

ETS GLOBAL PUBLIC PROGRAMME TEST CENTRE AGREEMENT

PARTIES

Educational Testing Service (ETS) Global BV (“**ETS Global**”) is a Dutch company, registered on the Dutch Trade Register of the Chamber of Commerce under number 34153484, which principal place of business is located at Strawinskyiaan 929, 1077XX Amsterdam, The Netherlands;

For the purpose of this agreement, acting through its branch whose principal place of business is located Educational Testing Service (ETS) Global BV Sp. z o.o., oddział w Polsce, ul. Bonifraterska 17, 00-203 Warszawa, Polska.

For the purpose of this Agreement legally represented by Ms Anna GUTKOWSKA-ZAJĄC.

AND

Czech University of Life Sciences Prague, with registered address FEM, Department of Languages, Kamýcká 129, 165 00, Praha – Suchbát, Czech Republic and billing address Czech University of Life Sciences Prague, FEM, Department of Languages, Kamýcká 129, 165 00 Praha, Suchbát, Czech Republic, with registration number 60460709

For the purpose of this Agreement legally represented by Mr Rector Prof. Ing. Petr SKLENIČKA, CSC.

(“**PPTC**” or “**Czech University of Life Sciences Prague, FEM**” or the “**Organisation**”)

RECITALS

ETS Global is a wholly-owned subsidiary of Educational Testing Service (“ETS”), a non-profit corporation organised under the Education Law of New York, U.S.A., which is the publisher and owner of the examination known as the “TOEIC® test” and the “TOEFL® test”, and all related documentation, files, data and any related Intellectual Property Rights.

You hereby certify that you have the power and capacity to enter into the ETS Global Agreement in the name and on behalf of PPTC. For the avoidance of doubt, by entering into this agreement you, PPTC, and any users registered on behalf of PPTC, will be bound by the Agreement (as defined in article 1.1).

1. TERMINOLOGY

1.1 Definitions

Capitalised terms used throughout the Agreement have the meaning defined either below or otherwise in the General Terms and Conditions attached as Appendix 1.

“**Administration**” shall mean the approved manner in which one or more Tests may be administered pursuant to this Agreement.

“**Agreement**” shall mean this PPTC agreement, including all appendices hereto, and all other documents (the “ETS Global Documentation”) listed in article 1.2 below. The ETS Global Documentation may be revised and/or completed by ETS Global during the Term.



“**Anti-corruption legislation**” shall have the meaning set forth in section 11.

“**Audit**” shall mean unannounced and announced audit of PPTC in order to verify the compliance with the terms of this Agreement.

“**Auditor**” shall mean an individual authorised by ETS Global or authorised third party to conduct audits of Test Sessions and Testing Sites on behalf of ETS Global or on behalf of authorised third party.

“**Candidate**” shall mean the individuals who may be interested in taking a Test and the Examinees.

“**Candidate Data**” shall mean any and all information obtained/accessed by, or disclosed to, PPTC about Candidates.

“**Confidential information**” shall mean this Agreement as well as its Appendices and documents covered, data (including in particular Candidate files or financial information) and any information of a confidential nature relating to the business of either Party, including ETS Global Affiliate, or which can reasonably be considered as confidential by the receiving Party, which is disclosed to the other Party in connection with this Agreement, excluding any information that the recipient can demonstrate: (a) was publicly known at the time of disclosure to it, or becomes publicly known through no act of the recipient; (b) was rightfully received from a third party without a duty of confidentiality; (c) was developed by it independently; or (d) is required to be disclosed by a binding judicial or governmental order.

“**B2B Platform**” shall mean ETS Global’s online secure system that allows Registered Users to manage Test Administration support members for the Test Administrations, access legal and product documentation, and manage Organisation’s data based on the Registered User’s profile.

“**Effective Date**” shall mean the March 1, 2025 or validation date whichever date comes later and provided that PPTC has accepted and validated the Agreement, including its Appendices. The Agreement enters into force on the Effective Date.

“**ETS**” shall have the meaning set forth in the recitals above.

“**ETS Global**” shall have the meaning set forth in the definition of the Parties above.

“**ETS Global Affiliate**” shall mean any entity that, directly or indirectly, controls, is controlled by or is under common control of ETS Global.

“**ETS Global Documentation**” shall mean all the documents related to the Agreement and the Products and Services such as but not limited to administration procedures and manuals as identified and provided to the Organisation of which ETS Global reserves the right to change, without prior notice, in which case the Organisation agrees to abide by such changes subject to its information.

“**ETS-Owned Technologies and Proprietary Materials**” shall mean the Tests, the Test materials, Products, Services, licensed marks, ETS marketing materials, translated materials, ETS software, and all other materials made available by or provided by ETS Global to the Organisation, along with any and all Intellectual Property Right therein.

“**Examinees**” shall mean the individuals registered to take a Test.

“**Government Authority**” shall mean any supra national, national, federal, state, municipal or local government (including any subdivision, court, administrative agency or commission or other authority of the same) or any quasi-governmental, industry or trade or private entity or person exercising any regulatory or quasi regulatory, taxing, importing or other governmental or quasi-governmental power or authority, as well as any entity that is majority controlled by any of the foregoing.

“**Indemnified Party**” shall mean ETS, ETS Global, ETS Global Affiliates, their officers, directors, employees, agents and partners.

“**Intellectual Property Right**” shall mean all of the following intellectual property rights: (i) patents, patent applications, patent rights, inventions whether or not patented or patentable and all improvements thereto; (ii) company names, business names, shop signs, trade dress, logos, slogans, mask works, registered and unregistered designs, trademarks and related registrations and applications for registration; (iii) copyrights in both published and unpublished works whether or not registered including without limitation all compilations, databases (including sui generis rights



on databases), software (including all underlying and related source, object codes and source codes), manuals and other documentation, graphics, logos, page headers, button icons, scripts, packaging, trade dress and designs whether or not appearing in large print or with the trademark symbol, and all copyrights registrations and applications, and all derivatives, translations, adaptations, and combinations of the above; (iv) Internet domain names with any extensions; and (v) know-how, trade secrets, confidential or proprietary information, techniques and research in progress.

“**Institutional Testing Programme**” shall mean the programme that may be offered in a full service All Test administrations offered under the Full Service Institutional Testing Programme must be supervised by Test Centre Administrators.

“**Institutional Testing Programme Test Session**” shall mean the Test Session under the Institutional Testing Programme administered by PPTC.

“**Organisation**” shall have the meaning set forth in the definition of the Parties above.

“**Parties**” shall mean ETS Global and PPTC.

“**Party**” shall mean ETS Global or PPTC, as the context dictates.

“**PPTC**” shall mean the Organisation that provides the location for the Testing Site and the test administration support for the Test administrations.

“**Public Testing Programme**” shall mean the administration of the Tests directly to Examinees on fixed dates and as approved by ETS Global. All authorised Administrations offered under the Public Testing Programme must be supervised by Test Centre Administrator and in accordance with the Schedules and ETS Global Documentation.

“**Public Testing Programme Test Session**” shall mean a Test Session under the Public Testing Programme administered by Organisation and in accordance with Schedules and ETS Global Documentation.

“**Payor**” shall mean the Party responsible for making a payment.

“**Registered User**” shall mean any person identified as being part of PPTC and who is granted access to the E-commerce Platform in accordance with its Profile. These Registered Users are created either by ETS Global or PPTC.

“**Services**” shall mean the test administration support services in the Territory and/or the Testing Site to be provided by PPTC under the PPTC Agreement

“**Term**” shall mean the period during which the Agreement is in force. This Agreement becomes effective on the Effective Date and remains in force until February 28, 2027 unless (i) renewed for a successive period to be determined by mutual written agreement between the Parties thirty (30) days prior to the end of the Term, or (ii) terminated earlier in accordance with the provisions of the Agreement.

“**Territory**” shall mean Czech Republic.

“**Tests**” shall mean the Tests which are and may be developed by ETS and distributed by ETS Global in the future.

“**Test Centre**” shall mean the location at which a Test is administered, which must comply with the requirements set out in the Test Administration Manual and the Administration Procedures and which, in relation to the Institutional Test Sessions, may be a PPTC site or another site designated for this purpose and which has been approved by ETS Global.

“**Test Centre Administrator**” shall mean the person accredited by ETS Global in accordance with ETS Global Documentation to administer a Test Session.

“**Test Session**” shall mean the administration of a Test on the Testing Site provided by the PPTC.

“**You**” or “**Your**” refers to PPTC.

1.2 Interpretation

Subject to the terms of this Agreement and unless the context specifies differently:

- a. the titles of the articles are given for information purposes only and are not taken into



- consideration for the interpretation and implementation of the Agreement;
- b. terms in plural should also be deemed to apply to singular and vice versa; and
 - c. in case of inconsistency between the provisions of the contractual documents, they should be interpreted according to the following decreasing order of importance:
 - i. The Public Programme Test Centre Agreement;
 - ii. The General Terms and Conditions in Appendix 2;
 - iii. The Schedules;
 - iv. ETS Global Documentation;

2. RELATIONSHIP DESIGNATION

Subject to compliance with the requirements set out in the Agreement and in the ETS Global Documentation, ETS Global authorises the PPTC, through this Agreement to provide ETS Global with the Services in the Territory in accordance with the ETS Global requirements. For providing this Service, ETS Global will pay PPTC in accordance with Section 4.2 of the Agreement. PPTC hereby accepts such appointment subject to the terms and conditions of this Agreement.

