**Licence Agreement for Higher Education Institutions offering Higher Nationals under Licence from Pearson**

**Revised July 2016**

# **The 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 trade marks. |
| B | Institution is a University with Taught Degree Awarding Powers, established with the primary aim of providing higher education. |
| C | Institution wishes to provide their own qualifications using the Higher National Certificate and/or Higher National Diploma trade mark under licence from Pearson.  |
|  | **AGREED TERMS**: |
| **1** | **DEFINITIONS**: |
| 1.1 | In this Agreement, unless the context otherwise requires: |
| 1.1.1 | “Agreement” means this Licence Agreement;  |
| 1.1.2 | “External Examiner” means an examiner who is external to and independent of the Institution and who has relevant subject expertise and appropriate qualification. |
| 1.1.3 | “Higher National Certificate” (HNC) means a qualification as set out in Schedule 1 and or Schedule 2 validated by the Institution of at least 120 credits (one credit equalling ten notional learning hours) at level 4. The HNC is designed to provide an assessed certification by an institution after one year of full 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” (HND) means a qualification as set out in Schedule 1 and/or Schedule 2 validated by the Institution of at least 240 credits (one credit equalling ten notional learning hours) of which 120 credits must be at level 5. The HND is designed to provide assessed certification by an institution after two years of full 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 above as applicable from the context. |
| 1.1.6 | “Institution” means a University with Taught Degree Awarding Powers, established with the primary aim of providing higher education and which is the awarder of the qualifications offered under this Licence Agreement and in accordance with the UK Quality Code for Higher Education. |
| 1.1.7 | “IPR” means Intellectual Property Rights, which means all patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in any part of the world; |
| 1.1.8 | “IRR” means Institutional Review Report; |
| 1.1.9 | "Programme" means a qualification Programme delivered by the Institution in respect of a Higher National Qualification under this Agreement. |
| 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 permits the Institution to design, validate, operate and award Higher National qualifications in accordance with the terms of this Agreement. |
| **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 11.  |
| 3.2 | Qualifications developed and delivered under licence are licensed by Pearson for three years subject to review under clause 5.  |
| **4** | **QUALITY ASSURANCE**: |
| 4.1 | The 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. |
| 4.2 | The 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 the Institution, in accordance with QAA Expectations on External Examining.  |
| 4.3 | The 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*.* |
| 4.4 | In order to monitor and maintain the national consistency of Higher National qualifications, the 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. |
| 4.5 | Pearson will work with the 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 the Agreement in accordance with clause 11 below. |
| 4.6 | Pearson will run regional licence centre briefing meetings to which it will invite appropriate staff from Institutions. Part of the briefing meeting will be used to exchange good practice and to sustain the consistency of the awards. Institutions are therefore encouraged toinvite staff (from the Institution and its partner colleges) and their External Examiners associated with quality assurance of the delivery and assessment of Higher National qualifications, to the briefing meeting. Briefing meetings will normally be arranged for the middle of the Autumn term. |
| 4.7 | The Institution is encouraged to hold an annual review meeting to include consideration of Higher National Qualifications under licence, discussion of relevant Pearson developments and of any other matters of report to Pearson. The Institution may wish to invite Pearson Quality Assurance colleagues and/or the University Principal Examiner (UPE) to these review meetings. |
| **5** | **Programme REVIEW AND DEVELOPMENT**: |
| 5.1 | The Institution will keep under review its Higher National Qualifications under licence from Pearson, in accordance with UK Quality Code for Higher Education Expectations for Programme design, approval, monitoring and review. |
| 5.2 | Any Higher Nationals Qualification that the Institution wishes to develop must comply with published Pearson guidelines.  |
| 5.3  | Once a Higher National Qualification under licence has been developed by an Institution, the Institution shall provide Pearson with validation details and a copy of the Programme specification, 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 under licence by the Institution, the Institution will provide Pearson with validation details and a copy of the Programme specification, in accordance with the UK Quality Code for Higher Education expectations on Programme design, approval, monitoring and review. This Programme will be reviewed to ensure core coverage as outlined in clause 5.2. |
