

## Licence Agreement (the "Agreement")

**PLEASE CAREFULLY READ THIS AGREEMENT BEFORE ACCEPTING BELOW. PROCEEDING WITH REGISTRATION, OR ACCESSING, USING, PRINTING, OR DISPLAYING THE PRODUCTS OR SERVICES INDICATES CUSTOMER'S ACCEPTANCE OF THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE WITH THESE TERMS, CUSTOMER SHOULD DECLINE REGISTRATION AND CUSTOMER MAY NOT ACCESS, USE, PRINT, OR DISPLAY THE PRODUCTS OR SERVICES.**

**1. Licence Grant.** Pearson Clinical and Talent Assessment is a division of Pearson Australia Group Pty Ltd ABN 40 004 245 943 ("Pearson" or "us"). This is a legal agreement concerning DSDA and is between You, either as an individual or business entity and Pearson. Pearson grants to you, the undersigned customer (hereinafter called "You or Your") a personal, non-transferable, non-exclusive license to use the Drive Safe Drive Aware product ("DSDA") to enable administration, scoring, and reporting individual assessments published by Pearson that are selected subtests of selected Pearson assessments which, may be modified from time to time (collectively the "Test(s)") and retention of examinee data during the term of this Agreement. DSDA displays Test instructions and items for onscreen Test data administration or data entry, Test-related manuals, and related user documentation. DSDA coordinates Your access to specific Test(s) procured by You from Pearson and based on the data input and the report selected by You, generates a total score for each subtest administered and places the patient into one of three categories based on these scores. DSDA also provides You with an opportunity to export Your patient data to Your email account for printing and/or saving to the patient's digital file.

**2. Term.** The term of this Agreement begins on the date this Agreement is electronically accepted by You or when You use DSDA and will continue, except as otherwise provided in this Agreement, unless or until terminated by either party in accordance with this Agreement.

**3. Orders and Payment.** All orders for Test(s) and administrations, scoring, and reports through DSDA ("Administrations") during the term of this Agreement are subject to acceptance by Pearson, in its sole discretion, and Pearson's qualification requirements.

To use DSDA, You will need to purchase a licence entitling to you to single instance Administration, and the report usage/s information will be delivered electronically to Your account. All purchases shall be charged to you using Pearson's then [current price list](#).

All prices are subject to change without notice and are inclusive of the applicable Goods and Services Tax (GST) for Customers in Australia and New Zealand. You agree to pay all applicable charges for Test(s) and Administrations at Pearson's then-prevailing rates at the time of order, together with any applicable taxes. Price changes will not affect orders in respect of which Pearson has already sent to the Customer an order confirmation.

Payment terms are 30 days for Customers with trading accounts otherwise payment must be made at time of purchase by credit card, direct deposit or cheque.

Charges not paid when due are subject to a late charge accruing from the date that payment becomes overdue, of 1-1/2% per month or the maximum permitted by law, whichever is less. The Customer is responsible for any legal and collection fees incurred by Pearson in collecting charges not paid when due.

Payment must be made in Australian dollars if the goods or services are supplied in Australia and in New Zealand dollars if the goods or services are supplied in New Zealand.

**4. Use of the Test(s) and DSDA.** You agree to use the Test(s), Administrations and DSDA in accordance with this Agreement and all applicable laws and regulations. You agree to use only the number of Test(s) and Administrations You have purchased from Pearson. You also agree to only use DSDA on devices that conform to Pearson's then-current published electronic operating environment specifications. You agree that Pearson may install any DSDA Maintenance Release at no additional charge. You understand and agree that Pearson's Test(s), Administrations, and DSDA are intended to be used as tools to supplement You in the overall assessment process, and are not intended or designed to be used alone or replace Your professional judgment. You shall not grant sub-licences, assign or transfer DSDA or any Test(s) or Administrations or permit any third party (other than examinees) to use DSDA or any Test(s) or Administrations without the prior written consent of Pearson.

**5. Protection of Test(s), Administrations and Operating System.** The Test(s), Administrations and the DSDA operating system are the proprietary property of Pearson and/or its licensor(s) and contain trade secrets, copyrighted works and/or patented intellectual property, owned by Pearson and/or its licensor(s). Title to the Test(s), Administrations and DSDA and copies thereof, and all intellectual property rights in the Test(s), Administrations and DSDA shall remain owned by Pearson and/or its licensor(s).

**6. Examinee Data. YOU ARE ADVISED TO EXPORT AND SAFEGUARD YOUR IMPORTANT DATA AND BACK UP IMPORTANT INFORMATION FREQUENTLY..** If You choose to store examinee data on DSDA, Pearson will regularly backup the examinee data stored in the DSDA data base and will securely store these backups. However, You must make regular backups and agree that You release Pearson in respect of any failure in the DSDA database or Pearson's backups.

