



Website.

5. RESTRICTIONS ON USE OF THE LICENSED PRODUCTS/ INTELLECTUAL PROPERTY RIGHTS.

- A. The Licensed Products may not be used (directly or indirectly) for any of the following purposes: substantial or systematic reproduction; redistribution, reselling or sublicensing in any manner including in connection with fee-for-service use; **supply or distribution in any form to anyone other than Authorized Users and only for the purposes strictly licensed herein**; or substantial or systematic retention of the Licensed Products. Subscriber shall not use “spider” or “web-crawling” or other software programs, routines, robots or other mechanized devices to continuously and automatically search and index any content accessed online under this Agreement.
- B. Neither Subscriber nor its Authorized Users may modify, adapt, transform, translate or create any derivative work based on the Licensed Products, or otherwise use same in a manner that would infringe the copyright or other proprietary rights therein. Copyright notices, other notices or disclaimers included in the Licensed Products may not be removed, obscured or modified in any way.
- C. Subscriber will not reverse engineer, decompile or disassemble the PALS website and/or any software included in the Licensed Products. However, in the event that a court determines that Subscriber has such right under its local law, which right cannot be waived, this right shall be restricted solely to the study of matters such as interoperability and shall not be used in such a way as to affect its commercial value.
- D. Subscriber acknowledges that all rights save for the limited and non-exclusive licenses or other privileges granted under this Agreement are reserved to and remain the exclusive property of the University, and nothing in this Agreement shall transfer any rights to Subscriber, including any copyrights. Subscriber acknowledges that the Licensed Products contain valuable and proprietary data and information, and that the unauthorized distribution of such material will materially harm the business and prospects of the University.

6. REPRESENTATIONS AND WARRANTIES.

- A. The University represents and warrants that it will use reasonably workmanlike efforts to provide the services under this Agreement consistent with industry standards but subject at all times to any factor or condition beyond its direction or control, and that the Licensed Products are as represented herein. This is the exclusive warranty provided by the University pursuant to this Agreement.
- B. Subscriber represents and warrants that it will: (a) ensure the security and integrity of the Licensed Products; (b) ensure that access to and use of the Licensed Products is limited to Authorized Users; (c) ensure that all Authorized Users are notified of and comply with the usage restrictions set forth in this Agreement; (d) ensure that passwords are issued only to Authorized Users and that neither the Subscriber nor its Authorized Users divulge any passwords to any third party; and (e) monitor compliance and, immediately upon becoming aware of any unauthorized use of the Licensed Products, notify the University and take corrective actions to ensure that such activity ceases and to prevent any recurrence. Subscriber further represents and warrants that it has entered into this Agreement to obtain products or services for its own account and use and not on behalf of any other person or entity, except as may be expressly set forth otherwise in this Agreement.
- C. Other than with respect to the warranties and representations expressly given in this Agreement, the University will not be responsible for any claim, loss or liability attributable to errors, inaccuracies or other defects in the Licensed Products, or any part thereof. Further, the University makes no warranties or representations regarding any undocumented features, elements or artifacts that may be present in the Licensed Products, or use of same in connection with software or hardware supplied by third parties. Notwithstanding anything as may be to the contrary in this Agreement or elsewhere, it is agreed and understood that the University shall not be liable for any indirect, incidental, special, consequential or exemplary damages including, but not limited to, loss

of anticipated profits or loss of or damage to existing or contemplated benefits. In no event, and subject to the foregoing sentence, shall the University's liability to Subscriber on any contractual, tort or other basis for any claim, loss or liability, exceed the licensing fee payable by Subscriber hereunder. There are no third party beneficiaries to this Agreement.

**THE UNIVERSITY EXPRESSLY EXCLUDES ANY LIABILITY FOR BREACH OF ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

- D. The University's warranties shall not apply if any software in the Licensed Products is combined or used with other programs, products or data; or the computer hardware or other equipment of the Subscriber used in the operation of the software is not in good operating order; or any such software is modified by anyone other than the University; or the software has been improperly installed or operated or used in any way other than as contemplated in this Agreement; or the then most current release of such software is not used; or the proper network connections have not been successfully installed. Notwithstanding the generality of the disclaimers given herein, the remedies with respect to any defects in any such software which amount to reproducible errors shall be as provided in this Agreement.
- E. The University's failure to temporarily perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, governmental restrictions, power failures, damage or destruction of any network facilities or servers, or software or hardware errors, shall not be deemed a breach of this Agreement.

