

**TERMS AND CONDITIONS****DEFINITIONS:**

- **Administration** means the administration of one or more Tests pursuant hereto.
- **Agreement** means these terms and conditions, the P3, compensation schedule agreed by Center, and any and all other written instructions, specifications, standards, terms and conditions posted on Sponsor's designated web site, notified to Center, and/or agreed between the Parties in writing (in written or electronic form), all of which are incorporated herein by reference and made an integral part hereof.
- **Candidate(s)** means the individual(s) taking a Test under the Administration of the Center.
- **Candidate Data** has the meaning set forth in paragraph 16. hereof.
- **Center** means the organization administering the Tests pursuant to this Agreement.
- **Center Staff Member** means any person whose name appears listed on a personnel roster or contact list in the Strategic Testing Network.
- **Client(s)** means any third party that has contracted with ETS for the Administration of its Tests.
- **CPR** means a Center Problem Report, as more fully described in the P3.
- **CTAS** means Certified Test Administrator Services.
- **Effective Date** means the date when Center has been approved by Sponsor as an authorized Test center operator for Test Administrations.
- **ETS** means Educational Testing Service, a non-profit corporation duly organized and validly existing under the Education Laws of the State of New York, U.S.A. and all its subsidiaries, including Prometric, Inc..
- **ETS-Owned Technologies and Proprietary Materials** has the meaning set forth in paragraph 19 hereof.
- **Manuals** shall mean any and all documentation that specifies how the Tests are to be administered.
- **Parties** shall mean Sponsor and Center.
- **Party** means Sponsor or Center, as the case may be.
- **Proctor** means the Center Staff Member who assists the Test Center Administrator in the set-up and Administration of a Test.
- **Prometric Inc.** means a wholly-owned indirect subsidiary of ETS.
- **P3** means the "Internet-based Testing Policies, Procedures and Practices" (Copyright © 2015 by Educational Testing Service).
- **Renewal Term** has the meaning set forth in Paragraph 6 hereof.
- **Services** shall mean the Administration of Tests and provision of other services by Center to Sponsor pursuant to this Agreement.
- **Site** means the location where Center provides the Services.
- **Sponsor** means ETS, its Client(s) and/or its designee or assignee.
- **Test(s)** means assessment(s) administered at the Site by the Center at the request of Sponsor.
- **Test Center Administrator(s) ("TCA")** means the Center Staff Member(s) responsible for administering the Test including Candidates check-in, the running of the Test Administration software, providing Center Problem Reports, communicating with the Help Desk, supporting pre- and post-Test activities, and other Test activities.
- **Test Security** means processes and procedures developed by ETS and set forth in any or all of the following: this Agreement, P3, any written notices provided to Center from ETS, and the Manuals which are provided by Sponsor to Center and the contents of which Center is required to implement for each Test Administration in an effort to ensure the integrity and validity of Test results. Such processes and procedures may include, among others, the testing environment requirements (e.g., seating arrangements, number of Candidates per lab); utilization of sufficiently trained personnel to establish and maintain uniform conditions and observe the conduct of Test takers when large groups of Candidates are tested; ensuring Test Center Administrators follow the instructions in the Test manual; demonstrate verbal clarity; use verbatim directions; adhere to verbatim directions; follow exact sequence and timing; and use materials that are identical to those specified by ETS; protecting the Test and computer-administered testing software, ensuring that only individuals with a legitimate need for access to the

materials/software are able to obtain such access and that steps to eliminate the possibility of breaches in Test security and copyright protection are respected.

- **Term** has the meaning set forth in paragraph 6 hereof.
- **VAT** means value added tax and any tax of a similar fiscal nature imposed, charged or payable in any jurisdiction, including (without limitation) taxes such as GST, sales taxes and turnover taxes.

