

  **Legal**  Workforce Skills Agreement

Workforce Skills Agreement

Pearson Workforce Skills Agreement



Version 3.2

Updated December 2023

This Workforce Skills Agreement (the “**WSA**”) is entered into as of the date of the last signature to the Agreement (the “**Effective Date**”), by and between the entity set forth on the applicable Order Form (“**Pearson**”), and the entity set forth on an executed Order Form



- a. Order Forms. Pursuant to this WSA, Client may order specific Pearson Services as set out in a separate, mutually agreed and executed Order Form (as defined below).
- b. Affiliates. Affiliates of the Parties may enter into Order Forms governed by this WSA. In such circumstances, references to “Client”, “Pearson”, or a “Party” in this WSA shall be read, for the purposes of such Order Form, to mean the specific Client or Client Affiliate or Pearson or Pearson Affiliate (respectively; and as applicable) identified in and executing such Order Form.
- c. Service Schedules. The WSA incorporates the Service-specific terms set forth in the “Service Schedules” set forth at <https://info.credly.com/legal> and corresponding to the Services purchased and set forth on the Order Form.
- d. Data Processing Agreement. The parties shall act in accordance with all applicable laws and regulations relating to the security and privacy of Personal Information of Users. This Agreement incorporates the Pearson Data Processing Agreement (“**DPA**”) located at <https://info.credly.com/data-processing-addendum> and applies to Client’s use of the Services to process Client Data (as defined in the DPA).
- e. Service Levels. The Agreement incorporates by reference the Credly’s Service Level Agreement (“**SLA**”) located at <https://info.credly.com/support-maintenance>, unless otherwise specified in the Order Form. Pearson shall provide support and maintenance for the Services as set forth therein.





- i. **"Affiliate"** means any entity that controls or is under common control by or with a Party. A corporation or other entity will be deemed to control another if it owns or controls more than fifty percent (50%) of the voting stock or other ownership interest in such corporation or entity.
- ii. **"Client"** means an organization using the Services.
- iii. **"Client Data"** means the data, including Personal Data, that is uploaded to the Pearson Services by the Client, and includes analytical outputs from the Services that are specific to Client. Client Data shall not include User Data.
- iv. **"Credential"** means a digital representation of an achievement issued to a User by an organization using the Services. Credentials include an image and metadata describing the achievement and may include supporting evidence and related information.
- v. **"Historical Credentials"** means Credentials issued pursuant to an applicable Order Form to account for achievements earned prior to the effective date of said Order Form.
- vi. **"Order Form"** means each document pursuant to which Client orders, and Pearson accepts, access to the Services.





Pearson or its Affiliates via its software, websites and offerings to the extent and for the term set forth on an Order Form.

- ix. **User** means an individual who has created an account to use the Services.
- x. **“User Data”** means the data, including but not limited to Personal Data, of an User that is processed by Pearson pursuant to an agreement between Pearson and that User.

3. Access to the Services.

a. Client Responsibilities. Client is responsible for its use of the Services. Client shall not misrepresent the identity or nature of any Personal Data. Client shall keep login information confidential. Client shall not provide access to the Services to any person who is not permitted to use the Services pursuant to an Order Form. Client may not use the Services to interact with Users under thirteen (13) years of age (or, the age of consent if specified in Applicable Data Protection Laws). Pearson assumes no responsibility and disclaims all liability for any actions Client takes based on any information provided by Pearson.

b. Right to Remove. Pearson may remove any Client Data from the Services that contains, consists of, or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or





may not copy, modify, create derivative works from, download, republish, reproduce, transmit or distribute any aspect of the Services, whether public or nonpublic, except for Client Data, without the written permission of Pearson. Client shall not use, evaluate or view the Services for the purpose of designing or creating any software program or system, in whole or in part, with features or functions similar to any function, feature, or aspect of the Services. Client may not engage in reverse engineering, decompiling, disassembling, deciphering or otherwise attempting to derive the source code for the Services. Except as expressly authorized by Pearson in writing, Client may not:

- i. Imply or state that Client is affiliated with or endorsed by Pearson;
 - ii. engage in "framing," "mirroring," "scrapping," "bot-harvesting," or otherwise simulate the appearance or function of the Pearson Services; or
 - iii. rent, lease, loan, trade, sell or otherwise monetize the Services or related data or access to the same.
- d. No Malware. Client shall not use any device, software or routine that interferes or attempts to interfere with the normal operation of the Services. Client is prohibited from introducing malware, spyware or any other malicious code into the Pearson Services or otherwise interfering with the operation of, or place an unreasonable load on (e.g., via spam, denial of service attack, viruses,





standard technologically current web browser and internet connection. Pearson shall not be responsible for any hardware, software, or networks outside of the control of Pearson.

