

NATIONAL PHYSICAL THERAPY EXAMINATION AGREEMENT

THIS NATIONAL PHYSICAL THERAPY EXAMINATION AGREEMENT (this "Agreement") is made by and between the FEDERATION OF STATE BOARDS OF PHYSICAL THERAPY with its principal office located at 124 West St. S, 3rd Floor, Alexandria, VA 22314 (the "FSBPT"), and the California Department of Consumer Affairs located at 1625 North Market Blvd. Suite, S103 Sacramento, CA 95834 (the "Licensing Authority").

WHEREAS, the FSBPT has prepared examinations known as the National Physical Therapy Examinations (NPTE) for use in the licensure of Physical Therapists ("PTs") and licensure, certification or registration of Physical Therapist Assistants ("PTAs") (hereinafter referred to individually as the "Examination" and collectively as the "Examinations") and has developed procedures for scoring the responses to the Examinations; and

WHEREAS, the current administration of the Examinations is computer based and the FSBPT may contract with a company that has the capability to administer the Examinations in a computer format, which company shall be listed on Exhibit 1 attached hereto (hereinafter such company shall be referred to as the "Examination Delivery System"); and

WHEREAS, the Licensing Authority desires to utilize the Examinations for Candidates seeking licensure as a PT, or licensure, certification or registration as a PTA within the Licensing Authority's jurisdiction (the "Candidates"), and the FSBPT desires to facilitate such utilization.

NOW, THEREFORE, in consideration of the above premises (which are incorporated herein by reference) and mutual promises and covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

I. CONTINGENCIES.

The provision, and continued provision, of the services contemplated under the terms and conditions of this Agreement are expressly contingent upon:

- A. The Licensing Authority remaining a member in good standing of the FSBPT;
- B. The Licensing Authority adhering to the FSBPT's National Physical Therapy Examination Policies, as amended from time to time (the "Examination Policies"). Notwithstanding anything to the contrary contained herein, the FSBPT may in its sole discretion amend the Examination Policies from time to time by providing the Licensing Authority with reasonable prior notice of such amendments; and
- C. The Licensing Authority agreeing that the Licensing Authority's right to view and/or use and disclose the Examinations shall be limited to the procedures set forth in the Examination Policies.

II. EXAMINATION FEES; SPECIAL ACCOMMODATIONS; JOB SIMILARITY.

A. Fees.

All PT and PTA Candidates will be required to pay an examination fee (the "Examination Fee") and a computer based testing fee (the "Computer Based Testing Fee" or "CBT") in the amounts and as further described below.

- (a) All Candidate Examination registrations submitted online (registration and payment) to the FSBPT before January 1, 2013 will require the Candidate to pay an Examination Fee of three hundred seventy dollars (\$370.00) to the FSBPT. Candidate registrations submitted online (registration and payment) to the FSBPT on or after January 1, 2013 will require the Candidate to pay an Examination Fee of four hundred dollars (\$400) to the FSBPT. A Candidate shall pay the Examination Fee by Visa or MasterCard

only made payable to the FSBPT. A Candidate will not be eligible to take an Examination and the FSBPT shall be under no obligation to have an Examination delivered to a Candidate, until the Candidate has been approved by the State to take an Examination and the Examination Fee has been paid in full.

- (b) The Computer Based Testing Fee: (a) for the PT Examination is seventy dollars and 60 cents (\$70.60); and (b) for the PTA Examination is fifty-five dollars and 60 cents (\$55.60). A Candidate shall pay the Computer Based Testing Fee directly to the Examination Delivery System by credit card (Visa or MasterCard or American Express) or electronic check only prior to the Candidate sitting for an Examination. The Examination Delivery System shall be under no obligation to deliver any Examination to a Candidate until the Computer Based Testing Fee has been paid in full.
- (c) Notwithstanding anything to the contrary herein, the FSBPT may in its sole discretion modify the amounts due as an Examination Fee or a Computer Based Testing Fee by providing the Licensing Authority with reasonable prior notice of such modification.

