



Terms and Conditions of Sale and Use of DriveSafe Diagnostics Assessment Products and Services

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1 Document Version Control

Version	Date Released
V1.0-Terms-Conditions	November 28, 2023

2 Definitions and Notes

- "Ts & Cs" means these Terms and Conditions
- "Product(s)" means assessment instruments (including but not limited to software, websites, digital apps and reports) and related materials (including but not limited to software, administration and user reference materials, manipulatives, reports and services) published, supplied or made available by DriveSafe Diagnostics pursuant to these Ts &Cs.



- **“Service(s)”** means DriveSafe Diagnostics’ websites, apps, digital products, and everything that powers them.
- **“Customer”** means the qualified and registered user of the Product(s) and Services(s) whose eligibility to use the Product(s) and Service(s) is determined by DriveSafe Diagnostics in its sole discretion, who are individually and collectively are referred to as "Customer."
- **“DriveSafe Diagnostics”** means DriveSafe Diagnostics Pty Ltd ABN 14667326472 (“DriveSafe Diagnostics” or “us”) with registered office at 28 Cheviot Street, Ashbury, NSW 2193, Australia.

3 Terms and Conditions of Sale and Use of DriveSafe Diagnostics Products

IMPORTANT NOTE: These Terms and Conditions (Ts & Cs) apply to the products and services listed on the www.drivesafediagnosics.com website, unless otherwise noted.

These Terms and Conditions of Use are subject to change without notice; the Terms and Conditions of Use posted and applicable at the time of order shall govern each order.

3.1 Acceptance of Terms and Conditions of Use

Sales and/or provision of Product(s) or Service(s) (including licensed assessments) by DriveSafe Diagnostics and the purchase and use of those Products by the Customer are conditioned upon acceptance of these Ts & Cs. Customer agrees to these Ts & Cs by submission of user qualifications, completion of an account registration process, use of any complementary test reports, online purchase of credits or a subscription or by paying part or all of a DriveSafe Diagnostics invoice. These Ts & Cs constitute the entire agreement between DriveSafe Diagnostics and the Customer and supersede any purchase order terms associated with a Purchase Order (P.O.) number on any order. If any provision of these Ts & Cs 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.

The law of the State of New South Wales, Australia, will govern these Ts & Cs, and the Customer and DriveSafe Diagnostics submit to the non-exclusive jurisdiction of the courts with jurisdiction in the State of New South Wales, Australia.

DriveSafe Diagnostics provides Customers access to its websites and related applications and services (collectively, “Services”), which may be delivered to you through the Internet via your browser or app (mobile or otherwise). Your use of the Services is subject to all terms, conditions, and policies referenced herein, posted elsewhere on this site or in the legal information section of the applicable app, and, where accessing or purchasing products.



It is important to us that the Services provide you with a helpful and reliable experience. To protect our rights and yours, we have prepared the Terms of Use that apply to all users of the Services. If you have any questions concerning the Terms of Use, please contact us at info@drivesafediagnosics.com.

Please note that your access to, and use of, other DriveSafe Diagnostics and third-party products and services linked to or from, or accessed or purchased via, these services may be subject to additional usage terms, purchase terms, and/or privacy policies that may vary from the terms herein so please make sure to check the terms and policies applicable to such other products and services prior to use.

By using the services, you represent that you have read and understood the terms of use and agree to be bound by them. You agree to use the services in a manner consistent with all applicable laws and regulations and in accordance with the terms of use. Do not use the services if at any time you do not agree with any part of the terms of use.

3.2 User Licence

You are granted a limited, personal, non-exclusive, non-assignable, and non-transferable licence to access and use the Products and Services subject to the terms and restrictions set forth herein.

Use of the Products and Services for any purpose other than as contemplated in the Terms of Use is a violation of DriveSafe Diagnostics and/or its licensors' copyright and proprietary rights. Neither DriveSafe Diagnostics nor its licensors guarantee the accuracy or completeness of any information or content. You agree that you must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content. All rights not expressly granted herein are reserved by DriveSafe Diagnostics.

Certain features of the Products and Services may be provided by third parties and the use of such features may be conditioned upon your agreement to such third parties' terms of use and privacy policies. You understand that the Terms of Use applies only to the parts of the Services that reside on DriveSafe Diagnostics' (or its service providers') servers and not to those that reside on third-party servers not controlled by DriveSafe Diagnostics.

3.3 Change Control

DriveSafe Diagnostics reserves the right to regularly update the features and functionality of Product and Services covered by these Terms and Conditions and the User licence. Details of Product version changes will be made available on our Product websites and also in the App Store from which iPad products are downloadable.



3.4 Privacy

DriveSafe Diagnostics is concerned about the safety and privacy of all users of the Services. Please read our [Privacy Policy](#), which is an important part of the Terms of Use.

3.5 Limited Warranty

DriveSafe Diagnostics warrants that the Products and Services published directly or under licence by DriveSafe Diagnostics in their standard form, will not infringe any valid, third-party, 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 DriveSafe Diagnostics Products in combination with any systems, software, or equipment, supplied by a third party.

If the Customer promptly notifies DriveSafe Diagnostics of an infringement claim concerning a DriveSafe Diagnostics Product and accords DriveSafe Diagnostics the right, at its sole option and expense, to handle the defence of the infringement claim, DriveSafe Diagnostics will indemnify and hold the Customer harmless from/against such infringement claim related solely to that DriveSafe Diagnostics Product. DriveSafe Diagnostics may, in its sole discretion, furnish the Customer with a non-infringing replacement product within sixty (60) days or repurchase the remaining unconsumed DriveSafe Diagnostics Product credits.

3.6 Disclaimer of Warranties

You expressly understand and agree that:

- 1) your use of the Services is at your own risk. The services are provided on an "as is" and "as available" basis. You acknowledge and agree that no warranties of any kind, whether express or implied, are made by DriveSafe Diagnostics or its licensors and DriveSafe Diagnostics and its licensors expressly disclaim all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement;
- 2) neither DriveSafe Diagnostics nor its licensors make any warranty that:
 - a) the services will meet your requirements;Melanie Rooney
 - b) the services will be uninterrupted, available for any length of time, secure, or error-free;
 - c) the results that may be obtained from the use of the services will be accurate or reliable;
 - d) the quality of any products, services, information, or other material purchased or obtained by you through the services will meet your expectations; and
 - e) any errors or defects in the services will be corrected; and



- 3) any material uploaded/downloaded or otherwise obtained from the services is done at your own discretion and risk; neither DriveSafe Diagnostics nor its licensors shall be liable, and you will be solely responsible, for any and all loss, or corruption, of data uploaded or inputted by you through the use of the services, and all servicing, repair, or correction and any damage to your hardware and software that may result from the use of the services.

3.7 Limitation of Liability and Limitation on Claims

Except where such limitations are prohibited by operation of law, in no event will DriveSafe Diagnostics be liable for any indirect, incidental, consequential, exemplary, or special damages arising out of this agreement, purchase or use of DriveSafe Diagnostics products or services. Notwithstanding any other provision or agreement between the customer and DriveSafe Diagnostics, DriveSafe Diagnostics' total liability to any party, arising out of this agreement, purchase, or use of products, except as it relates to DriveSafe Diagnostics' wilful misconduct, will not exceed the amount paid by customer for the products or services.

In no event shall DriveSafe Diagnostics or its employees, agents, licensors, or contractors be liable for any direct, indirect, incidental, special, consequential, punitive or exemplary damages, damages for loss of profits, goodwill, use of data, or other intangible losses (even if such party has been advised of the possibility of such damages), resulting from:

- 1) the loss of data and/or the use or the inability to use the services;
- 2) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the services;
- 3) unauthorized access to or alteration of your transmissions or data;
- 4) statements or conduct of any third party on the services; or
- 5) any other matter relating to the services

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, the limitations above may not apply to you.

You agree to exclude DriveSafe Diagnostics and its subsidiaries, affiliates, officers, agents, directors, licensors, contractors and employees for all liability for loss of profit, loss of business, loss of reputation, loss of revenue and loss of opportunity.

