

## MADISON ASSESSMENT END USER LICENSE AGREEMENT

This is a legal agreement (the “Agreement” or “EULA”) between you, the party licensing the assessment testing (“You”, “Your”), and Madison Assessment LLC, a District of Columbia limited liability company (“Madison”), whose principal place of business is located at 3929 Morrison Street NW, Washington DC, 20015. This Agreement is part of a package that includes one or more assessment tests and certain electronic and/or written materials. This Agreement covers Your permitted download, installation and use of the Assessment Tests (defined below). BY CLICKING ON THE “AGREE” BUTTON AND PRESSING THE ENTER KEY, YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, AND AGREE TO BE LEGALLY BOUND BY THEM. If You do not agree with the terms of this Agreement, You may not download, install or use the Assessment Tests or the Madison Software (defined below). As used in this Agreement, “Assessment Tests” means the Information Literacy Test (“ILT”), the Scientific Reasoning Test (“SR”) and/or the Quantitative Reasoning Test (“QR”). “Madison Software” means any of Madison’s or its licensors’ proprietary software and any patches, updates, enhancements, improvements, additions, derivative works, and other modifications or revised versions that may be provided by Madison or its licensors from time to time to deliver the Assessment Tests via the Internet or in paper and pencil format. “Documentation” means Madison’s release notes, test manuals or other similar instructions in hard copy or machine readable form supplied by Madison to You that describes the functionality of the Assessment Tests and the Madison Software licensed hereunder.

1. **YOUR PAYMENT OBLIGATIONS.** You agree to pay all amounts due or incurred by You, including any late payment fees, as are specified in an invoice provided by Madison as set forth in the Ordering Agreement. If any authority imposes a duty, tax or similar levy, including any sales or use taxes (other than taxes based on Madison’s income), You agree to pay, or to promptly reimburse Madison for all such amounts. You are also responsible for paying all shipping charges, if any.
2. **GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement, Madison grants to You a limited, non-exclusive, non-transferable license (the “License”) to download, access, install and use the Assessment Tests and the Madison Software solely in accordance with the Documentation with the number of tests administered and for the testing period identified on the Ordering Agreement and only for Your internal operations. The Assessment Tests and the Madison Software may be made available to You to via download from a web site designated by Madison or in paper and pencil form. Madison or Madison’s licensors retain all title, copyright and other intellectual proprietary rights in, and ownership of, the Assessment Tests and the Madison Software regardless of the media upon which the original or any copy may be recorded or fixed. Any rights in the Assessment Tests and the Madison Software not granted herein are expressly reserved by Madison or its licensors.
3. **SCOPE OF USE.** The Assessment Tests and the Madison Software ordered by You may only be used for the period of time identified by You under an Ordering Agreement (the “Testing Window”).
4. **NO REVERSE ENGINEERING, OTHER RESTRICTIONS.** You shall not directly or cause any third party to: (i) sell, resell, redistribute or transfer any of the Assessment Tests or the Madison Software to any person; (ii) modify, translate, reverse engineer (except to the limited extent permitted by law), decompile, disassemble, create derivative works based on, sublicense, or distribute any of the Assessment Tests or the Madison Software; (iii) use any Assessment Tests or the Madison Software for the benefit of any third parties (e.g., in an ASP, outsourcing or service bureau relationship) or in any way other than in its intended manner; (iv) remove, alter or obscure any proprietary or copyright notice, labels, or marks on the components of the Assessment Tests or the Madison Software; or (v) disable or circumvent any access control or related security measure, process or procedure established with respect to the Assessment Tests or the Madison Software or any other part thereof. You are responsible for all use of the Assessment Tests and the Madison Software and any downloading, installing and using the Assessment Tests and the Madison Software and for compliance with this Agreement; any breach by You or any user shall be deemed to have been made by You.
5. **INTELLECTUAL PROPERTY.** Unless otherwise expressly stated herein, this Agreement does not transfer to you any title or any ownership right or interest in any Assessment Tests or the Madison Software or in any other intellectual property rights of Madison or in its licensors. You acknowledge and agree that the Assessment Tests and the Madison Software and all intellectual property rights in or associated with them are owned by Madison and/or its licensors.
6. **TECHNICAL SUPPORT.** You may obtain technical support for web-based testing Monday through Friday from 9:00 AM to 5:00 PM Eastern Time during the Testing Window.
7. **CONFIDENTIALITY.** As used herein, “Confidential Information” means any non-public technical or business information of Madison, the Assessment Tests and the Madison Software (or its licensors), including without limitation, any information, relating to Madison’s techniques, algorithms, software, know-how, current and future products and services, research, engineering, designs, financial information, procurement requirements, manufacturing, customer lists, business forecasts, marketing plans and information, the terms and conditions of this Agreement, and any other information of Madison (or its licensors) that is disclosed to or learned by You. You will take all reasonable measures to maintain the confidentiality of Madison’s Confidential Information, but in no event less than the measures You use to protect your own confidential information. You will limit the disclosure of Madison’s Confidential Information to Your employees with a bona fide need to access such Confidential Information in order to exercise your rights and obligations under this Agreement; provided that all such employees are bound by a written non-disclosure agreement that contains restrictions at

