

Pearson Online Learning Services

E-LEARNING PROGRAM MASTER SERVICES AGREEMENT

This e-Learning Program Master Services Agreement is entered into as of February 28, 2018 (“Effective Date”), by and between Embanet-Compass Knowledge Group Inc. (“Pearson”) and the University of North Dakota (the “University”).

ARTICLE 1 **INTERPRETATION**

1.1 Introduction

Pearson and the University have entered into this Agreement for the purpose of marketing, promoting, and delivering distance education programs to University students.

1.2 Definitions.

1.2.1 “Agreement” means this e-Learning Program Master Services Agreement, as amended from time to time, and all exhibits, schedules and ancillary documentation, including, but not limited to, Program Term Sheets.

1.2.2 “Corporate Partnership Program” means the program described more particularly at <http://www.pearsoned.com/higher-education/products-and-services/services-and-solutions-for-higher-ed/solutions/online-program-management/our-services/corporate-partnerships/>.

1.2.3 “Drop Deadline” means the date in each semester by which a Program Student who drops a Course is entitled to a 100% tuition refund.

1.2.4 “Confidential Information” means information that is identified as “confidential” either verbally or in writing at the time of disclosure, or is of such a nature that a reasonable person would understand such information to be confidential. Confidential Information will include, at a minimum: (i) all information protected by FERPA and/or Title IV of the Higher Education Act (as amended); (ii) Intellectual Property; and (iii) the services provided by Pearson under this Agreement and/or Program Term Sheet, and the contract terms related to the computation of Service Fees, to the extent they qualify as either “confidential” or “exempt” under the open records laws of the State of North Dakota. Confidential Information does not include information: (1) that was known by the receiving Party, as shown by written documentation, other than as a result of a prior confidential disclosure to such Party; (2) that is in the public domain through no fault or omission of the receiving Party; (3) that is obtained from a third party free from any obligation of confidentiality to the disclosing Party; (4) that is created or developed by the receiving Party, without use of the Confidential Information of the disclosing Party, by persons who did not have access to the disclosing Party’s Confidential Information; (5) that does not qualify as “confidential” or “exempt” under the open records laws of the State of North Dakota; or (6) is required by law or legal process to be disclosed to a third party.

1.2.5 “Content” means the descriptive attributes of a collection of university courses, such as course descriptions, course sequences, intended learning outcomes, and course topics, that constitute an area of specialization as well as units of learning, usually defined by expected outcomes, including syllabi, assignments, tests, notes, presentations, and examples created for classroom and learning programs that are used to deliver Courses.

1.2.6 “Course” means an academic or training delivery framework with a set of assignments and activities within an e-Learning Program developed pursuant to this Agreement that is designed to fulfill a particular set of learning objectives within a specified period of time.

1.2.7 “e-Learning Program” means the Courses and other curricular requirements and attributes, including all concentrations, specialties, and tracks, which make up the University’s distance learning degree and/or certificate program supported by Pearson under the applicable Program Term Sheet.

1.2.8 “FERPA” means the Family Education Rights and Privacy Act of 1974 (as amended).

1.2.9 “Gross Receipts” means (1) gross tuition arising from any and all student enrollments in the e-Learning Program or Courses, without regard to whether such amounts are paid or the method of payment, less (2) (a) Corporate Partnership Program discounts granted to Program Students, (b) Military Discounts granted to Program Students, (c) amounts refunded to students who have dropped any Courses or withdrawn from the University pursuant to published University policy, (d) University and North Dakota University System employee and family members tuition waivers, and (e) other mutually-agreed discounts. No other discounts, credits, scholarships, awards, or write-offs shall be taken into account in calculating Gross Receipts. Gross Receipts does not include student fees; provided, however, that the University shall set student fees in good faith and not as a means of excluding tuition increases from Gross Receipts.

1.2.10 “Instructor” means an individual hired by University providing certain services in support of a Course, including instructing, grading, moderating online work groups and mentoring and assisting Program Students enrolled in the Courses.

1.2.11 “Instructor(s) of Record” mean the University faculty member who is responsible for instructing, teaching and directly administering each Course.

1.2.12 “Intellectual Property” means: (i) all trademark rights, logos, trade dress, service marks, trade names and brand names; (ii) all copyrights, copyright registrations and copyright applications; (iii) all patents and patent applications; (iv) all inventions, know-how; improvements, enhancements, derivative works, inventions, so-called “look & feel,” graphic design elements, graphic user interface, order of operations, order of Content presentment and related configuration, ideas, concepts, know-how, discoveries, improvements, designs, trade secrets, shop and royalty rights, computer programs, applications and files; and/or (vi) all rights in any derivative works of the foregoing.

1.2.13 “Marketing Materials” means (i) all marketing copy, slogans, art work and related materials associated with any e-Learning Program marketing materials that are created and

developed by Pearson; and (ii) all web sites and web site content created and developed by Pearson for the marketing effort of e-Learning Programs.

1.2.14 “Military Discount” means any mutually-agreed tuition discount granted to members of the United States Armed Forces and their immediate family members.

1.2.15 “Parties” or individually, “Party” means the entities entering into this Agreement, and their successors and permitted assigns.

1.2.16 “Pearson Content Product” means Pearson’s commercial digital content products, or any component thereof, provided to the University pursuant to the terms of a Program Term Sheet.

1.2.17 “Pearson Intellectual Property” means all Intellectual Property that is combined or associated with, or incorporated into (or that is any part of) the Courses or otherwise a part of an e-Learning Program, whether originally conceived, created, developed, authored, or otherwise owned by Pearson or by its affiliates, subsidiaries, licensors or others pursuant to Sections 2.2 and 2.3.1, including, but not limited to, e-Learning Program delivery components, such as flash, media course structure, instructional design and multimedia development, Marketing Materials, and marketing databases.

1.2.18 “Program Director” means the person designated by the University to act as an e-Learning Program Director.

1.2.19 “Program Students” means University students enrolled in an e-Learning Program.

1.2.20 “Program Term” means the term of a Program Term Sheet.

1.2.21 “Program Term Sheet” means the existing or future document that specifies each e-Learning Program outlining the key terms for each E-Learning Program. The Parties will execute a separate Program Term Sheet for each e-Learning Program.

1.2.22 “Subject Matter Expert(s)” means individuals selected by the University who are experts in the subject matter of a Course or e-Learning Program, and who develop Content and provide pedagogical ideas on his/her subject of expertise for incorporation into either such Courses or e-Learning Programs.

1.2.23 “Term” means the term of this Agreement.

1.2.24 “University Systems” means those University student and applicant databases to which Pearson requires access to meet its obligations and services under this Agreement, including but not limited to the University’s student applicant tracking system, student information system, and learning management system.

1.2.25 “University’s Intellectual Property” means all Intellectual Property (as defined in subsection 1.2.12) and derivative works therefrom, including the Content provided by the University, whether used or otherwise included in any Course developed under this Agreement, but

not including Intellectual Property of a third party which is included in the Content subject to a license executed between the University and the third party.

1.3 Headings.

The division of this Agreement into Articles, Sections, and Schedules and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

1.4 Agreement Structure.

The Parties shall execute a Program Term Sheet for each individual e-Learning Program under this Agreement. Each Program Term Sheet will set out the specific obligations of each Party with respect to the specific e-Learning Program. In the event of any conflict and/or inconsistency between this Agreement and a Program Term Sheet, the order of precedence shall be as follows: (a) the Program Term Sheet and (b) the Agreement. As to each e-Learning Program, Pearson shall only be obligated to perform those services as specifically set forth in the applicable Program Term Sheet.

1.5 Material Change in Program Attributes.

The University understands and acknowledges that Pearson has relied upon all of the e-Learning Program-specific characteristics and attributes existing at the time of the execution of a Program Term Sheet (the "Program Attributes") in making its decision to enter into such Program Term Sheet. Such Program Attributes include, but are not limited to: the e-Learning Program curriculum, e-Learning Program concentrations, tracks, and certificates, e-Learning Program admission requirements, the number of e-Learning Program intakes, and e-Learning Program tuition. Pearson understands and acknowledges the University, as an accredited institution of higher learning, retains ultimate control over the Program Attributes. In the event the University wishes to institute a material change in any Program Attribute during the Program Term of a Program Term Sheet, the University shall inform Pearson of the proposed change and shall work together in good faith with Pearson to evaluate the effect of the proposed change on e-Learning Program enrollments. In the event the University institutes the proposed change in a Program Attribute and Pearson determines that such change may adversely affect e-Learning Program enrollments, Pearson may terminate the applicable Program Term Sheet on ninety (90) days' written notice to the University.

ARTICLE 2

OBJECTIVES, DUTIES AND RESPONSIBILITIES OF PEARSON

Pearson shall be responsible for and provide, at its sole cost and expense unless otherwise expressly stated herein or in a Program Term Sheet, the following obligations and services:

2.1 Development of e-Learning Program.

2.1.1 Pearson shall develop, create, operate and deliver each e-Learning Program in accordance with the terms and conditions of this Agreement.

2.1.2 The University and Pearson agree that they shall work together and reasonably assist each other in the collaborative and joint development of the e-Learning Program based upon the University's Course requirements, including Content, curriculum and related materials.

2.2 Course Design and Development.

Pearson will develop and create the online component of all Courses including instructional design Course development, and multimedia development to established standards set mutually by the University and Pearson, as more particularly described in any Program Term Sheet. The University will provide Course hosting on its selected LMS; provided, however, Pearson shall host Course multimedia objects and other complex digital resources on Pearson's servers. All Courses shall be developed and created by Pearson in accordance with the terms and conditions of the relevant and applicable Program Term Sheet, including all Content requirements and specifications. Unless otherwise provided in a Program Term Sheet, the University shall be responsible for the engagement and compensation of any subject matter expert necessary to provide Pearson with the Content. Course activities that are related to media products, course structure and appearances including graphic design, order of operations, so-called "look & feel," and page lay-out, duplication of such materials, repurposing of such information for the e-Learning Program, creating the e-Learning environment, dissemination of such materials to Program Students, and providing surveys and assessments, shall all be subject to the prior approval of the University. Prior to the commencement of advertising and offering any Course to the general public, Pearson shall submit to the University, at agreed upon intervals throughout the Course Development process, for final approval as to quality and form, all Course materials prepared by the Parties. The University shall promptly, no later than ten (10) business days of such submission, either reject or accept such Course materials in writing.

2.3 Marketing.

2.3.1 Pearson shall undertake commercially reasonable marketing efforts, subject to the nature of the e-Learning Program, to develop, promote, market and sell the e-Learning Programs. Pearson will manage, implement and be responsible for: (i) marketing and tracking the associated e-Learning Program databases; (ii) activities related to entry, coordination, tracking, and control of the associated e-Learning Program marketing databases; (iii) activities related to determination of the associated e-Learning Program marketplace acceptance, size and probability; (iv) activities related to the execution of the associated e-Learning Program market research via direct mail, telephone surveys and other methods with specific benchmarks established periodically by Pearson necessary to develop and execute marketing strategy; (v) dissemination of such print and electronic marketing materials; (vi) such database management of electronic and hardcopy mailing lists for secondary mailings; (vii) activities related to creation of script and management of telephonic contact with potential Program Students; (viii) activities related to direct response marketing (which may include direct mail, trade publication advertising, Internet, telemarketing, inbound and outbound); and (ix) public relations and attending trade shows related to such e-Learning Programs, subject to the approval of the University. The Parties agree and confirm that Pearson's performance of all such obligations as expressly provided and required in the relevant Program Term Sheet will be deemed to fully satisfy Pearson's commercially reasonable marketing efforts first set out in this Section 2.3.1.

2.3.2 The Program Director shall promptly review and approve all Marketing Materials. Marketing Materials shall be deemed approved ten (10) business days after submittal if the Program Director does not otherwise object.

2.3.3 The University agrees that, subject to the University's existing proprietary rights and interests in any name, trade name, logo, domain names that are associated with the University's goodwill, brand indicia, trademark, service mark, and Content, the following are Pearson Intellectual Property: (i) all Marketing Materials; (ii) all data regarding prospective Program Students, including names and contact information in Pearson's marketing database, developed as a result of Pearson's marketing activities under this Agreement; and (iii) all Pearson market research findings, reports, marketing strategy, and marketing execution tactics and methodologies.

2.3.4 The University authorizes Pearson to bid on, organically rank, and drive traffic for relevant keywords (including branded, branded programmatic, non-branded, programmatic, and generic keywords) for use by Pearson in both national and geo-targeted marketing campaigns. The University shall periodically provide Pearson with a list of branded keywords the University currently bids on in its active marketing campaigns, and Pearson will undertake commercially reasonable efforts to avoid direct competition with the University in bidding on such keywords. The University agrees that such traffic will be directed to e-Learning Program sites or landing pages which will be designed, developed, and hosted by Pearson.