3. OBLIGATIONS OF PPTC

3.1 Access to the B2B Platform

PPTC must be a Registered User.

3.2 Standards

PPTC will carry out its obligations hereunder in such manner as to respect and further the outstanding reputation, professional standards and prestigious image of ETS Global and abide by the Standards for Quality and Fairness to be provided to the Organisation.

For the avoidance of doubt, any action or omission by PPTC which causes ETS Global to have a concern about the compliance with this Section 3 and ETS Global Documentation shall constitute a breach of this section 3.2.

3.3 Obligations in relation to the Services

PPTC shall provide accurate and up to date information to ETS Global related, without limitation, to its capacity and availability to provide the Services and undertakes to provide the Services in such volumes and dates as indicated to ETS Global.

PPTC will validate each date upon which it commits itself to provide the Services to administer the Test Session.

PPTC is responsible for the launch and administration of Tests within the proper time windows, and proper authentication of Candidate/Examinee identification for all those who take the Test and this in accordance with the ETS Global Documentation.

3.4 Equipment for Testing Site

PPTC is responsible for having the adequate testing equipment and making sure that all technical requirements are fulfilled to ensure that Testing Sites are fully functional to deliver all Tests according to the ETS Global Documentation.

Depending on the type of test, Paper based or online tests, equipment can vary and include but are not limited to: CD player, microphone, internet access, printers, webcam and a clock.



3.5 Testing site and Room Requirements

PPTC guarantees that the Testing Site and the room are compliant with the requirements detailed in ETS Global Documentation. Photos will need to be provided to validate usage of room.

Requirements include but are not limited to:

- the testing site and the room are accessible by public transportation;
- the testing site and the room are accessible to Candidates with disabilities;
- chairs have back support (no benches);
- restrooms are easily accessible;
- directional signs, indicating a Test that directs Candidates to the check-in area;
- check- in area sufficiently spacious to welcome candidates;
- adequate lighting for reading;
- temperature and ventilation appropriate for the season;
- the testing room should not be affected by noise and signs informing that a test is in progress should be displayed around the Testing room.

3.6 Testing Capacity and Location

PPTC shall provide accurate and up to date information to ETS Global related, without limitation, to the number and capacity of its testing facilities and their exact location.

PPTC will be available to provide Testing Sites in such volumes and on such Test dates as indicated to ETS Global.

4. ETS GLOBAL RESPONSIBILITIES

4.1 Test Sessions

ETS Global will communicate to PPTC session dates and Organisation shall validate in writing, which for the avoidance of doubt include emails and electronic communications, the dates upon which PPTC commits itself to provide Test Administration support members

Regarding the Testing Site, ETS Global will open the sessions to registration on the dates agreed with Organisation. The Organisation commits to provide Testing Sites for agreed dates.

4.2 Compensation and Payment

In consideration for the provision of Services stated hereunder, Organisation will receive payments in the amounts as follows and as based on agreed business terms.

| Test Administration Support Provider | Fee paid by ETS Global, per person excluding taxes |
|--------------------------------------|--|
| Test Centre Administrator | 750 CZK |
| Proctor | 500 CZK |

NB: Prices shown are exclusive of tax

| Room Provider Service | Fee paid by ETS Global excluding taxes (% of revenue generated by the session) |
|-----------------------|--|
| | |



| Public Programme (PP) tests | |
|---|-------------|
| Paper based Tests (PBT) in Public Programme (PP) | 20 % |
| Computer based Tests (CBT) in Public Programme (PP) | 20 % |
| Institutional Programme (IP) tests | |
| Paper based Tests (PBT) in Institutional Programme (IP) | N/A |
| Computer based Tests (CBT) in Institutional Programme (IP) | N/A |

For the avoidance of doubt, Organisation's remuneration is not applied to products and services rendered and provided by ETS Global.

PPTC will submit an invoice to ETS Global at the end of each month reflecting the Service provided.

ETS Global requires that invoices sent by Organisation include the names of Test Administration Support members who provided the Service.

ETS Global will pay each undisputed invoice 45 days after the end of each month.

Organisation agrees that in the event that Organisation owes payment to ETS Global, ETS Global shall have the ability to set this off against the fee due to the PPTC and other agreements between the Parties.

4.3 Withholding and indirect taxes

All payments due under this Agreement should be payable after deducting from the payments, any withholding tax that may be levied on the payments by the tax authorities. All sums payable under this Agreement shall be increased by VAT or Sales Tax at the appropriate rate, if applicable. Where any sum due to be paid is subject to any withholding tax, the Payor may make such appropriate withholding. The Parties agree to obtain and provide any official certificate of tax residency or similar documents issued by their respective tax authority if required.

5. TEST VOLUMES/DATES

Nothing contained herein will be construed as imposing upon ETS Global an obligation to retain the Services of Organisation for Test Administration in the volumes and/or on the Test dates for which Organisation has indicated to ETS Global that it has the capacity and availability. Organisation acknowledges and agrees that ETS Global may cancel a Test Session date with a prior notice of 14 days. In the event of force majeure or security incident, ETS Global will have the right to cancel such Test Session without prior written notice. Cancellation will not entitle Organisation to any damages or reimbursement of any kind.

6. TESTING SECURITY AND ADMINISTRATION PROCEDURES

6.1 General

Organisation understands and acknowledges that the compliance of the Testing Site and the integrity of Test administration in accordance with the Agreement including but not limited to ETS Global Documentation is vital to the business interests and reputation of ETS Global.



The Organisation will observe and comply with the conditions and procedures specified in the ETS Global Documentation relating to the room requirements and Testing Site and ETS Global Documentation provided to the Organisation, and any future updates which ETS Global may issue from time to time.

Organisation understands and agrees that ETS Global reserves the right to suspend Organisation from having Test Session taking place in the Testing Site and providing the Services, pending investigation by ETS Global into any suspected infringement of the provisions of Section 6 or where the security of the Test Session was compromised by Organisation. The failure by the Organisation to comply with the provisions of this article 6 shall entitle ETS Global to terminate the Agreement immediately pursuant to article 10.2.

6.2 Testing Site Security

The PPTC will be responsible for maintaining security in the Testing Site before, during and after the Test session and in all phases of the administration process, as described in the ETS Global Documentation and any future updates which ETS Global may issue from time to time.

The Organisation shall ensure that:

- i. There is a dedicated securely locked area in which all Test materials are placed and to which a maximum of two authorised persons have access;
- ii. There is a secure area where candidates can store personal belongings outside of the testing room;
- iii. The testing rooms are arranged in a way, that all examinees face the same direction;
- iv. Test Centre Administrators, assistants and proctors must have unimpeded access to every Candidate;
- v. For online based tests, if there are no partitions between tables to restrict visibility, there must be a separation distance of at least 1.5 meters from the center of the table to the center of the adjacent table;
- vi. For paper based tests, there must be a separation distance of at least 1.5 meters from the center of the table to the center of the adjacent table;
- vii. (i) All cartons and boxes containing Test material are opened and checked by a Test Centre Administrator and a proctor as soon as the test material is received. The Test material is checked two hours before the session start time at the earliest;
- viii. (ii) Following a Test Session, Organisation shall ensure that all Test materials are collected and quantities checked by the Test Centre Administrator(s) and proctor. Organisation shall return all Test materials immediately by secure shipment to ETS Global. In the event that the Test Session is held in the evening or on a weekend, the Organisation must ensure the Test material is securely stored and will be returned on the following business day using a secure courier offering a track and trace option.

6.3 Notification of Irregularities

In the event that Organisation detects any breach relating either directly or indirectly to the security of the Testing Site, the Organisation shall notify ETS Global immediately by submitting a completed report form.

Organisation will provide ETS Global and ETS with any assistance reasonably requested in relation to any investigation into a breach of Test integrity and security.

6.4 Testing Site Audit

ETS Global has the right to carry out announced and unannounced Audit visit of the Testing Sites, send mystery Candidates, including during the administration of any Test, to ensure that the requirements described in this Agreement including but not limited to the ETS Global Documentation are implemented by the Organisation.

Upon presentation by an auditor of an Audit authorisation letter signed by ETS Global and a valid



identification document, the Organisation shall allow such immediate and unimpeded access to the Testing Sites.

The auditor shall be allowed to take pictures of the Testing Site before or after the administration of any Test.

6.5 Test Administration Support

6.5.1 Test Administration Support Requirements

Every Test Centre Administrator must complete the accreditation training course and pass the accreditation quiz with a minimum percentage of good answers upon becoming a Test Administration Support member. PPTC will have at its own expense at least two persons trained as Test Centre Administrators. Training will be conducted by ETS Global in accordance with ETS Global requirements. All Test Centre Administrators must follow ETS Global's online or live training in order to become an accredited Test Centre Administrator. Accreditation must be renewed every year through a quiz with a minimum percentage of good answers. Only accredited Test Centre Administrators of PPTC are entitled to administer Test Sessions.

PPTC will ensure that all its Test Centre Administrators receive, read, understand the applicable ETS Global Documentation provided by ETS Global prior to conducting an Administration.

6.5.2 Test Centre Administrator

Test Centre Administrator is the person in charge of the whole session from the moment that the Test materials are received until they are returned to ETS Global. Organisation shall ensure that the Organisation has in place Test Centre Administrators and proctors at Test Sessions in sufficient numbers to supervise Testing Sites and Candidates in accordance with the Agreement and the ETS Global Documentation. Organisation shall ensure that Test Centre Administrators are present in the Testing Site for the duration of each Test Session. Organisation shall immediately take all measures required by ETS Global to improve Test security and Test integrity, including any measures resulting from an Audit.

