



This document contains terms and conditions applicable to the *Inform* subscription product offered by the School Systems business unit of NCS Pearson, Inc. ("Pearson").

LICENSE AGREEMENT TERMS AND CONDITIONS

BY USING THE *PEARSON INFORM* (subscription only) PRODUCT, CUSTOMER AGREES TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT.

1. **Definitions.** These License Agreement Terms and Conditions are referred to herein as the "Agreement." NCS Pearson, Inc. is referred to herein as "Pearson." The school district or other entity licensing the System from Pearson is referred to herein as the "Customer." In addition, the following terms when capitalized herein shall have these agreed-upon meanings:

1.1 "Authorized Site" shall mean a school or other Customer site designated in writing by Pearson, in Pearson's price quotation on which Customer's order was based or in Pearson written acknowledgment of Customer's order, as authorized to provide Users access to the System.

1.2 "Customer Data" shall mean and include all administrative, student, teacher, and other related information belonging to Customer.

1.3 "Documentation" shall mean all written user information, workbooks, course materials, and instructional manuals and guides, whether in electronic, written, or other format, delivered by Pearson to Customer with respect to the System.

1.4 "Subscription Fee" shall mean the amount to be paid by Customer for the license to use and access the System for a stated period. The Subscription Fee does not, however, include any one-time set-up or installation fees, or any fees or charges payable by Customer to Pearson for any training, project management, data load, implementation, or other services.

1.5 "System" shall mean all components of the *Pearson Inform* product provided to Customer pursuant to this Agreement. This includes: (a) all System software applications; (b) any System content and intellectual property made available to Users; and (c) all Documentation. All System features, modules, and changes to the System provided or made available hereunder, including all future System enhancements, will be considered part of the System and are subject to, and will be governed by, the terms of this Agreement.

1.6 "Users" shall mean those individuals authorized by Customer or an Authorized Site to access and/or use the System. Users must be limited to those individuals having an educational or administrative relationship to Customer (e.g., students, parents, teachers, or administrators).

2. **Provision of and Access to the System.** Pearson agrees to provide Customer access to and use of the System. Pearson may, in its discretion, from time to time, as determined by Pearson, add new features, functionality or content to the System; limit, modify or discontinue existing features, functionality or content made available with the System; or incorporate revisions into the System as may be deemed appropriate by Pearson.

3. **System Availability.** Pearson shall make the System generally available to Customer during the term of this Agreement; provided,

however, Customer acknowledges that Pearson may take the System down from time to time to perform maintenance and/or upgrades. In addition, Customer agrees that from time to time the System may be inaccessible or inoperable due to System errors or causes beyond the control of Pearson or which are not reasonably foreseeable by Pearson, including, but not limited to: the interruption or failure of telecommunication or digital transmission links; hostile network attacks; network congestion; or other failures (collectively "Downtime"). Pearson shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the System caused by Downtime, whether scheduled or not.

4. **License and Use.**

4.1 **License Grant.** Subject to the terms and conditions of this Agreement, Pearson grants to Customer a limited, personal, non-exclusive, non-transferable license to use and access the System for educational, instructional, and related administrative purposes. Customer shall grant access to the System only to Users at Authorized Sites and only for such purposes in accordance with the terms of this Agreement. If, at any time, Pearson permits Customer to increase number of students, Users or Authorized Sites on which Customer's original pricing was based, such increase shall also be subject to the terms and conditions of this Agreement and any relevant additional fees.

4.2 **Access; Passwords.** Customer acknowledges and agrees that, by granting user identifications and passwords, Customer controls, defines and manages access to all Customer Data and related records and data that will be used within the System. Pearson shall provide Customer with the ability to generate passwords and/or user identifications, which shall be used by Customer to provide access to the System. Customer will instruct its Users as to the importance of maintaining the confidentiality of passwords and/or user identifications. Customer acknowledges that Customer's data security may be compromised if Users do not follow appropriate security procedures to maintain the security of the System, including, without limitation, maintaining the confidentiality of User names and passwords, frequent changing of passwords, creation of appropriate passwords, and maintaining appropriate internal controls to monitor access to and use of the System. Customer will promptly report any security concerns to Pearson through Pearson's technical support line. Customer will secure all necessary prior parental and student consents (if any are required) for the collection, storage and use of education records and personal information within the System.

