



2019 Site License Pricing— Schools

Number of Schools	Price per school	Product Code	Total price (includes unlimited Cogmed use with students, online implementation and technical support, and online training for up to 3 coaches per school)
	\$1500	0150021666	

Unlimited User IDs valid for 12 months from date of purchase. Prices valid through 12/31/2019 and subject to change without notice. Multiple school discount pricing: 1-4 schools n/a, 5-9 schools 5%, 10-14 schools 10%, 15-20 schools 15%, 20+ schools 20%

Account Information

Name:

Title:

Email:

Phone:

District name:

School name:

Address:

City/State/ZIP:

Phone:

Payment

☐ **Purchase Order #**

☐ **Credit Card:** *Please provide the best contact number to reach you between the hours of 7:00 a.m. and 6:00 p.m. Central Time.

Phone Number:

() _____

*Pearson can only accept credit card payments through the e-commerce portal, call center, or remote call centers at select events. Credit card information is not accepted via paper orders to protect your personal information.

Bill To

Organization:

Name:

Email:

Address:

City/State/ZIP:

Phone:

PHONE: 888.748.3828

EMAIL:

cogmedinfo@pearson.com

800.627.7271 | PearsonClinical.com

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COGMED WORKING MEMORY TRAINING

LICENSE AGREEMENT

EDUCATIONAL INSTITUTIONS

THIS IS A LEGAL AGREEMENT BETWEEN YOU ("LICENSEE", "YOU") AND NCS PEARSON, INC., THROUGH ITS COGMED BUSINESS UNIT ("PEARSON"). THIS AGREEMENT SETS OUT THE TERMS AND CONDITIONS RELATED TO YOUR USE OF THE COGMED TRAINING SYSTEM. PLEASE READ THIS AGREEMENT CAREFULLY AND COMPLETELY. BY CLICKING THE "I ACCEPT" BUTTON YOU AGREE TO BE BOUND BY THIS AGREEMENT, INCLUDING ALL THE INFORMATION AT THE LINKS REFERENCED IN THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, PEARSON DOES NOT WISH TO GRANT A LICENSE TO YOU. YOU WILL NOT BE ABLE TO ACCESS OR USE THE COGMED TRAINING SYSTEM UNLESS AND UNTIL YOU AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT.

1 DEFINITIONS

- 1.1 **"Agreement"** means this Cogmed Working Memory Training License Agreement for Educational Institutions, together with [Pearson's Terms and Conditions of Sale and Use of Pearson Products](#) and of [Pearson's Cogmed Qualifications Policies](#), together with all information included at the links referenced in this Agreement.
- 1.2 **"Cogmed Content"** means any material(s) (whether in electronic or hard-copy format) made available by Pearson under license and intended for use with Cogmed Working Memory Training, including but not limited to forms, checklists, and user documentation.
- 1.3 **"Cogmed Product Marks"** means any trademarks, trade names, service marks, logos and other commercial symbols associated at any time with Cogmed Working Memory Training, whether registered or unregistered, including but not limited to those used on the CWMT Collateral Materials.
- 1.4 **"Cogmed Professional Training"** means the training provided to an individual by Pearson or its designee, through which such individual may become a Cogmed Qualified Coach. The Cogmed Professional Training may be revised from time to time; a current description can be found [here](#).
- 1.5 **"Cogmed Qualified Coach"** means an individual who has successfully completed the Cogmed Professional Training and whose qualification is current and in good standing.
- 1.6 **"Cogmed Quality Assurance Person"** means the individual having an appropriate level of professional qualifications, as described in [Pearson's Cogmed Qualifications Policies](#), as revised from time to time, and who is responsible for all aspects of Licensee's appropriate use of Cogmed Working Memory Training.
- 1.7 **"Cogmed Training System"** means the on-line training method and system that includes the computerized program(s) currently referred to as "Cogmed RM / Cogmed QM / Cogmed JM" and the Cogmed Training Web; all utilized to enable the Cogmed Working Memory Training educational intervention.
- 1.8 **"Cogmed UserID"** means a unique identifier provided by Pearson to Licensee that enables access by a single, unique Trainee to the Cogmed Training System.
- 1.9 **"Cogmed Working Memory Training"** means Pearson's educational intervention for improving working memory, utilizing the Cogmed Training System.

