**REVISED EXHIBIT E**

**UNIVERSITY OF OREGON**

**TRIAL PERIOD LICENSE AGREEMENT**

**(PCS #250000-XXXX)**

This Trial Period License Agreement (“Trial Period Agreement”) is entered into by the State Board of Higher Education acting by and through the University of Oregon ("University"), and <INSERT VENDOR> a(n) <INSERT> with its principal place of business at <INSERT>("Contractor"). University and Contractor are each “Party” and collectively “Parties”.

**AGREEMENT**

In consideration of the terms and conditions of this Trial Period Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**1. License.** Subject to the terms of this Trial Period Agreement and payment of the stipend fee, Contractor hereby grants University a limited, nonexclusive, and nontransferable license for access and use of the <INSERT DETAILS OF LMS> (“LMS”) which license will accommodate up to 25 credit-bearing course sites during University’s Winter 2014 and Spring 2014 quarters.

**2. Ownership.** All right, title, and interest in the LMS, including any updates or revisions thereto, is and shall remain the sole and exclusive property of the Contractor, its licensors, and their successors and assigns. Other than the limited license explicitly set forth in this Trial Period Agreement, no interest in or rights or licenses to the LMS are granted to University, and no interest in or rights or licenses to the LMS shall inure in or accrue to University, whether by implication, estoppel, or otherwise. All rights of any kind in the LMS that are not expressly granted in this Trial Period Agreement are entirely and exclusively reserved to and by the Contractor, its licensors, and their successors and assigns.

**3. Term.** This Trial Period Agreement and access and use of the LMS by University shall remain active from the date of last signature below through June 30, 2014 (“Term”). Contractor agrees, even in the event University concludes the evaluation period of the LMS and announces the intent to award a contract under RFP # 250000-0011-RFP prior to June 30, 2014, the LMS environment licensed under this Trial Period Agreement must remain available and fully functional through June 30, 2014.

**4.** **Stipend**. In exchange for use and access granted under this Trial Period Agreement, University will provide a stipend in the amount of $1,000.00 to Contractor. Such stipend amount shall be paid within ten business days after execution of this Trial Period Agreement.

**5. Confidentiality and Non-Disclosure.**

**5.1** As used in this Section, the term "Confidential Information" means proprietary or other nonpublic information or any information intended by University to be kept confidential which is disclosed by University to Contractor in the course of Contractor's performance of its obligations under this Trial Period Agreement.

**5.2** Contractor agrees that it will not disclose Confidential Information at any time without University's written consent.

**5.3** Contractor agrees that it will use Confidential Information only in performing services for University under this Trial Period Agreement.

**5.4** The confidentiality obligations imposed by this Section shall not apply to: (a) information that now is or hereafter becomes part of the public domain through lawful means; (b) information developed by Contractor outside the scope of this Trial Period Agreement; and (c) information subsequently and rightfully received by Contractor from third parties that does not relate to Contractor's performance under this Trial Period Agreement.

  **5.5** Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, will cause irreparable injury to University that is inadequately compensable in damages. Accordingly, University may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of University and are reasonable in scope and content.

**5.6** Family Educational Rights and Privacy Act. Contractor agrees to protect the confidentiality of student information and to comply with the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing regulations, specifically 20 U.S.C. 1232G, 34 C.F.R. § 99.33, ORS 351.070 and OAR 571-020, with respect to any redisclosure of personally identifiable information from education records obtained from the University.

**5.7** Contractor hereby acknowledges that any records it discloses to University are subject to the Oregon Public Records laws.

 5.8 If the access or documentation for such access provided to University contains any information that Contractor considers a "trade secret" under ORS 192.501(2), Contractor must either expressly identify such information or mark each containing sheet of such information with the following legend:

 "This data constitutes a trade secret under ORS 192.501(2), and will not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."

Failure to expressly identify or mark a specific page with the legend set forth in this Section will conclusively establish that the information does not constitute a trade secret as defined in ORS 192.501(2).

The Oregon Public Records law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies "unless the public interest requires disclosure in the particular instance". See ORS 192.501(2). As such, non-disclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Public Records Law.