4.3 **Copies.** Customer shall have the right to make copies of Documentation only as necessary to support the use of the System as set out in this Agreement. Customer shall ensure that all copyright or other proprietary rights notices contained on the downloadable Documentation appear on all copies. Customer shall not, and shall not allow any other person or entity to, reproduce, copy, repost, download

or distribute the System or any portions of the System, except as permitted by this Agreement, without the express written consent of Pearson.

4.4 Customer Content. To the extent that the System allows Customer to input or post any content, Customer will not input or post any content that infringes any patent, copyright, trade secret or other proprietary right of any other party. Customer acknowledges and agrees that Pearson may delete, or require Customer to delete, any such content from the System upon determining in its sole discretion, or upon receiving notice from Customer or any third party of any claim, that such content is infringing upon the intellectual property rights of a third party, or that such content is indecent, obscene, libelous, slanderous, illegal, or otherwise inappropriate. In addition, upon termination of this Agreement, Pearson may delete any of Customer's student data or any content input or posted in the System by Customer.

5. Proprietary Rights.

5.1 Rights in the System. Customer acknowledges and agrees that all right, title and interest in and to the System and related intellectual property, including all copyright, trademark, trade secret and patent rights, belong solely to Pearson or its licensors. Customer agrees to keep the System and related intellectual property confidential and to utilize reasonable efforts to protect such materials from unauthorized disclosure or use. Customer will not attempt to or allow others to (i) modify, adapt, decompile, decrypt, disassemble, extract or reverse-engineer any part of the System provided hereunder; (ii) remove any proprietary, copyright, trade secret or other warning legend from the System provided hereunder; (iii) furnish or distribute any portion of the System into any country in violation of national export control regulations; or (iv) continue the use of any of the System items or content in any format or in any test created by the Customer beyond the term of any subscription. Customer will notify Pearson of any violations of Pearson's proprietary rights of which it becomes aware.

5.2 Rights in Customer Data. Pearson acknowledges and agrees that all Customer Data is and shall remain the property of Customer. Pearson makes no claims as to ownership of any Customer Data. Pearson agrees to exercise commercially reasonable efforts to maintain as confidential and use solely as necessary for purposes of performing this Agreement all Customer Data that is disclosed to Pearson or is stored on servers hosting the System. Except as specifically stated herein, Pearson will not disclose Customer Data to third parties without Customer's consent. Pearson may, however, disclose Customer Data to entities performing work for Pearson related to the set-up, installation and training of Customer to use the System or the development, support or maintenance of the System, to the extent such disclosure is necessary for the facilitation of such work (in which case Pearson shall ensure that such entities are contractually bound to maintain the confidentiality of such information to the same extent that Pearson is), and may disclose the fact that Customer is a user of the System to business partners of Pearson that offer complementary products or services. In addition, Pearson may disclose Customer Data in the following situations: (a) in response to a subpoena, court order or other legal process; (b) to protect user security or the security of other persons; or (c) in connection with a sale, joint venture or other transfer of some or all of the assets of Pearson.

5.3 Use of Data. Customer authorizes Pearson to use data from Customer's use of the system on an anonymous, aggregated basis for research and System improvement purposes.

6. Support and Services.

6.1 Support. During the term of this Agreement, Pearson will provide technical support for the System via telephone or electronic mail, on weekdays during Pearson's normal business hours, excluding holidays observed by Pearson. Customer acknowledges that Pearson's provision of technical support does not extend to all Users of the System; rather, all requests for technical support from Pearson shall be made by persons employed by Customer who have been appropriately trained and whom Customer has designated as its Site Administrators for the System. Customer's other Users must direct their requests for such support to Customer's designated Site Administrators. Pearson will provide technical support to Customer's Site Administrators to assist Customer in resolving errors in the System and to answer technical questions that affect the functionality of and Customer's ability to use the System. Technical support does not include assistance with planning or interpretation of data. In addition, Pearson's obligation to provide technical support shall not extend to issues with 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 System.