**1. Representations and Warranties.** Center represents and warrants to Sponsor that (i) it has the necessary infrastructure (including without limitation computer hardware, software, and internet connectivity) to support the Services; (ii) its facilities and equipment at the Site meet the physical requirements, comfort and environment standards set forth in the P3 and/or Manuals; (iii) it has or will engage the requisite number of staff in the ratios determined by ETS and will ensure that such staff have the qualifications and assumes the responsibilities set forth in the P3 and/or Manuals; (iv) it will be available to provide Test Administrations at the Site in such volumes and on such Test dates as indicated to Sponsor; (v) the Services will be provided solely by Center in a professional manner and in accordance with the provisions of this Agreement, and (vi) at Sponsor's request and subject to Center's consent, Center will administer Tests for Prometric Inc. pursuant to these terms and conditions. **ETS AND/OR ITS CLIENTS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES RELATIVE TO THEIR RESPECTIVE TESTS, TEST MATERIALS, AND/OR THE INFORMATION, DOCUMENTS, EQUIPMENT AND MATERIALS PROVIDED TO CENTER HEREUNDER, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF CONFORMITY, WARRANTY AGAINST HIDDEN DEFECTS AND/OR ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

**2. RESERVED.**

**3. Dedicated Lab.** Center shall not reserve or allocate any lab, room or other space at the Site permanently or on an ongoing basis for any Tests, Test Administration, Test materials or any other matter or material relating to ETS. However, for each Test that includes a speaking component for Candidates (including, without limitation, TOEFL iBT, BTLPT, LOTE-French, LOTE-German, LOTE-Latin, LOTE-Spanish and Praxis World Languages), Center will allocate at the Site testing labs (including equipment and testing rooms) that are dedicated solely to such Tests for the duration of each such Test.

**4. Hardware and Software Compliance.** Center will maintain at least the minimum technical specifications and standards required for the Tests to be delivered. ETS may, from time to time, modify the technical specifications and standards and shall notify Center of such modifications. Center shall have up to six (6) months from the date such notice is sent to make all necessary hardware and/or software upgrades. Center's right to administer Tests is contingent upon completion of such modifications within said 6-month period. Center shall be responsible for applying and maintaining industry-recognized Anti-Virus software on all machines within the Site. The latest pattern updates for the Anti-Virus software should not exceed 7 days. Center shall be responsible for applying all Operating System updates known as patches on all machines at the Site. The patches should be applied every 30 days, or earlier as needed. The testing network associated with the Center should be configured such that (i) in-bound traffic into the testing network is prohibited and (ii) the testing network should be isolated from the rest of the network where applicable. Failure to comply with this Section 4 shall be deemed a material breach of this Agreement.

**5. Compensation and Payment.** Center shall provide the Services to Sponsor. In consideration for the provision of Services to Sponsor, Center will receive Test Administration fee(s) in the amounts agreed between the Parties in writing (in written or electronic form). Payments to Center, net of withholding taxes, if any, will be made within forty-five (45) days from the end of the calendar month in which the relevant Services were provided or the 15<sup>th</sup> calendar day of that payment month,

**TERMS AND CONDITIONS**

which ever date is later. ETS is not responsible for any payment delay that is due to incorrect banking information from the Center. Center is responsible for any wire transfer or other bank service fees incurred in connection with such compensation. Notwithstanding anything to the contrary herein, ETS shall have the right to deduct any outstanding amounts due ETS from Center under any other agreement between the Parties from such Test Administration fee(s) before making any payment to Center. ETS is not responsible for payment conflicts internal to the Center, including but not limited to changes in remit names or the person/people to whom ETS pays Test Administration fee(s).

**6. Term.** This Agreement is effective for a twelve (12) month period as of the Effective Date (the "Term") and will be automatically renewed for a successive twelve (12) month period (the "Renewal Term") unless either Party gives the other Party one hundred twenty (120) days' prior written notice of its intent not to renew this Agreement, unless otherwise terminated as set forth herein.

**7. Default.** In addition to such other breaches as may be determined are material breaches of the Agreement, the following shall be deemed a material breach under this Agreement:

- Failure of Center to meet the technical requirements set out in this Agreement and the P3;
- Any failure of Center to provide appropriate Test Security that is discovered as a result of a Test Center Audit and such failure is not remedied to the reasonable satisfaction of ETS;
- Failure of Center to administer Tests in accordance with this Agreement on a date for which it is scheduled to administer such Test; and
- Refusal by Center to allow observer's admittance to the Site and/or lab(s) following a request for admission made pursuant to Paragraph 11, except where that refusal is reasonable in all the circumstances and promptly given.

