

## LICENSED PRODUCT AGREEMENT

**1. DEFINITIONS.** This Licensed Product Agreement ("Agreement") is between Pearson Education, Inc. publishing as Peachpit Press ("Pearson") and the school, school district or other entity ("Customer") licensing Licensed Product from Pearson. In addition, the following definitions shall apply:

**1.1 "Licensed Product"** shall mean one or more of the Adobe Press Learn by Video Products specified on Exhibit A provided in physical media (i.e. DVD-Rom) that has been purchased for use by Customer as specified below. This includes all software applications and video content contained therein and made available to Customer that will be locally installed and deployed on individual CPUs at the Licensed Sites.

**1.2 "Licensed Sites"** shall mean those sites for which Pearson has received the applicable Site License Fees for Customer to install and access the Licensed Product.

**1.3 "License Term"** shall mean the term of Customer's license to access and use the Licensed Product, including the initial one-year term described in Section 7.1 and any renewal terms entered into pursuant to such Section.

**1.4 "Site License Fee"** shall mean the fee specified for each Licensed Site payable to Pearson for the initial one-year License Term or a renewal one-year License Term for the site license of the Licensed Product as described herein.

**2. LICENSE GRANT.** Subject to the terms and conditions set forth herein. Pearson grants to Customer a restricted, personal, non-exclusive, nontransferable license to use the Licensed Product that has been purchased for the License Term. The Licensed Product shall be accessed only by registered students or authorized personnel of Customer, only at the Licensed Sites, through no more than thirty (30) stand-alone computer CPUs located at the designated Licensed Site only. The Licensed Products are not authorized for any network use. If, at any time, (i) Customer increases the number of computer CPU's beyond the number authorized above or (ii) requires access from sites other than the registered Licensed Sites, Customer shall be required to register an additional Licensed Site and pay an additional Site License Fee. All additional Licensed Sites shall also be subject to the terms and conditions of this Agreement (unless Pearson provides new terms and conditions to Customer at the time such additional access is granted, in which case such new terms and conditions shall apply).

### 3. OWNERSHIP; RESTRICTIONS ON USE.

**3.1 Title.** The Licensed Product is protected by trade secret and/or copyright law and is proprietary to Pearson and/or its licensors. Title to all complete or partial copies, together with all applicable rights to copyrights, patents and trade secrets in the Licensed Product and any derivative works thereof, are and shall remain the property of Pearson or its licensors.

**3.2 Confidentiality.** Customer shall maintain the confidentiality of the Licensed Product, and, except as expressly provided herein. Customer shall not and shall not allow any other person or entity to, reproduce, copy, create derivative works, repost, distribute, download or otherwise transfer to any other system or media any portion of any Licensed Product without the written consent of Pearson: provided, however, that Customer may make copies of the software as necessary for authorized internal use. Customer shall not, and shall not allow others to, reverse engineer any software that is provided as part of the Licensed Product.

**3.3 Customer Content.** To the extent that the Licensed Product allows

Customer to input or post any content (e.g., through a bulletin board or similar feature). Customer will not input or post any content that infringes any patent, copyright, trade secret or other proprietary right of any other party. Customer acknowledges and agrees that Pearson may delete, or require Customer to delete, any such content from the Licensed Product upon determining in its sole discretion, or upon receiving notice from Customer or any third party of any claim, that such content is infringing upon the intellectual property rights of a third party, or that such content is indecent, obscene, libelous, slanderous, illegal, or otherwise inappropriate.

### 4. PAYMENT TERMS.

**4.1 Fees.** Pearson's Site License Fee for the initial and any renewal terms, shall be due and payable in advance in accordance with Pearson's invoice terms. Customer agrees to pay to Pearson all such fees and charges, and all applicable sales, use or other taxes, however designated, except for taxes based on Pearson's income. Customer shall pay a monthly charge of 1.5% (18% annually) on all amounts not paid when due, or, if a lower maximum rate is established by law, then such lower maximum rate. Customer shall provide Pearson with proof of any claimed tax exemption, and shall be responsible for the payment of all applicable penalties, taxes and costs which arise if the tax exemption proves inapplicable.

**5. NO SUPPORT AND SERVICES.** During the term of this Agreement, Pearson shall not provide or be responsible to make available to Customer any upgrades, enhancements and/or additions to the Licensed Product. Pearson's sole responsibility shall be as set forth in Section 8 hereto.

### 6. HARDWARE AND PREMISES.

**6.1 Customer's Responsibilities.** Customer shall be solely responsible for the installation of the Licensed Products and provision of personal computers compatible with the Licensed Product for use in accessing the Licensed Product, under the minimum system requirements set forth below, and for otherwise maintaining an operating environment compatible with the Licensed Product. Such specifications are subject to change over time based on changes in technology. Customer agrees to follow the installation guidelines provided by Pearson attached hereto as Exhibit B.