4. **Term and Termination**

- a. Term. The Agreement will commence on the Effective Date and will remain in effect until the last Order Form is expired or terminated. Access to the Services shall be granted on the effective date indicated in the applicable Order Form and continue for the term specified therein.
- b. Termination. The Agreement and any Order Form will terminate upon written notice to the breaching party for a material breach of the Agreement or Order Form, which breach, if capable of being cured, remains uncured for a period of 30 days after receipt of written notice specifying the breach. Any incurable breach shall allow for immediate termination on written notice.

5. **Payments**

- a. Fees. Client will pay Pearson in accordance with the payment schedules set forth in any Order Form (the "**Fees**").
- b. Payment Term. Client shall pay all invoices no later than 30 days from the date of invoice, and all payments shall be in the currency specified in the relevant Order Form.





d. Taxes. Applicable sales taxes shall be collected at the time of sale. Each Party will be responsible, as required under applicable law, for identifying and paying all value add or other taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that Party upon or with respect to the transactions and payments under this Agreement. Where tax withholding applies to payment of Pearson's invoice, any Fees shall be remitted to Pearson net of withholding unless otherwise set out in the Order Form.

e. Travel & Expenses. Pearson may not incur any recoverable travel or expenses related to the provision of the Services to Client under this Agreement without prior written approval by Client.

6. **Confidential Information**

a. Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by section 6(b)(i).

b. Each party may disclose the other party's confidential information:

i. To its employees, officers, representatives, contractors, Affiliates, subcontractors or advisers who need to know such information for the purposes





- ii. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c. No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

7. Intellectual Property

a. Pearson Intellectual Property. Nothing in this Agreement shall operate as a transfer of any intellectual property developed by a Party prior to the execution of this Agreement. Pearson owns all right, title and interest in and to the Services and all Pearson-created services, enhancements, aggregate data collection and processing, analysis, review, and reporting tools; trade secrets, know-how, processes, trademarks, copyrights and other intellectual property rights pertaining thereto (collectively, the **"Pearson Intellectual Property"**). Client agrees that it will not market, parcel, distribute, sell, sub-license or otherwise communicate the Pearson Intellectual Property without the express written consent of Pearson. Pearson may incorporate into the Pearson Intellectual Property any suggestions, enhancements, requests, recommendations, or other feedback provided by Client on a royalty-free, perpetual basis. Client may only use Pearson's trademarks in accordance with current trademark usage guidelines or direction provided by Pearson from time to time.





may use Client Data for the purposes of measuring usage and performance of the Pearson Services or identifying trends not specific to Client or Client's usage of the Pearson Services.

c. Changes to the Services. Pearson reserves the right to upgrade, update or discontinue any aspect or feature of a Service in whole or in part; provided, however, that if Pearson discontinues a Service during the term of an Order Form, then Pearson will provide Client with an alternative or replacement service.

8. Indemnification

a. Indemnification. Pearson shall defend and indemnify Client from and against all third-party claims (i) arising from acts of gross negligence, willful misconduct, or fraud committed by Pearson; (ii) arising from security incidents attributable to Pearson's failure to abide by the provisions of the DPA; or (iii) alleging that the Services infringe a third party's patent claim, copyright, or trademark. Pearson agrees at its own expense to defend, or at its option, settle any such claim, suit, or proceeding brought against Client and subject to this indemnification obligation. This obligation to indemnify does not extend to any claims of infringement to the extent resulting from (1) Client's modification of the Services; (2) any aspect of Client's software, documentation, not designed or developed by Pearson; (3) any claim arising from any instruction, information, design, or materials furnished by Client to Pearson, including claims alleging that any Client Data used in the provision of Services infringes a third-party intellectual property right; or (4) Client's continuing the allegedly infringing activity after