6.5.3 Proctors/Assistants

Proctors/assistants help and support with Test Administration duties but do not administer the Test.

6.5.4 Changes of Test Centre Administrators and Accreditation Withdrawal

ETS Global may withdraw a Test Centre Accreditation based on any breach of the Agreement and in particular the security provisions (section 6).

Organisation could establish a rotation system of TCAs and ETS Global may request to change the TCA for a specific test session and inform Organisation in a reasonable time.

6.6 Testing Site, Time and Locations

PPTC shall only be entitled to offer Testing Site authorised by ETS Global in writing (which for the avoidance of doubt includes email) and to provide the Test Administration Support at the Testing Sites authorised by ETS Global for Test Session. All Testing sites approved by ETS Global have to be registered with appropriate pictures. All Tests must be administered at Testing Sites and rooms.

6.7 Loss of Test material

The Organisation acknowledges that the loss of Test material by the Organisation, due to a breach of the terms of the Agreement related to security of the Test material (Section 6), will cause significant financial damage to ETS Global, as ETS Global may be required to withdraw the Test version from the market. The financial damage due to simple negligence will be an



object of valuation between ETS Global and the Organisation plus the damages if the loss is due to intentional error.

6.8 Security of test shipment

If the received materials are damaged or do not correspond to your order, or You encounter delivery problems, You must call our provider at the number indicated on your Organisation account or send an e-mail to the contact email available in your Organisation Account. It is understood and acknowledged that Test materials must never be left unattended when they are outside a locked storage area.

The Organisation shall keep strict records (which shall include, without limitation, the delivery notes included with each order) of all ETS-Owned Technology and Proprietary Materials under its responsibility and shall provide ETS Global with these records within 2 working days, upon request.

After a Test Session for a Paper Based Test, all used and unused materials must be sent back using a secured carrier with tracking number within 2 working days, for scoring at the address available on your Organisation Account.

The Organisation undertakes to notify ETS Global by filing all necessary reports as can be found in the Organisation Account in relation to any irregularity concerning Test materials in relation to shipment.

7. CONFIDENTIALITY AND OWNERSHIP OF DATA

7.1 Confidentiality of ETS Global Information

For purposes of this Agreement, Confidential Information of ETS Global includes all trade secret and proprietary information held by ETS Global concerning the ETS Global Offerings, the B2B Platform, the processes and procedures ETS Global uses for administration of the Tests, the information it holds regarding the Candidates (including scores, demographic data, identifying data including Candidate photographs, biographical data, responses to questions and comments); and financial and commercial information relating to ETS Global, including the amounts payable by PPTC under this Agreement and the terms of this Agreement itself.

The obligations of PPTC under this clause shall not apply to any information in the public domain, to information that PPTC develops on its own without reference to any of the Confidential Information, to information which PPTC can show by its written records PPTC possessed prior to its disclosure by ETS Global or to information which PPTC is required to disclose pursuant to a binding order of any court or Government Authority.

7.2 Depository of Data

PPTC understands and acknowledges that ETS Global is, and at all times shall remain, the sole and exclusive depository of all the Confidential Information and of any and all other information collected or obtained by PPTC in the performance of its obligations hereunder, including without limitation, Examinees scores, Candidate identifying and demographic data, biographical data, responses to questions asked of Candidates and comments of Candidates.

7.3 Data Protection; Confidentiality of Candidate Data

ETS Global and PPTC recognize the right of Candidates to privacy with regard to information supplied by them and about them that may be stored by or be under the control of either or both of the Parties. The Parties agree to safeguard such information from unauthorised or improper disclosure in a manner consistent with applicable data protection law and the ETS Global privacy policy available online on the ETS Global website, as such privacy policy may be updated from time to time. The Parties will provide any Candidates or other persons whose personal data (i.e. data of data subjects, as defined under Article 4.1 of the Personal Data Protection Regulation n°



2016/679 as all identified or identifiable natural persons) is collected pursuant to this Agreement with such rights of access, modification, removal and opposition as is required under applicable data protection laws. On request, Parties shall provide information to Candidates and any other persons as to how they may exercise such rights, and any such procedures implemented by a Party shall be in accordance with applicable data protection laws of Territory and shall render to the other, such assistance and co-operation as is reasonably necessary or reasonably requested by the other party in respect of the same.

7.4 Disclosure of Your Personal Data

We process Your Personal Data for the purposes of managing our business relationship with You.

Within such processing, we may disclose Your Personal Data to third parties that provide administrative or processing services for us, for example, printing, mailing, and payment processing. Our contract with these third parties prohibits them from using information except to provide the Product or Service You requested.

We may also disclose Personal Data collected on the Website, in accordance with Applicable Law, to assert or defend our rights and property, to prevent harm to others, to collect a debt, or in response to legal processes such as subpoenas.

Your Personal Data may be disclosed to ETS Global affiliates and/or third parties located outside of the European Union to whom we may entrust the performance of marketing and operational functions, monitoring and recording details of customer needs and preferences, or assistance and advising in operating our business. Any data transfers to recipients located outside of the European Union are secured by appropriate contractual clauses.

You benefit from the right to access Your Personal Data processed by us, to request its rectification in case it appears to be incorrect, outdated or incomplete, as well as to object, for legitimate reasons, to the processing of Your Personal Data. To exercise such rights, please contact ETS Global.

7.5 Obligations of PPTC upon Termination / Expiration

Upon expiration or termination of the Agreement, PPTC will promptly and at ETS or ETS Global's sole option, either return to ETS Global, or destroy and certify such destruction to ETS Global in writing, all Candidate Data, ETS material and ETS-Owned Technologies and Proprietary Materials in its possession.

7.6 Communication and marketing materials

PPTC authorises ETS Global to use the name of PPTC in commercial communication and marketing materials.

8. INTELLECTUAL PROPERTY

8.1 Intellectual Property Rights

All Intellectual Property Rights related, directly or indirectly, to the B2B Platform, or any service, product or material provided by or on behalf of ETS Global, belong exclusively to ETS, are protected from reproduction, imitation, dilution, or confusing or misleading uses under national and international trademark, copyright and intellectual property laws and may be used by PPTC only, in connection to the performing of its obligations hereunder solely, pursuant to the terms of the Agreement and in any case for no longer than the duration of the Agreement. Such non exclusive, non transferable, non assignable and without the right to sublicense right to use, is granted to PPTC upon full payment of all amounts due to ETS Global.

PPTC expressly declares that it will not use the Tests, the B2B Platform, or any service, product or material provided by or on behalf of ETS Global in a way which would be susceptible to



constitute an infringement or a violation of an Intellectual Property Right, found an unfair competition, passing off or any misappropriation or violation, of a third party's rights, or in a way which could be detrimental to ETS or ETS Global and notably to their image and reputation.

Any use or misuse of ETS Intellectual Property Right, including ETS-Owned Technologies and Proprietary Materials, except as permitted herein, is expressly prohibited, and nothing stated or implied in this Agreement or B2B Platform confers to PPTC any right under any ETS-Owned Technologies and Proprietary Materials other than those expressly mentioned herein.

8.2 Copyright

Copyrighted material shall be used solely for the purpose and in accordance with this Agreement.

PPTC covenants that all ETS Global materials that are distributed, disseminated and/or posted will display the original copyright and protective notices that appear on ETS Global materials.

8.3 Infringement of Intellectual Property Rights

PPTC shall promptly notify ETS Global in writing of any actual, threatened, or suspected infringement of the Tests, the B2B Platform, Intellectual Property Rights owned or held by ETS or any service provided by or on behalf of ETS Global or misappropriation of Confidential Information (as defined in article 7.1) that comes to PPTC's attention.

8.4 Relationship Designation, Product Identifiers and Marketing Material

Notwithstanding Section 8 PPTC may make limited use, in relation to the performance of its obligations in this Agreement only, of marketing materials, the Relationship Designation, the product identifiers on promotional materials only, to advise the public of its relationship with ETS Global as PPTC. Such use shall not extend to any other form than the relationship with ETS Global as PPTC and must comply with the Logos, Graphics and Trademark Guide which are provided to the Organisation. ETS Global reserves the right to change, without prior notice, the Relationship Designation, product identifiers and marketing materials. ETS Global will make the changes and the Organisation agrees to abide by it.

8.5 TOEIC Test Centre Logo

During the Term of the Agreement, ETS Global can provide PPTC with samples of the TOEIC® authorized Test Centre logo, and PPTC can display this logo in a clearly visible way at its Testing Site. ETS Global may provide PPTC with specific marketing materials bearing the TOEIC® authorized Test Centre logo. PPTC shall not use this logo other than in accordance with the written instructions of ETS Global and shall cease any and all use or display of the TOEIC® authorized Test Centre logo upon the termination or expiry of this Agreement.

9. INSURANCE

PPTC is responsible for any and all liability arising, directly or indirectly, as a result of the operations conducted at Testing Site. PPTC will indemnify and hold harmless ETS, ETS Global, and its and their employees, guests, agents, representatives, officers and directors from any loss, damage, injury or liability arising, directly or indirectly, out of PPTC's performance of the services or operation of the PPTC, breach by PPTC of a representation, warranty or obligation under this Agreement, or failure to comply with applicable laws, regulations and ordinances. PPTC agrees to maintain throughout the Term hereof a general liability insurance covering all possible liabilities that may arise from this Agreement, and employer's liability insurance as required by applicable law.