| 5.5 | Pearson may at any time undertake a review of the Institution’s Higher National Qualification in order to assure it complies with Pearson guidelines.  |
| 5.6 | Pearson will provide advice and assistance to the Institution on new developments, revisions of existing qualifications and how best to satisfy Pearson requirements. |
| 5.7  | Pearson will work with the 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 the Agreement. |
| **6** | **COLLABORATIVE ARRANGEMENTS**: |
| 6.1 | The Institution may apply to Pearson to make arrangements for the delivery of Higher Nationals Qualifications under licence to collaborative partner institutions in the UK and overseas, 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 | The 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, the 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 | The Institution will produce and distribute certificates to successful students, in accordance with secure certification procedures that are capable of being audited by Pearson. The Institution must also produce a transcript/diploma supplement for each student after completion of the Programme or withdrawal.  |
| 7.2 | Certificates for licensed Higher National Qualifications will be worded in accordance with the relevant Pearson guidance. The Institution will design the certificate and will submit a copy to Pearson for its records. |
| **8** | **STUDENT REGISTRATIONS AND FEES**: |
| 8.1 | The Institution shall not register students on Higher National Qualifications under licence 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 Nationals Qualifications under licence must be uploaded via Edexcel online by November 15th.  |
| 8.3 | For Programmes with other start times, registration of students on Higher National Qualifications under licence must be uploaded via Edexcel Online within 30 days of the commencement of the Programme.  |
| 8.4 | The Institution shall pay to Pearson a fee for each student registered on any licensed Higher National Qualification pursuant to this Agreement. The fees are published on Pearson's website and reviewed annually.  |
| 8.5 | The Institution shall pay the fees at the applicable rate, less any discounts as set out in clause 8.8 below. |
| 8.6 | Late registration fees will apply, in line with Pearson published policy. |
| 8.7 | Pearson will invoice the Institution for the registration fees following registration. The fees for licensed Higher National qualifications will be payable within one month of the date of the invoice. |
| 8.8 | The fees payable by the Institution for all Higher National Qualifications delivered under the Agreement will be subject to the following levels of discount: 1-500 registrations at 40% discount; 501-1000 registrations at 45% discount (with the registrations up to 500 receiving a 40% discount) and 1001+ registrations at 50% discount (with registrations up to 500 receiving a 40% discount and registrations from 501-1000 receiving a 45% discount). |
| 8.9 | The 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 qualifications and students registered with Pearson and entered on Edexcel Online. |
| **9** | **INTELLECTUAL PROPERTY RIGHTS**: |
| 9.1 | Pearson licenses the Institution to use the Higher National Diploma and Higher National Certificate registered marks in England, Wales and Northern Ireland on a non-exclusive, non-transferable, royalty free basis in accordance with the terms of this Agreement and Pearson's trademark usage policies. |
| 9.2 | Pearson owns the IPR in all Pearson BTEC Higher National qualifications and shall remain the owner of that IPR. Pearson licenses to the Institution on a non-exclusive, non-transferable royalty-free basis such rights as are necessary to enable the Institution to operate and award Higher National Qualifications pursuant to this Agreement. |
| 9.3 | Pearson authorises the Institution to sub-license the rights referred to in clauses 9.1 and 9.2 to collaborative partners referred to in clause 6.1 above. |
| **10** | **PEARSON OBLIGATIONS**: |
| 10.1 | Pearson will provide the Institution with the contact details of their University Principal Examiner who can provide curriculum advice and support in the application process. |
| 10.2 | Pearson will also provide access to a Curriculum Development Manager who can help with curriculum advice and support.  |
| 10.3 | Pearson will provide Institutions with a Licence Centre Guide, updated annually which provides practical support and information for UK Higher Education Institutions (“HEIs”) operating under licence. |
| 10.5 | Pearson will produce an annual summary report on Higher National qualifications delivered under licence. |
| **11** | **TERMINATION**: |
| 11.1 | 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: |
| 11.1.1 | 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 |
| 11.1.2 | 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. |
