Master Services and License Agreement

Terms Updated March 18, 2021

IMPORTANT! YOU ARE ENTERING INTO A LEGALLY BINDING AGREEMENT ON BEHALF OF YOUR AGENCY. PLEASE READ THIS CAREFULLY!

ALL PUBLIC AGENCIES THAT DESIRE TO USE THE IPMA-HR ASSESSMENTS AND ASSESSMENT SCORES ARE REQUIRED TO ENTER INTO THIS MASTER SERVICES AND LICENSE AGREEMENT WITH IPMA-HR, WHICH ESTABLISHES THE TERMS AND CONDITIONS FOR USE OF THE IPMA-HR ASSESSMENTS AND ASSESSMENT SCORES. THE USE OF THE IPMA-HR ASSESSMENTS AND ASSESSMENT SCORES IS STRICTLY PROHIBITED EXCEPT AS PROVIDED IN THIS AGREEMENT.

This Master Services and License Agreement (“MSLA” or “Agreement”) is hereby entered into by the Public Agency (the “Agency”) and the International Public Management Association for Human Resources (“IPMA-HR”) (individually a “Party” and together the “Parties”) as of the date it is executed by the Parties (the “Effective Date”).

# 1.0 PURPOSE OF THE AGREEMENT

Agency desires to license and use the IPMA-HR Assessments (as defined in section 2.1) and Assessment Scores (as defined in section 2.3) to assist Agency in making employment decisions about applicants and employees. IPMA-HR agrees to license the IPMA- HR Assessments and Assessment Scores to the Agency for use strictly as provided herein.

# DEFINITIONS

As used throughout this Agreement and in any Assessment Order Form, the following terms shall have the meanings specified below and other terms are defined throughout the Agreement in parentheticals with quotation marks around the defined terms:

* 1. **IPMA-HR Assessments:** All of the assessments described and offered by IPMA-HR at https[://www.](http://www.ipma-hr.org/assessment-)ipm[a-hr.org/assessment-](http://www.ipma-hr.org/assessment-) services/assessments and made available for administration and licensing pursuant to the terms of this Agreement, regardless of the mode of test administration, which include a series of pre-employment and employment assessments for each of the following categories of public agencies:
		+ **Police**
		+ **Fire**
		+ **Corrections**
		+ **Public Works**
	2. **Examinee:** A person who takes any IPMA-HR Assessment made available to the Agency by IPMA-HR pursuant to the terms of this Agreement. All Examinees are required to execute the Examinee Confidentiality Agreement for All IPMA-HR Tests attached to this Agreement as Attachment A.
	3. **Assessment Score:** A numerical value reflecting an Examinee’s performance on a particular IPMA-HR Assessment calculated by IPMA-HR based upon the Examinee’s assessment response data and the number of correct responses by the Examinee, including all test response data derived from and related to the test administration.
	4. **Assessment Order Form:** The electronic form to be completed by the Agency that identifies the specific titles and quantities of the IPMA-HR Assessments to be provided by IPMA-HR to the Agency pursuant to this Agreement as well as the mode of assessment administration.
	5. **Assessment Content:** All content contained within the IPMA-HR Assessments, including but not limited to all graphic images, text, readings passages, hypothetical scenarios, audio content, video content, multi-media content, questions, incorrect answer choices, correct answer choices, answer key and all related materials referred to, incorporated into and included within the IPMA-HR Assessments, including all related Test Information Packets, Technical Reports, and accompanying assessment materials required to administer and use the IPMA-HR Assessments, but not including any test delivery software or coding language which may be attached to the content or in which the content may be embedded for the IPMA-HR Assessments administered via computers.

|  |  |  |
| --- | --- | --- |
|  | **2.6** | **PBT:** A paper-based test administration of any IPMA-HR Assessment made available to the Agency by IPMA-HR pursuant to the terms of this Agreement. |
| **2.7** | **CBT:** A computer-based test administration of any IPMA-HR Assessment made available to the Agency by IPMA-HR pursuant to the terms of this Agreement via the IPMA-HR Online Test Administration System. |
| **2.8** | **TSA:** The Test Security Agreement, incorporated by reference into the terms of this MSLA, that must be signed by the Agency prior to the ordering or administration of any IPMA-HR Assessment made available to the Agency by IPMA-HR pursuant to the terms of this Agreement. The TSA is attached to this Agreement as Attachment B. |
| **2.9** | **LASA:** The Limited Access Security Agreement, incorporated by reference into the terms of this MSLA, that must be signed by all Agency staff that use or have access to Assessment Content, as that term is defined herein, prior to receiving access to or participating in the administration of any IPMA-HR Assessment made available to the Agency by IPMA-HR pursuant to the terms of this Agreement. The LASA is attached to this Agreement as Attachment C. |
| **2.10** | **Online Test Administration System or OTAS:** The IPMA-HR Online Test Administration System (“OTAS”) hosted by Assessment Systems on the web-based platform FastTEST that is used by the Agency to: (a) designate Agency’s Authorized Users of CBT, (b) complete and submit Assessment Order Forms for CBT, (c) schedule and administer CBT, and (d) retrieve Assessment Scores for CBT administered in OTAS. The OTAS Terms of Service is attached to this Agreement as Attachment D and the OTAS Manual is attached to this Agreement as Attachment E. |
| **2.11** | **FastTEST Account:** A secure user account that must be established by Agency on the IPMA-HR Online Test Administration System (“OTAS”) hosted by Assessment Systems on the web-based platform FastTEST, and must be used by the Agency to:(a) designate Agency’s Authorized Users of CBT, (b) complete and submit Assessment Order Forms for CBT, (c) schedule and administer CBT, and (d) retrieve Assessment Scores for CBT administered in OTAS. |
| . | **2.12** | **LRP:** A live, remote-proctored computer-based test administration of any IPMA-HR Assessment made available to the Agency by IPMA-HR pursuant to the terms of this Agreement via the IPMA-HR Online Test Administration System and proctored remotely by ProctorU. The Online Test Administration System with Live Remote Proctoring Manual is attached to this Agreement as Attachment E. |
| **3.0** |  | **ASSESSMENT ORDERING REQUIREMENTS, AGENCY ACCOUNTS, AND AUTHORIZED USERS** |
|  | **3.1** | **Test Administration Options**: The IPMA-HR Assessments can be administered in accordance with the TSA, LASA and all applicable IPMA-HR test administration manuals and policies using any of the following methods: |

