

Q-global®
Subscription and License Agreement (the "Agreement")

PLEASE CAREFULLY READ THIS AGREEMENT BEFORE ACCEPTING BELOW. PROCEEDING WITH REGISTRATION, OR ACCESSING, USING, PRINTING, OR DISPLAYING THE SERVICES INDICATES CUSTOMER'S ACCEPTANCE OF THE TERMS OF THIS SUBSCRIPTION AND LICENSE AGREEMENT. IF CUSTOMER IS A COVERED ENTITY AS THAT IS DEFINED UNDER HIPAA, PLEASE PAY PARTICULAR ATTENTION TO THE BUSINESS ASSOCIATE SECTION IN PARAGRAPH 10. 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. License Grant. This is a legal agreement concerning Q-global and is between You, the Customer (and any Authorized Users), either as an individual or business entity and NCS Pearson, Inc. An Authorized User is any user that has been given authority to use the account by the Customer. This Agreement supersedes and replaces any prior proposal, representation, or understanding You may have regarding Your use of the Q-global system. NCS Pearson, Inc. (hereinafter called "Pearson") grants to You, the undersigned Customer (hereinafter called "You , Your, or Customer"), a personal, non-transferable, nonexclusive license to use the Q-global Scoring and Reporting System product ("Q-global") to enable administration, scoring, and reporting individual assessments published by Pearson of selected Pearson assessments which, may be modified from time to time (the "Test(s)") and retention of examinee raw data during the term of this Agreement. Q-global displays Test instructions and items for onscreen Test administration or data entry, Test-related manuals, and related user documentation, Q-global 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 Test-specific output reports, including but not limited to, profile and interpretive reports ("Reports") delivered through Q-global. Q-global also provides You with an opportunity to export Your examinee data to Your desktop or to retain the examinee data in files on Q-global.

2. Term. The term of this Agreement begins on the date this Agreement is electronically accepted by You or when You use Q-global and will continue, except as otherwise provided in this Agreement, unless or until terminated by either party. This Agreement may be terminated pursuant to sections 12 and 13 herein below.

3. Orders and Payment. All orders for Test(s) and administrations, scoring, and Reports through Q-global ("Administrations") during the term of this Agreement are subject to acceptance by Pearson, in its discretion, and will be fulfilled subject to Pearson's Qualification requirements (click on the following link to view [Qualification Requirements](#)) and sections regarding Geographical Embargoes and Restrictions, Use of Product, Copyright and Trade Secrets, and Test Security contained in Pearson's Terms of Sale and Use (click on the following link to view [Terms and Conditions of Sales and Use](#)) and this Q-global License. Your acceptance of this License Agreement allows you access to the Q-global system.

You will separately purchase Test Administrations or Reports in the form of individual administration and report usages or through the purchase of a limited term scoring subscription that will be delivered electronically to Your account and be available for Your use in accordance with Pearson's Terms and Conditions of Sale and Use. You agree to pay all applicable charges for Test Administrations, Reports or Scoring Subscriptions at Pearson's then-prevailing rates at the time of order, together with any applicable taxes. Unless otherwise specified by Pearson, charges are due and payable within thirty (30) days of invoice.

4. Use of the Test(s) and Q-global. You agree to use the Test(s) and Q-global (a) in accordance with sections 3, 6, 7, and 8 of the Terms and Conditions referenced in Pearson's then current published catalog and in accordance with all federal, state and local laws and regulations and (b) for the number of Administrations You have purchased from Pearson. You also agree to only use Q-global on computers

that conform to Pearson's then-current published computer operating environment specifications. You agree that Pearson may install any Q-global Maintenance Release at no additional charge. You understand and agree that Pearson's Test(s) and Q-global are meant 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. 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. You shall not grant sublicenses, assign or transfer (including transfer by rental) Q-global or use Q-global to benefit any third party without the prior written consent of Pearson.

5. Protection of Test(s) and Operating System. The Tests(s) and the Q-global operating system are the proprietary property of Pearson and contain trade secrets, copyrighted works and, in certain cases, patented intellectual property, owned by Pearson and/or its licensors. The placement of a copyright notice on any portion of the Test(s) or Q-global does not mean that they have been published and will not derogate any claim by Pearson of trade secret protection. Title to the Test(s) and Q-global and copies thereof, and all intellectual property rights protecting the Test(s) shall remain with Pearson and/or its licensors and Q-global shall remain the property of Pearson.

6. Examinee Data. YOU ARE ADVISED TO EXPORT AND SAFEGUARD YOUR IMPORTANT DATA AND BACK UP IMPORTANT INFORMATION FREQUENTLY. You understand that You may be allowed to export Your examinee data at any time. If You choose to store examinee data on Q-global, Pearson will regularly backup the examinee data stored in the Q-global data base and will securely store these backups. However, You must make regular backups and agree that You release Pearson from any failure in the database system.

