

PSA 2022-23 LICENCE AGREEMENT

All foundation doctors will be required to pass the Prescribing Safety Assessment before being signed off as having successfully completed the Foundation 1 Year and being awarded the F1CC. This agreement sets out the responsibilities of each party in relation to the delivery of the Prescribing Safety Assessment to Foundation Schools in the UK for FP 2023 only (overseen by the UK Foundation Programme Office (UKFPO)).

This Agreement is made the 1st day of July 2022 (**Effective Date**)

between

BRITISH PHARMACOLOGICAL SOCIETY a company limited by guarantee registered in England and Wales with company number 02877400 which is a charity registered in England and Wales with registered charity number 1030623 whose registered office is at The Schild Plot, 16 Angel Gate, City Road, London, EC1V 2PT (**BPS**); and **MSC ASSESSMENT** a company limited by guarantee and registered in England and Wales with company number 8578576 which is a charity registered in England and Wales with registered charity number 1153045 whose registered office is at 20 Tavistock Square, London WC1H 9HD (**MSC Assessment**); together the **Licensor**

and

Health Education England (Licensee), whose office is at Blenheim House, Duncombe Street, Leeds, LS1 4PL (**HEE**).

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Agreement means this agreement, all schedules to it and any validly executed amendments made to it by the parties.

Assessment Lead means the Licensee's principal point of contact with overall responsibility for all matters relating to the administration of the PSA evaluation.

Business Day means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Effective Date means the date set out at the start of this Agreement.

FP 2023 means the medical foundation training year starting in August 2022 and finishing in July 2023.

Import/Export Legislation means any applicable laws in force from time to time regarding import/export regulations, tax and/or customs and duties.

Intellectual Property Rights means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other

intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

MC BNF means MedicinesComplete British National Formulary, a resource that provides expert knowledge on drugs and medicines.

Person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

PSA means the Prescribing Safety Assessment delivered to the Licensee by the Licensor in accordance with the service set out in Schedule C.

PSA Team means the group of staff working for MSC Assessment and responsible for administering the delivery of the PSA.

Technical Lead means the Licensee's principal point of contact with responsibility for all technical matters relating to the administration of the PSA evaluation.

Term means a period of 12 calendar months from the Effective Date.

UKFPO means the group of staff working for NHSE who oversee the contracting and financial arrangements for the PSA, which is delivered by local teams (foundation schools), across the United Kingdom.

Use means arranging for candidates to sit the PSA on agreed dates

2. LICENCE

- 2.1 From the Effective Date and subject always to the terms of this Agreement, the Licensor grants to Licensee a non-transferable, non-exclusive, limited licence for the Term to use the PSA (**the Licence**).
- 2.2 The Licence granted in clause 2.1 is limited to Licensee's own internal use only excluding any commercial use whatsoever.
- 2.3 The duration of this Agreement shall be no longer than the Term unless extended by written mutual agreement of the parties.
- 2.4 Licensee may only copy or part copy the PSA as reasonably required to exercise its rights under clause 2.1. Licensee shall ensure that all such copies contain any copyright and other proprietary notices which were provided with the PSA.
- 2.5 Save as provided for in clause 2.1, Licensee shall not:
 - a) market, sell and distribute the PSA;
 - b) adapt, modify or alter the PSA (in whole or in part);

- c) disassemble, decompile, reverse engineer or convert the whole or any part of the PSA (except to the extent that such restriction on disassembly, decompiling or reverse engineering is prohibited by law and then Licensee shall provide the Licensor with prompt written notice prior to any such action);
- d) part with possession of, lend, or transfer any part of the PSA to any other Person or fail to keep the PSA safe and secure; or
- e) develop any solution that competes with any part of the PSA during the Term and for a period of 5 years thereafter.

2.6 Licensee shall ensure that the PSA and any other products, software or technology received from the Licensor under this Agreement, will not be exported, diverted, transferred or otherwise disposed of in violation of the Import/Export Legislation, either in their original form or after being incorporated into other items.

3. LICENSEE'S OBLIGATIONS

3.1 Licensee shall be required to fulfil the following obligations of Schedule A in support of the delivery of the PSA by the Licensor, and to ensure that the minimum technical specifications set out in Schedule B are met.

