

COLLABORATION AGREEMENT BETWEEN NATIONAL FEDERATION OF THE BLIND AND PEARSON EDUCATION, INC.

This collaboration agreement (“**Agreement**”) is made and entered into this 9th day of March, 2020, by and between the National Federation of the Blind (“**NFB**”), having a place of business at 200 East Wells Street, Baltimore, Maryland 21230, and Pearson Education, Inc., (“**Pearson**”) and its affiliates, having a place of business at 221 River Street, Hoboken, New Jersey 07030. The NFB and Pearson are collectively referred to as the “**Parties**,” and at times individually referred to herein as a “**Party**.”

I. PURPOSE

WHEREAS, pre-K through postgraduate education institutions (collectively, “**Schools**”) are required to comply with applicable federal laws that prohibit discrimination on the basis of disability, including Section 504 of the Rehabilitation Act of 1973 (the “**Rehab Act**”) and Titles II and III of the Americans with Disabilities Act (“**ADA**”);

WHEREAS, the ADA and the Rehab Act require that individuals with disabilities be provided a full and equal opportunity to participate in, benefit from, and enjoy all of the goods and services of Schools;

WHEREAS, this means that Schools’ technology, educational content, learning management systems, instructional materials, tools, online courses, and all other programs, services, and products must be equally accessible to persons with a disability as they are to persons without a disability;

WHEREAS, Pearson is a learning, educational publishing, and assessment company that provides educational products and services to millions of teachers and learners in the United States (jointly referred to as “**Educational Products**”);

WHEREAS, Pearson provides Educational Products to Schools throughout the country for use by instructors, students, and others;

WHEREAS, the NFB is the largest consumer organization of blind people in the country which, for more than seventy-five years, has worked to increase understanding of the issues that face blind people, including issues relating to the accessibility of educational products, services, and technology;

WHEREAS, the NFB has considerable knowledge, experience, and expertise in addressing accessibility barriers faced by the blind, and in developing solutions through the testing and evaluation of products, services, and technology by end-users;

WHEREAS, the NFB has received complaints from blind students concerning the inaccessibility of certain educational products, and has ongoing litigation against Schools alleging, among other things, the inaccessibility of certain educational products and technologies;

WHEREAS, as a global leader in learning tools and services, Pearson is committed to making its Educational Products accessible to all people, including but not limited to the blind;

WHEREAS, Pearson has undertaken a number of measures to increase the accessibility of its Educational Products and is committed to ensuring that all of its Educational Products are accessible;

WHEREAS, to accomplish the foregoing, Pearson has expressed interest in collaborating with the NFB to: (a) promote the enculturation of accessibility in its organization, (b) develop priorities for addressing the accessibility of its Educational Products, (c) assist Pearson in its ongoing efforts to develop accessible Educational Products, and (d) remediate inaccessible Educational Products;

WHEREAS, it is in Pearson's best interest that both the NFB and the NFB's member feel satisfied that Pearson is committed to improving accessibility as outlined in this agreement;

WHEREAS, it is in the NFB's best interest to work collaboratively with Pearson to improve the general accessibility of Educational Products and avoid future litigation.

NOW, THEREFORE, the NFB and Pearson agree as follows:

II. DEFINITIONS

The following terms shall have the following meanings with respect to this Agreement. All other terms shall be interpreted according to their plain and ordinary meaning.

- a. "**Accessible**" and/or "**Accessibility**" means that blind individuals have an equal opportunity to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as non-blind individuals, with substantially equivalent ease of use, and in conformance with:
 - WAI-ARIA 1.0 for web content and WCAG 2.1 AA accessibility standards;
 - ATAG 2.0 for software used to create web content;
 - UAAG 1.0 for web browsers, media players, and assistive technologies;
 - WCAG2ICT for non-web software and content;
 - The latest versions of guidance from the Braille Authority of North America (BANA) for the production of Braille materials and tactile graphics;
 - MathML 3.0 specifications for digital mathematical and scientific notation; and
 - DAISY or ePub3 for digital publications and documents.
- b. "**Blind**" is used in its broadest sense to include all persons who have a vision-related disability that requires the use of alternative techniques or assistive technology to access visual information.