2.3.5 The University shall work with Pearson to effectuate the e-Learning Program search engine optimization strategy ("SEO Strategy") set forth in a Program Term Sheet. In the event a Program Term Sheet does not provide for a specific SEO Strategy, the University agrees to place links to e-Learning Program sites or landing pages on relevant pages within the University's web sites in a manner, and in specific locations, mutually agreeable to the Parties. To optimize the Pearson-managed domain's web presence, any design or content changes made to the University's website should ensure that all such links adhere to search engines requirements and best practices for a successful SEO Strategy. These requirements include, but are not limited to, representation of the e-Learning Program sites and/or landing pages in the following University locations (collectively, "University Web Pages"):

- Domain
- Program pages
- Banners
- Navigation
- Footer
- Press releases
- Header
- News articles
- Subdomains
- Third party websites
- Web properties owned by the University, including:
 - Student Blogs
 - Course Specific Websites
 - Faculty Websites

If the University has not yet created any of the University Web Pages listed above, Pearson may, upon the University's authorization, which shall not be unreasonably withheld, create such page(s) to house links to e-Learning Program sites or landing pages.

2.3.6 The University hereby grants Pearson for the term of this Agreement the exclusive right and authorization to establish, develop, author, operate, and maintain e-Learning Program social media pages and accounts on behalf of University on various social media platforms and websites, including, but not limited to, Facebook, LinkedIn, Instagram, Twitter, etc., the content of which is subject to the University's guidelines.

2.3.7 Pearson and the University agree that neither party shall use the Marketing Materials for any purpose other than to market and promote the e-Learning Programs pursuant to this Agreement. Notwithstanding the foregoing, University acknowledges and agrees that Pearson may market other relevant non-University academic programs to prospective e-Learning Program Students who (a) do not meet minimum e-Learning Program admission requirements and (b) were denied for admission to the e-Learning Program by the University (collectively, "Unqualified Students"). Pearson acknowledges and agrees that, until such time as prospective e-Learning Program students become Unqualified Students, Pearson shall market only the applicable e-Learning Program to such prospective e-Learning Program students.

2.3.8 The University shall provide Pearson with all consents and take all actions necessary to effectuate the authorizations and permissions in this Section 2.3. Pearson and the University agree that neither party shall use the Marketing Materials for any purpose other than to market and promote the e-Learning Programs pursuant to this Agreement.

2.4 Recruitment.

Pearson shall use commercially reasonable methods to counsel and recruit qualified prospective Program Students for the e-Learning Programs. Pearson shall contact and advise prospective Program Students concerning e-Learning Program requirements. Pearson shall collect admissions applications and submit same for the University's consideration. University shall retain sole authority and control over all admissions decisions and other academic matters.

2.5 Student Support.

Pearson shall use commercially reasonable methods to advise, support, and retain Program Students through completion of the e-Learning Program. Pearson shall receive and promptly respond to Program Student requests for information and assistance, such response to typically be within one (1) business day. Pearson further agrees to use commercially reasonable standards to protect student data, both electronic and otherwise, from unauthorized disclosure.

2.6 Help Desk.

Pearson shall provide the technical support to Program Students, Instructors, Subject Matter Experts, and Instructors of Record concerning their access to, and use of, the Courses.

2.7 Pearson Content Products.

2.7.1 Pearson hereby authorizes University to access and use all or select components of Pearson Content Products identified in a Program Term Sheet and provide access to such Pearson Content Products to University's faculty, Program Students, and administrative staff (collectively, "Authorized Users"), solely for educational and instructional use on such terms as are specified in a Program Term Sheet. Authorized Users may access and use the Pearson Content Products only in accordance with the terms and conditions set forth in this Agreement, the applicable Program Term Sheet, and in any end-user license agreement or terms of use (each a "EULA") that may be contained in or with the Pearson Content Products. In the event of any conflict between this Agreement and an EULA associated with a specific Pearson Content Product, the terms and conditions of the applicable EULA shall prevail with respect to the use of that specific Pearson Content Product. University agrees that no other individuals or third parties shall be allowed access to the Pearson Content Products. University understands and acknowledges that use of and access to the Pearson Content Products may be subject to pending conversion or setup of the Pearson Content Products. Authorized Users may access and use the Pearson Content Products during the applicable academic term (the "Access Period"), and only in accordance with the terms and conditions set forth in this Agreement, the applicable Program Term Sheet, and any EULA contained in the Pearson Content Products. Upon completion of the Access Period, an Authorized User shall no longer have the right to access or use the Pearson Content Products in any manner. University acknowledges that the Pearson Content Products are intended solely for distribution to Authorized Users only, for their respective courses, and may not be distributed or made accessible in any manner to other students, individuals, institutions or third parties. University agrees that it will notify Authorized Users of these restrictions. Except as expressly set forth in the foregoing, all rights with regards to the products and services offered herein are reserved by Pearson and under no circumstances shall University (or its users or students) resell, publish, transfer, distribute, sublicense, provide access to, copy, adapt, translate, reproduce, modify, enhance, or use the Pearson Content Products or the content contained therein, except for permitted modifications to Pearson Content Products by University for classroom purposes, without the express written permission of Pearson. University further agrees not to remove or alter any trademark or other proprietary notice in or on any Pearson Content Product. All right, title and interest in and to the Pearson Content Products and the content, materials and data contained therein, and any derivative works thereof (whether authorized or not, including any modifications made, specifically for University or to such course offerings in general, by Pearson or any other third party (including University and its agents or representatives)), is expressly reserved by Pearson. Pearson shall not be obligated to maintain, revise, enhance or update the standardized Pearson Content Products, unless specifically agreed to in a separate writing from the Agreement. Pearson may suspend use of or access to the Pearson Content Products in connection with any violation of this Agreement or any applicable EULA. The Pearson Content Products shall only be used in conjunction with the applicable e-Learning Program and in accordance with the terms and conditions of the Agreement. Upon the expiration or termination of the applicable Program Term Sheet, University shall no longer have the right to access, use or distribute the Pearson Content Products in any manner.

2.7.2 Pearson and its licensors shall retain all right, title and interest in all Pearson proprietary information and property, the Pearson Intellectual Property, including without limitation, any modification, improvements, or derivative works thereof and whether same is created, authored, or developed pursuant to this Agreement or otherwise; Pearson Content Products;

and the Pearson Services, including all updates and enhancements, reproductions and corrections thereof and all related patent rights, copyrights, trade secrets, trademarks, service marks, related goodwill and other intellectual property. University acknowledges that the rights granted under this Agreement do not provide it with title to or ownership of the Pearson Intellectual Property or Pearson Content Products or the Pearson Services, but only a right of limited use under the terms and conditions of this Agreement and the applicable Program Term Sheet. Pearson shall also retain all right, title and interest, including all intellectual property rights therein, in and to any work product or any other work of authorship or invention conceived of, developed or created by Pearson under the terms of this Agreement or applicable e-Learning Program.

2.8 Business Administration.

Pearson will manage the day-to-day business administration of the e-Learning Programs including the following: (i) activities related to initial contact, description of the e-Learning Programs, marketing, mailing of brochures, and notification of schedule; (ii) assistance for verification of receipt of information necessary for registration; (iii) activities related to notification of deadlines, e-mail updates, mailing of registration packets; (iv) verifications of receipt of information; and (v) telephone support in the application process, processing of information, and receipt of necessary student documentation.