#### **7. Restrictions on Use**

7.1 You agree not to reproduce, copy or duplicate in any form any of the Tests, Administrations or DSDA in whole or in part (except as expressly permitted under this Agreement or with the prior written consent of Pearson, which may be withheld by Pearson in its sole discretion); modify or alter physical or electronic characteristics of the Test(s), Administrations or the DSDA operating system; dismantle or reverse engineer any part of the Test(s), Administrations or DSDA; or permit or assist any of the foregoing acts.

7.2 You may excerpt portions of reports, limited to the minimum text necessary to accurately describe Your significant core conclusions, for incorporation into Your written evaluation of the individual test taker, in accordance with Your profession's citation standards, if any.

7.3 Without limiting clause 7.1, You may not, under any circumstance, copy or reproduce in any form the text or graphic image of any Test question or Test item without Pearson's prior written permission (which may be withheld by Pearson in its sole discretion).

**8. Test(s) and Administration(s) Availability.** Pearson's right to make available Test(s) and Administrations are subject to agreement between Pearson and the Test and

Administration owners/licensors. There is no assurance that Pearson will be able to provide any particular Test or Administration now or in the future. You agree that Pearson will not be liable to You in any manner whatsoever for any future unavailability of Test(s) or Administrations.

**9. Support.** You may contact Pearson's Technical Support for help in relation to the operation of DSDA, by telephone during Pearson's regular Technical Support business hours as follows: Phone 1800 882 385 (Australia) or 0800 942 772 (New Zealand) 8.00 am to 5.30 pm AEST or email to [info@pearsonclinical.com.au](mailto:info@pearsonclinical.com.au).

## **10. Privacy.**

10.1 In this Agreement:

**Privacy Law** means:

- (a) any legislation from time to time in force in any:
  - (i) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia) or New Zealand jurisdiction;
  - (ii) non-Australian jurisdiction or non-New Zealand jurisdiction (to the extent that You are subject to the laws of that jurisdiction),affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of data; and
- (b) any ancillary regulations, rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time; and

**Personal Information** means "personal information" as defined in the *Privacy Act 1988* (Cth).

10.2 You shall in respect of any Personal Information which You receive or have access to in connection with this Agreement:

- (a) comply at all times with the Privacy Law and Your applicable privacy policy;
- (b) only use the Personal Information to the extent necessary to perform Your obligations under this Agreement, or as otherwise permitted by Your applicable privacy policy or the Privacy Laws;
- (c) only disclose the Personal Information to Your employees to the minimum extent necessary to perform Your obligations under this Agreement or as otherwise permitted by Your applicable privacy policy or the Privacy Laws, and ensure that any person to whom the Personal Information is disclosed will manage the Personal Information consistently with Your obligations in this clause 10;
- (d) take reasonable steps to ensure that the Personal Information is protected against loss or unauthorised access, use, modification or disclosure;
- (e) upon request by us, promptly provide reasonable co-operation to us in:
  - (i) relation to any complaint alleging a breach, or any investigation into a potential breach, of the Privacy Law or Your applicable privacy policy;
  - (ii) providing access to any record of the Personal Information following a request from or lawfully on behalf of the individual to whom the Personal Information relates; and

- (iii) enabling us to comply, or assisting us in complying, with our obligations under the Privacy Law; and
- (f) upon request by us, promptly provide to us the details of any complaint received by You regarding Personal Information handling practices.

10.3 Subject to your compliance with this clause 10, if You have existing examinee data for the Test(s) on other Pearson platforms, DSDA may permit You to migrate that data from other Pearson platforms to DSDA. If this migration is permitted by DSDA and elected by You, You agree that You are responsible for complying with Pearson's migration protocol and ensuring Your data correctness before and after migration.

10.4 You shall, before the time Pearson collects personal information about an individual through that individual undertaking any test or assessment on the DSDA platform:

(a) on behalf of Pearson: (i) expressly inform that individual that if that individual consents to the disclosure of personal information about that individual by Pearson to a third party who is not in Australia or an external Territory, subclause 8.1 of the *Privacy Act 1988* (Cth) will not apply to the disclosure; and (ii) after having so informed that individual, obtain without duress the consent of that individual to the disclosure; and

(b) on behalf of Pearson, notify that individual of, or otherwise ensure that that individual is aware of, the content of Pearson's [Privacy Collection Statement](#).

10.5 If You are not able to comply with any of the requirements under clause 10.4, You shall:

(a) not permit the individual referred to under clause 10.4 to undertake any test or assessment on the DSDA platform; and

(b) not permit the personal information of the individual referred to under clause 10.4 to be entered into the DSDA platform.