- 1.10 “Confidential Information”** of a party means all information pertaining to that party’s business and management, including without limitation any of its proprietary or trade secrets, technology, or business records, excluding information:
- i. that is or becomes publicly available through no fault of the other party;
 - ii. that is disclosed with the prior written consent of such party;
 - iii. that is disclosed pursuant to a court order or other legal compulsion, and as a result becomes public record; or
 - iv. that is independently developed without use of the other party’s Confidential Information.
- 1.11 “CWMT Collateral Materials”** means brochures, descriptions, presentation material, manuals and other documentation that describes the Cogmed Working Memory Training and/or the Cogmed Training System, made available by Pearson and/or appearing on a Pearson-authorized Cogmed website(s).
- 1.12 “Pearson Intellectual Property”** means and includes the Cogmed Training System and Cogmed Content, as well as all Confidential Information, copyrights, database rights, patent rights, product mark rights, trademark rights, and other proprietary rights and interests of Pearson, its affiliates, or licensors related to any aspect of the Cogmed Working Memory Training; and all causes of action heretofore and hereafter accrued in favor of the owner of such intellectual property rights for infringement of any one or all of the aforesaid intellectual property rights.
- 1.13 “Team Member(s)”** means any and all third parties retained, commissioned, hired or employed by Licensee, including, without limitation, Licensee’s employees, consultants, independent contractors, Cogmed Quality Assurance Person(s), and Cogmed Qualified Coach(s), who contribute to or take part in any activity(ies) licensed to Licensee under this Agreement, including providing Trainee(s) with access to the Cogmed Training System on behalf of Licensee.
- 1.14 “Term”** means, subject to the early termination provisions contained in this Agreement, the period of time commencing when Licensee indicates its acceptance of this Agreement and continuing until the earlier of (i) such time as Licensee no longer has Cogmed UserID(s) acquired under this Agreement that can be used by a Trainee(s); and (ii) eighteen (18) calendar months after Licensee’s acceptance of this Agreement.
- 1.15 “Trainee”** means an individual student or staff member of Licensee to whom Licensee provides access to the Cogmed Training System.
- 1.16 “Training Data”** means Trainee demographics and Trainee input into the Cogmed Training System. Training Data does not contain any personally identifiable information.

2 LICENSE

During the Term of and subject to the terms and conditions of this Agreement, including payment of all applicable fees, Pearson hereby grants to Licensee, and Licensee hereby accepts, a personal, limited, non-exclusive, nontransferable license, without right of sublicense, to access and use the Cogmed Training System and the Cogmed UserID(s), solely for the purpose of providing Cogmed Working Memory Training to Trainees.

3 TERMS OF USE

- 3.1** For the full duration of their access to the Cogmed Training System, all Trainees must be either (i) enrolled at Licensee for the purpose of receiving curriculum-based education or (ii) staff of Licensee.
- 3.2** Cogmed UserID(s) acquired under this Agreement are activated on the date this Agreement is electronically accepted by Licensee. Each Cogmed UserID may be used by only a single Trainee. A Cogmed UserID is not transferable after initial Trainee log-in. Once a given Cogmed UserID has been used to complete all of their training blocks in the Cogmed Training System, that Cogmed UserID will become

de-activated and can no longer be used to access the Cogmed Training System. All use of Cogmed UserID(s) acquired under this Agreement must be COMPLETED within the Term of this Agreement. Upon termination or expiration of this Agreement, all still-active Cogmed UserID(s) acquired under this Agreement will terminate and will not be refunded or replaced. Licensee is solely responsible for maintaining the confidentiality and security of any Cogmed UserID(s), password(s), or other access information provided by Pearson to Licensee and/or created by Licensee for use in conjunction with the Cogmed Training System. If Licensee reasonably believes there has been any breach of security (e.g. disclosure, theft, or unauthorized use of any Cogmed UserID and/or password) or other unauthorized access to the Cogmed Training System, Licensee shall notify Pearson immediately.