1. CBT with in-person proctoring by the Agency;
2. CBT with LRP by ProctorU; and
3. PBT with in-person proctoring by the Agency.
	1. **Test Security Agreement and Assessment Order Forms:** In order to access, administer and use IPMA-HR Assessments and use Assessment Scores, in addition to accepting the terms of this Agreement, the Agency must accept and execute the TSA and then complete the required Assessment Order Form for the IPMA-HR Assessments that the Agency desires to use. For PBT IPMA-HR Assessments, upon executing this Agreement and the TSA, IPMA-HR will email the Agency with a link to a web-based Assessment Order Form that the Agency must complete specific the IPMA-HR Assessments it is ordering. For all CBT IPMA-HR Assessments, whether they will be proctored in-person by the Agency or via LRP, the Agency must follow the procedures set forth in section 3.3 below to complete the Assessment Order Form and manage the IPMA-HR Assessments ordered by the Agency. Agency shall pay all applicable fees and costs set forth on all Assessment Order Forms for the IPMA-HR Assessment that they order.
	2. **Agency Account for CBT and CBT with LRP:** In order to use CBT IPMA-HR Assessments and Assessment Scores, whether they will be proctored in-person by the Agency or via LRP, and submit Assessment Order Forms for the Agency, in addition to an authorized representative of Agency accepting the terms of this Agreement, the Agency must accept and execute the TSA, acknowledge and execute the OTAS Terms of Service, and register for a FastTEST account on OTAS. Agency’s authorized representative will be required to create a password in connection with Agency’s IPMA-HR FastTEST account. Agency is solely responsible for maintaining the confidentiality and security of Agency’s IPMA-HR FastTEST account and password and Agency agrees to accept responsibility for all activities that occur under Agency’s IPMA-HR FastTEST account and password. Agency agrees that the information Agency provides to IPMA-HR in FastTEST, whether at registration or at any other time, will be true, accurate, current, and complete. Agency also agrees that Agency will ensure that Agency’s information is kept accurate and up-to-date at all times in Agency’s IPMA-HR FastTEST account. If Agency has reason to believe that Agency’s FastTEST account is no longer secure (e.g., in the event of a loss, theft, or unauthorized disclosure or

use of Agency’s account ID or password), then Agency shall immediately notify IPMA-HR at assessment@ipma-hr.org. Agency shall be solely liable for the losses incurred by IPMA-HR or others due to any unauthorized use of Agency’s IPMA- HR FastTEST account.

* 1. **Agency’s Authorized Users:** Agency will be permitted to designate authorized users of its IPMA-HR FastTEST Account to order, schedule, administer and proctor the IPMA-HR Assessments and to obtain Assessment Scores for Examinees who have taken the IPMA-HR Assessments. All of Agency’s authorized users shall be required to execute a LASA prior to receiving access to Agency’s IPMA-HR FastTEST account. Agency’s authorized users shall be solely responsible for maintaining the confidentiality and security of their respective IPMA-HR FastTEST account and password and Agency agrees to accept responsibility for all activities that occur under the accounts of authorized users designated by Agency. Agency shall also have sole and exclusive responsibility and liability for the acts and omissions of its authorized users that relate in any way to
		1. the use of IPMA-HR FastTEST accounts by Agency or any authorized users established by Agency, (b) ordering, use, administration and proctoring of the IPMA-HR Assessments, and (c) use of and access to Examinee Assessment Scores. All users designated by Agency shall be bound by the terms of this Agreement, including all additional terms, conditions and policies incorporated by reference into this Agreement.
	2. **Examinee Requirements to be Enforced by Agency:** All Examinees are required to execute the Examinee Confidentiality Agreement for All IPMA-HR Tests (Attachment A) prior to taking any IPMA-HR Assessment. It is Agency’s sole and exclusive responsibility to ensure that all Examinees execute the Examinee Confidentiality Agreement prior to administration of any IPMA-HR Assessment, regardless of the method of administration. It shall be deemed a material breach of this Agreement by Agency if any Examinee has access to or takes any IPMA-HR exam prior to executing the Examinee Confidentiality Agreement.
	3. **Additional Terms, Conditions and Policies:** In addition to the terms and conditions set forth in this Agreement and each Assessment Order Form submitted by Agency, the use of IPMA-HR Assessments and Assessment Scores by Agency and all of Agency’s authorized users is subject to the terms and conditions set forth in the most current versions of the Examinee Confidentiality Agreement for All IPMA-HR Tests (Attachment A), the TSA (Attachment B), the LASA (Attachment C), the OTAS Terms of Service (Attachment D), the OTAS Manual (Attachment E), and the Online Test Administration System with Live Remote Proctoring (Attachment F) (collectively, the “Additional IPMA-HR Terms and Conditions”) applicable to the IPMA-HR Assessments and Assessment Scores, which IPMA-HR may modify from time to time. The Additional IPMA-HR Terms and Conditions are hereby incorporated by reference into and made part of the Agreement.
	4. **Terms and Conditions for Integrated Services:** The Agency’s use of OTAS and the IPMA-HR Assessments via CBT and CBT with LRP require the Agency to access and use third party integrated services provided, respectively, by Assessment Systems and ProctorU ("Integrated Services"). In order to use OTAS and the IPMA-HR Assessments via CBT or CBT with LRP, the Agency must accept all terms and conditions of the Integrated Services. IPMA-HR does not control the terms, policies or practices of the Integrated Services. If the Agency does not accept the terms and conditions of the Integrated Services, the Agency is prohibited from using the IPMA-HR Assessments that require their use.