6.2 Services. In addition to support services as described in Section 6.1, Pearson may provide certain other professional services pursuant to the following terms:

(a) Pearson may offer to Customer a standard package which may include implementation, training and other services. Any included services will be identified in Pearson's quote to Customer, and Customer will receive the benefits of those services upon purchase. Any additional services which are not identified in Pearson's quote may be purchased separately at Pearson's then-current rates, or such rates as may otherwise be agreed to in writing between Customer and Pearson.

(b) For both any standard package and any additional services that Customer may order, Pearson's quoted rates do not include travel expenses. Customer shall also pay Pearson for such reasonable travel expenses (including transportation, lodging and meals) as may be incurred in the performance of services. Customer acknowledges that certain professional services may, at Pearson's option, be performed on Customer's premises or remotely, via telephone, e-mail, or other forms of communication. For work to be performed on Customer's premises, Customer agrees to provide, at Customer's expense, appropriate work space and other on-site accommodations (e.g., access to utilities) necessary to enable Pearson to perform such work. Pearson reserves the right to require a purchase order or equivalent commitment to pay, or prepayment, prior to performing any services.

7. Payment Terms.

7.1 Payment; Taxes. Customer agrees to pay Pearson all fees charged under this Agreement, as well as all applicable taxes (exclusive of taxes based on Pearson's net income) in accordance with Pearson's invoice terms. Customer will provide Pearson with proof of any claimed tax exemption, and will be responsible for the payment of any applicable penalties, taxes, and costs which arise if the tax exemption proves inapplicable. Any sums not paid by the due date specified on the invoice will be subject to interest on the unpaid amount at the lesser of 1.5% per month (18% annually) or the maximum rate allowed by law.

7.2 Suspension for Non-Payment. In addition to any other rights of Pearson under this Agreement, Pearson shall have the right to immediately suspend Customer's access to the System and the performance of any other obligations of Pearson hereunder in the event that Customer breaches its payment obligations set forth in this Section 7, until such breach is cured.

8. **Compatible Platforms/Hardware.** Customer is responsible for meeting hardware, operating system, and other technical requirements necessary to properly access the System. Pearson will not be responsible for any incompatibility between the System and any ISP or any versions of operating systems, hardware, browsers or other products not specifically approved by Pearson for Customer's use with the System. Pearson will make written System requirements available to Customer at Customer's request. Customer is responsible for providing the necessary environment and equipment to access the System, including access to the Internet.

9. **Third Party Software License Terms.** The System may include certain third party software. In some cases, the provision of such third party software to Customer is subject to additional terms and conditions, which may be set forth on a schedule hereto or within the System or the Documentation, and for such software, such other terms and conditions shall apply in addition to the terms and conditions of this Agreement. However, in no event shall any such third party software terms deprive Customer of the intended benefits of this Agreement.

10. **Term.** The initial subscription term for Customer's access to the System shall begin on the date that Pearson makes the system available for Customer use, whether Customer actually uses the System or not, and shall continue for a period consistent with the Subscription Fees paid to Pearson. If either party notifies the other of its intent not to renew this Agreement for a subsequent term prior to the end of the then-current term, then this Agreement shall end at the expiration of the then-current term. Otherwise, this Agreement will be renewed so long as Pearson receives the applicable fees for the renewal term prior to the expiration of Customer's then-current term; provided, however, if Customer remits such fees to Pearson subsequent to the expiration of the initial or any renewal term, Pearson may, in its sole discretion, maintain this Agreement in effect. The fees for any such renewal term shall be at Pearson's then-current rates, unless otherwise indicated in Pearson's quote to Customer.

11. **Termination and Remedies.**

11.1 **Termination.** Pearson shall have the right to suspend Pearson's performance and Customer's access to the System under this Agreement in the event 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 Customer breaches any of its obligations under Sections 4 or 5.

11.2 **Effects of Termination.** In the event of any termination 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. The provisions of Sections 5, 11.3, 12, 13 and 14 shall survive termination of this Agreement.

11.3 **Return on Termination.** Customer's access to and use of the System shall immediately cease upon the termination of this Agreement for any reason. After termination, Customer will cease to use any System software applications and Documentation in its possession, and upon Pearson's request, Customer will certify that it has returned or destroyed all copies of same in its possession.