- 3.3** Licensee is authorized to permit Trainee(s) to access the Cogmed Training System only while such Trainee(s) are (i) under the supervision of a Cogmed Qualified Coach through the online Cogmed Coaching Center, and (ii) using a device which must conform to Pearson's then-current published **System Requirements**.
- 3.4** Licensee may not rent, lease, sell, sublicense, assign, share, or transfer Cogmed UserID(s) or any rights granted by this Agreement nor exploit the Cogmed Training System for commercial purposes. Licensee must not require any Trainee to pay any fee related specifically to such Trainee's access to the Cogmed Training System or participation in the Cogmed Working Memory Training.
- 3.5** All Cogmed Content remains the property of Pearson and is licensed to Licensee during the Term of this Agreement solely for use with the Cogmed Training System. Certain Cogmed Content materials may be accompanied by and subject to additional terms of use. Licensee will not post electronic copies of any Cogmed Content on any website or intranet. Upon termination or expiration of this Agreement, Licensee will cease use of all hard copies of and delete from all storage media all electronic copies of Cogmed Content, except that Licensee may retain the minimum number of copies of Cogmed Content reasonably required for archival and student record retention purposes.
- 3.6** Licensee acknowledges and agrees that the Pearson Intellectual Property is, and will remain, the sole and exclusive property of Pearson, its affiliates, or licensors, and Licensee acquires no right, title, or interest therein other than the limited license granted by this Agreement. All rights not expressly granted to Licensee by this Agreement are reserved to Pearson.
- 3.7** Licensee will not work around any technical limitations in and/or perform any actions that could interfere with the proper working of or modify or alter in any manner the Cogmed Training System.

4 LICENSEE'S OBLIGATIONS

- 4.1** Licensee will be solely responsible for identifying potential Trainees and when evaluating potential Trainees will comply with all applicable Cogmed training methods and guidelines.
- 4.2** Prior to permitting any Trainee to participate in the Cogmed Working Memory Training, Licensee will obtain from each Trainee or, if applicable, his/her parent or guardian, all consents required by law. Licensee is solely responsible for ensuring that Licensee's exercise of its rights granted under this Agreement is in accordance with all applicable data protection and privacy laws and regulations. Licensee will remain solely liable for all obligations to Trainee and his/her parent or guardian.
- 4.3** Licensee understands, acknowledges, and agrees that Training Data is automatically and electronically transmitted to Pearson or its designee in a manner that protects the identity of the Trainee, and Licensee must and hereby agrees to inform each Trainee of this fact before permitting the Trainee to participate in the Cogmed Working Memory Training. Pearson collects and analyzes Training Data and may use it during and after the Term of this Agreement for research or normative purposes and for further product development.

