

Illinois Community College Board

**MEMORANDUMS OF UNDERSTANDING
EDUCATIONAL TESTING SERVICE® – HIGHSCHOOL EQUIVALENCY TEST™
AND
MEMORANDUM OF UNDERSTANDING-AMENDMENT DATA RECOGNITION
CORPORATION – TEST ASSESSING SECONDARY COMPLETION™**

The Illinois Community College Board staff is seeking approval to enter into a new Memorandum of Understanding (MOU) agreement and an MOU amendment with two high school equivalency exam vendors. Each MOU requires an additional approval of costs. The new MOU agreement is with Educational Testing Services® (ETS), High School Equivalency Test™ (HiSet), and the MOU amendment is with Data Recognition Corporation (DRC), Test Assessing Secondary Completion™ (TASC). These two exams as well as the GED® Testing Services GED® Test* are used to determine completion and issuance of the Illinois High School Equivalency Certification.

The proposed new cost of each exam is as follows:

- ETS® – HiSet™: \$93.75 (computer) and \$115.00 (paper) – Calendar year 2019
 - Increase of \$3.75 for computer version
 - Newly instituted cost for the paper version \$115.00
- DRC – TASC™: \$101.00 per battery for calendar year 2019 and \$104.00 in calendar year 2020 (paper and pencil)
 - Increase of \$9.00 for 2019
 - Increase of an additional \$3.00 in 2020.

Please note that upon successful completion of a high school equivalency exam, the U.S. and IL Constitutions as well as the Flag Test, a high school equivalency certificate will be issued for an additional \$10.00. *In addition, GED® Testing costs remain unchanged and no action is needed.

RECOMMENDED ACTIONS

It is recommended that the following motion be adopted:

The Illinois Community College Board hereby approves the MOU agreement with ETS® through December 2020 and the MOU amendment with DRC through 2019 and authorizes the Illinois Community College Board staff to enter into agreements with these vendors.

It is also recommended that the following motion be adopted:

The Illinois Community College Board hereby approves the cost of the vendor exams as follows:

Calendar Year 2019:

- ETS- HiSet™ at \$93.75 (computerized version) and \$115.00 (paper version) per battery
- DRC –TASC™ at \$101.00 per battery

Calendar Year 2020:

- DRC at \$104.00 per battery

MEMORANDUM OF UNDERSTANDING
BETWEEN
EDUCATIONAL TESTING SERVICE
AND
ILLINOIS COMMUNITY COLLEGE BOARD

This Memorandum of Understanding (MOU), effective January 1, 2019, is between Educational Testing Service (ETS), a non-stock, non-profit corporation organized and existing under the Education Law of New York with principal offices located at Rosedale Road, Princeton, New Jersey 08541, and the Illinois Community College Board (ICCB) located at 401 East Capitol Avenue, Springfield IL 62701-1711, together known as the Parties. This MOU establishes the understandings of the Parties as related to the services provided by ETS in support of the Illinois High School Equivalency Certification Program.

WHEREAS, the ICCB has approved Educational Testing Service, a non-stock, non-profit organization with principal offices in Princeton, New Jersey, as a preferred provider of the HiSET® High School Equivalency Test for the State of Illinois; and

WHEREAS, the ICCB will select and approve test centers to administer the ETS-owned HiSET assessments; and

WHEREAS, this MOU defines the terms and conditions for the use and administration of the HiSET test in Illinois;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings hereinafter set forth, the Parties hereby agree as follows:

1. Definitions.

- 1.1 “**Administration**” shall mean the Test Center’s responsibilities related to the administration of the ETS-owned HiSET test to Test Takers in the State of Illinois.
- 1.2 “**Alternate Test Forms**” shall mean the HiSET test forms in alternative formats such as Braille, large print, or audio.
- 1.3 “**Agreement**” shall mean the terms and conditions agreed to between the Parties in writing, all of which are incorporated herein by reference and made an integral part hereof.
- 1.4 “**CBT**” is an acronym for computer-based testing or the delivery of a HiSET test via the Internet.
- 1.5 “**Common Core State Standards**” shall refer to the academic standards developed by the Council of Chief State School Officers and National Governors Association Center for Best Practices which were adopted by the State of Illinois in 2010 and fully implemented in Illinois schools during the 2013-14 school year.

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- 1.6 **“Confidential Information”** shall mean any information or data that is disclosed by one party (a disclosing party) to the other party (a receiving party) pursuant to this Agreement. “Confidential Information,” however, does not include information that the receiving party can demonstrate by documents that (i) is or becomes publicly known or available without breach of this Agreement, (ii) is received by a receiving party from a third party without breach of any obligation of confidentiality by such other third party, (iii) was previously known by the receiving party as demonstrated by its written records, or (iv) is independently developed by the receiving party without access to or use of such Confidential Information as demonstrated by contemporaneously prepared documentation.
- 1.7 **“ETS”** is a trade name for Educational Testing Service, a non-profit, non-stock research and testing organization that is providing HiSET, the high school equivalency testing program.
- 1.8 **“ETS-owned Technologies”** shall mean ETS’s pre-existing hardware and software systems used to deliver HiSET test materials to the Test Centers and/or record test taker responses, including but not limited to the ETS portal for registering HiSET Test Takers and for delivering final score reports.
- 1.9 **“ETS Proprietary Materials”** shall mean all HiSET test materials, including but not limited to, test books, test items, reports, data, answer sheets, instructional manuals and directions, ETS pre-existing proprietary software, and all derivative works of such ETS Proprietary Materials adapted for use for the high school equivalency program provided by ETS to the Test Centers for the delivery and/or administration of the HiSET test in Illinois
- 1.10 **“ETS Trademarks”** shall mean the trademarks and/or service marks of ETS, including without limitation ETS®, HiSET® and the modernized ETS logo.
- 1.11 **“Equipment”** shall mean any equipment necessary for the administration of the HiSET tests at the Test Centers, including but not limited to an appropriate testing room, accommodations, desks, lighting, pens/pencils, etc. Such Equipment shall be dedicated solely to the administration of the HiSET test for the duration of the HiSET test.
- 1.12 **“HiSET®”** is the brand name for the ETS High School Equivalency Testing program owned and licensed for use by ETS.
- 1.13 **“Intellectual Property Rights”** shall mean (i) copyrights and copyright applications or registrations, including any renewals, in either the United States or any other country; (ii) trademarks, service marks, trade names, and applications or registrations for any of the foregoing in the United States or any other country; (iii) trade secrets or any data or information which provides value or a competitive advantage to its holder by not being publicly known; and (iv) patents, patent applications, continuations, divisional, reexaminations, reissues, continuations-in-part, and foreign equivalents of the foregoing, in the United States, or any other country.
- 1.14 **“ICCB”** is an acronym for the Illinois Community College Board.
- 1.15 **“PBT”** is an acronym for paper-based testing or the delivery of a HiSET test via paper format.
- 1.16 **“Returnable Test Materials”** shall mean the paper version of all used and unused test booklets and answer sheets for the HiSET test.

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- 1.17 “**Subtests**” shall mean the content area (or subject area) tests that constitute the full HiSET battery of assessments.
- 1.18 “**Term**” shall have the meaning specified in Section 2.1 hereof.
- 1.19 “**Test(s)**” shall mean the ETS-owned and copyrighted HiSET test, developed and provided by ETS in paper and/or electronic format for use in the high school equivalency testing program in the State of Illinois.
- 1.20 “**Test Materials**” shall mean all HiSET test materials, including test booklets, test items, reports, data, answer sheets, and related materials including administration instruction manuals and directions provided to the Test Centers by ETS in print, electronic, or other format.
- 1.21 “**Test Centers**” shall mean facilities selected and approved by the Illinois Community College Board to deliver the HiSET tests in CBT and/or PBT formats to pre-registered Test Takers.
- 1.22 “**Test Taker(s)**” shall mean the individual(s) sitting for a HiSET test at the Test Center. Other titles for the Test Taker may be examinee or candidate.
- 1.23 “**Test Taker Data**” shall mean any and all information obtained/accessed by, or disclosed to the Test Center about the Test Taker, including (i) information regarding a Test Taker’s name, addresses, or other personally identifiable information (*e.g.*, passport or social security numbers); (ii) any list or grouping of Test Takers, regardless of whether such list also includes publicly available information; and (iii) test scores.
- 1.24 “**Testing Fees**” shall have the meaning specified in Section 6.1 hereof.

2. Term and Termination of Agreement.

2.1 This Memorandum of Understanding shall be effective from January 1, 2019 through December 31, 2020 (the “**Term**”), with the option for negotiated renewals every year thereafter. The policies and procedures for the newly-introduced HiSET program are in development and changes to such policies and procedures during their development will not impact the prices specified in this MOU.

2.2 This MOU may be terminated as follows:

- (a) In the event of a material breach by either Party that is not cured within 30 days after written notice by the non-breaching party; and
- (b) For convenience, upon 120 days prior written notice, provided that in the event of such termination the Parties agree to complete all services that are in progress pursuant to the terms and conditions set forth in this MOU. Test centers may terminate their own agreement with ETS upon 30 days prior written notice to both the ICCB and ETS.

