

SUBSCRIPTION AGREEMENT
For Navvy, Navvy +, PRoPL, and Schoolnet Product(s)

NCS Pearson, Inc., the provider of the above referenced products and services, is referred to herein as “Pearson.” The school, school district or other institution using the Pearson Services is referred to herein as “Customer.” Pearson and Customer may each be referred to herein as a “Party” and collectively as the “Parties.” This Subscription Agreement is part of and incorporated into the Order executed by Pearson and the Customer. By using, registering, displaying, or accessing the Services in any way, Customer agrees to the terms of this Agreement.

1. DEFINITIONS. The following terms when capitalized herein shall have these agreed-upon meanings:

1.1. Agreement means this Subscription Agreement, the Order, and any other document incorporated by reference by this Subscription Agreement and/or the Order.

1.2. Authorized Sites means the authorized schools and/or district sites for which Customer has paid the applicable fees for the Pearson Services and at which Customer is authorized to utilize the Pearson Services, as specified in this Agreement or otherwise in writing by Pearson.

1.3. Authorized Users means those users whom Customer has authorized to utilize Pearson Services, including but not limited to the students enrolled at Customer’s institution, Customer’s employees and administrators, and/or other Customer personnel and/or agents authorized to access the services hereunder.

1.4. Customer Data means student-specific educational records, customer-owned test items, student responses, score report data either provided by Customer through the use of Pearson Services or generated by Pearson Services on behalf of Customer. Customer Data does not include Resultant Data, the survey data under section 12.1, and the aggregated and/or de-identified Student Information data used for research, evaluation and product improvement purposes under Section 3.3.

1.5. Documentation means all written user information, whether in electronic, printed or other format, delivered or made available to Customer by Pearson with respect to Pearson Services, now or in the future, including instructions, manuals, training materials, and other publications that contain, describe, explain or otherwise relate to Pearson Services

1.6. Embedded Applications means software developed by third parties that may be embedded in or bundled with the software developed by Pearson as part of Pearson Services.

1.7. Errors shall mean a reproducible failure of Pearson to operate in accordance with its then-current Documentation, despite the proper installation and use of Pearson Services in a proper operating environment and on hardware and system software sufficient to meet Pearson’s then-current minimum requirements, which are subject to change as Updates are released. User mistakes are not Errors within the meaning of this Agreement.

1.8. Fix shall mean a patch, service pack or corrective update of Pearson Services that Pearson may prepare in its discretion on an interim basis, prior to issuance of a New Version, to correct programming Errors that prevent or obstruct normal operation of Pearson Services in accordance with the applicable then-current Documentation.

1.9. Improvements means any derivatives, customizations, corrections, fixes, enhancements, updates or other modifications to Pearson Services, whether made by Pearson, Customer, or any third party.

1.10. Instructional Resources means the instructional resources in Pearson’s Learning Library, accessible by Customer and Authorized Users as part of the Services, if applicable.

1.11. Item Bank means any item bank licensed to Customer by Pearson, including, without limitation, any individual items, materials associated with such items such as reading passages and graphics, and scoring materials contained within or associated with the Item Bank.

1.12. Order means the order form, statement of work, proposal, or other documentation that details the specific Pearson Services that Pearson will be providing to Customer under this Agreement.

1.13. Pearson Confidential Information shall mean any Pearson trade secrets, know-how, or any other secret or confidential information, knowledge or data of Pearson. Such Pearson Confidential Information shall include, but not be limited to any of the following, whether in oral, written, or other tangible form: (i) Pearson Products and Pearson Platforms; (ii) Pearson's financial plans, financial projections, product strategies, non-public product offerings, product or service specifications, scope or method of providing services, customer names or lists, target or actual markets for products or services, software code or functionality, product or service developments, processes, designs, research, marketing methods or distribution plans, information security information and documentation, whether or not marked or designated as confidential by Pearson; (iii) any other information which Pearson designates as confidential at the time of disclosure or within a reasonable time after and any information that, due to the nature of the information and the circumstances of disclosure, a reasonable person would understand to be the Confidential Information of Pearson.

