**IP Licence Agreement for Higher Education Institutions offering Higher National Qualifications and Programmes based on Pearson’s Specifications**

**Version: May 2017**

# **IP Licence Agreement**

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|  | **PARTIES:** |
| (i) | Pearson Education Ltd, whose registered office is located at 80 Strand, London WC2R 0RL and whose registered number is 872828 (“Pearson”); and |
| (ii) | University of…**[*Name, Address*] (“Institution”)** |
|  | **RECITALS**: |
| A | Pearson is the owner of *Higher National Certificate* and *Higher National Diploma* registered trademarks and of BTEC Higher National qualifications. |
| B | Institution is a University with Taught Degree Awarding Powers, established with the primary aim of providing higher education. |
| C | Pearson has granted Institution a licence to use Pearson’s *Higher National Certificate* and/or *Higher National Diploma* trade mark on certain of Institution’s own qualifications under a separate licence agreement (the “Trademark Licence Agreement”). |
| D | Institution now wishes to license and use the title and intellectual property from certain of Pearson’s BETC Higher National qualifications in order to provide its own Higher National qualifications based on such intellectual property. |
|  | **AGREED TERMS**: |
| **1** | **DEFINITIONS**: |
| 1.1 | In this Agreement, unless the context otherwise requires: |
| 1.1.1 | “Agreement” means this IP Licence Agreement; |
| 1.1.2 | “External Examiner” means an examiner who is external to and independent of Institution and who has relevant subject expertise and appropriate qualification. |
| 1.1.3 | “Higher National Certificate Qualification” or “HNC” means a qualification as set out in Schedule 1 and or Schedule 2 validated by Institution of at least 120 credits (one credit equalling ten notional learning hours) at level 4, which uses the Pearson IP and is offered under the Pearson Qualification title and *Higher National Certificate* trademark. The HNC is designed to provide an assessed certification by Institution after one year of full time study or equivalent period of part time study of an undergraduate Programme which will allow students to progress onto employment or onto further learning. It is not regulated by Ofqual. |
| 1.1.4 | “Higher National Diploma Qualification” or “HND” means a qualification as set out in Schedule 1 and/or Schedule 2 validated by Institution of at least 240 credits (one credit equalling ten notional learning hours) of which 120 credits must be at level 5, which uses the Pearson IP and is offered under the Pearson Qualification title and *Higher National Diploma* trademark. The HND is designed to provide assessed certification by the Institution after two years of full time study or equivalent period of part time study of an undergraduate Programme to allow students to progress into employment or into further learning. It is not regulated by Ofqual. |
| 1.1.5 | “Higher National Qualification” in the singular or plural form is a reference to either or both of the Higher National Certificate Qualification and Higher National Diploma Qualification as applicable from the context. |
| 1.1.6 | “Institution” means the University named in this Agreement, and which has Taught Degree Awarding Powers, is established with the primary aim of providing higher education and which is the awarder of the Higher National Qualifications offered in accordance with this Agreement, the Trademark Licence Agreement and with the UK Quality Code for Higher Education. |
| 1.1.7 | “IRR” means Institutional Review Report; |
| 1.1.8 | “Pearson IP” means, in respect of each Pearson Qualification, the Pearson Qualification Title, the unit titles, the learning outcomes, the assessment criteria, and the rules of combination; |
| 1.1.9 | “Pearson Qualification” means each of the Pearson qualifications set out in Schedules 1 and 2, which Schedules shall be re-submitted annually by Institution for approval prior to the start of each academic year; |
| 1.1.10 | “Pearson Qualification Title” means the title of the relevant Pearson Qualification but excluding the word “BTEC”; |
| 1.1.11 | "Programme" means a programme of study delivered by Institution and leading to a Higher National Qualification; |
| 1.1.12 | “Trademark” means the *Higher National Certificate* trademark and/or the *Higher National Diploma* trademark, as the case may be; |
| 1.1.13 | “Trademark Licence Agreement” means the separate agreement entered into between the parties under which Pearson licensed to Institution the right to use the Trademarks; |
| 1.2 | In this Agreement, except where the context otherwise requires: |
| 1.2.1 | any reference to a clause is to the relevant clause of this Agreement and any reference to a sub clause or paragraph is to the relevant sub clause or paragraph of the clause in which it occurs; |
| 1.2.2 | the clause headings are included for convenience only and shall not affect the interpretation of the Agreement; |
| 1.2.3 | use of the singular includes the plural and vice versa; |
| 1.2.4 | a reference to a statute or statutory provision is a reference to that statute or statutory provision and to all orders, regulations, instruments or other subordinate legislation made under the relevant statute as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such statute or statutory provision; |