least as protective as those set forth herein. You agree that Madison will suffer irreparable harm in the event that you breach any obligations under this [Section 7](#) and that monetary damages will be inadequate to compensate Madison for such breach. In the event of a breach or threatened breach of any of the provisions of this [Section 7](#), Madison, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity, shall be entitled to a temporary restraining order, preliminary injunction and/or permanent injunction in order to prevent or to restrain any such breach.

8. TEST SECURITY. YOU ARE RESPONSIBLE TO MAINTAIN TEST SECURITY BY PROVIDING A SECURE TESTING ENVIRONMENT. ALL TESTS MUST BE ADMINISTERED BY A PROCTOR PROVIDED BY YOU.

Test security shall be achieved, at a minimum, through the following steps: (i) You will provide Madison with scheduled dates for testing, (ii) access to tests will be controlled on Madison's server, (iii) a password will be issued at the testing site for students to use, (iv) picture identification will be checked at Your testing site by Your proctor and (v) identification numbers will be included with all data sets sent to You by Madison.

9. FEEDBACK. You hereby agree that all inputs and data you provide to the Assessment Tests and the Madison Software (or that are provided by a user), and all results, answers, suggestions, comments or other feedback regarding the Assessment Tests, the Madison Software, the Documentation or Your use or implementation of the Assessment Tests, the Madison Software and/or Documentation ("Feedback") shall remain at all times Your property, provided, however, that You hereby grant Madison and its licensors and suppliers a perpetual, non-exclusive, worldwide, royalty free licensee to use, publish, copy, modify, prepare derivative works based upon, integrate and distribute any Feedback to improve the Assessment Tests and the Madison Software, to create new technologies or new features, functionality, or performance based upon the Feedback that Madison subsequently incorporates into its products or for Madison's or its licensor's research and reporting use (including without limitation, the publication of psychometric and other research results). As between You and Madison, all such resulting products shall be the sole and exclusive property of Madison. Accordingly, if You provide Feedback, You hereby agree that Madison may freely use, reproduce, license, distribute, and otherwise commercialize the Feedback in the Assessment Tests or the Madison Software or other related technologies without the payment of any royalties or fees.

10. INSTALLATION AND CONFIGURATION. You represent, warrant and covenant that You are solely responsible for the proper configuration and management of Your systems in order to access and use the Assessment Tests and the Madison Software, as well as the installation of any separately provided software. You further understand and hereby acknowledge that the failure to properly configure and manage systems, and the failure to properly install any separately provided software, may adversely affect the performance of the Assessment Tests and the Madison Software. You represent and warrant to adhere strictly to the recommended minimum requirements specified from time to time by Madison in the Documentation. You agree to indemnify and hold harmless Madison, its officers, directors, licensor, employees or agent against any claims, losses, damages, liabilities, costs, or expenses arising from the failure of the Assessment Tests or the Madison Software to perform as warranted where such failure to perform is attributable, in whole or in part, to (i) Your failure to meet Madison's minimum requirements, (ii) the failure of Your hardware to perform, (iii) the mis-configuration of Your systems or (iv) the improper installation of the Madison Software or separately provided software.

