and Use. The Pearson Products may be made available by Customer solely to Authorized Users, who shall access the Pearson Products during their respective Access Periods (as prescribed in the Ordering Document) and only in accordance with the terms of the EULA. Upon completion of the Access Period, an Authorized User shall no longer have the right to access or use the Pearson Products. To the extent a Pearson Product is accessed via a Learning Tools Interoperability (LTI) link from a Customer LMS, Customer will ensure that only Authorized Users access the Pearson Product and that such Customer LMS applies adequate digital rights management and other protections necessary to prevent copyright infringement, misappropriations and misuse of the Pearson Product. 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 (for instance, via an LTI link), then Customer shall (i) ensure that such Customer LMS contains terms of use that require Authorized Users to access and use the Pearson Products in a manner consistent with the terms of Pearson’s EULA associated with the Pearson Product, and (ii) further require Authorized Users to acknowledge and agree to such terms of use.

Customer will promptly notify Pearson of any actual or suspected violation that Customer may discover in regards to an Authorized User’s use of the Pearson Products. Upon the request of Pearson in connection with any such violation, Customer will cooperate with

Pearson regarding the violation, up to and including termination of the violating Authorized User's access to the Pearson Products. Pearson reserves all rights against the violating Authorized User, including the right to bring any legal or equitable action deemed appropriate by Pearson. Pearson may suspend access to the Pearson Products, in whole or in part, if in Pearson's sole, reasonable discretion there is an emergency situation, including but not limited to a breach of security or unauthorized use of the Pearson Products.

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

Ownership. All right, title and interest in and to the Pearson Products and the content, materials, technology and data contained therein, and any derivative works thereof, is expressly reserved by Pearson (collectively, the "*Pearson Materials*"), except for Customer Material contained in the Pearson Products, if any. "*Customer Material*" means any curricular content, trademarks or logos owned or licensed by Customer or Customer Agents and delivered to Pearson for incorporation into the Pearson Products; such Customer Material must be clearly identified in writing by Customer prior to delivery to Pearson. Customer represents to Pearson that it is the lawful owner or licensee of all Customer Material; that it has obtained all necessary rights, permissions and waivers to use all third party materials contained within the Customer Material for the purposes required by Pearson to fulfill its obligations under any Ordering Document; and hereby grants to Pearson a non-exclusive, non-royalty bearing license to access, use and reproduce the Customer Material in conjunction with the creation, reproduction, publication, distribution and sale of any Pearson Products offered in an Ordering Document. Except to the extent prohibited by law, Customer shall indemnify and hold harmless Pearson from any losses, damages and legal expenses incurred by Pearson as a result of any third party claim, suit or action relating to the Customer Materials. Nothing in the Agreement will be construed to prevent Pearson from selling, licensing, using, repurposing or permitting any third party to use Pearson Materials.

Customer Materials may be provided to Pearson for the purpose of incorporating such Customer Materials into the Pearson Products. For avoidance of doubt, Customer

Materials do not include any curricular content or other materials that are not delivered to Pearson for processing and incorporation into the Pearson Products, including without limitation, content, materials, faculty notes, edits or data (i) directly uploaded onto a Customer LMS or made part of a Pearson Product by Customer or Customer Agents or (ii) used by Customer or Customer Agents in any manner that is not part of a Pearson Product (collectively, "*Excluded Materials*"). Customer agrees that it shall be solely responsible for any Excluded Materials, including without limitation, the delivery, access and use thereof.

Reservation of Rights. Except as expressly set forth in an Ordering Document, all rights with regard to all Pearson Products are reserved by Pearson and under no circumstances shall Customer or Customer Agents resell, publish, transfer, distribute, sublicense, provide access to, communicate to the public by telecommunication, copy, adapt, translate, reproduce, modify, enhance, or use the Pearson Products or the Pearson Materials contained therein without the express written permission of Pearson. Customer acknowledges that it is Customer's responsibility to communicate the foregoing use and distribution restrictions to Customer Agents and Authorized Users and to take all steps necessary to enforce such restrictions. Except to the extent prohibited by law, Customer will indemnify and hold harmless Pearson from any claim or action, together with any resulting costs, damages and expenses, including reasonable legal fees and court costs, arising out of Customer's or Customer Agents' unauthorized distribution, alteration or use of the Pearson Products.

