

**Managed Online Programs Agreement
between Rutgers University and eCollege.com**

Rutgers The State University of New Jersey ("**Rutgers**") and eCollege.com (a Pearson company incorporated in Delaware; eCollege.com will hereinafter be referred to as "**Pearson**"), hereby enter into this Managed Online Programs Agreement (the "**Agreement**") effective as of the 17th day of September, 2012 (the "**Effective Date**").

1. PURPOSE AND SCOPE

Rutgers and Pearson will work in partnership to develop and promote Rutgers' online programs (the programs developed and/or promoted by Pearson under this Agreement are collectively referred to as the "**Managed Programs**" and are subject to the mutual agreement of Pearson and Rutgers). Rutgers will use its best efforts to migrate all Rutgers online programs (whether provided under Rutgers' online brand or not) to be Managed Programs under this Agreement. However, Pearson acknowledges and agrees that Rutgers cannot make participation in the Managed Programs mandatory. Rutgers hereby agrees to make reasonable efforts to make available a minimum of one existing program to be transitioned to be a Managed Program by the start of the Spring 2013 academic term, with two more existing programs transitioned to be Managed Programs by the start of the Summer 2013 academic term and four more existing programs transitioned to be Managed Programs by the start of the Fall 2013 academic term. Rutgers will make reasonable efforts to transfer other programs to the Managed Programs by the start of the Fall 2013 academic term. For purposes of clarification, the term "existing program" shall mean any Rutgers program in existence as of the Effective Date, in either an online or on-ground format. Once a Rutgers program becomes a Managed Program, that program shall continue to remain in the Managed Programs for the remaining term of the Agreement (except as specified for non-performing programs in Section 7(a) of the Agreement).

2. TERM

The Term of this Agreement commences on the Effective Date and shall remain in effect until December 31, 2019 (with each of the following time periods being referred to as an "**Calendar Year**" for purposes of this Agreement).

- Effective Date – December 31, 2013
- January 1, 2014 – December 31, 2014
- January 1, 2015 – December 31, 2015
- January 1, 2016 – December 31, 2016
- January 1, 2017 – December 31, 2017
- January 1, 2018 – December 31, 2018
- January 1, 2019 – December 31, 2019

The Agreement may be extended for two additional one (1) year terms, in writing signed by Rutgers and Pearson.

3. RUTGERS ROLES AND RESPONSIBILITIES

Subject to any restrictions under applicable law or as otherwise expressly set forth herein, Rutgers shall be responsible for, and shall provide and perform at its sole cost and expense, the following roles and responsibilities, as they relate to the Managed Programs:

- a) **Academic Oversight.** Rutgers will provide institutional and academic guidance, evaluation and oversight for the Managed Programs.
- b) **Administrative Services.** Rutgers will process all financial aid and perform all administrative services that are related to the official student services component of the Managed Programs (for example, administrative services relating to financial aid, admission, and enrollment).

- c) **Program Development and Support.** Rutgers shall be responsible for developing, maintaining and operating the Managed Programs and shall use commercially reasonable efforts to provide an appropriate number and selection of programs and courses, (taking into consideration recommendations and guidance from Pearson), as needed to accommodate all prospective students generated through Rutgers' and Pearson's efforts under this Agreement. Rutgers will retain control and decision-making authority over all academic content and programmatic components of the Managed Programs.
- d) **Program Consistency and Continuity.** Rutgers will provide support to the Managed Programs to help ensure program consistency and continuity.
- e) **Faculty Selection.** Rutgers will be responsible for review and verification of credentials, appointment and coordination of course instructor(s), faculty/facilitators and their staff and their activities. Rutgers will also be responsible for taking reasonable steps to ensure that an appropriate number of faculty are available to meet the needs of the Managed Programs and projected student enrollment growth.
- f) **Course Instruction.** Rutgers will be responsible for all course instruction and related student and academic support activities and functions.
- g) **Content and Curriculum.** Rutgers shall provide and exercise control over the content and quality of curricula and related course materials.
- h) **Admissions.** Rutgers shall be responsible for all decisions regarding the admission and registration criteria of students. Rutgers will provide admissions resources that are dedicated to the Managed Programs. Rutgers shall use all reasonable efforts to complete, and communicate the results of all official transcript evaluations for the Managed Programs with a goal of within 5 business days of receipt of the respective student's completed file (excluding weekends and holidays).
- i) **Financial Aid.** Rutgers will be responsible for all tasks and functions related to the financial aid process. Rutgers will provide financial aid resources that are dedicated to the Managed Programs. Rutgers shall use all reasonable efforts to complete a review of, and communicate the results of all financial aid applications for the Managed Programs with a goal of within five (5) business days of receipt of a completed application.
- j) **Tuition and Ancillary Fees.** Rutgers will collect all revenues and ancillary fees and will be responsible for making distributions to Pearson as set forth herein.
- k) **Academic Credit and Degree.** Rutgers shall be responsible for granting course credits and degrees to students who successfully complete a Managed Program and who otherwise satisfy the necessary criteria established by Rutgers for such degrees.
- l) **Records.** Rutgers will be responsible for processing and maintaining all academic, administrative and financial aid records for students who are enrolled in or seeking enrollment in a Managed Program.
- m) **Access to Rutgers Enrollment and Marketing Systems, Documents and Training.** Rutgers shall use best efforts to provide Pearson with prompt and ongoing access to all Rutgers enrollment and marketing systems (including pertinent documentation and training) as may be needed to facilitate Pearson's performance of its roles and responsibilities under this Agreement, and will work in good faith with Pearson to facilitate any requests that Pearson may make to extend or enhance such access.
- n) **Marketing and Lead Generation.** Rutgers will provide reasonable coordination and cooperation of marketing efforts between Rutgers' traditional academic programs and their Managed Programs counterparts.
- o) **Brand Usage.** Rutgers hereby grants Pearson, for the term of the Agreement, the right and license to reproduce, display and use the name, trade names, trademarks, service marks, logos, symbols and trade dress (collectively "**Rutgers Trademarks**") owned or licensable by Rutgers to facilitate student

recruitment and to support and service the Managed Programs, provided that any and all uses of Rutgers Trademarks are submitted to Rutgers for prior review and written approval; this includes the use of Rutgers Trademarks in advertising and marketing plans, samples of representative marketing materials, and paid and unpaid advertising. Rutgers will complete and communicate the results of its review of each use of its Trademarks within 10 business days of receipt of the submission. If written approval is not received within 10 days of submission, then the request is deemed disapproved.

- p) **Dedicated Project Manager.** Rutgers will provide a dedicated project manager to facilitate and manage the performance of Rutgers' obligations under this Agreement, as well as to provide coordination with Pearson on all activities related to the Managed Programs.
- q) **Cooperation and Assistance.** Rutgers will cooperate with Pearson and provide assistance as reasonably requested by Pearson to support Pearson in performance of its duties under this Agreement, and will work in good faith with Pearson to identify and implement process improvements and other changes that reflect operational best practices.

4. PEARSON ROLES AND RESPONSIBILITIES

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

- a) **LearningStudio Access.** Pearson will provide Rutgers and its authorized users with access to and use of Pearson's LearningStudio virtual learning environment, which will be hosted and maintained on Pearson servers and accessed via the Internet through an online campus, for educational, instructional and related administrative purposes. The specific content, features and functionality reflected in the LearningStudio is subject to change and discontinuation by Pearson in its sole discretion. As part of its development efforts, Pearson may, from time to time, make upgrades or enhancements to the LearningStudio. In most instances, such upgrades and enhancements are made available free of charge to Pearson customers. However, if Pearson requires payment of additional fees in order to use certain upgrades and enhancements, such use shall be at Rutgers' sole discretion.
- b) **Integration to Rutgers Systems.** The Learning Studio has an existing integration with Rutgers' student information system. Additional customization and extension of the user experience, as the parties may agree upon, may be provided through existing or enhanced application programming interfaces within the LearningStudio.
- c) **Learning Outcomes.** Pearson will provide functionality within the LearningStudio that will allow faculty to: (i) track and grade learning outcomes within courses; (ii) track student activity; and (iii) track student grades through the Learning Studio gradebook.
- d) **Enterprise Reporting Analytics.** Pearson will provide functionality within the LearningStudio that will allow access to select data assets, enabling data monitoring, predictive models and multi-dimensional analysis. This will give Rutgers access to data and reports related to student achievement and success, faculty effectiveness, enrollment data and course completion rates.
- e) **Equella Learning Object Repository.** Pearson will provide its Equella learning object repository as a digital content repository for the Managed Programs. For purposes of this Agreement, the Equella product shall be considered to be part of the LearningStudio and therefore subject to the same terms and conditions and limitations on access and use as set forth in this Agreement for the LearningStudio. Pearson and Rutgers will work in good faith to develop a mutually acceptable project scope (in accordance with Pearson's standard development efforts and methodology for similar projects with other customers) for the Equella implementation, consulting and training activities. Within 30 to 90 days of signing the Agreement, Pearson will provide to Rutgers a proof of concept export of a demonstration course using Equella in an industry standard format that would represent the type of export that can be expected of Rutgers courses once Equella has been implemented.