- c. **“Confidential Information”** as used herein means: (i) written information received from a Party that is marked or identified as confidential; (ii) oral or visual information identified as confidential at the time of disclosure which is accurately summarized in writing and provided to the other Party in written form promptly after such oral or visual disclosure; (iii) information learned under a SOW; and (iv) information that a reasonable person would understand to be confidential.
- d. **“Intellectual Property Rights”** means all patent rights, trademark rights, copyrights, trade secrets, and any other protectable rights covering intellectual property or proprietary rights, and all applications, registrations, renewals, and extensions thereof owned or licensable by a Party.
- e. **“Non-technical Consulting Services”** means all consulting services that do not constitute “Technical Consulting Services.”
- f. **“Technical Consulting Services”** means services focused on computer coding, testing products and applications, investigating and/or documenting processes and applications, troubleshooting software issues, technical problem-solving, Accessibility compliance issues, and nonvisual usability best practices.

III. TERM OF AGREEMENT

This Agreement shall continue through December 31, 2022 (**“Agreement Term”**). The Agreement may be extended in writing with the mutual agreement of the Parties.

IV. STATEMENT OF WORK

- a. During the Agreement Term, the Parties may enter into one or more statements of work (each, a **“SOW”**) for the provision of consulting services by the NFB to Pearson. Each SOW shall be governed by the terms of this Agreement.
- b. For consulting services to be provided by the NFB, the Parties will enter into a SOW substantially in the form of SOW #1, attached as **Exhibit A** and made part of this Agreement.

V. COMPLAINTS

The NFB will share with Pearson complaints reported by students, parents, or others concerning Pearson Educational Products (**“Complaints”**). The NFB will forward such information to Pearson’s Relationship Manager, and Pearson will send monthly updates to the NFB regarding the status and resolution of forwarded Complaints. NFB will cooperate with Pearson to provide as much information as possible related to the specifics of the Complaint to assist in resolution.

For Complaints related to assessment products and in the event that the Complaint is the responsibility of Pearson’s Test Sponsor, Pearson will use its relationship with the Test Sponsor to attempt to resolve the issue and if unsuccessful will provide NFB the

contact information of the appropriate person at the Test Sponsor allowing NFB to attempt to address the issue directly with the Test Sponsor.

VI. OPTIONAL CONSULTING SERVICES

The NFB offers a range of consulting services described in Exhibit B, including but not limited to the following:

- Assistance in developing company-wide accessibility policies and procedures;
- Assistance in developing and/or evaluating a company's global plan to ensure the accessibility of its products and services;
- Assistance in identifying priorities for addressing inaccessible products and services;
- Collaboration in the design and implementation of usability studies, including the scope and criteria for user-testing of educational products and services;
- Implementation of user-testing of educational products and services;
- Best practices and curricula for educating and training employees, content and application developers, and contractors concerning Accessibility;
- Evaluation of the accessibility of digital content used in the development and delivery of assessment products;
- Development and implementation of Accessibility and related educational surveys; and
- Best practices to make STEM content Accessible.

Pearson shall have the right to utilize the information, guidance, advice and recommendations ("**Feedback**") provided by the NFB for any purpose consistent with this Agreement.

VII. COMPENSATION

If the Parties execute Statements of Work, such Statement of Work will specify any compensation to be paid by Pearson for NFB's services. Pearson agrees to pay any such negotiated rates as specified in a Statement of Work.

VIII. INVOICING

- a. During the Agreement Term, the NFB shall invoice Pearson on a quarterly basis for all services provided. The hourly rate set forth in this the individual Statement of Work includes all of the NFB's expenses, unless travel is required. Services shall be billed in quarter-hour increments. In the event travel is required, subject to Pearson's prior written approval, the NFB shall invoice Pearson for the cost of transportation, lodging, and meals, together with the submission of documentation of such expenditures, and Pearson shall reimburse the NFB for those expenses.

- b. Pearson shall pay the quarterly invoices received from the NFB within forty-five (45) days of receipt of such invoices.

