

**UNIVERSITY OF MASSACHUSETTS, THROUGH UMASS ONLINE AND PEARSON AMENDMENT 3 TO THE  
CLIENT SERVICES AGREEMENT AUGUST 1, 2013**

This AMENDMENT 3 TO THE AGREEMENT is made this 1st day of August 2017 (the "Effective Date"), by and between University of Massachusetts, through UMass Online ("UMOL"), an Massachusetts organization located at 333 South Street, Shrewsbury, MA 01545 and Pearson Education, Inc., successor in interest to Embanet ULC ("Pearson"), located at 105 Gordon Baker Road, Suite 300, Toronto, ON M2H 3P8.

WHEREAS, UMOL and Pearson have entered into an Agreement ("Agreement"), to provide Blackboard Learn end user support services ("Services") and;

WHEREAS, UMOL and Pearson Embanet desire to amend the terms of the Agreement with respect to the fee term of the agreement and the price.

NOW, THEREFORE, in consideration of the foregoing promises and mutual covenants set forth herein and for other good and valuable consideration, the sufficiency of which is expressly acknowledged, the parties agree as follows:

**WHEREAS**, the Parties desire to extend the Agreement Term for an additional thirty-six (36) months;

**NOW THEREFORE**, the Parties agree to amend the Agreement as follows:

1. The Agreement Term is hereby extended thirty-six (36) months to July 31, 2020 ("Revised Termination Date").
2. Schedule A of the Agreement is hereby amended as follows:

**Table 1**

Fee Tier	Annual Incidents	Fee per Incident
1	0 – 15,000	Inclusive
2	15,000+	\$12.00

The numbers set forth in the table above are based on a guaranteed minimum annual commitment of \$180,000 based on an estimated combined annual volume of 15,000 incidents (as defined below). In the event Client exceeds 15,000 recorded incidents during the 12 month period following each anniversary year, August 1, July 31<sup>st</sup>, Client shall be charged on a per incident rate of \$12.00 for each incident in excess of 15,000 in addition to Client's monthly commitment. The annual commitment is invoiced on a monthly basis at a rate of \$15,000.00 per month.

3. Schedule C of the Agreement is hereby amended as follows:

The following provision in Schedule C is hereby deleted in its entirety,

**"SLA-NON CONFORMANCE RESOLUTION/SLA CREDIT**

If Pearson Embanet fails to meet any of the SLAs set forth herein during any month of the Term, Pearson Embanet shall issue a financial credit to Client upon Client's request in the amount of 10% of Client total charges attributable to said month."

Schedule D "ACCESS TO PEARSON EMBANET CRM is hereby revised to allow up to 7 accounts.

**IN WITNESS WHEREOF**, the parties hereto have caused this Renewal to be executed by their respective duly authorized representative as of the Effective Date.

**Embanet ULC**

By: \_\_\_\_\_  
Print Name: Paul Gleason  
Title: VP Strategic Planning Pearson, North America  
Date: \_\_\_\_\_

**University of Massachusetts, UMass Online**

By: \_\_\_\_\_  
Print Name: John Cunningham  
Title: CEO  
Date: 7/20/17

# Pearson Embanet Agreement

## Pearson Embanet<sup>TM</sup>

### Client Services Agreement End User Support Services

<b>Client Name</b>	University of Massachusetts, through UMass Online	<b>Telephone Number</b>	774-455-7603
<b>Primary Contact</b>	Kevin O'Brien	<b>Fax Number</b>	774-455-7620
<b>Title</b>	Principal Applications Specialist	<b>Email</b>	kobrien@umassonline.net
<b>Address</b>	333 South Street	<b>Learning Platform</b>	Blackboard Learn
<b>City</b>	Shrewsbury	<b>Agreement Term</b>	Three Years
<b>State/Zip Code</b>	MA 01545	<b>Agreement Start Date</b>	August 1, 2013

Services Purchased	Description	Service Fee	Billing Start Date	Billing Frequency	Required (Yes/No)
End User Support Launch Fee	<ul style="list-style-type: none"> <li>Account Set Up</li> <li>Development of client help desk profile, protocols, training for help desk agents</li> <li>Development of customized client Online Support Center which includes user friendly tools such as: <ul style="list-style-type: none"> <li>Self-help knowledge base</li> <li>Live Chat</li> <li>Online Web-form (email)</li> <li>24/7/365 dedicated 1-800 number</li> <li>Co-Browse (Desktop Sharing)</li> </ul> </li> </ul>	\$3,000/institution	8/1/2013	One-Time	Yes
End-User Support	<ul style="list-style-type: none"> <li>Development of client help desk profile, protocols, training for help desk agents</li> <li>See Schedule C</li> <li>24x7x365 LIVE Technical Support</li> <li>Online Support Center (<i>inclusive of: toll-free number; web form/email; LIVE online chat; FAQ's; browser check; case status check</i>)</li> </ul>	\$250,000 Minimum Annual Commitment (See Schedule A)	8/1/2013	Every three months	Yes
Helpdesk Reporting	<ul style="list-style-type: none"> <li>Basic Monthly/Quarterly statistics reporting (<i>as set forth in Schedule C</i>)</li> </ul>	Inclusive	8/1/2013	n/a	Yes
RightNow Licenses	<ul style="list-style-type: none"> <li>A minimum of eight (8) annual Licenses for access to RightNow as set forth in Schedule D</li> </ul>	\$1,500/license	8/1/2013	Annually on Billing Start Date and each one-year anniversary	Yes

				thereof	
Account Management	Assigned Account Manager/single point of contact as set forth in Schedule C.	Inclusive	n/a	n/a	Yes