7. Restrictions on Use.

(a) You agree not to copy or duplicate, modify or alter physical or electronic characteristics of the Test(s) or the Q-global operating system or to dismantle or reverse engineer any part of the Test(s) or Q-global.

(b) Because Q-global and its outputs, including but not limited to Reports, are protected as trade secrets, except as expressly provided in this section 7, these **TRADE SECRETS ARE NOT PERMITTED TO BE DISCLOSED** in response to requests made pursuant to HIPAA (Health Insurance Portability and Accountability Act of 1996) or any other data disclosure law that exempts disclosure of information or documents protected as trade secrets. You agree that You will not otherwise, directly or indirectly disclose any trade secrets of Pearson without the prior written consent of Pearson.

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

(d) You may not, under any circumstance, copy or reproduce the text of any Test question without Pearson's prior written permission.

8. Test(s) Availability. Pearson's rights to make available Test(s) and Administrations are subject to agreements between Pearson and the Test owners/licensors. There is no assurance that Pearson will be able to provide any particular Test now or in the future. If Pearson is unable to sell Administrations with respect to a particular Test, You may continue to use any previously purchased Administrations. You agree that Pearson will not be liable to You in any manner whatsoever for any future unavailability of any Test(s) or Administrations.

9. Support. You may contact Pearson's Technical Support for help in operation of Q-global, by telephone during Pearson's regular Technical Support business hours.

10. Pearson's Protection and Use of Data. To perform services for You, Pearson will receive information that is provided by You and examinees. Pursuant to this Agreement, any information that Pearson receives is subject to the Privacy Policy (click the following link to access the [Privacy Policy](#)).

Pearson respects Your data and has provided you with two (2) options should You and Your client desire to share data with Pearson. When you sign up for Q-global, You will be given the following regarding how you will let Pearson deal with your data:

General Research.

Should You grant Pearson permission to use Your de-identified examinee data for General Data Research, then You allow Pearson to use de-identified data from your account in validation studies and studies of specific clinical populations. These data will enable us to identify items and subtests with the greatest sensitivity and specificity, and increase our ability to develop shorter and better assessments. You will have the opportunity to choose which examinees' data will be included in the research database.

Special Research.

Should You grant Pearson permission to participated in Specific Data Research, You permit Pearson to contact You each time there is a research study and, if You qualify, You may choose at that time to participate. If you choose to participate, You will receive information about specific research studies when they are being conducted. This data will meet de-identified safe harbor standards under US law, and will be used only for research and test development so that future versions of the assessment will have enhanced clinical utility. In the event that You have existing examinee data for the Test(s) on other Pearson platforms, Q-global may permit You to migrate Your data from other Pearson platforms to Q-global. If this migration is permitted by Q- global and elected by You, You agree that You are responsible for complying with Pearson's migration protocol and ensuring Your data's correctness before and after migration.

Business Associate. If You are a Covered Entity under HIPAA, You and Pearson agree that the Business Associate Addendum will govern HIPAA-related matters (click on the following link to view and accept the [Business Associate Addendum](#)). If You are a school or not a Covered Entity, this paragraph does not apply.

11. Warranty. Pearson warrants that neither the Test(s) in their standard form nor normal use of the Test(s) will infringe any valid United States patents or copyrights existing at the time the Test(s) are made available by Q-global, provided, however, that this warranty does not extend to any non-NCS Pearson test ("NCS Pearson Test(s)" that are published directly or under licenses by NCS Pearson, Inc.), to any infringement arising out of the use of such Test(s) in combination with systems, equipment or Q-global programs or platforms not supplied by Pearson or any use of the Test(s) outside the United States. If You promptly notify Pearson of any such infringement claim of which You have knowledge or notice, and accord Pearson the right, at its sole option and expense, to handle the defense of the infringement claim, Pearson will indemnify and hold You harmless from and against such infringement claim. If such an infringement claim arises, or if Pearson becomes aware of the possibility of such a claim, then Pearson may, in its discretion (a) furnish You with non-infringing replacement Test(s) within sixty (60) days; or (b) terminate this Agreement in whole or in part by repurchasing Your unconsumed Administrations. This is Your exclusive remedy for any breach of this warranty against infringement.

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS SECTION, PEARSON MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE TEST(S). ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

12. Termination. Either party shall have the right to terminate this Agreement, including any licenses, if the other party breaches any of its obligations 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 Pearson's rights under Sections 4 or 5 of this Agreement). If this Agreement is terminated for any reason, Pearson will allow you access to Q-global for not more than thirty (30) days for the sole purpose of exporting Your data. Your obligations under this Section 12, as well as the provisions of Section 14 and 15 below, shall survive any termination of this Agreement.

13. Active Accounts. As long as a customer has an active account (defined below), purchased subtests, report inventory, usages or other digital allocations of assessment measures and support materials will remain accessible and available for users of the account without expiration. Accounts deemed dormant (as defined below) will have all data (including client scores, reports, history, etc.) and digital allocations (usages, report inventory, manuals, etc.) permanently expunged from the system (after notice has been provided to the user) and will no longer be retrievable by the customer or Pearson.

An Account refers this Q-global account.

An "Active Account" is defined as any account that has, had any user generate a report, and/or has had purchased inventory added to the account within the last 24 months.

A "Dormant Account" is defined as any account that has not had any Authorized User generate a report, conduct an administration or purchase inventory in the previous twenty four (24) month period and does not currently have an active scoring subscription license for any inventory on the account.

"Appropriate Notice" is defined as communication efforts (email or letter) by Pearson with no less than six attempts to contact You over a ninety (90) day period after the account is deemed a Dormant Account using the contact information (phone, email and billing address) on file for the account in question. The Appropriate Notice will include one or more of the following: notice that the account should be reactivated or that all client information for all Authorized Users should be downloaded from the Pearson system prior to a specific date. If Pearson does not receive an appropriate response the Customer and all Authorized User's data will be permanently deleted and will no longer be available.

14. Indemnification. EXCEPT AS PROVIDED IN SECTION 11 OF THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY AND HOLD PEARSON HARMLESS AGAINST ALL CLAIMS, LIABILITIES, DEMANDS, DAMAGES, OR EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES) ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE TEST(S) COVERED BY THIS AGREEMENT AND/OR YOUR FAILURE TO PERFORM THE OTHER TERMS OF THIS AGREEMENT.

15. Liability. PEARSON'S LIABILITY FOR LOSS OR DAMAGE RELATING TO THIS AGREEMENT AND/OR THE TEST(S) OR YOUR USE OR INABILITY TO USE THE TEST(S), REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO THE CHARGES PAID BY YOU FOR THE TEST(S) INVOLVED. THIS IS YOUR EXCLUSIVE REMEDY. IN NO EVENT SHALL PEARSON BE LIABLE TO YOU FOR ANY CLAIM MADE AGAINST YOU BY ANY OTHER PARTY OR FOR ANY CLAIM MADE BY YOU FOR LOST BUSINESS OR PROFITS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF PEARSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, LOSS OR DAMAGES.

16. Federal Government Terms and Conditions. If You are the United States Government or any agency or instrumentality thereof, the Test(s) are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the United States Government of the Test(s) is subject to restriction as set forth in: (a) subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Information clause at DFAR 252.227-7013 (October 1988), if You are subject to Department of Defense Federal Acquisition Regulations; or (b) FAR 52.227-19 (June 1987), if You are not subject to the DFAR, but are the United States Government or an agency or instrumentality thereof. The Contractor, for purposes of such

provisions, is NCS Pearson, Inc., 5601 Green Valley Drive, Bloomington, Minnesota 55437.

17. Support Service. Subject to and conditioned on the Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term, Pearson shall use commercially reasonable efforts to provide to You and Your Authorized Users technical support (collectively, the "Services") in accordance with the time periods and terms and conditions hereof, including to host, manage, operate and maintain the Service Software for remote electronic access and use by the subscriber and its Authorized Users from 7 a.m. to 6 p.m. US, except for:

(a) Scheduled Downtime;

(b) Service downtime or degradation due to a Force Majeure Event;

(c) any other circumstances beyond Pearson's reasonable control, including Customer or any Authorized User's use of Third Party Materials, misuse of the Services, or use of the Services other than in compliance with the express terms of this Agreement and the Specifications; and

(d) any suspension or termination of Customer's or any Authorized Users' access to or use of the Services as permitted by this Agreement.

Support information is as follows:

US & Canada 1-800-249-0659 (7 AM to 6 PM Central Standard Time)

Technical Support E-mail: catechnicalsupport@pearson.com

Technical Support URL: PearsonAssessmentSupport.com

17. General. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA. The foregoing choice of law notwithstanding, copyright, trademark, and patent claims are subject only to U.S. Federal law and U.S. Federal court interpretation thereof. This Agreement constitutes the entire agreement of You and Pearson concerning this matter, and supersedes all discussions, proposals, bids, invitations, orders, and other communications, oral or written, on this subject. This Agreement may not be waived, amended, or modified in any way without the prior written permission of Pearson. If any one or more provisions of this Agreement are found to be illegal or unenforceable, the remaining provisions will be enforced to the maximum extent possible. To the extent any purchase order from You conflicts with or amends these Terms and Conditions in any way, these Terms and Conditions, as unmodified, will prevail.

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