# 4.0 TERM AND RENEWALS

This Agreement commences with the Effective Date and shall continue for a one-year period thereafter, unless terminated earlier as provided in Section 11.0 or by agreement of the Parties. This Agreement will automatically renew for an unlimited number of consecutive additional one (1) year renewal periods, unless either Party gives the other Party written notice that it will not renew at least sixty (60) days prior to the Expiration Date or the expiration of any renewal period. The time period during which the Agreement is in effect, including any renewal period, shall be referred to herein as the “Term” of the Agreement.

# FEES

Agency shall pay IPMA-HR the fees specified by IPMA-HR for the IPMA-HR Assessments ordered by Agency and submitted to IPMA-HR in an Assessment Order Form. Agency shall not charge Examinees any fees related to Agency’s use or administration of the IPMA-HR Assessments.

# Invoicing and Payment

Agency shall pay IPMA-HR in a timely manner for the IPMA-HR Assessments that Agency orders in each Assessment Order Form. In the event IPMA-HR is required to submit an invoice to Agency, IPMA-HR shall submit such invoices on a monthly basis, unless stated otherwise in the Invoice. All invoiced amounts shall be due and payable within thirty (30) days of date of the invoice. Any balance on an invoice not paid when due shall bear interest at the lesser of one and one-half percent (1 ½ %) per month or the maximum rate allowed by law from the date due until paid.

# Taxes/Fees Not Included

The fees for services charged to Agency do not include any applicable sales, use, excise, Value Added Tax (VAT), Goods and Services Tax (GST) or any other fees, taxes, excises, or charges on, or in connection with the furnishing of the services. The fees set forth also do not include credit card charges, currency lifting fees, currency border fees, or other charges. IPMA-HR will charge and collect from Agency these fees, taxes, etc., when these charges are required to be collected.

# OWNERSHIP AND LICENSES GRANTED

* 1. **IPMA-HR-Owned Materials and Licenses Provided to Agency**

Agency agrees that IPMA-HR owns or has obtained the exclusive right, title and interest in and to the IPMA-HR Assessments, Assessment Scores and the Assessment Content (as each of the aforementioned terms is defined in this Agreement) (collectively, the “Works”). Nothing in this Agreement shall be interpreted to suggest that IPMA-HR is transferring any of its exclusive rights in the Works to Agency. Agency shall not disassemble, decompile or reverse engineer the Works, or its component parts. Agency has no right to copy any components of the Works, except Assessment Scores, as provided below.

IPMA-HR hereby grants Agency a limited, revocable, non-exclusive, non-transferable, non-assignable, non-sublicenseable, royalty–free, worldwide license to use the IPMA-HR Assessments for which Agency has paid pursuant to an Assessment Order Form in strict accordance with the terms and conditions of this Agreement and the most current versions of the IPMA-HR Policies and Procedures Manual and the IPMA-HR Assessment Exam Policies for the purpose of (a) enabling Agency to administer the IPMA-HR Assessments to Examinees as part of Agency’s employment selection and/or evaluation requirements and (b) scoring the IPMA-HR Assessments in order to provide Assessment Scores to Agency.

IPMA-HR hereby grants Agency a perpetual, irrevocable, non-exclusive, non-transferable, non-assignable, sublicenseable, royalty–free, worldwide license to use and copy the Assessment Scores of Examinees who have taken IPMA-HR Assessments for which Agency has paid pursuant to an Assessment Order Form in strict accordance with the terms and conditions of this Agreement and the most current versions of the IPMA-HR Policies and Procedures Manual and the IPMA-HR Assessment Exam Policies for the purpose of enabling Agency to use the Assessment Scores as part of Agency’s Program requirements for Examinees and for the educational benefit of the Examinees who took the IPMA-HR Assessments.

All data, survey responses, suggestions, improvements, comments, and feedback provided by Agency in order to assist IPMA- HR in the research, development, maintenance, evaluation and validation of the IPMA-HR Assessments (collectively, the “Validation Data”) shall be considered “Works Made for Hire” and are the exclusive property of IPMA-HR. Agency agrees to fully cooperate with IPMA-HR in whatever manner may be required for the IPMA-HR to secure, register, perfect and enforce all of its rights in and to the Validation Data. All costs associated with supporting IPMA-HR’s exercise of it rights under this provision shall be borne by IPMA-HR. IPMA-HR hereby grants Agency a perpetual, irrevocable, non-exclusive, non-transferable, non-assignable, sublicenseable, royalty–free, worldwide license to use and copy the Validation Data for its legitimate research and governmental purposes.

