

**END USER USER-SUBJECT-TO-QUALIFICATION SOFTWARE
LICENSE
AGREEMENT**

**For Access and Use of DRDP Online, software containing
Desired Results Developmental Profiles© (2015)
—2015 Cloud Version—**

IMPORTANT – READ CAREFULLY: This User-Subject-to-Qualification Software License Agreement (“**Agreement**”) is a legal contract between the California Department of Education (CDE) (“**Licensor**”), a California state agency, and their agents, and you, a child development service provider. This document sets forth the terms and conditions for accessing and using Licensor’s DRDP Online software. The term “DRDP Online Software” includes any DRDP manuals or other documentation supplied by Licensor in conjunction with the Software and any corrections, bug fixes, enhancements, updates or other modifications created and supplied by Licensor.

BY SIGNING THIS DOCUMENT, OR BY ACCESSING OR OTHERWISE USING THE DRDP Online SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT ACCESS OR OTHERWISE USE THE DRDP Online SOFTWARE.

1. Certification.

a. *Licensee.* Licensee hereby represents, warrants and certifies that Licensee undertakes and abides by this License Agreement with Licensor or Licensor’s agent. Licensee is a User-Subject-to-Qualification under this agreement, such that Licensee may use DRDP Online only insofar as Licensee meets and continues to meet all of Licensor’s qualifications to use DRDP Online, specified herein.

2. License Terms

a. *Grant of License.* Subject to the terms of this License Agreement, including, without limitation, the data sharing obligations set forth below, Licensor grants to Licensee a non-exclusive, revocable, non-transferable, royalty-free license to access and use the DRDP Online Software residing on a server or servers managed and hosted by Licensor or Licensor’s agent.

b. *Authorized Use.* Licensee may use the DRDP Online Software only as intended by Licensor’s Early Education and Support Division in order to assess children who are enrolled in Licensee’s own program(s). Licensee may permit its consultants and other third-party service providers to use the DRDP Online Software only for this same purpose and only using the version of the DRDP Online Software that resides on a server or servers managed and hosted by Licensor or Licensor’s agent. Under no other circumstances shall Licensee permit any third parties to access or use the DRDP Online Software that is accessed or used by Licensee.

c. *Modifications, Reverse Engineering.* Licensee agrees that only the Licensor

shall have the right to alter, maintain, enhance or otherwise modify the DRDP Online Software. Licensee shall not attempt to disassemble, decompile or reverse engineer the DRDP Online Software or allow or assist any third party to attempt to do the same.

d. *Reservation of Rights.* Licensor hereby reserves any and all rights not expressly and explicitly granted in this Agreement.

Term of License. In addition to termination, Licensor may revoke this License upon notice. Until such termination or revocation, this license shall continue in perpetuity. Licensee may, at any time, discontinue its use of the DRDP Online Software; however, it shall continue to be bound by the obligations set forth herein.

3. Support

a. Licensor, at its sole discretion, may provide support services in connection with the DRDP Online Software (“Services”). Services may be provided by email, a help line, updates or otherwise as Licensor’s staffing, budget and priorities allow.

4. Research Collaboration Data Sharing Obligations

For the purpose of understanding overall trends in child development in order to inform statewide policy decisions in early-childhood education, Licensee shall share with Licensor all assessment data that is collected or developed in connection with the DRDP Online Software. Note that before such data is shared with Licensor, all identifying information, such as names and addresses of educational organizations (e.g., agencies and school districts); names of teachers and classrooms; names of students; etc., will be automatically removed (i.e., redacted). Also note that the data shared with Licensor will be aggregated across the entire DRDP Online system, such that the data cannot be used to make comparisons between or among organizations, groups, or individuals; or to evaluate organizations, groups, or individuals. This redacted and aggregated Research Collaboration data will be drawn from the DRDP Online system as of June 1 and again as of December 1 every year. The data will be analyzed by educational researchers from the BEAR Center at the University of California Berkeley and the WestEd Center for Child and Family Studies, who will examine trends in the key domains of child development from infancy through school age.