11. WARRANTY AND DISCLAIMER. Madison warrants that, for a period of ninety (90) days from the date the Assessment Tests and/or the Madison Software are made available to you (the "Warranty Period"), the unmodified Assessment Tests and the Madison Software will, under normal use, substantially perform the functions described in the Documentation. EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 11, THE ASSESSMENT TESTS AND THE MADISON SOFTWARE, AND ANY OTHER, DOCUMENTATION, MATERIALS AND/OR DATA PROVIDED BY MADISON ARE PROVIDED "AS IS," AND MADISON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, TITLE, NON-INFRINGEMENT, MERCHANTABILITY, SYSTEM INTEGRATION, OR FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE BY MADISON ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. MADISON DOES NOT WARRANT THAT THE ASSESSMENT TESTS, THE MADISON SOFTWARE OR ANY OTHER INFORMATION, MATERIALS, DOCUMENTATION OR TECHNOLOGY PROVIDED UNDER THIS AGREEMENT WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. YOU ACKNOWLEDGE THAT MADISON'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR YOUR BENEFIT ONLY.

12. EXCLUSIVE REMEDY. Madison's sole obligation and liability, and Your sole and exclusive remedy under the warranties set forth in [Section 11](#) shall be for Madison to use commercially reasonable efforts to remedy the problem, or to replace the defective product, provided that Madison is notified in writing of all warranty problems during the applicable Warranty Period.

13. LIMITATION OF LIABILITY. IN NO EVENT WILL MADISON'S AGGREGATE LIABILITY (INCLUDING, BUT NOT LIMITED TO, LIABILITY FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, MISREPRESENTATION AND OTHER CONTRACT OR TORT CLAIMS) ARISING FROM OR RELATED TO THIS AGREEMENT, OR THE USE OF THE ASSESSMENT TESTS OR THE MADISON SOFTWARE, EXCEED THE AMOUNT OF FEES YOU PAID TO MADISON FOR THE ASSESSMENT TESTS AND THE MADISON SOFTWARE

THAT GIVES RISE TO SUCH LIABILITY. UNDER NO CIRCUMSTANCES SHALL MADISON OR ANY OF ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY OF THE FOLLOWING: (I) THIRD PARTY CLAIMS; (II) LOSS OR DAMAGE TO ANY SYSTEMS, RECORDS OR DATA; OR (III) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES (INCLUDING LOST PROFITS AND LOST SAVINGS), IN EACH CASE EVEN IF MADISON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ARE SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING THE ADEQUACY OF ANY OUTPUT FROM THE ASSESSMENT TESTS OR THE MADISON SOFTWARE, AND FOR ANY RELIANCE THEREON.