| 1.2.5 | any phrase introduced by the terms “including”, “include”, “in particular” or any similar expressions shall be construed as illustrative and shall not limit the sense of the words preceding those terms. |
| **2** | **GRANT OF LICENCE**: |
| 2.1 | Pearson hereby grants to Institution a non-exclusive, non-transferable licence to use but not modify the Pearson IP (which includes the Pearson Qualification Title) in England, Wales and Northern Ireland solely in order to deliver the Programme(s) and Higher National Qualification(s) which are validated, operated, quality assured and awarded by Institution in accordance with the terms of this Agreement. |
| 2.2 | Institution may allow collaborative partners which it appoints in accordance with clause 6 to deliver the Programme(s) and Higher National Qualification(s) but may not otherwise re-sell, sub-license or make any other use of the Pearson IP. |
|  | All rights in and to the Pearson Qualification and the Pearson IP not expressly granted to Institution in this Agreement are reserved by Pearson. |
| **3** | **COMMENCEMENT AND DURATION**: |
| 3.1 | The parties agree to enter into this Agreement from the date of execution until termination in accordance with clause 10. |
| 3.2 | Institution shall re-submit Schedules 1 and 2 to Pearson annually for approval prior to the start of the academic year. If approval for any Higher National Qualification is not given then Institution shall not deliver such Higher National Qualification. |
| 3.3 | In the event that students have been offered a place but not completed their Higher National Qualification and approval is not renewed pursuant to clause 3.2, or in the event of the withdrawal or termination of this Agreement for any reason, Institution shall be authorised to teach out the relevant Higher National Qualification to certification, on the condition that no further students are registered by Institution on the Programme or Higher National Qualification concerned. For the avoidance of doubt, this teach out provision applies equally to termination under clause 10. |
| **4** | **DEELOPMENT AND QUALITY ASSURANCE**: |
| 4.1 | Institution will ensure that the Programme and Higher National Qualification use: a) the Pearson Qualification Title; b) all the unit titles from the Pearson Qualification; c) the Pearson Qualification learning outcomes;  d) the Pearson Qualification assessment criteria;  e) the Pearson Qualification rules of combination. |
| 4.2 | Institution will provide the Higher National Qualifications in accordance with the *QAA Framework for Higher Education Qualifications in England, Wales and Northern Ireland*, the UK Quality Code for Higher Education and Pearson guidance. |
| 4.3 | Institution will select, appoint and remunerate External Examiners for all Higher National Qualifications provided pursuant to this Agreement. The External Examiners will report to the Institution, using the usual procedures required by Institution, in accordance with QAA Expectations on External Examining. |
| 4.4 | Institution will be responsible to Pearson for ensuring the quality and standards of the Higher National Qualifications provided pursuant to this Agreement and for the quality assurance and enhancement of these Programmes*.* |
| 4.5 | In order to monitor and maintain the national consistency of Higher National qualifications, Institution will be required by Pearson to submit an annual Institutional Review Report (IRR) to Pearson, covering its Higher National Qualifications. The IRR must be submitted, using a proforma supplied by Pearson, by the end of December following the academic year to which the report refers. |
| 4.6 | Pearson will work with Institution to ensure that any issues of concern are resolved to the satisfaction of both parties within a reasonable time period. In the event of a failure to do so, Pearson may terminate this Agreement in accordance with clause 10 below. |
| 4.7 | Pearson will hold regular stakeholder meetings to which it will invite appropriate staff from Institution. Part of the briefing meeting will be used to exchange good practice and to sustain the consistency of the awards. Institution is therefore encouraged toinvite staff (from Institution and its partner colleges) to the stakeholder meetings which will normally be arranged twice yearly. |
| 4.8 | Institution is encouraged to hold an annual review meeting to include consideration of Higher National Qualifications, discussion of relevant Pearson developments and of any other matters of report to Pearson. Institution may wish to invite Pearson Quality Assurance colleagues and/or the University Principal Examiner (UPE) to these review meetings. |
| **5** | **PROGRAMME REVIEW**: |
| 5.1 | Institution will keep under review its Higher National Qualifications, in accordance with the UK Quality Code for Higher Education Expectations for Programme design, approval, monitoring and review. |
| 5.2 | Any Higher Nationals Qualification offered by Institution must comply with published Pearson guidelines. |