10. TERM/TERMINATION

10.1 Term

This Agreement becomes effective and remains in force on March 1, 2025 or validation date, whichever comes later and remains in effect until February 28, 2027 in accordance with the Term as defined in article 1.1.

10.2 Termination by ETS Global

ETS Global shall be entitled to immediately terminate the Agreement, without judicial intervention and any indemnity having to be paid to PPTC, upon written notice to PPTC in the event of a breach of the Standards provision (sub-Section 3.2), the Security provisions (Section 6), the Intellectual Property provision (Section 8), and the Confidentiality and Ownership of Data provisions (Section 7).

10.3 Termination by either Party for Material Breach

Except as otherwise provided in the preceding Section 10.2, the failure by either Party to comply with any of its material obligations pursuant to this Agreement shall entitle the other Party to give to the Party in default, notice specifying the nature of the default and requiring it to cure such default.

If such default is not cured within thirty (30) days following receipt of such notice the notifying Party shall be entitled, without prejudice to any other remedies available to it, to terminate this Agreement immediately upon written notice to the defaulting Party.

10.4 Effect of Expiry or Termination

Upon expiry or termination of the Agreement, PPTC will immediately (i) cease to hold itself out as PPTC and make any reference to ETS Global or ETS-Owned Technologies and Proprietary Materials, (ii) cease to use any Test, the B2B Platform, ETS-Owned Technologies and Proprietary Materials and any service provided by or on behalf of ETS and any Intellectual Property Right related thereto, (iii) deliver to ETS Global all Tests, ETS-Owned Technologies and Proprietary Materials and any service provided by or on behalf of ETS and printed materials, including without limitation advertising, promotional and instructional materials, Test materials, (iv) deliver to ETS Global the TOEIC® Approved Test Centre Certificate. PPTC shall not mention after the expiry or termination of the Agreement, without ETS Global prior written approval, its former relationship with ETS or ETS Global.

10.5 Survival

Sections 4 (Price and Invoices), 7 (Confidentiality and Ownership of Data), 8 (Intellectual Property), 11.3 (Indemnity) and 12 (General Provisions) will survive any expiration or termination of this Agreement in accordance with their respective terms. Provisions that do not survive will nonetheless be effective in determining the Parties' rights and obligations for conduct or events taking place before expiration or termination.

10.6 Termination on Notice

ETS Global may terminate this Agreement at any time on giving sixty (60) days prior written notice to PPTC.



11. LIMITATIONS AND INDEMNITY

11.1 Limitation of Liability

Subject to section 11.2, ETS GLOBAL will not be liable under this agreement, whether liability is asserted in contract, tort or otherwise, (a) for any indirect, incidental or consequential damages, whether foreseeable or not (including damages for loss of profits, business interruption, loss of business information, loss of clientele or any other pecuniary loss) and loss of Candidate's personal belongings or (b) for any damages in excess of an amount equal to all payments hereunder in the three (3) month period preceding the event giving rise to liability.

11.2 The limits on liability set out in section 11.1 above shall not apply in respect of liability arising in relation to:

- i. death or personal injury resulting from a Party's negligence;
- ii. a party's fraudulent misrepresentation;
- iii. a liability for which it is unlawful for a party to limit;
- iv. a breach of a party's obligations under sections 6 and 7.

11.3 Indemnity

PPTC agrees to defend, indemnify and hold harmless the Indemnified Parties against any and all claim made or brought against the Indemnified Parties in connection with (i) PPTC's breach of sub-Section 3.5 (Standard Provisions) and Section 7 (Confidentiality and Ownership of Data) and Section 8 (Intellectual Property) and, (ii) any claim related to or arising from PPTC's distribution of the Testing Site; (iv) PPTC's failure to comply with applicable laws, (v) any claim in relation to content or material used by PPTC and relating to, inter alia, obscenity, libel, slander, defamation and violation of rights of privacy or publicity. PPTC will indemnify and hold ETS Global and the Indemnified Parties harmless from any and all judgments, damages, losses, costs, liabilities or expenses, including reasonable attorney's fees, suffered or incurred by ETS Global and Indemnified Parties in connection with any such claim.

12. GENERAL PROVISIONS

12.1 Modification and Waiver

This Agreement may be modified throughout the Term hereof by mutual written agreement between the Parties. In no event may the terms of this Agreement be modified, deleted, supplemented or waived by any invoice, purchase order, receipt, acceptance or other document. This shall not apply to ETS Global Documentation and the Security provisions (Section 6) as ETS Global may unilaterally modify such provisions.

A failure by either Party to exercise any right or remedy hereunder, in whole or in part, or on one or more occasions, shall not be deemed either a waiver of such right or remedy to the extent not exercised, or a waiver of any other right or remedy on such occasion or on any succeeding occasion.

12.2 Compliance with laws

12.2.1 Anti-corruption

Organisation shall not directly or indirectly offer, receive, promise, authorise, solicit, pay, make a gift or give anything of value (including money) to gain advantage with a corrupt motive to anyone,



12.2.2 Candidates with Disabilities

PPTC will abide by all applicable local, provincial, national and/or international laws and regulations, including without limitation laws relative to Candidates with disabilities and to personal data protection, and will obtain and maintain in effect any and all necessary authorisations, licenses and permits for the provision of Services. PPTC shall accommodate all requests from Candidates pertaining to disabled accessibility.

12.2.3 Employees PPTC

PPTC also undertakes in this connection to provide the information and documents requested by local regulations proving that it employs its employees in full compliance with applicable regulations, and is not liable for moonlighting/concealed work, as listed in APPENDIX 1.

12.3 Governing Law and Dispute Resolution

This Agreement shall be governed by and construed in accordance with the laws of Poland. The Parties agree that any dispute concerning or resulting from the Agreement shall be discussed and negotiated in good faith. Parties shall meet as often as deemed necessary in order to resolve such dispute without the need for a formal procedure. If the Parties fail to resolve their dispute in good faith, the Parties agree that all disputes arising from or related to this Agreement shall exclusively be submitted to the competent court in Poland.

12.4 Independent Contractors

ETS Global and PPTC are, and at all times throughout the Term and any renewal 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.

Any employees assigned by PPTC to perform the Services shall be under the supervision, management and control of PPTC, and shall be and continue to be for any purposes PPTC's employees exclusively, and ETS Global shall bear no responsibility or liability therefore. In case PPTC intends to assign to the performance of the Services personnel that it does not employ directly, it undertakes to notify so in writing to ETS Global, and to also confirm in writing to ETS Global that it conducted the proper checks to ensure this personnel are employed in full compliance with applicable regulations.

12.5 Subcontracting

ETS Global may subcontract its obligations hereunder, in whole or in part, upon written notice to Organisation. Organisation may subcontract its obligations hereunder, in whole or in part, with the prior written approval of ETS Global (which approval ETS Global may grant or withhold in its sole and absolute discretion). Organisation remains responsible for all obligations performed by its subcontractors.

12.6 Assignment

ETS Global has the right to assign all or any part of the Agreement to ETS, any ETS Affiliate or ETS designee upon written notice to PPTC.

PPTC may not assign all or any part of the Agreement to a third party unless upon written notice and with the express written consent of ETS Global

12.7 Notice

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



12.8 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 other Party may, at its sole option, terminate this Agreement pursuant to the provisions of Section 10 hereof.

12.9 Severability

This Agreement is intended to be severable. If any provision of this Agreement is held to be invalid or otherwise unenforceable, the remaining provisions shall continue to be enforceable to the fullest extent permitted by applicable law.

12.10 Entire Agreement

This Agreement, including its Appendices, and the ETS Global Documentation constitute the entire obligation of the Parties hereto with respect to the subject matter hereof and shall supersede any prior expressions of intent or understandings, whether orally or in writing. Each of the Parties acknowledges that in agreeing to enter into this Agreement, each Party has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement) made by or on behalf of any other Party, orally or in writing, before the date of this Agreement.

12.11 Waiver

No delay, neglect or forbearance on the part of either Party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either Party is exclusive of any other right, power or remedy available to that Party.

12.12 Third party beneficiary

ETS is a third party beneficiary under the Agreement. Therefore, ETS shall have the right to directly enforce against the PPTC the provisions of the Agreement relative to ETS-Owned Proprietary Materials, compliance, and Test security. The Organisation understands and agrees that its breach (or threatened breach) of any of the Intellectual Property Rights of ETS and/or of the Organisation's confidentiality obligations under the Agreement would cause irreparable harm to ETS for which monetary damages, even if awarded, would not constitute adequate compensation. The Organisation agrees that, notwithstanding anything to the contrary contained in the Agreement, ETS is entitled to equitable relief by way of temporary and permanent injunctions and any other relief that a competent jurisdiction may deem just and proper.

The Agreement shall terminate immediately upon the termination of the agreement between ETS and ETS Global regarding all Test delivery platforms, unless the Agreement is assigned to ETS in accordance with the provisions of the Agreement.

The ETS Global acknowledges that the EPA is obliged to provide information at the request of a third party in accordance with Act No. 106/1999 Coll., on Free Access to Information, as amended (Czech law), and agrees, so that all the information contained in this Agreement has been provided to third parties upon their request in accordance with the cited law.

The ETS Global acknowledges that EPA is an entity obliged to publish contracts in the register of contracts in accordance with Act No. 340/2015 Coll., On special conditions of effectiveness of certain contracts, publication of these contracts and on the register of contracts (Act on the



Register of Contracts), as amended (Czech law) and if this Agreement meets the conditions for its mandatory publication, the EPA will publish it in the register of contracts in accordance with the cited law. The EPA and the ETS Global declare that all performances related to the subject of this Agreement provided before this Agreement enter into force shall be included in the performance under this Agreement at the time this Agreement enters into force and the EPA and the ETS Global will therefore not assert any claims against each other for unjust enrichment.

