Terms and Conditions of Sale and Use of Pearson Products

1. ACCEPTANCE OF Ts & Cs[a]

Sales of Pearson Products[b] and Other Publisher's Products[c] (together referred to as "Products") by Pearson's Clinical Assessment group[d] and the purchase and use of Products by Customer[e] are conditioned upon acceptance of these Ts & Cs. Customer agrees to these Ts & Cs by submission of User Acceptance Form, order(s) for tests or scoring services, or by paying part or all of a Pearson Invoice. These Ts & Cs constitute the entire agreement between Pearson and the Customer and supersede any purchase order terms associated with a Purchase Order (P.O.) number on any order. If any provision of the Ts & Cs is found to be illegal or unenforceable, the remaining provisions will be enforced. These Ts & Cs may not be waived or modified except by prior written agreement signed by a Pearson Vice President. Minnesota law will govern these Ts & Cs. Issues involving copyright and patent will be resolved under U.S. Federal Law. **Provisions Not Applicable In New Jersey: Pursuant to the New Jersey Truth in Consumer Contract Warranty and Notice Act ("TCCWNA"), Sections 2, 5, 6, and 9 of these Ts & Cs do not apply to those persons covered by that law.**

2. Warranty

Pearson warrants that the Pearson Products published directly or under license by Pearson in their standard form, will not infringe any valid, third-party, U. S. patents or copyrights existing at the time of publication. This warranty does not extend to any Other Publisher's Product or to any infringement arising from the use of the Pearson Products in combination with any systems, software, or equipment, supplied by a third party. If Customer promptly notifies Pearson of an infringement claim concerning a Pearson Product and accords Pearson the right, at its sole option and expense, to handle the defense of the infringement claim, Pearson will indemnify and hold the Customer harmless from/against such infringement claim related solely to that Pearson Product. Pearson may, in its sole discretion, furnish the Customer with a non-infringing replacement product within sixty (60) days or repurchase the remaining unconsumed Pearson Product. EXCEPT AS STATED HEREIN, PEARSON MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS. ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

3. Geographical Embargoes and Restrictions

Please note that, Pearson may restrict the sale of certain test materials within specific geographic regions because of various contractual arrangements. If the Product(s) have been rightfully obtained within the United States, Customer warrants and represents that neither the products nor any technical data received by the Customer from Pearson will be exported outside of the United States, except as authorized by the laws and regulations of the United States.

4. Risk of Loss and Returns

Shipping in the USA is FOB Destination freight from Pearson warehouse charged to the Customer. Returns may be made in accordance with the Returns Policy.

5. Limitation of Liability and Limitation on Claims

IN NO EVENT WILL PEARSON BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT, PURCHASE OR USE OF PEARSON PRODUCTS OR SERVICES. NOTWITHSTANDING ANY OTHER PROVISION OR AGREEMENT BETWEEN THE CUSTOMER AND PEARSON, PEARSON'S TOTAL LIABILITY TO ANY PARTY, ARISING OUT OF THIS AGREEMENT, PURCHASE, OR USE OF PRODUCTS, EXCEPT AS IT RELATES TO PEARSON'S WILLFUL MISCONDUCT, WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE PRODUCTS OR SERVICES.

6. Use of Product

Customer agrees that it is the Customer's responsibility to use any Products in accordance with Pearson's Qualification Policies & User Acceptance Form and applicable professional guidelines[g]. Customer understands and agrees that the Products are intended to be used as tools in the overall assessment process, and are not designed to be used alone or to replace the Customer's professional judgment. Pearson is not responsible for any claims or damages incurred in connection with the Customer's or any third party's use or misuse of the Products. Unless otherwise indicated, Products are not sold for self-guidance, nor to any individual or organization engaged in testing and counseling by any remote method. Users must agree to guard against the improper use of the Products in order to retain the right to purchase those Products. To protect their security and value, Products may not be resold, re-licensed, transferred or otherwise further distributed without prior written permission from Pearson. Reselling on any online site or by any other method is strictly prohibited and will disqualify the reseller from future purchases of Pearson Products or Services.

The Customer's purchase of Pearson Products does not grant the Customer a right to reproduce additional copies of materials or content or enter any content into a computer medium, such as non-Pearson scoring system or software. However, if the Customer licenses and uses Pearson software, the Customer may excerpt portions of the output reports, limited to the minimum text necessary to accurately describe the qualified user's significant core conclusions, for incorporation into a written evaluation of the individual, in accordance with the Customer's profession's citation standards, if any. No adaptations, translations, modifications, or special versions may be made without prior permission in writing from Pearson (see Section 10). Violation of these Ts & Cs may result in the revocation of a Customer's right to purchase as a qualified Customer.