You agree to indemnify and hold DriveSafe Diagnostics and its subsidiaries, affiliates, officers, agents, directors, licensors, contractors and employees harmless from any claims, actions, costs, liabilities, expenses and damages, including reasonable attorneys' fees and



expenses, made against DriveSafe Diagnostics by any third party due to or arising out of your use of the Services, your connection to the Services, your breach of any representation, warranty or obligation, your violation of this Terms of Use, or your violation of any rights of another user.

3.8 Use of Product

As a condition of your use of DriveSafe Diagnostics' Products and Services, you warrant to DriveSafe Diagnostics that you will not use the Product and Services for any purpose that is unlawful or prohibited by the Terms of Use. You agree not to obtain or attempt to obtain any materials or information not intentionally made available to you on the Services.

Use of the Products Services is subject to DriveSafe Diagnostics' Acceptable Use Policy ("AUP") found here <https://drivesafediagnosics.com/acceptable-use> By accessing or using the Product(s) or Service(s) you agree to comply with the terms of the AUP. DriveSafe Diagnostics reserves the right, at its sole discretion, to suspend or terminate access to and use of the Product(s) or Service(s), or to take any other appropriate legal action, with respect to any user that DriveSafe Diagnostics reasonably believes has undertaken, or participated in, any activities that violate the terms of AUP, or whose actions have, or are likely to, otherwise cause harm to DriveSafe Diagnostics, the Services, the Service Network (as defined in the AUP), or other users, or for any other reason at the sole and absolute discretion of DriveSafe Diagnostics.

DriveSafe Diagnostics reserves the right to refuse any order or terminate any Customer Account where it has a belief the Product(s) or Service(s), will not be properly used. The Customer agrees that it is the Customer's responsibility to use any Product(s) or Service(s) in accordance with applicable professional guidelines and warrants they have the appropriate qualifications and experience. The Customer understands and agrees that the Product(s) and Service(s), are intended to be used as tools in the overall assessment and are not designed to be used alone or to replace the Customer's professional judgment. DriveSafe Diagnostics 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 Product(s) or Service(s).

Users must agree to guard against the improper use of the Product(s) or Service(s), in order to retain the right to purchase those Product(s) or Service(s). To protect their security and value, Product(s) and Service(s), may not be resold, re-licensed, transferred or otherwise further distributed without prior written permission from DriveSafe Diagnostics. Reselling on any online site or by any other method is strictly prohibited and will disqualify the reseller from future purchases of DriveSafe Diagnostics Products or Services.

The Customer's purchase of DriveSafe Diagnostics' Product(s) or Service(s) 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-DriveSafe Diagnostics scoring system or software. However, if the Customer licenses and uses DriveSafe Diagnostics 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 DriveSafe Diagnostics (see Section 10).



Violation of these Ts & Cs may result in DriveSafe Diagnostics rejecting any future orders from the Customer.

3.9 Product Ordering Information

All DriveSafe Diagnostics Product(s) or Service(s) have instructions available online regarding how to obtain and order our products. Currently available products are:

- **DriveSafe DriveAware for iPad** (<https://drivesafedriveaware.com/getting-started>)

3.10 Stored Information Destruction

The Customer may request destruction of all product test and/or account information held by DriveSafe Diagnostics in association with a Customer's account. A Customer's patient may request destruction of their own test details stored by DriveSafe Diagnostics within a Customer account.

Such destruction requests should be emailed to info@drivesafediagnosics.com.

3.11 Qualifications of Customer

Not everyone who wishes to obtain an account or licence to use a DriveSafe Diagnostics product is qualified to do so. The Product(s) and Service(s) listed on the <https://drivesafediagnosics.com> website are carefully developed assessment instruments that require specialised training to ensure their appropriate professional use. Eligibility to be approved for an account by DriveSafe Diagnostics to use and purchase test reports is therefore restricted to individuals with specific training and experience in a relevant area of assessment and are registered with Australian Health Practitioner Regulation Agency (AHPRA) and/or are eligible for membership with their national professional association.

DriveSafe Diagnostics is committed to upholding these standards, and we reserve the right to require additional evidence of each customer's qualifications. DriveSafe Diagnostics has the sole right to determine whether a customer is qualified and under what classification. In addition, DriveSafe Diagnostics retains the right to withhold or withdraw approval for accounts or licences where there is evidence of violation of commonly accepted testing practices or any of the Terms and Conditions of Use.