**8. Consequences of Default.** In addition to all other rights under this Agreement, ETS may impose one or more of the following consequences of default on Center for its breach of this Agreement:

- Suspension of any obligation of ETS to make payments to Center until such time as Center remedies the breach; and
- Suspension of any Test Administrations by Center.

**9. Termination.**

- Termination for Convenience. This Agreement may be terminated by either Party upon one hundred twenty (120) days' prior written notice to the other Party, without cause.

- Certification not completed. The Agreement will automatically terminate if the Center does not satisfactorily complete the certification requirements and therefore the application is closed. An email will be sent notifying the Center the application is closed.

- Termination for Cause. This Agreement may be terminated by either Party (i) upon thirty (30) days' prior written notice to the other Party in the event of a material breach of this Agreement, which material breach has not been cured by the other Party within said thirty (30) day notice period, or (ii) immediately upon written notice to the other Party if the other Party has not performed its obligations hereunder for a period of thirty (30) consecutive days as a result of an event of Force Majeure, as defined in paragraph 34 hereof. Notwithstanding the foregoing, this Agreement may be immediately suspended or terminated by Sponsor upon written notice to Center if (i) Sponsor has reason to believe that Center has breached its Test Security obligations under this Agreement (including, but not limited to negative findings from any test center audits and/or post test administration analyses of test responses and scores, proxy test taking or TCA or Proctor enabled breaches. Further a refusal to allow observers admission to the Site following a request made pursuant to Paragraph 11, except where that refusal is reasonable in all the circumstances and promptly given, shall be such a reason) (ii) Sponsor has reason to believe that Center has violated any intellectual property right of Sponsor, including any patent, copyright, trademark or trade secret, (iii) any provision of this Agreement is

deemed by a court of competent jurisdiction to be invalid or unenforceable, (iv) Sponsor has reason to believe that Center is charging candidates an additional fee to take a Test, (v) Center is required by applicable law to engage in any of the activities prohibited pursuant to the last sentence of paragraph 21 hereof (titled "License for Tests"), and/or (vi) Center notifies Sponsor that it does not agree with any term or revised term of this Agreement, as provided in paragraph 10 hereof.

- Effect of Termination. Upon termination of this Agreement, Center shall immediately: (1) cease to display or use any intellectual property or signs, labels, logos, trademarks, copyrighted materials or other indications identifying Center in relation to Sponsor or a Test; and (2) cease all use of and deliver to ETS all printed materials relating Center to the Administration of Tests, including, without limitation, advertising, promotional and instructional materials and Confidential Information. Any marketing materials provided to Center by ETS must either be destroyed or returned to ETS or its designee, at ETS's discretion. Center shall certify in writing (in written or electronic form) that all Confidential Information has been either returned or destroyed and any and all Confidential Information expunged from all computer equipment, and devices of any kind. Termination of this Agreement shall not constitute a waiver of any rights that either Party may have for any breach by the other Party prior to the termination date. All obligations to perform under this Agreement shall continue in effect and be duly observed and complied with by both Parties during a notice of termination period until the effective date of such termination.

**10. Revised Terms/Acceptance.** Sponsor may, at any time, revise one or more terms of this Agreement (except for the Test Administration fee(s) payable to Center, which must be agreed to in writing (in written or electronic form) by the Parties) upon written notice to Center. Any such revised terms will become effective upon notice from Center of its agreement to be bound by such revised terms. However, if Center fails to notify Sponsor of its agreement or disagreement to the revised terms within a period of ten (10) business days from receipt of notice of such revised terms, Center shall be deemed to have notified Sponsor of its agreement to such revised terms at the end of said notice period. If Center notifies Sponsor that it disagrees with any of the revised terms, Sponsor may terminate this Agreement, pursuant to the provisions of paragraph 9 hereof.

**11. Test Security/Verification.** Center understands and acknowledges that the integrity of Test Administrations is vital to the business interests and reputation of Sponsor. Accordingly, Center will use best efforts to ensure that each Candidate reads, copies, and completes an appropriate statement independently by hand and signs a confidentiality statement, or Candidate reads the confidential statement out loud, if required and will send such confidentiality statements to Sponsor, in accordance with the provisions of the P3. Hard copies of confidential statements will remain a requirement until biometric information collection is 100% integrated. Center must ensure that Test Center Administrators and Proctors complete the required training module, certification, consent, and submits their photograph and voice sample (or other identifiers that may be required) along with name, email, address and telephone number. Moreover, Center will promptly notify Sponsor, by filing a CPR, of any breach, or suspected breach, of the provisions of the P3 and/or Manuals relative to the security of Test materials and Test Administrations, including without limitation candidate/examinee misconduct, irregularities, identification documents, and use of prohibited items, and will provide Sponsor with any information reasonably requested by Sponsor in this regard. The Sponsor may from time to time seek admission of observers to the Site on a day when Tests are scheduled to take place at that Site for the sole purpose of observing whether the Services provided by the Center are in compliance with this Agreement, permission for which shall not be unreasonably withheld or delayed by Center. The Sponsor reserves the right to send independent investigators acting as Candidates to Center to observe administration of Tests, with a particular focus on security arrangements, at any time during the term of this Agreement. The Center's responsibilities regarding Test Security and score validity include but are not limited to: providing accurate and true information at the time of application

**TERMS AND CONDITIONS**

relating to the location of the Site (e.g., the address of the building) and layout of a typical Test room, validation of the Center personnel, security of Test content, launch of Tests within the proper time windows, proper authentication of candidate/examinee identification for all those who take the Test and confirm that the Candidate's test record has been uploaded to ETS before concluding each Test Administration. If ETS considers that any of the security processes and procedures has been compromised, ETS may terminate this Agreement immediately upon written notice pursuant to Paragraph 9 and without appeal. ETS may also exercise its right to take legal action, seek damages, and permanently ban such entities from delivering any Tests. Note that ETS reserves the right to share information about the Center and the Site, including names and contact information of Center personnel, with government agencies or as otherwise required by applicable law.

**12. Duty of Cooperation.** ETS has entered into an agreement with Prometric Inc. for the provision of certain services relative to the operations of Center. Center agrees to cooperate fully with Prometric Inc. with respect to Test operational readiness, Test Administrations, Test preparation, reporting-related activities, and any other requirements to ensure compliance with this Agreement.

**13. Test Volumes/Dates.** Nothing contained herein will be construed as imposing upon Sponsor an obligation to retain the services of Center for Test Administrations in the volumes and/or on the Test dates for which Center has indicated to Sponsor that it has the capacity and availability. Nothing contained herein will be construed as imposing upon Center an obligation to provide to Sponsor Administrations of Tests in particular volumes on particular dates, except if Sponsor has requested Administrations of particular Tests on particular dates to which the Center has already consented in writing (in written or electronic form), Center must give Sponsor sixty (60) calendar days advance notice in writing (in written or electronic form) if it no longer wishes, or is unable, to provide those Administrations.

**14. Compliance with Laws.** Center agrees that, throughout the Term hereof, it will abide by all applicable local, state, provincial, Federal and/or community laws, including without limitation laws relative to candidates with disabilities, and will obtain and maintain in effect any and all necessary authorizations, licenses and permits for the provision of Services hereunder.

**15. Confidentiality.** Center understands and acknowledges that certain proprietary and confidential information, including without limitation the ETS-owned Technologies and Proprietary Materials, the Client-Owned Proprietary Materials and the Candidate Data, ("Confidential Information"), may be disclosed to Center during the Term hereof. Center, on behalf of itself, its employees, and agents, agrees to (i) treat all such Confidential Information with the highest level of confidentiality, (ii) protect such Confidential Information from disclosure to unauthorized third parties, and (iii) obtain Sponsor's written approval before divulging said Confidential Information to third parties, except as required pursuant to court order, and in that case Center will promptly notify Sponsor of the existence of such order and provide Sponsor with a copy thereof. Every Center Staff Member must sign a confidentiality agreement with Sponsor, to be provided to the Center by the Sponsor.

Center understands and acknowledges that ETS collects and utilizes personal information, including names, telephone numbers, email addresses, addresses, photographs and voice samples of Test Center Staff ("Test Center Staff Information") for test security and authentication purposes. ETS on behalf of itself, its employees, and agents, agrees to (i) treat all such Test Center Staff Information with the highest level of confidentiality, (ii) protect such Test Center Staff Information from disclosure to unauthorized third parties, and (iii) shall encrypt such Test Center Staff Information in transit, and storage.

**16. Use of Candidate Data.** Center agrees to regard and preserve as confidential any and all information obtained/accessed by, or disclosed to, Center about Candidates ("Candidate Data"), including without limitation (i) information regarding Candidates' names, addresses, telephone numbers, e-mail addresses, account numbers, credit card or checking account information, or other personally identifiable information (e.g. passport or social security numbers) and (ii) any list or grouping of Candidates, regardless of whether such list also includes publicly available information. Center agrees to collect and treat the Candidate Data in a lawful manner, and not to use, access, or disclose the Candidate Data for any purpose other than as necessary to perform its obligations under this Agreement. Upon expiration or termination of this Agreement, Center will promptly and at Sponsor's sole option, either return to Sponsor, or destroy, including expunging such Candidate Data from all computer equipment, including any cache proxy, all Candidate Data in its possession and certify such destruction and expungement to Sponsor in writing (in written or electronic form).

**17. Test Center Staff Requirements.** Every Proctor and Test Center Administrator, and any other Center Staff Member otherwise involved in the Administration of any Test, must complete the iBT Test Center Certification training course and pass the certification exam upon becoming a Center Staff Member and every two years thereafter or more frequently as may be required by Sponsor. As noted in Paragraph 15 above, every Center Staff Member must also sign or submit electronically a confidentiality agreement with Sponsor. Center Staff Members, upon Sponsor's request, to the extent permitted by law, must also provide Test Center Staff Information.

**18. Taxes.** Center is liable for any and all taxes assessed in connection with the performance of this Agreement by Center, including without limitation (i) property taxes assessed by local tax authorities on the equipment, and (ii) income taxes assessed on Test Administration fee(s) payments or other compensation received from or on behalf of Sponsor. Sponsor reserves the right to make any withholding of taxes from payment to Center that it determines necessary and/or appropriate under applicable law. In addition, Center is responsible for collecting and remitting to local tax authorities any applicable VAT on the Services. In addition, Center shall promptly provide ETS with copies of all notices received from any tax authority governing Center and the Sites assessing, or stating its intention to assess, tax liability of any nature whatsoever on ETS as a result of this Agreement or the amounts payable by ETS to Center hereunder. ETS reserves the right to lodge an objection with the relevant taxing authority to any such local assessments, and Center shall provide ETS reasonable assistance in contesting such liability. Any sum payable pursuant to this Agreement by Sponsor to Center shall be inclusive of any VAT which may be chargeable on the supply or supplies for which such sum is consideration for VAT purposes.

**19. ETS-Owned Technologies and Proprietary Materials.** Center acknowledges and agrees that, as between the Parties, ETS owns and/or holds all rights, including, but not limited to, copyright, trade secret, and patent in the ETS-Owned Technologies and Proprietary Materials, which will be provided to and/or used by Center to perform its responsibilities under this Agreement. "ETS-Owned Technologies and Proprietary Materials" means all of the following items: (i) any and all ETS manuals in any format whatsoever, including without limitation those relative to policies, procedures, and practices; (ii) that certain proprietary Internet-based testing software known as "iBT" and that certain proprietary Internet-based registration and scheduling system known as "iSER"; (iii) Test databases and scripts and all individual Test questions with respect to Tests; (iv) Candidate Data; (v) all Candidate Test scores; (vi) Test Security procedures for the secure Administration of Internet-based Tests; (vii) non-public information related to ETS Clients; and (viii) any other information identified by Sponsor to Center as proprietary, or that reasonably would be understood to be confidential or proprietary under the circumstances, including without limitation documents, data, and materials.



**TERMS AND CONDITIONS**

**20. Client-Owned Proprietary Materials.** Center acknowledges and agrees that, as between the Parties, ETS's Client owns and/or holds all rights, including, but not limited to, copyright and trade secret in the Client-Owned Proprietary Materials, which will be provided to and/or used by Center to perform its responsibilities under this Agreement. "Client-Owned Proprietary Materials" means all of the following items: (i) any and all Manuals related to the Client's Tests in any format whatsoever, including without limitation those relative to policies, procedures, and practices; (ii) Test databases and scripts and all individual Test questions with respect to Tests; (iii) Candidate Data; and (iv) all Candidate Test scores.

**21. License for Tests.** Subject to the terms of this Agreement, ETS hereby grants to Center a non-exclusive, royalty-free, non-transferable right to use the ETS-Owned Technologies and Proprietary Materials and/or the Client-Owned Proprietary Materials solely as required by Center to perform its obligations under this Agreement and without the right to sublicense. Center acknowledges that, except for the right to use the ETS-Owned Technologies and Proprietary Materials and Client-Owned Proprietary Materials in accordance with the terms of this Agreement, no proprietary rights in the ETS-Owned Technologies and Proprietary Materials and/or the Client-Owned Proprietary Materials are granted to Center pursuant to this Agreement. Neither may Center, nor may Center allow any third party who obtains from Center, directly or indirectly, access to the ETS-Owned Technologies and Proprietary Materials and/or Client-Owned Proprietary Materials to, (i) reproduce, distribute, disclose or create derivative works based upon the ETS-Owned Technologies and Proprietary Materials and/or the Client-Owned Proprietary Materials, or (ii) reverse engineer, decompile, disassemble or in any way attempt to create source code from any software contained within the ETS-Owned Technologies and Proprietary Materials and/or Client-Owned Proprietary Materials, except as otherwise required by applicable law, and in such event, Center shall provide ETS with prompt notice of any demand made by authorities pursuant to such law.

**22. No Modifications.** Center will not make any changes or modifications in the ETS-Owned Technologies and Proprietary Materials and/or the Client-Owned Proprietary Materials without the prior written consent of ETS.

**23. ETS Marks.** Center acknowledges and agrees that ETS, the ETS logo, GRADUATE RECORD EXAMINATIONS®, GRE®, PRAXIS®, THE PRAXIS SERIES®, TOEFL®, TOEFL iBT®, TOEIC®, TOEIC Bridge™ and TFI™ as well as others listed at [www.ets.org/legal/trademarks/owned](http://www.ets.org/legal/trademarks/owned), are trademarks, service marks or registered trademarks, and/or service marks ("Marks") of ETS in the U.S.A. and many other countries. Center agrees not to use, reproduce, copy or create materials for promotional purposes or to register and use any ETS Marks, or product names, whether such Marks or names now exist or may exist during the Term of this Agreement, without the prior written approval and review of such materials by the Office of the General Counsel of ETS. **Center agrees not to register and/or use any Internet Domain Names that include any ETS Marks or ETS product names.** Center agrees to comply with the most recent edition of the "CTAS Guidelines for Use of ETS Trademarks, Graphics and Copyrighted Materials" and to use only approved graphics as provided by ETS. Notwithstanding anything to the contrary contained in this Agreement, no trademark license is hereby granted to Center.

**24. Infringement.** Center will exercise reasonable diligence to discover infringements of any of ETS's property rights in the ETS-Owned Technologies and Proprietary Materials or the property rights of its Client(s) in the Client-Owned Proprietary Materials. Center will promptly notify ETS of any infringement of which it becomes aware, and in the event that ETS or its Client decides that a proceeding should be brought relative to such infringement, Center will cooperate fully with ETS and/or its Client to prosecute such action. ETS or its Client will fully control prosecution of infringements and will assume the cost thereof. If a third party asserts a claim against Center that the use by

Center of the ETS-Owned Technologies and Proprietary Materials and/or Client-Owned Proprietary Materials infringes such third party's property rights, Center will immediately notify ETS of such claim and ETS and/or its Client will have the right (but not the obligation) to control any litigation or negotiation arising as a result thereof.

**25. Insurance.** Center is responsible for any and all liability arising, directly or indirectly, as a result of the operations conducted at the Site. To the extent permitted by applicable law, Center will indemnify and hold harmless Sponsor, Prometric Inc., and its and their employees, guests, agents, representatives, officers and directors from any loss, damage, injury or liability arising, directly or indirectly, out of Center's performance of the Services or operation of the Site, breach by Center of a representation, warranty or obligation under this Agreement, or failure to comply with applicable laws, regulations and ordinances. Center agrees to maintain throughout the Term hereof general liability insurance with a minimum per incident limit of one million U.S. dollars (U.S. \$1,000,000), and employer's liability insurance as required by applicable law. If the Center is a self-insured State institution in the U.S. or a self-insured Canadian institution, Center must maintain the legally-mandated coverage and workers compensation insurance in the amounts required by the State(s) in the U.S. or Province(s) in Canada where the Center operates.

**26. Intentionally left blank.**

**27. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New Jersey, U.S.A., without giving effect to its conflict of laws principles, unless Center is a State institution in the U.S. prohibited by its State's law, or a Canadian institution prohibited by its Province's and/or country's laws, from agreeing to a choice of law clause applying New Jersey law. If the Center is an entity incorporated or resident in Europe, this Agreement will be governed by and construed in accordance with the laws of England and Wales, without giving effect to its conflicts of laws principles. The Parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement.

**28. Dispute Resolution.** The Parties hereby agree to attempt to resolve, in good faith, any dispute, controversy or claim arising out of or relating to this Agreement, the breach, termination, enforcement, interpretation or validity hereof. If the Parties fail to reach an amicable resolution within a reasonable period of time, the matter will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitration will be conducted by a single arbitrator in Princeton, New Jersey, and English will be the language used in the arbitral proceedings. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the provisions of this paragraph, if Center is prohibited by its local law from agreeing to arbitration, disputes relative to this Agreement will be brought before a court of competent jurisdiction.

**29. Injunctive Relief.** Center understands and agrees that its breach (or threatened breach) of any of the intellectual property rights of Sponsor and/or Center's confidentiality obligations under this Agreement would cause irreparable harm to Sponsor for which monetary damages, even if awarded, would not constitute adequate compensation. Accordingly, Center agrees that, notwithstanding anything to the contrary contained in this Agreement, Sponsor is entitled to equitable relief by way of temporary and permanent injunctions, without bond to the fullest extent allowed by law, and such other and further relief as any court of competent jurisdiction may deem just and proper.

**30. Conflicts.** In the event of any conflict between this Agreement and any statement of work, work order or other document executed between the Parties, the provisions of this Agreement will govern.

**TERMS AND CONDITIONS**

**31. Independent Contractors.** Sponsor and Center are, and at all times throughout the Term and/or Renewal Term hereof, will remain independent contractors vis-à-vis one another, and nothing herein will be construed as creating any other kind of relationship whatsoever between them.

**32. Assignment/Subcontracting.** ETS may assign and/or subcontract its rights and responsibilities hereunder, in whole or in part, upon written notice to Center. Center may not assign and/or subcontract its rights or responsibilities hereunder, in whole or in part, without the prior written approval of ETS (which approval ETS may grant or withhold in its sole and absolute discretion); any attempted assignment and/or subcontracting by Center without the prior written approval of ETS shall be deemed null and void *ab initio*.

**33. Notice.** Any notice given pursuant to this Agreement will be in writing and sent by fax (with transmission confirmation), email with receipt confirmation, and/or overnight courier (with delivery confirmation), and will be deemed duly given on the first business day of receipt, as evidenced by such fax transmission or courier delivery confirmation.

**34. Force Majeure.** Any delay or failure of performance by either Party pursuant to this Agreement shall not be considered a breach of this Agreement if and to the extent caused by an event of Force Majeure, including without limitation fire, flood, earthquake, tsunami or other natural disaster, any regulation or law of any applicable governmental authority, terrorist act, act of war, civil commotion, labor disturbance, epidemic, sabotage, failure of the public utilities or international carriers. A Party experiencing an event of Force Majeure shall, as promptly as reasonable under the circumstances, notify the other Party of the occurrence of said event and make every commercially reasonable effort to find a work-around solution. If the event of Force Majeure subsists for a period of thirty (30) consecutive days, the performing Party may, at its sole option, terminate this Agreement pursuant to the provisions of paragraph 9 hereof.

**35. Severability.** In the event one or more provisions of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, Sponsor may elect to immediately suspend or terminate this Agreement, pursuant to the provisions of paragraph 9 hereof.

**36. No Agency.** Each Party shall in all matters relating to this Agreement act as an independent contractor. Neither Party will have authority, nor will either Party represent that it has any authority, to assume or create any obligation, express or implied, on behalf of the other, or to represent the other Party as agent or employee or in any other capacity. Neither execution nor performance of this Agreement will be construed to have established any agency, joint venture, or partnership between the Parties.

**37. Survival.** The respective obligations of the Parties under this Agreement, including, but not limited to, those set forth in Sections: 11 (Test Security/Verification), 15 (Confidentiality), 18 (Taxes), 19 (ETS-Owned Technologies and Proprietary Materials), 20 (Client-Owned Materials), 21 (License for Tests), 22 (No Modifications), 23 (ETS Marks), 25 (Insurance), 27 (Governing Law), 36 (No Agency) and this section 37 (Survival) shall survive the termination of this Agreement to the fullest extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate.

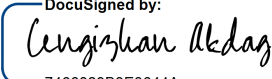
**38. Miscellaneous.** All amounts due hereunder shall be paid in U.S. Dollars. Center explicitly assumes the risk of loss or gain from foreign exchange rate fluctuations between the currency applicable to Center and the U.S. Dollar.

**39. Entire Agreement.** This Agreement (as defined herein) constitutes the entire understanding and agreement between the Parties as to the subject matter hereof and supersedes any prior terms and conditions, agreements and understandings, whether oral or written. The English

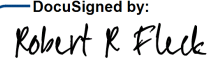
version of this Agreement and all other documents, takes precedence over a translated version.

**ACCEPTED AND AGREED:****NAME OF INSTITUTION**

ATATURK UNIVERSITY

DocuSigned by:  
  
 By: 7466829B3E3644A...  
 Name: Cengizhan Akdag  
 Title: LECTURER  
 Date: 9/25/2018

## EDUCATIONAL TESTING SERVICE

DocuSigned by:  
  
 By: 0E52BF9FADD34C0...  
 Name: Robert R Fleck  
 Title: Sr. Director, Corp Contracts  
 Date: 9/25/2018

AMENDMENT 1  
 TO TERMS AND CONDITIONS  
 AGREED BETWEEN  
 EDUCATIONAL TESTING SERVICE (“ETS”)  
 AND  
 ATATURK UNIVERSITY (“CENTER”)  
 REGARDING CENTER’S ACTIVITIES AS AN  
 ETS “CERTIFIED TEST ADMINISTRATOR SERVICES” (“CTAS”)

---

This Amendment 1, is effective as of January 29, 2018 (“Effective Date”) between ETS and Center.

WHEREAS, ETS sold Prometric Inc. and is no longer a wholly-owned indirect subsidiary of ETS; and,

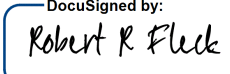
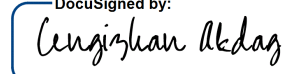
NOW THEREFORE, the Parties hereby agree to the following amendments to the Certified Test Center Administrator Services terms and conditions, effective as of the above Effective Date:

1. “Definitions” Section: The following two definitions are amended to read as follows:
  - **ETS** means Educational Testing Service, a non-profit corporation duly organized and validly existing under the Education Laws of the State of New York, U.S.A. and all its subsidiaries.
  - **Prometric Inc.** means a subcontractor of ETS.

All other terms and conditions of the Agreement, remain unchanged and in full force and effect, and as previously amended. In the event of any inconsistency between the terms and conditions of previous terms and conditions, as amended, and the terms of this Amendment, the terms of this Amendment takes precedence to the extent of that inconsistency. This Amendment forms part of the Agreement and, subject to the amendments above, is subject to all of the terms and conditions of this Agreement.

---

IN WITNESS WHEREOF, the Parties hereby intending to be legally bound, have caused this Amendment 1 to be executed by their duly noted representatives.

<p style="text-align: center;">Educational Testing Service</p> <p>DocuSigned by:          By: _____  <small>0E52BE9EADD34C0</small></p> <p>Name: <u>Robert R Fleck</u></p> <p>Title: <u>Sr. Director, Corp Contracts</u></p> <p>Date: <u>9/25/2018</u></p>	<p style="text-align: center;">Ataturk University</p> <p>DocuSigned by:          By: _____  <small>7466829B3E3644A</small></p> <p>Name: <u>Cengizhan Akdag</u></p> <p>Title: <u>LECTURER</u></p> <p>Date: <u>9/25/2018</u></p>
---	--