2.9 e-Learning Program Accounting.

Pearson shall be responsible for undertaking the financial services, transactions and for maintaining the accounting, with respect to e-Learning Program activities in accordance with Generally Accepted Accounting Principles in the United States of America to the extent such obligations are expressly set out and provided in each Program Term Sheet, which may include, without limitation, the recording, tracking and paying all business vendors and suppliers associated with the e-Learning Program other than those business vendors and expenses for which the University is responsible.

2.10 e-Learning Program and Business Funding.

Each Party shall fund and be responsible for the payment of all costs and all expenses with respect to the performance of their respective duties, responsibilities and activities assigned to each Party in this Agreement and the applicable Program Term Sheet unless otherwise specifically stated herein.

ARTICLE 3

OBLIGATIONS AND CONTRIBUTIONS OF THE UNIVERSITY

The University shall be responsible for and provide at its sole cost and expense, unless otherwise indicated in this Agreement or in a Program Term Sheet, the following obligations and services:

3.1 Program Term Sheet.

The University and Pearson shall use their reasonable efforts, on an expedited basis and in good faith, to propose, discuss, settle, agree to, execute and deliver such Program Term Sheets as may be required after the Effective Date to more particularly define the e-Learning Program(s) that will be subject to this Agreement, including all associated Course and Content requirements and specifications. Once each Program Term Sheet is agreed upon by each of the Parties, each Program Term Sheet will be signed by the Parties and become a part of this Agreement.

3.2 Content and Curriculum.

The University will be solely responsible for the development and timely delivery to Pearson of all Content. Academic programming and Content matters for all e-Learning Programs will be owned by and be the University's exclusive responsibility, and the University will make all decisions concerning each Course's Content. The University shall exercise control over, and be exclusively responsible for, the Content and quality of the Content of the e-Learning Program. The University shall undertake an annual review of each Course and provide all reasonably required improvements, revisions, additions, deletions and Content refreshment that may be required, whether due to information currency, discipline development, or any other reason related to Course quality and completeness. Pearson will incorporate such required improvements into the Courses at no additional cost to UND pursuant to the mutually-agreed curriculum plan and development schedule.

3.3 Instructor of Record.

The University shall be responsible for the review of credentials, appointment and coordination of each Instructor of Record. The University acknowledges the close relationship of the quality of the Instructors of Record and Content with the success of each e-Learning Program, and the University agrees that all Instructors of Record will have the experience, qualifications and expertise to perform their respective obligations in connection with each Course they are associated with and that the care, quality and performance of each Instructor of Record will be of a reasonably diligent and professional quality that is generally consistent with best academic and teaching practices for such academic programs in the United States. For greater certainty, the University shall be solely responsible for the engagement and compensation of all Instructors of Record, including all remuneration, benefits, statutory deductions, and remittances.

3.4 Academic Credit and Degree.

The University shall be responsible for assessing and granting all e-Learning Program accreditations, such as Course credits and degrees, to students whom the University determines have successfully completed an e-Learning Program and who otherwise satisfy the necessary academic criteria established by the University for such accreditation. For greater certainty, all Course and Program Student evaluations, performance assessments, and accreditation entitlements shall be the sole and absolute responsibility and discretion of the University.

3.5 Admissions.

The Program Director shall be responsible for determining the student capacity of the e-Learning Program, including the number of Program Students to be admitted, and the number of Course sections offered, in order to maintain the academic quality of each Course and the e-Learning Program. The University shall take all actions necessary, on an ongoing basis, to meet anticipated Program Student capacity. The University shall be responsible for (a) setting Program admission and registration criteria, and (b) all Program admission decisions.

3.6 Records.

The University will have the sole duty and responsibility to maintain all academic records in accordance with its existing contractual obligations with students, the University's policies and practices, and in compliance with all applicable laws and regulations. Upon the University's request, Pearson shall promptly provide the University with any academic records concerning this Agreement that are in Pearson's possession or under its control.

3.7 Licenses; Third Parties.

Without limiting Article 9 hereof, the University shall obtain and take all actions necessary to maintain, at its own expense, any approvals, consents, and licenses from third parties that are necessary for Pearson to perform this Agreement, and as otherwise required to develop, market, and deliver, and host the e-Learning Programs, and commercialize the Content as contemplated by this Agreement, including the procurement of all information technology and third party software necessary for Pearson to perform this Agreement, including Intellectual Property concerning the Content. Subject to the confidentiality obligations set forth herein, the University shall promptly provide to Pearson, upon Pearson's reasonable request, material information regarding the University's agreements with third parties that directly affect the e-Learning Programs and/or Pearson's rights to have access to or to otherwise possess or use such things for providing the services under this Agreement. The University shall promptly disclose to Pearson any Intellectual Property rights of faculty, including Instructors of Record, associated with any Content of which it becomes aware and which may adversely affect the ability of either Party to perform its obligations under this Agreement. Without limiting the foregoing, the University shall ensure that they have secured, in writing, all right, title, and interest (whether by license or otherwise), including necessary assignment of moral rights from all Instructors of Record or faculty for the University and Pearson to use the Content that is associated with each Course for the purposes of this Agreement.

3.8 University Domains

The University shall provide Pearson access to multiple CNAMEs off the University's main domain that points to an IP address on Pearson's server solely for the purpose of providing the services pursuant to this Agreement.

3.9 Access to University Systems

The University shall provide all Pearson employees assigned to an e-Learning Program with user names and passwords to access the University Systems without the necessity of requiring

Social Security numbers, home addresses, driver's license numbers, or other personal identifying information, other than the employee's name, the company name, and the employee's date of birth. A unique identifier may be used in lieu of the employee's name.

3.10 Content Clearance

The University shall be solely responsible for securing all third party consents, authorizations, permissions, approvals, and licenses concerning the Content that are required for Pearson to perform services under this Agreement.

3.11 Accreditation and Regulatory Compliance

The University shall take all actions necessary to comply with all applicable laws, regulations, and accrediting body standards, possess all required educational approvals and accreditations, maintain Title IV eligibility, and comply with all terms of its program participation agreement with the U.S. Department of Education then in effect. The University acknowledges and agrees that it is solely responsible for obtaining all necessary state, federal, and accrediting body approvals for all e-Learning Programs under this Agreement. The University shall take all actions necessary to obtain and maintain state authorizations and, to the extent applicable, licensure board approvals as are necessary to meet mutually-agreed Program Student enrollment goals.