- f) **ClassLive Pro.** Pearson will provide ClassLive Pro, a real-time training, demonstration, and collaboration environment which enables the delivery of live online learning, training, coaching, mentoring and meeting within Courseware with voice and video synchronous conferencing. If Pearson's agreement with the third party provider for ClassLive Pro is terminated or expires, Pearson can terminate this license upon 30 days written notice to Rutgers. In the event of such termination, Pearson will work to replace ClassLive Pro with functionality that satisfies the underlying need fulfilled by ClassLive Pro, provided such functionality remains commercially and technically viable for Pearson and core to the delivery of the Managed Programs.
- g) **ExamGuard.** Pearson will provide ExamGuard, a secure exam delivery functionality designed to lock down the operating system on a user's laptop or desktop computer, allowing access only to the online exam. If Pearson's agreement with the third party provider for ExamGuard is terminated or expires, Pearson can terminate this license to Rutgers upon 30 days written notice to Rutgers. In the event of such termination, Pearson will work to replace ClassLive Pro with functionality that satisfies the underlying need fulfilled by ClassLive Pro, provided such functionality remains commercially and technically viable for Pearson and core to the delivery of the Managed Programs.
- h) **Technical Support.** Pearson will provide telephone and online support (via chat and email) to Rutgers' faculty, students and staff who need technical assistance associated with their use of the LearningStudio. This support will be provided on a 24 hours a day, 7 days a week basis. Technical Support does not include support related to the use of Rutgers' or other third parties' technology, technical issues associated with outside ISPs, networks or third-party software or issues related to user inexperience with systems and settings other than the LearningStudio.
- i) **Operational Support.** Pearson will provide Rutgers with a single point of contact for the day-to-day operations and support of the Managed Programs.
- j) **Training.** Pearson will provide appropriate (as determined by Pearson in consultation with Rutgers) training regarding use of the LearningStudio to Rutgers faculty and faculty associates on an as needed basis.
- k) **Faculty Support.** Through Pearson's iSupport team, Pearson will provide Rutgers faculty (who have previously participated in applicable Pearson training) with phone and email support that allows contact with course development, instructional multimedia, and instructional design resources for informational consulting relating to the design, development and teaching methodologies of courses for the LearningStudio platform. iSupport is provided 8AM – 10PM Monday through Thursday; 8AM – 5PM on Fridays and 1PM – 5PM on Sundays, Mountain Time, excluding holidays.
- l) **General Management.** Pearson will provide an experienced program management, technical and operations team to support Rutgers in the management, facilitation and coordination of the Managed Programs. This team will develop timelines for each phase of the mutually agreed upon business plan and provide an acceptable reporting structure to ensure transparency and effective decision-making between Rutgers and Pearson. The parties will work in good faith toward the migration of existing Rutgers programs and to add new program offerings. Except as expressly set forth in this Agreement, Pearson will retain discretion in determining the appropriate levels of effort, investment and resources (staffing and otherwise) applied by Pearson to carry out its obligations under the Agreement; provided, however, that the foregoing shall not be construed to change the standard to which Pearson must perform, but rather applies only to the means by which Pearson satisfies its obligations.
- m) **Student Recruitment.** Pearson will promote and market the Managed Programs (and will retain decision-making authority on the, frequency, methodology, delivery channels and mix for such promotion and marketing); collect, respond to, qualify and manage all inquiries related to the Managed Programs; provide follow-up contact; provide enrollment counseling and facilitate prospect decision-making; provide guidance and support for application submission; collect applications and provide them to Rutgers for admission consideration. Pearson will work with Rutgers to develop all messaging and

will receive prior written approval from Rutgers for all campaign-level messaging for advertisements and marketing,

- n) **Course Conversion.** Pearson will convert existing online courses from Rutgers programs that decide to move to the Managed Program, to work with the LearningStudio, such that the converted courses will have materially the same functionality as the source course (i.e. feature-to-feature or unit-to-unit), excluding any features not currently supported by the Learning Studio. Pearson and Rutgers will work in good faith to develop a mutually acceptable project scope (in accordance with Pearson’s standard development efforts and methodology for similar projects with other customers) that addresses which courses will be converted and the timing of the conversion activities.
- o) **Content Enhancement.** Pearson will provide Rutgers with instructional design consultation services for the Managed Programs, with scope, sequence and outcomes that can be customized by Rutgers faculty. If such services are desired by Rutgers, Pearson and Rutgers will work in good faith to develop a mutually acceptable project scope (in accordance with Pearson’s standard development efforts and methodology for similar projects with other customers).
- p) **Course Import and Export.** Rutgers may use the administrative functions of the Equella application to import and export course material to and from the Learning Studio, at any time during the term of this Agreement (including any transitional time extensions as detailed in Section 8(d)).
- q) **Commercial Content.** Pearson will provide Pearson’s commercial content products (“**Pearson Content Products**”) for Managed Programs, where such Pearson Content Products may enhance the existing offering or speed the launch of new programs that are in development. The specific Pearson Content Products made available to Rutgers under this Agreement shall be subject to the mutual agreement of Rutgers and Pearson. All materials provided for Rutgers’s use hereunder are provided subject to the terms set forth in Section 5(c) below.
- r) **Course Development.** Pearson will provide custom course development services for Managed Programs , where Pearson and Rutgers agree that course development services may enhance the existing offerings or speed the launch of new programs that are in development. The specific course development services provided for Rutgers under this Agreement shall be subject to the mutual agreement of Rutgers and Pearson, and provided subject to the resource constraints set forth below (which may be adjusted or reallocated across Calendar Years upon the mutual written agreement of Rutgers and Pearson). The rights and licenses with respect to course content developed under this Agreement are set forth in Section 5(d).

Calendar Year	Course Development FTEs*	Liaison FTE*
2013	6	1
2014	6	1
2015	6	1
2016	6	1
2017	6	1
2018	6	1
2019	6	1

* Calculated based on an average of hours dedicated to these activities over the relevant time period.

- s) **Student Support and Retention.** Pearson will use proactive communication, outreach programs and technological integration with Rutgers information systems to identify at-risk students enrolled in Managed Programs. This is done by identifying behavior that correlates to academic performance and attendance, using Pearson’s data analytics capabilities and data provided by Rutgers. Pearson will use automated, real-time calling strategies customized for each individual student, to increase the likelihood of retention and continuing academic engagement.

- t) **Career Services.** Pearson will use proactive communication programs and technological integration to identify Managed Program students who are ready for career preparation activities. This is done by identifying students who are approaching graduation (number of hours estimated to complete degree) and have been identified as needing career placement using interviews and collective data from Pearson and Rutgers. Pearson will use both technology and other assessment tools to identify gaps in graduate preparedness that could prevent students from attaining a successful employment outcome. These customized assessments and steps may include professionalism, networking, portfolio creation, resume writing and job search and interviewing skills and will be used to help prepare students for post-graduation activities that are necessary to enter the workforce.
- u) **Field Services.** Pearson will provide support to Managed Program students who require field placement services as part of the graduation requirements of their online degree and program. These students will be identified upon initial enrollment into programs that require field placement. At the appropriate time in each degree program, Pearson will assist students, in partnership with Rutgers, in fulfilling all duties as required and available in placing students in their field of study to gain experience for credit towards graduation. Specific responsibilities may be unique for each program and at times may be unique to each student and should be defined in more detail as programs become part of the Managed Programs.
- v) **Implementation.** The use of and access to the LearningStudio and the Pearson Services will be subject to implementation by Pearson, in accordance with Pearson's standard development efforts, methodology and timelines for similar projects with other customers, and as deemed appropriate by Pearson for all the activities envisioned under this Agreement. Activities required for the integration of the LearningStudio and the Pearson Services to other Rutgers or third party systems or services not specified in the Agreement are not included, unless otherwise expressly specified in the Agreement.
- w) **Statement of Work.** Additional services that fall within the scope of this Agreement may be contracted for pursuant to a statement of work, on terms agreed to by the parties, which shall be governed by the terms and conditions of this Agreement.