The licenses provided by IPMA-HR to Agency are strictly limited to the purposes set forth in this Agreement, and upon termination, cancellation or nonrenewal of this Agreement for any reason, such authorization and license to use the IPMA-HR Assessments shall cease and terminate, but Agency may continue to use the Assessment Scores and the Validation Data as perpetually licensed herein.

# Special Statement Regarding the Use of Assessment Scores:

Where IPMA-HR provides scoring services to Agency for the IPMA-HR Assessments, IPMA-HR strives to calculate and deliver accurate, valid and reliable Assessment Scores. Agency understands and acknowledges that Assessment Scores reported by IPMA-HR are valid and reliable only to the extent that the Assessment Scores are used in accordance with the intended purposes of the IPMA-HR Assessments. Agency acknowledges that IPMA-HR offers no opinion or guidance as to the weight that Agency should assign to Assessment Scores in relation to employment decisions it makes in relation to Examinees. Agency acknowledges that Agency is solely responsible for the use of Assessment Scores, and any and all claims, losses and/or damages arising out of Agency’s use of Assessment Scores and hereby indemnifies IPMA-HR and its employees, officers, directors, contractors, agents and attorneys from any and all claims, demands, losses and/or damages arising out of Agency’s use of Assessment Scores.

# CONFIDENTIALITY

* 1. **Definition**.

For purposes of this Agreement, "Confidential Information" means and includes any and all materials, data and information provided by the IPMA-HR to Agency in relation to the Licenses provided under this Agreement as well as all of the IPMA-HR Assessments, Assessment Scores and the Assessment Content (as each of the aforementioned terms is defined in this Agreement), and related materials developed by IPMA-HR, tests presently in development by IPMA-HR, tests planned for future development by IPMA- HR, information concerning Examinees (as defined in paragraph 2.1 of this Agreement), information describing or relating to test items, test questions, test answer choices, software, software source documents, microcode and source code, test development processes, test scores, scoring programs, scoring processes, key performance indicators, data analytics, formulas, specifications, practice tests, and test preparation materials. Confidential Information shall also mean and include either Party’s information, intellectual property, data, know- how, results, processes, compositions, inventions, methods, materials, finances, sales, pricing, technologies, contracts, short-term and long-term business and marketing plans, strategies, and prospects, suppliers, budgets, projections, research and development, business policies or practices, investigations, investigative methods, legal strategies and any other information, however documented and in whatever form or medium, that is the confidential and proprietary business information of Agency or IPMA-HR, and/or a “Trade Secret,” as that term is defined in the Uniform Trade Secrets Act, whether in written, oral, electronic, Internet-based, or other form. IPMA-HR and Agency agree to protect and hold all Confidential Information in strict confidence and shall not, directly or indirectly, disclose any Confidential Information to any person who is not authorized by the disclosing Party to receive such information or use it for its own benefit or that of any other person or entity. All Confidential Information is and shall remain the sole and exclusive property of the disclosing Party, and the receiving Party shall have no rights or license thereto. Nothing contained herein shall require either Party to disclose any of its Confidential Information to the other.

# Non-Use and Non-Disclosure.

Each Party agrees that commencing on the Effective Date and continuing in perpetuity after the termination of IPMA-HR’s engagement with Agency (the “Term”), the receiving Party will keep the Confidential Information in the strictest confidence and shall not modify, disclose, recreate, create derivatives, copy or adapt such information for any purpose other than as specifically required to provide the Services hereunder and will not, during or subsequent to the term of this Agreement, (i) use the Confidential Information for any purpose whatsoever other than the performance of the Services or (ii) disclose the Confidential Information to any third party. Each Party agrees that all Confidential Information will remain the sole property of the disclosing Party (except Examinee Personal Data, which is owned by the Examinee it identifies). The Parties agree to take all reasonable precautions to prevent any unauthorized disclosure of such Confidential Information and that each shall have exclusive responsibility for the conduct of their respective employees in relation to the Confidentiality terms of this Agreement. Each Party acknowledges and agrees that disclosure of any Confidential Information without the express written permission of the disclosing Party will cause the disclosing Party irreparable harm for which remedies at law may be inadequate and that any breach or threatened breach of this Agreement by the receiving Party will entitle the disclosing Party to seek injunctive relief, in addition to any other legal and/or equitable remedies available to it, in any court of competent jurisdiction. In the event that any lawsuit or legal proceeding is commenced to enforce or construe a portion of this Agreement, the prevailing party, in addition to any other amounts to which the prevailing party may be entitled or awarded, the non- prevailing party shall be required to pay the reasonable attorneys’ fees and costs of litigation incurred by the prevailing party.

# Maintaining Confidentiality.

Each Party shall (i) attempt in every way to prevent intentional and unintentional unauthorized use or disclosure of Confidential Information; (ii) promptly notify the other Party of any unauthorized use, copying or disclosure of Confidential Information; (iii) assist the other Party in investigating and limiting the scope of any potential disclosure by such Party of Confidential Information; and (iv) mitigate any potential harm that could result from such disclosure. In order to fulfill its confidentiality obligations hereunder, each Party shall abide by the terms contained in Section 8 of this Agreement, Data Protection and Privacy.