3.12 Program Student Capacity

Except as otherwise provided in a Program Term Sheet hereto, the University shall take all actions necessary, on an ongoing basis, to build, develop, and/or secure sufficient advance administrative capacity to timely admit, process financial aid for, manage, and instruct anticipated Program Students. The University shall undertake reasonable measures to (a) build internal transcript evaluation capacity for prospective Program Students, with the goal of completing transcript evaluation with five (5) business days of receipt, and (b) include summer term financial aid awards in annual Program Student financial aid packaging.

ARTICLE 4

LICENSE

4.1 License to Pearson.

The University hereby grants to Pearson for the Term of this Agreement a personal, non-transferable (except as otherwise provided in this Agreement), and non-exclusive license to use, modify, revise, augment, create derivative works of, develop, produce, reproduce, manufacture, distribute, perform, display, promote, advertise, sell, and otherwise exploit the Content (and all other goods, things, information and information technology that the University shall provide Pearson pursuant to each Program Term Sheet) solely for the purposes of this Agreement and the benefit of the University, including creation of either foreign language versions or new versions of the e-Learning Program. The University further grants Pearson, for the Term of this Agreement, the world-wide, royalty-free, non-exclusive right and license to use and display the name, and non-athletic trade names and trademarks of the University (the "University Trademarks") for the

promotion, advertisement, selling and exploitation of the e-Learning Programs. ALL OTHER RIGHTS AND INTERESTS CONCERNING THE CONTENT ARE RESERVED BY THE UNIVERSITY.

4.2 License to the University.

Pearson hereby grants to the University for the Term of this Agreement a personal, non-transferable and non-exclusive license to use the Pearson Intellectual Property to perform, display, promote, advertise, sell, and otherwise exploit the e-Learning Programs that are produced pursuant to this Agreement, including any foreign language (direct translations) versions, but not for the purpose of creating or developing any derivative works or new versions of the e-Learning Program. For greater certainty, unless otherwise expressly agreed to in writing between the Parties, the University shall not (directly or indirectly) create, author, develop or produce any modifications, changes, revisions, adaptations, derivative works, alterations, deletions from, additions to, or customizations of all or any part of any Pearson property (including the Pearson Intellectual Property) or confidential information. ALL OTHER RIGHTS AND INTERESTS CONCERNING PEARSON INTELLECTUAL PROPERTY ARE RESERVED BY PEARSON.

4.3 Pearson Course Contributions.

Pearson will solely and exclusively own all right, title and interest in all Pearson Intellectual Property, whether same is created, authored, or developed pursuant to this Agreement or otherwise.

4.4 Rights to Content and Program.

Subject to Section 4.3, the University and/or the Instructor of Record, will retain all right, title, and interest in the Content and any derivative works, modifications, revisions, augmentations, or improvements that the University and/or Instructor of Record makes or creates to the original Content including trademarks, service marks and related goodwill associated with the Content.

4.5 Moral Right Assignments

The University shall secure from an author of Content that is to be included in an e-Learning Program, including Instructor of Record, the right for Pearson to use the author's likeness, name and biographical materials for the purpose of promoting and delivering that Course pursuant to this Agreement.

ARTICLE 5 **REMUNERATION**

5.1 Service Fees.

As full consideration for all of the obligations and services performed by Pearson pursuant to this Agreement, the University shall pay Pearson the service fees that are set out, and as calculable in, each applicable Program Term Sheet ("Service Fees").

5.2 Payment by University.

No later than ten (10) business days after the Drop Deadline of each semester, the University shall provide Pearson with a written statement in a form reasonably acceptable to both Parties setting forth, at a minimum, (a) the number of students enrolled in each Course, (b) the gross tuition billed to each student enrolled in a Course, (c) all deductions, if any, to be applied in the calculation of Gross Receipts, and (d) information concerning all collections, deductions, and remittances by the University ("Course Enrollment Statement"). After receipt of the Course Enrollment Statement, Pearson shall provide the University an invoice for Service Fees applicable to each e-Learning Program. The terms of payment shall be net thirty (30) days after receipt of each such invoice. Late payments will be subject to interest at the rate of 1.5% per month.

5.2 Reconciliation

In the event any information listed on a Course Enrollment Statement for a given semester has changed, the University shall provide Pearson with a corrected and updated Course Enrollment Statement by the deadline for submission of the following semester's Course Enrollment Statement. Any credits or charges resulting from such corrected and updated Course Enrollment Statement shall be reconciled on the following semester's invoice for Service Fees. The Parties acknowledge that any amounts refunded to students who have withdrawn from the University shall be taken into account in this reconciliation process.

ARTICLE 6

AUDIT

6.1 Right to Audit.

The University shall have the right, at the University's expense, to have an independent certified public accountant (the "Auditor") perform an audit (the "Audit") of Pearson's performance of its financial obligations to the University under Article 5, exercisable by at least twenty (20) days prior written notice delivered to Pearson, including providing reasonable access to Pearson's relevant financial books, records and materials regarding each e-Learning Program's financial affairs. For greater certainty, any Audit will only be conducted for the limited purpose of verifying the Service Fee that is payable by the University to Pearson hereunder. Such audit will not interfere with the conduct of Pearson's business operations. If the Audit determines that Pearson has been over compensated by any amount for such Audit period, then Pearson shall immediately repay such overcompensation to the University.

Pearson shall have the right to have an Auditor perform an Audit of the University's reporting of information affecting the Service Fee, exercisable by at least twenty (20) days prior written notice delivered to the University, including providing reasonable access to University's relevant financial books, records and materials regarding each e-Learning Program's financial affairs. For greater certainty, any Audit will only be conducted for the limited purpose of verifying the Service Fee that is payable by the University to Pearson hereunder. Such audit will not interfere with the conduct of University's business operations. If the Audit determines that the University

has been over compensated by any amount for such Audit period, then University shall immediately repay such overcompensation to Pearson.

6.2 Maintenance of Books and Records.

The Parties shall maintain and keep accessible and available all books and records relative to the obligations hereunder for inspection for the longer of: (i) three (3) years after termination or expiration of this Agreement, or (ii) such time as is required by Title IV of the Higher Education Act, as amended, or other applicable law of which the University advises Pearson in writing.

ARTICLE 7

CONFIDENTIAL INFORMATION AND NON-COMPETITION

7.1 Confidentiality.

The University and Pearson each agree to maintain the Confidential Information of the other Party in the same manner that it maintains its own confidential information, but in no event, less than a commercially reasonable standard of care. The University and Pearson each agree that any disclosure of the other Party's Confidential Information to any of its officers, employees, consultants, contractors, or agents shall be made only if and to the extent necessary to carry out its rights and responsibilities under this Agreement, shall be limited to the maximum extent possible consistent with such rights and responsibilities, and shall be made only to persons who are bound by confidentiality obligations no less restrictive than those set forth in this Agreement. Except as set forth above, the University and Pearson each agree not to disclose the other Party's Confidential Information to any third parties under any circumstance without the prior written approval from the other Party (such approval not to be unreasonably withheld), except as required in any application for regulatory approvals or as otherwise required by law. Each Party will notify the other Party in advance if disclosure is required in any application for regulatory approvals or by law, including requests under open records laws, but any additional action to prevent release or otherwise protect the Confidential Information must be undertaken by the Party in receipt of such notice at its own expense.