7. Copyright and Trade Secrets

Pearson Products are protected by various intellectual property laws, including trade secrets, copyright and trademark. Printing or reproducing copyright-protected materials or content, whether the reproductions are sold or furnished free for use, including reproduction of test items, scales, scoring algorithms, scored directions, or other content, is strictly prohibited by law and by these Ts & Cs. Pearson software outputs, including but not limited to reports, are protected as trade secrets. Trade secrets are not permitted to be disclosed in response to requests made pursuant to HIPAA[h] or to any other data disclosure law that exempts disclosure of information or documents protected as trade secrets.

Customer acknowledges and agrees that the use or disclosure of Pearson trade secrets or confidential information may cause Pearson irreparable harm for which remedies other than injunctive relief may be

inadequate. If Customer is required to disclose secure test materials pursuant to a subpoena or court order, please refer to the Pearson's Litigation Disclosure at www.pearsonclinical.com/legal.html.

8. Test Security

Customer agrees to comply with the following basic principles of minimum test security:

- Test takers must not be coached using the test or receive test answers before beginning the test.
- Test materials (text or graphic image) may not be reproduced in any manner electronically or otherwise without the prior written permission of Pearson.
- Access to test materials must be limited to qualified persons with a responsible, professional interest who agree to safeguard their use.
- Test materials and scores may be released only to persons qualified to interpret and use them properly.
- If a test taker or the parent of a minor child who has taken a test wishes to examine test responses or results, the parent or test taker may be permitted to review the test and the test answers in the presence of a representative of the school, college or institution that administered the test.
- Test materials must not be resold, re-licensed, transferred or otherwise redistributed for any purpose without prior written permission from Pearson.

9. Indemnification

To the extent permitted by law, Customer agrees to hold harmless, indemnify and defend Pearson from and against any and all claims, charges, demands, damages, liabilities, losses, expenses, and liabilities of whatever nature and howsoever arising (including but not limited to any legal or other professional fees and the costs of defending or prosecuting any claim and any loss of profit, goodwill, and any other direct or consequential loss) incurred or suffered by Pearson directly or indirectly by reason of any act or omission that the Customer commits in breach of these Ts & Cs and the obligations and warranties contained in them.

10. Requests for permission to license Pearson Intellectual Property

Requests to copy, translate, modify or adapt any Pearson Products must be in writing and directed to: Intellectual Property Licensing by e-mail at pas.licensing@pearson.com

11. Payment

Pearson accepts payment by check, money order, or Visa, MasterCard, American Express or Discover credit cards. Payment must accompany order. Pearson will invoice institutional Customers if orders are received on official purchase orders with tax exempt certificate on file at Pearson (if applicable). All invoices are payable net 30 days. Prepayment is required for all new accounts. Charges not paid when due are subject to a late charge accruing from the due date of 1-1/2% per month or the maximum permitted by law, whichever is less. The Customer is responsible for any reasonable attorney or collection fees incurred by Pearson in collecting charges not paid when due. Payment must be made in

U.S. dollars. Customers are responsible for all taxes and tariffs related to intercountry shipments. Pearson will collect and report state and local taxes applicable to the Customer's shipping address.

12. Modifications of Terms and Conditions

Pearson reserves the right to amend pricing and these Ts & Cs at any time without prior written notice. Pearson, without any penalty or liability, reserves the right to (a) publish or replace current products with new, revised, or updated products at any time; and (b) place any product "out of print" or discontinue offering the product for purchase. The most current Ts & Cs will be posted at Pearson's Website[f].

13. Definitions and Notes

[a] "Ts & Cs" means Pearson conditions of sale and use and the qualifications and return policies referenced in these Ts & Cs. A printed copy of the Ts & Cs, including the referenced policies, is available by calling 800.627.7271. These terms may be viewed in 12 point type at our Website[f].
[b] "Pearson Product(s)" means assessment instruments (including those formerly published by AGS Publishing and Harcourt Assessment, Inc.) and/or related materials (including but not limited to software, administration and user reference materials, manipulatives, reports and services) published by Pearson.
[c]"Third Party product" means assessment instrument(s) and/or materials(s) (including but not limited to software, administration and user reference materials, manipulatives, reports and service) not published by Pearson.
[d] Pearson's Clinical Assessment and Learning Assessment groups are businesses of NCS Pearson, Inc. Both organizations are included in the term "Pearson."
[e] "Customer" means the purchaser and qualified user of the Product, who are individually and collectively referred to as "Customer."
[f] "Website" means PearsonAssessments.com and Psychcorp.com and Pearsonassess.com
[g] "applicable professional guidelines" include but are not limited to the Standards for Educational and Psychological Testing, published by the American Educational Research Association (AERA), American Psychological Association (APA), and the National Council on Measurement in Education (NCME), Pearson software license (if applicable) and all federal, state, and local laws and regulations, including, but not limited to HIPAA and FERPA. Use of psychological tests in employment-related situations may be subject to certain laws including Title VII of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act of 1990, as amended; and other federal, state, and local laws and regulations.
[h] See HIPAA:Frequently Asked Questions.

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