IX. INDEPENDENT CONTRACTOR STATUS

The Parties acknowledge and agree that they are dealing with each other hereunder as independent contractors. Neither Party, nor its respective affiliates, agents, employees or representatives, are or shall be deemed to be the affiliate, agent, employee, or representative of the other. Nothing contained in this Agreement shall be interpreted as creating any legal partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties, or as conferring upon either Party the power or authority to bind the other in any transaction with third parties.

X. RELATIONSHIP MANAGER

Upon execution of this Agreement, each Party shall designate an employee (a "Relationship Manager") to act as the primary liaison with the other Party and shall notify the other Party in writing of the name, position, location, telephone number, and e-mail address of such person. Each Party may change its Relationship Manager at any time during the Term, upon reasonable notice to the other Party. Pearson's initial Relationship Manager shall be David Kokorowski (Pearson Higher Ed Courseware) and Jon Twing (Pearson Assessments). The NFB's initial Relationship Manager shall be: Valerie Yingling, vyingling@nfb.org.

XI. PROPRIETARY RIGHTS

- (a) Any and all technology, inventions, discoveries, developments, and Intellectual Property owned by each Party as of the Effective Date of this Agreement ("**Preexisting Property**") shall remain the exclusive property of such Party, irrespective of whether or not it is shared with, or used by, the other Party;
- (b) To the extent that any Preexisting Property owned by the NFB is shared by the NFB with Pearson during the term of this Agreement, the NFB hereby grants to Pearson a limited, non-exclusive, non-transferable, royalty-free license to use such Preexisting Property consistent with the objectives of this Agreement;
- (c) Except as otherwise provided herein, Pearson shall own all right, title, and interest in the work product and supplemental work that results from any services provided under this Agreement or an incorporated SOW;
- (d) This clause governing Proprietary Rights shall survive termination of the Agreement.

XII. CONFIDENTIALITY

- (a) Permitted Use. Except as otherwise permitted by this Agreement, each Party shall keep the Confidential Information of the other Party confidential and will not use such Confidential Information except for the purpose of using it for the performance of its obligations under this Agreement. Each Party may disclose the Confidential Information of the other Party only to employees who: (i) are bound by confidentiality restrictions at least as restrictive as those presented in this Agreement, and (ii) are reasonably required to know such Confidential Information in furtherance of the Party's performance of its obligations under this Agreement. Each Party shall use the same degree of care, but no less than a reasonable degree of care, as it uses to protect and prevent unauthorized disclosure of its own information of a like nature. This confidentiality provision shall last for five (5) years from the Effective Date of the Agreement, except in the case of trade secrets, which shall remain subject to this confidentiality provision for as long as they remain trade secrets under applicable law. Each Party acknowledges that any actual or threatened breach of this confidentiality provision could cause irreparable damage to the other Party, and therefore agrees that each Party shall be entitled, in addition to any other available remedies at law or in equity, to seek immediate injunctive relief from a court of competent jurisdiction in the event of breach or threatened breach of this section.
- (b) Exceptions. This Agreement imposes no obligation on a Party with respect to information that: (a) was already known to the Party prior to disclosure as evidenced by its preexisting records; (b) is or becomes publicly known through no breach of this Agreement or other confidentiality obligations owed by one Party to the other Party (or the other Party's Affiliates); (c) is rightfully received by a Party from a third party that has no applicable duty of confidentiality; or (d) is independently developed by a Party without any use of Confidential Information disclosed under this Agreement. A Party may also disclose Confidential Information pursuant to a requirement of a governmental agency of competent jurisdiction or applicable law of the United States, or any state or federal governmental or political subdivision thereof, so long as the Party provides the other Party with timely notice of such disclosure, uses its best efforts to cooperate with the other Party in seeking confidential treatment of such Confidential Information, and only discloses those portions of the Confidential Information required to be disclosed.
- (c) Return or Destruction. Upon termination or expiration of the Agreement for any reason, or otherwise at a Party's written request at any time during the Agreement Term, each Party shall promptly return or destroy, at the other Party's discretion, all embodiments of Confidential Information in any tangible and intangible medium and any materials received under this Agreement that contain the other Party's Confidential Information, and any derivative works thereof, within its possession and control or, at the other Party's option.