7.2 Publicity.

Neither Party shall disclose the terms of this Agreement that qualify as "confidential" or "exempt" under the open records laws of the State of North Dakota without the prior written consent of the other Party; provided, however, that any Party hereto may make such a disclosure to the extent required by law. Notwithstanding the foregoing, the Parties agree that Pearson may release an initial public announcement relating to the transactions contemplated by this Agreement provided that the contents of such public announcement are approved by the University, such approval to be provided within ten days and not unreasonably withheld. Any public announcement that has been previously approved by the Parties may be subsequently released without further approval. Any costs incurred for public relations in respect of this Agreement will be paid by the Party incurring the expense.

7.3 Return of Confidential Information.

Upon the termination or expiration of this Agreement for any reason, each Party shall immediately discontinue all use of the Confidential Information of the other Party. Within sixty (60) days of the termination or expiration of this Agreement for any reason, each Party shall return or destroy all the Confidential Information of the other Party, and an officer of each Party shall certify that all such materials have been returned or destroyed. Notwithstanding the foregoing, one copy of all Confidential Information may be retained in inactive archives solely for the purpose of establishing the contents thereof.

7.4 Prohibition on Solicitation.

Neither Party shall, during term of this Agreement and for a period of one (1) year thereafter, solicit any person who was employed by the other Party hereto or its affiliates during such period, whether such person is hired as an employee or consultant, unless authorized in writing by the other Party, or unless such person has not been employed by the other Party for at least twelve (12) months prior to his or her solicitation. Advertisements of open positions which are directed to the general public will not constitute a violation of this provision.

7.5 Restrictive Covenant.

During the Term, the University, as a material condition of this Agreement, shall not (a) use, commercially exploit, distribute, market, license, or otherwise allow any other person to use or have the benefit of, all or any part of, the e-Learning Program except solely and exclusively for the University's internal and non-commercial operations, or (b) indirectly or directly compete in any manner with any e-Learning Program. Notwithstanding the above, the Parties acknowledge and agree that the University may offer online courses outside the scope of an e-Learning Program developed under this Agreement.

ARTICLE 8

TERM AND TERMINATION

8.1 Master Agreement Term.

This Agreement will take effect as of the Effective Date and continue for so long as a Program Term Sheet is in effect, unless terminated earlier pursuant to Section 8.3. The initial term of this Agreement and any applicable renewal term mean the "Term."

8.2 Program Term Sheet Term.

In accordance with North Dakota State Board of Higher Education policy, the term of a Program Term Sheet hereunder shall not exceed ten (10) years. A Program Term Sheet may be renewed by mutual written consent of the Parties or as otherwise set forth in the Program Term Sheet.

8.3 Termination.

This Agreement may be terminated prior to the expiration of its Term in the following ways: (i) by mutual written consent of the University and Pearson; (ii) by one Party upon written notice to the other Party hereto in the event that (a) a Party has dissolved, ceased active business operations or liquidated, unless such dissolution, cessation or liquidation results from reorganization, acquisition, merger or similar event, or (b) bankruptcy or insolvency proceedings, including any proceeding under Title 11 of the United States Code, have been brought by or against another Party and, in the event such a proceeding has been brought against such Party, remains dismissed for a period of sixty (60) days, or an assignment has been made for the benefit of such Party's creditors or a receiver of such Party's assets has been appointed; (iii) by one Party upon default of another Party hereto in the full and timely observance or performance of a material covenant or obligation under this Agreement, upon thirty (30) days prior written notice in the case of a payment breach and sixty (60) days' prior written notice in the case of any other such breach by the other Party, which notice will specify the nature of the material default and the steps to be taken to cure such default; provided, however, that if such default is cured by the defaulting Party within such thirty (30) or sixty (60) day period, such notice of termination will be deemed withdrawn, null and void and this Agreement will not be terminated pursuant thereto; and (iv) either Party may terminate an individual Program Term Sheet upon one hundred twenty (120) days prior written notice, any time thirty (30) months after the commencement of the applicable e-Learning Program, if there are fewer than the minimum number of Program Students enrolled in the e-Learning Program designated in the applicable Program Term Sheet ("Minimum Number of Program Students") during any given non-summer academic term. In the event that all e-Learning Programs are terminated in this manner, then this Agreement will also terminate.

8.4 Termination for Non-Appropriation

To the extent the University's payment obligation under this Agreement expressly relies upon the legislative appropriation of funds, continuation of this Agreement beyond June 30 of any odd-numbered year is contingent on continued legislative appropriation of funds for the purposes of this agreement. If such appropriations are not forthcoming, University will notify Pearson as soon as possible and the Agreement will terminate on June 30 of that year. Any such termination of this agreement shall be without prejudice to any obligations or liabilities of either Party already accrued prior to such termination, including but not limited to the payment of (a) Service Fees in accordance with Article 5 and (b) Post-Termination Fees in accordance with Section 8.5 unless such obligations expressly rely upon the legislative appropriation of funds.

8.5 Termination Obligations.

Without limiting any other provisions of this Agreement, the Parties will remain liable for all obligations and will be entitled to all rights accruing prior to termination as well as those obligations and rights which survive the termination or expiration of this Agreement pursuant to Section 12.8. For greater certainty, upon termination or expiration of this Agreement, other than upon a default by Pearson pursuant to Section 8.3(iii) or as otherwise set forth in Section 8.4, Pearson will be entitled to all Service Fees earned prior to such expiration or termination and for all Service Fees that arise in connection with all Program Students recruited by Pearson for so long as such Program Students continue to enroll in online courses at the University ("Post-Termination

Fees”). University shall pay Pearson all Post-Termination Fees in accordance with the provisions of Article 5 of this Agreement governing the payment of Service Fees.

8.6 Continuing Obligations and Teach-out.

Without limiting any other provisions of this Agreement, the Parties shall remain liable for all obligations accruing prior to termination, including without limitation Service Fees earned by Pearson. At the option of the University (to be exercised by written notice to Pearson), this Agreement shall remain in effect, to complete any Courses then in progress and any reasonable transition period for then registered Program Students.

8.7 Other Relief.

8.7.1 If a Party to this Agreement fails to perform or otherwise breaches any of its material obligations under this Agreement, in addition to any right to terminate this Agreement, the non-defaulting Parties may elect to obtain other relief and remedies available under law.