B. Special Accommodations.

- (a) The Licensing Authority shall be solely responsible for investigating, approving and paying for all compliance costs associated with, any Candidate's request for any special accommodations under the Americans With Disabilities Act of 1990, as amended (Public Law 101-336) (the "ADA") and all applicable state and local laws, rules and regulations; provided that in its agreement with the FSBPT, the Examination Delivery System has agreed when requested by the Licensing Authority to accommodate the Licensing Authority's compliance with the ADA. Notwithstanding anything to the contrary in the foregoing, the FSBPT has established an ADA Cost Reimbursement Policy, a copy of which shall be provided by the FSBPT to the Licensing Authority upon request, under which the FSBPT has agreed to consider reimbursing the Licensing Authority for the compliance costs paid by the Licensing Authority with respect to certain special accommodations under the ADA; provided that the parties hereby agree that in so acting the FSBPT admits no actual responsibility or liability whatsoever for such compliance costs. The ADA Cost Reimbursement Policy may be discontinued by the FSBPT so long as the FSBPT provides the Licensing Authority with at least twelve (12) months' advance written notice of such discontinuation.
- (b) The FSBPT and the Licensing Authority acknowledge that compliance with the ADA may impact upon the security and integrity of the examination and/or may not be reasonable to accommodate. Therefore, the Licensing Authority agrees to forward as soon as practicable information regarding all proposed ADA accommodations to the FSBPT prior to the Candidate's Examination date for the FSBPT's review and authorization that such request is reasonable and acceptable. The Licensing Authority understands that, upon such review, the FSBPT may require the Licensing Authority to renegotiate a reasonable accommodation request with a Candidate or amend an approved request for reasonable accommodations in any manner consistent with the ADA, which renegotiation or amendment will occur prior to the Candidate's Examination date.
- (c) Following are the fees that will be charged by the Examination Delivery System for accommodating some common types of ADA requests. The Examination Delivery System will accommodate other special accommodations upon request by the Licensing Authority for a reasonable charge determined at the time a request is made.

Department of Consumer Affairs
 Physical Therapy Board of California
 and Federation of State Boards of Physical Therapy
 Contract Number: ~~068-0679-6~~

1.	To extend the duration of an Examination.	\$10.00/hour or part thereof beyond the maximum duration of the Examination plus the applicable Computer Based Testing Fee.
2.	To provide a private testing room.	If a private testing room exists in a test center: \$200.00 (plus the applicable Computer Based Testing Fee) If a private testing room does not exist in a test center: \$20/hour or part thereof for each workstation in the test center (plus the applicable Computer Based Testing Fee)
3.	To provide special assistance such as a reader, signer or amanuensis.	Computer Based Testing Fee plus \$60.00/hour or part thereof.

Notwithstanding anything to the contrary in the foregoing, the above fees are subject to modification upon reasonable prior notice to the Licensing Authority.

- (d) If :
- a. the Licensing Authority approves a request for special accommodations under the ADA for which the FSBPT will consider reimbursement pursuant to the terms of the ADA Cost Reimbursement Policy;
 - b. the request has been reviewed and authorized by the FSBPT pursuant to the terms of Section II.B.(b) above; and
 - c. the Licensing Authority desires reimbursement of the compliance fees to honor such request, the Licensing Authority must submit an ADA Payment Request Form, a copy of which shall be provided by the FSBPT to the Licensing Authority upon request or the Licensing Authority may make the request electronically as part of the FSBPT electronic examination registration and approval system. All fees related to ADA requests must be paid by the Licensing Authority upon invoice from the Examination Delivery System; provided that if the FSBPT approves reimbursement for an ADA request pursuant to the terms of this section, the FSBPT may, in its discretion, choose to directly pay such invoice rather than reimbursing the Licensing Authority after payment thereof.

C. Psychometric Validity and Job Similarity.

- (a) The FSBPT shall be responsible for ensuring that the Examinations are valid, reliable and comply with generally accepted psychometric standards applicable to a national professional licensing examination.
- (b) As the Examinations are prepared on a national basis, the Licensing Authority shall be responsible for questions of job similarity, test fairness, and compliance with applicable affirmative action and disability laws, rules and regulations as the same relate to applicable Licensing Authority's laws, regulations or similar documents and differ from national standards. In connection with making any such determinations, the Licensing Authority may review the Examinations and job analyses used to construct the Examinations as long as such review is in accordance with the Examination Policies. For purposes of this Agreement, "job similarity" shall mean that the Examination items are similar with the scope, intention and purposes as set forth under applicable Licensing Authority laws, regulations and rulings or similar documents for a PT to practice physical therapy or a PTA to act as a physical therapist assistant within the Licensing Authority.

III. OWNERSHIP OF EXAMINATIONS; TRADEMARKS; CONFIDENTIALITY/NON-DISCLOSURE.

A. Ownership of Examinations.

The FSBPT owns all property and/or proprietary rights and interests, including, but not limited to, copyrights, trade secrets and patents in and to the Examinations themselves, the NPTE Candidate Handbook (as such term is defined in the Examination Policies) and all materials related thereto and derived therefrom including, but not limited to, the answer keys for the Examinations (hereinafter collectively referred to as the "FSBPT Owned Materials"). No property and/or proprietary rights and interests of any kind are granted to Licensing Authority in the FSBPT Owned Materials.

B. Trademark, Logos, Etc.

Neither party may use the trade name, trademark, service mark, logo or other designation of the other party, and the Licensing Authority may not use the trade name, trademark, service mark, logo or other designation of the Examination Delivery System, in its promotional or marketing materials or activities, or for any other purpose, without the prior written approval of the respective owner thereof.

C. Confidentiality/Non-Disclosure.

During the Term (as such term is defined in Section IV.A hereof) of this Agreement, each party may become privy to the Confidential Information (as such term is hereinafter defined in this Section III.C) of the other party. The parties agree that all Confidential Information and all copies and modifications thereof are the property of the originating party, that such Confidential Information constitutes valuable assets and trade secrets of such party, and that during and after the Term of this Agreement, the other party, except as required by law, order of court, or as necessary to perform its obligations and exercise its rights under this Agreement:

- (a) Shall hold the Confidential Information of the originating party in strict confidence with at least the same degree of care it uses for its own Confidential Information;
- (b) Shall limit access to the Confidential Information to only those of its employees, agents and representatives who need access to the Confidential Information, and if reasonably requested by the originating party, requires its employees, agents and representatives to execute non-disclosure agreements; and
- (c) Shall not, and will instruct its employees, agents and representatives not to, directly or indirectly, voluntarily or involuntarily, use, sell, lease, assign, transfer, disclose or otherwise make available any part of the Confidential Information to others, except with the written consent of the originating party.

Upon this Agreement's termination, each of the parties hereto shall return to the other party all Confidential Information received in connection with the terms of this Agreement. The parties' obligations under this Section shall survive the termination of this Agreement. For purposes hereof, the term "Confidential Information" shall mean all information concerning or related to the business, affairs or operations of the parties, including, but not limited to:

- a. each of the parties' trade secrets, special or unique processes, protocols or methods;
- b. marketing, sales, advertising or other concepts or plans of the parties;
- c. each of the parties' finances; and
- d. each of the parties' customers, clients or prospects.

The term "Confidential Information" shall specifically exclude any information that is a matter of public knowledge except if such public knowledge resulted from a breach of this provision.

IV. TERM AND TERMINATION.

A. Term.

Unless earlier terminated, the initial term (the "Initial Term") of this Agreement shall be for three (3) years commencing on July 1, 2011, and ending on June 30, 2014. Thereafter, this Agreement shall automatically renew for additional one (1) year terms upon the same terms and conditions (collectively, the "Renewal Terms") unless either party provides the other party with written notice of non-renewal at least sixty (60) days prior to the end of the then effective Initial Term or Renewal Term. For purposes hereof, the Initial Term and all Renewal Terms are collectively referred to as the "Term."

B. Termination.

(a) Termination of the Agreement for Good Cause.

This Agreement may be terminated by either party for "good cause" (i.e., a material breach of an obligation or responsibility imposed upon a party by this Agreement.); provided that the party in material breach shall have a period of thirty (30) days after written notice thereof to cure such breach (or, if such breach requires more than thirty (30) days to cure, shall commence such cure within thirty (30) days of written notice of the breach, and thereafter diligently prosecute such cure).

(b) Termination of Agreement for Force Majeure Event.

This Agreement may be terminated if the performance of this Agreement is suspended due to force majeure event for a period of sixty (60) days or more pursuant to the terms of Section VII.J. hereof.