**If the entire deliverable and documentation is identified or marked in its entirety as confidential or a “trade secret,” University reserves the right to deem Contractor as non-responsive under LMS RFP PCS #250000-0011-RFP.**

**6. Insurance.**

**6.1 Commercial General Liability.** Contractor will secure at Contractor’s expense and keep in effect during the term of this Trial Period Agreement comprehensive general liability insurance with a broad form CGL endorsement or broad form commercial general liability insurance, covering bodily injury and property damage, with a minimum limit of $1,000,000per occurrence with an aggregate amount of $2,000,000, which will include personal and advertising injury liability and products.

**6.2 Professional Liability.** Contractor shall secure at its own expense and keep in effect during the term of this Trial Period Agreement Professional Liability insurance with a per claim limit of not less than $1,000,000in the annual aggregate. Full limits can be obtained by the purchase of one primary policy or a primary and excess policy as needed to provide the full policy limits. Such policy shall include coverage for losses arising from the breach of information security or cyber liability (including Technology Errors & Omissions, Security and Privacy Liability and Media Liability), liability arising from theft, dissemination, and/or use of Confidential Information stored or transmitted in electronic form, network security liability arising from unauthorized access to, use of, or tampering with computer systems including hacker attacks, or inability of an authorized third party to gain access to your services, including denial of service, unless caused by a mechanical or electrical failure. liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer’s or a third person’s computer, computer system, network or similar computer related property and the data, software, and programs thereon, whether combined with the Professional Liability policy or placed as a separate policy, but carrying the same limits of liability. Such coverage shall insure damage caused by error, omission, or negligent acts, including all prior acts without limitation, related to the professional services to be provided under this Trial Period Agreement. The policy shall be amended to include independent contractors providing professional services on behalf of or at the direction of Contractor. The definition of contractual liability in the policy shall be amended to state that liability under a contract of professional services is covered. Further, coverage shall be afforded for fraudulent acts, misappropriation of trade secrets, internet professional services, computer attacks, personal injury, regulatory actions, known wrongful acts, contractual liability, privacy policy, and insured versus insured. Contractor shall ensure that coverage under this policy continues for duration of 24 months after completion of this project.

**6.3** Insurance policies are to be issued by an insurance company authorized to do business in the State of Oregon with a minimum financial rating of an AM Best rating of A- or higher. Other than the professional liability insurance, all liability insurance will be arranged on an “occurrence” basis. No insurance will be allowed on a "claims made" basis. Self-insured retentions may be acceptable in lieu of the above requirements. Any self-insured retentions must be declared to and approved by the University. University may require Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

**6.4** Before the Trial Period Agreement is executed by University, Contractor must provide to University a Certificate of Insurance from the insuring company evidencing insurance coverages required by this Trial Period Agreement.  The “Description of Operations” must include (using the following exact language) the “**State Board of Higher Education acting by and through the University of Oregon, their officers and employees”** as additional insured. The certificate will provide that the insurance company will give a 30-day written notice to University if the insurance is cancelled or materially changed.

Upon request by University, Contractor will provide to University an endorsement from the insuring company, naming (using the following exact language) “the **State Board of Higher Education acting by and through the University of Oregon, their officers and employees”** as additional insured.

**7. INDEMNITY.** CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE UNIVERSITY AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, OR LIAIBILITY, INCLUDING COSTS AND ATTORNEYS' FEES AT TRIAL, ON APPEAL, AND ON ANY PETITION FOR REVIEW, TO THE EXTENT CAUSED BY CONTRACTOR'S NEGLIGENCE OR WILFULL MISCONDUCT IN THE PERFORMANCE OF ANY OF CONTRACTOR'S OBLIGATIONS UNDER THE TERMS OF THIS TRIAL PERIOD AGREEMENT. Contractor shall defend, at its expense, by counsel approved by University, such approval not to be withheld unreasonably, any such suit or proceeding provided that: (a) University gives Contractor prompt notice in writing of any such suit and permits Contractor through the aforementioned counsel, to answer the charge and defend such suit; and (b) University gives Contractor all the needed information, assistance and authority, at Contractor’s expense to enable Contractor to defend such suit. Contractor shall not be responsible for payment of any amounts under any settlement made without its prior written consent. Any settlement entered into by Contractor purporting to bind University shall be subject to University's prior written approval, which shall not be withheld unreasonably.