8.7.2 Each Party agrees and confirms the unique, commercially sensitive and operationally critical nature of the e-Learning Programs, and all other obligations and duties under this Agreement, and each Party could be immediately and irreparably harmed by any material breach of the obligations owed by either Party to the other and that monetary relief alone for any such breach may not adequately compensate the harmed Party in such event. The Parties further agree that they will be entitled to apply for equitable relief in connection with any such breach of this Agreement, including a restraining order, injunctive relief, or specific performance as may be granted by any Court of competent jurisdiction, in accordance with Section 12.3 of this Agreement, to prevent or otherwise remedy any such expected or actual breach of this Agreement, and to enforce the terms and provisions hereof. Each Party agrees and confirms that their respective obligations of data and privacy protection and confidentiality set out in this Agreement are fiduciary duties, and that the provisions of this Section 8.7 are fair and reasonable in the commercial circumstances of this Agreement. The Parties acknowledge and agree that the provisions of this Section 8.7 are a promise that induced each of the Parties to enter into this Agreement. Such remedies shall not be deemed to be the exclusive remedies for any breach of this Agreement, but shall be in addition to all other remedies available at law or equity.

ARTICLE 9

REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 University Representations.

i. Organization. The University represents and warrants that it is duly organized, validly existing and in good standing, and has all requisite power and authority, corporate or otherwise, to conduct its business as now being conducted, and to execute, deliver and perform this Agreement.

- ii. Right to Use. The University represents that it presently has, or will have during the Term of this Agreement, permission to use (and for the Company to access, display, and use) any Content as set forth in this Agreement.
- iii. Infringement. The University represents that it has no actual knowledge that the Content infringes upon the valid Intellectual Property Rights of any third party.
- iv. Compliance with Laws. The University represents that it is in material compliance with all applicable laws, regulations, and accrediting body standards, possesses all required educational approvals and accreditations, is a Title IV eligible institution with a program participation agreement with the U.S. Department of Education presently in effect, and has no actual knowledge of any basis for the revocation or material limitation of any of its educational approvals or accreditations.
- v. Right to Services. The University represents that during the Term of this Agreement, the University will work exclusively with Pearson and with no other person or entity, and will not grant a license to the Content to any other person or entity, for the purpose of providing the services set forth in a Program Term Sheet with respect to the e-Learning Programs developed in connection with this Agreement. Nothing in this section or this Agreement shall be interpreted as preventing the University from working with third parties on programs outside of the scope of this Agreement or the Program Term Sheets hereunder.
- vi. No Legal Violation. The performance of this Agreement by the University will not violate any provision of any agreement, law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to either this Agreement, or to any provision of the University constating or charter documents.
- vii. Binding Agreement. This Agreement is a legal, valid and binding obligation of the University enforceable against it in accordance with its terms and conditions.
- viii. No Inconsistent Obligation. The performance of this Agreement by the University will not infringe, breach, contravene or detrimentally affect any other person's contractual, confidentiality or intellectual property rights, and the University does not require any authorization, consent, permission, or approval otherwise from any other person concerning the ability of the University to perform all, or any part of, this Agreement (including permitting Pearson to take possession of, use, operate, maintain, or otherwise have access to any Course, Content, information technology, or information). The University is not under any obligation to any person, or entity, contractual or otherwise, that is conflicting or inconsistent in any respect with the terms of this Agreement or that would prevent, delay, interfere with, or otherwise impede the diligent and complete fulfillment of the University's obligations hereunder.

9.2 Pearson Representations.

- i. Organization. Pearson represents that it is a corporation duly organized, validly existing and is in good standing under the laws of the jurisdiction of its incorporation and it holds the required registrations to perform its obligations hereunder.

ii. Right to Use. Pearson represents and warrants that it presently has, or will have during the Term of this Agreement, permission to use (and for the University to use) any Pearson Intellectual Property as set forth in this Agreement.

iii. Incentive Compensation – Title IV Compliance. Pearson represents and covenants that its compensation of its employees, consultants and any other persons who perform any student recruitment activities for the University under this Agreement is and will continue to be in accordance with 20 U.S.C. § 1094(a)(20), or any successor provision, and the regulations promulgated thereunder by the U.S. Department of Education, currently located at 34 C.F.R. § 668.14(b)(22). Pearson agrees to maintain, during the term of this Agreement and for a period of at least three (3) years after the expiration or termination of this Agreement, complete and accurate books and records relating to its compensation of its employees and other persons who perform any student recruitment activities for the University under this Agreement.

iv. Binding Agreement. This Agreement is a legal, valid and binding obligation of Pearson enforceable against it in accordance with its terms and conditions.

v. No Inconsistent Obligation. Pearson is not under any obligation to any person, or entity, contractual or otherwise, that is conflicting or inconsistent in any respect with the terms of this Agreement or that would impede the diligent and complete fulfillment of its obligations hereunder.

9.3 WARRANTY DISCLAIMER.

EXCEPT AS SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY WITH RESPECT TO ANY TECHNOLOGY, GOODS, SERVICES, RIGHTS OR OTHER SUBJECT MATTER OF THIS AGREEMENT, AND BOTH PARTIES HEREBY DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 10

RISK MANAGEMENT

10.1 Infringement Liability by the University.

The University's liability related to any third party claim that use of the Content in accordance with the terms of this Agreement, including moral rights pursuant to Section 4.5, infringes the Intellectual Property of such third party shall be determined in accordance with chapter 32-12.2 of the North Dakota Century Code and is subject to the conditions and limitations contained therein. If any Content or its use constitutes an infringement of any third party's Intellectual Property, the University shall at its expense and option: (1) procure the right for Pearson to continue using the Content; (2) replace the Content with non-infringing equivalent content conforming to the applicable specification required by this Agreement; or (3) modify the Content to make it non-infringing while conforming to the applicable specifications.

10.2 Infringement Liability by Pearson.

Pearson's liability related to any third party claim that Pearson Intellectual Property infringes any Intellectual Property of any third party shall be determined in accordance with Article 11 of this Agreement. If Pearson Intellectual Property or its use constitutes an infringement of any third party's Intellectual Property, Pearson shall at its expense and option: (1) procure the right for the University to continue using Pearson Intellectual Property; (2) replace Pearson Intellectual Property with non-infringing equivalent content conforming to the applicable specification required by this Agreement; or (3) modify Pearson Intellectual Property to make it non-infringing while conforming to the applicable specifications.

10.3 Notice of Infringement.

Each Party shall inform the other promptly in writing of any alleged infringement of an Intellectual Property Right relating to an e-Learning Program by a third party and of any available evidence thereof.

10.4 Right to Assume Litigation Defense.

Each Party will have the right, but not be obligated, to defend and litigate at its own expense any infringement claim to which it may be liable under this Article 10.