| 5.3 | Once a Higher National Qualification has been validated by Institution, Institution shall provide Pearson with validation details, in accordance with the UK Quality Code for Higher Education Expectations on Programme design, approval, monitoring and review. |
| 5.4 | Following a review of a Higher National Qualification by Institution, Institution will provide Pearson with validation details, in accordance with the UK Quality Code for Higher Education expectations on Programme design, approval, monitoring and review. |
| 5.5 | Pearson may at any time undertake a review of Institution’s Higher National Qualification in order to assure it complies with Pearson guidelines. |
| 5.6 | Pearson will provide advice and assistance to Institution on new developments, revisions of existing qualifications and how best to satisfy Pearson requirements. |
| 5.7 | Pearson will work with Institution to ensure that any significant issues connected with a new qualification, or the review of an existing qualification, are satisfactorily resolved. In the event of a failure to reach a satisfactory solution within a reasonable time period, Pearson may exclude that qualification from this Agreement. |
| **6** | **COLLABORATIVE ARRANGEMENTS**: |
| 6.1 | Institution may apply to Pearson to make arrangements for the delivery of Higher Nationals Qualifications to collaborative partner institutions in England, Wales and Ireland, in accordance with the UK Quality Code for Higher Education guidance on collaborative provision. This is to be set out in Schedule 2. |
| 6.2 | Institution will be responsible for the management of its collaborative provision in accordance with Pearson guidance, and in accordance with the UK Quality Code for Higher Education expectations on collaborative provision. |
| 6.3 | If operating overseas, Institution must comply with Model 3 of Pearson’s policy for ‘Centres Operating Across International Borders to Offer BTEC and Other Pearson Vocational Qualifications’. This can be found on the Pearson website. |
| **7** | **CERTIFICATION**: |
| 7.1 | Institution will produce and distribute certificates to successful students, in accordance with secure certification procedures that are capable of being audited by Pearson. Institution must also produce a transcript/diploma supplement for each student after completion of the Programme or withdrawal. |
| 7.2 | Certificates for Higher National Qualifications will be worded in accordance with the relevant Pearson guidance. Institution will design the certificate and will submit a copy to Pearson for its records. For the avoidance of doubt, the certificate must not suggest in any way that the Higher National Qualification is awarded or validated by Pearson and must not include the word “BTEC”. |
| **8** | **STUDENT REGISTRATIONS AND FEES**: |
| 8.1 | Institution shall not register students on Higher National Qualifications in excess of 30% above the proposed student numbers as set out in Schedule 1 and Schedule 2. |
| 8.2 | For Programmes following an academic year, registrations of students on Higher National Qualifications must be uploaded via Edexcel online by November 15th. |
| 8.3 | For Programmes with other start times, registration of students on Higher National Qualifications must be uploaded via Edexcel Online within 30 days of the commencement of the Programme. |
| 8.4 | In consideration for the rights granted under this Agreement, Institution shall pay Pearson a fee for each student registered on any Higher National Qualification which uses the Pearson IP. The fees payable by Institution will be the registration fees set out on Pearson’s website (which are reviewed annually) but subject to a 25% discount. This fee shall be Institution’s total payment obligation under both the Trademark Licence Agreement and this IP Licence Agreement for any Higher National Qualification which uses Pearson IP. For the avoidance of doubt, no additional payment will be due from Institution under the Trademark Licence Agreement in respect of such Higher National Qualification. |
| 8.5 | Late registration fees will apply, in line with Pearson published policy. |
| 8.6 | Pearson will invoice Institution for the registration fees following registration. The fees will be payable within one month of the date of the invoice. |
| 8.7 | Institution will update student registration details on Edexcel Online by 30th September annually with details of student completions and withdrawals. Institutions may only issue certificates for Higher National Qualifications and students registered with Pearson and entered on Edexcel Online. |
| **9** | **PEARSON OBLIGATIONS**: |
| 9.1 | Pearson will provide Institution with the contact details of its University Principal Examiner who can provide curriculum advice and support in the application process. |
| 9.2 | Pearson will provide Institution with a Licence Centre Guide, updated annually which provides practical support and information for UK Higher Education Institutions operating under licence. |
| 9.3 | Pearson will produce an annual summary report on Higher National qualifications delivered under licence. |
| **10** | **TERMINATION**: |
| 10.1 | Each party shall have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately by notice to the other, if the other: |