# Third Party Confidential Information.

IPMA-HR recognizes that it will receive and process confidential, proprietary and/or protected information of Examinees subject to a duty on IPMA-HR’s part to protect and maintain the confidentiality of such information and to use it only for certain limited purposes. Confidential information from Examinees may include, but is not limited to, the name, identity, race, other personal identifying information, academic information, personal health records and test scores of the Examinees that is subject to protection and regulation under international, state and federal laws restricting the collection, processing, use and disclosure of such information. IPMA-HR agrees that during the term of this Agreement and thereafter any such third-party confidential information is considered to be Confidential Information for purposes of this Agreement and IPMA-HR is under the same obligations to maintain the confidentiality of such information as IPMA-HR has to keep Agency’s Confidential Information confidential. Notwithstanding the foregoing terms, Agency acknowledges that while IPMA-HR shall handle and process Assessment Scores as Confidential Information of Examinees subject to

the applicable laws and regulations cited herein, Assessment Scores are the exclusive property of IPMA-HR as provided in Section 6 of the Agreement.

# Notice of Legally Compelled Disclosures.

In the event a Party is required by law to disclose any Confidential Information, such Party shall give the other Party reasonable prior written notice of such required disclosure and shall permit the other Party to seek a protective order or to take appropriate actions to contest the disclosure and shall provide reasonably requested cooperation to the other Party in seeking such protective order or in any other efforts to maintain the confidentiality of the Confidential Information. Each Party shall indemnify, defend and hold the other Party harmless from and against any claims or damages arising from any breach of the obligations contained in this Section, which indemnification obligation shall survive the expiration or termination of this Agreement.

# Return or Destruction of Materials.

Upon the termination of this Agreement, or upon Agency’s earlier written request, IPMA-HR shall return to Agency or destroy, at Agency’s option and Agency’s expense, all Confidential Information, except Assessment Scores and Validation Data, received from Agency and Examinees in IPMA-HR’s possession or control and any such information to which IPMA-HR has access, including Confidential Information contained in all backup and/or cloud-based data storage systems, within thirty (30) calendar days of receipt of the request. If Agency requests that IPMA-HR destroy the Confidential Information, IPMA-HR shall promptly provide a written certification to Agency that includes a reasonably specific inventory of all the Confidential Information that was destroyed, the date of destruction, all manner of destruction and a declaration that the contents of the certification are true and accurate.

# Continuation of Obligation.

The confidentiality provisions provided herein shall survive the termination and/or non-renewal of the Agreement and/or the termination of the business relationship between the Parties. The Parties shall protect and maintain the secrecy of each other’s Confidential Information in perpetuity.

# 8.0 DATA PROTECTION AND PRIVACY

IPMA-HR and Agency shall comply with the Data Protection and Privacy Terms attached to this Agreement as Attachment G. The Parties agree that the Data Protection and Privacy Terms are material terms of this Agreement.

# INDEMNIFICATION

* 1. **Agency’s Indemnity**

Agency will, to the extent permissible under applicable law, indemnify, defend and hold IPMA-HR and its officers, directors, employees, agents, attorneys, representatives, successors and assigns harmless from and against any and all Losses arising out of any claim, demand, action, or proceeding based directly or indirectly on Agency’s use or administration of the IPMA-HR Assessments, Agency’s use of Assessment Scores, Agency’s decision to hire or promote or to not hire or not promote any Examinee, Agency’s decisions regarding testing accommodations requested by any Examinee in relation to the IPMA-HR Assessments, Agency’s provision and/or implementation and/or delivery of testing accommodations to any Examinee who takes the IPMA-HR Assessments, and any Agency act or omission related to Agency’s use of the IPMA-HR Assessments and/or Assessment Scores. Agency’s indemnity will include Agency’s grant or refusal of accommodations for Examinees representing themselves as disabled. For the benefit of clarity, all of the provisions of this Indemnification section of the Agreement shall only be binding on Agency to the extent permissible under applicable law.

# Losses

“Losses” shall mean (i) the amounts payable by IPMA-HR to one or more third parties (including any and all liabilities, damages, fines, penalties, costs, expenses, assessments, levies, restitution and forfeitures), whether by means of judgment, settlement, arbitration award, or otherwise; and (ii) IPMA-HR’s costs and expenses (including any and all expert fees, court costs, reasonable costs of investigation, defense, litigation, settlement, judgment, and appeal, reasonable attorney’s fees in connection with the foregoing or with successfully establishing the right to indemnification under this Section 9, and expenses and any interest and penalties levied on a judgment or arbitration award or payable as part of any settlement).

# Procedures

In order to invoke its right to indemnification under this Section 9, IPMA-HR shall promptly notify (and, in the case of any action, suit, arbitration, or judicial or administrative proceeding, shall so notify no later than fifteen (15) days after the IPMA-HR has received notice thereof or has been served with a complaint or other process) Agency when it has knowledge of circumstances or the occurrence of any events which are likely to result in an indemnification obligation under this subsection or when any action, suit, arbitration, or judicial or administrative proceeding is pending or threatened that is covered by this subsection.

Upon request, and to the extent permitted by applicable law, Agency shall have the right to defend, settle, or compromise any such suit or proceeding, at its own expense, provided that: (a) Agency demonstrates to the satisfaction of IPMA-HR that it is financially able to defend such action and to pay any settlement, award or judgment; (b) counsel retained by Agency are reasonably satisfactory to IPMA-HR; and (c) no settlement shall be made which imposes any obligations on (other than the payment of money which is made by Agency on behalf of IPMA-HR), or is prejudicial to, IPMA-HR, without the prior consent of IPMA-HR, which consent shall not be unreasonably withheld.

IPMA-HR shall cooperate with Agency in the defense of any such suit or proceeding, and Agency shall reimburse IPMA-HR for its expenses with respect thereto, including counsel of its choice. Such cooperation shall include, but not be limited to, the making of statements and affidavits, attendance at hearings and trials, production of documents, assistance in securing and giving evidence and obtaining the attendance of witnesses, provided, however, that in no event shall either Party be required to waive attorney-client or other applicable privileges.

Failure by IPMA-HR to promptly notify Agency as required by this subsection shall not invalidate the claim for indemnification, unless such failure has a material adverse effect on the settlement, defense, or compromise of the matter that is the subject of the claim for indemnification. In addition, IPMA-HR shall be responsible for any claims or losses which could have been avoided or mitigated by prompt notice as required by this subsection.

# NO THIRD-PARTY BENEFICIARIES/ LIMITATION OF LIABILITY/ WARRANTY DISCLAIMER

* 1. **No Third Party Beneficiaries**

Nothing in this Agreement shall entitle any person (including, without limitation, Examinees) to any rights as a third-party beneficiary under this Agreement.

# Limitation of Liability

EXCEPT FOR THE OWNERSHIP AND LICENSES GRANTED TERMS SET FORTH IN SECTION 6, CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 7, AGENCY’S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9 (TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW), AND EITHER PARTY’S WILLFUL MISCONDUCT RELATED TO THE PERFORMANCE OF THIS AGREEMENT (“EXCLUDED MATTERS”), IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION - E.G. CONTRACT, WARRANTY, TORT, MALPRACTICE, AND/OR OTHERWISE) EXCEED THE AMOUNT PAID BY AGENCY TO IPMA-HR DURING THE 12-CONSECUTIVE-MONTH PERIOD IMMEDIATELY PRECEEDING THE EVENT TRIGGERING A CLAIM OF LIABILITY HEREUNDER. EXCEPT FOR EXCLUDED MATTERS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, OR BUSINESS, LOSS OF USE, OR INTERRUPTION OF BUSINESS, OR OTHER DAMAGES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF OR SUCH DAMAGES ARE PERMITTED UNDER APPLICABLE LAW. FOR EXLUDED MATTERS, THE LIMITATION OF LIABILITY SHALL BE $1,000,000.

# Warranty and Disclaimer

IPMA-HR warrants that IPMA-HR owns or otherwise has sufficient rights in the IPMA-HR Assessments, the Assessment Content and the Assessment Scores to grant Agency the rights to use the IPMA-HR Assessments and the Assessment Scores as provided herein. IPMA-HR’s breach of this warranty shall be grounds for termination of the Agreement. This warranty shall only be effective and enforceable if Agency has used the IPMA-HR Assessments and the Assessment Scores in accordance with the terms of this Agreement, including all incorporated terms, conditions and IPMA-HR policies, and Agency has provided IPMA-HR with commercially reasonable notice of any alleged breach of warranty in accordance with the terms hereof.

EXCEPT AS SPECIFICALLY SET FORTH HEREIN, EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

# TERMINATION

* 1. **Termination for Cause.** Either party can terminate this Agreement for cause by providing written notice to the other party of one of the below identified grounds for termination and by following the procedures set forth in the Dispute Resolution Procedures set forth below:
		1. if a party fails to pay the other party any delinquent amounts owed to the other party hereunder;
		2. if Agency determines that IPMA-HR breached any of the Confidentiality, Ownership or Data Protection provisions of this Agreement;
		3. if the other party has committed any material breach of its obligations under this Agreement; or
		4. upon the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within thirty (30) days of commencement.
	2. **Dispute Resolution Procedures.** Upon either party to this Agreement receiving written notice of termination in accordance with any of the above grounds for termination, the Parties agree to follow the procedures set forth in this section prior to filing or serving any legal action or proceeding in any court, unless the ground for termination is IPMA-HR’s alleged breach or anticipated breach of the Confidentiality, Ownership or Data Protection provisions of the Agreement.
		1. First, the party alleged to have breached the Agreement shall have fifteen (15) calendar days to cure the breach that shall begin to run from the date the written notice of breach was received (the “Cure Period”).
		2. If, after the expiration of the Cure Period, the party alleging a breach is not satisfied that the alleged breaching party has cured, the party alleging the breach shall deliver a written Notice of Mediation to the alleged breaching party, setting out the allegations of fact underlying the alleged breach, and identifying the specific terms of the Agreement that may have been breached.
		3. The Parties agree to meet and confer in a face to face meeting ten (10) calendar days after delivery of the Notice of Mediation and participate in a good faith negotiation to settle and finally resolve the dispute described in the Notice of Mediation.
		4. If, after meeting and conferring in good faith, the Parties still have not resolved the alleged breach described in the Notice of Mediation, the Parties shall, within a period of ten (10) calendar days after the failure of the Parties to resolve the matter at their good faith meet and confer session, jointly select a neutral mediator who will hold a face-to-face mediation with the senior representatives of the Parties and make a recommendation of settlement to the Parties. Such face-to-face mediation shall be scheduled within an additional thirty (30) calendar days after the appointment of the neutral mediator. If the Parties reject the recommendation of the neutral mediator in writing, then, and only then, may either or both Parties proceed with litigation.
		5. Neither party shall pursue any legal action against the other in any court or other proceeding until the dispute resolution procedure provided in this paragraph has been executed in good faith and exhausted and resulted in either no resolution or an incomplete resolution of the dispute.
		6. For the benefit of clarity, it is the intent of the Parties that the earliest that either Party could initiate a legal action against the other in court under this Agreement is sixty-five (65) days after the party delivers written notice of a material breach of the Agreement.
		7. Notwithstanding any of the foregoing terms, either Party may, at its sole discretion, avoid the dispute resolution procedures set forth above and immediately file a legal action or proceeding in any court of competent jurisdiction if the filing Party has determined in good faith that the other Party breached any of the following Sections of the Agreement: 6.0 Ownership and Licenses Granted, 7.0 Confidentiality, 9.0 Indemnification, and 12.0 Right to Audit and Investigate.