4. ASSISTANCE AND SUPPORT

4.1 This Agreement entitles Licensee to the support services specified in Schedule C.

5. SERVICE CHARGE

5.1 Licensee shall pay a service charge of £75 per candidate per sitting to the Licensor within 30 days of receipt of a valid invoice. One invoice will be submitted to the UKFPO on completion of each sitting for FP 2023.

5.2 All charges are expressed exclusive of Value Added Tax or other equivalent tax which shall be charged in accordance with applicable tax legislation.

6. CONFIDENTIALITY

6.1 Each party will keep confidential all information supplied by the other party which is marked or asserted as confidential at the time of its disclosure, and shall not without the prior written consent of the other party use, make copies, or disclose to any third party the confidential information for any purpose whatsoever except for the purposes permitted or set out under this Agreement and only to the extent necessary for those purposes, and each shall inform its employees and contractors of their duty of confidentiality. The PSA will be deemed to be confidential information in the hands of the Licensee. This obligation shall survive for 5 years from termination of this Agreement.

6.2 The obligations of confidentiality shall not extend to any part of the confidential information which is:

- a) already known to the recipient prior to its disclosure by the discloser; or

- b) lawfully received by the recipient from a third party; or
- c) independently developed by the receiving party without recourse to the confidential information; or
- d) required to be disclosed by law to the extent of such required disclosure.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The PSA and all Intellectual Property Rights contained within (including all modifications and/or enhancements to the PSA made by the Licensor) are and will remain the property of the Licensor.
- 7.2 The Licensor warrants that as far as it is aware, the PSA does not infringe any third party's Intellectual Property Rights. If any valid claim of breach of such warranty is brought to the attention of the Licensor it may as Licensee's sole remedy:
- a) obtain a licence from the third party so that the PSA does not infringe; or
 - b) modify or replace the PSA without materially reducing its overall performance so it does not infringe; or
 - c) terminate this Agreement immediately.
- 7.3 Licensee must inform the Licensor, in writing, if the Licensee becomes aware of any breach of the warranty in clause 7.2, permit the Licensor to deal with any claim and give the Licensor, at its reasonable cost, all reasonable assistance in relation to any claim.

8. WARRANTIES

- 8.1 The PSA and any deliverable under this Agreement are provided "AS IS". Accordingly the Licensor makes no express or implied warranty or representation concerning the PSA, or its accuracy or completeness and therefore excludes all conditions, warranties and representations (express or implied), statutory or otherwise in respect of the PSA and any deliverable under this Agreement.

9. LIMITATION OF LIABILITY

- 9.1 Except for injury to or death of any person caused by Licensor's negligence (for which no limit applies), the Licensor will not be liable under contract, tort (including in each case negligence) or any other legal theory for any direct or indirect loss of profits or any indirect or consequential loss or damage (including loss or damage to Licensee's (or any other's) data or computer programs) arising out of, or in connection with, the PSA or this Agreement. In any event and notwithstanding the foregoing, the Licensor's total aggregate liability for any loss or damage in respect of the PSA, any related services or this Agreement will not exceed £50.
- 9.2 Licensee shall be exclusively responsible for its use of the PSA and accordingly Licensee shall indemnify the Licensor in respect of all costs damages and expenses incurred as a result of any claims by third parties in tort or otherwise against the Licensor arising in any way out of or in relation to the PSA,

provided that the Licensor will permit the Licensee to deal with any claim and give the Licensee, at the Licensee's reasonable cost, all reasonable assistance in relation to any claim. In relation to any such claim, Licensee agrees at its own expense, to (i) defend the Licensor from and against any and all such claims, and (ii) pay any final settlement or amount awarded in any final judgment rendered on such claim.