Test users must agree to guard against the improper use of DriveSafe Diagnostics' tests in order to retain the right to license those tests. To protect their security and value, tests and



scoring keys must be kept in locked files or storage cabinets accessible only to authorised personnel.

Test materials may not be resold or otherwise distributed or used as tools for performance coaching or to design performance coaching materials.

3.12 Rules Governing Licence of Product(s) and Services(s) to Organisations

Organisations are subject to the guidelines set forth in this document and must have appropriately qualified individuals on staff in order to license and use DriveSafe Diagnostics' products.

Qualified individuals should comply with the requirements of their respective institutions concerning purchase. DriveSafe Diagnostics may not be able to process orders without the appropriate purchase order(s) or other documentation required by the institution.

If individual staff members of an organisation successfully apply for a Customer Account to use a Product or Service, then they will be responsible for the safe keeping of their credentials (username, password and PIN). If they share these credentials with a third party who accesses the Product(s) or Service(s) then the Customer to whom the credentials were issued will be held liable for damage, copyright or any Ts and Cs breaches. The organisation may also be held liable if unable to prove that their staff were adequately informed of their responsibilities.

DriveSafe Diagnostics requires that its Product(s) and Service(s) are used only by the Customer; this means that organisations may need to apply for multiple Customer Accounts and credits purchased on a "per Customer Account" basis. To facilitate such organisations, DriveSafe Diagnostics:

- can provide a **Multiple Account Credit Purchase Order Form** which allows organisations to state the credits it wishes to purchase and assign to which of their staff Customer Accounts. We would then issue a single Tax Invoice to an organisation for payment of all listed credits.
- understands that sometimes credits bought by an organisation for a Product or Service and assigned to one Customer Account may need to be moved to another Customer Account under certain circumstances (e.g. if a staff member leaves an organisation, or if a staff member takes extended leave or no longer carries a caseload that justifies use of the purchased credits); in these circumstances. DriveSafe Diagnostics will accept written requests to reasonably move credits from one Customer Account to another and will make best efforts to action requests that it deems reasonable.

An Administration fee may be applicable for these changes.



To request a **Multiple Account Credit Purchase Order Form** or to request transfer of credits between accounts, please email info@drivesafediagnostisc.com or the support channel for the Product or Service in question.

3.13 Pricing and Payment

DriveSafe Diagnostics reserves the right to amend any of its pricing at any time without prior written notice, and the pricing in effect at the time of your purchase shall apply. DriveSafe Diagnostics further reserves the right to correct pricing inaccuracies, errors, or omissions, and is not required to supply you with products or services at an incorrectly displayed price, as determined in DriveSafe Diagnostics' sole discretion. DriveSafe Diagnostics, without any penalty or liability, also reserves the right, at any time and without notice to you: (1) to publish or replace current DriveSafe Diagnostics Products with new, revised, or updated products at any time; and (2) to place any DriveSafe Diagnostics Product "out of print" or otherwise discontinue offering a DriveSafe Diagnostics Product for purchase.

All prices published on DriveSafe Diagnostics websites are exclusive of applicable Goods and Services Tax (GST) for Customers. GST will be calculated at checkout based on Customer address geo information provided at registration. Price changes will not affect orders in respect of which DriveSafe Diagnostics has already sent to the Customer an order confirmation.

If payment is made online, a processing fee is applicable and calculated at checkout. Payment must be made in Australian dollars if the Products are supplied in Australia and in New Zealand dollars if the Products are supplied in New Zealand.

3.14 Unused Credit Purchase Expiry

Unless otherwise stated or agreed with a Customer, DriveSafe Diagnostics reserves the right to expire any unused purchased credits 2 years from purchase date.

3.15 Termination

DriveSafe Diagnostics reserves the right at any time, and from time to time, to discontinue, temporarily or permanently, the Services or any part thereof or terminate any user's access to the Services or any part thereof. DriveSafe Diagnostics may also modify, delete, or adapt the Services at any time without any notice or obligation to the user at DriveSafe Diagnostics' sole discretion.

