This “Agreement” for access to the Learner Web Educational Community is between the “Subscribing Organization” hereafter referred to as “Subscriber”, and the Oregon State Board of Higher Education acting by and through Portland State University, an institution of higher education in the State of Oregon, located in Portland, Oregon, hereafter referred to as “University”. The parties agree as follows:

Background

University desires to have organizations join the Learner Web educational community, to create content and serve their learners.

Subscriber is an organization involved in education or development of educational content and/or courses, and desires access to the Learner Web community. Subscriber requires access to the software, and may desire limited training and certain technical support from University.

Definitions

“Administrative Contact” means an individual authorized by Subscriber to receive access to the Work and notices from University. Each Region will have an Administrative Contact listed on Schedule B.

“Agreement” means this Access Agreement, with attached Schedules.

“Content” means educational plans, resources, and other materials which comply with Standard and which Subscriber inserts into Work.

“Effective Date” shall be the date on which this web form is submitted.

“Learner” means Users who access content through Subscriber.

“License Fee” shall mean the amount due from Subscriber for the permissions provided by this Agreement, as set forth on Schedule B.

“Region” means a distinct web URL and portal controlled by Subscriber.

“Standard” means the Learner Web standard available from University which describes the mechanism for linking and providing learning resources to Users.

“Technical Contact” means an individual authorized by Subscriber to contact University for Technical Support. Each Region will have a Technical Contact listed on Schedule B.

“Users” means individuals authorized to access content Subscriber places into Work.

“Virtual Seats” means Learners accessing Work concurrently across all Regions in Subscriber’s license.

“Work” means the Learner Web educational community, as described more fully in Schedule A. Work specifically excludes the Learner Web
Standard and Content that the Subscriber or third parties add to the Work.

**Access**

Beginning on the Effective Date, University hereby grants to Subscriber, and Subscriber accepts, a limited, non-transferable, non-exclusive license to display Work, provided Subscriber complies with the terms of this Agreement.

Subscriber may add and link Content to the Work, may grant Users access to the Work, and may participate in the public features of the Work.

Subscriber must submit the form on Schedule B. Two (2) Regions and twenty (20) Virtual Seats per Subscriber are included in a Basic License. Additional Regions and Virtual Seats are available for Medium and Network Licenses. Subscriber may allow partner organizations to administer Regions under Subscriber’s license provided that the total Regions under a Subscriber’s license do not exceed time and resources available under Subscriber’s Technical Support package as outlined in Schedule C. Subscriber may recover costs of its License Fee from such partner organizations provided that the total recovered costs for all Regions under a Subscriber’s license do not exceed the Subscriber’s License Fee for the term of the license.

**Conditions**

Subscriber acquires no proprietary interest in Work. Subscriber shall not remove or obscure rights management markings, such as copyright and trademark notices, from Work or printouts from Work.

Except with advance written approval from University, Subscriber shall not charge Users for access to the Work.

Subscriber retains all of ownership rights in Content. As between University and Subscriber, University does not acquire any ownership rights in Content. However, by submitting Content to Work, Subscriber hereby grants University a worldwide, non-exclusive, royalty-free license to use, reproduce, distribute to Users or others authorized to receive Content, prepare derivative works of, display, and perform the Content in connection with the Work, including without limitation for promoting and redistributing part or all of the Work (and derivative works thereof) in any media formats and through any media channels.

Subscriber acknowledges that University will have access to data and content generated by Users. University shall abide by the Privacy Policy noted on Schedule D, and shall inform Users through an initial click-through license regarding University’s use of User and Subscriber data.

Subscriber shall not sublicense, sell, display, lend, rent, lease or otherwise transfer all or any of Work. Subscriber agrees not to circumvent, disable or otherwise interfere with security-related features of the Work.
University does not endorse any Content or any opinion, recommendation, or advice expressed therein.

**Subscriber Content**

Subscriber may add Content to Work. Subscriber shall use reasonable efforts to insure that Content is of high educational quality, complies with Standard, and is suitable for broad public distribution.

Subscriber agrees not to alter or modify any part of the Work, except for adding permitted Content.

Subscriber agrees not to use or launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses the Work in a manner that sends more request messages to the Work servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser. Subscriber agrees not to collect or harvest any personally identifiable information, including account names, from the Work, nor to use the communication systems provided by the Work (e.g. comments, email) for any commercial solicitation purposes.

Subscriber is solely responsible for Content and the consequences of posting or publishing Content on Work. In connection with Content, Subscriber affirms, represents, and warrants that: Subscriber owns or has the necessary licenses, rights, consents, and permissions to use and authorize University to distribute Work and Content to Users.

Subscriber further agrees that Subscriber will not submit Content that is defamatory, copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless Subscriber is the owner of such rights or has permission from their rightful owner to post the material and to grant University the license rights granted herein.

**Communications**

University will provide certain training to Subscriber, to enable Subscriber’s optimal use of the Work. Notices to Subscriber shall be sent to the Administrative Contact, and any Technical Support shall be provided through the Technical Contact.