- 4.4** Licensee will have access to its Trainees' Training Data stored in the Cogmed Training System data base for a period of six (6) months following the date of initial Trainee log-in under any given Cogmed User ID, and Licensee may use its Trainees' Training Data to produce reports and as otherwise appropriate in providing Cogmed Working Memory Training. Pearson will regularly back up the Training Data stored in the Cogmed Training System data base. Licensee remains solely responsible, however, for making backups of its Trainees' Training Data adequate for Licensee's own purposes. Licensee releases Pearson from any and all liability for any damages, loss, or other injury related to or resulting from errors or failure in the Cogmed Training System data base and/or Pearson's backup systems.
- 4.5** Licensee shall select and assign to each Trainee, in accordance with then-current Cogmed guidelines, a Cogmed Qualified Coach to communicate with and supervise such Trainee's access to the Cogmed Training System. Licensee will not permit any Trainee to access the Cogmed Training System except at the direction of a Cogmed Qualified Coach. Licensee shall ensure that each Trainee's assigned Cogmed Qualified Coach performs his/her responsibilities in accordance with then-current Cogmed coaching guidelines.
- 4.6** Licensee's designated Cogmed Quality Assurance Person is responsible for (a) evaluating the suitability of individuals for participation in Cogmed Working Memory Training; (b) monitoring quality of Cogmed Working Memory Training offered by Licensee to Trainees; (c) monitoring the compliance of Licensee with Licensee's obligations under this Agreement; and (d) serving as the contact person and liaison between Pearson and Licensee in matters related to the quality of Cogmed Working Memory Training. Licensee's Cogmed Quality Assurance Person shall not evaluate any individual for participation in Cogmed Working Memory Training or permit any Trainee to access the Cogmed Training System until after successfully completing the Cogmed Professional Training.
- 4.7** Licensee is responsible for any and all costs related to or resulting from Licensee's exercise of its rights under this Agreement.

5 PROMOTION; OWNERSHIP OF TRADEMARKS

- 5.1** Neither Licensee nor any Team Member(s) shall: (a) make any warranty, representation, or statement regarding the Cogmed Working Memory Training that is in conflict with the CWMT Collateral Materials; or (b) represent or suggest that Cogmed Working Memory Training is, or purports to be, a medical device, a substitute for medication, or a cure or treatment for any disorder or condition.
- 5.2** Pearson grants to Licensee a limited, non-exclusive, nontransferable, royalty-free license to use the Cogmed Product Marks during the Term of this Agreement, solely for the purpose(s) of exercising Licensee's rights under this Agreement and describing Cogmed Working Memory Training to potential Trainees and their parents and/or guardians. Licensee is not permitted to alter the CWMT Collateral Materials or create any new or additional marketing materials containing any of the Cogmed Product Marks. Licensee shall acquire no right, title or interest in the Cogmed Product Marks other than the limited license stated herein. Licensee will not by act or omission depreciate the value of the goodwill attaching to the Cogmed Product Marks.

6 TECHNICAL SUPPORT SERVICES; HARDWARE REQUIREMENTS

- 6.1** The Cogmed Training System is an on-line application that must be used with a **"Supported Web Browser"**. Pearson reserves the right to revise from time to time the Supported Web Browser(s). Provided that Licensee is using a then-Supported Web Browser to access the Cogmed Training System, Pearson or its designee shall during the Term of this Agreement provide to Licensee the **"Cogmed Technical Support**

Services”. Pearson has no obligation to provide Cogmed Technical Support Services if Licensee is not using a Supported Web Browser to access the Cogmed Training System.

- 6.2** Pearson may from time to time perform scheduled maintenance and upgrades on the Cogmed Training System, and during such periods the Cogmed Training System will not be accessible. Pearson will make reasonable efforts to communicate to Licensee information regarding such scheduled maintenance and upgrades. Licensee acknowledges that the availability of an on-line service is at times dependent on factors beyond Pearson’s control and that there may be non-scheduled periods of unavailability, and Licensee releases Pearson from any and all liability related to or resulting from any scheduled or nonscheduled periods of unavailability.

