

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
EDUCATIONAL TESTING SERVICE AND  
IOWA DEPARTMENT OF EDUCATION

---

This Memorandum of Understanding (MOU) is between Educational Testing Service (ETS), a non-stock, non-profit corporation organized and existing under the Education Law of the State of New York with principal offices located at Rosedale Road, Princeton, New Jersey 08541, and the Iowa Department of Education (DE), 400 East 14th Street, Des Moines, Iowa, 50319-0146, together known as the Parties. This MOU establishes the understandings of the Parties as related to the services provided by ETS in support of the Iowa Department of Education High School Equivalency Diploma.

WHEREAS, the Iowa Department of Education has approved Educational Testing Service, a non-stock, non-profit organization with principal offices in Princeton, New Jersey, as utilizing within Iowa the HiSET™ (High School Equivalency Test) as the official test to determine eligibility of a high school equivalency credential; and

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

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

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

1. Definitions.

- 1.1 “Administration” shall mean the Test Center’s responsibilities related to the administration of the ETS-owned HiSET test to Test Takers in Iowa
- 1.2 “Alternate Test Forms” shall mean the HiSET test forms in alternative formats such as Braille, large print, or audio.
- 1.3 “Agreement” shall mean these terms and conditions agreed to between the Parties in writing, all of which are incorporated herein by reference and made an integral part hereof.
- 1.4 “CBT” is an acronym for computer-based testing or the delivery of a HiSET test via the Internet.
- 1.5 “Confidential Information” shall mean any information or data that is disclosed by one party (a disclosing party) to the other party (a receiving party) pursuant to this Agreement. “Confidential Information,” however, does not include information that the receiving party can demonstrate by documents that (i) is or becomes publicly known or available without breach of this Agreement, (ii) is received by a receiving party from a third party without breach of any obligation of confidentiality by such

DE and ETS MOU  
HiSET

other third party, (iii) was previously known by the receiving party as demonstrated by its written records, or (iv) is independently developed by the receiving party without access to or use of such Confidential Information as demonstrated by contemporaneously prepared documentation.

- 1.6 "ETS" is a trade name for Educational Testing Service, a non-profit, non-stock research and testing organization that is the prime contractor for the State of Iowa's high school equivalency testing program.
- 1.7 "ETS-owned Technologies" shall mean ETS's pre-existing hardware and software systems used to deliver HiSET test materials to the Test Centers and/or record test taker responses, including but not limited to the ETS portal for registering HiSET Test Takers and for delivering final score reports.
- 1.8 "ETS Proprietary Materials" shall mean all HiSET test materials, including but not limited to, test books, test items, reports, related data (other than personally-identifiable information), answer sheets, instructional manuals and directions, ETS pre-existing proprietary software, and all derivative works of such ETS Proprietary Materials adapted for use for the high school equivalency program in the State of Iowa, provided by ETS to the Test Centers for the delivery and/or administration of the HiSET test in Iowa.
- 1.9 "ETS Trademarks" shall mean the trademarks and/or service marks of ETS, including without limitation ETS®, HiSET™ and the modernized ETS logo.
- 1.10 "Equipment" shall mean any equipment necessary for the administration of the HiSET tests at the Test Centers, including but not limited to an appropriate testing room, accommodations, desks, lighting, pens/pencils, etc. Such Equipment shall be dedicated solely to the administration of the HiSET test for the duration of the HiSET test.
- 1.11 "HiSET" is the brand name for the ETS High School Equivalency Testing program owned and licensed for use by ETS.
- 1.12 "Intellectual Property Rights" shall mean (i) copyrights and copyright applications or registrations, including any renewals, in either the United States or any other country; (ii) trademarks, service marks, trade names, and applications or registrations for any of the foregoing in the United States or any other country; (iii) trade secrets or any data or information which provides value or a competitive advantage to its holder by not being publicly known; and (iv) patents, patent applications, continuations, divisionals, reexaminations, reissues, continuations-in-part, and foreign equivalents of the foregoing, in the United States or any other country.
- 1.13 "DE" is an acronym for the Iowa Department of Education.
- 1.14 "PBT" is an acronym for paper-based testing or the delivery of a HiSET test via paper format.
- 1.15 "Personally Identifiable Data" means Iowa's Test Taker data including personally identifiable information and score results. Such data is the property of DE as defined in Section 9.
- 1.16 "Returnable Test Materials" shall mean the paper version of all used and unused test booklets and answer sheets for the HiSET test.
- 1.17 "Subtests" shall mean the content area (or subject area) tests that constitute the full HiSET battery of assessments.