10. **TERM AND TERMINATION**

- 10.1 This Agreement shall terminate on the expiry of the Term unless extended by the mutual written agreement of the parties.
- 10.2 Either party may end this Agreement by telling the other, in writing, if the other party:
- a) commits any significant breach of this Agreement and (in the case of a breach which is not persistent and can be remedied) have failed, within 30 days after receipt of a request in writing to do so, to remedy the breach; or
 - b) has a receiver or administrative receiver appointed over it or over any part of its business or assets or pass a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enter into any voluntary arrangement with its creditors, or it ceases or threatens to cease to carry on business.
- 10.3 On termination for any reason all rights granted to Licensee under this Agreement shall cease. Licensee must immediately cease all activities authorised by this Agreement. Licensee must immediately delete or remove the PSA from all hardware, and immediately destroy all copies of the PSA and related documents then in Licensee's possession, custody or control and certify to the Licensor that Licensee has done so.
- 10.4 Termination will not affect any accrued rights of action or liabilities of either party, nor will it affect the coming into force or continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into or continue in force on or after ending this Agreement, including but not limited to clauses 2.6, 6, 7, 9, 10.3 and 11.10.

11. **GENERAL**

- 11.1 **Force majeure:** Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Licensee or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for six months, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.

- 11.2 **Waiver:** A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 11.3 **Severance:** If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 11.4 **Entire Agreement:** This Agreement and any documents referred to in it constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter of this Agreement. Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty of any Person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents. Nothing in the clause shall limit or exclude any liability for fraud.
- 11.5 **Amendments:** Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 11.6 **Assignment:** Licensee shall not, without the prior written consent of the Licensor, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Licensor may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 11.7 **No partnership or agency:** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 11.8 **Third party rights:** This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.
- 11.9 **Notices:** Any notice under this Agreement must be in writing and must be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement or such other address as may have been notified by that party for such purposes. A notice delivered by hand will be deemed to have been received when delivered (or if delivery is not in normal business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 11.10 **Governing law and jurisdiction:** This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England. The parties irrevocably agree that

the courts of England have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Agreement, its subject matter or its formation (including non-contractual disputes or claims).

- 11.11 **Anti-bribery and anti-corruption:** Licensee shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and promptly report to the Licensor any request or demand for any undue financial or other advantage of any kind received by Licensee in connection with the performance of this Agreement.
- 11.12 **Non-solicitation of employees:** Neither party shall, for a period of 12 months from the Effective Date, (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of that party, any employee of the other party who is employed or engaged in any services which are relevant to the Agreement. A party shall not be in breach of this clause as a result of running a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party. If either party commits any breach of this clause, the breaching party shall, without prejudice to any other rights or remedies of the claiming party, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee plus the recruitment costs incurred by the claiming party in replacing such person.
- 11.13 **Interpretation:** a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); a reference to a party includes its personal representatives, successors or permitted assigns; a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted; a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and a reference to writing or written includes e-mails.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorised representatives.

BPS
SIGNED:
NAME: [REDACTED]
TITLE: [REDACTED]
DATE: [REDACTED]

MSC ASSESSMENT
SIGNED:
NAME: [REDACTED]
TITLE: [REDACTED]
DATE: [REDACTED]

HEALTH EDUCATION ENGLAND
SIGNED:
NAME: [REDACTED]
TITLE: [REDACTED]
DATE: [REDACTED]

SCHEDULE A: LICENSEE RESPONSIBILITIES

This Schedule provides a list of standard information and activities that the PSA team, on behalf of the Licensor, will require of the Licensee and their Foundation School Managers in order to successfully deliver PSA events. It should be read in conjunction with Schedule C highlighting the items of service that we will provide to you. This schedule will be enacted once this Agreement has been executed by all parties to deliver PSA assessment events on specified dates, normally at least 6 months in advance.

The Licensor will expect the Licensee to provide the following services during the assessment process:

1. IDENTIFICATION OF LOCAL CONTACTS

- 1.1 Before any significant planning is possible the Licensee shall clarify the appropriate lines of communication. They will need to provide names and contact points for the Foundation School Managers and any other associates who will take responsibility for the delivery of the PSA in the Foundation Schools. They will also need to identify a Technical Lead and any associates who can be involved in discussions around the local hardware and software that will be necessary to deliver the events to the Licensee.