C. Suspension, Modification or Termination of Agreement by the FSBPT

At any time after the occurrence of any event, or the existence of any circumstance, which the FSBPT has a reasonable and good faith basis to believe could (a) result in a violation of educational testing standards, (b) jeopardize the security of the Examination, (c) adversely affect the ability of the FSBPT to administer a psychometrically sound Examination that delivers reliable test results or (d) result in a violation of any law, rule or regulation, or any administrative or judicial determination, if the FSBPT were to perform as required by this Agreement, then upon twenty-four (24) hours' written notice to the Licensing Authority, the FSBPT shall have the right to:

(a) suspend its performance as required by this Agreement until such events or circumstances no longer have any such result or effect in the reasonable and good faith judgment of the FSBPT, or

(b) modify its performance as required by this Agreement in such manner as it deems appropriate so that such events or circumstances no longer have any such result or effect in the reasonable and good faith judgment of the FSBPT, in which case this Agreement shall be deemed amended to the extent of such modifications, or

(c) terminate this Agreement.

V. INDEMNIFICATION.

A. FSBPT's Indemnity.

The FSBPT shall indemnify and hold harmless the Licensing Authority, its officers, directors, members, employees, agents, and each of them, and their successors, from all claims, losses, deficiencies, liabilities,

costs, damages, liens, fines, penalties, expenses, fees (including reasonable attorneys' fees, and costs of negotiation and litigation), and interest, arising out of the FSBPT's performance hereunder, including, but not limited to, the inaccuracy of any statement or representation, or the breach of any covenant, warranty or agreement, made by, or referred to, by the FSBPT in this Agreement.

B. Licensing Authority's Indemnity.

Subject to appropriation by the legislature, and except as may be prohibited by the laws of the State of California, the Licensing Authority shall indemnify and hold harmless the FSBPT, its officers, directors, members, employees, agents, and each of them, and their successors, from all claims, losses, deficiencies, liabilities, costs, damages, liens, fines, penalties, expenses, fees (including reasonable attorneys' fees, and costs of negotiation and litigation), and interest, arising out the Licensing Authority's performance hereunder, including, but not limited to, the inaccuracy of any statement or representation, or the breach of any covenant, warranty or agreement, made by, or referred to, by the Licensing Authority in this Agreement.

C. Indemnification Procedures.

The party claiming indemnification under this Agreement 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 receiving notice thereof, or having been served with a complaint, arbitration demand, or other process) the other party when it has knowledge of circumstances, or the occurrence of any events, which are likely to result in an indemnification obligation under this Agreement, or when any action, suit, arbitration, or judicial or administrative proceeding is pending, or threatened, that is covered by an indemnification obligation hereunder.

The indemnifying party shall defend the party to be indemnified through counsel. The party to be indemnified shall have the right of prior approval over any settlement, if such settlement might directly or indirectly affect, in a materially detrimental way, the party's interests, or business relationships.

The party claiming indemnification shall cooperate with the indemnifying party in the defense of any suit or proceeding, and the indemnifying party shall reimburse the indemnified party for the expenses incurred as a result of such cooperation, including, but not limited to, those expenses relating to retaining counsel of its choice. By way of example, the following actions shall be representative of cooperation:

- (a) the taking of statements and affidavits,
- (b) attendance at hearings and trials,
- (c) production of documents,
- (d) assistance in securing and giving evidence, and
- (e) obtaining the attendance and cooperation of witnesses; provided, however, that in no event shall either party be required to waive the attorney-client, or other applicable privilege.

Failure by the party claiming indemnification to promptly notify the other party as required hereunder, shall not invalidate a claim for indemnification, unless such failure has a materially adverse affect on the settlement or defense of, or otherwise compromises, the matter that is the subject of the claim for indemnification. In addition, the party claiming indemnification shall be responsible for any claims or losses that could have been avoided or mitigated by prompt notice as required hereunder.

VI. REMEDIES; LIMITATION OF LIABILITY.

Except in the case of willful misconduct or gross negligence, neither party shall be liable to the other for punitive, exemplary, special, indirect or consequential damages, including, without limitation, lost profits, each party's aggregate liability being limited to the other party's direct damages, and/or costs.

VII. GENERAL.

A. Compliance with Agreement Condition Precedent to Performance.

Notwithstanding anything in this Agreement to the contrary, the FSBPT shall not be required to furnish any services hereunder if the Licensing Authority violates or fails to comply with any material term or condition contained herein.