XIII. TERMINATION

- a. This Agreement may be terminated by either Party upon thirty (30) days written notice.
- b. Upon termination of this Agreement for any reason, the NFB shall be entitled to receive such compensation and reimbursement, if any, accrued under the terms of a SOW, but unpaid, as of the date NFB ceases work under the Agreement.

XIV. NON-EXCLUSIVITY

Each Party acknowledges that its agreement with the other is non-exclusive, and each is free to contract with third parties to secure or provide similar services.

XV. ADVOCACY

Nothing in this Agreement prevents the NFB or its attorneys from advocating or litigating in any manner on behalf of itself, its members, or other interested persons or entities regarding access barriers identified in a Pearson product, as long as such advocacy or litigation is not based upon any Confidential Information shared with the NFB under this Agreement. However, whenever possible, NFB or its attorneys will raise any concerns related to Pearson's Educational Products and provide Pearson with a commercially reasonable amount of time to remediate such concerns prior to commencing any litigation.

XVI. MEET AND CONFER

Twice a year during the Agreement Term, the Relationship Managers of Pearson and NFB will work together to set up a meeting with appropriate representatives from both organizations concerning the status of this Agreement, any pending or anticipated Statements of Work, and any additional support, assistance, or guidance sought from the NFB, with additional phone conferences as may be scheduled.

XVII. MODIFICATION OF AGREEMENT

This Agreement may only be amended or modified by a mutually agreeable written document executed by both Parties.

XVIII. MERGER AND INTEGRATION

This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and it supersedes all prior negotiations, agreements, discussions, or understandings with respect thereto.

XIX. GOVERNING LAW

This Agreement shall be governed by, construed, and interpreted according to the laws of the state of Maryland as if executed and fully performed therein without regard to that state's principles of conflict of laws. The Parties expressly agree that sole and exclusive jurisdiction and venue over all disputes hereunder or related hereto shall be in the state or, if jurisdictional prerequisites exist, federal courts of the state of Maryland, and each Party hereby submits to such jurisdiction and venue and waives any defense or lack of personal jurisdiction, lack of venue, or forum non conveniens to any action in those forums.

XX. NON-WAIVER

The failure by one Party to require performance of any provision of this Agreement shall not affect that Party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach, default, or a waiver of the provision itself.

XXI. NOTICE

Any notice or communication required or permitted hereunder shall be in writing and shall be deemed given when received. All such notices shall be sent to the address of each Party set forth below, or to such other address specified by the Party in writing:

To the NFB:

National Federation of the Blind
200 East Wells Street
Baltimore, MD 21230
Attention: Valerie Yingling

To Pearson:

Pearson Education, Inc.
221 River Street
Hoboken, New Jersey 07030
Attention: General Counsel

XXII. EXECUTION

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Further, this Agreement shall be executed through the use of digital and/or electronic signatures of authorized representatives of the Parties to ensure the Accessibility of the Agreement.

XXIII. PUBLICITY

Throughout the duration of this agreement, in the event that either Party seeks to publicize the existence or contents of this collaboration agreement, it may do so only after obtaining prior written consent of the other Party. Parties may choose to jointly publicize the existence or contents of this collaboration agreement via similar mutually written consent. Upon execution of this Agreement, the Parties will jointly prepare and approve public talking points that the Parties may use to discuss the agreement with third parties.

XXIV. ACCESSIBILITY USER TESTING

The NFB may collaborate with Pearson in the design and implementation of usability studies to evaluate the Accessibility of certain Educational Products designated by Pearson. The specific scope and timing of such usability studies will be set forth in future SOWs.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement:

National Federation of the Blind

By: 

Title: President

Date: March 9, 2020

Pearson Education, Inc.

