

TESTNAV QUALIFIED Certification Mark Agreement

This TESTNAV QUALIFIED Certification Mark Agreement (the "Agreement") is effective and entered into this ___ day of _____, _____ by and between:

NCS Pearson, Inc. a Minnesota Corporation ("Pearson") with a principle place of business at 2510 North Dodge Street, Iowa City, Iowa 52245; and

_____, located at _____ ("Licensee").

By executing this Agreement, Licensee acknowledges that it has read, agrees to, and shall follow the terms of the Pearson Certification Mark Program Usage Guidelines for the TestNav Qualified Program (the "Usage Guidelines") and the terms and conditions of the Pearson Qualification Standards (the "Qualification Standards") posted online at www.testnavqualified.com (the "Pearson Qualification Site"), all of which are incorporated herein by reference and made a part of this Agreement.

WHEREAS, Pearson is the owner and developer of certain educational assessment products including a test assessment delivery system sold under its TESTNAV trademarks;

WHEREAS, Pearson is the owner of the rights and goodwill in the TESTNAV trademarks and TESTNAV QUALIFIED certification marks (collectively, the "Pearson Marks");

WHEREAS, Licensee is a [];

WHEREAS, Licensee desires to obtain a license to use the TESTNAV QUALIFIED certification marks, in the forms identified in Attachment A (collectively, the "TESTNAV QUALIFIED Marks") and posted online at www.testnavqualified.com, consistent with the Usage Guidelines in connection with computer hardware that has been tested and meets Pearson's Qualification Standards (the "Qualified Products"), as outlined in Section 1 of this Agreement;

WHEREAS, Pearson is willing to grant to Licensee a non-exclusive, non-transferrable license to use the TESTNAV QUALIFIED Marks in connection with the Qualified Products subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, each intending to be legally bound hereby, agree as follows:

1. Qualified Products

Licensee agrees to and shall only use the TESTNAV QUALIFIED Marks on or in connection with Qualified Products that have been tested and meet all of the requirements and conditions set forth in the Qualification Standards. Licensee agrees that (a) Pearson may from time to time, in its sole discretion, make reasonable changes or modifications to the Qualification Standards, (b) Licensee will make reasonable efforts to regularly review the Pearson Qualification Site and the Qualification Standards in an effort to maintain compliance with any such changes or modifications as may be made by Pearson, (c) Licensee's products must continue to meet current Qualification Standards (including any changes or modifications by Pearson) to be or remain Qualified Products.

2. License

Subject to the terms of this Agreement, Pearson hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, non-transferable right and license to use the TESTNAV QUALIFIED Marks for Qualified Products, as outlined in Section 1, in the manner prescribed in the Usage Guidelines.

Licensee authorizes Pearson to reference and link to Licensee's web-site and product materials in Pearson's materials and website associated with this program.

3. Ownership of Marks

Licensee acknowledges Pearson's ownership of the Pearson Marks and agrees that (a) it shall not take, or assist another in taking, any action which challenges, objects to, or otherwise is inconsistent with the validity of the Pearson Marks, the license granted herein, or Pearson's ownership of the Pearson Marks, (b) Licensee agrees not to and shall not adopt or use, any name, logo, mark, graphic, slogan, or other designation, simulation or colorable imitation, that includes or is confusingly similar to the Pearson Marks, other than the allowed use of the TESTNAV QUALIFIED Marks provided for in this Agreement, and (c) if Licensee is for any reason deemed to be the owner of any of the Pearson Marks, Licensee agrees to and shall take any and all steps necessary to transfer, assign and vest ownership in and to the Pearson Marks in Pearson. Licensee agrees that nothing in this Agreement shall give Licensee any right, title or interest in the Pearson Marks other than the right to use the TESTNAV QUALIFIED Marks in accordance with this Agreement.

4. Quality Standards

Licensee agrees that all uses of the TESTNAV QUALIFIED Marks shall only be on or in connection with Qualified Products, and that all such uses of the TESTNAV QUALIFIED Marks shall conform to the Usage Guidelines.

Licensee agrees, upon Pearson's request, to provide samples and permit reasonable inspection of Licensee's use of the TESTNAV QUALIFIED Marks, including but not limited to whether Licensee's products meet the Qualification Standards.

5. Representations

Licensee warrants and represents to Pearson that all services provided and all business conducted as in connection with the TESTNAV QUALIFIED Marks shall; (i) not harm the reputation of Pearson or its products; (ii) not employ deceptive, misleading, or unethical practices; (iii) not make any representations, warranties or guarantees to customers on behalf of Pearson; (iv) comply with all applicable federal and local laws and regulations (including but not limited to laws regulating your professional status and licensing requirements and US export regulations) and all other applicable government laws, statutes and regulations; (v) comply with all intellectual property and proprietary rights protection for Pearson software, development tools and other products; and (vi) not disassemble, decompile, reverse engineer, or otherwise reduce or seek to derive the object code for Pearson software and/or tools to a human readable (source code) form.

6. Disclaimer of Warranty

TO THE EXTENT PERMITTED BY APPLICABLE LAW, PEARSON SPECIFICALLY DISCLAIMS ANY AND ALL STATUTORY OR IMPLIED WARRANTIES RELATING TO LICENSEES PRODUCTS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

7. Limitation of Liability

PEARSON SHALL NOT BE LIABLE TO LICENSEE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL LOSSES OR DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST RECORDS OR DATA, LOST SAVINGS, LOSS OF USE OF FACILITY OR EQUIPMENT, LOSS BY REASON OF FACILITY SHUT-DOWN OR NON-OPERATIONS OR INCREASED EXPENSE OF OPERATIONS, OR OTHER COSTS, CHARGES, PENALTIES, OR LIQUIDATED DAMAGES, REGARDLESS OF WHETHER ARISING FROM BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS COULD HAVE BEEN REASONABLY FORESEEN.