DE and ETS MOU  
HiSET

- 1.18 "Term" shall have the meaning specified in Section 2.1 hereof.
- 1.19 "Test Centers" shall mean facilities selected and approved by DE to deliver the HiSET tests in CBT and/or PBT formats to pre-registered Iowa Test Takers.
- 1.20 "Test Taker(s)" shall mean the individual(s) sitting for a HiSET test at the Test Center. Other titles for the Test Taker may be examinee or candidate.
- 1.21 "Test Taker Data" shall mean any and all information obtained/accessed by, or disclosed to the Test Center about the Test Taker, including (i) information regarding a Test Taker's name, addresses, or other personally identifiable information (e.g., passport or social security numbers); and (ii) any list or grouping of Test Takers, regardless of whether such list also includes publicly available information.
- 1.22 "Testing Fees" shall have the meaning specified in Section 6.1 hereof.

2. Term and Termination of Agreement.

- 2.1 This Memorandum of Understanding shall be effective from January 1, 2014 through December 31, 2016 (the "Term"), with the option for negotiated renewals every year thereafter. The policies and procedures for the newly-introduced HiSET program are in development and changes to such policies and procedures during their development will not impact the prices specified in this MOU.
- 2.2 This MOU may be terminated as follows:
  - (a) In the event of a material breach by either Party that is not cured within 30 days after written notice by the non-breaching party; and
  - (b) For convenience, upon 120 days prior written notice, provided that in the event of such termination the Parties agree to complete all services that are in progress pursuant to the terms and conditions set forth in this MOU.

3. ETS Responsibilities.

- 3.1 Under the terms of this MOU, ETS is responsible for:
  - a. Providing the ETS-owned HiSET test (in PBT and CBT formats, including Alternate Test Forms) as the high school equivalency test approved by DE for Iowa residents seeking an equivalency high school diploma;
  - b. Delivering the HiSET test to the DE's approved Iowa Test Centers in PBT and CBT formats for testing purposes;
  - c. Scheduling and providing one-time, one face to face, initial training for appropriate staff and DE-approved test administrators and annually thereafter in an agreed upon delivery method;
  - d. Providing access to the ETS web-based portal to the DE, Test Takers, and the DE pre-approved Test Centers with appropriate user identification and password permissions;
  - e. Pre-registering Test Takers for PBT or CBT assessments (based on individual Test Taker choice) via an ETS-managed, web-based portal based upon Iowa specific requirements (see Exhibit 1);
  - f. Retaining Test Taker Data online on the web-based site;

DE and ETS MOU  
HiSET

- g. Collecting the Testing Fees (per Test Taker) as defined by the terms of this Agreement;
- h. Shipping secure PBT HiSET test materials to the Test Centers;
- i. Providing testing guidelines and policies for test administration that Iowa will adopt or modify for compliance to the state rules or laws; and annually reviewing or updating the guidelines and policies as well as providing the necessary test security guidelines as well as conducting a Test Center compliance audit for both PBT and CBT test centers.
- j. Reviewing and approving or denying requests for accommodations from Test Takers with disabilities and confirming the details (including test date and location) and accommodation requirements with the Test Taker, based on DE approval;
- k. Providing Alternate Test Form(s) (including Braille, large print, audio versions) and/or additional testing time, and communicating approved accommodations for Test Takers with disabilities to the Test Centers;
- l. Providing sufficient payment options to address the needs of 3<sup>rd</sup> party payees directly during registration or through an approved invoicing method;
- m. Providing pre-printed return mailing labels and envelopes to the Test Centers for the secure return to ETS of Returnable Test Materials;
- n. Notifying DE of any incident occurring at the Test Centers within 3 business days of ETS becoming aware of the incident;
- o. Pending receipt of a properly submitted answer sheet at ETS for PBT and receipt of electronic answers for CBT, providing results of multiple choice test scoring within 2 to 4 business days, with constructed response results within 6 to 8 business days;
- p. Posting final score report data online for Test Taker and DE access; and
- q. Providing specific test summary reports (to be subsequently determined and added to this MOU) to the DE.

3.2 ETS will not be responsible for:

- a. Paying or subsidizing DE-selected Test Centers;
- b. Hiring or managing Test Center personnel or compensating them in any way;
- c. Printing or mailing individual Test Taker score reports directly to Test Takers;
- d. Any actions taken by Test Center personnel or occurring at the Test Centers;
- e. Any delays, accidents, incidents, any actions by Test Takers or other unforeseen circumstances occurring at the Test Centers;
- f. Any security breaches, directly or indirectly caused by Test Takers or Test Center personnel and/or by the failure of equipment at the Test Centers.
- g. Collection of any diploma, transcript or verification fees as indicated by Iowa Code 259A Rule 281-32.7.