1.14. Pearson Platforms shall mean Pearson's proprietary assessment software that may be used by Pearson to deliver the Services and which Customer and their Authorized Users may access as part of the Services. The software is hosted by Pearson and access is provided to Customers as a service. These include but are not limited to TestNav, ABBI, ABIGAIL, OSCAR, ADAM, EMMA, RADAR, LaunchPad, Spotlight, Family Portal, and/or PearsonAccess Next.

1.15. Pearson Products means Pearson's proprietary assessment product solutions including but not limited to Schoolnet, Navy, Navy+, PRoPL, and the Pearson Item and/or Asset Bank (PIB & PAB).

1.16. Pearson Services means the Pearson Products and Pearson Platforms (including Embedded Applications and Third-Party Materials), professional and Support Services as may be reasonably required to enable the Customer to utilize the Pearson Products and Pearson Platforms and/or as may be set forth in the Order (including to host, manage, operate and maintain the Pearson Services, for remote electronic access and use by Customer and its Authorized Users), Item Banks, Instructional Resources, and all related Documentation provided to Customer, pursuant to this Agreement and as specified in the Order now or in the future. Pearson Services shall not include any Third Party Software.

1.17. Resultant Data means information, data and other content that is derived by or through the Pearson Services from processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further processing of such information, data or content. For the avoidance of doubt, this includes, but is not limited to, statistical insights, performance metrics and other derived information related to user interactions, survey, and assessment responses.

1.18. Student Information means all personally identifiable information concerning and related to Customer's students.

1.19. Third-Party Materials means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Pearson Services that are not proprietary to Pearson.

1.20. Third-Party Software means any software product designated as Third-Party Software by Pearson, and any related documentation supplied to Customer. Any product designated as Third-Party Software is licensed by an entity other than Pearson, under different license terms than those set forth herein. Third Party Software is different from Embedded Applications in that Pearson licenses the Embedded Applications to Customer as part of Pearson Services (but in some cases, such Embedded Applications may be subject to additional license terms as identified herein). Pearson is not the licensor of Third-Party Software.

1.21. Updates shall mean an updated version of Pearson Services issued by Pearson, which may include Fixes, together with such other modifications, updates, enhancements and improvements to Pearson Services that Pearson may, in its discretion,

develop and deem ready for distribution and that Pearson standardly provides to all customers with an active agreement for such Pearson Services.

2. ACCESS RIGHTS.

2.1. Scope. During the Term, solely for use by Authorized Users, and subject to the terms and conditions of this Agreement, Pearson grants to Customer a limited, non-exclusive, non-transferable, non-assignable right to access and use the Pearson Services by their Authorized Users for internal business purposes. Such access shall be for the Term, and will automatically renew based on the language in 2.3. In no event may the Pearson Services be: (a) used other than at the Authorized Sites; or (b) made available via a network or otherwise to any school, school district or third party other than the Authorized Sites. The access and use rights provided hereunder do not grant any rights not explicitly expressed. Customer will not: (a) make copies of or otherwise reproduce any component of the Pearson Services, except as expressly provided in this Agreement; or (b) transfer, assign, provide, or otherwise make Pearson Services available to any other party without the prior written consent of Pearson. Any attempted sublicense, assignment or transfer of the Pearson Services or of any rights, duties or obligations by Customer in violation of this Agreement shall be void. The Pearson Services shall only be used as expressly authorized by this Agreement. Customer shall be responsible and liable to Pearson for Authorized Users access and use of the Pearson Services and any violation of this Agreement by any Authorized Users.

2.2. Item Bank and Instructional Resources Specific Terms. Notwithstanding anything in this Agreement to the contrary, Customer expressly acknowledges that its license to any Item Bank and Instructional Resources shall be solely for the term set forth on Pearson's Order, to Customer and will in no event be perpetual. Subject to the terms and conditions of this Agreement, Customer is granted a limited, non-exclusive, non-assignable, non-transferable license to access and use the content contained in any Item Bank and/or Instructional Resources solely for the Customer's internal use for no more than the number of Customer students as set forth in the Order. All rights, licenses, and privileges not expressly granted to the Customer under this Agreement shall remain exclusive to Pearson and/or its third parties. In addition, Pearson will have the right throughout the license term to modify, and to delete or require the deletion by Customer of specific items and/or passages from the Item Bank, or modify or delete the Instructional Resources, at Pearson's sole discretion. The Customer may not use the items in any Item Bank for either high stakes state assessments or for college admissions test preparation.