## **11. Limitation of Liability.**

11.1 In this Agreement:

**Australian Consumer Law** means the *Competition and Consumer Act 2010* (Cth), including the Australian Consumer Law contained in Schedule 2 of that Act; and

**Statutory Guarantees** means the guarantees that apply to goods and services purchased by Consumers (as defined in the Australian Consumer Law).

11.2 Except for the Statutory Guarantees, Pearson disclaims and excludes all warranties and representations in relation to the goods or services provided by it under this Agreement.

11.3 To the maximum extent permitted by section 64A of the Australian Consumer Law, if the goods or services provided by Pearson under this Agreement are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Pearson limits its liability, at its discretion:

- (a) in the case of goods, to:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services, to:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

**12. Termination.** Either Party shall have the right to terminate this Agreement if the other Party breaches any term under this Agreement and fails to cure the same within thirty (30) days after receipt of written notice of default (except that there shall be no cure period for Your breach of clause 4 (Use of the Test(s) and DSDA), 7 (Restrictions on Use) or 10 (Privacy) of this Agreement). In addition, Pearson shall have the right to terminate this Agreement on written notice without any liability to You, for any reason, including, without limitation, if Pearson is or becomes unable to provide any of the Test(s), Administrations or DSDA. If this Agreement is terminated for any reason, Pearson will allow you access to DSDA for not more than thirty (30) days for the sole purpose of exporting Your data. This clause 12, as well as clauses 13, 14 and 15 below, shall survive any termination of this Agreement.

**13. Indemnification.** To the fullest extent permitted by law, you agree to indemnify and hold Pearson and its officers, employees and agents harmless against all claims, charges, liabilities, demands, damages, losses, expenses and costs of whatever nature (including legal and other professional fees and expenses on an indemnity basis and the costs of defending or settling any claim, and any loss of profit, goodwill, business or opportunity and any other direct and indirect, special, incidental or consequential losses or damages) and howsoever arising (including, without limitation, in contract, tort (including negligence), equity, restitution, strict liability or under statute) incurred or suffered by Pearson or any of its officers, employees or agents directly or indirectly in connection with any breach by you of any term of this Agreement, any of the usage rules in relation to the Test(s), Administrations, DSDA or other materials or software provided to you in relation to this Agreement, or any applicable law (including, without limitation, privacy law); or your use of the Test(s), Administrations or DSDA pursuant to this Agreement.

#### **14. Liability.**

14.1 Subject to clause 14.3 and except in respect of any infringement claim in clause 14.2, Pearson's total aggregate liability for loss or damage relating to this Agreement, the Test(s), Administrations or DSDA, or your use or inability to use the Test(s), Administrations or DSDA, howsoever arising (including, without limitation, in contract, tort (including negligence), equity, restitution, strict liability or under statute) in respect

of any and all claims shall be limited to the charges paid by you for the test(s) involved. This is your exclusive remedy.

14.2 If any claim arises that any Test(s), Administrations or DSDA infringes any right (including any intellectual property right) of any third party ("infringement claim"), or if Pearson becomes aware of the possibility of any infringement claim, Pearson may, in its sole discretion: (a) provide You with a non-infringing replacement; or (b) terminate this Agreement in whole or in part and refund to You the amount paid by You for Your unconsumed Test(s) or Administrations. The foregoing is Your exclusive remedy in relation to any infringement claim.

14.3 In no event shall Pearson be liable to you for any Consequential Loss. In this Agreement, "Consequential Loss" means any special, indirect or consequential loss or damage including loss of profits, loss of revenue, loss of anticipated savings, loss of data, loss of or damage to reputation, loss of or damage to goodwill, loss of business opportunities (including opportunities to enter into or complete arrangements with third parties), loss of management time, damage to credit rating, or loss of business, whether or not such loss is reasonably supposed to have been in the contemplation of you and/ or Pearson.

## **15. General.**

This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Victoria, Australia. Each of You and Pearson submits to the non-exclusive jurisdiction of the courts with jurisdiction in the State of Victoria, Australia. This Agreement constitutes the entire agreement between You and Pearson concerning the subject matter of this Agreement, and supersedes all discussions, proposals, bids, invitations, orders, and other communications, oral or written, on the subject matter of this Agreement. The terms of this Agreement published and applicable at the time of order shall govern each order. If any provision of this Agreement is found to be illegal or unenforceable, that provision shall be read down to the extent necessary to overcome the difficulty and the remaining provisions will be enforced to the maximum extent possible. To the extent any purchase order from You conflicts with or amends this Agreement in any way, this Agreement, as unmodified, will prevail.

**I ACCEPT THIS AGREEMENT by clicking the Accept button or using DSDA**

**I DECLINE THIS AGREEMENT by clicking the Decline button**

License version effective date **29 May, 2014**