#### AUTHORIZATION


This Agreement is between Embanet ULC ("Pearson Embanet") and the Client and consists of this CLIENT SERVICES AGREEMENT, the attached document entitled "TERMS AND CONDITIONS" and any additional "SCHEDULES" and "ATTACHMENTS" attached hereto.

If there is any conflict between these documents, the Client Services Agreement and the "SCHEDULES" will take precedence over the "TERMS AND CONDITIONS" and the "ATTACHMENTS"

**The Client acknowledges that it has read and understands this Agreement. The Client and Pearson Embanet agree to be bound by the terms and conditions in this Agreement.**

University of Massachusetts, through UMass  
Online

Signature of  
Authorized  
Representative



Printed Name John Cunningham

Title CEO

Date: 7/31/13

Embanet ULC  
Signature of  
Authorized  
Representative



Printed Name Phillip Kim

Title Vice President &  
Corporate Controller

Date: Aug 1/13

## SCHEDULE A

1. **Fees and Charges.** The following charges and fees ("Fees") apply to this Agreement:

### A. END USER SUPPORT LAUNCH FEES

Pearson Embanet shall charge Client a one-time end user support start-up fee of \$3,000 per Client Participating Institution (each of which shall be referred to herein as an "Institution") which covers:

- Training (onsite and/or remote as needed)
- Development of customized Online Support Center
- Toll free number
- Development of help desk profiles based on institutions policies and procedures
- Dedicated Account Executive
- Pearson Embanet travel and related expenses

### B. END USER SUPPORT FEE SCHEDULE

Table 1		
Per Incident/Rates		
Fee Tier	Annual Incidents	Fee per Incident
1	0 to 20,000	Inclusive
2	20,001+	\$12.50

The numbers set forth in the table above are based on a guaranteed Minimum Annual Commitment of \$250,000 based on an estimated combined annual volume of 20,000 Incidents (as defined below). In the event Client exceeds 20,000 recorded Incidents during the 12 month period following the Agreement Start Date, Client shall be charged on a per Incident rate of \$12.50 for each Incident in excess of 20,000, in addition to Client's monthly commitment. By way of example, assume in July 2014 (the 12<sup>th</sup> month following the Agreement Start Date) an additional 250 Incidents are recorded, totaling 20,250 Incidents YTD. July 2014 invoicing shall be calculated as follows:

- \$20,833.33 (annual minimum commitment portion)
- The 250 incidents count towards new incidents
- The 250 new incidents are billable at the Tier 2 rate of \$12.50 per incident (250\*\$12.50 = \$3,125.00).
- Total of invoice for July 2014 would be \$23,958.33 (\$20,833.33+\$3,125.00).

The aggregate count of Incidents for purposes of calculating the monthly end user support fees shall re-set to zero on the twelve (12) month anniversary of the Agreement Start Date of each year during the Term of this Agreement.

For purposes of this Agreement, an "Incident" shall be defined as a User contact through any medium with Pearson Embanet relating to an issue, problem or question concerning any of the support services provided by Pearson Embanet to the Client or to each respective Institution. Where the User has initiated multiple contacts pertaining to the same issue, problem, or question, such multiple contacts shall be considered a single Incident. Billing is calculated on a per Incident basis reflective of Table 1 above, between the 1<sup>st</sup> and last day of each calendar month. All Incidents shall be logged and reported by Pearson Embanet through the Pearson Embanet Helpdesk Customer Relationship Management (CRM) tool.

Website hits to Self-Help/FAQ area are not logged or reported as Incidents through the CRM, and are not a billable service chargeable to Client.

Notwithstanding the foregoing, on a quarterly basis for the duration of the Term of this Agreement, Pearson Embanet and Client shall meet to review Client's actual Incident volume to date as reported by Pearson Embanet pursuant to the process set forth herein. The parties agree that this Agreement may be amended upon the written request of Client in order to change the end user support fee structure from a per Incident rate to the per User rate as set forth in Section 1.3 of Appendix E to Pearson Embanet's responses to RFP#UP12-DJ-0303 "Multi-Campus Help Desk Provider" dated April 20, 2012. Said written request shall be delivered to Pearson Embanet a minimum of ninety (90) days prior to the next one (1) year anniversary date of the Agreement Start Date, which shall be the effective date of any amendment under this provision. In the event this Agreement is amended to change the fee structure to a per User rate, the applicable number of Users shall be determined by utilizing Client's unduplicated headcount.

All fees are due and payable within 30 days of the invoice date. Interest will be charged on outstanding balances at rates established by the Commonwealth of Massachusetts after 45 days in accordance with Mass. Gen. Laws ch 29 § 29C and with Commonwealth regulation 815 C.M.R. 4.00. Said rate is presently 0.75% per annum.