Client will defend and indemnify Pearson from and against third-party claims alleging that (i) any Client Data violates the intellectual property rights of a third party; or (ii) the provision of Client Data to Pearson violates User rights under applicable law.

c. Procedure for Indemnification. Any party seeking indemnification under this Section must provide written notice thereof to the indemnifying party within fifteen (15) calendar days following service of the complaint or other process. The defense or settlement of a claim by the indemnified party without such opportunity to the indemnifying party shall relieve the Indemnifying Party of any further obligation to indemnify the indemnified party with regard to such claim. The indemnifying party shall, at its own expense, undertake the defense of such proceedings, claims, or demands through counsel of its choosing. Further, the indemnifying party shall have the right to enter into and conclude settlement negotiations, provided that no settlement will be made which imposes any material obligations on the indemnified party (other than the payment of money by the indemnifying party made on behalf of the indemnified party), without prior written consent of the indemnified party. If a court or similar tribunal requires consent of the indemnified party, such consent shall not be unreasonably withheld. Either party will reasonably cooperate with the other party to resolve any actual or alleged third-party claims as promptly as is reasonable.



9. **Limited Warranties And Disclaimer**

a. Mutual Representations. Each Party represents and warrants that (i) it has the legal power and authority to enter into this Agreement; and (ii) it will comply with all



Services, when used as authorized under the Agreement, will perform substantially in conformance with the documentation associated with the applicable Services; and (ii) Pearson will not introduce files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs, and Trojan horses into Client's system. Client's sole and exclusive remedy for any breach of these warranties by Pearson is for Pearson to repair or replace the affected Services to make them conform, or, if Pearson determines that the foregoing remedy is not commercially reasonable, then Pearson may terminate the Agreement and provide Client a pro rata refund of paid but unused Fees.

c. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THE AGREEMENT OR WHERE SUCH EXCLUSIONS ARE VOID BY OPERATION OF APPLICABLE LAW, PEARSON, SERVICES ARE PROVIDED AS-IS WITH ALL FAULTS AND: (i) MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED IN FACT OR BY OPERATION OF LAW, OR STATUTORY, AS TO ANY MATTER WHATSOEVER; (ii) DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE; AND (iii) DOES NOT WARRANT THAT THE SERVICES ARE OR WILL BE ERROR-FREE OR MEET CLIENT'S REQUIREMENTS.



10. LIMITATIONS OF LIABILITY

a. IN NO EVENT WILL EITHER PARTY OR THEIR THIRD PARTY PROVIDERS HERETO BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT OR OTHERWISE FOR ANY



PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (ii) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8; (iii) THE REVERSE ENGINEERING, OR MISAPPROPRIATION OF EITHER PARTY'S INTELLECTUAL PROPERTY, OR (IV) THE MISUSE OF CONFIDENTIAL INFORMATION IN VIOLATION OF SECTION 6, IN NO EVENT WILL EITHER PARTY'S LIABILITY (EXCLUSIVE OF FEES PAYABLE) ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE SUM OF FEES PAID BY ISSUER UNDER THE APPLICABLE ORDER FORM AND WITHIN TWELVE (12) MONTHS PRIOR TO THE DATE OF WHICH SUCH CLAIM ARISES.

11. **Dispute Resolution**

a. Dispute Resolution Process. Subject to the Trade Secrets and Breach of Confidentiality Exception section below, any dispute arising out of or relating to this Agreement, whether based on contract, tort, or any other legal or equitable theory, will be resolved as follows: Either party will notify the other party of the dispute, and provide a detailed description of the basis for the dispute as well as any relevant supporting documents. Senior management of each party will then attempt to resolve the dispute. If the parties do not resolve the dispute within 45 days of the initial dispute notice, either party may provide notice of its demand for formal dispute resolution through non-binding mediation. Within 30 days after the formal dispute resolution demand, the parties will meet for one day with an impartial mediator selected by mutual agreement and consider dispute resolution alternatives other than litigation. If the parties cannot agree on a mediator, they will each select one nominator, who must not at that time be employed by either party, and the two





b. Trade Secrets and Breach of Confidentiality Exception. Either party at any time may seek an injunction or other equitable remedies against the other party for misappropriation of trade secrets or breach of confidentiality obligations without complying with the dispute resolution process in the Dispute Resolution Process section.