12.13 Details ETS Global

Contact details for each region can be found on www.etsglobal.org

Accepted and agreed by:



ETS Global BV
Ms Anna GUTKOWSKA-ZAJĄC

**Czech University of Life Sciences
Prague**
Mr Rector Prof. Ing. Petr SKLENIČKA,
CSC.

Signature

Signature



APPENDIX 1

LIST OF THE DOCUMENTS TO BE SUBMITTED TO ETS GLOBAL BY THE SERVICE PROVIDER AT THE TIME OF THE SIGNING OF THE SERVICE AGREEMENT AND EVERY SIX MONTHS UNTIL ITS TERM

1. In all cases, the following documents:
 - A certificate (i) evidencing proper completion by the Service Provider of all social security filings and payment of social security contributions and charges, (ii) issued by the social security agency in charge of collecting the social security contributions and charges to be paid by the Service Provider, (iii) dating from less than six months, and (iv) the authenticity of which has been verified by the Company by contacting the relevant social security agency.

2. When registration of the Service Provider with the Register for Trade and Companies or the Register for Professions is mandatory, or when its activity is a “regulated profession”, one of the following documents:
 - An excerpt of registration with the Register for Trade and Companies (K or K bis); or equivalent
 - An identification card justifying registration with the Register for Professions;
 - A quote, an advertising document or a professional correspondence, provided these documents contain the name or the corporate name, the complete address and the registration number with the Register for Trade and Companies or the Register for Professions or a list of a professional order, or the reference of the accreditation issued by the relevant professional authority;
 - A receipt of registration with an agency for business formalities for businesses which registration/incorporation is underway.



APPENDIX 2

GENERAL TERMS AND CONDITIONS FOR REGISTERED USERS (Profiles Test Centre Administrator and Proctors)

“**Profile**” shall mean any of the profiles as described in this Appendix 1 in article 2.2 (Profiles). Profiles are assigned to Registered Users, a Registered User may hold one or more Profiles.

“**Registered User**” shall mean any person identified as being part of PPTC and who is granted access to the B2B Platform in accordance with its Profile. These Registered Users are created either by ETS Global or PPTC.

All capitalized terms in this Appendix shall have the same meaning as in the Agreement.

1. USE OF B2B PLATFORM

1.1. Under this Agreement, ETS Global gives permission to access and use the B2B Platform for professional use and for the performance of Your obligations under the Agreement and, when applicable, to copy, distribute and/or transmit materials available via the B2B Platform only to the extent that such copying, distribution, and transmission is part of Your obligations under the Agreement and automatically done through browser software incidentally to use the B2B Platform for professional use. You may also print a copy of the information displayed on the B2B Platform for Your professional use. That means, that except as set forth above, You may not modify, reformat, copy, display, distribute, transmit, publish, license, create derivative works from, obtained by Your use of the B2B Platform or reverse engineer, decompile, disassemble or in any way attempt to create source code from any software contained within the B2B Platform. This restriction means, amongst other things, that You may not mirror on Your own B2B Platform any portion of the B2B Platform or display through Your own platform any results pages or other information from the B2B Platform without ETS Global's prior express permission.

1.2. The underlying technology and contents of, the B2B Platform is owned by ETS and is protected by copyrights and other intellectual property or proprietary rights. If You use the B2B Platform in any other manner than as provided above, You may violate applicable (intellectual property) legislation and be subject to penalties. ETS owns and retains all ownership of the underlying technology and contents of the B2B Platform, and reserves all rights that have not been expressly granted to the Organisation in this Agreement.

When using this B2B Platform, the Organisation represents and warrants that:

- the information provided to ETS Global is not false or misleading;
- it will not violate any applicable law or regulation;
- it will not infringe any copyright, patent, trademark, or other intellectual property right of any third party.

2. ACCESS TO THE B2B PLATFORM

2.1. Registered Users will be allocated a login name by ETS Global for its individual Profile. The passwords and logins are strictly private and confidential and can only be used in connection to Registered Users Profile within the PPTC and must not be passed on or shared with any third party.

PPTC shall procure that all its Registered Users comply with the terms of the Agreement and accepts that the actions of the Registered Users on the B2B Platform by using their respective login and password will be considered as carried out on behalf of the PPTC.

2.2. Profiles available in the B2B Platform

The descriptions and applicable Profiles are available on the online Account.

2.3. Each Registered User is granted a different access to sections and actions within the B2B Platform, depending on the Profile under which the Registered User is registered. However, they all have access to the ETS Global Documentation and the Organisation's Account.



3. CONTROL OVER FEATURES, FUNCTIONS AND ACCESS TO THE B2B PLATFORM

ETS Global reserves the right to change any information, features and functions of the B2B Platform without prior notice.

ETS Global may deny access to the B2B Platform to any Registered User without prior notice if the Organisation or any of the Registered Users using one of its Profiles engages in any conduct or activity that ETS Global considers, in its sole discretion, to breach this Agreement, the rights of ETS Global or the rights of any third party, or considers to be otherwise inappropriate.

The Organisation shall indemnify ETS Global for any loss or damage arising out of or in connection with the use, by the Organisation or any Registered User using one of the Organisation's Profiles or otherwise in connection with this Agreement.

4. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

This B2B Platform is provided by ETS Global on an "as is" and "as available" basis. ETS Global makes no representations and warranties of any kind, express or implied as to the functioning of the B2B Platform or as to the information, content, Products and Services provided on or through the B2B Platform.

ETS Global will not be liable for any malfunctioning, non-availability or adverse conditions of use of the B2B Platform resulting from improper hardware, problems experienced by the Organisation, Internet service provider or disruption of the Internet networks or any other reasons outside the control of ETS Global.

ETS Global does not guarantee that the B2B Platform will function without interruption or error. In particular, the use of the B2B Platform may be interrupted at any time for maintenance purposes, updates or technical improvements, or to develop its content and/or presentation. Whenever possible, ETS Global shall inform the Organisation prior to maintenance works or updates.



APPENDIX 3

DATA PROCESSING AGREEMENT (« DPA »)

COMPLIANCE WITH THE EU GENERAL DATA PROTECTION REGULATION

RECITALS

Educational Testing Service (ETS) Global BV (“**ETS Global**” or “**Party**”) a Dutch company, registered on the Dutch Trade Register of the Chamber of Commerce under number 34153484, which principal place of business is located at Strawinskylaan 929, 1077 XX Amsterdam, The Netherlands,

and

Czech University of Life Sciences Prague, FEM (the “**Processor**” or the “**Organisation**” or “**Party**”), with registered address at Department of Languages, Kamýčká 129, 165 00, Praha 6 – Suchbát, Czech Republic, (collectively: “**Parties**”),

are concluding this Data Processing Agreement (DPA), as the Organization provides services to ETS Global (the “**Services**”) that entail the Processing of Personal Data (as defined in the Annex 3.1). This can occur in one of the following situations:

1. ETS Global is the Controller and the Organisation is the Processor.
2. ETS Global is Processor and the Organisation is Subprocessor.

If the situation as referred to under 2 (Processor – Subprocessor) is applicable, any reference to the Controller shall be read as a reference to the Processor and any reference to the Processor shall be read as a reference to the Subprocessor.

ETS Global acts as Controller for the processing activities identified in Annex 3.1 only. For all other processing activities, ETS Global and the Organization act as independent Processors, without ETS Global being able to influence the way in which the Organization wishes to process Data Subjects' Personal Data.

This DPA documents the data protection requirements imposed upon Parties by the GDPR :

1. For purposes of this DPA, “GDPR” means the General Data Protection Regulation (EU) 2016/679, as well as any applicable laws, rules or regulations issued by supervisory authorities. Words and phrases in this DPA shall, to the greatest extent possible, have the meaning given to them in GDPR Article 4 :
 - (a) “Controller” has the meaning given to it in GDPR Article 4(7) : “means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the Controller or the specific criteria for its nomination may be provided for by Union or Member State law;”
 - (a) “Master Agreement” means the agreement referred to in Annex 3.1 for the provision of Products and/or Services.
 - (b) “Personal Data” has the meaning given to it in GDPR Article 4(1): “any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person” but only to the extent such personal data pertain residents of the European Union Member States or are otherwise subject to the GDPR.
 - (c) “Personal Data Breach” has the meaning given to it in GPDR Article 4(12): “[any] breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed”.