Optional services requested by Client shall be quoted individually and billed upon agreement with Client by means of a Statement of Work or Schedule to this Agreement. In connection with any optional services requested by Client, the Client shall reimburse Pearson Embanet for reasonable travel and accommodation expense, provided Client has pre-authorized Pearson Embanet to incur such expenses and Pearson Embanet promptly submits to Client valid receipts or other supporting documentation itemizing such expenses.

If Client has not paid all Fees due within 90 days of Client's receipt of Pearson Embanet's invoice, Pearson Embanet may temporarily suspend the Service until such time as the Fees are paid, provided such Fees are not the subject of a Good Faith Dispute, as defined herein. A "Good Faith Dispute" means a dispute by Client on a good faith basis regarding certain amounts invoiced under this Agreement where: (1) Client has given written notice of the dispute to Pearson Embanet within 30 days of receiving the invoice; (2) the notice explains Client's position in reasonable detail, and (3) the Client's position is reasonably defensible under the Agreement. A Good Faith Dispute will not exist as to an invoice in its entirety merely because certain amounts on the invoice have been disputed. The parties shall attempt to resolve any Good Faith Dispute amicably between themselves by referring the disputed matter to their respective designated representatives for discussion and resolution. Either party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and if such representatives are unable to resolve such dispute within thirty (30) days of initiating such negotiations, either party may seek the remedies available to such party under law and under this Agreement. The parties acknowledge and agree that UMass Online shall be the sole Client point of contact with Pearson Embanet regarding billing and billing disputes.

**Communication Protocol:**

PEARSON EMBANET AUTHORIZED DESIGNATE	AUTHORIZED DESIGNATE CLIENT CONTACT
Tania Lindo, Client Services Manager tania.lindo@pearson.com 1-866-854-2110, extension 2290	Kevin O'Brien, Principal Applications Specialist kobrien@umassonline.net 774-455-7603
<b>INVOICING</b>	
Mai Tran, Accounts Receivable Specialist mai.tran@pearson.com 416-494-6622, extension 2691	Kevin O'Brien, Principal Applications Specialist kobrien@umassonline.net 774-455-7603
Paulo Dias, Managing Director, Technical Services pdias@embanetcompass.com 1-866-854-2110, extension 2277	Han Aung, Business Data Analyst haung@umassonline.net 774-455-7613
	Stacey Edwards, Business Development sedwards1@umassonline.net 508-380-6077

## **SCHEDULE B**

### **CLIENT ROLES & RESPONSIBILITIES**

1. Client will designate an authorized UMass Online representative for the purpose of reviewing and approving billable data on a monthly basis.
2. Client is responsible for requiring each Participating Institution to maintain accurate and current student information records within each course hosted on the LMS and other Pearson Embanet supported technologies. Client is also responsible for requiring that each Participating Institution provide the Pearson Embanet helpdesk with suitable access levels to their Pearson Embanet Supported Technologies in order to provide technical support to the Institution' s students and instructors in accordance with institutions protocols. Client acknowledges and agrees that Pearson Embanet' s ability to meet the service levels set forth in Schedule C is dependent upon Client and the Participating Institutions meeting these responsibilities.
3. Client is responsible for providing Pearson Embanet with reasonable notice related to system interruptions/maintenance windows that may result in greater than normal activity levels. On a best effort basis, Pearson Embanet will adjust staffing levels in order to minimize service level impacts. In conjunction to this, each Participating Institution will be responsible for providing Pearson Embanet with written notice of any service outages related to services hosted individually by the campuses (such as a password reset tool, survey tool, etc.).
4. Client and/or the Participating Institutions are responsible for communicating and updating Pearson Embanet with any change in protocol or administrative

changes that may affect Pearson Embanet' s ability to service the Institutions' end-users. These updates will be reviewed on a regular basis through the applicable Client Profile serving as the primary reference source for the Pearson Embanet personnel supporting Client and each Participating Institution.



## SCHEDULE C

### SERVICE LEVEL AGREEMENT FOR PEARSON EMBANET END USER SUPPORT CENTER SERVICES

The following Service Level Agreement details Pearson Embanet's minimum commitment to providing a superior level of service to the Client and Client's Participating Institutions (each referred to herein as an "Institution"). The SLA set forth herein shall be applicable at the Client level. However, the minimum services levels noted below may be modified on a per Institution basis which shall be incorporated as separate schedules hereto pursuant to an amendment to this Agreement. The parties acknowledge and agree that Pearson Embanet shall provide unique support services to Client and to each Institution based on Client's and each Institution's respective requirements.