Your right to use and otherwise access the Services is automatically terminated if you violate the Terms of Use. You agree that DriveSafe Diagnostics will not be liable to you or any third



party for any modification, suspension, or discontinuation of the Services, or any part thereof. Upon termination for any reason of your right to use and otherwise access the Services, you must cease all access to the Services. All provisions of the Terms of Use as to limitation and disclaimer of warranties, limitation of liability, DriveSafe Diagnostics' ownership rights, and your representations and indemnities shall survive termination.

3.16 Copyright and Trade Secrets

DriveSafe Diagnostics' Products and Services 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. DriveSafe Diagnostics software outputs, including but not limited to reports, are protected as trade secrets.

DriveSafe Diagnostics considers its secured tests to be trade secrets. The test questions and answers, manuals and other materials constitute highly confidential, proprietary testing information that DriveSafe Diagnostics takes every precaution to protect from disclosure beyond what is absolutely necessary for the purpose of administering a test. Even in the development stage, the assessment materials are treated confidentially by DriveSafe Diagnostics employees, agents and consultants.

DriveSafe Diagnostics continues to guard the secrecy of its test materials once they become finished products. They are sold only to qualified individuals who are bound by the ethical standards of their profession to protect the integrity of the materials by maintaining the confidentiality of the test materials. DriveSafe Diagnostics has Qualification Policies that are strictly enforced via our application processes which requires acceptance by the qualified purchaser indicating that the purchaser is so qualified, that the purchaser will abide by the Terms and Conditions of Sale and Use and that all ethical rules will be observed by the purchaser. Therefore, DriveSafe Diagnostics strongly opposes the release of any test materials to non-qualified individuals.

DriveSafe Diagnostics asserts that strong measures are necessary to protect the validity of its valuable testing instruments/products. DriveSafe Diagnostics believes that any reproduction of its tests without the prior written permission from DriveSafe Diagnostics may constitute copyright infringement and is a violation of the Terms and Conditions of Sale and Use of DriveSafe Diagnostics Products. Furthermore, disclosure of the assessments may threaten the ongoing security, reliability, and/or validity of the test and the test's results, and therefore, the value and usefulness of the test.

It is the position of DriveSafe Diagnostics that any reproduction of its test or other published materials, whether reproduced on paper or electronically (this includes use intake forms, research, video or audio taping administrations, photos, or any image capturing system), constitutes an infringement of the copyright and other proprietary rights in the tests or other published materials. In DriveSafe Diagnostics' view, reproduction of its test materials without prior written consent DOES NOT fall within the "fair use" exception of the copyright law. Therefore, please contact DriveSafe Diagnostics at info@drivesafediagnosics.com for any



permission request to make reproductions of any of the DriveSafe Diagnostics tests or other DriveSafe Diagnostics materials.

The Customer acknowledges and agrees that the use or disclosure of DriveSafe Diagnostics trade secrets or confidential information may cause DriveSafe Diagnostics irreparable harm for which remedies other than injunctive relief may be inadequate. If the Customer is required to disclose secure test materials pursuant to a subpoena or court order, please refer to the DriveSafe Diagnostics' Litigation clause in this document.

3.17 Trademarks

Any unauthorised use of DriveSafe Diagnostics' trademarks is strictly prohibited. Requests to use any trademark should be addressed to the:

DriveSafe Diagnostics - Marketing
28 Cheviot Street
Ashbury NSW
Australia 2193

DriveSafe Diagnostics reserves the right to amend these policies at any time. Your continued use of these terms shall indicate your acceptance of these terms and changes.

3.18 Demands for materials in connection with Litigation

DriveSafe Diagnostics understands that from time-to-time Customers may receive demands from third parties to reproduce, produce or disclose copyright-protected and/or trade secret protected test materials in connection with litigation. If such demands were to be fully complied with, the material disclosed might include test booklets, answer sheets, record forms, manuals, user's guides, scoring software, computer generated output reports, or other published and unpublished material protected by DriveSafe Diagnostics under intellectual property law.