# Performance Until Termination

Notwithstanding the delivery of a notice of default or notice of termination by either Party to the other, all obligations to perform services and to pay for such services shall continue in effect and be duly observed and complied with by both Parties until the effective date of termination.

# 12.0 RIGHT TO AUDIT AND INVESTIGATE

Agency agrees that IPMA-HR shall have the right to audit, at IPMA-HR’s expense, Agency’s compliance with the terms of this Agreement and conformance to all IPMA-HR policies incorporated by reference into this Agreement. Such audit rights shall extend to all components of Agency’s performance of the Agreement. Agency shall fully cooperate with any audit by IPMA-HR and promptly provide copies of and/or access to all requested information and data controlled or possessed by Agency and its contractors and agents that relate to the performance of the Agreement. All information received in an audit shall be treated as Confidential Information of the Party that delivers it. All auditors appointed by IPMA-HR shall be allowed, upon commercially reasonable advance notice to Agency, access to electronically stored information related to the performance of this Agreement by Agency, its employees, contractors and authorized agents. IPMA-HR shall also have the right to investigate, in its sole discretion and at its expense, any incident, event, allegation, suspicion or situation that may threaten the integrity or validity of the IPMA-HR Assessments or Assessment Scores. Agency shall cooperate in all such investigations by promptly producing all documents, data and electronically stored information requested by IPMA-HR in relation to its investigation. Agency shall also produce and make available, at a mutually agreed time and place, all employees, contractors and agents thereof for in-person or virtual remote video interviews by investigators and other agents appointed by IPMA-HR to complete any such investigation related to the integrity or validity of the IPMA-HR Assessments or Assessment Scores. Agency and its employees, contractors and authorized agents shall reasonably cooperate in any audit or investigation by IPMA-HR. In addition to the audit rights specified above, IPMA-HR reserves the right to audit any IPMA-HR Assessment administration by Agency or its employees, contractors, with or without prior notice to Agency. Agency, its employees and contractors shall cooperate with all audits of IPMA-HR Assessment administrations. In the case of any IPMA-HR Assessment administered by Agency through the use of a third-party remote-proctoring vendor, IPMA-HR shall also have the right to review and audit, on its own or through a third party contractor of IPMA-HR’s choice, all recorded IPMA-HR Assessment administration session video, audio and test session data for IPMA-HR’s auditing purposes, and Agency shall promptly provide IPMA-HR and its third party vendor with all requested assessment administration data relevant to such audits.

# 13.0 RELEASE OF INFORMATION AND MEDIA INQUIRIES

Agency shall not issue or make any public announcement, news release or social media post related to the IPMA-HR Assessments without first obtaining prior advance written permission from IPMA-HR and Agency shall promptly notify IPMA-HR in writing via email and telephone if it receives any media or press inquiry related to the IPMA-HR Assessments.

# 14.0 NOTICES

Any notices or other communications required or which may be given by either Party to the other Party under this Agreement, shall be in writing and may be sent by email, with read receipt requested, or by overnight courier, with a verified receipt, or by registered or certified mail, postage prepaid and addressed to the address stated below or to such other address as the Parties shall subsequently designate to each other by notice given in accordance with this Section 14. Such notice shall be deemed to be sufficiently given when the receiving Party receives the original. For the Agency, IPMA-HR shall provide notice to the person at the email address and/or street address provided by Agency on the TSA.

FOR IPMA-HR: Cara Woodson Welch 1617 Duke Street

Alexandria, VA, 22314

# 15.0 INDEPENDENT CONTRACTOR

The Parties agree that IPMA-HR’s relationship to Agency under this Agreement is that of an independent contractor, and that neither Party is an agent or employee of the other.

# 16.0 PREVAILING PARTY

The unsuccessful Party in any action or proceeding shall pay for all costs, expenses and reasonable attorney’s fees (including cost of inside counsel) incurred by the Prevailing Party or its agents or both in enforcing the terms and conditions of this Agreement.

The term “Prevailing Party” as used herein shall include without limitation a party who utilizes legal counsel and brings or defends an action, suit, or judicial or administrative proceeding involving an alleged breach or default under this Agreement and, if the plaintiff, obtains substantially the relief sought (whether by compromise, settlement, award or judgment) or, if the defendant, the plaintiff fails to substantially obtain the relief sought. In the event that neither Party can be considered the Prevailing Party, the judge shall have the discretion to equitably apportion costs and attorney’s fees and expenses.