5. LICENSES AND OWNERSHIP

a) **LearningStudio.**

LearningStudio. "LearningStudio" shall mean the learning management system (including software, hardware, interfaces and other components) used by Pearson to provide the Pearson Services to Rutgers. Rutgers hereby acknowledges that Pearson has made no commitments as to the exact functionality or timing of upgrades and enhancements to the LearningStudio.

License Terms. Pearson hereby grants Rutgers a non-transferable, non-exclusive, non-sublicenseable license to access and use the applicable portions of the LearningStudio during the term of this Agreement for the sole purpose of Rutgers and its authorized users receiving the Pearson Services for educational, instructional and related administrative purposes, solely with regard to the Managed Programs. All such access and use shall be subject to the terms and conditions of this Agreement. All rights not specifically granted herein are reserved by Pearson.

Authorized Users. Rutgers' students, faculty and staff are hereby deemed to be authorized users of the LearningStudio. In all instances, Rutgers shall be responsible for the actions and inactions of its authorized users with regard to their access and use of the LearningStudio and the Pearson Services.

Restrictions. Under no circumstances may Rutgers or any of its authorized users, without prior written permission from Pearson: (a) use the LearningStudio or Pearson Services to provide products or services to another school, college, university, or other third party; (b) directly or indirectly provide access to the LearningStudio or provide Pearson Services, in whole or in part, to another school, college, university or other third party except as part of an academic program in which Rutgers is an active participant, (c) sublicense its rights with respect to this Agreement without the written permission

of Pearson, or (d) attempt, or authorize others, to modify, adapt, decompile, decrypt, disassemble, extract or reverse engineer any part of the LearningStudio or the Pearson Services. Rutgers and its authorized users shall not use the LearningStudio to (a) engage in spamming or other impermissible advertising, marketing or other activities, including, without limitation, any activities that violate anti-spamming laws or regulations; (b) transmit, display or store infringing, obscene, threatening, indecent, libelous, slanderous, defamatory or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (c) introduce malicious programs (such as viruses, worms or Trojan horses) into the LearningStudio; (d) interfere with or disrupt the integrity or performance of the LearningStudio, the Pearson Services or the data contained or used therein; (e) attempt to gain unauthorized access to the LearningStudio or its related systems or networks; or (f) harass or interfere with another user's use of the LearningStudio or the Pearson Services. Rutgers will, at all times, comply with all applicable local, state, federal, and foreign laws in using the LearningStudio and the Pearson Services. Pearson reserves the right to suspend access to and use of the LearningStudio and the Pearson Services with respect to any individual user that Pearson reasonably believes has undertaken, or participated in, any of the foregoing activities.

System Security. Pearson shall provide Rutgers with the ability to generate passwords and/or user identifications, which Rutgers shall use to provide access to the LearningStudio for its authorized users. Rutgers will control and manage access to the LearningStudio and to all Rutgers Information stored within, or accessible through, the LearningStudio. Rutgers will instruct its authorized users as to the importance of maintaining the confidentiality of passwords and/or user identifications. Rutgers acknowledges that Rutgers' data security may be compromised if Rutgers' authorized users do not follow all applicable security policies and procedures and take other appropriate steps to maintain the security of the LearningStudio, including, without limitation, maintaining the confidentiality of user identifications and passwords, frequent changing of passwords and maintaining appropriate internal controls to monitor access to and use of the LearningStudio.

Location of the LearningStudio. Notwithstanding the foregoing, and except for the license granted in this Agreement, Rutgers shall not have direct access to the software or infrastructure used to provide the LearningStudio and the Pearson Services to Rutgers, at any time during or after the term of this Agreement.

- b) **Pearson Ownership.** Pearson and its licensors shall retain all right, title and interest in all Pearson proprietary information and property, the LearningStudio 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. Rutgers acknowledges that the license granted under this Agreement does not provide it with title to or ownership of the LearningStudio or the Pearson Services, but only a right of limited use under the terms and conditions of this Agreement. Except as set forth in Section 5(d) of this Agreement, 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 any Statement of Work.
- c) **Pearson Content Products.** During the term of the Agreement and as it relates to the Managed Programs, Pearson hereby authorizes Rutgers to access and use the Pearson Content Products and provide access to the Pearson Content Products to Rutgers' faculty, students and administrative staff, solely for educational and instructional use on the LearningStudio. Authorized users may access the Pearson Content Products only in accordance with the terms and conditions set forth in this Agreement and in any end-user license agreement (each a "EULA") or terms of use that may be contained in or with the Pearson Content Products. Rutgers agrees that no other individuals or third parties shall be provided access to the Pearson Content Products. Rutgers 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. 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 Rutgers authorize its users or students to 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 Rutgers

for classroom purposes, without the express written permission of Pearson. Rutgers 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 Rutgers or to such course offerings in general, by Pearson or any other third party (including Rutgers 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 material violation of this Agreement or any applicable EULA. Rutgers shall indemnify and hold harmless Pearson from any liability or damages incurred by Pearson that is caused by Rutgers' alteration or unauthorized use of the Pearson Content Products. The Pearson Content Products shall only be used in conjunction with the LearningStudio and in accordance with the terms and conditions of the Agreement. Rutgers understands and acknowledges that the Pearson Content Products may be retired or supplanted by new editions at any time, and that Pearson is under no obligation to make new editions or replacement products available to Rutgers. Notwithstanding Rutgers' rights to use the Pearson Content Products, Pearson may require Rutgers to promptly cease (within three business days) using any Pearson Content Products, if (i) Pearson notifies Rutgers that Pearson no longer has the necessary rights to the Pearson Content Products, (ii) Pearson believes cessation is necessary to limit or avoid liability or (iii) Pearson is otherwise required by law or court order to cease and desist. In such events, Pearson will use commercially reasonable efforts to replace, at no cost to Rutgers, any affected Pearson Content Products with other materials to be used by Rutgers pursuant to the terms of this Agreement.

Notwithstanding the foregoing, to the extent that content provided by Rutgers is included in a Pearson Content Product for Rutgers' use under this Agreement, Rutgers shall retain all right, title and interest in and to such included content.

- d) **Course Development Activities.** For purposes of this Agreement, "**Pearson IP**" shall mean any and all materials fixed in a tangible medium that are supplied or created by Pearson in connection with course development activities under this Agreement and that are incorporated into a Managed Programs course. For purposes of this Agreement, "**Rutgers IP**" shall mean any and all materials fixed in a tangible medium that are supplied or created by Rutgers in connection with course development activities under this Agreement and that are incorporated into a Managed Programs course. Pearson and its licensors will at all times retain ownership and all intellectual property rights in the Pearson IP, including, without limitation, any modification, improvements, or derivative works thereof. Rutgers will at all times retain ownership and all intellectual property rights in the Rutgers IP, including, without limitation, any modification, improvements, or derivative works thereof. Except for the rights expressly granted in this Agreement, each party to this Agreement receives no other rights or licenses and all other rights are hereby expressly reserved in favor of the party owning such intellectual property. In the event that this Agreement terminates or expires, neither party shall use the other party's intellectual property for any purpose. In the event that either party creates a derivative work that combines Rutgers IP and Pearson IP (a "**Combined Work**"), each of the parties shall continue to own the underlying Rutgers IP or Pearson IP, as the case may be, incorporated into the Combined Work. However, the parties agree that the Combined Work shall be owned jointly by Rutgers and Pearson; provided, however, that the Combined Work shall not be disclosed, adapted or otherwise used by either party other than within courses for the Managed Programs. In the event that this Agreement terminates or expires, neither party shall use the Combined Works for any purpose. Notwithstanding the foregoing, Rutgers may use Combined Works in its courses after the termination or expiration of the Agreement, for a fee of \$100 per Enrollment in such courses (such use to be self-reported by Rutgers to Pearson and due and payable upon invoicing by Pearson). As part of all course development activities, Rutgers and Pearson agree to designate (in some form of mutually agreeable written format, such as a course content catalog) individual course content items into one of the three categories identified above (either Pearson IP, Rutgers IP or a Combined Work).