By: _____

Title: SVP Product Management, Higher Education & Career Learning

Date: March 9, 2020

EXHIBIT A

STATEMENT OF WORK #1

Type of Services:	Accessibility Consulting Services
Supplier:	National Federation of the Blind
Planned SOW Start Date:	March 9, 2020
Planned SOW Finish Date:	December 31, 2022

This Statement of Work (“SOW”), dated March 9, 2020 between Pearson Education, Inc., (“**Pearson**”), and the National Federation of the Blind (“**NFB**”), incorporates by reference all of the terms of the Collaboration Agreement dated March 9, 2020 between Pearson and the NFB (the “**Agreement**”). The Parties agree to abide by all terms of the Agreement in the performance of this SOW.

Any capitalized terms used but not defined in this SOW shall have the meaning for such terms as defined in the Agreement. In the event of a conflict between any term of the Agreement and this SOW, the terms of this SOW shall prevail with respect to this SOW only.

1. Statement of Purpose

On an as-needed and requested basis, the NFB will provide consulting services to Pearson in a collaborative environment to: (a) help promote the enculturation of Accessibility within Pearson, (b) develop priorities for addressing the Accessibility of Pearson’s Educational Products, (c) assist Pearson in auditing and/or testing its Educational Products, (d) assist Pearson in remediating inaccessible Educational Products, and (e) provide requested advice, guidance, and/or feedback (jointly referred to as “Feedback”) concerning the Accessibility of its Educational Products.

2. Scope of Work

(a) Accessibility Plans and/or Roadmap.

1. On a mutually agreed upon date within the first three (3) months of this Agreement **Pearson Higher Education Courseware** will share with the NFB a draft accessibility roadmap template which will be used to review certain Pearson Educational Products identified by Pearson as subject to this review. The list of Educational Products covered under this Agreement will be provided to the NFB within six (6) months of execution of this Agreement. The NFB will review the accessibility roadmap template and provide written feedback within two (2) months. Pearson

will undergo internal review of the identified Educational Products and complete the agreed upon roadmap template for each within one (1) year of execution of this Agreement. Higher Education Educational Products subject to review will include those under active development which collectively represent the substantial majority of Pearson Higher Education Courseware digital customers--including MyLab and Mastering. The template agreed upon for Pearson Higher Education Courseware will be used for the identified Pearson Higher Education Courseware Educational Products. Pearson will continue to share VPATs with customers, upon request. In addition, Pearson will post accessibility updates to a public facing website. During meetings between the Relationship Managers, Pearson will share with NFB the current completed roadmaps they plan to execute and information related to the progress made toward resolving issues that may be identified in the applicable roadmaps. The Parties agree that roadmaps are fluid documents that may change over time.

2. On a mutually agreed upon date within the first six (6) months of this Agreement, Pearson Assessments will share with the NFB a draft accessibility roadmap template which will be used to review certain Pearson Educational Products identified by Pearson as subject to this review. The list of Educational Products covered under this Agreement will be provided to the NFB within six (6) months of execution of this Agreement. The NFB will review the accessibility roadmap template and provide written feedback within two (2) months. Pearson will undergo internal review of the identified Educational Products and complete the agreed upon roadmap template for each within one (1) year of execution of this Agreement. The template agreed upon for Pearson Assessments will be used for identified Pearson Assessments Educational Products. Pearson will continue to share VPATs with customers, upon request. In addition, Pearson will post accessibility updates to a public facing website. During meetings between the Relationship Managers, Pearson will share with NFB the completed roadmaps they intend to execute and information related to the progress made toward resolving issues that may be identified in the applicable roadmaps. The Parties agree that roadmaps are fluid documents that may change over time.

- (b) Accessibility Policies and Procedures. On a mutually agreed upon date within the first six (6) months of this Agreement, Pearson will share with the NFB applicable written Accessibility policies and procedures regarding: (i) implementation of a continuous improvement process to continually review accessibility of products, (ii) Educational Product procurement; (iii) staff training to include professional development to drive awareness and technical skills related to accessibility; and (iv) disability inclusion in the Pearson workplace. The NFB will review such policies and procedures and provide written Feedback within two (2) months.