# 17.0 APPLICABLE LAW

Unless prohibited by applicable state or local law that governs the operation of the Agency, this Agreement and all related disputes shall be construed and governed by the laws of the Commonwealth of Virginia, without reference to principles regarding conflict of laws. Unless prohibited by applicable state or local law that governs the operation of the Agency, all disputes related to this Agreement shall be heard in a Court of competent jurisdiction in the Commonwealth of Virginia, and the Parties consent to the jurisdiction of any such court in the Commonwealth of Virginia and agree that venue is appropriate there.

# 18.0 FORCE MAJEURE

Neither Party shall be liable for delay or failure in performance of any of its obligations under this Agreement (other than payment obligations) when such delay or failure arises from events or circumstances beyond the reasonable control of such Party, including, without limitation, acts of God, fire, flood, war, explosion, pandemic, epidemic, sabotage, terrorism, embargo, civil commotion, acts or omissions of any government entity, supplier delays, communications or power failure that are not caused by IPMA- HR, equipment or software malfunction not caused by IPMA-HR, or labor disputes.

# 19.0 NO WAIVER

No failure on the part of either Party to exercise, no delay in exercising, and no course of dealing with respect to any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege under this Agreement.

# 20.0 ASSIGNMENT

Neither Party may assign, sublicense or otherwise transfer this Agreement, or any part thereof, without the prior written approval of the other Party, which approval shall not be unreasonably withheld. A copy of the proposed contract shall accompany any such request for approval of a proposed assignment between the Party and the proposed assignee/subcontractor. IPMA-HR may, without the necessity of Agency’s consent, assign its rights and obligations under this Agreement to (a) any subsidiary or affiliate of IPMA-HR or (b) any successor in interest pursuant to merger or acquisition.

# 21.0 INTERPRETATION

The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the other gender or numbers where the context so indicates or requires. Unless otherwise expressly provided, references to days, months or years are to calendar days, months or years. Person or persons include individuals, partnerships, corporations, government agencies or other entities. Section headings are included for convenience only and are not to be used to construe or interpret this Agreement.

# 22.0 ELECTRONIC SIGNATURES

IPMA-HR shall be deemed to have signed and executed this Agreement upon Agency’s acceptance of the Terms via click- through agreement as indicated below. Agency shall also be deemed to have signed and executed this Agreement upon Agency’s acceptance of the Terms via electronic click-through agreement as indicated below. The Parties agree that these electronic signature mechanisms shall have the same meaning and force of law as ink signatures of their authorized representatives on a paper contract.

# 23.0 SURVIVAL BEYOND TERMINATION OR EXPIRATION

It is mutually agreed that any and all obligations arising under the following Sections of the Agreement, including all subsections thereunder, shall survive any termination, cancellation, non-renewal or completion of this Agreement: 1.0, 2.0, 5.0, 6.0, 7.0, 9.0, 10.0, 12.0, 13.0, 14.0 16.0, 17.0, 18.0, 19.0, 21.0, 23.0, 24.0, 25.0, and 26.0.

# 24.0 SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement, which shall remain in full force and effect. If any of the provisions of this Agreement shall be deemed to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties contemplate that the court making such determination shall enforce the remaining provisions of this Agreement, and shall reduce such extent, duration, scope, or other provision and shall enforce them in their reduced form for all purposes contemplated by this Agreement.

# 25.0 CHANGES TO THE TERMS AND CONDITIONS OF THE AGREEMENT

IPMA-HR reserves the right to modify and update the terms and conditions of the Agreement. IPMA-HR will post the most current version of these Terms at [https[://www.](http://www.ipma-hr.org/mla)ipm[a-hr.org/mla](http://www.ipma-hr.org/mla)]. If IPMA-HR makes material changes to the Agreement, IPMA-HR will notify the Agency via email to the email address of the Principal Signer of the TSA or may simply present the updated Agreement to the Agency upon login to the Agency’s FastTEST account. If the Agency does not accept updated versions of the Agreement, the Agency must stop using the IPMA-HR Assessments. The Agency’s continued use of the IPMA-HR Assessments after notice about changes to the Agreement and/or acceptance of the updated Agreement by clicking “I Agree” means that the Agency is consenting to and accepting the updated Agreement.

# 26.0 ENTIRE AGREEMENT

This Agreement, including the Additional IPMA-HR Terms and Conditions incorporated herein by reference, constitutes and expresses the entire agreement and understanding between the Parties regarding all the matters herein referred to, and supersedes all previous discussions, promises, representations, and understandings relative thereto, if any, between the Parties. **The Parties explicitly agree that any Purchase Order or other ordering document or payment authorization document required by Agency shall not alter the terms of this Agreement and shall have no legal effect on the rights and responsibilities of the Parties in relation to the topics covered by this Agreement.**

# THIS AGREEMENT IS HEREBY ACCEPTED AND EXECUTED BY IPMA-HR UPON THE AGENCY’S ACCEPTANCE BELOW.

**BY CLICKING THE "I AGREE" BUTTON, ACCESSING OR UTILIZING ANY IPMA-HR ASSESSMENT, THE PERSON SIGNING ON BEHALF OF THE AGENCY IS REPRESENTING THAT (1) THEY HAVE THE LEGAL AUTHORITY TO BIND THE AGENCY TO THIS AGREEMENT AND (2) THE AGENCY AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL INCORPORATED POLICIES.**

# IF THE AGENCY’S REPRESENTATIVE DOES NOT HAVE THE LEGAL AUTHORITY TO BIND THE AGENCY TO THIS AGREEMENT OR THE AGENCY DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT AND ALL INCORPORATED POLICIES, DO NOT CLICK THE "I AGREE" BUTTON.

 I AGREE