7 PEARSON’S WARRANTY; LIMITATION OF LIABILITY

- 7.1** Pearson warrants to Licensee that the content of the Cogmed Training System does not infringe on any valid copyrights of any third party enforceable in the United States.
- 7.2** Pearson represents and warrants to Licensee that: (a) it has the right to grant the license(s) specified herein; (b) its execution of this Agreement has been duly authorized; and (c) this Agreement is fully binding on Pearson and enforceable in accordance with its terms. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE RIGHTS AND LICENSES PROVIDED HEREIN ARE PROVIDED “AS IS”, AND PEARSON AND ITS AFFILIATES AND LICENSORS HEREBY DISCLAIM ANY AND ALL WARRANTIES OF MERCHANTABILITY, ACCURACY, PERFORMANCE, EFFORT, NONINFRINGEMENT, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE. PEARSON DOES NOT WARRANT THAT LICENSEE’S USE OF THE COGMED TRAINING SYSTEM OR ANY OTHER PRODUCT OR SERVICES FURNISHED BY PEARSON, OR EXERCISE OF THE RIGHTS GRANTED HEREIN WILL BE UNINTERRUPTED OR ERROR FREE, AND PEARSON DOES NOT WARRANT AS TO ANY RESULTS THAT MAY BE OBTAINED BY LICENSEE’S EXERCISE OF THE RIGHTS GRANTED HEREIN. PEARSON AND ITS LICENSORS DISCLAIM ANY OTHER EXPRESS OR IMPLIED WARRANTY. PEARSON DOES NOT WARRANT THAT THE COGMED TRAINING SYSTEM WILL ALWAYS BE ACCESSIBLE OR OPERATE WITHOUT ERROR NOR THAT USE OF THE COGMED TRAINING SYSTEM WILL BE UNINTERRUPTED OR SECURE.
- 7.3** PEARSON’S LIABILITY FOR LOSS OR DAMAGE RELATING TO THIS AGREEMENT AND/OR LICENSEE’S USE OR INABILITY TO USE THE COGMED TRAINING SYSTEM, REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO THE AMOUNT PAID BY OR DUE FROM LICENSEE TO PEARSON FOR ACCESS TO THE COGMED TRAINING SYSTEM AS EVIDENCED BY THE COGMED USER ID(S) IDENTIFIED TO LICENSEE AND ACQUIRED UNDER THIS AGREEMENT. THIS IS YOUR EXCLUSIVE REMEDY. IN NO EVENT SHALL PEARSON OR ITS AFFILIATES OR LICENSORS BE LIABLE TO LICENSEE FOR ANY CLAIM MADE AGAINST LICENSEE BY ANY THIRD PARTY (INCLUDING ANY TRAINEE) OR FOR ANY CLAIM MADE BY LICENSEE FOR LOST BUSINESS OR PROFITS OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF PEARSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, LOSS, OR DAMAGES.

8 LICENSEE’S REPRESENTATIONS AND WARRANTIES

LICENSEE REPRESENTS AND WARRANTS THAT: (a) IT MEETS OR EXCEEDS PEARSON’S RELEVANT COGMED QUALIFICATION REQUIREMENTS; (b) IT HAS ALL REQUISITE POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND TO PERFORM ALL OF ITS OBLIGATIONS UNDER THIS AGREEMENT, AND THIS AGREEMENT IS FULLY ENFORCEABLE AGAINST IT IN ACCORDANCE WITH THE TERMS HEREOF; (c) LICENSEE’S EXPERTISE INCLUDES THE IDENTIFICATION OF PERSONS HAVING WORKING MEMORY WEAKNESSES; (d) LICENSEE IS AN ORGANIZATION OR INSTITUTION WHOSE PRIMARY ACTIVITY IS THE OFFERING OF CURRICULUM-BASED EDUCATION; AND (e) ALL USE OF THE COGMED TRAINING SYSTEM BY LICENSEE, TEAM MEMBER(S), AND TRAINEES SHALL BE CONDUCTED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT AND ALL THEN CURRENT COGMED AND PEARSON GUIDELINES.