2.3. Term Renewal. All term-based subscriptions for Pearson Services shall be renewed for successive periods unless stated elsewhere in the Order, or either party provides written notice of non-renewal to the other party at least thirty (30) days prior to the end of the then-current term. If no notice of non-renewal is given by either party, Pearson will invoice Customer for the applicable renewal fees for the subsequent term. If Customer pays the applicable renewal fees, then the Agreement term will renew for the applicable renewal term stated on Pearson's renewal invoice; otherwise, specified term-based access to Pearson Services will terminate at the end of Customer's current Agreement term.

2.4. Copies. Customer shall not make copies of or otherwise reproduce any Pearson Services, except that Customer may make printed copies for Customer's internal use of any Documentation delivered by Pearson to Customer. The number of copies of Documentation created shall only be what is necessary to allow Customer to fully access or utilize the Pearson Services. Customer shall retain and include all of Pearson's or any third parties' copyright and other proprietary rights notices on all copies of the Documentation and other Pearson Services. Customer shall not otherwise reproduce Pearson Services.

3. PROPRIETARY RIGHTS.

3.1. Pearson's Intellectual Property Rights. The Pearson Services are proprietary to Pearson and/or third parties and are protected by copyright, trade secret, and other intellectual property rights. The placement of a copyright notice on any portion of the Pearson Services does not mean that such portion has been published and will not derogate any claim of trade secret protection for the same. Title to all complete or partial copies, and all applicable rights to copyrights, patents, trademarks and trade secrets in Pearson Services, are and shall remain the property of Pearson or their other owners, as applicable. Pearson owns or licenses all intellectual property and proprietary rights in and to the Pearson Services, now or hereinafter existing, and any Improvements and Updates to the Pearson Services, whether made by Pearson, Customer, or by any third party. Except as set forth herein, Customer has no right, title or interest in or to the Pearson Services. Customer shall not (and shall not permit any

employee, contractor or other party to) (i) do anything to infringe upon, harm or take any action contrary to, or that would diminish or contest the validity of, any ownership rights in the Pearson Services; (ii) remove or alter any copyright, trademark or patent notices that appear on any portion of the Pearson Services; (iii) copy, rent, lease, sublicense, distribute publicly, modify, or create derivative works of the Pearson Services or otherwise commercially exploit the Pearson Services; or (iv) reverse engineer, decompile, disassemble or otherwise reproduce Pearson Services. Customer's rights in Pearson Services will be limited to those expressly granted herein, and Pearson reserves all rights not expressly granted in this document.

3.2. Customer's Intellectual Property Rights. Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Student Information and Customer Data, subject to the rights and permissions granted in Section 3.3. Customer shall be the owner of all copyrights, patent rights and other intellectual property rights in any data, documentation, reports or other deliverables created specifically for and paid for by Customer pursuant to this Agreement or any associated statement of work entered into by the Parties ("Deliverables"). Customer shall, during the term of this Agreement, have a paid-up, royalty-free license to use the Documentation for Customer's internal use only, solely for the purpose for which such Documentation were provided. Nothing in this Agreement shall prevent Pearson from providing the Documentation to Pearson's other customers or third parties. Notwithstanding the foregoing, Pearson acknowledges and agrees that any Customer Confidential Information, Student Information and/or Customer Data that is incorporated into any Deliverable remains subject to the provisions of this Agreement.

3.3. Consent to Use Student Information and Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Student Information and Customer Data: (a) to Pearson, its subcontractors, and the Pearson employees as are necessary and/or useful to perform the Pearson Services, including without limitation to summarize results, conduct psychometric analyses, evaluations, and studies of alignment, validity, efficacy, fairness, impact, and comparability; and (b) to Pearson as is necessary or useful to enforce this Agreement and exercise its rights and perform its duties hereunder. Customer also grants Pearson all such rights and permissions to use Resultant Data, and aggregated and/or de-identified Student Information for research, evaluation, and product improvement purposes. In addition, Customer grants Pearson all such rights and permission to publish and publicly share such results from this research and evaluation, provided no student personally identifiable information will be shared publicly.

3.4. Customer's Confidentiality Obligations. Customer agrees to keep the Pearson Confidential Information confidential and to prevent unauthorized disclosure or use of Pearson Confidential Information in Customer's possession. Customer agrees that the terms of this Agreement, including all pricing for the Pearson Services, shall be kept strictly confidential and not disclosed to any third party without the prior written consent of Pearson; provided, however, that Pearson's consent shall not be required if Customer is required to disclose the provisions of this Agreement in order to comply with applicable public records laws. In addition, Customer acknowledges that the pricing for the Pearson Services and information provided by Pearson related to Pearson's information security measures are Pearson trade secrets and are exempt from disclosure under applicable law. Customer shall notify Pearson immediately in writing of any unauthorized use or distribution of Pearson Confidential Information of which Customer becomes aware and shall take all steps necessary to ensure that such unauthorized use or distribution is terminated. For any Pearson Services for which Pearson makes available passwords or other user identification technology to access such Pearson Services, Customer shall advise all users of such passwords or other user identifications that such passwords or user identifications must be maintained in confidence and not transmitted or shared.

3.5. Pearson's Confidentiality Obligations. Pearson acknowledges that all Student Information and Customer Data constitutes Customer's Confidential Information and agrees to use commercially reasonable efforts to maintain the confidentiality of such information that is disclosed to it in connection with the Pearson Services and to use such Customer confidential information solely for the purposes of performing the Pearson Services. For purposes of this Section, Customer's confidential information shall not extend to any information that: (a) is or becomes publicly known through no fault or negligence of Pearson; (b) is or becomes lawfully available from a third party without restriction; (c) is independently developed by Pearson; or (d) is disclosed without restriction by Customer to any third party at any time.

3.6. Modifications. Customer shall not, and shall not allow any third party to, modify, decompile, disassemble or reverse engineer Pearson Services or otherwise attempt to discover source code, object code, or underlying structure, ideas, or algorithms for the Pearson Services by any means without Pearson's express written authorization.

4. SERVICES.

4.1. Support Services. If indicated in the Order, Pearson (or an entity under contract with and authorized by Pearson to provide Support Services as defined below) will provide Support Services for the Pearson Services during the Term or for a time as otherwise documented in the Order for the Pearson Services. “Support Services” may include: (a) telephone, e-mail, and/or chat support; (b) remote diagnosis and access tools; (c) access to an online support website, as maintained by Pearson for customers maintaining a current support subscription; (d) Fixes, as developed and made generally available by Pearson in its discretion to address Errors that Customer is experiencing in using Pearson Services; and (e) Updates, as developed and made generally available by Pearson. Support Services shall be available during regular business hours (8:00am – 5:00pm CST) Monday through Friday, excluding holidays. Pearson shall not be required to provide in-person Support Services and shall use remote diagnosis tools to deliver Support Services. To receive Support Services, Customer authorizes Pearson’s use of remote diagnosis tools and access to Customer’s computers and networks. In order to receive Support Services described herein, Customer may be required to purchase appropriate training regarding the use and operation of Pearson Services. Telephone, e-mail, and chat support may be limited to a specified number of authorized representatives of Customer who have been appropriately trained.