3. ETS Responsibilities.

3.1 Under the terms of this MOU, ETS is responsible for:

- a. Providing the ETS-owned Test (in PBT and CBT formats, including Alternate Test Forms) as the high school equivalency test approved by ICCB for Illinois residents seeking an equivalency high school diploma;

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- b. Delivering the Test to the ICCB's approved Test Centers in PBT and CBT formats for testing purposes;
- c. Scheduling and providing training for appropriate staff and ICCB-approved test administrators;
- d. Providing access to the ETS web-based portal for Test Takers and the ICCB's pre-approved Test Centers with appropriate user identification and password permissions;
- e. Registering Test Takers for PBT or CBT assessments (based on individual Test Taker choice) via an ETS-managed, web-based portal;
- f. Retaining Test Taker Data online on the web-based site;
- g. Collecting the Testing Fees (per Test Taker) as defined by the terms of this Agreement;
- h. Shipping secure PBT Test Materials to the Test Centers;
- i. Reviewing and approving or denying requests for accommodations from Test Takers with disabilities, and confirming the details (including test date and location) and accommodation requirements with the Test Taker based on ICCB approval;
- j. Providing Alternate Test Form(s) (including Braille, large print, audio versions) and/or additional testing time, and communicating approved accommodations for Test Takers with disabilities to the Test Centers;
- k. Providing ETS paid return mailing labels and envelopes to the Test Centers for the secure return to ETS of Returnable Test Materials;
- l. Notifying the ICCB of any incident occurring at the Test Centers within 3 business days of ETS becoming aware of the incident;
- m. Pending receipt of a properly submitted answer sheet at ETS for PBT and receipt of electronic answers for CBT, providing results of multiple choice test scoring within 3 to 5 business days, with constructed response results within 5 to 10 business days;
- n. Posting final score report data online for Test Taker and ICCB access;
- o. Conducting announced and unannounced Test Center compliance audits at various locations throughout the term of this Agreement;
- p. Collecting state-specified fees (if requested) and state mandated, test center operational fees and remitting the fees as appropriate on a monthly basis; (State test center operational fees are established by the state and are the same fixed price for all centers.)
- q. Providing test summary reports as detailed by the ETS HiSET Client Extract Specification to the ICCB. Illinois requires a nightly feed of demographic information and testing results for every test scored. This information is brought into the Illinois High School Equivalency database and is used as part of the Illinois High School Equivalency certification process. The Illinois High School Equivalency portal is also the official place transcripts and certificates are generated for candidates. This information should be delivered on a nightly basis.
- r. Fully aligning the HiSET exam to the educational standards followed by the State of Illinois – including, but not limited to, the Common Core State

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Standards – and maintaining alignment to those standards throughout the course of this agreement.

- 3.2 ETS will not be responsible for:
- a. Paying or subsidizing ICCB-selected Test Centers;
 - b. Hiring or managing Test Center personnel or compensating them in any way;
 - c. Printing or mailing individual score reports directly to Test Takers;
 - d. Any actions taken by Test Center personnel or occurring at the Test Centers;
 - e. Any delays, accidents, incidents, any actions by Test Takers or other unforeseen circumstances occurring at the Test Centers;
 - f. Any security breaches, directly or indirectly caused by Test Takers or Test Center personnel and/or by the failure of equipment at the Test Centers.

4. ICCB Responsibilities.

- 4.1 Under the terms of this MOU, the ICCB is responsible for:
- a. Reviewing applications for Test Centers for the secure administration of PBT or CBT HiSET testing and notifying ETS of the approved, ICCB-selected Test Centers;
 - b. Establishing policies for the admission of Test Takers at the Test Centers through verification of a state-approved identification;
 - c. Establishing testing guidelines and policies, including ADA compliance policies and procedures, and conducting Test Center compliance audits;
 - d. Enforcing ETS's guidelines for secure test administrations;
 - e. Authorizing ETS to enter into agreements with ICCB-approved Test Centers for receipt and use of secure Test Materials;
 - f. Notifying ETS of ICCB's choice to close a Test Center, as needed; and
 - g. Managing the Illinois high school equivalency certification program, including distribution of documentation and/or certification(s) as determined and authorized by the ICCB.

- 4.2 Under the terms of this MOU, the ICCB is not responsible for:
- a. Paying ETS-required Testing Fees (per Test Taker) to ETS, or any local testing fees (per Test Taker), to test centers;
 - b. Paying or subsidizing Test Centers, unless approved by the ICCB;
 - c. Hiring Test Center personnel or compensating them in any way;
 - d. Any actions taken by Test Center personnel or occurring at the Test Centers;
 - e. Any delays, accidents, incidents, any actions by Test Takers or other unforeseen circumstances occurring at the Test Centers;
 - f. Any security breaches, directly or indirectly caused by Test Takers or Test Center personnel and/or by the failure of equipment at the Test Centers.

5. Limitation of Liability.

NEITHER PARTY IS RESPONSIBLE TO THE OTHER, NOR TO ANY TEST-TAKER, FOR ANY DAMAGES ARISING OUT OF THE TEST CENTER'S ACCESS

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TO, OR INABILITY TO ACCESS OR USE, THE TEST MATERIALS HEREIN, INCLUDING DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, AND WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOSS OF PRIVACY, SECURITY OF DATA, FAILURE TO MEET ANY DUTY (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR LACK OF PROFESSIONAL EFFORT), OR FOR ANY OTHER INDIRECT DAMAGES WHATSOEVER, THAT ARISE OUT OF OR ARE RELATED TO THE ETS PROPRIETARY MATERIALS OR THE TEST ADMINISTRATIONS, EVEN IF EITHER PARTY (OR AN AFFILIATE, SERVICE PROVIDER, OR AGENT) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE), OR STRICT OR PRODUCT LIABILITY OR MISREPRESENTATION. NEITHER PARTY IS RESPONSIBLE FOR PHYSICAL INJURY OR PROPERTY DAMAGE SUFFERED BY OR CAUSED BY A TEST-TAKER SITTING FOR THE HISET ASSESSMENT. ETS DOES NOT WARRANT THAT THE HISET OR ANY TEST MATERIALS WILL BE UNINTERRUPTED OR ERROR FREE AT ICCB'S TEST CENTERS.

6. Compensation and Payment.

- 6.1 As full and complete compensation for the services provided under this MOU, ETS will collect testing fees from each Test Taker in accordance with the fee schedule and conditions specified in Exhibit 1, attached hereto and hereby incorporated in this MOU (the “**Testing Fees**”). ETS is not responsible for the payment of any State or local taxes that may be incurred through the collection of Test Center or State fees. If such taxes are levied against ETS, the Test Centers are responsible for payment.
- 6.2 The Test Center cannot charge any fees that are not approved by the ICCB. ETS agrees to accept Test Taker payment of the ICCB-approved Test Center fee (for facility usage, operational costs), and to remit it to the Test Center on a monthly basis.
- 6.3 All Testing Fees related to the use of the ETS-owned Test Materials by Test Takers are pre-paid directly by Test Takers when the Test Taker schedules with ETS to sit of the HiSET assessment. The ICCB is not responsible to ETS for the Testing Fees.
- 6.4 HiSET fees are subject to change at a future date to maintain test quality or offer program enhancements. In the event of any fee changes, the HiSET Program will follow appropriate notification procedures to existing HiSET clients. At a minimum, ETS will provide the ICCB with 180 days prior notice of any fee changes.

7. Test Taker Retest Policy.

Test Takers who register for any Subtest will be permitted to retake the Subtest again with no additional ETS fees up to two times in a 12 month period beginning on the date of the original Subtest purchase. However, a reduced Test Center cost of \$8 per

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Subtest (to be collected as local Test Center fees) will be applied. These fees are in addition to the standard test fees charged by ETS and paid by the Test Takers to ETS when registering to test. Test Center fees will be remitted by ETS to the Test Centers on a monthly basis, as required by Section 6.2 of this agreement. After the 12 month expiration or on the third retest within 12 months of purchase, the retests are treated as a new test and the Test Taker must pay the applicable ETS Subtest fee and Test Center fee.

8. Intellectual Property.

- 8.1 ETS shall own all right, title and interest in and to the ETS Proprietary Materials and the ETS-owned Technologies, including all Intellectual Property Rights therein.
- 8.2 ICCB shall own all right, title and interest in and to the Test Taker Data.
- 8.3 Except as permitted in section 10.1 of this MOU, neither Party may use the other Party's trade name, trademark, service mark, logo or other designations for promotional or marketing activities without the express written permission of the other Party. However, the Parties may list each other as clients or vendors respectively.

9. Confidentiality.

- 9.1 The Parties agree to keep Confidential Information, including but not limited to performance, financial, contractual and technical information which may be exchanged during the Term of this MOU, in confidence at least to the extent it uses to protect its own confidential information. Such Confidential Information shall not be disclosed to any third party without the prior written approval of the Party whose Confidential Information may be disclosed. Restrictions as to the disclosure and use of Confidential Information shall continue for five years beyond the expiration date of this MOU.
- 9.2 ICCB agrees to protect the privacy of the confidential personally identifiable information contained in the Test Taker Data such as, but not limited to, names, addresses, telephone numbers, dates of birth, test scores, and any other information provided by the Test Takers in strictest confidence, in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), the Federal law that protects the privacy of student education records.

10. ETS Trademarks.

- 10.1 Notwithstanding the limitations set forth in Section 8.2 of this MOU, ETS grants to the ICCB a limited, non-exclusive, non-transferable, revocable license to use the ETS Trademarks in order to fulfill its responsibilities to the ICCB in this MOU, and to reproduce or create promotional materials and signage to inform the public about the Test and the locations of Test Centers, provided that (i) ICCB shall comply with

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all ETS standards for quality in delivering and administering the Test, (ii) ICCB shall comply with all trademark and branding guidelines developed for use of the ETS Trademarks, and (iii) ICCB shall submit all promotional materials for review and prior approval by the Office of the General Counsel of ETS before production and distribution of such promotional materials. ICCB shall submit such promotional materials for review and approval by email to cthompson001@ets.org, or by mail or fax to: Caroline Thompson, Senior Trademark Administrator, Office of the General Counsel – TDI Group, 660 Rosedale Rd, MS 05-J, Princeton, NJ 08541; Fax: +1 (609) 734-1700.

- 10.2 Except for ETS-approved promotional materials and/or signage provided to authorized Test Centers by ETS or ICCB, ICCB acknowledges and agrees that (i) its Test Centers are not authorized to use, reproduce, copy or create materials for promotional purposes or to register and use any Internet Domain Name bearing the ETS name, trademarks or service marks, or the marks of ETS or its service providers, 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, and (ii) that ICCB will assist ETS in taking corrective action in the event ETS identifies a violation of ETS's trademark rights by any Test Center. Notwithstanding anything to the contrary in this Agreement, no trademark license is hereby granted to any Test Center.

11. Rights upon Expiration or Termination.

Upon expiration or termination of this MOU, ICCB shall return to ETS all ETS Confidential Information in its control and/or possession, or destroy the Confidential Information and provide ETS with a confirmation signed by a duly authorized officer or representative of ICCB.

12. Force Majeure.

Neither Party shall be liable to the other for delays in performance caused by fires, floods, civil riots, strikes, labor controversies, acts of God, acts of war, acts of terrorism, governmental restrictions, or inability to obtain transportation or transmission facilities or other circumstances similar or dissimilar which are beyond the control of the Parties. In the event of any delay in performance due to any such event, the Parties shall promptly notify each other and give a date for completion of services as reasonably extended to overcome the effects of such cause.

13. Governing Law.

These terms and conditions shall be governed by the laws of the State of Illinois without regard to its conflict of laws and principles. The Parties agree and hereby submit to the exclusive personal jurisdiction and venue of the state and federal courts for the resolution of any disputes arising from this MOU's terms and conditions.

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14. Entire Agreement.

This Agreement 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. Any modification or amendment of any provisions of this Agreement shall not be binding on either Party unless in writing and signed by the authorized representatives of both Parties.

This MOU has been entered into by the Parties by signature of each Party's respective duly authorized representative.

EDUCATIONAL TESTING SERVICE

ILLINOIS COMMUNITY COLLEGE
BOARD

By: _____

By: _____

Name: David Hunt

Name: _____

Title: EVP and COO

Title: _____

Date: _____

Date: _____

Exhibit 1
Illinois Fee Schedule

Attached
Exhibit 1 – ICCB Fee Schedule

In accordance with Paragraph 6.0 Compensation and Payment, ETS will collect payment from Test Takers as follows:

HiSET Fee Schedule

Fee Description	Test Taker Fees As of January 1, 2019	
HiSET Test Subtest Fees: Must pass all five subtests for certificate.		
Language Arts-Reading	\$23 total \$15.00 ETS fee \$8 Test Center fee Paper	\$18.75 total \$10.75 ETS fee \$8 Test Center Fee Computer
Language Arts-Writing	\$23 total \$15.00 ETS fee \$8 Test Center fee Paper	\$18.75 total \$10.75 ETS fee \$8 Test Center Fee Computer
Mathematics	\$23 total \$15.00 ETS fee \$8 Test Center fee Paper	\$18.75 total \$10.75 ETS fee \$8 Test Center Fee Computer
Science	\$23 total \$15.00 ETS fee \$8 Test Center fee Paper	\$18.75 total \$10.75 ETS fee \$8 Test Center Fee Computer
Social Studies	\$23 total \$15.00 ETS fee \$8 Test Center fee Paper	\$18.75 total \$10.75 ETS fee \$8 Test Center Fee Computer
Retest Policy:		
<ul style="list-style-type: none"> • The ETS fees for up to two retest attempts are included in subtest fee above if taken within 12 months of the date of purchase. Test Center fees of \$8 per subject area will still apply. • After 12 months, or third retest within 12 months of purchase, retests are treated as a new test. Must pay the applicable subtest fee (fees will change January 1, 2019). 		
Practice Tests:		
Paper-based practice test	\$10.00 per subtest	\$10.00 per subtest
Computer-based practice test	\$2 per subtest (minimum purchases apply)	TBD
Optional Services:		
Telephone Registration	One-time, first call-in	\$10.00
Score Verification	For each test being verified	\$25.00
Reschedule Fee	1 st time free, any additional will be charged	\$10.00



**Amendment No. 001
Memorandum of Understanding
State Of Illinois Community College Board
And
Data Recognition Corporation**

This Amendment No. 001 ("Amendment 001") made effective as of January 24, 2019 ("Effective Date") by and between Data Recognition Corporation, with an office at 13490 Bass Lake Road, Maple Grove, Minnesota 55311 ("DRC") and the State of Illinois Community College Board ("ICCB") with an office at 401 E. Capitol Avenue, Springfield, Illinois 62701-1711, (DRC and ICCB shall be referred to herein individually each as a "Party" and collectively as "the Parties").

Whereas, the Parties, entered into a Memorandum of Understanding (MOU) effective August 11, 2015 for the administration of TASC Test Assessing Secondary Completion ("TASC Test") product, (the "Agreement"); and

Now therefore, the Agreement is hereby amended as follows:

1. Section 2. *Term and Termination, A. Agreement Term*, is amended to change the expiration date to December 31, 2019.
2. Exhibit 3: *Examinee Fees*, is deleted in its entirety and replaced with Exhibit 3-1, attached to and made part of this Agreement.
3. Except as otherwise provided in this amendment, the terms and conditions of the Agreement shall remain unchanged.

As signified by signatures of authorized representatives of the Parties below, the Parties have caused this Amendment to be effective as of the first date written above.

Illinois Community College Board

Data Recognition Corporation

By _____
Authorized Signatory

By *Diane Bierbaum*
Authorized Signatory

Print Name and Title

Diane Bierbaum, Dir. Contract Mgmt & Procurement
Print Name and Title

Date

01-24-2019
Date

**Exhibit 3-1
Examinee Fees**

Description	Calendar Year 2019	Calendar Year 2020
TASC Readiness	\$15.00/Battery	\$16.00/Battery
TASC Test	\$61.00/Battery	\$64.00/Battery
TASC Test takers may be subject to additional state and local fees as determined by the state.		
TASC Test Retakes	\$12.20/subtest	\$12.80/subtest
Test Center Fee for Initial Subtests and Retake Subtests – to be paid by Examinee	\$8.00/subtest	\$8.00/subtest

TASC Test Fees for all Renewal Terms will be subject to the then current DRC Testing Fee. Pricing is valid on a calendar year basis – January 1st through December 31st.

**STATE OF ILLINOIS COMMUNITY COLLEGE BOARD
AND DATA RECOGNITION CORPORATION**

Memorandum of Understanding

This Memorandum of Understanding ("MOU") is made effective August 11, 2015 ("Effective Date") by and between Data Recognition Corporation ("DRC") with an office at 20 Ryan Ranch Road, Monterey, California 93940 and the State of Illinois Community College Board ("ICCB"), with an office at 401 E. Capitol Avenue, Springfield, IL 62701-1711, hereinafter collectively referred to as "The Parties".

1. Purpose

This MOU sets forth responsibilities, security requirements, procedures and policies for the products and services provided by DRC for the Test Assessing Secondary Completion™ ("TASC Test") which shall be administered by DRC through test centers approved by the ICCB ("Approved Test Centers").

For purposes of this MOU, "Testing Materials" shall include the TASC Test Assessing Secondary Completion™, the Test Administration Manual ("Documentation"), TASC Readiness Assessment and any materials required for implementation by DRC for test administration of TASC Test Assessing Secondary Completion™. "Services" shall be defined as any DRC services that DRC is required to undertake in order to provide the paper based tests ("PBT") and computer based tests ("CBT") as required by the ICCB.

2. Term and Termination

- A. Agreement Term.** The Agreement Term for this MOU shall commence on the Effective Date and terminate on December 31, 2018. This MOU may be renewed by the Parties through a written amendment signed by an authorized signatory of both Parties ("Renewal Term"). Testing fees for Renewal Terms will be subject to the then current DRC Testing Fees and will be set forth in each amendment.
- B. Termination for Convenience.** This Agreement may be terminated for convenience by either party upon thirty (30) days written notice.
- C. Termination for Default.**
- i. Default by DRC or State.** Any default by DRC or the State in the performance of any of its respective duties hereunder shall be dealt with between pursuant to the terms of the pertinent Contract.
 - ii. Default by Test Center.** In the event that DRC determines in its sole judgment that a Test Center defaults in the performance of any of its duties hereunder and such default is not remedied to the satisfaction of DRC within five (5) days after receipt of written notice to correct said default, or if said default cannot reasonably be corrected within said five (5) days, DRC may terminate the Test Center Agreement immediately upon written notice to both the Test Center and the State.

- iii. **Defaults Included.** Defaults under the terms of this Agreement shall include but not be limited to: Failure by any Party to comply with the provisions of the TASC Test Coordinator's Manual, Test Examiner's Manual or TASC Website requirements. A party ceasing normal business operations shall be considered to be in default under the terms of this Agreement.
- iv. **Effect of Termination.** At the expiration or termination of this MOU, the Test Center will, upon written request by DRC, return DRC materials to DRC in accordance with DRC's instructions. Returned Materials shall not include any test taker information, which shall remain the property of ICCB. The terms of this Section 2 shall survive termination or expiration of this MOU for any reason.

3. **Terms and Conditions of Test Center**

The terms and conditions under which a Test Center shall administer the TASC Test as permitted by the ICCB and DRC will be set forth in the Test Center Memorandum of Understanding. References to the "Test Center Memorandum of Understanding or Agreement" herein mean (i) the TASC Test Center MOU, attached as Attachment 1 and made part of this Agreement; (ii) these Terms and Conditions of the State MOU ("Terms and Conditions"); (iii) the Documentation, incorporated by reference - which may be updated from time to time; provided, however, that DRC shall provide ICCB and the Test Center with notice of any material changes; and (iv) any written addenda or amendments to any of the foregoing that are signed by both Parties ("Amendments").

4. **Roles and Responsibilities**

- A. **ICCB State Test Administrator.** The ICCB State Test Administrator is responsible for the secure and ethical operation and administration of the High School Equivalency Program throughout the entire state of Illinois and agrees that he or she will comply with the Terms and Conditions of this Agreement, including but not limited to the issuance of high school equivalency diplomas/certificates to passing examinees.
- B. **Site Test Coordinator.** The Site Test Coordinator is responsible for the secure and ethical operation of the Test Center(s) identified on the Registration Page herein, and at Addendum Sites, as listed in Exhibit 2 of the Test Center MOU. Site Test Coordinator shall serve as the liaison between the Test Center, the Addendum Site(s), and DRC. Site Test Coordinator acknowledges and accepts that ICCB negotiated the Test Center MOU on behalf of the Test Center(s) and Addendum Sites. Site Test Coordinator represents and warrants that he/she has the full legal right and authority to enter into the ICCB-negotiated Test Center MOU on behalf of the Test Center and Addendum Sites and that the Test Center MOU constitutes the valid, legal and binding obligations of the Test Center. Furthermore, ICCB and the State Test Administrator shall be responsible for supporting the Site Test Coordinator. To the extent allowed under Illinois law, ICCB shall remain liable for the acts of its personnel and staff. To the extent allowed under Illinois law, Test Center(s) shall remain liable for the acts of their personnel and staff.

- C. **DRC.** DRC is responsible for providing TASC Test services in accordance with this Memorandum of Understanding; the TASC Test Center MOU and the Documentation.

DRC will provide a nightly upload of test results and related data which will be encrypted and transferred on a daily basis to an ICCB designated secure file transfer protocol (“FTP”) site. In general, the XML data transfer files are generated at 12:30 AM Eastern Time daily. The XML file is available for push to the ICCB between 12:30 AM and 7:30 AM EDT. The content of the files is based on the number of assessments received and scored in the prior 24 hours. The timing of these transfers can be impacted by any number of external and internal factors on either the sending or receiving side.

5. Test Center Approval by ICCB and Acceptance by DRC

- A. **Approval by ICCB.** ICCB represents that the Test Center is able to (i) provide secure testing services for TASC Testing in accordance with ICCB requirements, and (ii) comply with all Terms and Conditions of the Test Center MOU, including the Terms and Conditions of the State MOU, incorporated herein. ICCB acknowledges and agrees that the Test Center will act at ICCB’s direction as a licensee of DRC, and DRC will not be liable for any acts or omissions of the Test Center.
- B. **DRC’s Right of Inspection.** Test Center shall comply with all Terms and Conditions of the Test Center MOU and the Documentation. DRC reserves the right to inspect the Test Center, including Addendum Sites, to ensure compliance with all Terms and Conditions and the Documentation.

6. Registration and Payment of Testing Fees

- A. **Registration.** TASC Test Examinees are required to register and schedule for testing in DRC’s TASC Student Registration and Scheduling system.
- B. **Examinee Costs.** All costs for administration of the TASC Test are borne by the Examinee, as detailed in the TASC Test Pricing, attached as Attachment 2 and made part of this MOU.

For Examinees who reside in a Department of Corrections (“DOC”) facility, test fees will be borne by the DOC or the applicable correctional facility.

- C. **Collection of Testing Fees.** As full and complete compensation for the services provided under this MOU, the Examinee will pre-pay for the TASC Test, including any state or local fees, when registering to test, in accordance with Attachment 2 of the Test Center MOU. TASC Test fees for Renewal Terms will be subject to the then current DRC TASC Test Fee rates.
- D. **Invoicing and Payment of Test Fees.** Payment and invoicing of Test Fees shall be handled in one of the following manners:

1. Test Center Collects All Fees:

Examinee pays the DRC Test Fee and any applicable state and local fees to the Test Center. DRC will submit an invoice for the DRC Test Fee to the Test Center on a monthly basis after completion of scoring of each subtest. Payment to DRC is due upon receipt of invoice. The Test Center is responsible for sending any applicable state fees collected to the State.

2. DRC's eCommerce System:

Option 1: DRC collects all Fees from Examinee, including the DRC Test Fee and any applicable state and/or local fees through DRC's eCommerce system. DRC will remit any applicable state and/or local fees, on a quarterly basis, directly to Oklahoma and/or the Test Center, respectively.

Option 2: Test Center collects their Test Center Fee from Examinee; and Examinee pays the DRC Test Fee and any applicable state fees through DRC's eCommerce system. DRC will remit any applicable state fees, on a quarterly basis, directly to Oklahoma.

3. Department of Correction Examinees:

DRC Test Fees and any state and/or local Test Center fees are paid by either the Department of Corrections or the applicable correctional facility. DRC will invoice the DOC or the applicable facility for DRC Test Fees on a monthly basis after completion of scoring of each subtest. Payment to DRC is due upon receipt of invoice. DOC or applicable correctional facility will remit state fees collected to the State.

All states and test centers that will receive reimbursement state and/or local fees collected by DRC through eCommerce must provide a signed W9 to DRC when returning this agreement. The W9 form may be obtained from the following link:

<https://www.irs.gov/pub/irs-pdf/fw9.pdf>.

- E. Taxes.** ICCB, DRC and each Test Center shall each be solely responsible for payment of their own federal, state and local taxes, including any benefits relating to the Affordable Care Act and self-employment (social security) taxes that may become due as a result of performance of the terms of this MOU ("Taxes"). Test Center shall comply with all laws concerning its employees at its own expense, including worker's compensation and disability laws.
- F. Accurate Records and Right to Audit.** Test Center agrees to maintain accurate records in connection with the registering for and the administration of the TASC Test. All papers, correspondence, documents, data information, reports, records, receipts and other sources of information relating to TASC Test administrations must be maintained and available for inspection by ICCB or DRC or its duly appointed representatives upon reasonable prior notice during business hours throughout the Term of this MOU and for a period of

three (3) years from the date of the last TASC Test administration offered in Illinois within the Term of an Agreement with DRC.

7. Copyright, Licenses and Proprietary Rights

- A. DRC Ownership.** TASC Test Materials including but not limited to TASC PBT, TASC CBT, the Documentation, DRC's Proprietary Online Assessment System Platform ("OAS"), TASC Test Training Materials, online Materials such as Special Accommodations Forms, and all related content (collectively "TASC Test Materials") and such TASC Test information that is online, ("TASC Test Services") are the property of DRC and its licensors and are protected by United States and international copyright laws and conventions. All copyright, patent, trademark and other proprietary rights in TASC Test Materials and Services, including all software, text, graphics, test items, norms, multimedia assets, design elements, and all other materials, data, information, and domain names originated or used by DRC are reserved to DRC and its licensors. Neither ICCB nor Test Center shall modify the DRC information or reproduce, create derivative works, upload, post, transmit, or distribute any DRC Information, or reverse engineer, decompile, derive or disable any code. DRC grants to ICCB and Test Center ("Licensee") a non-exclusive, non-transferable right and license to access TASC Test Services via the TASC Test website and a right to designate end users of TASC Test Services for educational purposes anytime during the Term. ICCB and Test Center acknowledge, agree, and accept that this license extends only to TASC Test Services and to end users from ICCB, Test Center and Addendum Site locations designated in this MOU. This license will, at all times, be subject to this MOU and to the then-current "DRC Privacy Policy" and any related rules of usage as set forth in Exhibit 4 of the Test Center MOU. Licensee agrees it will inform end users that their use of the TASC Test Website and TASC Test Services are subject to these limitations, and that it will use its best efforts to ensure their compliance. This License does not and shall not be construed in any way to transfer any ownership rights or title in the TASC Test Information or any DRC materials to the Licensee (Test Center), TASC Test Registrants, or other vendors.
- B. DRC License to Test Centers – Computer-Based Testing.** DRC hereby grants to ICCB and Test Center ("Licensee") a non-exclusive, non-transferrable, limited license to administer the TASC Test and to use DRC's OAS Platform in connection therewith, all in accordance with this Agreement.
- C. Proprietary DRC Materials.** To the extent that the Test Center has access to the Testing Materials, Test Center agrees to use all reasonable efforts to maintain the confidentiality and security of the Testing Materials in accordance with the provisions of this MOU, and will not disclose or disseminate the Testing Materials to any third party, except as otherwise provided in this MOU or as required by law. The Parties agree that the Testing Materials are the secure, trade secret, confidential and proprietary property of DRC.

Prior to providing access to or disclosure of any Testing Materials to a third party, whether or not pursuant to legal process or an applicable law or regulation

providing for public disclosure, Test Center agrees it shall provide DRC with prompt written notice so that DRC will have the opportunity to prevent disclosure of the Testing Materials.

8. **Personally Identifiable Information.**

- A. **“Personally Identifiable Information” or “PII”** means information provided to DRC in connection with DRC’s obligations to provide the Services under the Agreement that (i) could reasonably identify the individual to whom such information pertains, such as name, address and/or telephone number, or (ii) can be used to authenticate that individual, such as passwords, unique identification numbers or answers to security questions, or (iii) is protected under Applicable Laws. For the avoidance of doubt, PII does not include aggregate, anonymized data derived from an identified or identifiable individual.
- B. PII concerning TASC registrants, examinees’ scores, data, test results and analyses (“Data”) belongs to the ICCB. ICCB grants the right for DRC to use and share the Data with for the purposes of providing the service, including sharing the Data with the following DRC’s vendors:

1. eResources who hosts the Registration System;

provided PII is only used in the aggregate for any purposes other than providing the service and related obligations of this MOU.

- C. **Collection and Use.** All Parties are responsible for following procedures outlined in the MOU for the collection, transfer, and securing of PII, and will only use PII in connection with the performance of its obligations in this MOU. Test taker data, including but not limited to TASC Test scores, may include aggregated, non-identifying data and may be used by the Parties for development and improvement of assessment tests, statistical analysis and norms (“Research Purposes”).
- D. **Legal Requirements.** All Parties must comply with legal and regulatory requirements around the collection, use, and sharing of this information. Both Parties agree to be responsible for compliance with the Family Educational Rights and Privacy Act and the US Department of Education’s implementing regulations at 34 CFR Part 99 (collectively, “FERPA”) and all other applicable laws, rules, or regulations (all collectively, “Applicable Law”).

9. **DRC Indemnification.**

DRC shall indemnify, defend and hold harmless ICCB from and against any direct damages, costs, liabilities, losses or expenses, including reasonable attorneys’ fees, arising out of a third party claim or cause of action brought by such third party based upon: (i) allegations that the Services or the Testing Materials provided by DRC for TASC Testing infringe on the intellectual property rights of a third party (provided, however, that ICCB has not modified any of the Services or the Testing Materials in a manner causing the allegations); and (ii) arising directly out of any act or omission by DRC in connection with its obligations made under this MOU; (iii) the death or bodily

injury of any person directly caused by an act or omission by DRC; or (iv) any act of gross negligence or willful misconduct by DRC, unless such claims (v) arise as a result of DRC's compliance with guidelines and policies established by ICCB.

Notwithstanding any provision of this MOU to the contrary, IN NO EVENT SHALL DRC BE LIABLE TO ICCB FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. Provided further, in no event shall DRC liability to ICCB in connection with or arising from any breach, injury, damage, claim, or liability exceed the amount owed to ICCB by DRC.

As a condition to the indemnity obligations set forth in this Section 10, ICCB shall (i) promptly notify DRC in writing of any claim or action subject to such indemnity obligations, (ii) permit DRC to control the litigation and/or settlement thereof, provided, however, that DRC will not, without ICCB's prior written consent, agree to any settlement or compromise that would require the indemnified party to make any payments or bear any obligations, and (iii) reasonably cooperate with DRC, in defense of such claim or action.

10. Limitation of Liability.

DRC SHALL NOT BE LIABLE TO ICCB FOR ANY DAMAGES FOR LOST PROFITS, LOSS OF PRIVACY, SECURITY OR DATA, OR, PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Disclaimer of Warranties

NEITHER DRC NOR ITS PARENT COMPANY, AFFILIATES, EMPLOYEES, AGENTS OR SUPPLIERS MAKE ANY REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR THE TESTING MATERIALS. OTHER THAN AS EXPRESSLY SET FORTH HEREIN OR AS SET FORTH IN THE SUBMISSION SENT IN RESPONSE ICCB'S REQUEST FOR SUBMISSIONS, THE SERVICES AND THE TESTING MATERIALS ARE PROVIDED "AS IS", AND NEITHER DRC NOR ITS PARENTS, AFFILIATES, EMPLOYEES, AGENTS OR SUPPLIERS MAKES ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, OR STATUTORY OR OTHERWISE.

12. General Provisions

A. Effect of Invalidity

If any provision of this MOU is held to be void or unenforceable by or as a result of a determination of any court of competent jurisdiction, the decision of which is binding upon the Parties, the Parties agree that such determination shall not render the remaining portions of this MOU to be null and void.

B. Waiver

Any Party's waiver or any breach or failure to enforce any of the terms or conditions of this MOU at any time, shall not in any way affect, limit or waive

such Party's right thereafter to enforce and compel strict compliance with the Terms and Conditions of this MOU.

C. Independent Contractors

Unless otherwise provided in this MOU, each of the Parties hereto is an independent contractor, and nothing herein contained shall be deemed to constitute the relationship of partners, joint ventures, or of principal and agent between the Parties hereto. Neither Party shall represent itself to third persons as acting on behalf of, or serving as the agent of, the other Party.

D. Assignment

This MOU may not be assigned, sublicensed, or otherwise transferred by ICCB, in whole or in part, voluntarily or by operation of law. DRC may assign its interests under the Agreement in its entirety (i) upon sale or transfer of substantially all of the assets of DRC; or (ii) to any affiliate, subsidiary or successor entity.

E. Notices

Any notices required or permitted to be given under this MOU shall be in writing and shall be effective five (5) days following deposit into the United States mail, returned receipt requested; priority postage prepaid; or shall be effective the next business day following overnight delivery by a nationally recognized overnight carrier, facsimile with confirmation of sending or email transmittal, addressed as follows:

<u>Contractor</u>	<u>DRC</u>
State of Illinois Community College Board	Data Recognition Corporation
401 E Capitol Avenue	20 Ryan Ranch Road
Springfield, IL 62701-1711	Monterey, California 93940-5703
Attn: Jennifer K. Foster	Attn: Manager, Contracts
Fax: (217) 558-6700	Fax: (831) 393-7668
Email: Jennifer.Foster@Illinois.gov	Email: Contracts_DRC@DRC.com

F. Governing Law

All matters pertaining to the validity, construction and effect of this MOU shall be governed by the laws of Illinois without reference to the conflicts of laws principles thereof.

G. Order of Precedence

In the event of a conflict between this MOU, and the TASC Test Documentation, this MOU shall take precedence.

H. Force Majeure

No Party shall be in default or otherwise liable for any delay in or failure of its performance under this MOU if such delay or failure arises by any reason beyond that Party's reasonable control, including any acts of God, events of

war, acts of terrorism, riots, fire, flood, earthquake, explosion or other natural disasters, epidemics, quarantine restrictions, or acts of government (collectively the "Force Majeure"). Such obligation that cannot be performed shall be excused for the same period that the delay could not have been avoided through the exercise of reasonable care.

I. Complete Agreement

This MOU, contains the full and complete understanding between DRC and ICCB. No oral statements or agreements made prior to or at the signing of this MOU shall supplement or modify the written terms hereof. No Party shall claim any amendment, modifications, waiver, or release from any provisions hereof of mutual agreement, acknowledgment, or acceptance of purchase orders or otherwise, unless the same is in writing, signed by each of the Parties hereto, and specifically states the same is an amendment to this MOU.

IN WITNESSETH WHEREOF, the Signatory Parties have executed this MOU, effective as of the day and date first above written.

**State of Illinois Community
College Board**

Data Recognition Corporation

Karen Hunter Anderson
Authorized Signatory

Authorized Signatory

Karen Hunter Anderson
Print Name

Print Name

Executive Director
Print Title

Print Title

1/8/16
Date

Date

**Attachment 1
TASC Test Center Memorandum of Understanding**

**Data Recognition Corporation
And
HSE Test Center**

REGISTRATION PAGE

TEST CENTER LEGAL NAME: _____

TEST CENTER CODE: _____

TEST CENTER ADDRESS: _____

SITE TEST COORDINATOR: _____

PHONE: _____ EMAIL: _____

CONTRACT TERM: Start: _____ End: _____

This TASC Test Center Memorandum of Understanding ("MOU") is entered into on _____ ("Effective Date") between Data Recognition Corporation, with offices at 20 Ryan Ranch Road, Monterey, California 93940 ("DRC") and the Test Center identified above. DRC and the Test Center identified above shall be referred to as the "Parties".

WHEREAS DRC has developed the TASC Test Assessing Secondary Completion™ ("TASC Test"), a high school equivalency assessment that provides access, quality and affordability for adults in the U.S. that do not have a high school or equivalent degree; and

WHEREAS the Illinois Community College Board ("ICCB") has authorized the ICCB staff to adopt the TASC Test as one of its high school equivalency assessments; and

WHEREAS the ICCB and DRC have agreed upon terms and conditions for statewide implementation of the TASC Test (the "State MOU"); and

WHEREAS the Test Center identified above wishes to administer the TASC Test; and

NOW THEREFORE the Parties agree that the ICCB-approved Test Center identified above may administer the TASC Test, pursuant to the Terms and Conditions contained herein.

The Parties agree to comply with the defined provisions set forth in: (i) this Registration Page; (ii) the TASC Test Terms and Conditions attached as Exhibit 1 and made part of this MOU; and (iii) the TASC Test Administration Manual (the "Documentation") incorporated by reference. The Documentation may be updated from time to time provided, however, that DRC

shall provide ICCB and the Test Center with notice of any material changes; and (iv) any written addenda or amendments to any of the foregoing that are signed by both Parties ("Amendments"); and

D R C hereby grants the Test Center the right to administer the TASC Test pursuant to the Terms and Conditions set forth below.

The Test Center acknowledges all test materials ordered by the Test Center or its Addendum Sites identified below will be shipped to the following address:

TEST CENTER SHIPPING ADDRESS:

It is the responsibility of the Test Center to distribute all test materials to their Addendum Sites.

In event of a conflict between these Terms and Conditions of the Test Center MOU and the State MOU, the terms of State MOU shall take precedence.

IN WITNESS WHEREOF, the Parties agree to be bound by this MOU and have signed this Agreement effective on the date first written above.

Test Center

Data Recognition Corporation

Authorized Signatory

Authorized Signatory

Print Name

Print Name

Print Title

Print Title

Date

Date

**Exhibit 1:
TASC Test Terms and Conditions**

These TASC Test Terms and Conditions (these "Terms and Conditions") set forth the terms and conditions pursuant to which the Test Center, as defined on the Registration Page of this MOU, shall administer the TASC Test Assessing Secondary Completion™ ("TASC"), as permitted by the State and Data Recognition Corporation ("DRC").

References to the "Agreement" shall mean;

- (i) the Registration Page and the following attachments:
 - Exhibit 1 – TASC Test Terms and Conditions;
 - Exhibit 2 – Addendum Test Sites; Exhibit 3 – Test Fees; and
- (ii) the TASC Administration Manual (the "Documentation")
- (iii) the TASC website and
- (iv) any written addenda or amendments to any of the foregoing that are signed by both parties.

1. Agreement and Order of Precedence

In the event of a conflict between these Terms and Conditions and any related contracts or manuals the following is the order of precedence:

- A. These TASC Terms and Conditions
- B. TASC Test Administrators Manual
- C. TASC Website <http://www.tasctest.com>
- D. Exhibits to the Test Center MOU

2. Roles and Responsibilities

- A. ICCB State Test Administrator.** The ICCB State Test Administrator is responsible for the secure and ethical operation and administration of the High School Equivalency Program throughout the entire state of Illinois and agrees that he or she will comply with the Terms and Conditions of this Agreement, including but not limited to the issuance of high school equivalency diplomas/certificates to passing examinees.
- B. Site Test Coordinator.** The Site Test Coordinator is responsible for the secure and ethical operation of the Test Center(s) identified on the Registration Page herein, and at Addendum Sites, as listed in Exhibit 2 of the Test Center MOU. Site Test Coordinator shall serve as the liaison between the Test Center, the Addendum Site(s), and DRC. Site Test Coordinator acknowledges and accepts that ICCB negotiated the Test Center MOU on behalf of the Test Center(s) and Addendum Sites. Site Test Coordinator represents and warrants that he/she has the full legal right and authority to enter into the ICCB-negotiated Test Center MOU on behalf of the Test Center and Addendum Sites and that the Test Center MOU constitutes the valid, legal and binding obligations of the Test Center. Furthermore, ICCB and the State Test Administrator shall be responsible for supporting the Site Test Coordinator. To the extent allowed under Illinois law,

ICCB shall remain liable for the acts of its personnel and staff. To the extent allowed under Illinois law, Test Center(s) shall remain liable for the acts of their personnel and staff.

- C. **DRC.** DRC is responsible for providing TASC Test services in accordance with the TASC Test Center MOU and attachments thereto; the Documentation and the State of Illinois Purchase Order Terms and Conditions as issued and accepted.

DRC will provide a nightly upload of test results and related data which will be encrypted and transferred on a daily basis to an ICCB designated secure file transfer protocol ("FTP") site. In general, the XML data transfer files are generated at 12:30 AM Eastern Time daily. The XML file is available for push to the ICCB between 12:30 AM and 7:30 AM EDT. The content of the files is based on the number of assessments received and scored in the prior 24 hours. The timing of these transfers can be impacted by any number of external and internal factors on either the sending or receiving side.

3. **Test Center Approval by ICCB and Acceptance by DRC**

- A. **Approval by ICCB.** ICCB represents that the Test Center is able to (i) provide secure testing services for TASC Testing in accordance with ICCB requirements, and (ii) comply with all terms and conditions of the Test Center MOU. The ICCB approved Test Center will act at ICCB's direction as a licensee of DRC, and DRC will not be liable for any acts or omissions of the Test Center.
- B. **DRC's Right of Inspection.** Test Center shall comply with all Terms and Conditions of the Test Center MOU and the Documentation. DRC reserves the right to inspect the Test Center, including Addendum Sites, to ensure compliance with all Terms and Conditions of the Test Center and the Documentation.

4. **Registration and Payment of Testing Fees**

- A. **Registration.** TASC Test Examinees are required to register and schedule for testing in DRC's TASC Student Registration and Scheduling system.
- B. **Examinee Costs.** All costs for administration of the TASC Test are borne by the Examinee, as detailed in the TASC Test Pricing, attached as Attachment 2 and made part of this MOU.

For Examinees who reside in a Department of Corrections ("DOC") facility, test fees will be borne by the DOC or the applicable correctional facility.

- C. **Collection of Testing Fees.** As full and complete compensation for the services provided under this MOU, the Examinee will pre-pay for the TASC Test, including any state or local fees, when registering to test, in accordance with Attachment 2 of the Test Center MOU. TASC Test fees for Renewal Terms will be subject to the then current DRC TASC Test Fee rates.

D. Invoicing and Payment of Test Fees. Payment and invoicing of Test Fees shall be handled in one of the following manners:

4. Test Center Collects All Fees:

Examinee pays the DRC Test Fee and any applicable state and local fees to the Test Center. DRC will submit an invoice for the DRC Test Fee to the Test Center on a monthly basis after completion of scoring of each subtest. Payment to DRC is due upon receipt of invoice. The Test Center is responsible for sending any applicable state fees collected to the State.

5. DRC's eCommerce System:

Option 1: DRC collects all Fees from Examinee, including the DRC Test Fee and any applicable state and/or local fees through DRC's eCommerce system. DRC will remit any applicable state and/or local fees, on a quarterly basis, directly to Oklahoma and/or the Test Center, respectively.

Option 2: Test Center collects their Test Center Fee from Examinee; and Examinee pays the DRC Test Fee and any applicable state fees through DRC's eCommerce system. DRC will remit any applicable state fees, on a quarterly basis, directly to Oklahoma.

6. Department of Correction Examinees:

DRC Test Fees and any state and/or local Test Center fees are paid by either the Department of Corrections or the applicable correctional facility. DRC will invoice the DOC or the applicable facility for DRC Test Fees on a monthly basis after completion of scoring of each subtest. Payment to DRC is due upon receipt of invoice. DOC or applicable correctional facility will remit state fees collected to the State.

All states and test centers that will receive reimbursement state and/or local fees collected by DRC through eCommerce must provide a signed W9 to DRC when returning this agreement. The W9 form may be obtained from the following link: <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.

E. Taxes. Test Center shall each be solely responsible for payment of their own federal, state and local taxes, including any benefits relating to the Affordable Care Act and self-employment (social security) taxes that may become due as a result of performance of the terms of this MOU ("Taxes"). Test Center shall comply with all laws concerning its employees at its own expense, including worker's compensation and disability laws.

F. Accurate Records and Right to Audit. Test Center agrees to maintain accurate records in connection with registering for and the administration of the TASC Test. All papers, correspondence, documents, data information, reports, records, receipts and other sources of information relating to TASC Test administrations must be maintained and available for inspection by

ICCB or DRC or its duly appointed representatives upon reasonable prior notice during business hours throughout the Term of this MOU and for a period of three (3) years from the date of the last TASC Test administration offered in Illinois within the Term of an Agreement with DRC.

5. Copyright, Licenses and Proprietary Rights

- A. DRC Ownership.** TASC Test Materials including but not limited to TASC PBT, TASC CBT, the Documentation, DRC's Proprietary Online Assessment System Platform ("OAS"), TASC Test Training Materials, online Materials such as Special Accommodations Forms, and all related content (collectively "TASC Test Materials") and such TASC Test information that is online, ("TASC Test Services") are the property of DRC and its licensors and are protected by United States and international copyright laws and conventions. All copyright, patent, trademark and other proprietary rights in TASC Test Materials and Services, including all software, text, graphics, test items, norms, multimedia assets, design elements, and all other materials, data, information, and domain names originated or used by DRC are reserved to DRC and its licensors. Neither ICCB nor Test Center shall modify the DRC information or reproduce, create derivative works, upload, post, transmit, or distribute any DRC Information, or reverse engineer, decompile, derive or disable any code. DRC grants to ICCB and Test Center ("Licensee") a non-exclusive, non-transferable right and license to access TASC Test Services via the TASC Test website and a right to designate end users of TASC Test Services for educational purposes anytime during the Term. ICCB and Test Center acknowledge, agree, and accept that this license extends only to TASC Test Services and to end users from ICCB, Test Center and Addendum Site locations designated in this MOU. This license will, at all times, be subject to this MOU and to the then-current "DRC Privacy Policy" and any related rules of usage as set forth in Exhibit 3 of the Test Center MOU. Licensee agrees it will inform end users that their use of the TASC Test Website and TASC Test Services are subject to these limitations, and that it will use its best efforts to ensure their compliance. This License does not and shall not be construed in any way to transfer any ownership rights or title in the TASC Test Information or any DRC materials to the Licensee (Test Center), TASC Test Registrants, or other vendors.
- B. DRC License to Test Centers – Computer-Based Testing.** DRC hereby grants to ICCB and Test Center ("Licensee") a non-exclusive, non-transferrable, limited license to administer the TASC Test and to use DRC's OAS Platform in connection therewith, all in accordance with this Agreement.
- C. Proprietary DRC Materials.** To the extent that the Test Center has access to the Testing Materials, Test Center agrees to use all reasonable efforts to maintain the confidentiality and security of the Testing Materials in accordance with the provisions of this MOU, and will not disclose or disseminate the Testing Materials to any third party, except as otherwise provided in this MOU or as required by law. The Parties agree that the Testing Materials are the secure, trade secret, confidential and proprietary property of DRC.

Prior to providing access to or disclosure of any Testing Materials to a third party, whether or not pursuant to legal process or an applicable law or regulation providing for public disclosure, Test Center agrees it shall provide DRC with prompt written notice so that DRC will have the opportunity to prevent disclosure of the Testing Materials.

6. Personally Identifiable Information.

- A. “Personally Identifiable Information” or “PII”** means information provided to Test Center and DRC in connection with Test Center and DRC’s obligations to provide the Services under the Agreement that (i) could reasonably identify the individual to whom such information pertains, such as name, address and/or telephone number, or (ii) can be used to authenticate that individual, such as passwords, unique identification numbers or answers to security questions, or (iii) is protected under Applicable Laws. For the avoidance of doubt, PII does not include aggregate, anonymized data derived from an identified or identifiable individual.
- B.** PII concerning TASC registrants, examinees’ scores, data, test results and analyses (“Data”) belongs to the ICCB.
- C. Collection and Use.** Both Parties are responsible for following procedures outlined in this MOU for the collection, transfer, and securing of PII, and will only use PII in connection with the performance of its obligations in this MOU.
- D. Collection and Use.** All Parties are responsible for following procedures outlined in the MOU for the collection, transfer, and securing of PII, and will only use PII in connection with the performance of its obligations in this MOU.
- E. Legal Requirements.** Both Parties must comply with legal and regulatory requirements around the collection, use, and sharing of this information. Both Parties agree to be responsible for compliance with the Family Educational Rights and Privacy Act and the US Department of Education’s implementing regulations at 34 CFR Part 99 (collectively, “FERPA”) and all other applicable laws, rules, or regulations (all collectively, “Applicable Law”).

7. Term and Termination.

- A. Agreement Term.** The Agreement Term for this MOU is set forth on the Registration Page above. This MOU shall automatically renew for additional one (1) year periods unless terminated earlier (“Renewal Term”). TASC Testing fees for each Renewal Term will be subject to the then current DRC Testing Fees and will be set forth in each amendment.
- B. Termination for Convenience.** This Agreement may be terminated for convenience by either party upon thirty (30) days written notice.

C. **Termination of the State MOU.** In the event the MOU between DRC and ICCB is terminated, this Test Center MOU shall terminate in accordance with said termination date.

D. **Termination for Default.**

i. **Default by Test Center.** Notwithstanding any other provisions of this Agreement, DRC may immediately terminate this Agreement, upon written notice, in the event that DRC determines in its sole judgment that Test Center defaults in the performance of any of its duties hereunder and such default is not remedied to the satisfaction of DRC within five (5) days after receipt of written notice to correct said default, or if said default cannot reasonably be corrected within said five (5) days.

ii. **Defaults Included.** Defaults under the terms of this Agreement shall include but not be limited to: Failure by any Party to comply with the provisions of the TASC Test Coordinator's Manual, Test Examiner's Manual or TASC Website Requirements. A party ceasing normal business operations shall be considered to be in default under the terms of this Agreement.

iii. **Effect of Termination.** At the expiration or termination of this MOU, the Test Center will, upon written request by DRC, return DRC materials to DRC in accordance with DRC's instructions. Returned Materials shall not include any test taker information, which shall remain the property of ICCB. The terms of this Section 7 shall survive termination or expiration of this MOU for any reason.

8. **Limitation of Liability.**

DRC SHALL NOT BE LIABLE FOR ANY DAMAGES FOR LOST PROFITS, LOSS OF PRIVACY, SECURITY OR DATA, OR, ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Provided further, in no event shall DRC liability to Test Center in connection with or arising from any breach, injury, damage, claim, or liability exceed the amount owed to Test Center by DRC.

9. **Disclaimer of Warranties**

NEITHER DRC NOR ITS AFFILIATES, EMPLOYEES, AGENTS OR SUPPLIERS MAKE ANY REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR THE TESTING MATERIALS. OTHER THAN AS EXPRESSLY SET FORTH HEREIN OR AS SET FORTH IN THE SUBMISSION SENT IN RESPONSE ICCB'S REQUEST FOR SUBMISSIONS, THE SERVICES AND THE TESTING MATERIALS ARE PROVIDED "AS IS", AND NEITHER DRC NOR ITS AFFILIATES, EMPLOYEES, AGENTS OR SUPPLIERS MAKES ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, OR STATUTORY OR OTHERWISE.

10. General Provisions

A. Effect of Invalidity

If any provision of this MOU is held to be void or unenforceable by or as a result of a determination of any court of competent jurisdiction, the decision of which is binding upon the Parties, the Parties agree that such determination shall not render the remaining portions of this MOU to be null and void.

B. Waiver

Any Party's waiver or any breach or failure to enforce any of the terms or conditions of this MOU at any time, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance with the Terms and Conditions of this MOU.

C. Independent Contractors

Unless otherwise provided in this MOU, each of the Parties hereto is an independent contractor, and nothing herein contained shall be deemed to constitute the relationship of partners, joint ventures, or of principal and agent between the Parties hereto. Neither Party shall represent itself to third persons as acting on behalf of, or serving as the agent of, the other Party.

D. Assignment

This MOU may not be assigned, sublicensed, or otherwise transferred by ICCB, in whole or in part, voluntarily or by operation of law. DRC may assign its interests under the Agreement in its entirety (i) upon sale or transfer of substantially all of the assets of DRC; or (ii) to any affiliate, subsidiary or successor entity.

E. Force Majeure

No Party shall be in default or otherwise liable for any delay in or failure of its performance under this MOU if such delay or failure arises by any reason beyond that Party's reasonable control, including any acts of God, events of war, acts of terrorism, riots, fire, flood, earthquake, explosion or other natural disasters, epidemics, quarantine restrictions, or acts of government (collectively the "Force Majeure"). Such obligation that cannot be performed shall be excused for the same period that the delay could not have been avoided through the exercise of reasonable care.

F. Notices

Any notices required or permitted to be given under this MOU shall be in writing and shall be effective five (5) days following deposit into the United States mail, returned receipt requested; priority postage prepaid; or shall be effective the next business day following overnight delivery by a nationally recognized overnight carrier, facsimile with confirmation of sending or email transmittal, addressed as follows:

Test Center

Attn: _____
Fax: () _____
Email: _____

DRC

Data Recognition Corporation
20 Ryan Ranch Road
Monterey, California 93940-5703
Attn: Manager, Contracts
Fax: (831) 393-7668
Email: Contracts_DRC@DRC.com

G. Governing Law

All matters pertaining to the validity, construction and effect of this MOU shall be governed by the laws of New York without reference to the conflicts of laws principles thereof.

H. Agreement and Order of Precedence

In the event of any conflict between the TASC Test Center MOU and the TASC Test Documentation, such conflicts shall be resolved by interpretation of the documents in the following order of precedence:

- i. This MOU
- ii. TASC Test Documentation

I. Complete Agreement

This MOU contains the full and complete understanding between DRC and ICCB. No oral statements or agreements made prior to or at the signing of this MOU shall supplement or modify the written terms hereof. No Party shall claim any amendment, modifications, waiver, or release from any provisions hereof of mutual agreement, acknowledgment, or acceptance of purchase orders or otherwise, unless the same is in writing, signed by each of the Parties hereto, and specifically states the same is an amendment to this MOU

**Exhibit 2
Test Center Addendum Sites**

TO BE COMPLETED BY EACH TEST CENTER/COLLEGE SITE AS APPLICABLE
[If none – indicate “None” and these terms shall not apply]

ADDENDUM SITE NAME			
TEST CENTER CODE			
ADDENDUM SITE ADDRESS			
ADDENDUM SITE TEST COORDINATOR			
PHONE:		EMAIL:	

ADDENDUM SITE NAME			
TEST CENTER CODE			
ADDENDUM SITE ADDRESS			
ADDENDUM SITE TEST COORDINATOR			
PHONE:		EMAIL:	

ADDENDUM SITE NAME			
TEST CENTER CODE			
ADDENDUM SITE ADDRESS			
ADDENDUM SITE TEST COORDINATOR			
PHONE:		EMAIL:	

1. **Definition of Addendum Sites.** “Addendum Site” shall mean a Test Center site or location in the State that is approved by ICCB to administer tests, but that operates under the authority of a Test Center. Addendum Sites are not authorized to store testing materials unless otherwise approved in a written agreement between the Parties and signed by DRC and ICCB.