9 INDEMNITY

Licensee shall indemnify, defend, and hold Pearson harmless from and against any third party claims, actions, suits, damages, costs and reasonable attorneys' fees arising out of (i) any breach of Licensee's obligations hereunder; (ii) Licensee's dealings with Trainees, including but not limited to data protection and privacy issues; (iii) Licensee's exercise of its rights granted under this Agreement, including any Trainee access to the Cogmed Training System; (iv) acts or omissions of Licensee or any Team Member(s), including the death of, or injury to, any person or damage to any property which resulted or is alleged to have resulted from any acts or omissions of Licensee and/ or a Team Member(s); (v) the personal injury or death of a Trainee or any third party or damage to any property arising from the acts or omissions of Licensee and/or any Team Member(s) and/or any Trainee; (vi) any warranty, representation, or statement made by Licensee and/or a Team Member(s) regarding the Cogmed Working Memory Training that is in conflict with the CWMT Collateral Materials; and/or (vii) any representation or suggestion made by Licensee and/or a Team Member(s) that Cogmed Working Memory Training is, or purports to be, a medical device, a substitute for medication, or a cure or treatment for any disorder or condition (in violation of §5.1). Licensee is responsible for ensuring compliance with the terms and conditions of this Agreement by all Team Member(s) and by any party (including any Trainee(s)) that gains access to the Cogmed Training System as licensed to Licensee under this Agreement and/or that uses any Cogmed UserID issued to Licensee.

10 TERM AND TERMINATION

- 10.1** Either Party may terminate this Agreement in the event the other party breaches this Agreement and fails to remedy such breach, if capable of remedy, within thirty (30) days after receipt of written notice thereof.
- 10.2** Notwithstanding the foregoing, Licensee acknowledges and agrees that any breach or threatened breach of Sections 2 (License), 3 (Terms of Use), 4 (Licensee's Obligations), 5 (Promotion, Ownership of Trademarks), 8 (Licensee's Representations and Warranties), 11 (Confidentiality), or 12.3 (Assignment) of this Agreement by Licensee or any Team Member(s) will cause Pearson, its affiliates and/or licensor(s) irreparable damage. Licensee acknowledges and agrees that money damages would not be a sufficient remedy for the breach of such Sections and that Pearson, its affiliates and/or licensor(s) shall be entitled (i) to suspend Licensee's use of the Cogmed Training System and deny access from Licensee's Cogmed ID(s) and/or (ii) specific performance and injunctive or other equitable relief as a remedy for any such breach without the necessity of posting bond. Such remedies shall not be deemed to be the exclusive remedy for such breaches, but shall be in addition to all other remedies that may be available at law or equity.
- 10.3** A breach of Licensee's obligations under Sections 2 (License), 3 (Terms of Use), 4 (Licensee's Obligations), 5 (Promotion; Ownership of Trademarks), 8 (Licensee's Representations and Warranties), 11 (Confidentiality), and 12.3 (Assignment), shall not require a cure period and shall result in an immediate and automatic termination of this Agreement without further notice.
- 10.4** Without limitation, the following events shall constitute material breaches of this Agreement: (i) failure by Licensee to comply promptly with any obligation, duty or undertaking to Pearson pursuant to this Agreement, including any payment obligation related to the Cogmed Training System; (ii) filing by or against Licensee of a petition in bankruptcy or any other insolvency proceeding or the failure of Licensee to meet its financial obligations to Pearson or to third parties as such financial obligations become due, which shall automatically and without notice constitute a termination of this Agreement effective immediately prior to such petition or proceeding; (iii) Licensee's misrepresentation of or loss of its qualifications to offer Cogmed Working Memory Training; and (vi) the commission of any act by Licensee in violation of federal, state or local law that, in the sole discretion of Pearson, adversely affects the goodwill and reputation of Pearson, Pearson Intellectual Property, and/or the Cogmed Working Memory Training. Any such material breach shall immediately and automatically cause the termination of this Agreement without further notice.

- 10.5** Upon the termination of this Agreement, Licensee shall immediately cease all use of the Cogmed Training System, Cogmed Content, and Pearson Intellectual Property, except to the extent permitted in Sections 3.5 and 4.4 above. Termination of this Agreement for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination.