All services provided by Pearson Embanet pursuant to this Agreement shall be in conformance with Section 5.0 of Pearson Embanet's responses to RFP#UP12-DJ-0303 "Multi-Campus Help Desk Provider" dated April 20, 2012. Pearson Embanet shall maintain the following minimum levels of service for each Client member Institution during the Term of this Agreement (collectively, "SLA"):

<b>Quality Satisfaction</b>	<i>80%+ of respondents will be "satisfied" or "very satisfied," as established by User feedback surveys</i>
<b>Abandon Rate</b>	<i>&lt;10% overall Abandon Rate after threshold per month</i>
<b>Live Phone Support (80/60)</b>	<i>80%+ of support phone requests will be answered within 60 seconds</i>
<b>Live Chat Support (80/120)</b>	<i>80%+ of support Live Chat requests will be answered within 120 seconds</i>
<b>Resolution Time (Email/Web form)</b>	<i>80%+ of email/web tickets solutions will be provided to the end user within 60 minutes of acceptance</i>
<b>Solution Closure</b>	<i>90%+ of delivered solutions will not be re-opened by the end-user</i>

#### **ONLINE SUPPORT CENTER:**

All support requests must be directed through each Institution's dedicated Online Support Center provided by Pearson Embanet.

The following features are included within the Client's Online Support Center for each Institution:

- Toll-free Number
- LIVE Online Chat
- Web form with Email response capabilities
- Self-Help Knowledge Base (Student/Instructor FAQs)
- Browser check
- Co-browse

#### **SUPPORT CENTER TARGETS**

##### **PHONE – Calls Answered in 60 Seconds**

*(calls answered in 60 seconds)/(total calls presented to queue)*

Explanation: *This measure indicates the % of calls presented to the Pearson Embanet Support Center, where the queue wait time was less than 60 seconds.*

Pearson Embanet Target: 80% of calls answered in 60 seconds or less (80/60)

NOTE: While Pearson Embanet will make every attempt to achieve this target, Pearson Embanet cannot guarantee results that may be affected by outages/interruptions in end-user systems; maintenance windows or reasons of *Force Majeure*.

##### **ABANDON RATE**

A. *Telephone calls abandoned)/(total calls presented to the queue)*

Explanation: *This measure indicates the % of calls presented to the Pearson Embanet Support Center, where the caller chose to disconnect while waiting for an agent to answer. This % typically climbs during peak call volumes when caller wait times increase.*

Pearson Embanet Target: <10%

\*NOTE: While Embanet will make every attempt to achieve this target, Embanet cannot guarantee results that may be affected by outages/interruptions in end-user systems; maintenance windows or reasons of *Force Majeure*.

B. Email and Web Form Inquiries

0% abandon rate, Pearson Embanet shall respond to all User emails and web form inquiries.

C. Live Chat Support

Less than >10% abandon rate for Live Chat request.

##### **LIVE ONLINE CHAT**

Online Chat allows Users engage in an online chat with Pearson Embanet Support Center Agents *Live Person Chat Support*. A complete Chat transcript may be saved for future reference.

Pearson Embanet Target: 80% in <120 seconds

##### **WEBFORM WITH EMAIL RESPONSE**

End Users may detail their technical issue through the Pearson Embanet web form allowing Support Center agents to begin troubleshooting the concern quickly and through an email response.

Pearson Embanet Target: 80% in < 60 minutes

##### **ESCALATIONS TO CLIENT**

Pearson Embanet shall not escalate more than 10% of all Incidents to Client for resolution, provided that Client provides Pearson Embanet access and documentation to all support applications.

##### **CHECK CASE STATUS**

This feature allows end users to follow up on open cases where investigation/resolution is pending. By entering the assigned ticket number and valid email address, students/faculty can follow up on their issue of concern and re-open the case if further action is required.

**BROWSER CHECK**

This feature dynamically tests and alerts end users with regards to optimal system settings most recommended in order to navigate successfully throughout the online environment.

**TECHNOLOGY SERVICE LEVELS**

The following are the minimum monthly percentages of availability of related technology-based services that Pearson Embanet shall maintain during the Term of the Agreement. (Availability is defined as the percentage of time on a monthly basis a system is up (functioning as expected) and reachable by end-users, excluding scheduled system maintenance and "acts of God")

- a. Phone system  
*99% availability*
- b. Email system  
*99% availability*
- c. Chat system  
*99% availability*
- d. Web-based forms  
*99% availability*
- e. Online knowledgebase  
*99% availability*
- f. Online help desk issue reporting and tracking system  
*99% availability*

**Service Level Reporting**

Pearson Embanet will provide customer service reports to each Institution on a monthly basis except as otherwise noted below, or access to an administrative dashboard, providing the following minimum information:

- Total Incidents (i.e. opened, in progress, closed) per Institution, including via,
  - o Phone,
  - o Email,
  - o Chat,
  - o Web form
- Self Help Knowledgebase Analytics (on a quarterly basis);
  - o Number of unique visitors
  - o Number of hits
  - o Most popular articles
- Total Incidents by students, faculty and staff per Institution;
- Average Pearson Embanet response time, via,
  - o Phone,
  - o Email,
  - o Chat,
  - o Web form
- Average Incident turn-around time
- First-Contact Resolution (i.e., the percentage of contacts that can be resolved without requiring additional contacts, e.g. callbacks, additional emails, etc.);
- Abandonment Rate (Percentage of calls abandoned while waiting to be answered);

- Customer satisfaction.

Pearson Embanet will provide monthly technology reports, providing:

- Availability of all technical systems, including (availability refers to the percentage of time over a month the system is accessible to end-Users):
  - o Phone,
  - o Email,
  - o Chat,
  - o Web forms,
  - o Supporting administrative technologies (e.g. dashboards, ticketing systems, etc.)