For purposes of demonstration, the following examples are intended to provide representative use cases for each of the three categories identified above (Pearson IP, Rutgers IP and Combined Work):

Pearson IP example – Pearson’s written material and media assets, including but not limited to, images, graphs, interactive tutorials, podcasts, video, simulations and animations.

Rutgers IP example – Rutgers’ written material and media assets, including but not limited to images, graphs, interactive tutorials, podcasts, video lectures, simulations and animations. For purposes of clarity, content that is originated by a Rutgers professor which Pearson then edits, adapts, and/or formats such as Pearson recording a video lecture of a Rutgers professor or creating new iterations of a problem set or exam will be considered Rutgers IP.

Combined Work example – Any combination of the above into a single learning object, such as a simulation or animation, or any net new material created in collaboration by Pearson and Rutgers. For example, Pearson working with a Rutgers professor and developing a new simulation for use in a course

Public Domain example – Public domain content that under the direction of a Rutgers professor is incorporated into a course by Pearson is considered not to be owned by either party and is therefore available for Rutgers use in the course format after the end of the agreement.

- e) **Rutgers Ownership.** Rutgers and its authorized users may provide Pearson, either directly or indirectly (through placement of such information, materials, course content and data on the LearningStudio by Rutgers’ authorized users) with information, materials and data (the “**Rutgers Information**”). As between Pearson and Rutgers, all such Rutgers Information is the exclusive and proprietary property of Rutgers. Pearson shall under no circumstances, use, sell, lease, assign or sublicense the Rutgers Information except as provided herein.
- f) **Rutgers Grant of License.** Rutgers grants to Pearson a limited, nonexclusive license during the term of this Agreement to copy, transmit, use and prepare derivative works of the Rutgers Information to the extent necessary for Pearson to perform its obligations under this Agreement. This license shall not be construed to permit Pearson to use Rutgers Information for any other purpose, except as expressly permitted by the Agreement. Pearson may use anonymous data related to student performance, individual and aggregated demography and the activity of Rutgers’ authorized users within the LearningStudio, for product improvement and general research and analytical purposes (which Pearson may share with other third parties, so long as such data does not in any way identify Rutgers or individual authorized users).
- g) **Additional Products or Services.** Except as specifically otherwise provided for in this Agreement, no other Pearson products and services are included in this Agreement. Additional fees, in excess of the fees set forth herein, may apply to the use of Third Party Services or additional Pearson products and services.

6. FEES AND PAYMENT

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

- a) **Student Type Definitions.** Pearson and Rutgers will work in good faith to classify all Rutgers students into one of the following student types:
 - Fully Online: Students who are enrolled in one of the Managed Programs (excludes Exempt Fully Online students).
 - Exempt Fully Online: Fully Online students who were enrolled in a Rutgers online program during the academic term preceding their enrollment in the Managed Programs.

- **Non-managed:** Students who are not enrolled in a Managed Program. The following components of the Pearson Services (as defined in Section 4 of the Agreement) will not be provided to On-Campus students: Sections 4(m) - “Student Recruitment”, 4(r) - “Student Support and Retention”, 4(s) - “Career Services” and 4(t) - “Placement Services”.
 - **Transfer:** Students who were previously defined as Non-managed and then switch to Fully Online. Pearson reserves the right to audit Rutgers data needed to verify the accuracy of individual student role type designations.
- b) **Declared Revenue per Student Credit Hour.** The payment owed by Rutgers to Pearson for the Pearson Services performed under this Agreement will be based on a declared revenue per student credit hour basis (“**DR/SCH**”), as follows:
- i) **Declared Revenue per Student Credit Hour.** Prior to each term, Rutgers and Pearson will work in good faith to identify the applicable DR/SCH for that term for each course, which shall represent the per credit hour tuition fee plus the per credit hour technology fee which Rutgers will charge for that term. For purposes of clarity, all tuition and fee decisions are made by the Rutgers Board of Governors.
- Pearson has based its financial modeling for the 2013 Calendar Year on a baseline DR/SCH of \$900 (with anticipated growth in line with the US Consumer Price Index for each subsequent Calendar Year; collectively the “**Baseline DR/SCH**”). In the event that Rutgers’ actual DR/SCH does not meet or exceed this baseline assumption (including CPI escalation), (i) Rutgers and Pearson will work in good faith to negotiate appropriate changes to the fee provisions of this Section 6 to reflect the adjusted circumstances Pearson may then face, and (iii) if the parties are unsuccessful in achieving a mutually agreed-to compromise under the foregoing, either party may terminate this Agreement upon 180 days written notice to the other party.
- ii) **Census Date.** Pearson shall conduct an official census of enrolled students for each section (the “**Census Data**”), five business days after Rutgers’ add/drop period closes for the applicable semester. (the “**Census Date**”). A student will be counted for purposes of this Agreement if (a) at the Census Date the student has granted access to a course pursuant to enrollment procedures agreed to between Pearson and Rutgers, and (b) Pearson has not received notification prior to the Census Date that the student has withdrawn. Pearson shall deliver the Census Data to Rutgers for review and reconciliation. Any discrepancies shall be reported to Pearson within three business days or such data will be deemed agreed to by the parties.
 - iii) **Enrollment Definition.** “**Enrollment**” shall mean one Managed Programs student registered in one online course on the LearningStudio (e.g. if a student is enrolled in two such courses, that would be two Enrollments for purposes of this Agreement) at the time of the applicable Census Date for that course.
 - iv) **Tuition Percentage for Fully Online Students.** The Tuition Percentage to be paid to Pearson for Fully Online student Enrollments in the Managed Programs during the first Calendar Year is hereby set at 50%. For all other Calendar Years, the Tuition Percentage for Fully Online students will be established based on the total number of Enrollments in the Managed Programs during the prior Calendar Year, in accordance with the schedule set forth below. For example, if Rutgers attains 8,500 Fully Online student Enrollments in the Managed Programs in a particular Calendar Year, the Tuition Percentage for the following Calendar Year shall be set at 48%.

Fully Online* Enrollments in the Managed Programs during the prior Calendar Year	Tuition Percentage for the current Calendar Year
0-3,999	50%
4,000-7,999	49%
8,000-11,999	48%

12,000-14,999	47%
15,000-19,999	46%
20,000 and above	45%

Notwithstanding the foregoing, if the average DR/SCH paid by students in the Managed Programs during a particular Calendar Year meets or exceeds the Baseline DR/SCH for that Calendar Year (only the first 25,000 Enrollments in a particular Calendar year will be used for purposes of assessing whether the Baseline DR/SCH threshold has been met or exceeded), the Tuition Percentage to be paid to Pearson for Fully Online student Enrollments in the Managed Programs in excess of 29,999 during the following Calendar Year shall be calculated in accordance with the table set forth below.

Fully Online* Enrollments in the Managed Programs during the current Calendar Year	Tuition Percentage for the current Calendar Year for Enrollments falling within the applicable Enrollment tier
30,000 – 39,999	43%
40,000 – 49,999	40%
50,000 – 59,999	38%
60,000 and above	35%

For example, if Rutgers achieves 13,000 Fully Online students Enrollments during the 2013 Calendar Year and also achieves an average DR/SCH paid by students for that Calendar Year which is equal to or exceeds \$900, and then achieves 42,000 Fully Online Enrollments during the 2014 Calendar Year, the Tuition Percentage during the 2014 Calendar Year will be 47% for the first 29,999 Enrollments, 43% for Enrollments 30,000 - 39,999 and 40% for Enrollments 40,000 - 42,000. For purposes of clarification, the Tuition Percentage set forth in the table immediately above will be based only on cumulative Fully Online Enrollments for the applicable Calendar Year.

* Does not include any Enrollments that are assessed the \$200 per Enrollment fee under Section 6(b)(vi) below.

- v) Tuition Percentage for Transfer Students. The Tuition Percentage to be paid to Pearson for Transfer students Enrollments in the Managed Programs is hereby set at 40%.
- vi) Student Fees for Managed Programs Courses. Following the official Census Date for each academic term, Rutgers will pay to Pearson a fee (determined by tuition percentage in effect on the course start date) for each enrolled student credit hour for the Managed Programs for that term (the “SCH Fees”), upon invoicing by Pearson. SCH Fees shall be calculated for all Managed Programs courses at the time of the official census date for each such course, in accordance with the following formula:

SCH Fees = (DR/SCH x Tuition Percentage) x (students enrolled in the course) x (credit hours per student for the course)

Notwithstanding the foregoing, Exempt Fully Online Enrollments (during the 2013 Calendar Year only) and On-Campus Enrollments will instead be assessed a fee of \$200 per Enrollment in Managed Program courses. Additionally, during the 2014 calendar year, a number of Fully Online Enrollments equal to 2/3 of the Exempt Fully Online Enrollments during the 2013 Calendar Year will instead be assessed a fee of \$200 per Enrollment in Managed Program courses (with such discounted Enrollments to be evenly allocated throughout the 2014 calendar year) . The remaining 1/3 of the Exempt Fully Online Enrollments will be assessed as Fully Online student Enrollments for purposes of determining fees due to Pearson for such Enrollments.