**Confidentiality**

“Proprietary Information” means information of any form or format disclosed by University to Subscriber pertaining to the Work and identified by University at the time of disclosure as not for public release, or if orally disclosed, reduced to written form and identified by University as not for public release within thirty (30) days of disclosure. Proprietary Information does not include information which (i) Subscriber can demonstrate was previously known to Subscriber, or (ii) has been independently developed by Subscriber by those without access to Proprietary Information, or (iii) has been obtained by Subscriber from sources not breaching any obligation to University; or (iv) which is or in the future becomes public knowledge other than through acts or omissions of Subscriber; or (v) is required to be disclosed by operation of law or the action of a court of competent jurisdiction.
Subscriber shall hold Proprietary Information in confidence for ten (10) years from date of disclosure, using safeguards at least comparable to those by which Subscriber handles its own similar proprietary information, but in any case not less than reasonable safeguards. Subscriber shall not disclose Proprietary Information to any third party, including without limitation any patent or copyright office.

**Subscription**

Outside the context of the Technical Support packages in Schedule C, University shall endeavor to respond to routine requests for clarifications sent to: help@learnerweb.org, or 503-725-8720. Any such efforts by University, however, shall be on an “as available” basis.

**Delivery**

University shall provide Subscriber access to Work by means of password and internet address for Work. Delivery is authorized by Subscriber to be made to the Administrative Contact, who shall serve as Subscriber’s contact for University with respect to Work. University shall contact Administrative Contact within five (5) business days of receipt of this signed Agreement.

**Payment**

Subscriber shall pay to University License Fee as set forth on Schedule B, due upon execution of this Agreement. Should payment not be received from Subscriber upon execution of this agreement, University, at its sole discretion, may end Subscriber’s access to Work.

**Term**

This license shall be effective for one year from the Effective Date, and shall automatically renew on an annual basis upon payment of yearly invoices for the license fees commensurate with Subscriber’s license status as outlined in Schedule B.

**Notices**

All notices to University shall be sent by U.S. mail or email per the following:

Portland State University  
PO Box 751, Mailcode RSP  
Portland, OR 97207  
Attention: Director, Innovation & Intellectual Property  
Telephone: 503.725.8454  
Email: iip@pdx.edu

All notices to Subscriber shall be sent by U.S. mail or email to the Administrative Contact listed at the end of this Agreement.

**Termination**

Provided Subscriber has paid License Fee, Subscriber may terminate this Agreement at any time upon thirty (30) days written notice to University. University shall not refund to Subscriber any portion of License Fee received by University for early termination.

University may terminate this Agreement upon notice if Subscriber is in breach of this Agreement and fails within thirty (30) days of a written
demand for performance to cure such breach. After notice period elapses, access to Work will be immediately terminated. If University determines that University can no longer administer this Agreement, University may terminate the Agreement upon ninety (90) days notice to Subscriber.

The provisions under which this Agreement may be terminated shall be in addition to any and all other legal remedies which either party may have for the enforcement of any and all terms hereof, and do not in any way limit any other legal remedy such party may have.

Termination of this Agreement shall terminate all rights and permissions granted to Subscriber relating to Work. The obligation to pay any required License Fee survives termination of this Agreement.

**Disclaimers**

The Work has been developed as part of research conducted at Portland State University. The Work is experimental in nature and is made available “AS IS,” without obligation by University to provide accompanying services or support except as specified in this Agreement. The entire risk as to the quality and performance of the Work is with Subscriber.

UNIVERSITY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, PERTAINING TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF WORK OR ANY SUBJECT MATTER OTHERWISE PROVIDED TO SUBSCRIBER UNDER THIS AGREEMENT.

The Work may contain links to third party websites that are not owned or controlled by University. University has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, University will not and cannot censor or edit the content of any third-party site. By using the Work, Subscriber expressly agrees that University has no liability arising from Subscriber’s use of any third-party website. University does not guarantee security or privacy of any Content.

University does not permit copyright infringing activities and infringement of intellectual property rights on Work, and University will remove all Content if properly notified that such Content infringes on another's intellectual property rights.

University reserves the right to remove Content without prior notice.

**Indemnification**

Subscriber shall save, hold harmless and indemnify the State of Oregon, the State Board of Higher Education, University, and their agencies, subdivisions, officers, employees and agents from and against any and all claims, suits, actions, losses, demands, damages, costs, expenses (including, but not limited to, those arising out of personal injuries, wrongful death or property damage suffered by any third party) and reasonable attorneys’ fees incurred by University, arising out of or
relating to the use of Work or any other activities of Subscriber or its officers, employees, subcontractors or agents under this Agreement.