Pearson Embanet agrees that Client or an Institution may periodically make reasonable requests for supplemental reports from Pearson Embanet concerning performance measures or information in addition to those noted above; provided, however, that the parties shall negotiate a mutually agreeable rate for such supplemental reports that are not otherwise required under this Agreement. Pearson Embanet and Client agree to work cooperatively to establish the parameters and timing of such supplemental reporting.

#### **SLA NON-CONFORMANCE RESOLUTION/SLA CREDIT**

If Pearson Embanet fails to meet any of the SLAs set forth herein during any month of the Term, Pearson Embanet shall issue a financial credit to Client upon Client's request in the amount of 10% of Client's total charges attributable to said month.

#### **ACCOUNT MANAGEMENT**

The Client has been assigned a Client Services Executive (CSE) who serves as the single point of contact for all issues surrounding the Client's account. The CSE is responsible for overseeing all matters related to managing and meeting commitments and expectations within the Service Level Agreement.

##### **Responsibilities include but are not limited to:**

- Offering consultation and services applicable to retention of students and enrollment growth
- Identifying opportunities for streamlining/enhancing the Client's online education capabilities
- Reviewing Support Center activities, identifying trends and appropriate actions/improvements
- Acts as primary liaison between the Pearson Embanet Support Center team, Pearson Embanet I.T. and Client main contacts
- Immediate communication and follow-up of all scheduled and unscheduled interruptions of service
- Ensuring Embanet Support Center adheres to all Client protocols and best practices as outlined within profile (including immediate notification and follow-up of all scheduled and unscheduled interruptions occurring outside of regular business hours)

#### **STAFFING**

Pearson Embanet shall provide appropriate staff according to the volume of Client's end users. Pearson Embanet shall provide a minimum of five (5) agents to provide Client's end User support at any time during support-required hours. Pearson Embanet shall also assign one dedicated service manager for each Client Institution as a single point of contact for issues unique to that Institution.

**MEETINGS**

Pearson Embanet shall meet on a monthly basis with each individual Institution administrator(s) to discuss:

- *Monthly Reports;*
- *overall volume;*
- *contact type;*
- *top call drivers;*
- *Customer Satisfaction Survey results;*
- *Knowledgebase Updates*
- *Trends and Observations*

Pearson Embanet will meet on a quarterly basis with Client to discuss:

- Incident reporting (estimated versus actual)
- End User Support fee structure
- Pearson Embanet SLA performance and any applicable credits
- Trends and Observations

**TRANSITION PLANNING**

No less than ninety (90) days prior to the expiration or termination of the term of this Agreement, Pearson Embanet shall reasonably assist Client in the development of a plan for the orderly transition of all services provided by Pearson Embanet under this Agreement (the "Transition Plan") such that after transition Client, will be able to provide the services that were being performed by Pearson Embanet or a third party of Client's choice can take over performance of the services in place of Pearson Embanet. Such Transition Plan shall be jointly developed by the parties by such persons as each shall designate.

## **SCHEDULE D**

### **CLIENT ACCESS TO PEARSON EMBANET CRM**

As part of the Agreement, Pearson Embanet grants to Client a license to access Pearson Embanet's Helpdesk Customer Relationship Management (CRM) tool via "RightNow."

#### **LICENSE REQUIREMENTS:**

- **Accounts:** 8 users minimum
- **License Costs:** \$1,500 per annum per user

**USAGE:** The RightNow license shall enable Client to perform the following functions:

- **Search:** By Ticket #, By Customer, By Date
- **Edit:** Basic ability to open, modify and close tickets
- **Assign:** Ability to assign to other customer support representative members of UMass Online
- **Ticket Transfer:** Ability to transfer tickets to Pearson Embanet queue (Customization charges might apply)
- **Reporting:** Ability to generate Statistics: By Queue, By Location, By Category, By user and By ticket number.

#### **CUSTOMIZED ACCESS:**

Any customization to Client's access to Pearson Embanet's CRM via RightNow shall result in result in further charges and shall be separately negotiated by the parties.