- (c) Accessibility Audit. Within the first (2) two months of this Agreement, Pearson will engage a qualified third party of its choice to conduct an Accessibility audit of Pearson's MyLab and Mastering platforms. Such audits will be completed within six (6) months. Within (3) months of audit completion, Pearson will address any Accessibility gaps identified in the audit and develop a remediation plan to address applicable gaps identified in the audit. Pearson will present audit findings and remediation plan to the NFB and NFB will provide feedback on the prioritization of remediation. Implementation of the remediation plan will be included in ongoing product roadmaps.
- (d) Complaints. For any complaints forwarded by the NFB to Pearson under Section V of the Agreement, to the greatest extent allowable:
1. The NFB will provide the following information for any Higher Education inquiries: name of individual, individual's institution, the course name, Pearson product, location, brief summary and description of the issue, criticality of the issue, and contact names of any individuals at the institution who have been involved and may provide support in resolving;
 2. The NFB will provide the following information for any Assessments related complaints: name, test name, test date, description and summary of the issue.

If such complaint is filed with adequate information, Pearson will compensate the NFB at a rate of \$150/hour up to a maximum of \$500 per month for the handling of these complaints.

- (e) Confidentiality. All information shared and/or provided by Pearson to the NFB pursuant to this SOW will be considered Confidential Information under this Agreement.

3. Costs. For any review conducted by the NFB as prescribed in Sections 2(b) and 2(c) of this SOW, Pearson will pay the NFB for this review at a rate of \$150 per hour for non-technical consulting and \$300 per hour for technical consulting. The total value of work conducted under this SOW shall not exceed \$10,000. If the NFB believes that the work provided hereunder will exceed this amount, the NFB will not proceed until this Agreement is amended in writing to include the additional fees. There will be no reimbursement for travel or other expenses under this SOW unless approved, in writing, by Pearson in advance.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their respective duly authorized representatives as set forth below:

National Federation of the Blind

By: 

Title: President

Date: March 9, 2020

Pearson Education, Inc.

By: _____

Title: SVP Product Management, Higher Education & Career Learning

Date: March 9, 2020

EXHIBIT B

NATIONAL FEDERATION OF THE BLIND CONSULTING SERVICES

The NFB offers accessibility consulting services to support companies, schools, and other entities in providing full and equal access, in accordance with the general requirements of the Americans with Disabilities Act and the Rehabilitation Act of 1973, and industry-standard accessibility guidelines:

- Web Content Accessibility Guidelines (WCAG) 2.1, AA,
- Authoring Tools Accessibility Guidelines (ATAG) 2.0,
- User Agent Accessibility Guidelines (UAAG) 1.0,
- Accessible Rich Internet Applications (ARIA) 1.1,
- WCAG 2.1 Applied to Non-Web Information and Communication Technologies (WCAG2ICT),
- Digital Accessible Information System (DAISY),
- Electronic Publication standards (EPUB) 3.0.1, and
- Guidelines and Standards for Tactile Graphics, 2010.

Services must be formalized in a mutually agreed upon and executed Statement of Work inclusive of 1) the task(s) to be performed, 2) the fee for service, and 3) the timeline for completion. The NFB has the right to refuse a request for consultation and/or request a minimum number of hours of consultation per contract.

Consultation work will be customized to the requestor's need. The following list of services is a sample of what the NFB can provide in regard to organizational processes, product design, and evaluation.

Organizational Processes

- Provide guidance on developing accessibility policies, procedures, and performance measures.
- Consult on the creation of an accessibility committee and hiring of an accessibility coordinator.
- Assist with developing curricula for educating and training employees and contractors on accessibility.
- Design accessibility criteria for staff evaluations.
- Provide guidance on developing accessibility-focused procurement language and practices.

Product Design

- Advise on coding for Accessible design.
- Consult on Accessible document creation.
- Provide guidance on using Accessible images and creating alt tags.
- Advise on what information should be provided tactilely and on general tactile graphics design.
- Assist with the development of Accessible interactive elements.

Evaluation

- Provide guidance on automated versus manual testing.
- Develop scope and criteria for user testing.
- Assist with the creation of quality assurance processes.
- Assist with developing metrics.
- Evaluate basic testing paths.
- Consult on product accessibility on iOS and Android devices.
- Help develop optimization guidelines for products.
- Evaluate the accessibility of images and alt tags.
- Evaluate tactile graphics and Braille documents.