2. **Security of Addendum Site Testing Materials.** The Parties agree that the Site Test Coordinator is responsible for ensuring that all testing materials from an Addendum Site shall be, upon completion of any TASC Test administration, securely stored, transferred and accounted for. The Site Test Coordinator shall check out the Test Materials to each Addendum Site and transport such Test Materials to the Addendum Site(s) and oversee the administration of the Test.

3. **Responsibility for Addendum Sites.** Site Test Coordinator is responsible for the Addendum Site(s). If there is a change in the individual fulfilling the role of Site Test Coordinator, the Test Center remains responsible for complying with the Terms and Conditions of this MOU as if the change had never occurred. The Test Center must give DRC and ICCB ten (10) business days’ written notice in the event of any change in the individual serving as Site Test Coordinator. Test Center agrees that it is responsible and liable for the acts or activities of the Addendum Sites and furthermore that the Addendum Sites shall abide by and comply with any and all Terms and Conditions of this Agreement. For avoidance of doubt, references to “Test Center” shall refer to and include any and all Addendum Sites as provided herein.

4. **Changes to Exhibit 1.** If there are any additions or removals of any Addendum Sites, the Test Center shall notify DRC and ICCB immediately in writing.

**EXHIBIT 3:
EXAMINEE FEES**

Description	CALENDAR YEAR 2015	CALENDAR YEAR 2016	CALENDAR YEAR 2017
TASC Readiness	\$10.00/Battery	\$11.00/Battery	\$12.00/Battery
TASC Test	\$52.00/Battery	\$52.00/Battery	\$54.00/Battery
TASC Test takers may be subject to additional state and local fees as determined by the state.			
TASC Test Retakes	\$10.40/subtest	\$10.40/subtest	\$10.80/subtest
Test Center Fees for Initial Subtests and Retake Subtests - to be paid by Examinee	\$8.00/subtest	\$8.00/subtest	\$8.00/subtest

TASC Test Fees for all Renewal Terms will be subject to the then current DRC Testing Fee. Pricing is valid on a calendar year – January 1st through December 31st.

Subtest Retakes:

1. Retakes in Pursuit of a Passing Score:

- The TASC Test offers two retakes of each content area subtest (5 in total) at no additional cost to first time Examinees. Examinees may be subject to additional state and local fees as determined by the state.
- The retake fee is waived solely on subtests that did not receive a passing score. Examinees may be subject to additional state and local fees as determined by the state.
- Please see (2) below for retakes in pursuit of improved scores.
- After two fee-waived retakes in any content area subtest, standard retest fees will apply.
- Fee-waived retakes are available to Examinees at any time, within the parameters of the state's retesting rules, up to one year from the date of the initial subtest.
- Unless mandated by the ICCB's retest rules, there is no requirement that the Examinee purchase or take the entire battery of subtests in order to be eligible to take fee-waived retakes.

2. Retakes to Improve a Passing Score:

Examinees that achieve passing scores but still elect to retest in order to improve their scores after passing the initial test will be subject to standard retest fees.

**EXHIBIT 4:
DRC Data Privacy and Security Policy**

This Data Privacy and Security Policy (“**DPSP**”) sets forth DRC and Test Center’s respective duties and obligations with respect to Personally Identifiable Information (defined below). In the event of any inconsistencies between the DPSP and the MOU (defined below), the Parties agree that the DPSP will supersede and prevail. Capitalized terms not defined herein shall have the meaning ascribed to them in the agreement.

1. Definitions.

- A. “**Agreement**” means the MOU between DRC and Test Center to which this DPSP is attached and made a part thereof.
- B. “**Applicable Laws**” means federal, state and international privacy, data protection and information security-related laws, rules and regulations applicable to the Services and to Personally Identifiable Information.
- C. “**End User Data**” means the data provided to or collected by DRC in connection with their obligations to provide the Services under the Agreement.
- D. “**Personally Identifiable Information**” or “**PII**” means information provided to DRC in connection with DRC’s obligations to provide the Services under the Agreement that (i) could reasonably identify the individual to whom such information pertains, such as name, address and/or telephone number, or (ii) can be used to authenticate that individual, such as passwords, unique identification numbers or answers to security questions, or (iii) is protected under Applicable Laws. For the avoidance of doubt, PII does not include aggregate, anonymized data derived from an identified or identifiable individual.
- E. “**Processing of PII**” means any operation or set of operations which is performed upon PII, such as collection, recording, organization, storage, use, retrieval, transmission, erasure or destruction.
- F. “**Third Party**” means any entity (including, without limitation, any affiliate, subsidiary and parent of DRC) that is acting on behalf of, and is authorized by, DRC to receive and use PII in connection with DRC’s obligations to provide the Services.
- G. “**Security Incident**” means the unlawful access to, acquisition of, disclosure of, loss, or use of PII or DRC proprietary, confidential and/or trade secret materials.
- H. “**Services**” means any services and/or products provided by DRC in accordance with the Agreement.

2. Confidentiality and Non-Use; Consents.

- A. DRC agrees that the PII is the Confidential Information of the Test Taker and, unless authorized in writing by Test Taker or as otherwise specified in the Agreement or the DPSP, DRC shall not Process PII for any purpose other than as reasonably necessary to provide the Services, to exercise any rights granted to it under the Agreement, or as required by Applicable Laws.
- B. DRC shall maintain PII confidential, in accordance with the terms set forth in this

DPSP and Applicable Laws. DRC shall require all of its employees authorized by DRC to access PII and all Third Parties to comply with (i) limitations consistent with the foregoing and, (ii) all Applicable Laws.

- C. Test Center represents and warrants that in connection with any PII provided directly by Test Takers / Registrants to DRC, DRC shall be responsible for (i) notifying End Users that DRC will Process their PII in order to provide the Services and (ii) obtaining all consents and/or approvals required by Applicable Laws.

3. Data Security. DRC shall use commercially reasonable administrative, technical and physical safeguards designed to protect the security, integrity, and confidentiality of PII. DRC's security measures include the following:

- A. Access to PII is restricted solely to DRC's staff who need such access to carry out the responsibilities of DRC under the Agreement;
- B. Access to computer applications and PII are managed through appropriate user ID/password procedures;
- C. Access to PII is restricted solely to ICCB personnel based on the user role they are assigned in the system (provided, however, that it is the ICCB's responsibility to ensure that user roles match the level of access allowed for personnel and that their personnel comply with Applicable Law in connection with use of such PII);
- D. Data is encrypted in transmission (including via web interface) at no less than 128-bit level encryption; and
- E. DRC or a DRC-authorized party performs a security scan of the application, computer systems and network housing PII using a commercially available security scanning system on an annual basis.

4. Data Security Breach.

- A. In the event of a Security Incident , DRC shall (i) investigate the Security Incident, identify the impact of the Security Incident and take commercially reasonable actions to mitigate the effects of any such Security Incident, (ii) timely provide any notifications to individuals affected by the Security Incident that DRC is required to provide, and, (iii) notify ICCB of the Security Incident, subject to applicable confidentiality obligations and to the extent allowed and/or required by Applicable Laws.
- B. Except to the extent prohibited by Applicable Laws, DRC shall, upon ICCB written request, provide ICCB with a description of the Security Incident and the type of data that was the subject of the Security Incident.

5. Security Questionnaire. Upon written request by ICCB, which request shall be no more frequently than once per twelve (12) month period, DRC shall respond to security questionnaires provided by ICCB, with regard to DRC's information security program applicable to the Services, provided that such information is available in the ordinary

course of business for DRC and it is not subject to any restrictions pursuant to DRC's privacy or data protection or information security-related policies or standards. Disclosure of any such information shall not compromise DRC's confidentiality obligations and/or legal obligations or privileges. Additionally, in no event shall DRC be required to make any disclosures prohibited by Applicable Laws. All the information provided to ICCB under this section shall be Confidential Information of DRC and shall be treated as such by the ICCB.

6. **Security Audit.** Upon written request by ICCB, which request shall be no more frequently than once per twelve (12) month period, DRC's data security measures may be reviewed by ICCB, both through an informal audit of policies and procedures and/or through inspection of security methods used within DRC's infrastructure, storage, and other physical security. Should ICCB request an inspection, DRC will schedule a site visit a minimum of five days after the date of the request.

7. **Records Retention and Disposal**

- A. DRC will use commercially reasonable efforts to retain End User Data until the End User deletes such data or for an alternative time period mutually agreed by the Parties.
- B. Using appropriate and reliable storage media, DRC will regularly back up the ICCB and End User Data and retain such backup copies for a minimum of twelve (12) months.
- C. DRC will immediately place a "hold" on the destruction of records that include but are not limited to End User Data, in response to an oral or written request from ICCB indicating that those records may be relevant to litigation that ICCB reasonably anticipates. Oral requests by ICCB for a hold on record destruction shall be reduced to writing and supplied to DRC for its records as soon as reasonably practical under the circumstances. ICCB will promptly coordinate with DRC regarding the preservation and disposition of these records. DRC shall continue to preserve the records until further notice by ICCB.