## TERMS & CONDITIONS ("Terms")

- 1. Definitions.** For the purposes of this Agreement: **"Agreement"** means the Service Agreement, these Terms as well as any schedules, statement of works, order forms, quotations and all documents supplementing, amending or confirming the Agreement. **"Client"** means the **University of Massachusetts, through UMass Online**. **"Participating Institutions"** means the following campuses of the University of Massachusetts operating in conjunction with UMass Online: Amherst, Boston, Dartmouth, Lowell, and, Worcester, as well as Wentworth Institute of Technology and the Massachusetts Department of Elementary and Secondary Education. Client may add new Participating Institutions to be covered by this Agreement effective upon sixty (60) days' written notice to Pearson Embanet; provided, however, that new Participating Institutions shall not be added to this Agreement during the months of January or September. **"Pearson Embanet"** means Embanet ULC. **"Embanet Network"** means the equipment, operating system, servers and network environment on which the LMS Software reside. **"Client Data"** means any data, information or material provided or submitted by Client in the course of using the Services or collected by Pearson Embanet through providing the Services to the Client. **"Effective Date"** means the date the Service Agreement is executed by Pearson Embanet. **"LMS Software"** means the Client's Learning Management System as identified on the Service Agreement. **"Services"** means the helpdesk related services provided by Pearson Embanet to Client as identified on the Service Agreement or other parts of this Agreement, including the license to the "RightNow" customer relationship management tool. **"Statement of Work"** means a document developed by the parties, which sets out the initial services provided by Pearson Embanet to set up and configure the additional work and includes deliverables and timeframes. **"Term"** means the Agreement Term identified on the Service Agreement and any extension or renewal term. **"User"** means an employee, student or representative of the Client authorized by Client to access the Pearson Embanet Network and/or receive the Services.
- 2. Services.** Pearson Embanet shall provide Client help desk support to Client's Users. Pearson Embanet reserves the right to periodically modify or add to any of its Services upon reasonable written notice of no less than thirty (30) days to the Client and provided that any such modification or addition to any of the Services does not result in a disruption or material change in any of the functionality or features of the Services set forth in Schedule C. Additional services may be purchased from Pearson Embanet pursuant to a Statement of Work.
- 3. Client Responsibilities.** Client and each Institution shall enable its own reliable Internet connectivity to and from the Pearson Embanet Network; maintain adequate network connectivity and bandwidth to properly utilize the Services; and maintain the confidentiality of any passwords issued by Pearson Embanet to Client to access the Services and Pearson Embanet Network. Client and each Institution, in the use of the Services, shall not knowingly compromise the security or integrity of others' computer systems or software; impersonate another Pearson Embanet client or provide false identity information to gain access to or use the Services; or breach any applicable laws, including laws related to data privacy, international communications and the transmission of data; publishing, distributing, possessing selling, advocating, promoting or exposing obscene or threatening material, child pornography, or hate propaganda; defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality and unfair competition; Internet etiquette rules or protocols; or otherwise infringe any third party's intellectual property or other rights (**"Infringing Material"**). In the event that any Infringing Material is posted by a User (an **"Offending User"**) and Pearson Embanet advises Client of such Infringing Material, Pearson Embanet may take all necessary steps to remove the Illegal Material and terminate the Services for the Offending User. Client warrants that it has the right to enter this Agreement and allow



Pearson Embanet to perform the Services. THIS SECTION WILL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

4. **Client Data and LMS Software.** As between Pearson Embanet and Client, Client owns and retains all right, title and interest in all intellectual property rights pertaining to the Client Data and the LMS Software, subject only to Pearson Embanet's right to access and use the Client Data and LMS Software for the benefit of the Client in connection with using the Services pursuant to this Agreement. Client shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right to use the Client Data. Client represents that it has and will have the right to provide Client Data to Pearson Embanet in connection with using the Services pursuant to this Agreement, including, but not limited to, obtaining applicable consents from identifiable individuals.
5. **Ownership.** Client and Pearson Embanet acknowledge and agree that as between them, Pearson Embanet is the owner of all intellectual property rights in the Services, Pearson Embanet Network and all related components and elements thereof, including modifications, written materials, logos, trademarks, trade names, copyright, patents, trade secret and moral rights, registered or unregistered (the "**Pearson Embanet Property**"). No proprietary interests or title in or to the intellectual property in the Pearson Embanet Property is transferred to Client by this Agreement. Pearson Embanet reserves all rights not expressly granted to Client under section 2. All Client content in Pearson Embanet's possession, including the online environment developed by the Consultant, is the property of the Client and shall be returned to the Client at the conclusion of this agreement.
6. **Limitations of Liability and Remedies.** Notwithstanding any provision in this Service Agreement to the contrary, neither party will be liable for any special, incidental, or indirect or consequential damages, however caused, or on any theory of liability, whether or not the party has been advised of the possibility of such damage or loss, nor will the Pearson Embanet be liable for loss, damage or expense, which directly or indirectly arise from the use of or inability to use the services provided hereunder, whether separately or in combination with other equipment or software, or for commercial loss of any kind, or for procurement of substitute goods. Except for Pearson Embanet's indemnity obligations, Pearson Embanet's total liability under this Agreement will not exceed the amounts paid by Client during the twelve (12) months immediately preceding the event giving rise to the claim.
7. **Pearson Embanet Warranties.** Pearson Embanet represents and warrants a) that it has the right (i) to provide access to the Pearson Embanet Network, (ii) provide the Services, and (iii) grant Client the license to the "RightNow" customer relationship management tool; b) it will provide the Services (i) with appropriately qualified and trained personnel and (ii) with due care and diligence and to a high standard of quality as is customary in the industry; c) the Services will not infringe the rights of any third party and; d) it will comply at all times with all applicable laws, regulations, rules, and ordinances, including, without limitation applicable privacy and data protection laws. OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, THE SERVICES ARE NOT GUARANTEED AND PROVIDED 'AS IS' AND PEARSON EMBANET GIVES NO REPRESENTATIONS, WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION REPRESENTATIONS, WARRANTIES OR CONDITIONS AS TO UNINTERRUPTED OR ERROR FREE SERVICE, SECURITY, QUALITY OF FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE, OR FROM A COURSE OF DEALING OR USAGE OR TRADE.
8. **Indemnities/Liability.** Pearson Embanet shall indemnify and defend Client and Client's Institutions, affiliates, subcontractors, and agents (and each of their trustees, officers, directors, employees and contractors), and Client's Users from and against any and all third party claims and resulting losses and damages arising out of any infringement on the part of the Services of a third party copyright, trademark or other intellectual property right registered or recognized in