**General**

Subscriber may not assign any of its rights under this Agreement. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party. In the event that any provision hereof is found to be invalid or unenforceable pursuant to a final judgment or decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership or employment relationship between the parties hereto. Except as specified herein, neither party shall have the right, power or implied authority to create any obligation or duty, express or implied, on behalf of the other party hereto. Subscriber and University are the only parties to this Agreement and are the only parties entitled to enforce its terms; nothing in this Agreement gives or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to any third persons. Subscriber agrees not to use the name of University or any of its employees, in any advertisement or sales promotion relating to any Work without prior written approval by University. This document represents the entire Agreement between the parties as to the matters set forth and integrates all prior discussions or understandings between them. This Agreement may only be modified or amended in writing by a document signed by an authorized representative of University and Subscriber.
Access Agreement
Schedule A

Work

The Work is the various implementations of the core Learner Web (LW) software at PSU and in the educational community of organizations that use it to support adult learners. The LW is an innovative web-based and telephony-based technology that will:

- help adults improve their basic skills
- help adults identify goals, plan realistically for learning, and connect with and utilize supportive resources appropriate to their goals and plans
- be nationally scalable while being embedded in and customizable by local communities
- strengthen community collaboration around adults’ learning needs

The LW is a web- and telephone-accessed application providing online facilitation and support to adults seeking to improve their basic skills, prepare for the GED or pursue other learning goals such as citizenship, family literacy or preparing for college. The LW makes literacy resources accessible to learners on their own time and in their own environment. A learner’s goals and skill needs are matched to supportive resources available online or offline in their local communities. The communities define the content appropriate to their learners.

Learners can also be connected with volunteer tutors in their community. The LW is designed to support and enhance, not replace, existing educational programs and resources in the community.

The Learner Web is quite different in conception and design from other online adult education websites and distance education systems. In fact, distance education systems, websites, print materials and other supports are entries (called Resources) in the Learner Web database that are matched to adults’ individual goals, needs, skills and plans. In this way, the LW connects with and leverages other programs and resources, either online or offline in local communities. It connects learners with tutors, helpers and counselors either through the internet, over the phone, or face-to-face in their local community, depending on the preferences of learners and local partnering organizations and communities.
See web form above.
Access Agreement
Schedule C
Technical Support

Basic Level (included with all licenses)
- Unlimited use of bug reporting and feature request software
- Unlimited use of online support materials, training manuals and videos, pre- recorded webinars, and user forums
- Unlimited participation in community webinars
- One telephone consultation for technical assistance
- Three email consultations for technical assistance

Advanced Level ($3000)
- Unlimited use of bug reporting and feature request software
- Unlimited use of online support materials, training manuals and videos, and pre- recorded webinars
- Unlimited participation in community webinars
- Up to 30 hours of technical assistance by telephone and email
- 1 day of hands-on training in Portland or in mutually agreeable location (trainer’s travel expenses must be paid separately by licensee if outside of Portland)*
- 3 two-hour webinars customized for training needs of licensee*

*Multiple members of licensee’s organization may participate in these trainings

Notes:
1. One person designated by licensee will be authorized to contact PSU for Technical Support; licenses with multiple support packages can have one additional authorized contact person per additional support package
2. Licensee may purchase multiples of Advanced packages to achieve desired level of support
3. Portland State will keep track of time spent on technical support by telephone and email (this includes research time spent by staff resolving issues between telephone and email communications)
Access Agreement
Schedule D
Privacy Policy

For Subscribers

We provide information about individuals and progress through specific plans in detailed form, or as reasonably requested, to the Technical Contact of the Subscriber. Subscriber and University will create a reporting schedule which is workable for both parties.

Contact Joseph Janda (at iip@pdx.edu or 503-725-8454) with any general concerns or questions about our website privacy.

For Users (something substantially similar to this language will display to all Users)

People who use the web are often concerned about what information about them is collected and retained by University, and for what purpose. This document describes how University manages information collected by University and Subscriber.

When visitors view our web pages, we automatically collect and aggregate some basic information. This means that the information we have is passed on only as large numbers and do not specifically identify individuals for these purposes: (1) to document visits for reporting purposes – to the federal government to demonstrate use of this resource under the grant; and (2) to further improve this resource and make it more useful for visitors.

Examples of this Automatically-Collected Basic Information

The following information is automatically collected: (1) the IP address/hostname used to access our website, (2) date of the visit, and (3) the pages that were visited. The IP address under (1) is used only to generate an approximate count of visits. Most IP addresses are allocated dynamically or configured in such a way that they are not traceable to individual users, and at any rate we do not use this for any other purpose. No information such as names, computer characteristics, or computer content is collected. We do not sell or distribute any web visitor information.

Specific Identifiable Information

In addition, to demonstrate progress on a specific Learning Plan, we must have information about individuals and progress through specific plans. We provide information to the “owner” of the Learner Web through which you are subscribed to this Learning Community, which may include information about you and your progress through the Learning Plans.

We also provide access to this information, with identifying information (such as your name and address) removed to researchers who are studying how people learn. We do this so we all can improve Learning Plans and resources.

This information is maintained in secure databases only for the stated purpose and is not used in any other way. We do not sell or distribute any email list, mailing list, or publications request information.