4.2. Professional Services. In addition to providing any agreed upon Support Services during the Support Term, Pearson will perform such other professional services, including, without limitation, training, installation, consulting, and project management services, as may be specified in the Order, and/or as may be subsequently agreed upon by the Parties; provided that Pearson may, at its option, arrange for any such services to be performed by another entity on behalf of Pearson. Customer agrees to pay for such services at the rates and charges specified in the Order, at the rates agreed upon in writing by Customer and Pearson for such subsequent work. Pearson reserves the right to require a purchase order or equivalent documentation from Customer prior to performing any services, or to require prepayment of certain services. Unless otherwise specified, all rates quoted are for services to be performed during Pearson’s normal business hours; additional charges may apply for evenings, weekends or holidays. If included in the Order, Customer shall also pay Pearson for travel expenses (lodging, meals, transportation and other related expenses) incurred in the performance of services. All such additional charges will be due and payable concurrently with payment for services. Pearson reserves the right to impose a minimum labor charge for each on-site visit. In the event that Customer pays in advance for any services, all services must be scheduled and delivered within twelve (12) months of such payment, unless otherwise agreed in writing by Pearson; any portion of any prepaid services amount that has not been used by Customer toward services actually rendered within such twelve (12) month period shall be forfeited. Customer shall pay a cancellation charge equal to fifty percent (50%) of the services fee and any non-refundable expenses incurred by Pearson if Customer cancels any scheduled professional services less than fourteen (14) days before the occurrence of any service dates that Pearson has scheduled at Customer’s request.

4.3. Training. Pearson reserves the right to limit the number of persons permitted to attend any training class in accordance with Pearson’s training standards.

4.4. Artificial Intelligence.

4.4.1. Utilization of Artificial Intelligence. Except where expressly prohibited and mutually agreed to in writing, Pearson may from time to time in its discretion utilize proprietary and/or third-party artificial intelligence (AI) systems, including generative AI (together, “AI”) in the creation or delivery of the Services, and/or may provide Customer access to AI-powered features within the Services if enabled and/or purchased by Customer (e.g. Navy Writing). Unless expressly approved by Customer, Pearson will not input any Customer Data or Customer Confidential Information into any public AI model or system or input this information into any non-public AI system for purposes of model training, fine tuning, or model improvement. Except where necessary to deliver the specific AI Services that Customer has enabled and/or purchased, Pearson will not input any Student Information into any artificial intelligence model or system without Customer approval.

4.4.2. Disclosure and Disclaimer. Customer understands and acknowledges that AI can be prone to errors, hallucinations, and other issues affecting the accuracy of the output information, and the output may be inaccurate, incomplete, prone to bias, or otherwise unpredictable. For AI Services and/or features provided by Pearson, including but not limited to Navy Writing, Customer acknowledges that all AI generated output should be reviewed by

Customer for accuracy before any further use and should not be used to make any fully automated decisions. Customer is solely responsible for ensuring final human review of any AI output resulting from the AI Services, including but not limited to responsibility for using the AI output in connection with any decisions that may have legal, educational, and/or other significant effects on Customer, Students, and other Authorized Users. Pearson does not warrant or guarantee that the AI Services are free from bias or errors, and Customer acknowledges its responsibility to monitor for and address any potential bias in relation to Customer's specific use. Without limiting any other disclaimer of warranty or liability set forth in this Agreement, Pearson expressly and specifically disclaims any liability, responsibility, and/or guarantee whatsoever regarding the outputs of the AI Services. To the maximum extent permitted by applicable law, all use of any AI Services is at Customer's own risk.

5. FEES AND TAXES. Customer agrees to pay Pearson, in accordance with Pearson's invoice terms, the fees charged for the Pearson Services, together with any other charges made in accordance with this Agreement, and all applicable sales, use or other taxes or duties, however designated, except for taxes based on Pearson's net income. If Customer claims tax exempt status, Customer agrees to provide evidence of such tax exemption upon Pearson's request. To the extent that such tax exemption cannot be properly claimed or does not extend to certain taxes or transactions, Customer shall be responsible for any and all taxes and assessments that arise from this Agreement and related transactions (except for taxes based upon Pearson's net income). Customer shall pay a monthly charge of 1.5% (18% annually) on all amounts not paid when due, or, if a lower maximum rate is established by law, then such lower maximum rate. All pricing is in United States dollars unless otherwise specified.