| 11.2 | Pearson shall have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately by notice to the Institution if the Institution: |
| 11.2.1 | undergoes a change of control; or |
| 11.2.2 | sells all of its assets or is merged or reorganised in circumstances where it is not the surviving entity; or |
| 11.2.3 | ceases to possess Taught Degree Awarding Powers; or |
| 11.2.4 | fails to maintain appropriate quality assurance standards or fails to rectify any issues of concern legitimately raised by Pearson as referred to in clause 4.5 above. |
| 11.3 | Pearson shall have the right to terminate this Agreement for any reason on twelve months’ notice to the Institution. |
| 11.4. | On termination of this Agreement for any reason: |
| 11.4.1 | the 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; |
| 11.4.2 | 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; |
| 11.4.3  | 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. |
| **12** | **CONFIDENTIALITY**: |
| 12.1 | Each party agrees: |
| 12.1.1 | 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; |
| 12.1.2 | to make all relevant officers, employees, agents and sub-contractors aware of the confidentiality of the Confidential Information and the provisions of this clause 12, 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 12. |
| 12.2 | The obligations in this clause 12 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: |
| 12.2.1 | any information which was lawfully in the possession of the receiving party prior to its disclosure by the disclosing party; |
| 12.2.2 | any information which is lawfully become part of the public domain; |
| 12.2.3 | any information which is otherwise lawfully available to one party from a source independent of the other party; or |
| 12.2.4 | any information the disclosure of which is required by applicable law, regulation, judicial order or other governmental authority. |
| **13** | **ARBITRATION**: |
| 13.1 | Any dispute, difference or disagreement arising out of or in connection with this Agreement may (subject to clause 13.2) 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. |
| 13.2 | Prior to any dispute, difference or disagreements being referred to arbitration pursuant to clause 13.1, the parties shall seek to resolve the matter as follows: |
| 13.2.1 | 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): |
| 13.2.2 | 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 13.1 will take effect. |
| **14** | **LIABILITY** |
| 14.1 | 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. |
| 14.2 | Institutions operating under the Licence Agreement shall be mindful of the expectations and requirements of all relevant legislation as they may impinge upon the operation of the licence. |
| 14.3 | 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. |
| 14.4 | Subject to clause 14.3, Pearson shall have no liability for any loss or damage which may be suffered by the Institution (or any person claiming under or through the 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 any other indirect or consequential loss or damage even if Pearson was advised of the possibility of such losses. |
| 14.5 | Except as provided in clauses 14.1 and 14.2, the total liability of Pearson under this Agreement, whether in contract, tort or otherwise, shall in no circumstances exceed an aggregate amount of the registration fees earned per annum. |
| 14.6 | Subject to clause 14.1, the Institution acknowledges that no representations were made prior to entering into this Agreement. The 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. The 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. |
| 14.7 | 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 |
| 14.8 | The provisions of this clause 14 shall continue after expiry or termination of the Agreement howsoever occasioned. |
| **15** | **GENERAL**: |
| 15.1 | 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. |
| 15.2 | 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. |
| 15.3 | 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. |
| 15.4 | 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. |
| 15.5 | 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. |
| 15.6 | 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. |
| **16** | **RELATIONSHIP**: |
| 16.1 | Nothing in this Agreement shall create or be deemed to create a legal partnership or the relationship of principal and agent between the parties. |
| **17** | **GOVERNING LAW**: |
| 17.1 | 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 for **each** Higher National qualification which the Institution intends to deliver under licence, delivered by the Institution. (This needs to be submitted annually by 1st July).

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| **Name of Institution** |  |
| **Title of proposed 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 for **each** Higher National qualification which the Institution intends to deliver under licence to **collaborative partner** institutions in the UK and overseas. (This needs to be submitted annually by 1st July).

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