**6.2 Minimum System Requirements:** The minimum system requirements for the Licensed Products are as follows: Microsoft Windows XP/Vista/7; Mac OS X; Linux. 512 MB RAM per product running concurrently on one machine; 6.5 GB hard drive space for each product installed; display resolution 1024 x 768 pixels or higher.

### 7. TERM AND TERMINATION.

**7.1 Term and Renewal.** The initial License Term for each Licensed Site shall begin on the date that the Licensed Product is available for Customer's use at such site, and shall continue for a period of one year. Customer may terminate this Agreement as of the end of the then-current License Term by providing written notice to Pearson prior to the end of such License Term that such party does not wish to renew this Agreement. If no notice of non-renewal is given, then Pearson will invoice Customer for the applicable renewal Site License Fees for the Licensed Sites for a subsequent renewal License Term. Renewal terms are for a period of one (1) year, although other terms may apply in certain circumstances. If Customer pays the applicable Site License Fees stated on Pearson's renewal invoice, then this Agreement will renew for the applicable one-year renewal License Term; otherwise, this Agreement will terminate at the end of Customer's current paid-up License Term. If

this Agreement is so terminated due to non-payment, and then Pearson subsequently reinstates Customer's access to the Licensed Product, any such reinstated access shall remain subject to the terms of this Agreement (unless Pearson provides new terms and conditions to Customer at the time of such reinstated access, in which case such new terms and conditions shall apply). The Site License Fee for each renewal License Term shall be at Pearson's then-current and applicable rates.

**7.2 Termination.** Either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period; provided, however, that Pearson shall have the right to suspend performance under this Agreement at any time that Customer is not current in its payment obligations, and Pearson may terminate this Agreement immediately upon written notice in the event Customer breaches, or threatens to breach, any of its obligations under Section 3. Sections 3, 7, 8, 9 and 10 shall survive the termination of this Agreement.

**7.3 Return or Destruction of Licensed Product.** Immediately upon termination of this Agreement for any reason, Customer shall, at its own expense, return to Pearson or otherwise destroy or dispose of all copies of the Licensed Product that are in Customer's possession or control.

**8. LIMITED WARRANTY.** During the term of this Agreement, Pearson shall replace any material defect in any DVD-rom provided by Pearson in connection with any material failure of the Licensed Product (collectively, "Errors") that precludes access to the Licensed Product, after receiving written notification of such Error from Customer. If Pearson is unable to correct the Error after a reasonable opportunity, Pearson shall reimburse Customer for a prorated portion of the Site License Fees paid to Pearson hereunder, computed from the date of Customer's notice as described above through the scheduled expiration date of the current License Term, and Customer's license to use the Licensed Product shall terminate. The foregoing remedy shall not apply to Errors resulting from Customer's negligence, abuse or failure to meet its responsibilities hereunder ("Customer-caused Errors"). The foregoing states the complete and entire remedies that Customer has under this warranty. Pearson shall have no responsibility for any warranty claims made outside of the warranty period.

**9. DISCLAIMER OF OTHER WARRANTIES. THE WARRANTIES SET FORTH IN SECTION 8 ABOVE CONSTITUTE AND EXPRESS THE ENTIRE STATEMENT OF PEARSON AS TO WARRANTIES FOR THE LICENSED PRODUCT PROVIDED HEREUNDER. PEARSON AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**10. LIMITATION OF LIABILITY. PEARSON AND ITS LICENSORS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS OR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT OR THE LICENSED PRODUCT PROVIDED HEREUNDER, OR ARISING FROM THE USE OF OR INABILITY TO USE THE LICENSED PRODUCT, EVEN IF PEARSON OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN NO EVENT WILL THE LIABILITY OF PEARSON AND ITS LICENSORS FOR ANY CLAIM UNDER THIS AGREEMENT EXCEED THE TOTAL FEES PAID FOR THE LICENSED PRODUCT ON WHICH THE CLAIM IS BASED**

**DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE LOSS OR INJURY.**

**11. GENERAL. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.** This Agreement constitutes the complete agreement between Customer and Pearson, and supersedes all prior discussions, understandings, arrangements and negotiations between the parties with respect to its subject matter. Any additional or variant terms and conditions submitted by Customer, in a purchase order or otherwise, with respect to the Licensed Product or any support or other services shall be of no effect. No action, regardless of form, may be brought by Customer more than one year after the cause of action has arisen. In the case of notices to Pearson, such notices shall be sent to: Pearson Education, Inc., publishing as Peachpit Press, 1249 Eighth Street, Berkeley, CA 94710. In the case of notices to Customer, such notices shall be sent to Pearson's address of record for Customer. Either party may change its notice address by notifying the other in like manner.