5. Intellectual Property Rights; Disclosure Restrictions

a. *Title.* Licensee acknowledges that Licensor owns all property rights in and to the DRDP Online Software, including any patent, copyright, trade secret, trademark and other proprietary rights. No title to the DRDP Online Software is transferred hereby and Licensee’s rights hereunder are strictly limited as set forth herein.

b. *Transfers.* Under no circumstances shall Licensee sell, license, publish, display, distribute, or otherwise transfer to a third party the DRDP Online Software or any copy thereof, in whole or in part, without the Licensor’s prior written consent.

c. *Data.* Licensee also acknowledges that the data developed in connection with the DRDP Online software belongs to Licensor. Licensee further acknowledges that certain student data and personal information are restricted from disclosure by state and federal laws. Licensee agrees to maintain the confidentiality of all data and information developed or collected in connection with the use of the DRDP

assessment instruments, whether or not entered into the DRDP Online Software, and shall not disclose such data except as expressly required by applicable law. d. Licensee shall not take any action to assist, facilitate or otherwise encourage access to the DRDP Online Software by any third party. Without limiting the generality of the foregoing, Licensee shall not i) share the access link, passwords or other information used to access, download and use to the DRDP Online Software, or ii) provide access to its system containing the DRDP Online software except as necessary for Licensee to use the DRDP Online Software as intended.

6. Disclaimer of Warranties

a. *Disclaimer.* The DRDP Online Software is provided “AS IS” and WITH ALL FAULTS. There are no warranties of any kind, express or implied given or made with respect to the DRDP Online Software. All representations and warranties are disclaimed, whether express or implied as to the title, fitness for a particular purpose, merchantability, accuracy or standard of quality of the DRDP Online Software, including any content contained therein, that the DRDP Online Software will run uninterrupted or be error free or with respect to the results to be obtained from use of any part of the Software.

7. Indemnity and Limitation of Liability

a. *Indemnity and Limitation of Liability.* In consideration of the royalty-free license provided hereunder, Licensee hereby indemnifies, defends, releases, discharges and holds harmless Licensor from and against any claim, loss, damage or liability arising in connection with DRDP Online or this License Agreement, including, without limitation:

- (1) the availability, accuracy, damage or loss of data, software, hardware or other real, personal or intellectual property arising from or in connection with the DRDP Online Software;
- (2) any Services or any defect, failure, delay in the DRDP Online Software or any Services;
- (3) any claim based on contract, tort, or otherwise or any loss of revenue (whether direct or indirect), loss of profits or any consequential loss whether of an economic nature or not;
- (4) any personal injury or death suffered in connection with the DRDP Online Software or Services
- (5) any identity theft, fraud or other activity related to the login ID and/or password; and
- (6) any disruption or suspension of Licensee’s business.

provided; however, that the foregoing indemnity, defense, release discharge and hold harmless shall not apply to the extent of Licensor’s willful misconduct.

8. General Provisions

a. *Modifications.* Licensor may alter or revise the terms of this Agreement at any time by posting the revised terms on the Desired Results Web site at www.desiredresults.us. If Licensee does not accept the changes, Licensee’s sole remedy shall be to discontinue Licensee’s use of the DRDP Online Software.

b. *Governing Law/Venue/Jurisdiction.* The Agreement shall be governed

exclusively by laws of California without regard to its conflict of law provisions. In the event of dispute, the Licensee shall submit to the exclusive jurisdiction and venue of the courts of California.

c. *Termination.* Without prejudice to any other rights, Licensor may revoke and terminate this Agreement for its convenience upon notice to Licensee. In such event, Licensor may deny access to, and Licensee must discontinue use of, the DRDP Online Software and Services.

d. *Severability.* Except as otherwise set forth in this Agreement, the provisions of this Agreement are severable, and if one or more of such provisions shall be determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portions thereof shall not in any way be affected thereby and shall nevertheless be binding between the parties hereto. Any such invalid, illegal or unenforceable provision or portion thereof shall be changed and interpreted so as to best accomplish the objective of such provision or portion thereof within the limits of applicable law.

e. *Complete Agreement.* The parties agree that this Agreement is the complete and exclusive statement of the understanding between the parties with respect to the subject matter hereof, which supersedes and merges all other prior proposals, understandings and agreements, oral or written, between the parties relating to the subject matter.

f. *Waiver.* Any waiver, either expressed or implied, by either party or any default by the other in the observance and performance of any of the conditions and/or covenants of duties set forth herein shall not constitute or be construed as a waiver of any subsequent or other default.

g. *Read and Understood.* Licensee hereby acknowledges that it has read and understands this Agreement and agrees to be bound by its terms.

h. *Headings.* The headings to the clauses and sub-clauses of this Agreement are included merely for convenience and shall not affect the meaning of the language included therein.

Licensee: I certify that I have the authority to sign this Agreement as a representative of the Licensee.

Name:

Title:

Program/Agency:

Address:

City:

State: Zip:

Signature _____

Date: