

**AMERICAN PSYCHIATRIC ASSOCIATION
1000 Wilson Boulevard, Suite 1825
Arlington, VA 22209**

**ELECTRONIC PRODUCT
LICENSE AGREEMENT**

This Electronic Product License Agreement ("Agreement") is effective as of July 15, 2015, by and between the **American Psychiatric Association, APA**, ("LICENSOR"), with offices at 1000 Wilson Blvd., Suite 1825, Arlington, VA 22209, and **Texas Department of Assistive and Rehabilitative Services (DARS) and its successor state agency, Texas Workforce Commission (TWC)**, ("LICENSEE"), with offices at 4900 North Lamar Blvd., Austin, TX 78751.

WHEREAS APA ("LICENSOR") has developed and is the sole and exclusive owner of all rights with respect to the DSM-5, including, but not limited to copyright, publishing, and trademark rights;

WHEREAS LICENSEE wishes to acquire a nonexclusive and non-transferable license from LICENSOR to use specified portions of the DSM-5 in its electronic product as more fully described Paragraph 1.2 below.

NOW THEREFORE, in consideration of the promises and agreements set forth herein, and with intent to be legally bound hereby, the parties agree as follows:

1. Definitions.

1.1 "WORK" is defined herein as the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Arlington, V.A., American Psychiatric Association (2013), ("DSM-5"), specified in Exhibit A, which is incorporated herein by reference.

1.2 "PRODUCT" is defined as LICENSEE's ReHabWorks, as more fully described in Exhibit B, which is incorporated herein by reference.

1.3 "USER" is defined as a named individual who (a) accesses, uses, or manipulates DSM-5 contained in the PRODUCT; (b) accesses, uses, or manipulates the PRODUCT to produce or enable an output (data, reports, or the like) that could not have been created without DSM-5 embedded in the PRODUCT even though DSM-5 may not be visible or directly accessible; or (c) makes use of an output of the PRODUCT that relies on or could not have been created without DSM-5 embedded in the PRODUCT even though DSM-5 may not be visible or directly accessible.

2. License Grant.

2.1 Subject to the terms of this Agreement, LICENSOR hereby grants to LICENSEE for the term of this Agreement a limited nonexclusive, nontransferable right and license to reproduce and distribute the WORK as incorporated in

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LICENSEE's PRODUCT, as defined by Paragraph 1.2, above, in the English language and in the form specified in Exhibit B, throughout the United States of America.

2.2 LICENSEE shall not abridge, modify, alter, or adapt the WORK, including the text, captions, graphics, or illustrations contained in the WORK, without the prior written approval of LICENSOR. Notwithstanding the foregoing, LICENSEE may adapt, modify, or alter the WORK solely to the extent actually necessary for the technical purpose of incorporating the WORK into LICENSEE's PRODUCT.

2.3 LICENSEE agrees that it will not use the WORK, or any portion thereof, in any other manner or in any other medium than that set forth in this Agreement.

2.4 LICENSEE shall not include any statements in the PRODUCT or in any advertising or information accompanying the PRODUCT that expressly or implicitly represents or suggests that LICENSOR has sponsored, endorsed, or approved the PRODUCT, or that LICENSOR is affiliated, connected, or associated with the PRODUCT.

3. Obligations of Licensee.

3.1 LICENSEE shall permit access to its PRODUCT only to authorized USERS who have entered into an agreement with LICENSEE that obligates the USERS to comply with the restrictions on use of the WORK as specified in Exhibit C, which is incorporated herein by reference.

3.2 LICENSEE shall take all necessary measures to restrict and control the use, copying, and security of the WORK incorporated into the PRODUCT, including, but not limited to, preventing unauthorized USERS from accessing the PRODUCT, and requiring each authorized USER of the PRODUCT to agree that he or she will not make any unauthorized or infringing use of the WORK. LICENSEE shall take all necessary measures to enforce such obligations of its authorized USERS.

3.3 LICENSEE shall deliver without charge to LICENSOR screenshots of the PRODUCT, to the extent allowed by law, within 10 business days of a request by LICENSOR solely for the purpose of verification of compliance with the terms of the agreement.

4. Future Versions of DSM. This License does not extend to any use of any future editions/versions of the DSM.

5. Assignability. This license is personal to LICENSEE and shall not be assigned by any act of LICENSEE or by operation of law. Any attempt by LICENSEE to assign this license shall be null and void.

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6. **Sublicenses.** LICENSEE is not authorized to and shall not license or permit others to retransmit, reproduce, or distribute the Work, other than as necessary for LICENSEE to create and distribute the Product referred to in Paragraph 1.2, above.

7. **License Fees.** In consideration for the license granted hereunder, LICENSEE agrees to pay to LICENSOR compensation as set forth in Exhibit D, which is incorporated herein by reference.

8. **Term of the Agreement.** Subject to prior termination in accordance to the provisions of Paragraph 9, the license granted by this Agreement shall commence on the EFFECTIVE DATE, and shall continue for the life of the edition of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (Copyright ©2013) only, until the next edition/version of the DSM is published, subject to earlier termination as herein provided. Except as otherwise provided herein, or agreed to in writing by LICENSOR, this license shall expire automatically at the end of the Term without notice to the LICENSEE. This Agreement may be renewed by mutual consent, according to terms to be negotiated.

9. **Termination.** LICENSOR shall have the right to immediately terminate this Agreement by providing written notice of such termination to LICENSEE in the event that LICENSEE fails to abide by any of the terms and conditions of this Agreement, or in the event that LICENSEE's continued use of the WORK or distribution of the PRODUCT is reasonably determined by LICENSOR to be materially detrimental to the interests of the American Psychiatric Association and its members. In the event of a termination of this Agreement for any reason, all rights with respect to the WORK shall automatically revert back to LICENSOR. Termination of this Agreement shall be without prejudice to any moneys already paid or then due or to become due from LICENSEE to LICENSOR and without prejudice to any rights of either party at law or in equity.

10. **Intellectual Property Rights.**

10.1 Nothing in this Agreement shall be construed to grant to the LICENSEE any ownership or other proprietary interest in the WORK. The LICENSEE agrees that it does not acquire any title, ownership, or other exclusive intellectual property right or license under this Agreement. LICENSOR retains all rights in the original work, regardless of whether or not it is incorporated in LICENSEE's PRODUCT.

10.2 **Copyright.** In all instances where any portion of the WORK or DSM-5 appears, the source and copyright status of the material must appear where the text appears and in all marketing materials. The following notice shall be used:

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Unless authorized in writing by the APA, no part may be reproduced or used in a manner inconsistent with the APA's copyright. This prohibition applies to unauthorized uses or reproductions in any form.

The American Psychiatric Association is not affiliated with and is not endorsing this product.

To the extent that such notice or any other copyright management information is embedded in the electronic product, LICENSEE agrees that it will not alter it or delete it. LICENSEE further agrees to require all USERS of its PRODUCT to maintain such copyright management information in its original form as provided by LICENSOR.

10.3 Trademark. LICENSEE acknowledges that DSM and DSM-5 are registered trademarks of the American Psychiatric Association and may not be used commercially without prior approval. LICENSOR grants to LICENSEE permission to use the DSM and DSM-5 trademarks on a non-exclusive basis, as part of the PRODUCT, only with proper notice and only as necessary to accomplish LICENSEE's purpose as set out in Paragraph 1.2, above. The following notice shall be used:

**DSM and DSM-5 are registered trademarks of the American Psychiatric Association, and are used with permission herein. Use of these terms is prohibited without permission of the American Psychiatric Association.
Use of this trademark does not constitute endorsement of this product by the American Psychiatric Association.*

11. Damages. In the event that LICENSEE breaches this Agreement, the parties agree that damages will not provide an adequate remedy for LICENSOR. Therefore, in the event of a breach or threat of breach, LICENSOR shall be entitled to seek injunctive relief, in addition to any other relief available at law or in equity.

12. Disclaimer of Warranties.

TO THE EXTENT ALLOWED BY LAW, LICENSOR EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES (INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) AND

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REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN RELATION TO LICENSEE'S USE OF THE WORK IN ITS PRODUCT.

TO THE EXTENT ALLOWED BY LAW, LICENSOR WILL NOT BE LIABLE TO LICENSEE, OR ANY THIRD PARTY FOR LOSS OF PROFITS, LOSS OF USE OR FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, EVEN IF IT IS AWARE OF THE POSSIBILITY THEREOF. LICENSEE AGREES THAT THE ENTIRE LIABILITY OF LICENSOR WILL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE FEE PAID FOR THE LICENSE.

13. Disclaimer of Medical Liability. DSM-5 is not a substitute for, is not designed to, and does not provide, medical advice. It is a guide for clinicians. Every clinician should use his or her own medical judgment and skill in diagnosing mental illness. To the extent allowed by law, LICENSOR shall not be liable to LICENSEE or any third party if readers of DSM-5 disregard professional medical advice, or delay in seeking such advice, because of something they have read in the DSM-5. To the extent allowed by law, LICENSOR shall not be liable to LICENSEE or any third party if readers rely solely on information in DSM-5 in making diagnosis, or in place of seeking professional medical advice. RELIANCE ON ANY INFORMATION CONTAINED IN DSM-5 IS SOLELY AT THE READER'S OR USER'S OWN RISK.

Moreover, to the extent allowed by law, LICENSOR is not responsible or liable to LICENSEE or any third party for any advice, course of treatment or diagnosis provided by a physician or other health care professional. LICENSOR neither recommends nor endorses any specific tests, products, procedures, opinions or other information that may be recommended to a reader or user by a health care professional.

14. Indemnification. To the extent allowed by law, LICENSEE shall defend, indemnify, and hold harmless LICENSOR from and against all liability, demands, damages, expenses, losses, attorney's fees, and costs arising out of or related to the design, manufacture, distribution or use of LICENSEE's PRODUCT.

15. Entire Agreement. This Agreement represents the entire understanding and agreement between the Parties hereto and may be modified or waived only by a separate writing signed by both Parties expressly so modifying or waiving this Agreement.

16. Severability. If a term or condition of this Agreement is found by a court or administrative agency to be unenforceable, the remaining terms and conditions will remain in full force and effect.

7/7/2015

Texas DARS DSM-5 APA License Agreement and Exhibits

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17. **Governing Law.** This Agreement shall be governed by and construed under and in accordance with the laws of Virginia, excluding its principles governing conflicts of law, and the courts within such jurisdiction shall be the only courts of competent jurisdiction.

18. **Counterparts.** This Agreement may be executed in one or more counterparts (including facsimile copies), each of which, when so executed, constitutes one original and all of which, when taken together, constitute one and the same Agreement.

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AMERICAN PSYCHIATRIC PUBLISHING

By: Rebecca Rinehart
Name: Rebecca Rinehart
Title: Publisher
Date: 7/8/15

LICENSEE

By: Jeffery C. Peden
Name: JEFFERY C. PEDEN
Title: DIRECTOR, IT
Date: 7/7/15

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**EXHIBIT A
Definition of Work**

The following portions of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (Copyright ©2013), Washington, D.C., American Psychiatric Association, may be used in Licensee's PRODUCT:

- DSM-5 Classification (Codes and Disorder Names Only, pp. xiii-xl),
English Language Only**

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**EXHIBIT B
Description of Licensee's Product**

Name of Product: ReHabWorks

Description: DSM-5 descriptors for use in the Consumer Case Management System also known as ReHabWorks

Medium/Format: Internet – not available to public

**Intended Users (type):
Texas Department of Assistive and Rehabilitative Services (DARS), and its successor agency,
Texas Workforce Commission (TWC)**

Estimated Number of Users: 2,571

Type of Access and Access Restrictions: Password-protected

Price Structure of Product: Internal use only, not for resale under the price category

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**EXHIBIT C
Principal Requirements of User Agreements**

To be in compliance with the Electronic Product License Agreement (“EPLA”), each User Agreement entered into by you or any of your distributors must contain the following elements in a form appropriate to the laws in the jurisdiction in which the Product is to be used. Other provisions may be added so long as they do not conflict with your license with APA, and as long as they do not expose APA to any liability or jeopardize any of APA’s rights, including copyright or trademark rights. The End User Agreement must:

1. State that the User Agreement is nontransferable, nonexclusive, and for the sole purpose of internal use by the licensee in the territory and language as designated in the EPLA.
2. Prohibit any use of any portions of the DSM-5 other than those expressly allowed under the EPLA.
3. Prohibit distribution, publishing, translating, or transferring possession of the Product.
4. Prohibit creation of derivative works based on the DSM-5, or selling, leasing, or licensing it or otherwise making it available to a non-authorized party. Require that the User obligate anyone authorized to use the PRODUCT to comply with the provisions of the User Agreement.
5. State that the End User may only make copies of the WORK as required by use of the PRODUCT, specifically, by executing the PRODUCT or making one back-up copy for archival purposes.
6. State that the copyright in DSM-5 is owned by APA and that all notices of proprietary rights, as set out in Paragraph 10 of the EPLA, including trademark and copyright notices must appear on all back-up or archival copies made by the User.
7. Limit, to the extent allowable under the applicable laws, warranties and liability for the PRODUCT, stating that the PRODUCT is provided “as is” without any liability to you or to APA, including without limitation, no liability for consequential or special damages or lost profits for accuracy or completeness of data, and no warranty that it will meet the end user’s requirements, and that your sole responsibility is to use reasonable efforts for you to correct defects or replace the PRODUCT. To the extent allowed by law, APA disclaims any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in the DSM-5.
8. Paragraphs 12 and 13 of the EPLA must be included in their entirety in any User Agreement.
9. Provide for termination in the event of default under the User Agreement or this Agreement.

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10. State that in the event that a provision is determined to violate any law or is unenforceable the remainder of the User Agreement shall remain in full force and effect.

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EXHIBIT D
License Fees and Royalties

LICENSEE agrees to pay license fees and royalties, pursuant to Paragraph 7, above, according to the schedule outlined below.

LICENSEE shall account and render statements and payments to LICENSOR annually with the initial billing cycle of August 2015-August 2016 and commence thereafter to reflect such billing cycle so long as this Agreement is in effect. Each annual statement shall report the number of users and the total amount of fees payable pursuant to this Agreement. LICENSEE shall maintain complete and accurate books of account relating to the sale and/or distribution of the PRODUCT. LICENSOR or its duly authorized representative shall have the right, at its own expense, upon written request, to examine and make extracts from said books of account insofar as they relate to this Agreement. Reports and payments should be mailed to:

American Psychiatric Association, Att. Rights Manager, 1000 Wilson Blvd., Suite 1825, Arlington, VA 22209. Reports must itemize the number of users of the DSM-5 Classification.

LICENSEE may terminate this agreement at the end of any annual billing cycle.

Per User or Subscriber

LICENSEE shall pay a \$10.00 yearly fee for each user or subscriber licensed to use its PRODUCT, including each individual authorized to use the PRODUCT under a site license or multi-user license. LICENSEE acknowledges that any other use is not authorized by this Agreement. LICENSEE estimates 2,571 users of the DSM-5 Classification. Should LICENSEE not meet the estimated number of users or surpass the estimated number of users per year, the pricing will be adjusted to the appropriate tier.

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DSM-5 Classification (Codes and Names): Per User or Subscriber Licensing Fees		
Less than:	User count range	User Fee per Year
100	1-99	\$20.00
200	100-199	\$15.00
300	200-299	\$14.00
500	300-499	\$13.00
1,000	500-999	\$12.00
2,000	1000-1999	\$11.00
3,000	2000-2999	\$10.00
5,000	3000-4999	\$9.00
10,000	5000-9999	\$8.00
15,000	10,000-14,999	\$7.00
20,000	15,000-19,999	\$6.00
25,000	20,000-24,999	\$5.00