## EXHIBIT A

1. Adobe Learn By Video CS4 Site License (ISBN 0-321-75224-4)

Includes:

Adobe Photoshop CS4 Learn By Video  
Adobe Flash CS4 Learn By Video  
Adobe Dreamweaver CS4 Learn By Video

2. Adobe Learn By Video CS5 Site License (ISBN 0-321-75223-6)

Includes:

Adobe Photoshop CS5 Learn By Video  
Adobe Flash CS5 Learn By Video  
Adobe Dreamweaver CS5 Learn By Video

## EXHIBIT B

### **Learn by Video Site Licensed Product System Requirements and Installation Instructions**

#### **•System Requirements**

At minimum, the machine(s) you want to install the software on must be capable of running either Microsoft Windows XP, Vista, or 7; or Mac OS X; or Linux. 512 MB RAM is required to run a single Learn by Video product; an additional 256 MB RAM is necessary to run each additional product concurrently. The resolution of your video display must be at least 1024 x 768 pixels.

Installing each Learn by Video product requires at least 6.5 GB hard disk space; **installing all three products will take up around 20 GB.**

#### **•Product Installation**

Each *Learn by Video* product must be installed on each computer on which you wish to run it. Installation is a matter of copying the complete contents of the disc onto your computer's hard drive.

#### **•To install a product in Windows:**

You will create a folder for each product on your computer's hard drive, then copy the contents of the Learn by Video disc to the new folder.

1. Because the video files reside in a folder that is hidden on the DVD-ROM, you must first make them visible in order to copy them to your hard drive.

**Caution: Making hidden files visible will reveal many files that were hidden for a reason. They may be needed by the operating system, and if you delete or move them you could make your computer run badly or not at all.**

To do this, open the Folder Options dialog box.

In Windows XP:

Click the Start button, then choose Control Panel > Folder Options

In Windows Vista or Windows 7:

Click the Start button, then choose Control Panel > Appearance and Personalization > Folder Options

In the Folder Options dialog box, click the View tab. In the Advanced Settings area, find Files and Folders > Hidden Files And Folders.

Make sure the option Show Hidden Files And Folders is selected.

2. Next, create a folder on your hard disk where you will copy the Learn by Video files. You can place it in any convenient folder for which you have Write permission. Give it a distinctive name, like "Photoshop CS5 LBV."

3. Now, place the product DVD in the computer's disc drive. Once it has mounted and appears in Windows Explorer, locate the disc icon. Its name will be of the form "LearnByVideo\_XXX." Right-click the icon and choose Open from the context menu. The contents of the DVD will be displayed. If you successfully made hidden files visible, you should see about 10 items on the disc. If you see only a handful of items, go back and check the Show Hidden Files And Folders setting.

4. Press Ctrl-A to select all of the items on the disc. Press Ctrl-C to copy them to the Clipboard.

5. Find the folder you created on your hard disc and open it. Press Ctrl-V to paste the DVD contents into the folder. Depending on the speed of your hardware, it might take a long time to copy all of the data. When the progress bar shows that the copy is complete, your task is finished!

Refer to the readme.html file on the disc to learn how to use the training.

#### **•To install a product in Mac OS X:**

You will use Disk Utility (provided as part of Mac OS X) to create a disc image of the product DVD. The disc image will be stored on the computer's hard drive.

1. To begin, insert the Learn by Video DVD into your computer's disc drive and wait until it appears on the Desktop.

2. Open Disk Utility, whose default location is /Applications/Utilities (the shortcut to open this folder is Command-Shift-U). In the Disk Utility window, a list of available disks is displayed in the upper left corner. Find the listing for the Learn by Video disc and select it.

3. Next, choose File > New > Disk Image from "LearnByVideo\_XXX" (the specific menu item will change depending on the name of the product). In the Save As dialog that drops down, navigate to the folder on your hard drive where you want to store the disc image. This can be any folder for which you have Write permission. Do not change the name of the image. From the Image Format menu, choose Read-Only, and from the Encryption menu choose None.

Click Save. The Disk Utility Progress window will let you monitor the operation, which may take a long time.

4. When the process of creating the disc image has finished, quit Disk Utility and eject the DVD.

5. Navigate to the disc image on your hard drive (the file will have the suffix ".dmg") and double-click the file. It will appear on your Desktop and you can use it exactly the same way you would use the physical DVD.

Note: If you have multiple *Learn by Video* products installed on a computer, you can mount multiple disk images and run them simultaneously.

#### **•To Uninstall a Product**

To remove a *Learn by Video* product from your hard drive in Windows, simply select its files in Windows Explorer and press Shift-DEL. Note: This deletion is permanent!

To remove a *Learn by Video* product from your hard drive in Mac OS X, select the disc image icon and press Command-Delete (this moves it to the Trash). Then press Command-Shift-Delete to empty the Trash. Note: If the disc image is mounted, you will have to eject it before moving to the Trash.