Should litigation reach the stage where a court considers ordering the release of proprietary test materials to non-professionals such as counsel, we request that the court issue a protective order prohibiting parties from making copies of the materials; requiring that the materials be returned to the professional at the conclusion of the proceeding; and requiring that the materials not be publicly available as part of the record of the case, whether this is done by sealing part of the record or by not including the materials in the record at all.

In addition, testimony regarding the items, particularly that which makes clear the content of the items, should be sealed and again not be included in the record. Pleadings and other documents filed by the parties should not, unless absolutely necessary, make specific reference to the content of or responses to any item, and any portion of any document that does should be sealed. Finally, we ask that the judge's opinion, including both findings of fact and conclusions of law, not include descriptions or quotations of the items or responses. We think this is the minimum requirement to protect our copyright and other proprietary rights to the test, as well as the security and integrity of the test.



If you have other questions, please contact us: info@drivesafediagnosics.com

3.19 Permissions and Licensing

Reproduction of any purchased materials requires the prior written consent of DriveSafe Diagnostics. Questions and answers, including practice questions and answers, may not be reproduced without written permission, regardless of the number of lines or items involved. Test copies may not be bound in theses, dissertations or reports placed in libraries, generally circulated, or accessible to the public, or in any article or text of any kind without written permission from DriveSafe Diagnostics. Please contact info@drivesafediagnosics.com to request permission.

DriveSafe Diagnostics will consider requests for permission to reproduce, modify, or translate part or all of any copyrighted publication and will also consider the granting of licenses for use of our copyrighted materials.

Requests to reproduce, translate, adapt, modify, or make special versions of these publications must be in writing and directed and requests to copy any test materials must be in writing and directed to: info@drivesafediagnosics.com

Once approved, any reproduction must include acknowledgement of the source, including author, test, publisher, and copyright notice.

3.20 Permission to Use Copyrighted Test Parameters

DriveSafe Diagnostics has the sole right to authorise reproductions of any portion of its published tests, including test parameters. Copying of test norms without authorisation is a violation of copyright. The term "copying" includes, but is not limited to, entry of test norms into a computer memory for purposes of test processing, scoring, or reporting. Any person or organisation wanting to use DriveSafe Diagnostics' test parameters must submit a formal written request to the General Manager. If permission is granted, a fee may be charged. Permission from DriveSafe Diagnostics for use of test parameters does not imply endorsement of, or responsibility for, the accuracy or adequacy of any test processing, scoring, or reporting service.

3.21 Permission for Research

Permission is not needed for research by individuals who are qualified to license and administer the tests; however, no reproduction of test materials is allowed for any purpose,



including articles and reports based on research, without the prior written consent of DriveSafe Diagnostics.

3.22 Force Majeure

Non-performance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, act of God, war, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party and not due to its fault or negligence.

3.23 Export Law Assurance

If the product(s) ordered from DriveSafe Diagnostics have been rightfully obtained within Australia and New Zealand, Customer agrees and certifies that neither the products nor any technical data received by the Customer from DriveSafe Diagnostics will be exported outside of Australia and New Zealand, except as authorised by the laws and regulations of Australia and New Zealand.

3.24 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 DriveSafe Diagnostics.
- 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 health professional that administered the test.
- Test materials must not be resold, re-licensed, transferred or otherwise redistributed for any purpose without prior written permission from DriveSafe Diagnostics

3.25 Disclosure of Test Record Forms



DriveSafe Diagnostics' test materials are protected by copyright and trade secret law, and the widespread dissemination of test record forms (which may disclose test questions and answers) would violate restrictions on the use of DriveSafe Diagnostics' test materials and would cause great harm to DriveSafe Diagnostics', the test materials, the clinical community, and to the public at large.

Accordingly, we will continue to advise our Customers that DriveSafe Diagnostics' test materials are trade secrets and their usefulness and value would be compromised if they were generally made available to the public. This position is also consistent with our practice of ensuring, through our terms and conditions of use, that all purchasers have the appropriate qualifications to administer and interpret the test materials being purchased and that such purchasers agree to maintain the confidentiality of the test materials.

3.26 Second opinions

DriveSafe Diagnostics recognises that, in some cases, a carer or guardian may wish to consult a second professional regarding a wards' test scores. In these situations, we have no objection to a reproduction of the completed test protocol/report being provided to another qualified professional for the purpose of review; however, the materials should pass directly from professional to professional and not through the hands of the carer, guardian or their lawyer.