6. THIRD PARTY SOFTWARE LICENSE TERMS; EMBEDDED APPLICATIONS; OPEN SOURCE SOFTWARE. Any software designated by Pearson as Third Party Software is provided to Customer pursuant to a separate license agreement between Customer and the third party supplier, which will be provided to Customer by the third party supplier. All support, warranties, and services related to Third Party Software are provided by the supplier of the Third Party Software under such third party's terms and conditions, and not by Pearson, unless otherwise specifically provided under this Agreement. Only Sections 5, 6, 7, 8, 9 and 10 of this Agreement apply to Third Party Software and any related support and services set forth in this Agreement. In addition, the Pearson Services may contain Embedded Applications. If any Embedded Applications require additional license terms, Pearson will make such terms available to Customer and Customer shall comply with such terms with respect to such applications. Certain Embedded Applications may also be subject to "open source" licensing terms. In some cases, the open source licensing terms may conflict with portions of this Agreement, and to the extent of any such conflict, the open source licensing terms shall govern, but only as to the software components subject to those terms. Notwithstanding the foregoing, Customer acknowledges that if any open source software component is licensed under terms that permit Customer to modify such component, and if Customer does so modify such component, then Pearson will not be responsible for any incompatibility with such modifications and the remainder of the Pearson Services.

7. COMPATIBLE PLATFORMS/HARDWARE. Customer is responsible for obtaining and maintaining an appropriate operating environment with the necessary hardware, operating system software and other items required to use and access the Pearson Services. Pearson will not be responsible for any incompatibility between the Pearson Services and any versions of operating systems, hardware, browsers or other products not specifically approved by Pearson for Customer's use with the Pearson Services. Pearson will make written requirements available to Customer at Customer's request.

8. DISCLAIMER OF WARRANTIES. PEARSON SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND PEARSON AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PEARSON DOES NOT WARRANT THAT THE FUNCTIONALITY CONTAINED IN THE PEARSON SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF THE PEARSON SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE PEARSON SERVICES WILL BE CORRECTED. FURTHERMORE, PEARSON DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE PEARSON SERVICES IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. CUSTOMER AGREES THAT THE USE OF PEARSON SERVICES IS AT CUSTOMER'S OWN RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PEARSON OR A PEARSON REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT FULLY APPLY TO CUSTOMER.

9. LIMITATION OF LIABILITY. PEARSON SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR FOR CLAIMS OF A THIRD PARTY; ARISING OUT OF THIS AGREEMENT, PEARSON SERVICES, THIRD PARTY SOFTWARE, THIRD PARTY MATERIALS, SUPPORT SERVICES, OR OTHER ITEMS PROVIDED, OR THE USE OR INABILITY TO USE ANY OF THE FOREGOING, EVEN IF PEARSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ARISING OUT OF THIS AGREEMENT, CUSTOMER SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY CUSTOMER TO PEARSON HEREUNDER IN THE PREVIOUS TWELVE MONTHS FOR THE APPLICABLE PEARSON SERVICES, ITEM OR SERVICE ON WHICH THE CLAIM IS BASED.

10. INDEMNIFICATION.

10.1 Customer Indemnification. To the fullest extent permitted by law, Customer shall indemnify and hold harmless Pearson, its affiliates, employees, officers, directors, and its licensors from and against any loss, damage, liability, claim or expense resulting from third party claims that: (a) any information or content (including any link to any website) input into, posted to or maintained on any Pearson Product or Pearson Platform by Customer or its Users or by Pearson at Customer's request or direction (collectively, "Customer Content") infringes or violates any patents, copyrights or other intellectual property rights of a third party, or that such Customer Content is indecent, obscene, libelous, slanderous or illegal; (b) Customer's use of the Pearson Services in an unlawful manner or in violation of this Agreement; or (c) any breach of Customer's obligations under this Agreement.

10.2 Pearson Indemnification. Pearson will hold Customer harmless and indemnify Customer against any third party claim that the Pearson Services, in the form delivered by Pearson to Customer, infringes or violates any valid United States copyrights of a third party existing at the time of delivery; provided that Pearson must be given prompt, written notice of the claim and allowed, at its option, to control the defense and settlement of any such claim. Pearson's obligations under this Section do not apply to any infringement arising out of the use of the Pearson Services in combination with systems, equipment or computer programs not supplied by Pearson), or any modification of the Pearson Services. In addition, if Customer's use of the Pearson Services is restricted as the result of a claim of infringement, Pearson shall, at its option, either: (a) substitute other equally suitable products or services; (b) modify the allegedly infringing portion of the Pearson Services to avoid the infringement; (c) procure for Customer the right to continue to use such Pearson Services free of the restrictions caused by the infringement; or (d) take back such Pearson Services, refund to Customer the services fee previously paid.