**8. INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 7, CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS UNIVERSITY AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE DELIVERABLES INFRINGE ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY. Contractor shall defend, at its expense, by counsel approved by University, such approval not to be withheld unreasonably, any such suit or proceeding provided that: (a) University gives Contractor prompt notice in writing of any such suit and permits Contractor through counsel, to answer the charge of infringement and defend such suit; and (b) University gives Contractor all the needed information, assistance and authority, at Contractor’s expense to enable Contractor to defend such suit. Contractor shall not be responsible for payment of any amounts under any settlement made without its prior written consent. Any settlement entered into by Contractor purporting to bind University shall be subject to University's prior written approval, which shall not be withheld unreasonably. The foregoing indemnity shall not apply to the extent such alleged or actual infringement arises as a result of (i) the use or incorporation of such Work in a manner or in combination with any other products, devices or parts not specified in Contractor’s specifications therefor, (ii) modifications of such Work made by University or any party (other than Contractor) which were not approved by Contractor, or (iii) Contractor’s compliance with any of University’s designs, specifications or instructions. In the event that a court of competent jurisdiction determines in a final, nonappealable order that the Work is infringing in a manner for which Contractor is obligated to indemnify University pursuant to this Section, Contractor shall, at its option, either (1) procure for University the right to continue using such infringing Work; (2) replace the infringing Work with a non-infringing item of like form, fit or function; (3) modify the Work so that it no longer infringes; or (4) remove the Work and refund all amount paid for the Work to University.

**9. LIMITATION OF LIABILITY.** NOTWITHSTANDING THE FOREGOING AND EXCEPT FOR CONTRACTOR’S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, THE LIABILITY OF CONTRACTOR AND ITS LICENSORS UNDER THIS TRIAL PERIOD AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE STIPEND. EXCEPT FOR UNIVERSITY’S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, THE LIABILITY OF UNIVERSITY AND ITS USERS UNDER THIS TRIAL PERIOD AGREEMENT SHALL NOT EXCEED $1,000.

**10. Miscellaneous Terms and Conditions.**

**10.1 Designated Contacts.** All or other communications related to use of the LMS during this Trial Period Agreement will be to the individuals at the addresses listed below:

University: With a copy to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Purchasing and Contracting Services

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 720 E 13th Ave Suite 302

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Eugene, OR 97401

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fax: (541)346-2425

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: competitionsupport@uoregon.edu

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fax: (541)346-2425

Contractor: With a copy to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**10.2 Compliance with Applicable Law.** Contractor will comply with all applicable federal, state, county, and local laws, ordinances, regulations, and University policies. Contractor also agrees to comply with all applicable laws prohibiting discrimination on the basis of race, sex, national origin, religion, age, sexual orientation, status as a veteran, or handicap.

**10.3 Time Is of the Essence.** In all instances where Contractor is required by the terms and provisions of this Trial Period Agreement to do any act at a particular time or within an indicated period, it is understood and agreed that time is of the essence.

**10.4 No Third Party Beneficiaries.** University and Contractor are the only Parties to this Trial Period Agreement and are the only Parties entitled to enforce its terms. Nothing in this Trial Period Agreement gives, is intended to give, or shall be construed to give, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described herein as intended beneficiaries.

**10.5 Survival.** All provisions of this Trial Period Agreement that would reasonably be expected to survive the termination of this Trial Period Agreement will do so.

**10.6 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Equipment and be binding upon the Parties.

UNIVERSITY: CONTRACTOR:

State of Oregon, acting by and through <INSERT CONTRACTOR NAME>

the State Board of Higher Education,

on behalf of the University of Oregon

  By (Sign) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By (Sign) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name (Print) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (Print) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_