- (d) "Privacy Legislation/Laws" means the GDPR and all member state law implementing the GDPR), including all laws and regulations laid down pursuant to those laws and any other applicable laws that apply to the Processing of Personal Data.
 - (e) "Processing" has the meaning given to it in GDPR Article 4(2): "any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction".
 - (f) "Processor" has the meaning given to it in GDPR Article 4(8): a natural or legal person, public authority, agency or other body which processes personal data in behalf of the controller.
 - (g) "Subprocessor" means "[any] natural or legal person, public authority, agency or other body as defined in GDPR Article 4(8) which processes Personal Data on behalf of the Processor (including any affiliate of the Processor)."
 - (h) "Transfer" means: "to disclose or otherwise make Personal Data available to a third party (including to any affiliate or Subprocessor), either by physical movement of the Personal Data to such third party or by enabling access to the Personal Data by other means."
2. Each party must use reasonable efforts to stay informed of the legal and regulatory requirements relating to the processing of Personal Data. Each Party shall inform the other without delay as soon as it becomes aware of circumstances or changes in legislation that would make it significantly more difficult to comply with its obligations under this DPA.
 3. Processor shall process Personal Data only to the extent that (i) such is necessary for the performance of the Agreement, and (ii) ETS Global has provided written instructions to the Processor for this purpose. If, under applicable law, Processor is required to process Personal Data without written instructions from ETS Global, Processor will inform ETS Global.
 4. In accordance with GDPR Article 28(1), Processor guarantees that it has implemented appropriate technical and organizational measures in such a manner that is appropriate to the risk and nature of the Personal Data and it will guarantee its Processing of Personal Data will meet the requirements of the GDPR and ensure the protection of the rights of the data subjects.
 5. Processor recognizes that security requirements are constantly evolving and that frequent evaluation and improvement of security measures are necessary to ensure effective protection and to maintain compliance with Privacy Laws.
 6. In accordance with GDPR Article 28(2), the Processor shall not engage any Subprocessor without prior authorization from ETS Global. Permission is deemed given for the Subprocessors as set forth in Annex 3.1. The Processor shall comply with the requirements for subprocessing as set forth in GDPR Article 28(4), namely that the data protection obligations set forth herein such be imposed upon the Subprocessor, so that the Processor's contract with the Subprocessor contains sufficient guarantees that the Processing will meet the requirements of the GDPR. The Processor will remain fully responsible and liable for all actions of the Subprocessor.
 7. Processor shall not transfer any Personal Data to a country outside the European Economic Area (EEA), unless:
 - (a) ETS Global gave its prior written permission for such transfer. Permission shall be deemed given on entering into this DPA for the accepted Subprocessor(s) named in Annex 3.1; and
 - (b) the European Commission has issued a decision to the effect that the country in question has an adequate level of protection; or
 - (c) the transfer occurs under the EU Standard Contractual Clauses; or
 - (d) the transfer occurs under binding corporate rules within the meaning of GDPR Article 47.
 8. In accordance with GDPR Article 28(3):
 - (a) The Processor shall only process the Personal Data (i) as needed to provide the Services, (ii) in accordance with the specific instructions that it has received from ETS Global, including with regard to any



Transfers, and (iii) as needed to comply with law (in which case, the Processor shall inform ETS Global of such legal requirement) unless that law prohibits this disclosure.

Processor shall ensure that persons authorized to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality, namely; (a) ensure that access to Personal Data is available only to employees who will need them to perform their work and who have authorizations granted by the Processor; (b) ensure that persons authorized to process Personal Data are committed to secrecy or are subject to a statutory obligation to maintain confidentiality; (c) ensure that persons authorized to process Personal Data undergo appropriate training, receive appropriate instructions and guidelines regarding the processing of Personal Data; The processor must ensure that persons authorized to process Personal Data are familiar with the data security requirements;

- (b) Processor shall take all security measures required by GDPR Article 32, namely:
- i. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate: (a) the pseudonymization and encryption of Personal Data; (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing; (e) introduce adequate authentication procedures in IT systems and have appropriate software to protect data in such systems or on media; (f) ensure that buildings and installations used to process Personal Data are protected from unauthorized access, and that the equipment and software used are regularly monitored and updated.
 - (1) In assessing the appropriate level of security, Processor shall take account to the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed.
 - (2) The Processor shall take steps to ensure that any natural person acting under the authority of the Processor who has access to Personal Data does not process them except on instructions from ETS Global, unless he or she is required to do so by European Union Member State law.
 - ii. Taking into account the nature of the processing, Processor shall without any additional costs, reasonably assist ETS Global by implementing appropriate technical and organizational measures, for the fulfilment of ETS Global' obligation to respond to requests for exercising the data subject's rights. In the event the Processor receives a request for access to Personal Data or any other request to exercise the rights of the data subjects or a request of the supervisory body regarding the Personal Data under the scope of this DPA, the Processor shall send such application or request to ETS Global within a maximum of 7 days and will follow the instructions received from ETS Global. The Processor may not respond to any requests of data subjects without the prior written consent of ETS Global.

If the Services involve the collection of Personal Information directly from individuals, Processor will provide the individuals with a clear and conspicuous privacy notice, which notice shall either (i) be ETS Global's privacy notice, or (ii) be Processor's privacy notice, including a direct link to ETS Global's privacy notice, provided that such notice must address any legal requirements for such notices in the jurisdictions where it is given, be translated into the languages used in connection with Processor's interaction with the individuals, and indicate that Processor is processing the data as a Processor on behalf of its ETS Global. All such notices must be approved by ETS Global.
- (c) Taking into account the nature of processing and the information made available, Processor shall comply with (and shall reasonably assist the Controller to timely comply with) the obligations regarding Personal Data Breaches (as set forth in GDPR Articles 33 and 34), data protection impact assessments (as set forth in GDPR Article 35), and prior consultation (as set forth in GDPR Article 36).
- (d) In case Processor experiences a Data Breach, Processor shall immediately and no later than 24 hours after discovery inform ETS Global of a Data Breach using the contract details set out in Annex 3.1 Within 36 hours, the affected Party shall provide all relevant information about:
- i. the nature of the Data Breach;
 - ii. the affected (or potentially affected) Personal Data;



- iii. the affected (or potentially affected) Data Subjects;
 - iv. the established and probable consequences of the Data Breach; and
 - v. the measures that have been or will be taken to resolve the Data Breach and to mitigate the consequences and damage as far as possible.
- (e) In case of a Data Breach the Processor shall:
- i. take the measures that it may reasonably be expected to take in order to rectify the Data Breach as soon as possible;
 - ii. take the measures that it may reasonably be expected to take to mitigate the consequences and damage to the fullest possible extent;
 - iii. enable the ETS Global to conduct a thorough investigation into the Data Breach;
 - iv. enter into consultation with ETS Global without delay in order to agree arrangements for risk-mitigating measures;
 - v. enable ETS Global to formulate a correct response and to take appropriate follow-up steps in respect of the Data Breach, including internal and external communication and notification of the press, supervisory authorities and Data Subjects;
 - vi. refrain from providing any information about the Data Breach to the press, Data Subjects or other third parties, unless the content of such information was agreed beforehand with ETS Global and Processor received prior written permission from ETS Global for the content and the time of communication;
 - vii. have implemented written Data Breach procedures to enable it to inform ETS Global about a Data Breach immediately and through the right persons, and in order to cooperate effectively with ETS Global to resolve the Data Breach. At the request of ETS Global, Processor shall give ETS Global a copy of its Data Breach procedure.
- (f) In the event of an inspection or investigation by the Supervisory Authorities, Processor shall provide all the necessary assistance to ETS Global. If a supervisory authority is of the opinion that processing operations under this DPA are unlawful, the two Parties shall immediately take measures to bring about compliance with Privacy Laws.
- (g) At ETS Global' discretion, the Processor shall delete or return all the Personal Data to ETS Global after the end of the provision of services relating to Processing and delete existing copies unless applicable European Union Member State law requires their storage. Processor shall submit to ETS Global a certificate of deletion
- (h) The Processor shall provide ETS Global with all information necessary to demonstrate compliance with the obligations laid down in the GDPR, and allow for and contribute to audits, including inspections, conducted by ETS Global or another auditor mandated by ETS Global. For the avoidance of doubt ETS Global shall have the right to conduct audits regarding the processing of Personal Data by the Processor in order to verify compliance with the provisions of this DPA and the GDPR. In addition, ETS Global has the right to designate an external auditor (expert) who, together with ETS Global or alone, will audit Processor on behalf of ETS Global. The costs of the inspection shall be reimbursed by ETS Global, unless the inspection shows that the Processor is in breach of the obligations of this DPA or Privacy Laws. As part of the audit right, Processor shall, free of charge, at the first request of ETS Global, submit a report issued by an independent and appropriate expert third party, such as but not limited to, certificates or Third-Party Memorandum (TPM), confirming compliance with the GDPR. The certificate or TPM, may not be older than 12 months. At the request of ETS Global, Processor will provide ETS Global with access to devices, rooms where Personal Data is processed, and Processor will provide ETS Global with all information required by ETS Global to assess whether the Processor or Subprocessor has applied the necessary technical and organizational security measures and fulfills other obligations required by the



GDPR.

9. The Processor shall maintain all records required by Article 30(2) of the GDPR, and (to the extent they are applicable to Processor's activities for ETS Global) Processor shall make them available to ETS Global upon request.
10. The Processor shall be held liable, without limitations of liability, for damage, caused to ETS Global as well as damages caused to third parties, in connection to breaches by Processor of this DPA and/or the GDPR. In such event Processor shall promptly reimburse ETS Global the equivalent of any penalties, including administrative fines imposed by the supervisory authorities, expenses, costs (including reasonable legal fees), damages (Including damages caused by loss of data), redress resulting from violation of this DPA or the provisions regarding the protection of Personal Data by the processor or further processing, in particular resulting from third party claims (including claims of Data Subjects) and administrative decisions; alternatively, the Processor, at the request of the administrator, will pay them directly to the beneficiary to receive them. The liability provisions made in the Master Agreement are not applicable to this DPA.
11. Each Party shall inform the other Party without delay if it becomes aware of circumstances or changes in legislation that render compliance with its obligations under this DPA substantially more difficult.
12. ETS Global will be entitled to make changes to the terms in this DPA by providing the Processor with new instructions in writing with a two (2)-week deadline for their implementation.
13. In the event the Processor is unable to fulfil its obligations under this DPA, ETS Global shall have the right to temporarily suspend relevant Processing operations, in whole or in part, until such time as the breach has been remedied.
14. Unless otherwise expressly stated in the order, this version of the DPA is incorporated into and subject to the terms of any contract between ETS Global and the Organisation and shall be effective and remain in force as long as the commercial relationship exists. Except as expressly stated otherwise in this DPA or the order, in the event of any conflict between the terms of a contract between ETS Global and the Organisation including any policies or schedules referenced therein, and the terms of this DPA, the relevant terms of this DPA shall take precedence. ETS Global may terminate this DPA with immediate effect if the Processor fails to perform or improperly performs his obligations set out in this DPA and in the event Processor fails to repair the effects of improper performance or non-performance within 14 days from receiving the request from ETS Global.
15. Upon termination or expiration of this DPA, ETS Global will be entitled to determine whether the Personal Data being processed by Processor should be deleted or returned to ETS Global or transferred directly to another entity designated by ETS Global. ETS Global will indicate the method to return / forward Personal Data, i.e. the file format and the method of data transfer, e.g. on a carrier or a transmission via a network. The Processor will comply, within 7 days of receiving instructions of ETS Global, with such requests. The Processor will confirm, without undue delay, but no later than within 7 days the deletion and return or transfer of Personal Data. This will include the deletion, return or transfer of Personal Data of Subprocessors as well. The above obligation to delete or return Personal Data shall not apply if there is a provision of law that requires the processing of Personal Data by the recipient.
16. If any provisions contained in this DPA are held to be invalid or unenforceable, the other provisions shall remain fully in force.
17. Parties shall decide in consultation with each other on any cases not covered by this DPA.
18. Parties shall keep the contents of this DPA confidential.



ANNEX 3.1

DESCRIPTION OF DATA PROCESSING

▮ Contact details

| ETS Global | Organisation |
|--|--------------------------|
| Privacy officer : Lucia LOYO | Privacy officer : |
| Email address : privacy@etsglobal.org | Email address : |

▮ Description of Processing operations

| Activity | Description | Purpose |
|---|--|---|
| Candidate registration | The PPTC registers the candidates via its Online Account and according to the terms defined by ETS Global. | Ensure the correct registration of a candidate for a test allowing the notification of the results. |
| Administration of the Test session | The PPTC or ETS Global ensures the correct administration and monitoring of the test session, in accordance with ETS Global administration procedures. | Administration, scoring the tests and issuing the result certificates and / or certificates (individual scores, Individual Performance Feedback, duplicates, etc.). |
| Complaints report | Complaint and incident reports are handled by the PPTC on behalf of ETS Global. | The PPTC processes Personal Data in order to have all the elements relating to a claim and to identify the Data subject making the claim. With this information, ETS Global can clarify the claim and use the report to improve and provide efficient service to its customers. |
| Incidents report | The PPTC collects incident reports on behalf of ETS Global. | The PPTC processes Personal Data on behalf of ETS Global and collects information relating to an incident and information enabling the Data subject to be identified. On the basis of the incident report, ETS Global will check the result certificate and decide whether it can be communicated to the Candidate. The PPTC also processes Personal Data on behalf of ETS Global to prevent and report test fraud. |

▮ Categories of Personal Data¹

| Category | Data subject ² | Retention period |
|--|---------------------------|--|
| General data of candidate : 1) Full name 2) Gender 3) Date of birth 4) Native language 5) Contact details (telephone number, email, address) 6) ETS ID number | Candidate | Maximum 33 months after the test date or at the end of this Agreement. |

¹ Some data may be deleted in response to a deletion request

² Directly or indirectly identifiable natural persons (generally end-users) for whom personal data is processed.



| | | |
|--------------------------|--|--|
| Tests results (score) | | |
| Medical note | | |
| Handwriting samples | | |
| Picture of the candidate | | |
| Identification Document | | Immediately or maximum one (1) month after from the processing of the request. |
| Voice records | | Maximum 33 months after the test date or at the end of this Agreement. |

▯ Subprocessors³

| Subprocessors ⁴ | Location | Transfer measures |
|----------------------------|---|-------------------|
| 1) | <ul style="list-style-type: none">Within the European Economic Area | |
| 2) | <ul style="list-style-type: none">Outside the European Economic Area, i.e. United States | |
| 3) | | |

³ Any transfer of personal data with Subprocessors located outside the EEA is governed by the European Commission's Standard Contractual Clauses, in accordance with GDPR Article 46. These Standard Contractual Clauses form an integral part of this DPA.

⁴ Processor shall not use backup or cloud solutions without the prior written consent of ETS Global.



STANDARD CONTRACTUAL CLAUSES

ANNEX to the European Commission's decision C(2021) 3972 of 4 June 2021 containing Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of European Parliament and of the Council

SECTION I

Clause 1

Purpose and scope

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) ⁵ for the transfer of personal data to a third country.
- (b) The Parties:
- (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter "entity/ies") transferring the personal data, as listed in Annex I.A. (hereinafter each "data exporter"), and
 - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A. (hereinafter each "data importer")

have agreed to these standard contractual clauses (hereinafter: "Clauses").

- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

Clause 2

Effect and invariability of the Clauses

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46 (2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

Clause 3

Third-party beneficiaries

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:

⁵ Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295 of 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.



- (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
- (ii) Clause 8 - Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);
- (iii) Clause 9 - Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
- (iv) Clause 12 - Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
- (v) Clause 13;
- (vi) Clause 15.1(c), (d) and (e);
- (vii) Clause 16(e);
- (viii) Clause 18 - Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.

(b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

Clause 4

Interpretation

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

Clause 5

Hierarchy

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

Clause 6

Description of the transfer(s)

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

Clause 7

Docking clause

- (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
- (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
- (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

SECTION II – OBLIGATIONS OF THE PARTIES



Clause 8

Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

8.1 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B. It may only process the personal data for another purpose:

- (i) where it has obtained the data subject's prior consent;
- (ii) where necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iii) where necessary in order to protect the vital interests of the data subject or of another natural person.

8.2 Transparency

- (a) In order to enable data subjects to effectively exercise their rights pursuant to Clause 10, the data importer shall inform them, either directly or through the data exporter:
 - (i) of its identity and contact details;
 - (ii) of the categories of personal data processed;
 - (iii) of the right to obtain a copy of these Clauses;
 - (iv) where it intends to onward transfer the personal data to any third party/ies, of the recipient or categories of recipients (as appropriate with a view to providing meaningful information), the purpose of such onward transfer and the ground therefore pursuant to Clause 8.7.
- (b) Paragraph (a) shall not apply where the data subject already has the information, including when such information has already been provided by the data exporter, or providing the information proves impossible or would involve a disproportionate effort for the data importer. In the latter case, the data importer shall, to the extent possible, make the information publicly available.
- (c) On request, the Parties shall make a copy of these Clauses, including the Appendix as completed by them, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the Parties may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.
- (d) Paragraphs (a) to (c) are without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

8.3 Accuracy and data minimisation

- (a) Each Party shall ensure that the personal data is accurate and, where necessary, kept up to date. The data importer shall take every reasonable step to ensure that personal data that is inaccurate, having regard to the purpose(s) of processing, is erased or rectified without delay.
- (b) If one of the Parties becomes aware that the personal data it has transferred or received is inaccurate, or has become outdated, it shall inform the other Party without undue delay.



- (c) The data importer shall ensure that the personal data is adequate, relevant and limited to what is necessary in relation to the purpose(s) of processing.

8.4 Storage limitation

The data importer shall retain the personal data for no longer than necessary for the purpose(s) for which it is processed. It shall put in place appropriate technical or organisational measures

to ensure compliance with this obligation, including erasure or anonymisation² of the data and all back-ups at the end of the retention period.

8.5 Security of processing

- (a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the personal data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter “personal data breach”). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.
- (b) The Parties have agreed on the technical and organisational measures set out in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
- (c) The data importer shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (d) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the personal data breach, including measures to mitigate its possible adverse effects.
- (e) In case of a personal data breach that is likely to result in a risk to the rights and freedoms of natural persons, the data importer shall without undue delay notify both the data exporter and the competent supervisory authority pursuant to Clause 13. Such notification shall contain i) a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), ii) its likely consequences, iii) the measures taken or proposed to address the breach, and iv) the details of a contact point from whom more information can be obtained. To the extent it is not possible for the data importer to provide all the information at the same time, it may do so in phases without undue further delay.
- (f) In case of a personal data breach that is likely to result in a high risk to the rights and freedoms of natural persons, the data importer shall also notify without undue delay the data subjects concerned of the personal data breach and its nature, if necessary in cooperation with the data exporter, together with the information referred to in paragraph (e), points ii) to iv), unless the data importer has implemented measures to significantly reduce the risk to the rights or freedoms of natural persons, or notification would involve disproportionate efforts. In the latter case, the data importer shall instead issue a public communication or take a similar measure to inform the public of the personal data breach.
- (g) The data importer shall document all relevant facts relating to the personal data breach, including its effects and any remedial action taken, and keep a record thereof.

8.6 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions or offences (hereinafter “sensitive data”), the data importer shall apply specific restrictions and/or additional safeguards adapted to the specific nature of the data and the risks involved. This may include restricting the personnel permitted to access the personal data, additional security measures (such as pseudonymisation) and/or additional restrictions with respect to further disclosure.