11. DATA PROCESSING AND SECURITY

11.1. Compliance with Laws. Each Party shall comply with all applicable data protection legislation applicable to it in its respective processing of Student Information or other personal data under the Agreement. The Parties acknowledge and agree that with respect to Student Information and any other personal data Pearson may process as part of the provision of Pearson Services, Customer is the data controller, and Pearson is the data processor and shall process personal data strictly on behalf of the Customer for the purposes described in this Agreement or as otherwise agreed to in writing by the Parties.

11.2. Notices and Consents. Customer shall provide all notices and collect consents required under applicable data protection legislation from the data subjects (or, where necessary, to and from their parents) to share the Student Information with Pearson for Pearson to process the Student Information for the Pearson Services in accordance with the terms of this Agreement. Customer represents and warrants on an ongoing basis that it has obtained and will maintain the applicable notices and consents for the Student Information through the term of this Agreement.

11.3. Data Transfers. Pearson is located within the United States and is subject to U.S. law. If you are located outside of the United States, as part of the provision of Pearson Services, your Student Information, Authorized User Information, and other Customer Data will be transferred by and to Pearson and our third-party vendors in the U.S. only to facilitate the purpose for which it was collected and as provided herein. For transfers of information from the European Union, the United Kingdom, and Switzerland, we rely on appropriate transfer mechanisms, including but not limited to, Standard Contractual Clauses and

performance of contract. Customer agrees to work with Pearson, the data processor, to complete any required documentation or additional agreements to comply with applicable laws as it relates to data protection requirements and transfers of personal data.

11.4. Security of Customer Data. Pearson shall implement, maintain, and use appropriate technical and organizational security measures to preserve the confidentiality, integrity, and availability of Customer Data.

12. ADDITIONAL DATA USE.

12.1. Survey Data. If Customer chooses to authorize, Pearson may collect feedback from users (students, teachers, and administrators) through survey items or quick feedback interactions (e.g., thumbs up/down button) to examine how the system is used and how it impacts users' actions, beliefs, and opinions when using Pearson Services. Users may opt-out of surveys. No personally identifiable information will be saved as part of this survey feedback. Any related Student Information will be de-identified and/or aggregated. Customer hereby acknowledges that Pearson is the owner of this feedback, that Pearson may use this feedback along with assessment data for purposes, not limited to, product improvement, summarizing results, conducting psychometric analyses and evaluations, and conducting studies of validity, efficacy, impact, and comparability, and that these findings may be shared publicly in reports, presentations, and publications.

12.2. Additional Assessment Data. If Customer chooses to provide to Pearson, Pearson may collect additional local assessment data (e.g., interim assessment data) and/or state assessment data from the Customer for analyses for purposes of providing the Services, including summarizing results, conducting psychometric analysis and evaluations, and conducting studies of validity, efficacy, impact, and comparability. Customer hereby acknowledges that Pearson may use and share these findings publicly in reports, presentations, and publications with the Customer and with other third parties. No Student Information will be shared. All Student Information will be de-identified and/or aggregated.

13. TERMINATION.

13.1. Termination for Breach. Pearson shall have the right to suspend performance under this Agreement in the event that Customer is in breach of any of its obligations under this Agreement. In addition, either Party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other Party, in the event the other Party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period, provided that Pearson shall have the right to terminate this Agreement immediately upon written notice in the event that Customer breaches any of its obligations under Section 3. Customer further acknowledges that, as breach of the provisions of Section 3 could result in irreparable injury to Pearson, Pearson shall have the right to seek equitable relief against any actual or threatened breach thereof, without proving actual damages.