Except as specifically set forth in an Ordering Document, Customer acquires no rights to use, display, market, license or promote (including but not limited to marketing tools, promotional or preview use allowances, printing allowances, or lending or sharing rights) the Pearson Products in connection with its rights under the Agreement or any Authorized Users' use of the Pearson Products. Unless specifically permitted in an Ordering Document, in no event will Customer or Customer Agents have the right to further distribute, display or transmit the Pearson Products to anyone else including (i) in any physical form (CDs, DVDs, portable media, etc.), (ii) in any other material form, (iii) in portions or in parts less than the complete Pearson Product and (iv) in or as a derivative work.

Security Audit. ~~Pearson will have the right to audit and inspect the systems and processes of the Customer LMS to ensure compliance with any and all requirements and~~

*request
written
evidence*

~~limitations imposed under the Agreement.~~ Pearson will have the right to stop making Pearson Products available to Customer if at any time Pearson notifies Customer of any violation of the Agreement that is not remedied to the reasonable satisfaction of Pearson within 10 days after such request or if Pearson otherwise determines that Customer's or its third party partners' direct or indirect practices for protecting the Pearson Products from unauthorized use are unsatisfactory or inadequate.

Books and Records. Customer will maintain complete and accurate books of account and records covering all usage of Pearson Products under any Ordering Document, as well as all course enrollment information. 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 Customer's Usage Reports. Customer shall immediately pay any shortfall that results from Pearson's inspection of Customer's records. If Customer has underreported by 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.

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.

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

Termination. The Agreement may be terminated by either Party in the event of (i) a material breach hereof by the other Party, effective on sixty (60) days' prior written notice; provided that, during such sixty (60) day notice period, the breaching Party fails to cure the breach to the reasonable satisfaction of the non-breaching Party; (ii) the other Party voluntarily enters into proceedings in bankruptcy or insolvency, makes an assignment for

the benefit of its creditors, is adjudged to be bankrupt or insolvent, a petition is filed against the other Party under a bankruptcy law, corporate reorganization law, or any other law for the relief of debtors or similar law and such petition is not discharged within sixty (60) days after its filing, or a receiver, trustee or similar person is appointed with respect to the other Party's assets; or (iii) the other Party ceases to carry on its business. Either Party may terminate the Agreement for cause without notice at any time. For purposes of the Agreement, the term "cause" will include any act of willful misconduct by the other Party which is or may be materially injurious to the terminating Party or its affiliates. Upon the expiration or termination of the Agreement, Customer will promptly pay all amounts owing by Customer to Pearson under all Ordering Documents and cease all access to and use of the Pearson Products by its and its Authorized Users. Those provisions which by their nature are intended to survive any termination or expiration of the Agreement shall survive such termination or expiration. The Agreement may not be extended, except by mutual agreement in writing between Pearson and Customer.

Failure to Pay Invoices. To the extent Customer fails to pay an invoice when due, Customer will be responsible for Pearson's reasonable legal fees relating to the enforcement of such payments. If Customer has failed to make any payment due to Pearson pursuant to an Ordering Document and such failure has continued 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 payment and has deposited the amount of such payment into an interest bearing trust account to be released only upon resolution of the dispute, Pearson may, at its discretion, (i) suspend all further use and distribution of Pearson Products or (ii) terminate the Agreement and/or the applicable Ordering Document and require all amounts to be paid thereunder.

Approved Distributors. Customer represents and warrants to Pearson that any Approved Distributor (i) has all necessary rights and authority to act, on behalf of Customer, in accordance with the terms of the Agreement, (ii) does not and will not infringe any patent, trademark, or copyright or misappropriate any trade secret or other proprietary right of any person or party and (iii) is and will remain in compliance with all applicable laws and regulations relating to its activities under the Agreement.

DISCLAIMER. EXCEPT AS SET FORTH IN THE AGREEMENT, PEARSON EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING

BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. PEARSON DOES NOT WARRANT THAT THE PEARSON PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESSED WARRANTIES PROVIDED IN THE AGREEMENT.

Third Party Products. To the extent Pearson provides Customer with a Third Party Product, Customer agrees that the owner of such Third Party Product shall be solely responsible for any and all aspects of the provision, delivery and use of such Third Party Products, including, without limitation, all performance, functionality, data protection, support and maintenance, and Customer agrees to look solely to such owner for its remedies under the Agreement. In no event shall Pearson or its affiliates, or any of their respective officers, directors, members, employees, shareholders, agents or representatives (collectively, "*Pearson Entities*") be liable for any direct, indirect, incidental, punitive, special or consequential damages (including without limitation loss of data, use or goodwill, or work stoppage, computer failure or malfunction), or any and all other commercial damages or losses incurred by Customer, Customer Agents or Authorized Users in any way relating to the provision or use of the Third Party Products, even if any of the Pearson Entities has been notified of the possibility or likelihood of such losses or damages.