3.27 Ethical issues

The original dissemination of DriveSafe Diagnostics' test materials are carefully restricted to individuals with a professional background in psychology, occupational therapy, medicine, nursing physiotherapy or speech pathology, and only individuals with appropriate training in clinical assessment should interpret the tests. The confidentiality of test questions, responses, and scores are paramount to maintaining the integrity, reliability, and validity of the tests. Any leakage of test items will severely compromise the value and usefulness of the tests.

3.28 Electronic Storage of Assessments and Test Results

Please refer to the DriveSafe Diagnostics [Privacy Policy](#) for details of what information DriveSafe Diagnostics stores electronically, where it stores it and how it may be used.

In terms of Customer electronic storage, we provide the following guidelines to assist you with maintaining the security of the assessment instrument and to address the need to store the information electronically. When DriveSafe Diagnostics grants permission to make electronic file copies of the tests and products it publishes, we require those who would do electronic storage to comply with the following guidelines.



Permission to make electronic file copies of the tests is predicated on the following conditions:

- Ensure that the test items not be included whenever possible;
- That the tests are kept separate from other file material so that they are not inadvertently disclosed in response to a general request to view medical records. Of course, there are situations that require disclosure of test material, but these are rare and are addressed with legal protective orders; and
- That the file containing the tests be password protected and secure from unqualified (per the DriveSafe Diagnostics [Qualification of Customer clause](#)) users.

3.29 Posting reproductions or an administration of a test on-line

Agreement to DriveSafe Diagnostics' Terms and Conditions of Sale and Use of DriveSafe Diagnostics Products are part of the purchase process for any of its assessments. For a variety of reasons, it is critical that all our customers (including students, as part of their graduate program) adhere to ethical and professional policies for the appropriate protection of secure assessment content. In contrast to the past where videotapes of assessments were relegated to the media lab at the graduate program, technology now makes it very easy for anyone to record themselves administering an assessment and post that recording to a mass media site. While recording an assessment administration remains an important part of the teaching and supervision process, students should be reminded that:

- Test materials (text, graphic images, or the oral reading of items) may not be displayed, reproduced, or performed (e.g., filming an administration) in any manner, electronically or otherwise, including posting on any mass media site, such as YouTube or any other similar site, without the prior written permission of DriveSafe Diagnostics.

This means that posting a video on a mass media site, such as YouTube or any other site, of an administration of a secure, copyrighted assessment should never occur without the prior written consent of DriveSafe Diagnostics. When a video of this nature becomes public on any forum, it is considered an unauthorised reproduction or performance of the copyrighted material (whether the materials are viewable or not). In addition to the legal concern, all clinicians should be aware that the availability of secure test content to unqualified users is damaging to the test's reliability and validity.

3.30 Variant testing conditions

3.30.1 Audio/video recording of test administration

Audio or videotaping or other non-standard conditions may invalidate the use of research based parameter-referenced scores. Research based parameters for standardised tests are developed under strict conditions. If such conditions are not met, the scaled scores obtained



by application of the test parameters are not statistically defensible. Although it is the position of DriveSafe Diagnostics that the validity of any scaled score that results from a non-standard administration should be interpreted with caution, it is the responsibility of the individual clinician administering the test to ensure that the results of the assessment are an accurate reflection of the examinee's abilities. In rare high stakes legal evaluations with a valid court order mandating the audio or video recording of an evaluation for review only by other qualified examiners, the examiner and reviewers have the responsibility to determine if this variant testing condition has or had a material impact on the examinees test performance considering issues such as distractions and rapport. We request that any such recordings should be made the subject of a protective order to ensure the security of the test items and content. Please refer to the section herein titled Litigation which describes what should be included in a protective order. Additionally, recordings should not be allowed in any setting where the security of the recording cannot be adequately protected. Additionally, an audio or video taping of an administration where any test materials are recorded is a reproduction under copyright law. If done without our written permission, such acts may be an infringement of the assessment's copyright.