13.2. Termination for Convenience. Either party may at any time and without cause terminate this Agreement by giving thirty (30) days' written notice of termination to the other party. Upon such termination, Customer shall pay Pearson for all Pearson Services rendered and expenses incurred by Pearson up to the effective date of termination. Customer shall not be entitled to a refund of any pre-paid fees.

13.3. Effects of Expiration or Termination. In the event of any expiration or termination of all or any portion of this Agreement, Customer shall not be relieved of any obligation to pay any sums of money that have accrued prior to the date of termination or expiration. In addition, the provisions of Sections 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, and 15 shall survive termination or expiration of this Agreement. Immediately upon any expiration or termination of this Agreement, Customer shall immediately cease all use of the Pearson Services, and at its own expense, either return to Pearson or destroy all copies of the Pearson Confidential Information and Documentation, and shall forward written certification to Pearson that all such copies of such Pearson Confidential Information and Documentation have either been destroyed or returned to Pearson. Customer acknowledges that use of the Pearson Services and all modifications and derivative works thereof after termination of the Agreement is strictly prohibited and would constitute infringement of Pearson's and/or our third parties' proprietary rights. Immediately upon any expiration or termination of this Agreement, Pearson shall cease all use of any Customer Data or Customer's Confidential Information and (i) promptly return to Customer, and/or at Customer's written request destroy, all Customer Data and

Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Pearson directly or indirectly controls within a reasonable time following termination or expiration, provided that, for clarity, Pearson's obligations under this Section 13.3 do not apply to any Resultant Data, the survey data under section 12.1, and the aggregated and de-identified Student Information data used for research, evaluation and product improvement purposes under Section 3.3.

14. COMPLIANCE WITH LAWS. Customer agrees: (i) not to use the Pearson Services for illegal purposes; (ii) to abide by all local, state, national, and international laws and regulations applicable to Customer's use of the Pearson Services, including without limitation all laws and administrative regulations (including, all U.S. and applicable foreign) relating to the control of exports of commodities and technical and/or personal data, (iii) to comply with the Family Educational Rights and Privacy Act ("FERPA") and any other applicable federal, state and/or local statutes and legislation regarding Student Information. Pearson agrees: (i) to abide by all local, state, national, and international laws and regulations applicable to Pearson's provision of the Pearson Services; (ii) to comply with FERPA and any other applicable federal, state, and or local statutes and legislation regarding Student Information.

15. GENERAL.

15.1. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MINNESOTA. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

15.2. General Provisions. Neither Party shall be held liable to the other Party for failure of performance where such failure is caused by supervening conditions beyond that Party's control, including but not limited to acts of God, civil disturbance, strikes or labor disputes. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, this Agreement shall be enforced to the maximum extent possible to effectuate the original express intent of the Parties. In the case of notices to Pearson, such notices shall be sent to: NCS Pearson, Inc., Attn: Legal Department, 5601 Green Valley Dr., Bloomington, MN 55437. In the case of notices to Customer, such notices shall be sent to Pearson's address of record for Customer. Either Party may change its notice address by notifying the other in like manner.

15.3. Independent Contractor. Pearson and its employees are independent contractors and not employees of the Customer. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the Parties.

15.4. Export. Without in any way limiting the restrictions on transfer set forth elsewhere in this Agreement, Customer specifically agrees that Customer will not, directly or indirectly, export or transfer any export-controlled commodity, technical data or software: (a) in violation of any laws, regulations, rules or other limitations imposed by any government authority; or (b) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or other approvals.

15.5. Modifications to Subscription Agreement. Pearson reserves the right to modify this Agreement, and the Pearson Services or policies associated with the subscription and any Pearson Materials at any time without advance notice to Customer. Any modification shall take effect immediately when it is posted to this site. Customer's continued use of the Pearson Services following any modification to the Agreement, the Pearson Services, or the associated policies shall be conclusively deemed an acceptance of such modification.

15.6. Entire Agreement. This Agreement constitutes the complete and entire agreement between the Parties with respect to its subject matter, and supersedes all prior discussions, understandings, arrangements, proposals and negotiations with respect to same. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any purchase order or other documentation submitted by Customer with respect to Pearson Services or any related support or services, and Pearson hereby refuses any such different or additional provisions in purchase orders or other documents.