8.7 Onward transfers



The data importer shall not disclose the personal data to a third party located outside the European Union³ (in the same country as the data importer or in another third country, hereinafter “onward transfer”) unless the third party is or agrees to be bound by these Clauses, under the appropriate Module. Otherwise, an onward transfer by the data importer may only take place if:

- (i) it is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679 with respect to the processing in question;
- (iii) the third party enters into a binding instrument with the data importer ensuring the same level of data protection as under these Clauses, and the data importer provides a copy of these safeguards to the data exporter;
- (iv) it is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings;
- (v) it is necessary in order to protect the vital interests of the data subject or of another natural person; or
- (vi) where none of the other conditions apply, the data importer has obtained the explicit consent of the data subject for an onward transfer in a specific situation, after having informed him/her of its purpose(s), the identity of the recipient and the possible risks of such transfer to him/her due to the lack of appropriate data protection safeguards. In this case, the data importer shall inform the data exporter and, at the request of the latter, shall transmit to it a copy of the information provided to the data subject.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.8 Processing under the authority of the data importer

The data importer shall ensure that any person acting under its authority, including a processor, processes the data only on its instructions.

8.9 Documentation and compliance

- (a) Each Party shall be able to demonstrate compliance with its obligations under these Clauses. In particular, the data importer shall keep appropriate documentation of the processing activities carried out under its responsibility.
- (b) The data importer shall make such documentation available to the competent supervisory authority on request.

MODULE 4: TRANSFER PROCESSOR TO CONTROLLER

8.1 Instructions

- (a) The data exporter shall process the personal data only on documented instructions from the data importer acting as its controller.
- (b) The data exporter shall immediately inform the data importer if it is unable to follow those instructions, including if such instructions infringe Regulation (EU) 2016/679 or other Union or Member State data protection law.
- (c) The data importer shall refrain from any action that would prevent the data exporter from fulfilling its obligations under Regulation (EU) 2016/679, including in the context of sub-processing or as regards cooperation with competent supervisory authorities.
- (d) After the end of the provision of the processing services, the data exporter shall, at the choice of the data importer, delete all personal data processed on behalf of the data importer and certify to the data importer that it has done so, or return to the data importer all personal data processed on its behalf and delete existing copies.

8.1 Security of processing



- (a) The Parties shall implement appropriate technical and organisational measures to ensure the security of the data, including during transmission, and protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter “personal data breach”). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature of the personal data, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects, and in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.
- (b) The data exporter shall assist the data importer in ensuring appropriate security of the data in accordance with paragraph (a). In case of a personal data breach concerning the personal data processed by the data exporter under these Clauses, the data exporter shall notify the data importer without undue delay after becoming aware of it and assist the data importer in addressing the breach.
- (c) The data exporter shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

8.2 Documentation and compliance

- (a) The Parties shall be able to demonstrate compliance with these Clauses.
- (b) The data exporter shall make available to the data importer all information necessary to demonstrate compliance with its obligations under these Clauses and allow for and contribute to audits.

Clause 9

Use of sub-processors

N/A

Clause 10

Data subject rights

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

- (a) The data importer, where relevant with the assistance of the data exporter, shall deal with any enquiries and requests it receives from a data subject relating to the processing of his/her personal data and the exercise of his/her rights under these Clauses without undue delay and at the latest within one month of the receipt of the enquiry or request. The data importer shall take appropriate measures to facilitate such enquiries, requests and the exercise of data subject rights. Any information provided to the data subject shall be in an intelligible and easily accessible form, using clear and plain language.
- (b) In particular, upon request by the data subject the data importer shall, free of charge :
 - (i) provide confirmation to the data subject as to whether personal data concerning him/her is being processed and, where this is the case, a copy of the data relating to him/her and the information in Annex I; if personal data has been or will be onward transferred, provide information on recipients or categories of recipients (as appropriate with a view to providing meaningful information) to which the personal data has been or will be onward transferred, the purpose of such onward transfers and their ground pursuant to Clause 8.7; and provide information on the right to lodge a complaint with a supervisory authority in accordance with Clause 12(c)(i);
 - (ii) rectify inaccurate or incomplete data concerning the data subject;
 - (iii) erase personal data concerning the data subject if such data is being or has been processed in violation of any of these Clauses ensuring third-party beneficiary rights, or if the data subject withdraws the consent on which the processing is based.
- (c) Where the data importer processes the personal data for direct marketing purposes, it shall cease processing for such purposes if the data subject objects to it.



- (d) The data importer shall not make a decision based solely on the automated processing of the personal data transferred (hereinafter “automated decision”), which would produce legal effects concerning the data subject or similarly significantly affect him / her, unless with the explicit consent of the data subject or if authorised to do so under the laws of the country of destination, provided that such laws lays down suitable measures to safeguard the data subject’s rights and legitimate interests. In this case, the data importer shall, where necessary in cooperation with the data exporter:
 - (i) inform the data subject about the envisaged automated decision, the envisaged consequences and the logic involved; and
 - (ii) implement suitable safeguards, at least by enabling the data subject to contest the decision, express his/her point of view and obtain review by a human being.
- (e) Where requests from a data subject are excessive, in particular because of their repetitive character, the data importer may either charge a reasonable fee taking into account the administrative costs of granting the request or refuse to act on the request.
- (f) The data importer may refuse a data subject’s request if such refusal is allowed under the laws of the country of destination and is necessary and proportionate in a democratic society to protect one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679.
- (g) If the data importer intends to refuse a data subject’s request, it shall inform the data subject of the reasons for the refusal and the possibility of lodging a complaint with the competent supervisory authority and/or seeking judicial redress.

MODULE 4: TRANSFER PROCESSOR TO CONTROLLER

The Parties shall assist each other in responding to enquiries and requests made by data subjects under the local law applicable to the data importer or, for data processing by the data exporter in the EU, under Regulation (EU) 2016/679.

Clause 11

Redress

- (a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

MODULE 1: TRANSFER PROCESSOR TO CONTROLLER

- (b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- (c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
 - (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
 - (ii) refer the dispute to the competent courts within the meaning of Clause 18.
- (d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- (e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.



Clause 12

Liability

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

MODULE 4: TRANSFER PROCESSOR TO CONTROLLER

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.
- (c) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (d) The Parties agree that if one Party is held liable under paragraph (c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its / their responsibility for the damage.
- (e) The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

Clause 13

Supervision

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

- (a) [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

- (b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

Clause 14

Local laws and practices affecting compliance with the Clauses

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER



MODULE 4: TRANSFER PROCESSOR TO CONTROLLER (Where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
- (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
 - (ii) the laws and practices of the third country of destination— including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards⁶;
 - (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- (c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
- (e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).
- (f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

Clause 15

Obligations of the data importer in case of access by public authorities

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

⁶ As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.



MODULE 4: TRANSFER PROCESSOR TO CONTROLLER (Where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)

15.1 Notification

- (a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
 - (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
 - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 Review of legality and data minimisation

- (a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).
- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV – FINAL PROVISIONS

Clause 16

Non-compliance with the Clauses and termination

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.



- (b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
- (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
 - (ii) the data importer is in substantial or persistent breach of these Clauses; or
 - (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

- (d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data.

The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.

- (e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

Clause 17

Governing law

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

MODULE 4: TRANSFER PROCESSOR TO CONTROLLER

These Clauses shall be governed by the law of a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of Netherlands.

Clause 18

Choice of forum and jurisdiction

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

MODULE 4: TRANSFER PROCESSOR TO CONTROLLER

(a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.

(b) The Parties agree that those shall be the courts of the Netherlands.

(c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.



(d) The Parties agree to submit themselves to the jurisdiction of such courts.

APPENDIX

EXPLANATORY NOTE:

It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.

ANNEX I

A. LIST OF PARTIES

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

MODULE 4: TRANSFER PROCESSOR TO CONTROLLER

Data exporter(s): [Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]

1. ETS Global

Information included in the Data Processing Agreement (DPA)

Data importer(s): [Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]

2. The Organization

Information included in the Data Processing Agreement (DPA)

B. DESCRIPTION OF TRANSFER

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

MODULE 4: TRANSFER PROCESSOR TO CONTROLLER (Where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)

Categories of data subjects whose personal data is transferred

Information included in the Data Processing Agreement (DPA)

Categories of personal data transferred

Information included in the Data Processing Agreement (DPA)

Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

Information included in the Data Processing Agreement (DPA)

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

Data will be transferred on a continuous basis during the execution of the main agreement.

Nature of the processing



Information included in the Data Processing Agreement (DPA)

Purpose(s) of the data transfer and further processing

Information included in the Data Processing Agreement (DPA)

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

Information included in the Data Processing Agreement (DPA)

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

Information included in the Data Processing Agreement (DPA)

C. COMPETENT SUPERVISORY AUTHORITY

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

MODULE 4: TRANSFER PROCESSOR TO CONTROLLER (Where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)

Identify the competent supervisory authority/ies in accordance with Clause 13

Dutch supervisory Authority (Autoriteit Persoonsgegevens)

ANNEX II

TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

EXPLANATORY NOTE:

The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers.

Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.

Information included in the Data Processing Agreement (DPA)

For transfers to (sub-) processors, also describe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the controller and, for transfers from a processor to a sub-processor, to the data exporter

Information included in the Data Processing Agreement (DPA)

ANNEX III

MODULE 1: TRANSFER CONTROLLER TO CONTROLLER

LIST OF SUB-PROCESSORS

EXPLANATORY NOTE:

This appendix must be completed for modules 2 and 3, in the event of specific authorization of subsequent subcontractors [clause 9, paragraph a), option 1].

The controller has authorized the use of the following sub-processors:



Information included in the Data Processing Agreement (DPA)