It is expressly agreed that Rutgers’ obligation to pay Pearson the amounts set forth above shall remain in effect notwithstanding (i) the failure of a student to complete the applicable course, or (ii)

Rutgers' failure or inability to collect the tuition or any related fees from that student except as outlined in 6 (c) below.

eCollege and Rutgers are also parties to a separate Master Services and License Agreement (the "MSLA"), dated July 1, 2009, for the provision of the LearningStudio and associated products and services to Rutgers and its authorized users. The parties hereby agree that student Enrollments assessed a DR/SCH fee under this Agreement shall not also incur a separate fee under the MSLA. However, those student Enrollments shall be counted in terms of assessing volume of usage under the MSLA (e.g. for determining the appropriate level of ClassLive Pro or Bundled Solution Fees under the MSLA). Additionally, the fees incurred under this Agreement shall not count towards Rutgers' eCourse Minimum Technology Service Fees commitments to eCollege under the MSLA.

- c) **Adjustment for Uncollected Amounts.** All invoices generated pursuant to this Section shall reflect a 3% reduction on the aggregate amount due (the "Doubtful Account Percentage"), which 3% reduction is intended as an allowance for uncollected accounts ("Doubtful Account Reserve"). Within ninety days following the end of the Contract Year, the parties will review and compare the actual uncollected accounts against the Doubtful Account Reserve. The parties shall then adjust the Doubtful Account Percentage for the following year to equal the percentage of accounts that were uncollectable in the prior Contract Year (rounded to the nearest tenth of a percent), up to the maximum Doubtful Account Percentage of 5%.
- d) **Due Date and Payment.** Rutgers shall pay all undisputed invoices issued by Pearson within sixty(60) days of the date of the invoice. All prices are quoted in U.S. dollars and all payments shall be made in U.S. dollars. Payment shall be remitted per the instructions on the invoice or as instructed by Pearson from time to time. Pearson may accept any payment without prejudice to Pearson's right to recover any remaining balance or to pursue any other remedy provided in this Agreement, or by applicable law. In the event that any undisputed invoiced amount is not paid in full within sixty (60) days of the invoice date, Rutgers shall pay simple interest at the rate of 1.5% per month beginning sixty (60) days after the date of the invoice. If Rutgers fails to pay an undisputed invoiced amount within ninety (90) days after the date of the invoice, Pearson may, after providing seven (7) days written notice to Rutgers, suspend the provision of products and services, including turning off Rutgers' access to the LearningStudio and the Pearson Services. To the extent that Rutgers disputes any invoice or portion thereof, the parties will work in good faith to resolve the disagreement, but to the extent that such discussions are not successful, Rutgers will in all events still be obligated to promptly pay the undisputed portions of such invoice.
- e) **Taxes.** The fees hereunder do not include any applicable sales, use, excise, VAT or other taxes or duties levied or based on this Agreement or the Pearson Services provided hereunder, which Rutgers agrees to pay (or reimburse Pearson for upon invoicing, as the case may be) separately, exclusive of income taxes or taxes based on Pearson's income. If Rutgers is a tax-exempt entity and provides Pearson with a valid certificate evidencing such tax-exempt status, then Pearson shall not assess Rutgers for taxes not payable by tax-exempt entities.

7. Performance Indicators.

Pearson will track key performance indicators for the Managed Programs, to measure the success of the Managed Programs against certain defined targets, as follows:

- a) **Generation of Quality Leads.** Pearson commits that no Rutgers degree which enters the managed program will be disadvantaged by any similar agreements that it enters into with other universities. Both sides are committed to using best efforts in reaching and then sustaining the agreed-to targets for high quality enrollments for each Rutgers degree program. Rutgers acknowledges that Pearson may enter into partnerships with universities offering the same degrees in the US or other countries, so long as this does not adversely affect the resources devoted to marketing the Rutgers program. As part of the partnership with each program, Pearson and Rutgers will be collaborating on the development of the marketing strategy, including the different mechanisms that will be used, and then reporting back

detailed information on the types and level of marketing activities and their effectiveness. Rutgers and Pearson will, after careful review of market research data and Rutgers' (where applicable) prior enrollments for each new Managed Program, together agree on reasonable annual enrolment projection for that Managed Program. It will be Pearson's responsibility through its marketing efforts to generate high quality leads that result in applications, with volume targeted to meet the enrolment projections. If lead generation is insufficient to meet the enrollment projections, based on the agreed lead-to-start conversion rate, Rutgers and Pearson will review all factors involved in the lead generation process and make appropriate adjustments within the following two (2) terms. If a particular academic program fails to meet at least 80% of the mutually agreed-to annual enrollment projections for two consecutive years, either party may notify the other party in writing that it is electing to remove that program from the Managed Programs, with such removal to take effect at the conclusion of the then-current Calendar Year. During that time period, Pearson may discontinue all services provided for under this Agreement, solely with respect to that program, other than those specified in Sections 4(a) - 4(l). In all such events, Pearson and Rutgers will work together to ensure the smooth transition of such programs from the Managed Programs.

- b) **Lead-to-Start Conversion Rate.** The lead-to-start conversion rate shall be calculated as the percentage of leads that enroll in a Managed Program within a seven (7) month time period after lead generation. The rate shall be further refined by taking the average of the month being measured along with the rate calculated for the prior two (2) months. For example, if 100 leads are generated in March and 11 of those leads enroll in a Managed Program by the end of September of the same year, the lead-to-start conversion rate for September would be initially calculated at 11%. However, if the January and February lead-to-start conversion rates were 10% and 9%, respectively, the rate applied to the September academic term starts would be adjusted to 10%. If the lead-to-start conversion rate is measured as less than 5% during the month that an academic term starts, except in situations where Pearson is clearly identified as the cause for the missed target, the Tuition Percentage for that term will be deemed to be 50% (overriding any lower Tuition Percentage that had been set for that Calendar Year under Section 6 above) and Rutgers and Pearson will review the data and make appropriate operational adjustments within the following two (2) terms. If the lead-to-start conversion rate is less than 5% during four (4) of any six (6) consecutive terms, Pearson and Rutgers will negotiate an appropriate remedy in good faith, up to and including termination of the Agreement.
- c) **Term-to-Term Persistence.** The term-to-term persistence shall be calculated as the percentage of unique students enrolled in one (1) term that continue into the following term. New students and students returning after a hiatus from the Managed Programs are not considered in this calculation. If the term-to-term persistence rate for the Managed Programs is less than 90% for any term during the first Calendar Year or 92% for any term during any subsequent Calendar Year (collectively, the "**Minimum Persistence Rate**"), except in situations where Pearson is clearly identified as the cause for the missed target, the Tuition Percentage for that term will be deemed to be 50% (overriding any lower Tuition Percentage that had been set for that Calendar Year under Section 6 above) and Rutgers and Pearson will review the data and make appropriate operational adjustments within the following two (2) terms. If the Minimum Persistence Rate is not met during four (4) of any six (6) consecutive terms, Pearson and Rutgers will negotiate an appropriate remedy in good faith, up to and including termination of the Agreement.
- d) **Minimum Enrollments.** If the total number of Enrollments is less than the minimums set forth below for any Calendar Year, Pearson and Rutgers will work in good faith to take corrective actions, including the addition of courses and programs, the addition of sections and/or the transition of unmanaged courses and programs to be included in the Managed Programs. Additionally, total number of Fully Online Enrollments is less than the minimums set forth below for two consecutive Calendar Years, the Tuition Percentage for the following Calendar Year will be deemed to be 50% (overriding any lower Tuition Percentage that had been set for that Calendar Year under Section 6 above).