3.30.2 Telehealth test delivery administration

There is emerging evidence supporting test validity when administering the test via a telehealth method developed under strict testing conditions. If such conditions are not met, the scores may not result in statistically accurate scores. Please refer to the product website/s for further information related to telehealth test administration. Delivering our assessments via a teleconference or other similar method is a reproduction of our assessments under federal copyright law that requires the written permission from the copyright owner. If done without our written permission, such acts may be an infringement of the assessment's copyright.

DriveSafe Diagnostics currently permits the use DriveSafe Diagnostics products and copyrighted materials under the following conditions:

- Qualified professionals are hereby granted a limited and revocable permission to utilise appropriate non-public facing teleconferencing software and tools to assist in the remote administration of DriveSafe Diagnostic assessment content, consistent with this policy. Before test administration, the qualified professional must obtain documented agreement from the examinee that the session will not be recorded, reproduced or published, and that copies of the materials will not be made. Further, the qualified professional may not utilise recording capabilities to record live test administrations.
- This permission is intended to include the use of non-public facing screen-mirroring and screen share methods to remotely share test item content with examinees on a computer screen and capture responses either verbally or through other means.
- This permission is not intended to allow for use of photocopying, scanning, or duplication of test protocols, including any screen capture or session recording technology, but is merely intended to support practical live delivery of tele-health services.



- This permission is also not intended to allow for any modification to the original test content as it currently appears. Any use of original test content must include copyright notices as contained in the materials and show the copyright notice when displayed. Further requests to modify, translate, digitise, or alter test content should be directed to info@drivesafediagnosics.com.

3.31 Links to and from Other Websites

You may have linked to the Services from a third-party website and the Services may provide links to other third-party websites or resources (collectively, "3P Sites"). Because we do not control such 3P Sites you acknowledge and agree that DriveSafe Diagnostics is not responsible or liable for the content, products or performance of those 3P Sites, and you hereby irrevocably waive any claim against DriveSafe Diagnostics with respect to such sites. DriveSafe Diagnostics reserves the right to terminate any link at any time without notice. The inclusion of a link to such 3P Sites does not constitute or imply an endorsement, authorization, sponsorship, or affiliation by DriveSafe Diagnostics of that 3P Site, or any products or services provided therein. The information practices of those 3P Sites are not covered by the Terms of Use or any other policies or terms applicable to the Services. We recommend that you review any terms of use and privacy policy of those 3P Sites linked to the Services before providing any information to those websites or using their products and services.

Please note that the Services may also provide links to other sites brought to you by DriveSafe Diagnostics. The privacy statement and terms of use of other DriveSafe Diagnostics sites may vary from the Terms of Use. Please review the privacy statements, terms of use and other policies or terms that may apply to other DriveSafe Diagnostics sites prior to your use of such sites.

3.32 Changes in Terms of Use

DriveSafe Diagnostics has the right to change or modify the Terms of Use at any time, including the AUP, Store T&C's, and Privacy Policy applicable to your use of the Services. Such changes or modifications shall be effective immediately upon notice, which may be given by means including, but not limited to, posting within the Services, or by electronic or conventional mail, messaging, or by any other means by which you may obtain notice. Any use of the Services by you subsequent to such notice shall be deemed to constitute your acceptance of such changes or modifications.

3.33 Mediation and Arbitration

- a. The parties shall endeavour to settle any dispute arising out of or relating to this agreement, including with regard to its existence, validity or termination, by mediation



administered by the Australian Dispute Centre (ADC) before having recourse to arbitration or litigation.

b. The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time of the matter is referred to the ADC (the Guidelines).

c. The terms of the Guidelines are hereby deemed incorporated into this agreement.

d. This clause shall survive termination of this agreement.

4 Related Policies

4.1 DriveSafe Diagnostics – Privacy Policy

A current copy can be found at <https://drivesafediagnosics.com/s/Privacy-Policy-CURRENT.pdf> and may be changed at any time at DriveSafe Diagnostics' discretion.

4.2 DriveSafe Diagnostics – Acceptable Use Policy

A current copy can be found at <https://drivesafediagnosics.com/s/Acceptable-Use-CURRENT.pdf> and may be changed at any time at DriveSafe Diagnostics' discretion.