Canada or the United States, provided that: (i) Client utilized the Services in accordance with this Agreement; (ii) Pearson Embanet is notified in writing promptly of Client's receipt of notice of the claim; (iii) Pearson Embanet, if it assumes the indemnity obligations, will have sole responsibility for carriage of the claim, including but not limited to choice of counsel and settlement negotiations/decisions; and (iv) Pearson Embanet is given the necessary authorization, information and full co-operation and assistance by Client.

To the extent authorized under the laws of the Commonwealth of Massachusetts, and subject to all sovereign immunities available to Client, Client shall accept responsibility for any third party claims, losses or damages attributable to the acts or omissions of those for whom Client is legally responsible and which arise out of Client's use of Pearson Embanet's services.

9. **System Access.** All access to information via the Internet or telephony systems will be subject to access authorization supplied by the Client. Pearson Embanet is not responsible for; (a) any unauthorized access, use or downloading of information by users using valid access authorization codes; (b) loss of service due to the Client's Local Area Network (LAN), scheduled maintenance events, Client caused outages or disruptions, interconnections to or from and connectivity within other Internet Service Provider (ISP) networks, or the Public Switched Telephone Network (PSTN); (c) inability to use the services due to the Client's staff or User's capability; or (d) force majeure events.
10. **Confidentiality.** Each party agrees not to disclose the other party's Confidential Information and to protect its confidentiality using at least the same degree of care that party uses to protect its own Confidential Information, which shall under no circumstances be less than reasonable, including not disclosing it to a third party unless there is a "need to know," a "right to know," and a written obligation by the third party to maintain the confidentiality. Pearson Embanet acknowledges that Client is a public institution and is subject to the Massachusetts Public Records Law, Mass. Gen. Laws ch. 4 §§ 7 and 26 and ch. 66 § 10 ("MPRL"), and that Client's obligations under MPRL supersede its obligations under this Section 11. For the purposes of this Agreement, "Confidential Information" means any information, written or oral, that relates to either party's business, products, processes, or services, that is designated as confidential or proprietary or that a reasonable party would understand to be confidential or proprietary, including Client Data, with the following exceptions: (i) information that was already known to the receiving party; (ii) information obtained from public or published information; (iii) information received from a third party not known to be employed or affiliated with the disclosing party; and (iv) information which is or becomes known to the public other than through a breach of this Agreement. Pearson Embanet acknowledges that Client has a duty to maintain the privacy of education records under federal privacy law ("FERPA" at 20 USC 1232g and 34 CFR part 99), and further acknowledges that as an independent contractor providing a service for Client, Pearson Embanet accepts responsibility to preserve the privacy of all education records (including student passwords and identification codes, student submissions of assignments and other information, and student grades) to the full extent required of Client under applicable FERPA regulations. Pearson Embanet will not use any personally identifiable information acquired from Client or from Client's students for marketing, sales, or for any purpose other than the services set forth in this Agreement. Further, in the performance of this Agreement, Pearson Embanet may acquire or have access to "personal data" and become a "holder" of such personal data (as defined in Mass.Gen.Laws ch. 66A) or personal information (as defined in Mass.Gen.Laws ch. 93H). Personal data and personal information shall be deemed to be "Personal Information." Pearson Embanet shall implement feasible safeguards to restrict access and ensure the security, confidentiality and integrity of all Personal Information owned, controlled, stored, or maintained by Client and provided to or accessed Pearson Embanet in the performance of services irrespective of the medium in which it is held. Pearson Embanet agrees that it shall inform each of its employees, servants or agents, having involvement with Personal Information of the laws and regulations concerning confidentiality and privacy.

11. **Term.** The Term of this Agreement commences on the Agreement Start Date for the Initial Term (as specified on the Service Agreement) period. This Agreement may be renewed upon mutual agreement of both parties for successive one year terms (each, a "Renewal Term"). Client shall initiate said mutual agreement by providing Pearson Embanet with written notice of Client's intent to renew no later than sixty (60) days prior to the expiration of the Initial Term or then current Renewal Term.
12. **Early Termination by Client.** In the event Client terminates this Agreement without cause prior to the expiration of the Initial Term or any Renewal Term, as the case may be, the Client will be liable for the remaining Minimum Annual Commitment, if any, applicable to the year of said term during which the termination is effective, and payment for such amount shall be due thirty (30) days after the effective date of Client's early termination.
13. **Termination For Cause.** Without limiting any other rights or remedies available to either party under this Agreement or at law or equity, either party may terminate this Agreement on thirty (30) days advance written notice to the other party if: (i) the other party is in breach of any of its obligations or warranties set forth in this Agreement and such breach is not cured within 10 days of the party's receipt of such termination notice; or (ii) bankruptcy or insolvency proceedings are taken by or against the other party or if a receiver, trustee or other similar person is appointed over the other party's assets.
14. **Events Upon Termination.** On termination or expiration of this Agreement, except as otherwise provided herein, all rights, benefits and obligations of the parties under this Agreement shall terminate. Client shall cease using the Services and applicable obligations on the part of Pearson Embanet will cease (including that Pearson Embanet will disconnect Client's access to the Services). Upon termination of this Agreement, Pearson Embanet shall promptly deliver to Client the LMS Software and all Client Data provided to or collected by Pearson Embanet in the performance of the services hereunder. Upon the termination or expiration of this Agreement, Client shall deliver or, at Pearson Embanet's request destroy, all Confidential Information of Pearson Embanet that it possesses.

