

**aimswEBPlus**  
**SUBSCRIPTION AND USER LICENSE AGREEMENT**

This aimswEBPlus Subscription and User License Agreement ("Agreement") governs access to and use of the aimswEB fee-based products and services offered by NCS Pearson, Inc. ("PEARSON"). By accessing, using, printing, displaying or registering for such services or products, you ("CUSTOMER") agree to the terms of this Agreement in which, CUSTOMER receives a limited license to access, use, print, display or register for such services or products for an initial one school year (August 1 – July 31) period.

**PLEASE CAREFULLY READ THIS AGREEMENT BEFORE ACCEPTING BELOW. PROCEEDING WITH REGISTRATION, OR ACCESSING, USING, PRINTING, OR DISPLAYING THE PRODUCTS OR SERVICES INDICATES THE CUSTOMER'S ACCEPTANCE OF THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE WITH THESE TERMS, CUSTOMER SHOULD DECLINE THE REGISTRATION AND CUSTOMER MAY NOT ACCESS, USE, PRINT, OR DISPLAY THE PRODUCTS OR SERVICES.**

PEARSON has developed this proprietary universal screening and progress monitoring system for academics and behavior based on direct, frequent and continuous student assessment "aimswEBPlus" designed to monitor student achievement and instruction. In addition, aimswEBPlus establishes and maintains a database of student performance which provides access to students, parents, teachers and administrators via a web-based data management and reporting system for providing skill assessment protocols, testing materials and instructions; assessment probes for use in the classroom (collectively referred to in this Agreement as the "MATERIALS"). Some or all of the MATERIALS are copyrighted by NCS Pearson, Inc. All of the MATERIALS are proprietary. Use of the MATERIALS by any individual, organization, entity or enterprise is strictly prohibited except for a CUSTOMER entity authorized pursuant to this Agreement.

The MATERIALS, software, online software documentation, Implementation Training Manual and the *aimswEBPlus* support site (collectively the "Subscription Service") and any modifications, updates, revisions, or enhancements thereof are subject to the terms of this Agreement.

**1. License Grant.**

PEARSON hereby grants to CUSTOMER and CUSTOMER hereby accepts from PEARSON a limited, non-exclusive, non-transferable, revocable license to access, print and use the MATERIALS for the limited purposes of universal screening and progress monitoring for academics and behavior of each LICENSED USER associated with CUSTOMER (as defined below).

"CUSTOMER" is a person, organization, school, district, or Department of Education, public entity, business entity or enterprise which: (1) has paid a license fee to or is otherwise authorized by PEARSON to access, print and use the MATERIALS on behalf of a LICENSED USER; and (2) both CUSTOMER and LICENSED USER have agreed to be bound by the terms and conditions of this License Agreement.

"LICENSED USER" means:

- (a) If CUSTOMER is a corporation, or public body such as a School, or School District, Department of Education, or similar organization, a LICENSED USER may include an individual employee or agent to whom CUSTOMER has conferred the right to use the MATERIALS or to accept these license terms. Any such individual is subject to the terms and conditions of this Agreement, and must agree to be bound and has the right to bind their organization to the terms and conditions of this License Agreement.
- (b) If CUSTOMER is a post-secondary academic institution, academic library or similar research institution, a LICENSED USER may also include a post secondary student and an academic researcher, provided that CUSTOMER identifies each LICENSED USER to PEARSON and PEARSON consents to each LICENSED USER.

In this Agreement, all references to CUSTOMER shall also include LICENSED USER.

Upon expiration or termination of this Agreement, the nonexclusive limited license granted herein shall automatically and immediately terminate and CUSTOMER agrees not to access, print or use the MATERIALS and, upon request of

PEARSON, to return all MATERIALS then in possession of CUSTOMER to PEARSON or destroy and certify to PEARSON the manner and date of that CUSTOMER destroyed same.

## **2. Authorization.**

The use of the MATERIALS is strictly limited to those provided for in this Agreement. The MATERIALS may be used only for their stated and published purposes including monitoring of student performance scores, comparison of student performance scores, individually and across various cohort groups.

CUSTOMER agrees that the MATERIALS will not be:

- (a) used for any "for-profit" commercial activities, unless specifically agreed in writing by PEARSON, including any use of any trademark of PEARSON;
- (b) copied, duplicated, modified, translated, adapted, publicly displayed, or publicly performed without the express written consent of PEARSON;
- (c) downloaded, transmitted, or re-transmitted or transferred for the purpose of evading the prohibition on copying, duplication or modification;
- (d) sold, transferred, conveyed, pledged licensed, or sub-licensed;
- (e) reverse engineered, decompiled, disassembled or subject to efforts to derive source code for any software and/or computer code components of the MATERIALS; or
- (f) exploited for any purpose different from or contrary to the rights and interests of PEARSON or inconsistent with the stated terms and purposes of this Agreement.