Use of Marks. Each Party owns certain trade names, logos and trademarks (collectively, "*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; provided, however, that Customer grants to Pearson a non-exclusive, non-royalty bearing license to reproduce Customer's Marks in conjunction with the publication, distribution and sale of the Pearson Products under any Ordering Document. Customer further agrees not to remove or alter any Pearson Mark or other proprietary notice in or on any Pearson Product.

LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY, INCLUDING WITHOUT LIMITATION LOST DATA, LOST PROFITS AND COSTS FOR PROCUREMENT OF SUBSTITUTE GOODS OR

SERVICES, GOODWILL, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THE AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE PEARSON PRODUCTS OR THIRD PARTY PRODUCTS. PEARSON'S TOTAL AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT OR CUSTOMER'S USE OF THE PEARSON PRODUCTS OR THIRD PARTY PRODUCTS WILL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER TO PEARSON FOR THE SPECIFIC PEARSON PRODUCT OR THIRD PARTY PRODUCT GIVING RISE TO THE CLAIM DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD. THE LIMITATIONS SET FORTH IN THIS SECTION 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.

No action, regardless of form, arising under the Agreement may be brought by either Party more than one year after the facts supporting the cause of action become known, or reasonably should have become known, to the claimant, except that an action for non-payment may be brought without any limitation on time.

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.

Confidentiality. Customer shall keep confidential and shall not disclose the terms and conditions of the Agreement or any Ordering Document, except to its authorized legal and financial representatives with a need to know and then only for purposes of representing Customer's interests hereunder or thereunder. In addition, 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 advance written consent of Pearson.

Customer Information. Customer may provide Pearson, either directly or indirectly via Customer Agents and Authorized Users, with information, materials and data that are subject to the Family Educational Rights and Privacy Act (FERPA) (collectively, "*Customer Information*"). Customer grants to Pearson a limited, nonexclusive license

during the term of the Agreement to copy, transmit, use and prepare derivative works of the Customer Information to the extent necessary for Pearson and its third party partners to perform its obligations under the Agreement. This license shall not be construed to permit Pearson to use Customer Information for any other purpose, except as expressly permitted by the Agreement. Notwithstanding the foregoing, Pearson may use anonymous data related to student performance and the activity of Authorized Users for product improvement, efficacy reports and general research and analytical purposes (which Pearson may share with other third parties).

FERPA and Data Privacy. Pearson will not distribute Customer Information in violation of FERPA. However, Customer acknowledges and agrees that, by granting user identifications and/or passwords, Customer controls, defines and manages access to Customer Information and related records and data that will be used within the Pearson Products, as well as in any Customer LMS or Pearson Platform. Customer is responsible for (a) compliance with all foreign and domestic privacy and student record laws and regulations that may be applicable to Customer's use of the Pearson Products; (b) securing all necessary prior consents (if any are required) for the collection, storage and use of education records, data and personal information within the Customer LMS, Pearson Platform or any Pearson Products; and (c) the creation of, and compliance with, applicable policies regarding the access and use by Authorized Users of personally identifiable information stored in the Customer LMS, Pearson Platform or in any Pearson Products.

Force Majeure. If the performance of the Agreement is interfered with, delayed or prevented as a result of an act of God or any other reason beyond the reasonable control of a Party, including, without limitation, on account of strikes, labor conditions, shortages in materials or equipment, riots, insurrection, war, terrorism, acts of civil or military authority, governmental action, unavailability of energy or communication resources, unavailability of internet service, network outages, insolvency or inability of a Pearson Product platform vendor, then the affected Party shall be excused from such performance to the extent of such interference, provided that the affected Party shall use commercially reasonable efforts to remove such causes of non-performance. This provision shall not apply to a Party's payment obligations.

Governing Law and Venue. The Agreement will be governed by the laws of the State of New York, excluding principles of conflicts of law. Any action or proceeding arising from or

relating to the Agreement will be brought in a federal or state court located in New York County, New York, and each Party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

Notices. Any notice or other communication required or permitted to be given under the Agreement will be provided by registered mail to the Parties at the addresses set forth on the first page of the Agreement. Any notice to Pearson shall include a copy to the following address: Pearson Education, Inc., 200 Old Tappan Road, Old Tappan, NJ 07675, Attn: Associate General Counsel, North America; and via email at: NALegal-Contact@pearson.com.

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. These Additional Terms and Conditions will govern in the event of any conflict with any other terms, attachment, exhibit or schedule to the Agreement.

Updates. These Additional Terms and Conditions may be updated from time to time at the discretion of Pearson.

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.

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.

Last updated: August 2016

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