| 10.1.1 | is in material or persistent breach of any of its obligations under this Agreement and either that breach is incapable of remedy or that the other party has failed to remedy that breach within 30 days of receiving written notice requiring it to do so; or |
| 10.1.2 | is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), or had an administrator or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with the creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction. |
| 10.2 | Pearson shall have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately by notice to Institution if Institution: |
| 10.2.1 | undergoes a change of control; or |
| 10.2.2 | sells all of its assets or is merged or reorganised in circumstances where it is not the surviving entity; or |
| 10.2.3 | ceases to possess Taught Degree Awarding Powers; or |
| 10.2.4 | fails to maintain appropriate quality assurance standards or fails to rectify any issues of concern legitimately raised by Pearson as referred to in clause 4.6 above. |
| 10.3 | Pearson shall have the right to terminate this Agreement in its entirety or in respect of Pearson IP for individual Pearson Qualification(s) for any reason on twelve months’ notice to Institution. |
| 10.4 | On termination of this Agreement for any reason, or upon withdrawal of approval for an individual Higher National Qualification: |
| 10.4.1 | Institution shall immediately pay to Pearson all of Pearson’s outstanding unpaid invoices and interest and, in respect of registrations for which no invoice has been submitted, Pearson may submit an invoice which shall be payable immediately on receipt; |
| 10.4.2 | the parties shall cooperate to take such reasonable steps as may be available to ensure that the relevant Programmes are carried on with a minimum of interruptions and inconvenience to students then registered as taking that Programme; |
| 10.4.3 | Institution shall not offer, promote, register or enrol any new students on the Programme(s) or the Higher National Qualification(s) which has/have been terminated or withdrawn; |
| 10.4.4 | all rights granted to Institution hereunder will immediately terminate, other than is necessary solely in order to allow Institution to comply with its teach out commitments to currently enrolled students. For the avoidance of doubt, at the end of the teach out period Institution may make no further use of the Pearson IP or Pearson Qualification Title which relate to the Programme or Higher National Qualification that has been terminated or withdrawn; |
| 10.4.5 | the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected. |
| **11** | **CONFIDENTIALITY**: |
| 11.1 | Each party agrees: |
| 11.1.1 | to maintain as confidential and not to use or disclose to any third party any Confidential Information derived from the other party without the consent of the disclosing party except where such use or disclosure is that which is reasonably necessary for the proper performance of this Agreement and the Confidential Information is disclosed subject to an obligation of confidentiality on the part of the third party; |
| 11.1.2 | to make all relevant officers, employees, agents and sub-contractors aware of the confidentiality of the Confidential Information and the provisions of this clause 11, including taking such steps as will from time to time be reasonably necessary to ensure compliance by its officers, employees, agents and sub-contractors with the provisions of this clause 11. |
| 11.2 | The obligations in this clause 11 will continue in full force and effect during the terms of and for five (5) years following the termination or expiration of this Agreement, provided, however, the following will not be subject of such restrictions: |
| 11.2.1 | any information which was lawfully in the possession of the receiving party prior to its disclosure by the disclosing party; |
| 11.2.2 | any information which is lawfully become part of the public domain; |
| 11.2.3 | any information which is otherwise lawfully available to one party from a source independent of the other party; or |
| 11.2.4 | any information the disclosure of which is required by applicable law, regulation, judicial order or other governmental authority. |
| **12** | **ARBITRATION**: |
| 12.1 | Any dispute, difference or disagreement arising out of or in connection with this Agreement may (subject to clause 12.2) be referred by either party to a single arbitrator appointed by agreement between the parties or, in default of agreement between the parties within 30 days of a request in writing for a reference to arbitration, to an arbitrator appointed by the President of the Chartered Institute of Arbitrators. |
| 12.2 | Prior to any dispute, difference or disagreements being referred to arbitration pursuant to clause 12.1, the parties shall seek to resolve the matter as follows: |
| 12.2.1 | In the first instance, the matter will be considered by the respective director/manager of each party, but if they are not able to resolve the matter within 30 days, then (and it is expected that this will only be the case in extreme circumstances); |
| 12.2.2 | be referred for consideration to the Chief Executive or equivalent of each party, but if they are unable to resolve the matter in a further 30 days, the provisions of clause 12.1 will take effect. |
| **13** | **LIABILITY** |