Fully Online Enrollments

Calendar Year	Target Enrollments	Minimum Enrollments
2013	1,056	850

2014	3,689	2,900
2015	7,434	6,000
2016	12,011	9,600
2017	16,419	13,200
2018	19,781	15,800
2019	22,155	17,700

Exempt Fully Online Enrollments

Calendar Year	Target Enrollments	Minimum Enrollments
2013	974	780
2014	1,549	1,250
2015	1,744	1,400
2016	1,387	1,100
2017	497	400

- e) **Regulatory Activity.** If the Department of Education or other applicable governing body or entity (whether governmental or otherwise) creates regulations or rules that, in the reasonable opinion of either Rutgers or Pearson, significantly impacts any material aspect of this Agreement, the parties will negotiate in good faith to amend this Agreement to address the impact of such regulations to the satisfaction of each party. Rutgers further agrees that it will use its best efforts to reach compliance status with all applicable state authorization requirements by the start of its Fall 2012 academic term.

- f) **Provision of Services upon expiration of the Agreement.** At least 120 days prior to the expiration of this Agreement (either at the end of the initial term, or the end of any additional renewal terms that the parties may agree to in writing, as applicable), Rutgers will provide written notice to Pearson of Rutgers's intent to either renew the Agreement or allow it to expire. Pearson may discontinue all services provided for under this Agreement, other than those specified in in Sections 4(a) - 4(l) for the 90 day period prior to Agreement expiration if either (a) Rutgers provides written notice to Pearson of its intent to allow the Agreement to expire in accordance with the forgoing sentence, or (b) Rutgers and Pearson have not formally extended the Agreement by mutual written agreement by the 90th day prior to expiration of the Agreement.

- g) **Reimbursement upon termination of the Agreement.** If the Agreement is terminated prior to its normal expiration, then prior to the actual termination date Rutgers, at its sole discretion, shall select one of the following options and provide Pearson with formal written notice of such election:
 - i) Rutgers shall reimburse Pearson for all costs incurred by Pearson associated with marketing, recruitment, support and retention services, career services and placement services (as set forth in Sections 4(m), 4(r), 4(s) and 4(t)) during the 90 days prior to receipt of the notice of termination of the Agreement. This amount may be paid by Rutgers to Pearson as either (in Rutgers's discretion) (i) a one-time lump-sum payment within 90 days of the last day of the Agreement, or (ii) in equal installments to be paid regularly to Pearson over up to a 6 month period from the last day of the Agreement.

 - ii) Extend the Agreement for an additional 120 day period, during which time Pearson may discontinue all services provided for under this Agreement, other than those specified in in Sections 4(a) - 4(l) for the final 90 days of the extension period.

8. TERMINATION

- a) **Termination by Mutual Agreement.** This Agreement may be terminated at any time by the mutual, written agreement of Rutgers and Pearson.

- b) **Termination for Breach.** Except as otherwise set forth herein, this Agreement may be terminated by either party if the other is in material breach of any provision of this Agreement, but only after written notice of default and opportunity to cure has been given to the breaching party. The notice of default must provide for an opportunity to cure of at least thirty (30) days following receipt of notice. If the party receiving the notice has not cured the breach before the cure date stated in the notice then the party giving notice may terminate this Agreement by giving the breaching party written notice of termination, which will be effective upon delivery.
- c) **Effect of Termination or Expiration.** Upon termination or expiration of this Agreement, all licenses and rights to use trademarks and other proprietary information, granted hereunder shall immediately terminate, and any and all fees set forth herein shall become immediately due and payable. Notwithstanding the termination of this Agreement for any reason, the rights and duties of the parties under Sections 5(b), 5(c), 5(d), 5(e), 6(d), 6(e), 7(g), 8(e), 10(b), 10(c), 10(e), 10(g), 10(i), 10(j), 10(l), 10(n), 10(o) and 10(s) and all provisions pertaining to ownership of intellectual property shall survive such termination and remain in full force and effect.
- d) **Transition Services.** Notwithstanding anything contained herein to the contrary, in the event that this Agreement is terminated (regardless of the reason for such termination), Pearson shall continue providing the products and services contemplated in Sections 4(a) - 4(l) and providing Rutgers access to Rutgers's data and materials for a time period sufficient to allow Rutgers to complete any academic terms already ongoing at the time of the termination of the Agreement, and then for an additional 90 days, solely for the purpose of allowing Customer to use the administrative functions of the LearningStudio to manage and extract the information and data found within the LearningStudio. Additional transition services beyond those set forth in this Agreement may be supplied by Pearson on a fee basis to Rutgers, upon Rutgers's request for such services and mutual agreement of Pearson and Rutgers.

9. REPRESENTATIONS & WARRANTIES.

- a) **Mutual Representations and Warranties.** Rutgers and Pearson each represents and warrants to the other as follows: (a) the execution, delivery and performance by it of this Agreement have been duly authorized by all necessary corporate action and do not and will not require any consent or approval of its stockholders or owners or violate any provision of any agreement presently in effect having applicability to it or any provision of its charter documents; (b) this Agreement is a legal, valid and binding obligation of it enforceable against it in accordance with its terms and conditions; and (c) it 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 and that it has all power and authority under all instruments or agreements to which it is a party to enter into this Agreement and to perform its obligation hereunder.
- b) **Pearson Representations and Warranties.** Pearson represents and warrants that: (a) the Pearson Services will be performed in a professional manner and Pearson will use its best efforts to conform to the performance criteria set forth in this Agreement, in compliance with applicable federal, state and local laws, regulations, rules, and ordinances; and (b) all services will be performed by qualified, trained, and properly equipped personnel; and (c) that it is not debarred, suspended, proposed for debarment, or declared ineligible by any relevant governmental entity.

Pearson represents that it has not offered (and will not offer during the term of this Agreement) any compensation, reward, gift, favor, service, outside employment, reimbursement of expenses, loan, ownership interest, or anything else of value, to any officer, employee, or faculty member of Rutgers as an inducement to enter into or renew this Agreement. Pearson will notify Rutgers of any changes in the conditions as represented in the foregoing, that might give the appearance of a conflict of interest. Pearson warrants and represents that it is financially responsible and experienced in and competent to perform the type of work required hereunder.

Each party represents that to the best of its knowledge, any method of transmitting the programs to the other party will not introduce, any program, routine, subroutine or data (including malicious software or "malware," viruses, worms and Trojan Horses) that are designed to disrupt the proper operation of the programs or any other software or system used by that party.

PEARSON MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS OR SERVICES PROVIDED BY PEARSON HEREUNDER. PEARSON HEREBY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR OTHERWISE, INCLUDING WITHOUT LIMITATION TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. PEARSON MAKES NO WARRANTY THAT THE PEARSON SERVICES OR RUTGERS' USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, PEARSON DISCLAIMS ANY REPRESENTATION OR WARRANTY CONCERNING ANY PRESENT OR FUTURE USE, INTEGRATION OR COMPATIBILITY WITH ANY OTHER PRODUCTS OR SERVICES.

- c) **Rutgers Representations and Warranties.** Rutgers represents and warrants to Pearson that it owns the Rutgers Information or has obtained all rights in the Rutgers Information to provide the Rutgers Information to Pearson and convey the licenses granted herein to Pearson so that the use by Pearson to provide the Pearson Services and other services does not violate the intellectual property rights or other rights of a third party. Rutgers is responsible for meeting the then-current hardware, operating system, browser and other technical requirements necessary to properly use and access the LearningStudio. Rutgers will comply with all applicable federal, state and local laws, regulations, rules, and ordinances.
- d) **Prohibited Contacts.** Pearson and Rutgers shall each comply with telemarketing laws, rules and regulations on a local, state, and federal level, as applicable with respect to any contacts made by such party or its contractors, customers or affiliates. The term "telemarketing laws, rules and regulations" includes but is not limited to the Telemarketing Sales Rule and the Telephone Consumer Protection Act. Rutgers may supply leads and related information to Pearson in order for Pearson to perform the Pearson Services. In such instances, Rutgers represents, covenants, and warrants that each lead it supplies will satisfy the following criteria: (1) Rutgers has received a request from the lead that it expressly desires to receive additional information via telephone at a date certain, or (2) Rutgers has received an express request in writing to be contacted via telephone using a form which includes the number to be called and the lead's signature, or (3) the lead is not registered on any state or federal "Do Not Call Lists." Further, Rutgers will not provide any lead to Pearson if the lead has made a prior "Do Not Call" request to Rutgers. Rutgers acknowledges and agrees that it is responsible under this Agreement for the leads it obtains from its contractors, customers or affiliates. Rutgers and Pearson will work together to identify procedural changes or other measures that would reduce the likelihood of any issues in this area. If Pearson and Rutgers agree that Pearson will contact leads by any means or medium in addition to telephone (including, without limitation text messages or email), each party will be responsible for ensuring that any leads and other contacts provided by that party can be contacted without such contact resulting in the violation of any applicable federal, state, or local laws, rules, and regulations pertaining to the contact of persons or entities by such means or medium.