8. Indemnification

Licensee agrees that Pearson shall have no liability to Licensee or any of Licensee's employees, agents, clients or customers and that Licensee shall defend, indemnify, and hold Pearson, its affiliates, subsidiary corporations and their respective officers, directors, employees, agents, successors and assigns harmless from and against any and all actions, demands, claims, and/or liabilities (including but not limited to, personal injury or product liability claims) arising out of: (i) Licensee's use of the TESTNAV QUALIFIED certification marks or (ii) the termination of this Agreement by Pearson, pursuant to the terms herein. In the event Pearson seeks indemnification from Licensee under this provision, Pearson will promptly notify Licensee in writing of the claim(s) brought against Pearson for which it seeks indemnification. Pearson reserves the right, at its option and sole discretion, to assume full control of the defense of such claim with legal counsel of its choice. Licensee may not enter into any third party agreement which would, in any manner whatsoever, affect the rights of, or bind Pearson in any manner, without the prior written consent of Pearson. In the event Pearson assumes control of the defense of such claim, Pearson shall not settle any such claim requiring payment from Licensee without Licensee's prior written approval. Upon Pearson's request, Licensee shall reimburse Pearson for any expenses reasonably incurred by Pearson in defending such a claim, including, without limitation, attorney's fees and costs, as well as any judgment or settlement of the claim in respect to which the foregoing relates.

Licensee shall defend, indemnify and hold harmless Pearson and its affiliates from and against any and all losses, damages, liabilities, claims and expenses (including all legal costs such as attorneys' fees, court costs, and settlement expenses) arising out of Licensee's, or Licensee's employee's, agent's affiliate's or client's, use, marketing or implementation of TestNav of the TestNav Certification marks.

9. Confidentiality

Confidential Information is information, whether or not marked or designated as confidential by the Disclosing Party information that, due to the nature of the information and the circumstances of disclosure, a reasonable person clearly would understand to be the Confidential Information of the Disclosing Party.

The Party receiving Confidential Information ("Receiving Party") and its Agents shall use reasonable means to safeguard and keep confidential the Confidential Information and to not, without the prior written consent of the Party disclosing the Confidential Information ("Disclosing Party"), disclose the Confidential Information in any manner, in whole or in part, or use the Confidential Information except for the purpose of evaluating the potential business relationship.

In the event that the Receiving Party or its Agents become legally compelled to disclose any of the Confidential Information, the Receiving Party will use its best efforts to promptly notify the Disclosing Party and to provide reasonable cooperation to the Disclosing Party in connection with the Disclosing Party's efforts to lawfully avoid or limit disclosure and preserve the confidentiality of the Confidential Information in such circumstances.

10. Communications

Licensee shall only use Pearson's name as provided for herein and only with regard to factual information that may be disclosed pursuant to this Agreement. Any form of public information disclosure relating to advertising, marketing or communications of any sort that contains Pearson information not of a factual nature and not provided for in this Agreement cannot be publicly disclosed without the prior written approval of Pearson. Pearson requests the opportunity to review all Press Releases or Media Communications prior to public disclosure.

11. Breach

Failure by Licensee to comply with any clause of this Agreement, including without limitation unauthorized use of the Pearson Marks or failure of one or more of Licensee's products to comply with the Qualification Standards, shall constitute a breach of this Agreement. If a breach occurs, Pearson will give Licensee written notice of noncompliance, requiring corrective measures by Licensee. If Licensee does not take the corrective measures or otherwise cure the breach to Pearson's satisfaction within fourteen (14) days of such notice, Pearson may terminate this Agreement and reserves the right to pursue any other legal remedy available to it, including but not limited to any action to recover damages and to remedy trademark infringement. Upon termination of this Agreement, Licensee agrees to and shall immediately cease any and all use of the TESTNAV QUALIFIED Marks, and shall recall or otherwise remove the TESTNAV QUALIFIED Marks from products already in the marketplace.

12. Notices

All notices and other communications made under this Agreement must be in writing and shall be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service to the parties to the following addresses:

Pearson

Attn: Contracts Department c/o Bobbi Jenks
2510 North Dodge Street
Iowa City, Iowa 52245

Copy to:
Pearson
Attn: Kaitlynn Griffith
2510 North Dodge Street
Iowa City, Iowa 52245

Licensee

Any notice or other communication shall be deemed to be given on the date of personal delivery or on the date of confirmed delivery.

13. No Transfer or Assignment

This Agreement is not assignable or transferable, and does not include a right to sublicense.

14. Third Party Beneficiaries. The Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of the Parties based upon this Agreement.

15. Governing Law

This Agreement will be construed and enforced in accordance with the laws of the State of Minnesota, without regard to that state's exclusive rules regarding choice of law. The parties hereto consent to exclusive personal jurisdiction and exclusive venue in the courts located in the State of Minnesota for all dispute arising out of or related to this Agreement or the subject matter hereof.

16. Entire Agreement

This Agreement constitutes the full and complete agreement of the Parties hereto with respect to the subject matter hereof and supersedes any and all prior understandings, agreements and amendments, whether written or oral. The section headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement. This Agreement shall not be modified or amended except by express written consent of the Parties. This Agreement may be executed in counterpart copies and receipt by facsimile transmission of executed copies will be legally binding.

IN WITNESS WHEREOF, the parties hereto have, through their duly authorized representatives, executed this agreement as of the day and year first above written.

NCS Pearson, Inc.

LICENSEE

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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