Notwithstanding the foregoing, some of the MATERIALS, including any assessment protocols, which include assessment probes, testing sheets and instructions and similar information, may be duplicated for the internal distribution and administration of student performance tests, and to train employees of CUSTOMER, including each LICENSED USER, consistent with this Agreement.

## **3. Ownership.**

CUSTOMER is granted a non-exclusive limited license to use the MATERIALS under the terms of this Agreement. All right, title, and interest in and to the MATERIALS, the Subscription Services, and all intellectual property rights in and to the MATERIALS, the Subscription Services and the website of PEARSON, and all other materials shall remain solely vested in, to and with PEARSON. PEARSON is granted permission to use any student data received from CUSTOMER for research, development or normative purposes, as long as, such data does not contain any personally identifiable information.

## **4. Subscription Charges**

aimswebPlus subscriptions are based on per student, per school year fees. The initial fee to activate Subscription is based on estimate by CUSTOMER of unique students that will have score data entered. PEARSON will run reconciliation reports in June of each subscription year and invoice for any overages at that time. Subscription fees are non-refundable for any reason at any time.

Certain "Subscription Services" are available only from PEARSON via a dedicated service subscription to which the following applies:

- (a) CUSTOMER agrees to pay, using a valid credit card, purchase order, or check which PEARSON accepts, the subscription fees set forth by PEARSON, applicable taxes, and other charges incurred on the account of CUSTOMER in order to access, print and use the Subscription Services. PEARSON reserves the right to change fees, or to institute new fees at the end of each subscription year, upon reasonable notice posted in advance on [www.aimsweb.com](http://www.aimsweb.com) or as otherwise provided. aimswebPlus subscription services must be renewed on an annual basis. PEARSON does not automatically renew Subscriptions. In the event CUSTOMER chooses not to renew aimswebPlus Subscriptions, PEARSON reserves the right to terminate

CUSTOMER access to the Subscription Services. No refunds or credit will be granted for any cancellation or termination for any reason at anytime.

- (b) In addition to the charges set forth above, CUSTOMER is responsible for all expenses and charges associated with accessing the internet; connecting to the Subscription Service; and any service fees associated with such access and connection. CUSTOMER is also responsible for providing all equipment necessary for CUSTOMER to make such connection, including without limitation, computer and modem and/or network connection. This includes all equipment and software used to load and print files saved in .pdf format.
- (c) For purposes of identification and billing, CUSTOMER agrees to provide PEARSON with accurate, current and complete information as required during registration for the Subscription Services, including, without limitation, the legal name, address, telephone number(s), e-mail address, and applicable payment data (e.g. credit card number and expiration date) for CUSTOMER and to maintain and update this information to keep it accurate, current and complete. Failure to provide and maintain accurate, current and complete information may, at the option of PEARSON, result in immediate suspension or termination of this Agreement and the Subscription Services.

## **5. Multi Customer Accounts**

This license for each Subscription Service creates a single account. CUSTOMER may then create additional sub-accounts, and each sub-account that CUSTOMER creates shall be fully subject to this Agreement.

## **6. Password**

As part of the registration process for Subscription Services, CUSTOMER will select a password. CUSTOMER is solely responsible for maintaining the confidentiality of the CUSTOMER password and agrees that PEARSON has no obligations with regard to the use by third parties of such password. CUSTOMER is entirely responsible for any activity occurring under the CUSTOMER account (and any sub-account) and password. CUSTOMER agrees to notify PEARSON immediately if CUSTOMER has any reason to believe that the security of CUSTOMER data or any password has been compromised.

Should CUSTOMER forget the password, PEARSON will reset it for CUSTOMER at CUSTOMER's request; however, in order to protect the privacy of CUSTOMER and the data of CUSTOMER, PEARSON may require CUSTOMER to provide specific information.

## **7. Privacy & Security**

PEARSON has taken reasonable actions, including use of encryption and firewalls, to ensure that data and information of CUSTOMER is disclosed only to those designated by CUSTOMER, as set forth in the applicable [Privacy Policy](#) posted on the aimsweb site. However, CUSTOMER acknowledges that the Internet is an open system and PEARSON cannot and does not warrant or guarantee that third parties will not intercept same.

## **8. Server Availability and Scheduled Down Times**

PEARSON schedules daily maintenance from 12:00 a.m. to 6:00 a.m. Central Standard Time, Monday through Sunday. In the event a mission-critical maintenance situation arises, PEARSON may be required to perform emergency maintenance at any time. During these scheduled and emergency maintenance periods, CUSTOMER may be unable to transmit and receive data. CUSTOMER agrees to accept the risk of such unavailability and to fully cooperate with PEARSON during the scheduled and emergency maintenance periods.

## **9. Indemnification**

To the extent permitted by law, CUSTOMER hereby agrees to indemnify, defend, and hold harmless PEARSON from and against any and all claims, proceedings, damages, liability, and costs (including reasonable attorney fees) incurred by PEARSON in connection with any claim arising out of (i) any breach or alleged breach of any of CUSTOMER obligations set forth herein, (ii) any acts by CUSTOMER, or (iii) MATERIALS or information posted or transmitted by CUSTOMER in connection with the Subscription Service regardless of the type or nature of the claim. CUSTOMER shall cooperate as fully as reasonably required in the defense of any claim. PEARSON reserves the right, at its own expense, to assume the

exclusive defense and control of any matter otherwise subject to indemnification by CUSTOMER and CUSTOMER shall not in any event settle any matter without the written consent of PEARSON.

PEARSON will hold the CUSTOMER harmless and indemnify the CUSTOMER against any third party claim that the MATERIALS, in the form delivered by PEARSON to the CUSTOMER, infringes or violates any valid United States patents or copyrights of a third party existing at the time of delivery; provided that PEARSON must be given prompt, written notice of the claim and allowed, at its option, to control the defense and settlement of any such claim. PEARSON's obligations under this Section do not apply to any infringement arising out of the use of the MATERIALS in combination with systems, equipment or computer programs not supplied by PEARSON, or any unauthorized modification of MATERIALS.

## **10. Limitation of Liabilities and Remedies**

**THE MATERIALS AND THE SUBSCRIPTION SERVICES (INCLUDING ALL CONTENT, SOFTWARE AND FUNCTIONS) ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND "WITH ALL FAULTS" WITHOUT WARRANTY OF ANY KIND. PEARSON MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ANY AND ALL WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION, TITLE, SECURITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AVAILABILITY, OR UNINTERRUPTED ACCESS. PEARSON DISCLAIMS AND CUSTOMER WAIVES ALL LIABILITY ARISING FROM THE ACCESS, USE AND PRINTING OF THE MATERIALS AND PROVISION OF THE MATERIALS AND THE SUBSCRIPTION SERVICES.**

**IN NO EVENT SHALL THE LIABILITY OF PEARSON TO CUSTOMER OR ANY THIRD PARTY FOR DAMAGES FOR ANY CAUSE WHATSOEVER RELATED TO OR ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER TO PEARSON DURING THE PRECEDING TWELVE MONTHS. IN NO EVENT WILL PEARSON BE LIABLE FOR ANY LOST PROFITS, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE ANY MATERIALS OR THE SUBSCRIPTION SERVICE EVEN IF PEARSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT ANY CLAIM ARISING FROM USE OF OR ACCESS TO THE MATERIALS PROVISION OF ANY SUBSCRIPTION SERVICES MUST BE MADE WITHIN ONE (1) YEAR OF THE FIRST DATE SUCH CLAIM FIRST ACCRUED OR SHALL BE DISMISSED AS UNTIMELY AND FOREVER BARRED.**

**THIS LIMITATION OF LIABILITY APPLIES TO ANY EXPENSES, DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR OF OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF DATA RECORDS, WHETHER FOR BREACH OF CONTRACT, STRICT LIABILITY, TORTUOUS BEHAVIOR, NEGLIGENCE, OR FOR ANY OTHER CAUSE OF ACTION.**

## **11. Term and Termination**

This Agreement has a term of one (1) school year (August 1 – July 31) and must be renewed each following school years by CUSTOMER for continued service.

Either CUSTOMER or PEARSON may cancel or terminate this Agreement upon thirty (30) days written notice to the other via electronic mail or conventional mail, and all fees for the then-present term of this Agreement shall immediately become fully due and payable.

PEARSON reserves the right to restrict, suspend or terminate CUSTOMER access to the Subscription Services in whole or in part without notice and without liability, with respect to any breach or threatened breach of any portion of this Agreement. If PEARSON terminates this Agreement based on a breach of any portion of this Agreement, PEARSON reserves the right to refuse to provide Subscription Services to CUSTOMER.

Subject to the PEARSON Privacy Policy, if the Agreement is terminated by PEARSON for reasons other than breach of this Agreement by CUSTOMER, any student data entered by CUSTOMER will be made available to CUSTOMER either through a third party offsite vault storage provider or directly from PEARSON for up to ninety (90) days after termination. Charges may apply.

## **12. Modifications to License Agreement and Subscription Services**

PEARSON reserves the right to modify this Agreement, and the software or policies associated with the Subscription Services and any MATERIALS at anytime without advance notice to CUSTOMER. Any modification shall take effect immediately when same is posted to [www.aimsweb.com](http://www.aimsweb.com). CUSTOMER may not assign, sell, distribute, lease, rent, sublicense, or transfer the Subscription Service or the license granted CUSTOMER herein or disclose the Subscription Service to any other person. CUSTOMER continued use of the Subscription Services following any modification shall be conclusively deemed an acceptance of all such modification(s). PEARSON reserves the right to modify, suspend or discontinue the Subscription Services or any portion thereof at any time, including the availability of any functional area of the Subscription Service. PEARSON may also impose limits on certain features and services or restrict CUSTOMER access thereto without notice or liability.

## **13. Student Data Escrow**

CUSTOMER has the ability to export their data at any time. However, PEARSON will produce regular backups of any student data of CUSTOMER and will escrow these backups. Assuming all fees owed by CUSTOMER are current and have been paid, CUSTOMER may request that any of the student data of CUSTOMER be copied to physical data storage media and provided to CUSTOMER. Charges will apply for this service. This service (receiving data) will be available to CUSTOMER only during the term of this Agreement and for a maximum period of three (3) months following the termination or expiration of this Agreement. After the three (3) month period expires, all such data may be destroyed and not available to CUSTOMER.

## **14. Support**

At no additional charge, each CUSTOMER may use a comprehensive online customer service and assistance service. PEARSON agrees to exert reasonable efforts to provide customer service to CUSTOMER, as well as toll-free telephone and e-mail support, but each form of support is provided "AS IS" and "AS AVAILABLE" basis and CUSTOMER acknowledges that use of such support is at the sole risk of CUSTOMER. The support services may be changed at anytime without notice to CUSTOMER or may be discontinued in the sole discretion of PEARSON at anytime.

## **15. Recommended Environment**

Any modification, derivative work, translation, or adaptation to the MATERIALS or the Subscription Services by CUSTOMER shall be subject to a royalty-free, non-exclusive, irrevocable worldwide license to PEARSON in and to same. CUSTOMER agrees to promptly report to PEARSON all defects, inconsistencies, or issues arising from the MATERIALS and the Subscription Services. CUSTOMER acknowledges that additional maintenance fees and upgrade costs may accrue in the event that PEARSON provides support for and/or is requested by CUSTOMER to rectify issues related thereto.

## **16. Student Assessment**

The use, accuracy and efficacy of the Subscription Service depend in large measure upon the accuracy and completeness of the data provided to PEARSON by CUSTOMER. CUSTOMER agrees that it will use the MATERIALS, and in particular the basic skill performance tests, protocols, reading passages, testing procedures, testing instructions and all similar documents and information in a manner consistent with this Agreement, and applicable guidelines and directions from PEARSON.

## **17. Software Documentation Manual**

PEARSON provides a variety of documentation manuals in electronic form and PEARSON hereby agrees to permit CUSTOMER to access, use, reproduce, print and distribute each applicable Documentation Manual for the internal training, educational and assessment purposes of CUSTOMER.

## **18. Acceptance**

This Agreement must be accepted by CUSTOMER and PEARSON. CUSTOMER may indicate acceptance of this Agreement by: (1) signing and returning to PEARSON the printed acceptance form; (2) by electronic acceptance indicating that CUSTOMER accepts the Agreement; or (3) by accessing, printing, displaying and/or use of the MATERIALS or ordering any of the packages of Subscription Services. If CUSTOMER submits a purchase order for any

products or services covered by this Agreement, CUSTOMER agrees that any pre-printed terms of such purchase order shall not apply or modify this Agreement and that this Agreement shall solely control and govern the transaction and such purchase order shall constitute acceptance of this Agreement.

The laws of the State of Minnesota shall govern this Agreement and the interpretation and issues of enforcement related thereto without regard to any conflicts of laws provisions therein. CUSTOMER agrees to the personal and subject matter jurisdiction of the court sitting in the State of Minnesota. In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall be valid and enforceable according to its terms. "*aimsweb*" and "*aimswebPlus*" design are trademarks of Pearson Education, Inc.