11.4 **Data Storage and Return.** In the event of non-renewal or termination of a subscription for any reason, any student data remaining on Pearson's servers will be stored or destroyed in accordance with Pearson's then-current policies.

12. **DISCLAIMER OF WARRANTIES.** PEARSON WILL USE COMMERCIALY REASONABLE EFFORTS TO MAINTAIN THE PERFORMANCE OF THE SYSTEM IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. HOWEVER, PEARSON AND ITS LICENSORS DO NOT MAKE, AND HEREBY DISCLAIM, ANY EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, STATUTORY WARRANTIES, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, INTEGRATION OR COMPATIBILITY WITH ANY OTHER PRODUCTS OR SERVICES, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. NEITHER PEARSON NOR ITS LICENSORS WARRANT THAT THE SYSTEM OR CUSTOMER'S USE THEREOF WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. NEITHER PEARSON NOR ITS LICENSORS CAN CONTROL THE FLOW OF DATA TO OR FROM PEARSON'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT USERS' AND/OR PEARSON'S CONNECTIONS TO THE INTERNET.

13. **LIMITATION OF LIABILITY.** NEITHER PEARSON NOR ITS LICENSORS SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES, OR FOR ANY LOST BUSINESS, LOST FUNDING, LOST PROFITS OR LOST SAVINGS ARISING OUT OF THIS AGREEMENT, OR OUT OF CUSTOMER'S USE OF OR INABILITY TO USE THE SYSTEM, EVEN IF ADVISED OF SUCH DAMAGES OR LOSS OR THE POSSIBILITY OF SUCH DAMAGES OR LOSS. IN NO EVENT SHALL PEARSON'S OR ITS LICENSORS' LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF MONEY PAID BY CUSTOMER TO PEARSON FOR THE SYSTEM, OR OTHER ITEM OR SERVICE ON WHICH THE CLAIM IS BASED, DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE LOSS OR INJURY.

14. **General.**

14.1 **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA.

14.2 **Limitation on Actions.** Customer may bring no action arising out of this Agreement, regardless of form, more than one (1) year after the cause of action has arisen.

14.3 **Assignment; Subcontracting.** Customer may not assign, delegate, or otherwise transfer all or any portion of this Agreement or its rights and obligations hereunder without the prior, written consent of Pearson. Customer acknowledges that Pearson may subcontract portions of the support services or professional services to be provided by Pearson hereunder to third parties certified by Pearson to provide such services. Additionally, Pearson may use third parties to host and deploy the System.

14.4 **Waiver; Severability.** No waiver of any provisions of this Agreement by either party shall be deemed to be an ongoing waiver of such provisions or any rights related thereto unless the parties otherwise

expressly agree in writing. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be enforced to the maximum extent possible.

14.5 Force Majeure. 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 acts of God, civil disturbance, strikes, or labor disputes.

14.6 Notices. Any and all notices shall be sent by United States First Class or Certified Mail or by a courier service furnishing proof of delivery (postage and delivery prepaid). In the case of notices to Pearson, such notices shall be sent to: NCS Pearson, Inc., Attn.: Contracts Department, 3075 West Ray Road, Suite 200, Mail Stop 315, Chandler, Arizona 85226. 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.

14.7 Terms of Agreement. Customer agrees that the terms of this Agreement, including all pricing for Pearson products and services, are the confidential information of Pearson and shall be kept confidential by Customer and not disclosed to any third party without the prior written consent of Pearson; provided, however, that Pearson's consent shall not be required in the event that disclosure of the terms of this Agreement is

required by law (e.g., public records acts or similar statutes that may be applicable to Customer).

14.8 U.S. Government Restricted Rights. The System is a "commercial item" as that term is defined in 48 C.F.R. §2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. §12.212, 48 C.F.R. §227.7202 and 48 C.F.R. §52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government end users acquire the System only with those rights set forth herein.

14.9 Total Agreement. This Agreement contains the entire agreement between the parties relating to its subject matter and supersedes all previous agreements, proposals, negotiations, and correspondence between them, whether oral or written, related to this matter. 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 the System or any related products or services provided. This Agreement shall not be modified, varied, waived or otherwise changed without the mutual, written agreement of both parties. Headings used in this Agreement are for reference only and are not interpretive.