14. **ESSENTIAL BASIS.** The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including without limitation, the economic terms, would be substantially different.
15. **VERIFICATION.** You agree that Madison or its designee shall have the right to periodically conduct on-site or other audits of Your use of the Assessment Tests and the Madison Software. These audits will be conducted during regular business hours, and Madison will make reasonable efforts to minimize interference with Your regular business activities. Alternatively, Madison may request that You complete a self-audit questionnaire in a form provided by Madison. If an audit or such questionnaire reveals unlicensed use of the Assessment Tests or the Madison Software, You agree to promptly order and pay for sufficient licenses to permit all usage disclosed or discovered.
16. **LEGAL COMPLIANCE; RESTRICTED RIGHTS.** You shall be responsible for, and agree to comply with, all applicable laws, statutes, ordinances, regulations and other types of government authority (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, false advertising, privacy and data protection, and publicity) (“Laws”). Without limiting the foregoing, You agree to comply with all U.S. export Laws, and all applicable export Laws of Your locality (if You are not located in the United States). The Assessment Tests, the Madison Software and Documentation are “commercial computer software” and “commercial computer software documentation,” and pursuant to FAR 12.212 or DFARS 227.7202, and their successors, as applicable, use, reproduction and disclosure of the Assessment Tests, the Madison Software and the Documentation are licensed with “Restricted Rights” governed by the terms of this Agreement.
17. **GOVERNING LAW; ARBITRATION.** This Agreement shall be governed by the laws of the District of Columbia, USA, without regard to choice-of-law rules or principles. You expressly agree with Madison that this Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods. Except for instance where equitable relief is permitted under this Agreement, any and all claims, disputes, or controversies arising under, out of, or in connection with this Agreement or the breach thereof (each, a “dispute”) shall be submitted to the chief operating officer (or equivalent) of each party (or their designee) for a good faith attempt to resolve the dispute. The position of each party shall be submitted, and the individuals promptly thereafter shall meet at a neutral site. If the parties are unable to reach agreement within fifteen (15) days following such meeting, then any dispute which has not been resolved within said fifteen (15) days by good faith negotiations between the parties shall be resolved at the request of either party by final and binding arbitration. Arbitration shall be conducted in Washington, D.C., in accordance with the Commercial Arbitration Rules of the American Arbitration Association, by a single arbitrator mutually agreed upon by the parties, who shall be knowledgeable in the commercial aspects of software licensing and technical consulting services. The arbitrator shall make detailed written findings to support the award, and shall make commercially reasonable efforts to render a decision no more than sixty (60) days after the parties finally submit the claim, dispute or controversy to the arbitrator. The prevailing party in any such proceeding shall be entitled to recover its reasonable attorneys’ fees and expenses, and the expenses incurred in the arbitration. Judgment upon the arbitration award may be entered in any court having jurisdiction.
18. **SEVERABILITY.** If any provision of this Agreement is held to be illegal or unenforceable for any reason, then such provision shall be deemed to be restated so as to be enforceable to the maximum extent permissible under law, and the remainder of this Agreement shall remain in full force and effect.
19. **FORCE MAJEURE.** Neither Party shall be liable for any delay or failure due to a force majeure event and other causes beyond its reasonable control. This provision shall not apply to Your payment obligations.
20. **NOTICES.** Any notices under this Agreement to Madison will be personally delivered or sent by certified or registered mail, return receipt requested, or by nationally recognized overnight express courier, to the address specified herein or such other address as Madison may specify in writing. Such notices will be effective upon receipt, which may be shown by confirmation of delivery. All notices to Madison shall be sent to the attention of President (unless otherwise specified by Madison).
21. **ASSIGNMENT.** You may not assign or otherwise transfer this Agreement without Madison’s prior written consent. Notwithstanding the foregoing, either party may assign this Agreement without the consent of the other party if a majority of its outstanding voting capital stock is sold to a third party, or if it sells all or substantially all of its assets. This Agreement shall be binding upon and inure to the benefit of the parties’ successors and permitted assigns.
22. **FURTHER ASSURANCES.** You agree, at Madison’s request and reasonable expense, to provide reasonable assistance and cooperation to Madison and its designees, to execute documents and to take such further acts as reasonably requested by

Madison to acquire, transfer, maintain, perfect, and enforce Madison's intellectual property rights as described in this Agreement.

23. GENERAL. This Agreement is the parties' complete agreement regarding its subject matter, superseding any prior oral or written communications. Under no circumstances will the terms of any purchase order issued by You control or otherwise negate the terms set forth in this Agreement. Waivers, amendments or changes to this Agreement must be in mutually executed writings to be effective. Sections 1, 3, 4, 5, 6, 7, 8-23 and all warranty disclaimers and use restrictions shall survive the termination or expiration of this Agreement. The parties are independent contractors for all purposes under this Agreement.

BY CLICKING ON THE "AGREE" BUTTON AND PRESSING THE ENTER KEY, YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, AND AGREE TO BE LEGALLY BOUND BY THEM.