B. Standards of Conduct.

It is the policy of both parties not to discriminate on the basis of race, ethnic background, creed, color, gender, physical or mental disability, medical condition, marital status, age or sexual preference. Accordingly, by executing this Agreement, each party agrees to use its best efforts not to allow any of its agents or employees to behave, either through speech or conduct, in a manner that could be construed as offensive, or otherwise be in violation of the aforementioned policy.

C. Interpretation.

The masculine, feminine and/or neuter gender, and the singular and/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. The headings contained herein are for the convenience of reference only, and are not intended to define, limit, expand or describe the scope of intent of any provision of this Agreement.

D. Survival Beyond Termination.

It is mutually agreed that any and all obligations arising under Section II.A. Fees, Section III.A. Ownership of Examinations, Section V. Indemnification and Section VI. Remedies; Limitation of Liability shall survive the termination of this Agreement, and such survival shall specifically include any other terms and provisions of this Agreement necessary to give full force and effect to said provisions, provided however, that one party's obligation to indemnify the other shall expire ten (10) years from the date of termination of this Agreement.

Department of Consumer Affairs
Physical Therapy Board of California
and Federation of State Boards of Physical Therapy
Contract Number: 068-0679-6

E. Notice.

Any notices or communications given by either party to the other party under this Agreement shall be in writing and sent either:

- (a) by overnight courier, with a verified receipt; or
- (b) by registered or certified United States Mail, postage prepaid. Notice will be deemed sufficiently given upon receipt at the following addresses:

If to the FSBPT: Federation of State Boards of Physical Therapy
124 West St. S, 3rd Floor
Alexandria, VA 22314
Attention: William A. Hatherill, CEO

With copy to: Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
Attention: J. Kent Culley, Esquire

If to the Licensing Authority: California Department of Consumer Affairs
Contracts Unit
1625 North Market Blvd. S-103
Sacramento, CA 95834
Attention: Carl Nelson

F. Entire Agreement.

This Agreement together with all exhibits hereto embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter hereof.

G. Severability.

The covenants, provisions and paragraphs of this Agreement will be severable. In the event that any portion of this Agreement is held to be unlawful or unenforceable:

- (a) such portion will be deemed omitted and this Agreement will be construed in such case as if such unlawful or unenforceable portion had never been contained in this Agreement;
- (b) such portion will not affect any other portion of this Agreement; and
- (c) all remaining terms and conditions or portions thereof will remain in full force and effect.

H. Waiver.

The failure of either party to exercise, or delay in exercising, in any respect, any right, power or privilege provided for hereunder shall not be deemed 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. No party shall be deemed to have waived a right, power or privilege provided for hereunder, unless such waiver is made in writing and signed by the party against whom such waiver is sought.

I. Assignment.

No party hereto shall, without the prior written consent of the other party:

- (a) assign or change the name of a party;
- (b) transfer this Agreement, or any of its rights or obligations hereunder or; and
- (c) contract with any third party to perform any of its responsibilities or obligations relating to this Agreement; provided, that the parties agree that the FSBPT may contract with a company to administer the Examinations, which company shall be listed on Exhibit 1 as the Examination Delivery System.

J. Force Majeure.

In the event that any party should fail in whole or in part to fulfill its obligations under this Agreement as a consequence of acts of God, fire, explosion, strikes, floods, earthquakes, embargoes, war or riot, such failure to perform shall not be considered a breach of this Agreement during the period of such disability, and for a reasonable time thereafter, provided, that, the Term of this Agreement and the time line for the performance of the tasks set forth herein shall be suspended and extended by the duration of the force majeure event, and provided further, that if such force majeure event shall continue for sixty (60) days, the other party shall have the right to terminate this Agreement. In the event of any such force majeure occurrence, the disabled party shall use its best efforts to cure such disability and to meet its obligations as set forth in this Agreement. The disabled party shall promptly, and in writing, advise the other party of:

- (a) its inability to perform due to a force majeure event;
- (b) the expected duration of such inability to perform; and
- (c) any developments (or changes therein) that appear likely to affect the ability of that party to perform any of its obligations in whole or in part.

K. Independent Contractors.

The parties hereto are independent contractors with respect to each other, and nothing contained herein shall be construed to create the relationship of an employer/employee, joint venture, partnership or association between the parties. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

L. Modification.

Except as otherwise specifically provided in a provision contained herein or in an exhibit attached hereto, neither this Agreement, nor any provision hereof or thereof, may be amended or otherwise modified, except in a written instrument signed by the parties hereto.

M. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and together shall be binding upon the parties hereto.

N. Interpretation of Agreement not to Prejudice Drafter.

The parties agree that this Agreement and the terms and conditions contained herein shall be construed as if it were jointly prepared by the parties hereto. Any uncertainty or ambiguity shall not be interpreted against any particular party.

O. Representations Concerning Execution of Agreement.

The parties represent that they:

- (a) are represented by counsel;
- (b) have full power and authority to enter into this Agreement, and to carry out the transactions contemplated hereunder; and
- (c) that all actions, corporate or otherwise, required to be taken to authorize the execution, delivery and performance of this Agreement have been, or will be, taken. Except as set forth above, no consent, authorization or approval of any person or entity is necessary to authorize the execution or consummation of this Agreement, and this Agreement constitutes a valid and binding obligation upon the parties.

P. Further Assurances.

Each of the parties agrees to take all other actions as may be reasonably requested by the other party (including, without limitation, the execution of any further instruments and documents) in order to carry out the provisions and purposes of this Agreement.

Q. Applicable Law; Jurisdiction.

This Agreement shall be governed by the laws of the Commonwealth of Virginia, without reference to the principles of conflict of laws thereof. Any disputes arising hereunder shall be resolved in the state courts located in the Commonwealth of Virginia, City of Alexandria or in the federal courts located in the Eastern District of the Commonwealth of Virginia, and the parties hereto submit to the jurisdiction of said courts.

Department of Consumer Affairs
Physical Therapy Board of California
and Federation of State Boards of Physical Therapy
Contract Number: 068-0679-6

IN WITNESS WHEREOF, the parties hereto have duly executed, or caused the due execution of, this Agreement as of the dates set forth below, and each of the signatories for such parties is authorized by the board of directors or other governing body of the respective organizations to enter into this Agreement on behalf of such organizations.

LICENSING AUTHORITY:
California Department of Consumer Affairs

FSBPT:
Federation of State Boards of Physical Therapy

(Signature)

(Signature)

(Printed Name)

William A. Hatherill

(Printed Name)

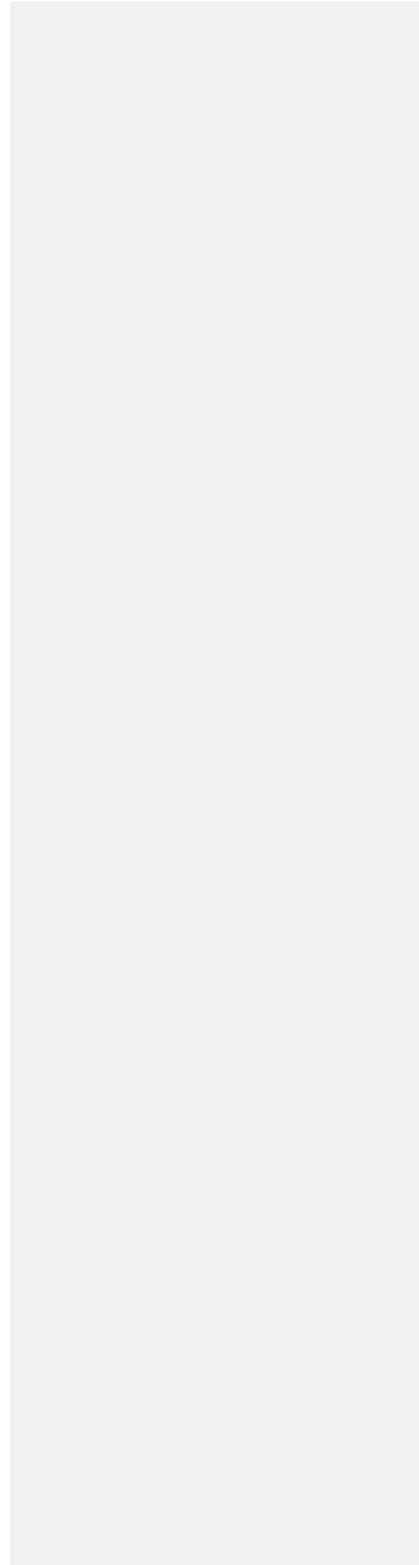
(Title)