11 CONFIDENTIALITY

Confidential Information or trade secrets may be (but are not required to be) marked as Confidential Information or trade secrets by the disclosing party. Each party will keep in confidence the other party's Confidential Information to which such party obtains access as a consequence of entering into this Agreement. Each party will use the other party's Confidential Information only as may be necessary in the course of performing duties or exercising rights under this Agreement. Each party will take all reasonable precautions to protect the other party's Confidential Information from any use or disclosure except as expressly authorized by this Agreement. Each party will implement reasonable procedures to maintain the security of the other party's Confidential Information in its possession.

12 OTHER PROVISIONS

- 12.1 Conflicting Terms; Amendment.** To the extent any term of this Agreement conflicts with Pearson's Terms and Conditions of Sale and Use of Pearson Products, these license terms prevail, but only as regards the use of the Cogmed Training System and Cogmed UserID(s) licensed to Licensee under this Agreement. This Agreement shall not be modified or amended except by a written document signed by a duly authorized officer of each of the parties.
- 12.2 Headings.** Section headings are used for convenience only and shall not affect the scope, meaning, or intent of this Agreement or any provisions herein.
- 12.3 Assignment.** This Agreement or any of the rights granted by this Agreement may not be assigned, in whole or in part, or otherwise delegated, conveyed, pledged or transferred by Licensee to any third party without the prior written consent of Pearson. Any attempted assignment in violation of this Agreement shall be null and void and shall constitute a material breach of this Agreement. No permitted assignment shall relieve Licensee of its obligations to perform and remain responsible under this Agreement.
- 12.4 Waiver.** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No delay or failure on the part of a party to exercise any right under this Agreement will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.
- 12.5 Independent Contractor.** Licensee is an independent contractor and not an employee, agent, affiliate, partner, or joint venturer with or of Pearson, its affiliates or licensors. Neither Licensee nor Pearson will have any right to enter into any contracts or commitments in the name of, or on behalf of the other or to bind the other in any respect whatsoever.
- 12.6 Survival.** All definitions and the provisions of Sections 3.5, 3.6, 3.7, 4.3, 4.4, 4.7, 5.1, 7, 8, 9, 10.2, 10.5, 11, and 12.10 shall survive the termination or expiration of this Agreement.
- 12.7 Severability.** If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not); the remaining provisions' validity, legality and enforceability will not be affected or impaired thereby, and this Agreement will be enforced to the maximum extent possible.

- 12.8 Binding Agreement and No Third Party Beneficiaries to Licensee.** This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto and their permitted successors and assignees. There shall be no third-party beneficiaries to Licensee under this Agreement.
- 12.9 Further Assurances.** The Parties hereto shall execute, acknowledge, and deliver all such further instruments, and to do all such other acts, as may be necessary and appropriate in order to carry out the intent and purposes of this Agreement.
- 12.10 Governing Law.** This Agreement and any claims arising from or relating to this Agreement will be governed by, construed, and interpreted in accordance with the laws of the State of Minnesota without reference to its choice of law, and the federal laws of The United States of America applicable therein, and will be treated, in all respects, as a Minnesota contract. The State and Federal courts in Minnesota will have exclusive jurisdiction over any controversy relating to this Agreement, and the parties hereby irrevocably submit to the exclusive jurisdiction of the State and Federal courts of the State of Minnesota and consent to service of process by mail. All issues involving Copyright, Trademark, and Patent will be construed in accordance with the laws of the United States and the decisions of the Federal Courts of the District of Minnesota and the 8th Circuit Court of Appeals, with exclusive forum in the U.S. 8th Circuit. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.
- 12.11 Force Majeure.** Neither party shall be liable to the other party for delay or failure of performance of this Agreement if the delay or failure is caused by acts of God, war, terrorism, fire, embargo, strikes or other labor trouble, governmental regulations or actions, shortage of or inability to obtain material, equipment or transport, or any cause beyond the reasonable control of such party.

PLEASE INDICATE YOUR AGREEMENT WITH THE TERMS OF THIS AGREEMENT BELOW.

School Name:		
Print Name:		
Title:		
Signature:		Date:
License Agreement:	<input type="checkbox"/> I Accept	<input type="checkbox"/> I Do Not Accept