2. ALLOCATION LIST

- 2.1 Licensee shall provide the PSA team with the final Allocation List for FP2022-23 including any applicants from the reserve list, military placements, and those on the Academic Foundation Programme, at the earliest opportunity, and a minimum of 8 weeks in advance of the first test date. The list will contain the names, email addresses, GMC numbers, graduating Medical School/Eligibility Office, and allocated Foundation Schools for trainees. No trainees will be registered on the system until the list has been provided to the PSA team.
- 2.2 Identifiable personal details will be provided for the purpose of delivering the PSA for FP2022-23 only. All personal data will be processed in accordance with the General Data Protection Regulation (GDPR).

3. INFORMATION TO CANDIDATES

- 3.1 In the Administrators' Guidance document the PSA team shall provide standard information emails that can be configured to suit the local requirements. Licensee shall distribute the information emails to the proposed candidates and other individuals who will be responsible for running the PSA events locally. Licensee will be required to inform candidates that their personal data will be transferred to the PSA team for the purpose of delivering the PSA.

4. PROVIDING A LIST OF CANDIDATES AND TESTING EQUIPMENT

- 4.1 Licensee shall provide a list of all candidates sitting the PSA at least 1 month prior to each of the assessment events, in such form as specified by the PSA team in the Administrators' Guidance. This is necessary to ensure the PSA team can register candidates on the PSA online assessment system. Licensee shall be required to test equipment within two weeks of the assessment to ensure there are no issues with accessing the platform or additional resources.

5. PROVIDING LOCAL SUPPORT FOR LICENSEE'S CANDIDATES

- 5.1 Licensee shall be required to assist its candidates with all questions and information relating to the Licensee's running of the assessment, including but not limited to location and timing of the assessment and the release date for assessment results.

6. TECHNICAL SUPPORT

- 6.1 Licensee shall nominate a local Technical Lead and associates to liaise with the PSA team on the technical delivery of the PSA, and ensure Licensee's machines are appropriately configured, meet a minimum specification, and can access the BNF (see Schedule B).

7. TEST SUPPORT

- 7.1 Licensee shall ensure that all of its staff directly involved in the delivery of the PSA (including invigilators and technical staff) liaise with the PSA team at such time and in such manner as the PSA team specifies ahead of the delivery of the PSA test to candidates (including by teleconference or at a meeting).

8. REVIEW OF THE PSA RESULTS

- 8.1 Following the receipt of the PSA candidates' answer and feedback data from the PSA team, Licensee shall review the data and confirm in writing whether the main results (total score and score by section) can be released to the candidates. Once the PSA team receives this confirmation it will activate the results, making them available to the candidates via their PSA account.

9. TRACKING CANDIDATES RESULTS

- 9.1 Licensee shall create and keep a comprehensive list of all candidates required to sit the PSA as part of FP 2023 and will ensure this list is maintained and updated after each assessment event. The list will be shared with the PSA team on a periodic basis to ensure accuracy with records kept by the PSA team.

SCHEDULE B: MINIMUM TECHNICAL SPECIFICATIONS FOR COMPUTER ROOMS

This Schedule provides a list of the minimum technical specifications for Licensee computer rooms, which the Licensee will be required to have and maintain during the Term of this Agreement:

1. A recommended screen resolution of 1024 x 768;
2. Reliable broadband web connection;
3. Cookies and javascript enabled;
4. Recommended internet browser Google Chrome;
5. We do not recommend Internet Explorer or Safari. If using Mozilla Firefox, version 42.0 is a minimum;
6. Sufficient RAM and CPU to support contemporary web applications; and
7. All hardware clean and fully functional.

SCHEDULE C: DELIVERABLES

The deliverables under this Agreement include access to the PSA system which comprises of a series of interfaces to enable a range of functionalities in support of delivering a web-based assessment relating to prescribing competency;

The following are standard items that the PSA team will provide to the Licensee. In order to successfully deliver this list of items, Licensee will need to meet the requirements set out in Schedules A and B.

The PSA team will provide the following services during the assessment process:

1. ADMINISTRATORS' GUIDANCE AND INVIGILATOR GUIDANCE

- 1.1 The PSA team shall provide the Licensee and Foundation School Managers an Administrators' Guidance and Invigilator Guide with information required for organising the PSA in Foundation Schools. These will normally be provided at least 1 month in advance of the first scheduled PSA test or at the earliest practical opportunity.