7. FEES AND PAYMENT TERMS.

Subscriber agrees to pay the University for the License and Related Services described in Articles 1 and 2 at the rate of \$ 0 per teacher account for the following number of PreK teacher accounts: \_\_\_\_\_ over the one-year term covered by this Agreement. (The cost of using the PALS-PreK website is paid by the Virginia Department of Education for the term set forth in Article 9 below, through a Memorandum of Agreement with the PALS Office.) Class size shall not exceed 30 students per teacher account.

8. CONFIDENTIALITY. As used herein, a party disclosing Proprietary Information is referred to as the "Disclosing Party" and a party receiving such Proprietary Information is referred to as the "Receiving Party." By "Proprietary Information," the parties mean information of a confidential or proprietary nature provided by a Disclosing Party to a Receiving Party in connection with the Agreement, including but not limited to such data specified by the Family Education Rights and Privacy Act (FERPA). Except as provided in the next sentence, Receiving Party shall use reasonable efforts not to disclose, in whole or in part, any Proprietary Information to any third party either during the Term or for a period of three (3) years following termination of this Agreement (or in the case of information subject to FERPA, until such time that the information may be legally disclosed). The Receiving Party shall have no obligation to prevent the disclosure, in whole or in part, of Proprietary Information that is: (a) Already known to Receiving Party at the time it is disclosed by Disclosing Party to Receiving Party; (b) Known to a third party without the wrongful act or breach of this Agreement by Receiving Party; (c) Rightfully received by Receiving Party from a third party on a non-confidential basis; (d) Approved for release by written authorization of Disclosing Party; (e) Developed independently by Receiving Party without the aid or benefit of Proprietary Information disclosed to Receiving Party by Disclosing Party; or (f) Required by law, regulation, subpoena or government or judicial order to be disclosed.

9. TERM. This Agreement shall commence on July 1, 2018, and continue until June 30, 2019, unless the term is further extended for additional periods by written amendment of this Agreement.

10. TERMINATION. This Agreement may be sooner terminated on the first to occur of the following:

- A. Termination of Agreement. In the event the University and Subscriber shall mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.
- B. Early Termination for Unauthorized Use. In the event of any unauthorized use of the Licensed Products or PALS Materials, the University may suspend access to the PALS Online System and

may terminate this Agreement upon ten (10) business days' notice to the Subscriber if the unauthorized use is not remedied to the satisfaction of the University within such notice period.

- C. Early Termination for Convenience. The University may terminate this Agreement for its convenience at any time by written notice or posting on the PALS website.
- D. Early Termination on Notice for Default. Except as outlined in paragraph B above, in the event either party shall give notice to the other that such other party has substantially defaulted in the performance of any material obligation under this Agreement and such default shall not have been cured within thirty (30) days following the giving of such notice, the party giving such notice shall have the right to immediately terminate this Agreement. Each party shall continue to perform its obligations hereunder until this Agreement is terminated.
- E. Effects of Termination. Upon termination of this Agreement, as herein above provided, neither party shall have any further obligation hereunder, except for obligations accruing prior to the date of termination. In the event this Agreement is terminated early for no fault of the Subscriber, the University will refund Subscriber a pro-rata portion of the total fee paid by Subscriber based upon the number of months remaining in the term of this Agreement, or in the event that this Agreement is renewed for an additional academic year(s), the number of months remaining in the then-current academic year.

11. NOTICES. Any notice, demand, or communication required, permitted, or desired to be given hereunder, shall be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including telecopy) or overnight courier, or five (5) days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

**University:** PALS Office  
University of Virginia  
P.O. Box 800785  
617 West Main Street Third Floor  
Charlottesville, VA 22908-8785  
Attention: Anita McGinty, Principal Investigator

**Subscriber:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other address, and to the attention of such other person(s) or officer(s) as either party may designate by written notice.

12. GENERAL PROVISIONS. This Agreement shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the Commonwealth of Virginia, and any controversy regarding its terms shall be adjudicated in the courts of the Commonwealth. No assignment of this Agreement or the right and obligations hereunder shall be valid without the specific written consent of both parties. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms. This Agreement supersedes all previous contracts and constitutes the entire Agreement between the parties with respect to access to the PALS Online System and related services. This Agreement may be executed simultaneously in two or more counterparts (including facsimile, "pdf" and other electronic copies) each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. No oral statements or prior written material not specifically incorporated herein shall be of any force and effect, and no changes in or additions to this Agreement shall be recognized unless incorporated herein by amendment as provided herein, such amendments(s) to become effective on the date stipulated in such amendment(s). Any changes or amendments to this Agreement will become effective only after signature by the appropriate authority.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**THE RECTOR AND VISITORS OF  
THE UNIVERSITY OF VIRGINIA**

**SUBSCRIBER**

By: \_\_\_\_\_  
Name: William G. Define  
Title: Director of Financial Operations

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_