10. GENERAL TERMS AND CONDITIONS

- a) **Third Party Services.** If Rutgers elects to use third party products and/or services (collectively, the "Third Party Services") that are accessed through an integration from the LearningStudio to the third party's applications, Rutgers must contract directly with the applicable third party for the Third Party Services and Rutgers acknowledges the privacy policies and other terms and conditions applicable to the use of such Third Party Services may differ from those applicable to the use of the LearningStudio or the Pearson Services, and Rutgers' access to and use of the Third Party Services subject to such policies and terms and conditions. To the extent that Rutgers' use of such Third Party Services requires the transfer of, or access to, any Rutgers Information or other Rutgers data by the third party, Rutgers hereby expressly

consents to such transfer and/or access. Pearson makes no representations or warranties as to the Third Party Services, either express or implied, including any implied warranties of merchantability, quality, accuracy, performance, fitness for a particular purpose, or non-infringement, and Pearson shall not be liable to Rutgers for any claims, expenses, costs or other damages of any kind, arising out of or relating to the Third Party Services or Rutgers' use thereof. For purposes of clarification, products and services provided by Pearson under this Agreement shall not be considered to be Third Party Services.

- b) **Notice.** Unless expressly stated otherwise herein, any notice, demand, request or delivery required or permitted to be given by a party pursuant to this Agreement shall be in writing and in each case addressed to the receiving party at such party's address as set forth in this Agreement or as subsequently modified by the receiving party pursuant to written notice to the other party. Notices shall be effective upon receipt and shall be deemed to be received as follows: (a) when delivered personally, (b) if delivered by nationally recognized overnight courier, effective the business day following the date of shipment, or (c) if by U.S. mail (certified or registered mail return receipt requested, postage prepaid) the earlier of actual receipt or three business days from the date deposited in the mail. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be to the parties as set forth below:

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

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

Rutgers, The State University of New Jersey
Office of General Counsel
Winants Hall
New Brunswick, NJ

Rutgers, The State University of New Jersey
University Procurement Services
Attn: Executive Director
3 Rutgers Plaza, ASB III
New Brunswick, NJ 08901

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

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

- c) **Non-Exclusive Services.** Pearson provides products and services to other educational institutions that may be similar to, or the same as, those offered as part of the Pearson Services.
- d) **Pearson's Personnel.** Pearson shall, at its own cost and expense, provide honest, courteous and competent personnel adequate for and capable of managing, directing and operating its services hereunder and as outlined in this Agreement. Pearson shall be responsible for the compensation paid to and benefits paid on behalf of all such employees of Pearson. If Rutgers reasonably objects to the manner of performance of any employee of Pearson, Pearson shall immediately take all necessary actions to rectify the objections, including, if necessary, the prompt removal of the employee from the provision of services to Rutgers.
- e) **Independent Contractors and Responsibility.** The relationship between Rutgers and Pearson is limited solely to the activities, rights and obligations as set forth in this Agreement. Nothing in this

Agreement shall be construed (i) to create or imply a general partnership, limited partnership or other legal entity between Rutgers and Pearson, (ii) to create any duties or obligations between Rutgers and Pearson except as expressly set forth herein, or (iii) to grant any direct or implied licenses or any other right other than as expressly set forth herein.

- f) **Publicity.** Rutgers and Pearson, upon the execution of this Agreement, will agree upon the text and timing of an initial public announcement relating to the relationship established by this Agreement as soon as possible after the Effective Date (such agreement not to be unreasonably withheld or delayed); provided however that the parties acknowledge that Rutgers is a public institution and therefore subject to public records requests. Advance release of information related to this transaction by Rutgers in accordance with its policies shall not constitute a breach of this Agreement.
- g) **Governing Law.** This Agreement and all related disputes between the parties shall be construed under and controlled by the laws of the State of New Jersey, excluding its choice of law principles that would require the application of the laws of another jurisdiction.
- h) **Force Majeure.** Neither party shall be considered to be in default as a result of its delay or failure to perform its obligations under this Agreement when such delay or failure arises out of causes beyond the reasonable control of the party. Such causes may include, but are not restricted to, acts of God or the public enemy, acts or requirements of any governmental authority, wars, insurrections, riots, blackouts, failure of third party communications services, explosions, earthquakes, lightning, wind, terrorism, sabotage, fires, floods, epidemics or strikes.
- i) **Confidentiality.** Except to the extent counter to applicable law, Pearson and Rutgers agree to the following terms with respect to the treatment of confidential information. During the term of this Agreement, a party ("**Receiving Party**") may have disclosed to it or come in contact with information of the other party ("**Disclosing Party**") of a sensitive (as determined by the nature of the information itself or due to the circumstances of disclosure) or proprietary nature ("**Confidential Information**"). Confidential Information shall include the proprietary information and materials provided or disclosed by each party to the other as well as all student data. Each party hereto represents to the other party that during the term of this Agreement and thereafter, it will not, directly or indirectly, use, disseminate or disclose the Confidential Information to any person or entity (other than to employees, agents and contractors who are bound by similar obligations of confidentiality) for any purpose or at any time, except as expressly authorized by the Disclosing Party or as needed to perform its obligations under this Agreement. The Receiving Party shall use the same standard of care to avoid disclosure of any Confidential Information as it uses with respect to its own confidential or proprietary information, provided that in no event shall the Receiving Party employ less than reasonable efforts to protect any Confidential Information of the other party. Confidential Information shall not include information which:
 - i) is or becomes publicly known or available to the Receiving Party at or after the time of disclosure through no wrongful act of the Receiving Party; ii) is in the possession of or known to the Receiving Party at the time of disclosure without confidentiality restrictions; iii) is rightfully obtained by the Receiving Party from a third party; or iv) is independently developed by the Receiving Party. The terms of this section shall supersede and replace any non-disclosure or confidentiality agreement entered into by the parties prior to the Effective Date. In addition, a party will not be considered to have breached its obligations under this section for disclosing Confidential Information of the Disclosing Party to the extent required to satisfy any legal requirement of a competent governmental authority or court order, provided that promptly upon receiving any such request and to the extent that it may legally do so, such party advises the Disclosing Party prior to making such disclosure in order that the Disclosing Party may object to such disclosure, take action to ensure confidential treatment of the Confidential Information, or take such other action as it considers appropriate to protect the Confidential Information disclosed pursuant to the requirement or request of a governmental agency or disclosure is required by operation of law.

Notwithstanding the foregoing, the parties to this engagement letter acknowledge and agree that Rutgers, as an instrumentality of the State of New Jersey, is subject to the provisions of the New Jersey Open Public Records Act (OPRA).