2. REGISTRATION OF THE CANDIDATES ON THE ASSESSMENT SYSTEM

- 2.1 Licensee shall be provided with a standard spreadsheet that can be completed and will enable the candidates to be uploaded into the assessment system. This spreadsheet will normally include, as a minimum, forename, surname, GMC number, and institution e-mail address for each candidate and will be provided at least 1 month in advance of the first assessment. Following the receipt of a populated spreadsheet from the Licensee, the PSA team will upload the data onto the PSA system, triggering an email to the Licensee's candidates inviting them to complete their registration and activate their PSA account. This will normally be completed 1 month in advance of the first assessment events.

3. ONLINE SUPPORT FOR CANDIDATES

- 3.1 The PSA team shall provide online support to candidates in the form of FAQs on registration and practice papers. Online support will be available from 1 month in advance of the first assessment events until the release of the results.

4. PRACTICE ASSESSMENTS

- 4.1 All registered candidates will have access to practice PSA assessment 'papers' prior to the main assessment events for which they are registered. These practice papers will provide individualised scoring and feedback to the candidates after each one has been completed.

5. ASSESSMENT EVENTS

- 5.1 These events will be set up on the PSA system based on the dates and times agreed with the Licensee. Each candidate will then be associated with the appropriate PSA event based on the allocation chosen by the Licensee (normally stimulated in the submitted candidate spreadsheet above). Each event will be given a secure password. This will normally be completed 1 month in advance of the first assessment events. For Foundation Programme 2023 (PSA 2022-23) these dates and times are:

1pm on 6th September 2022 (first sit)

1pm on 13th March 2023 (resit)

1pm on 24th April 2023 (resit)

6. ASSESSMENT PAPER

- 6.1 The PSA team shall assign a standard PSA assessment paper for the candidates in advance of each test date. The paper will consist of 60 items in length, will be standard set by the PSA Assessment Board, and have the scoring system completed in advance of the first assessment events.

7. TECHNICAL SUPPORT

- 7.1 The PSA team shall provide online and telephone technical support to Licensee during normal office hours in the run up to PSA events to ensure that all machines are appropriately configured and meet a minimum specification to allow the events to occur.

8. EVENT SUPPORT

- 8.1 The PSA team shall contact the Licensee and Foundation School Managers 1 week prior to the PSA event to ensure that all recognised issues have been addressed and the PSA website is working appropriately on the specified machines. The PSA team will then contact each Foundation School Manager (or designated representative) 1 working day before the test date to communicate the event passwords, and confirm the timing of the events and contact points for any support to address both administrative and technical issues on the day of the event.

9. POST-ASSESSMENT REVIEW

- 9.1 The PSA team shall arrange for an expert review of the prescribing answers in the early post-assessment period to ensure that all of the candidate answers have been marked appropriately and no creditworthy answers have been ignored in the marking scheme.

10. PREPARATION OF RESULTS AND FEEDBACK

- 10.1 The PSA team shall produce spreadsheets containing the answer and feedback data provided by the candidates. This will include a spreadsheet that provides results broken down by section as well as a breakdown of anonymised student feedback.

11. CANDIDATE RESULTS

- 11.1 The PSA team shall activate the candidates' results, making them available to the candidates via their PSA account at a time that can be chosen by the Licensee.

12. DISABLING OF CANDIDATE ACCOUNTS

- 12.1 Accounts for trainees who have successfully passed the PSA during the F1 year will be disabled on Friday 6th October 2023, ahead of the PSA Assessment Board meeting where changes may be made to the PSA

system. Foundation School Managers will need to remind trainees to download a copy of their PSA certificate before this date.

13. **PASS LISTS**

- 13.1 After the last medical school assessment has taken place, the PSA team shall use the Allocation List provided by the Licensee to create a spreadsheet of all allocated trainees who have passed the PSA in the last two years, and who need to take the PSA for FP2022-23 (PSA 2022-23). Names that do not appear in the allocation list will not be in the pass lists.
- 13.2 The PSA team will send the Foundation School Managers a copy of their list no later than four weeks in advance of the first test date.