In the event of the expiration or termination of this Agreement, all Client content, including any Marks (as defined in Section 16) shall immediately (within one week or less) be returned by Pearson Embanet to Client in the same format as delivered to Pearson Embanet, including but not limited to: all databases, server data, coding, and any other element (not including server hardware, routers and related software) necessary to ensure the smooth transition of the Client's on-line environment to another vendor or employee.
15. **USE OF MARKS.** Client agrees that Pearson Embanet may use Client's trademarks and logos (hereinafter called "Marks") as appropriate and necessary in connection with the Services provided by Pearson Embanet, provided such use is conducted ONLY as provided herein: Pearson Embanet acknowledges that the Client owns all rights, title, and interest in its Marks and that Pearson Embanet has no rights therein. Client grants to Pearson Embanet, solely for the term of this Agreement, a non-assignable, non-exclusive, limited license to utilize Client's Marks solely in conjunction with Pearson Embanet's maintenance of Client's Online Support Center and for no other purpose. Client has the right to review the manner in which the Marks are being used by Pearson Embanet and in Client's complete discretion, to refuse to allow uses that Client considers objectionable. Client's Marks may not be used in any manner that expresses or might imply affiliation, Client sponsorship, endorsement, certification, or approval of Pearson Embanet's services, other than of the stated services outlined in this Agreement. Pearson Embanet shall not perform or knowingly permit to be performed any act or thing that would in any way impair the rights of Client, that would affect the validity of the Marks or any part thereof, or that would depreciate the value of the Marks or any part thereof. Pearson Embanet shall not use the Client Marks in association with any third party trademarks in a manner that might suggest co-branding or otherwise create potential confusion as to ownership of the

Marks. The limited rights granted in this paragraph will be terminated upon any expiration or termination of this Agreement.

16. **Miscellaneous.** Any notice or demand under this Agreement will be made by courier or facsimile transmission at the address set out on the Service Agreement. Neither party shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of nature or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay. Neither party shall assign this Agreement without first obtaining the written consent of the other, except that Pearson Embanet may assign this Agreement to an affiliate, subsidiary, or any entity or successor that acquires all or substantially all of the business or assets of Pearson Embanet (an "Assignee") provided that such Assignee: (a) is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or incorporated, (b) is duly qualified, authorized to do business and in good standing in the Commonwealth of Massachusetts; (c) is not and has not ever been debarred or suspended from contracting with any agency of the Commonwealth of Massachusetts under any applicable statute, regulation, or policy; (d) is not in default under any obligation to Client; and (e) agrees in writing that it shall be subject to all terms and conditions of this Agreement. Pearson Embanet shall provide Client written notice of any such assignment no less than thirty (30) days prior to the effective date thereof. This Agreement will inure to the benefit of and be binding on the parties and their respective successors and permitted assigns. Pearson Embanet may list Client's name on its marketing materials and website as a client of Pearson Embanet, provided that Pearson Embanet shall not use Client's name in any manner that expresses or might imply Client's affiliation with or endorsement, sponsorship or approval of Pearson Embanet's products or services. Unless otherwise indicated, all rates and charges are in U.S. dollars. The parties agree that this Agreement may be executed in counterparts and that a facsimile signature shall be deemed to be an original. The following sections of these Terms will survive termination or expiration of this Agreement: 3, 4, 5, 6, 8, 11, 13 and 14. This Service Agreement, Terms and any Schedules attached to it shall constitute the entire agreement between the parties and supersedes any prior agreements, whether written or verbal between the parties. This Agreement may not be modified or amended unless agreed to in writing by both parties. Any consent by a party to, or waiver of breach by the other, whether express or implied, will not constitute a consent to or waiver of or excuse for any other different or subsequent breach. In the event that any one or more provisions contained in this Agreement is held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts without reference to its conflicts of law provisions. The Parties agree to bring any action arising out of or relating to this Agreement or the relationship between the Parties in the Commonwealth of Massachusetts, Suffolk County Superior Court's Business Litigation Session which shall have exclusive jurisdiction thereof. Pearson Embanet expressly consents to the jurisdiction of the above noted state court of the Commonwealth of Massachusetts in any action brought by the Commonwealth or the Client arising out of or relating to this Agreement or the relationship between the Parties, waiving any claim or defense that such forum is not convenient or proper. This paragraph shall not be construed to limit any other legal rights of the Parties.