- j) **FERPA.** Pearson will not make available or distribute any student information in violation of the Family Educational Rights and Privacy Act. However, Rutgers acknowledges and agrees that, by granting user identifications and/or passwords, Rutgers controls, defines and manages access to Rutgers Information and related records and data that will be used within the LearningStudio. Rutgers is responsible for (a) compliance with all foreign and domestic privacy and student record laws and regulations that may be applicable to Rutgers' use of the LearningStudio or the Pearson Services; (b) securing all necessary prior consents (if any are required) for the collection, storage and use of education records, data and personal information within the LearningStudio; and (c) the creation of, and compliance with, applicable policies regarding the access and use by Rutgers' authorized users of personally identifiable information stored on the LearningStudio.
- k) **Assignment.** Neither party shall assign or otherwise transfer this Agreement, or any of its rights and obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld, and any such attempted assignment or transfer without such consent will be null and void.
- l) **Non-Solicitation.** Neither party will, during the term of this Agreement, and for a period of one (1) year following the termination or expiration of this Agreement, directly or indirectly, hire or solicit for employment any person directly involved in the performance of this Agreement and then employed by the other party, or employed by other party at any time during the prior six (6) months, without prior written consent of the party.
- m) **Insurance.** Pearson agrees to carry, at its own cost and expense, the insurance policies described herein and submit to Rutgers at execution of this engagement, evidence thereof in the form of current certificates of insurance certifying all coverage. The Commercial General Liability and Business Automobile Liability policies and certificates of insurance shall name Rutgers as an additional insured and such coverage shall be deemed as primary coverage irrespective of any insurance maintained by Rutgers. Pearson shall endeavor to provide thirty (30) days written notice in the event of cancellation. The following insurance coverage is the minimum required solely with regards to Pearson's actions in the performance of this engagement letter, and shall not relieve Pearson of any liability where liability for injury, death, and property damage is greater than the insurance coverage for bodily injury, death or property damage to third parties:
- (1) Commercial General Liability Insurance Coverage – for bodily injury, death or property damage to third parties. The policy shall provide minimum coverage of \$5,000,000.00 per occurrence and in the aggregate. This policy shall be endorsed to name the Rutgers as an additional insured and such coverage shall be deemed as primary coverage irrespective of any insurance maintained by Rutgers solely with regards to Pearson's actions in the performance of this engagement letter.
 - (2) Worker's Compensation and Employer's Liability Insurance which provides statutory coverage in accordance with the Worker's Compensation Laws of the State of New Jersey and Employer's Liability coverage with limits of not less than:
 \$1,000,000 for Bodily Injury by Accident
 \$1,000,000 each employee for Bodily Injury by Disease
 \$1,000,000 Bodily Injury by Disease policy limit
 - (3) Business Automobile Liability insurance covering all non-owned and hired vehicles with a combined single limit of \$2,000,000 each accident and in the aggregate.
 - 4) Professional liability insurance, covering all services under this agreement, in an amount not less than \$5,000,000 each claim and in the aggregate. Such coverage shall include Information and Network Technology and provide cover for claims to the extent Pearson has access to Rutgers PII (Personally Identifiable Information). In the event of a PII breach, Rutgers shall be consulted and an agreement reached over notification process. Professional should also include coverage for software (and code) copyright infringement.

For items 4, and 5 above, if written on a claims made basis, this coverage will be retained for at least 3 years post completion of work.

Failure to maintain insurance coverage throughout the life of the contract, consistent with the provisions of this Section, shall be considered a breach of contract.

- n) **Limited Liability.** EXCEPT FOR EACH PARTY'S INDEMNITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY, INCLUDING WITHOUT LIMITATION LOST PROFITS OR GOODWILL, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE LEARNINGSTUDIO OR THE PEARSON PRODUCTS OR SERVICES. DURING THE FIRST TWELVE MONTHS FOLLOWING THE EFFECTIVE DATE, PEARSON'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL IN NO EVENT EXCEED FIVE MILLION DOLLARS (USD). THEREAFTER, PEARSON'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT DURING EACH SUBSEQUENT TWELVE MONTH PERIOD WILL IN NO EVENT EXCEED THE GREATER OF FIVE MILLION DOLLARS (USD) OR THE TOTAL FEES PAID BY RUTGERS TO PEARSON PURSUANT TO THIS AGREEMENT DURING THE IMMEDIATELY PRECEDING TWELVE MONTH PERIOD. NOTWITHSTANDING THE FOREGOING, CLAIMS BASED ON PERSONAL INJURY OR DEATH SHALL NOT BE SUBJECT TO THE LIABILITY CAPS SET FORTH HEREIN. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT, OR OTHERWISE, EVEN IF THE PARTY HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAILS OF THEIR ESSENTIAL PURPOSE.

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

- o) **Indemnification.**

Pearson. Pearson will, at its own expense, defend any action brought by a third party against Rutgers, and Pearson will pay any final judgment awarded, or settlements entered into by Pearson, in such actions, solely to the extent that such action is based upon a claim (a) of death or personal injury, (b) gross negligence or willful misconduct, or (c) that the LearningStudio or any other Pearson owned products (excluding any third party software or systems) infringes a third party's U.S. copyrights or misappropriates a third party's trade secrets. If the LearningStudio becomes, or in Pearson's opinion is likely to become, the subject of an infringement claim, Pearson may, at its option and expense, either: (a) procure the right to continue using the LearningStudio; (b) replace or modify the LearningStudio so that it becomes non-infringing; or (c) terminate this Agreement upon written notice to Rutgers. Notwithstanding the foregoing, Pearson will have no obligation under this section or otherwise with respect to any infringement claim based upon: (i) any use of the LearningStudio not in material accordance with this Agreement; (ii) any use of the LearningStudio in combination with products, equipment, software, content or data not supplied by Pearson; or (iii) any use of any release of the LearningStudio other than the most current release made available to Rutgers. THIS SECTION STATES PEARSON'S ENTIRE LIABILITY AND RUTGERS' SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS OR ACTIONS.

Rutgers. Except to the extent otherwise limited or prohibited by applicable state law, Rutgers will, at its own expense, defend any action brought by a third party against Pearson, and will pay any final judgment awarded, or settlement entered into, in any such action, provided that such action is based upon (a) Rutgers' failure to comply with any applicable laws or regulations, or (b) a claim that the Rutgers Information infringes any party's patents or copyrights or misappropriates such third party's trade secrets. If either party becomes aware or believes that Rutgers Information is (a) likely to become the subject of a claim that it infringes any party's patents or copyrights or misappropriates such

third party's trade secrets, or (b) indecent, obscene, threatening, libelous, slanderous, defamatory, illegal, or otherwise unlawful or tortious, including material that is harmful to children or violates third party privacy or publicity rights, that party shall give the other party notice of the potential issue and Pearson may, without liability under the Agreement, remove such Rutgers Information from the LearningStudio until such time as the issue has been resolved to both parties satisfaction.

Conditions. The obligations in this section are expressly conditioned upon the party seeking defense: (a) giving the party offering such defense (the "**Defending Party**") prompt notice of any such action; (b) giving the Defending Party sole control of the defense thereof, and any related settlement negotiations; and (c) providing reasonable cooperation and assistance to the Defending Party in the defense of such action.

- p) **Compliance with Rutgers Polices.** Pearson shall comply with all Rutgers rules, regulations and policies when on Rutgers property. In addition, in performing its duties and fulfilling its obligations hereunder, Supplier shall plan and conduct its operations so as not to delay, endanger, or interfere with the operation of others at Rutgers.
- q) **Affirmative Action.** Pearson shall comply with the regulations of NJSA 10:5-31 et seq (PL 1975, C.127) (N.J.A.C. 17:27). This Agreement shall be subject to all regulations of the above laws, and Supplier shall comply with all provisions of the laws. Pearson shall submit a Form AA-1 and either 1) a Certificate of Employment Information Report Approval issued by the state of New Jersey Affirmative Action Office and a signed copy of Exhibit "A" as an indication that the mandatory language is part of the Contract or 2) evidence of a current Federally approved Affirmative Action Program, photo static copy of said approval and signed Exhibit "A." If Pearson cannot furnish or meet said requirement and if an Employee Information Approval has not been applied for, Pearson shall submit a signed Exhibit C and a completed Information Report Form AA302. Rutgers shall provide form AA302 upon request. Employment goals shall be incorporated into this Agreement as part of the mandatory Agreement language.
- r) **Cooperation.** Pearson shall not be responsible for any delay in, or inability to perform, any services that results from a material delay or material failure in performance by Rutgers. Rutgers will make its management and technical personnel, who will work with Pearson and will perform those activities described as Rutgers' responsibility in this Agreement reasonably available to Pearson.
- s) **Miscellaneous.** This Agreement (including its exhibits) sets forth the entire understanding of the parties with respect to the subject matter covered by the Agreement and supersedes any and all prior understandings, representations, proposals, communications and agreements, whether written or oral, between the parties with respect to such subject matter. This Agreement may only be amended in a writing executed by both parties. If purchase orders or other documents or acknowledgments are issued by Rutgers for services and products that are part of this Agreement and contain terms and conditions in addition to, modifying or contrary to the provisions of this Agreement, those terms and conditions are hereby specifically objected to and shall be of no force or effect; it being the parties' intentions that this Agreement shall govern all matters relating to the subject matter herein. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired. No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision. The captions and headings in this Agreement are inserted only as a matter of convenience and for reference and in no way define the scope or content of this Agreement or the construction of any provision hereof or of any document or instrument referred to herein. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Execution and delivery of this Agreement may be evidenced by facsimile or PDF transmission.

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

Pearson

By: _____
Matt Leavy, President

Rutgers The State University of New Jersey

By: _____
Printed Name: _____
Title: _____