12. Compliance

a. Pearson Code of Conduct. Pearson shall comply with its Code of Conduct which is found at: <https://plc.pearson.com/en-US/corporate-policies>

b. Client Code of Conduct. Unless the Client has a comparable binding code of conduct, it shall comply with Pearson's business partner code of conduct (BPCC), then it shall abide by the BPCC as published by time to time by at :
<https://plc.pearson.com/sites/pearson-corp/files/2022-03/2022-04/business-partners-code-english.pdf>

c. Sanctions & Modern Slavery. The Parties agree they shall not intentionally or otherwise do anything which causes the other Party to be in breach of any trade sanctions or modern slavery legislation.

d. Termination Right. Where one Party has a reasonable suspicion that the other Party may be in breach of the obligations set forth in this Section, the non-breaching Party may terminate this Agreement by giving written notice.





undertake to perform any of Client's regulatory obligations or assume any responsibility for Client's operations or business. Except as expressly set forth in writing, neither party has power or authority to act for, represent, or bind the other party in any manner. Nothing contained in this agreement will be deemed to create any relationship between the parties other than that of a principal and independent contractor.

b. Assignment. Either party may assign this Agreement in whole or in part (i) to an Affiliate; (ii) in connection with a merger where the contracting entity does not survive such merger, or (iii) in connection with the sale of all or substantially all of the contracting entity's assets related thereto. Except as expressly stated in this section, neither party may assign its rights or obligations under this Agreement without obtaining the other party's prior written consent. Any assignment in contravention of this section is void.

c. Publicity. Neither Party will use the others' name, trademarks or logo, in any press release, advertisement, or other promotional or marketing material or media, whether in written, oral, electronic, visual, or any other form, without, in each case, prior written consent.

d. Waiver. No failure or delay in (i) exercising any right or remedy; or (ii) requiring satisfaction of any condition under this agreement, and no course of dealing between the parties, operates as a waiver or estoppels of any right, remedy or condition.





other email addresses as a Party may designate in confirmed written notice to the other Party

f. Entire Agreement And Modification. The WSA, together with all Order Forms, Service Schedules, and the DPA, contains the entire agreement between the parties hereto, supersedes all prior agreements, arrangements, or understandings between the parties and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This agreement may not be modified or amended except by a written agreement duly signed by persons authorized to act on behalf of the party to be charged with the amendment. No confirmation, shipment or delivery docket or purchase order terms, or other similar document will vary, prevail over or form part of the Agreement. If any document referred to in this clause purports to govern or apply to the provision of Services subject of the Agreement (whether issued prior to or after the formation of the Agreement) such document is expressly rejected and shall be deemed null and void and of no legal effect unless such document explicitly references the WSA and is signed by an authorized representative of each Party. This provision applies even if such document expressly purports to prevail over the terms of the Agreement. In the event of a conflict, the order of precedence is:

- i. the DPA,
- ii. the WSA and its Service-specific addenda; and
- iii. the Order Form.





causes may include acts of god or of a public enemy, acts of terrorism, earthquakes, floods, fires, epidemics, riots, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance will be extended to the extent of delays excused by this section. The parties will promptly inform and consult with each other as to the existence and nature of such delay. A force majeure event shall not relieve outstanding payment obligations.

h. Severability. If any provision of this agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this agreement will remain in full force and effect. Any provision of this agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

i. Survival. The provisions of sections 3(b), 6, 7, 8, 9, 10, and 11 will survive any termination, expiration or cancellation of this agreement, regardless of the basis for such termination or cancellation..

j. Governing Law And Venue. This agreement will be governed by and construed in accordance with the laws of state or nation of the Pearson entity set forth on the Order Form, other than its conflicts of laws provisions. The parties consent to venue in the state or nation of the Pearson entity set forth on the Order Form (and hereby waive any claims of forum non conveniens with respect to such venue) and to the exclusive jurisdiction of competent State or National courts for all litigation which may be

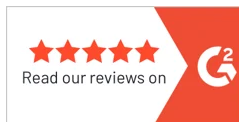




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Credly by Pearson hosts the largest and most-connected digital credential network. We help the world speak a common language of verified knowledge, skills, and abilities.



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