10.5 Cooperation.

The indemnified Party shall fully cooperate and assist in all respects with the defense of any such intellectual property infringement claim, including to testify when requested and to make available all relevant records, papers, information, samples, specimens, and the like.

10.6 Limitation and Exclusion of Liability.

Except as otherwise agreed in Sections 10.1 and 10.2 hereof and for any breaches of Sections 5.1, 5.2, 5.3, 8.3, 8.4, 9.1, and 9.2, and subject to section 32-12.2-15 of the North Dakota Century Code, the Parties agree and confirm that: neither Party will, in any circumstance, be liable, responsible or obligated for any indirect, third party, consequential, special or punitive liability, damages, compensation, award, loss, harm, injury, cost or expense whatsoever regardless of the cause of action for same arose, including contract, tort, negligence, common law, equity, statute or otherwise.

10.7 Insurance.

During the Term, Pearson shall obtain and maintain insurance issued by a company authorized to provide insurance in the United States of America, in the following kinds and amounts:

10.7.1 Commercially reasonable worker's compensation and employer liability, covering all employees on or off the work site, acting within the course and scope of their employment.

10.7.2 Insurance for bodily injury and property damage as listed below:

Commercial General Liability with:

\$1,000,000 per occurrence

\$1,000,000 personal injury

\$2,000,000 general aggregate

10.7.3 Commercial automobile insurance with coverage of \$1,000,000 Combined Single Limited Liability including hired and non-owned.

10.7.4 Pearson shall provide a certificate of insurance to the University to confirm the existence of the insurance coverage that is required pursuant to this Section 10.7. Further, Pearson shall inform the University should there be a termination of, or material change in, the coverage.

ARTICLE 11

DISPUTE RESOLUTION

11.1 Informal Resolution Attempts.

In the event of any dispute arising between the Parties in connection with this Agreement, the Parties shall attempt to amicably resolve the dispute, including through escalation of the matter to a senior representative or senior representatives of each Party.

11.2 No Mandatory Alternative Dispute Resolution.

In the event that the dispute is not resolved through informal resolution attempts, the Parties may, upon mutual agreement, refer the dispute to mediation or arbitration. Absent such an agreement to use alternative dispute resolution, the Parties shall have the right to bring legal action to pursue available remedies. Neither Party waives any right to a jury trial.

ARTICLE 12

GENERAL PROVISIONS

12.1 Relationship of the Parties.

The relationship between the Parties is limited solely to that of independent contractor. Nothing in this Agreement will be construed to create or imply a partnership, agency, employer/employee, or other legal relationship between the Parties. Either Party may utilize the products and/or services of third party contractors in connection with the performance of services under this Agreement without the written consent of the other Party.

12.2 Entire Agreement.

This Agreement, together with the Program Term Sheets, constitutes the entire agreement and understanding between the Parties relating to the subject matter of this Agreement and

supersedes all prior agreements, conditions, warranties, representations, arrangements and communications, whether oral or written, with respect to the subject matter hereof.

12.3 No Waiver.

The waiver by either Party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach. A waiver will be effective unless it is in writing and signed by the Party giving it, and no such waiver will constitute a waiver for any other provisions, whether or not similar.

12.4 Time of the Essence

The University's time-related obligations herein are of the essence in the performance of any obligation or duty to the extent any time requirements are specifically set forth in this Agreement or an e-Learning Program Term Sheet.

12.5 Currency.

All references to currency in this Agreement are to US Dollars.

12.6 Severability.

If any portion of this Agreement is held to be illegal, invalid or inoperative then so far as is reasonable and possible: (i) the remainder of this Agreement will be considered valid and operative; and (ii) effect will be given to the intent manifested by the portion held invalid or inoperative.

12.7 Amendments

This Agreement and any Program Term Sheet hereto may be modified only upon the mutual written consent of Pearson and the University.

12.8 Compliance with Law.

The Parties agree that this Agreement and all activities in any way relating to it shall be conducted in compliance with applicable laws. Pearson agrees to comply with FERPA and its implementing regulations, in carrying out its obligations under this Agreement and shall be liable for any costs and expenses that arise out its failure to do so. For purposes of this Agreement, Pearson will be deemed to have acted in compliance with FERPA if it acts in accordance with the University's FERPA policies and practices.

12.9 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of North Dakota, without regard to its law governing conflict of laws.

12.10 Further Assurances.

The Parties shall execute such other documents or perform such acts as may be reasonably necessary to give effect to the intentions expressed in this Agreement.

12.11 Notices.

Any notice to be given to the University or Pearson under the terms of this Agreement may be delivered personally, by fax or other form of written electronic transmission, or by registered or certified mail, postage prepaid, and shall be addressed as follows:

If to Pearson: Pearson Online Learning Services
2145 MetroCenter Blvd., Suite 400
Orlando, FL 32835-7632

Attention: Pearson Legal Department

If to the University: Jeff E. Holm, Ph.D.
Faculty Fellow, Academic Affairs
Chairperson & Professor, Dept. of Psychology
Senior Research Scientist, Center for Health Promotion &
Prevention Research
University of North Dakota

Columbia Hall, Room 2000
501 N. Columbia Rd, Stop 8380
Grand Forks, ND 58202-8380

O: 701.777.3792 | D: 701.777.3451
O: 701.777.5964 | F: 701.777.3454

A Party may hereafter notify another in writing of any change in address. Any notice shall be deemed duly given (i) when personally delivered, (ii) when faxed or transmitted by other form of written electronic transmission (upon confirmation of receipt) or (iii) on the third day after it is mailed by registered or certified mail, postage prepaid, as provided herein. The provisions of this section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court shall govern.

12.12 Assignment.

Neither Party may assign this agreement without first obtaining the written consent of the other Party, which may not be unreasonably withheld, except that Pearson may assign this Agreement, including all licenses granted hereunder, to an affiliate or subsidiary.

12.13 Counterpart Execution.

This Agreement may be executed in any number of counterparts and may be maintained in electronic form with the same effect as if all Parties hereto have signed the same document. All counterparts will be construed together and constitute one Agreement.


12.14 Survival.


Notwithstanding any provision herein to the contrary, the rights and obligations set forth in Articles 3, 7, 9, 10 (except for Section 10.7) and 11, and Sections 4.3, 5.3, 8.4, 8.5 and 8.6 shall survive the expiration or termination of this Agreement.

The Parties have entered into this Agreement as of the Effective Date.

**Embanet-Compass Knowledge Group
Inc.**

University of North Dakota

By: 
Iwan Streichenberger (Mar 2, 2018)
Iwan Streichenberger
Managing Director
Pearson Online Learning Services

By: 
Mark Kennedy
President

Date: Mar 2, 2018

Date: 02-28-2018