| 13.1 | Neither party shall have the authority to incur any financial or other obligation on the part of the other party without the prior consent in writing of the other party. |
| 13.2 | Institution shall be mindful of the expectations and requirements of all relevant legislation as they may impinge upon the operation of the rights granted under this Agreement. |
| 13.3 | Nothing in this Agreement shall exclude or limit Pearson’s liability for: (i) fraud or other criminal acts; (ii) personal injury or death caused by the negligence of its employees in connection with the performance of their duties under this Agreement or by defects in any product supplied pursuant to this Agreement; (iii) any other liability that cannot be excluded by applicable law. |
| 13.4 | Subject to clause 13.3, Pearson shall have no any liability to Institution for any loss or damage which may be suffered by Institution (or any person claiming under or through Institution) which results from: (i) loss of profits; (ii) loss of anticipated savings; (iii) loss of business opportunity or goodwill; (iv) loss of data; or (v) or loss of use or; (vi) any indirect or consequential loss or damage even if Pearson that party was advised of the possibility of such losses. |
| 13.5 | Except as provided in clauses 13.1 and 13.2, the total liability of Pearson under this Agreement, whether in contract, tort or otherwise, shall in no circumstances exceed an aggregate amount equivalent to the annual fees paid by Institution under this Agreement averaged out over the life of the Agreement. |
| 13.6 | Subject to clause 13.1, Institution acknowledges that no representations were made prior to entering into this Agreement. Institution agrees that, in entering into this Agreement, it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement. Institution shall have no remedy in respect of any representation (whether written or oral) made to it on which it relied in entering into this Agreement and Pearson shall have no liability otherwise than pursuant to the express terms of this Agreement. |
| 13.7 | The Institution agrees to indemnify Pearson and keep Pearson indemnified against all loss, damage, costs, legal costs and professional and other expenses of any nature incurred under any claim, whether in contract, tort, including negligence, or any other form of action resulting from any claims brought against Pearson by a student of the Institution in relation to the Programmes or Higher National Qualifications. |
| 13.8 | The provisions of this clause 13 shall continue after expiry or termination of the Agreement howsoever occasioned. |
| **14** | **GENERAL**: |
| 14.1 | No delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach. |
| 14.2 | Any amendment, waiver or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties. |
| 14.3 | If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced. |
| 14.4 | The Institution may not, without the prior written consent of Pearson, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. |
| 14.5 | No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement. |
| 14.6 | Any notice required to be given pursuant to this Agreement shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Agreement. Notices may be sent by first class mail or fax, provided that the faxes are confirmed within 24 business hours by first class mailed confirmation of a copy. |
| **15** | **RELATIONSHIP**: |
| 15.1 | Nothing in this Agreement shall create or be deemed to create a legal partnership or the relationship of principal and agent between the parties. |
| **16** | **GOVERNING LAW**: |
| 16.1 | This Agreement shall be governed by, construed in accordance with, and each party hereby submits to the exclusive jurisdiction of the English courts. |
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| **Signed by:**  Name:  Title:  Date:  Duly authorised for and on behalf of the Institution | **Signed by:**  Name:  Title:  Date:  Duly authorised for and on behalf of Pearson |

**Schedule 1**

This is to be completed and submitted to Pearson for approval annually for **each** Higher National Qualification which Institution intends to deliver under the Pearson Qualification Title and using the Pearson IP under the IP Licence Agreement.

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| **Name of Institution** |  |
| **Title of Pearson Qualification** |  |
| **Address of delivery centre** |  |
| **Proposed student registration numbers 2016/17** |  |
| **Mode of delivery** |  |
| **Proposed start date** |  |
| **Programme duration** |  |

**Schedule 2**

This is to be completed and submitted to Pearson for approval annually for **each** Higher National Qualification which Institution intends to deliver under the Pearson Qualification Title and using the Pearson IP to **collaborative partner** institutions in the UK and overseas under the IP Licence Agreement.

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| **Name of Institution** |  |
| **Name of collaborative delivery partner** |  |
| **Title of Pearson Qualification** |  |
| **Address of collaborative partner** |  |
| **Address of delivery centre** |  |
| **Proposed student registration numbers 2016/17** |  |
| **Mode of delivery** |  |
| **Proposed start date** |  |
| **Programme duration** |  |