Chief Executive Officer

(Title)

(Date)

(Date)



Department of Consumer Affairs
Physical Therapy Board of California
and Federation of State Boards of Physical Therapy
Contract Number: 068-0679-6

Exhibit 1 to Attachment I

EXAMINATION DELIVERY SYSTEM

Effective as of January 1, 2006, the FSBPT has a contract with Thomson Prometric, a division of Thomson Learning, Inc., which contract was assigned to Test Center, LLC, an indirect subsidiary of Educational Testing Service, and Test Center, LLC by change of name is now known as Prometric, Inc ("Prometric") pursuant to which Prometric agrees to administer the Examinations through its network of Prometric Test Centers on the FSBPT's behalf. The FSBPT agrees to provide the Licensing Authority with reasonable prior notice of the termination of Prometric as the Examination Delivery System and/or the termination or modification of any services provided by Prometric as described in the Agreement and in this Exhibit 1. Upon termination of Prometric as the Examination Delivery System and/or the termination or modification of any services provided by Prometric, this Exhibit A shall be amended by the FSBPT to include (1) the name of, and information regarding, the new company acting as the Examination Delivery System or (2) any modifications or terminations of the services provided by Prometric hereunder.

LAW EXAMINATION

THIS EXHIBIT A, Attachment II (the "Attachment II") is made to the National Physical Therapy Examination Agreement (the "Agreement") by and between the Federation of State Boards of Physical Therapy with its principal place of business located at ~~509 Wythe Street~~ 124 West Street S., 3rd Floor Alexandria, VA 22314 (the "FSBPT"), and the California Department of Consumer Affairs located at Contracts Unit 1625 North Market Blvd. S-103 Sacramento, CA 95834 (the "Licensing Authority").

Formatted: Superscript

The terms and conditions of this Attachment II shall apply to the Law Examination only. All other terms and conditions of Attachment I (i.e. Agreement) not specific to the Law Examination, and not in conflict herewith (including the fees listed in Section II.B.(c)), shall also apply to this Attachment II, provided, however, that except as indicated above, the ADA Cost Reimbursement Policy referred to in Attachment II.B of Attachment I (i.e. Agreement) shall not otherwise apply to this Attachment II.

I. LAW EXAMINATION DESCRIPTION; LAW EXAMINATION DEVELOPMENT; CONVERSION TO COMPUTER BASED FORMAT.

A. Law Examination Description.

The Law Examination, which has four (4) versions or "forms," shall consist of fifty (50) items ("Items") and shall be allotted one (1) hour to administer. The Law Examination shall be administered to both PT and PTA Candidates. The Licensing Authority shall instruct the FSBPT as to which Items shall appear on each form of the Law Examination.

B. Law Examination Development.

The Licensing Authority shall be solely responsible for the development, production, and maintenance of the Law Examination. The Licensing Authority shall be solely responsible for determining those Items that will comprise each form of the Law Examination.

C. Conversion to Computer Based Format.

- (a) The Licensing Authority shall deliver to the FSBPT in "hard copy" the item bank and all other components including, but not limited to, accession numbers, pass points, test specifications and non-text exhibits for all forms of the Law Examination ("Components"). Components must arrive at the FSBPT's offices no later than one hundred twenty (120) days prior to the scheduled date of the administration of any new version of the Law Examination.
- (b) The FSBPT shall perform data entry services by entering the Items that comprise the Law Examination item bank into the FSBPT's item bank system ("IBS").
- (c) After entry into IBS, the FSBPT shall proofread all Items, convert them to a Microsoft Word format, and electronically transmit them to the Examination Delivery System.
- (d) After transmission is completed, the FSBPT will again proofread the Items and apply appropriate quality control procedures.

- (e) The Licensing Authority is responsible for the Items that appear on the Law Examination including, but not limited to, the validity, reliability and fairness of the Items and for "beta testing" the Law Examination items at one of the Examination Delivery System's testing site locations located within the State of California. The Licensing Authority agrees to defend, at its own expense, any challenge to the validity, reliability and/or fairness of the Law Examination.
- (f) New Items may be added to the Law Examination item bank once in any given twelve (12) month period. Requests for additional transmission of Items within the said twelve (12) month period will be considered on a case-by-case basis, and the Licensing Authority acknowledges that there is an additional fee for such inter-period transmission. The current fee for such service is five thousand dollars (\$5,000) per additional download, which fee shall be paid directly to the FSBPT. The FSBPT may, in its sole discretion, modify such fee by providing the Licensing Authority with reasonable notice of such modification.
- (g) The FSBPT shall, in cooperation with the Licensing Authority:
 - a. perform a preliminary analysis of the Items to verify scoring keys and/or to identify faulty examination questions; and
 - b. as appropriate, resolve keying errors or examination question problems prior to final scoring. At the request of the Licensing Authority, the FSBPT shall modify the answer keys to reflect changes in California's laws and legislation regulating PT/PTA's.

II. APPLICATION PROCEDURES; LAW EXAMINATION DELIVERY.

All paper and electronic application forms shall be modified to include the option for Candidates to take the Law Examination. The Law Examination shall be delivered in the same manner as set forth in Exhibit A of the Agreement.

III. FEE PAYMENT.

- A. The payment procedures set forth in Section II.A. of the Agreement shall apply to this Section III.
- B. (The examination fee for the Law Examination (the "Law Examination Fee") shall be thirty dollars (\$30) per Candidate. Registrations to take the Law Examination may be submitted by the Candidates either to the FSBPT (including registering online through the FSBPT internet web site) or the Licensing Authority.
- C. The computer based testing fee for the Law Examination (the "Law Examination Computer Based Testing Fee") shall be twenty dollars (\$20) per Candidate and shall be paid directly to the Examination Delivery System by the Candidate.
- D. Notwithstanding anything to the contrary herein, the FSBPT may, in its sole discretion, modify the amounts due as a Law Examination Fee and a Law Examination Computer-Based Testing Fee by providing the Licensing Authority with reasonable prior notice of such modification.

IV. OWNERSHIP OF LAW EXAMINATION/IBS; RETENTION OF LAW EXAMINATION/LAW EXAMINATION RESULTS.

A. Ownership of Law Examination; Ownership of IBS.

- a. The FSBPT acknowledges and agrees that, the Licensing Authority owns all proprietary rights and interests, including, but not limited to, copyright, trade secret, and patent, in and to the Law Examination, including, but not limited to, the Law Examination itself and the answer key thereto (hereinafter collectively referred to as the "Licensing Authority Owned Materials"). The FSBPT agrees that all property and/or proprietary rights in the Licensing Authority Owned Materials are expressly reserved to Licensing Authority, and no property or proprietary rights of any kind are granted to the FSBPT in Licensing Authority Owned Materials.
- b. The Licensing Authority acknowledges and agrees that, the FSBPT owns all proprietary rights and interests, including, but not limited to, copyright, trade secret, and patent, in and to IBS. The Licensing Authority agrees that all property and/or proprietary rights in the IBS are expressly reserved to the FSBPT, and no property or proprietary rights of any kind are granted to Licensing Authority in the IBS.

B. Retention of Law Examination/Law Examination Results.

The FSBPT agrees to retain master copies of Law Examination and answer keys for a period of ten (10) years from the date that the form is first administered, and Law Examination results for a period of sixty (60) years from the date the Candidate took the Law Examination.

V. SURVIVAL UPON TERMINATION.

It is mutually agreed that any and all obligations arising under Sections III, IV and VI hereof shall survive the termination of this Attachment II, and such survival shall specifically include any other terms and provisions of the Agreement necessary to give full force and effect to said provision.

VI. INDEMNIFICATION.

As a condition precedent to the FSBPT consenting to inclusion of this Attachment II in the Agreement, the Licensing Authority shall indemnify and hold harmless the FSBPT, its officers, directors, members, employees, agents, and each of them, and their successors, from all claims, losses, deficiencies, liabilities, costs, damages, liens, fines, penalties, expenses, fees (including reasonable attorneys' fees, and costs of negotiation and litigation), and interest, arising out of the provision of services by the FSBPT and the Examination Delivery System under this Attachment II, including, but not limited to, the inaccuracy of any statement or representation, or the breach of any covenant, warranty or agreement, made by, or referred to, by the Licensing Authority in this Exhibit B. The indemnification procedures set forth in Section V.C of the Agreement shall apply to this Section VI. The terms and conditions of Section VI of the Agreement will not apply to this Section VI.