4. DE Responsibilities.

4.1 Under the terms of this MOU, the DE is responsible for:

DE and ETS MOU  
HiSET

- a. Pre-approving selected Test Centers for the secure administration of PBT or CBT HiSET testing and notifying ETS of the DE-selected Test Centers;
- b. Establishing policies for the admission of Test Takers at the Test Centers;
- c. Approving testing guidelines and policies, including ADA compliance policies and procedures that are specific to Iowa's Test Centers, and conducting Test Center compliance audits;
- d. Enforcing ETS's guidelines for secure test administrations;
- e. Authorizing ETS to provide a license to the DE-approved Test Centers for receipt and use of secure HiSET test materials;
- f. Notifying ETS of DE's choice to close a Test Center, as needed; and
- g. Managing Iowa's high school equivalency program, including distribution of documentation and/or certification(s) as determined and authorized by DE.

4.2 DE is not responsible for:

- a. Paying ETS's Testing Fees (per Test Taker).

5. Limitation of Liability.

ETS WILL NOT BE LIABLE TO THE DE OR TO ANY TEST-TAKER FOR ANY DAMAGES ARISING OUT OF THE TEST CENTER'S ACCESS TO, OR INABILITY TO ACCESS OR USE, THE HISET TEST MATERIALS LICENSED HEREIN, INCLUDING DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, AND WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOSS OF PRIVACY, SECURITY OF DATA, FAILURE TO MEET ANY DUTY (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR LACK OF PROFESSIONAL EFFORT), OR FOR ANY OTHER INDIRECT DAMAGES WHATSOEVER, THAT ARISE OUT OF OR ARE RELATED TO THE ETS PROPRIETARY MATERIALS OR THE TEST ADMINISTRATIONS, EVEN IF ETS (OR AN AFFILIATE, SERVICE PROVIDER, OR AGENT) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE), OR STRICT OR PRODUCT LIABILITY OR MISREPRESENTATION. ETS IS NOT RESPONSIBLE FOR PHYSICAL INJURY OR PROPERTY DAMAGE SUFFERED BY OR CAUSED BY A TEST-TAKER SITTING FOR THE HISET ASSESSMENT. ETS DOES NOT WARRANT THAT THE HISET OR ANY TEST MATERIALS WILL BE UNINTERRUPTED OR ERROR FREE AT THE DE TEST CENTERS.

6. Compensation and Payment.

- 6.1 As full and complete compensation for the services provided under this MOU, ETS will collect fees from each Test Taker in accordance with the fee schedule and conditions specified in Exhibit 2, attached hereto and hereby incorporated in this MOU (the "Testing Fees").
- 6.2 ETS is not liable to the Test Center for any compensation or payment of any kind. Only ETS Testing Fees will be collected for the administration of the HiSET test. Advertising the test and testing hours is the responsibility of the Test Center.

DE and ETS MOU  
HiSET

- 6.3 All Testing Fees related to the use of the ETS-owned HiSET test materials by Test Takers are pre-paid directly by Test Takers when the Test Taker registers with ETS to sit for the HiSET assessment. The DE is not responsible to ETS for the Testing Fees.

7. Test Taker Retest Policy.

Test Takers who register for all five Subtests in one purchase and who do not meet the DE's passing score requirements will be permitted to take the full battery HiSET test again at no additional cost up to two times in a 12 month period beginning on the date of the battery purchase. To reflect DE's retest rule (281-32.5(259A)), the test taker must meet either requirement (1) a waiting period of three 3 months or (2) completed instruction in the area or areas to be retested as certified by an instructor in the local program. Once this information has been verified the authorizing to retest is granted by the local level. After the 12 month expiration, a \$15 subtest fee will apply if a Test Taker is taking individual Subtests. Test Takers have the option to take a new test battery with a \$50 payment.

8. Intellectual Property.

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

9. Rights in Data

- 9.1 Without limiting the generality of this section, the vendor shall only use personally identifiable information as strictly necessary to provide the services and shall disclose such information only to its employees who have a strict need to know such information. The vendor shall comply at all times with all laws and regulations applicable to such personally identifiable information.
- 9.2 The DE is and shall remain the owner of all state-specific data pursuant to the agreement. The DE may use the data provided by the vendor for the purpose of archiving test taker information and scores in a longitudinal database for the purpose of verification of test completion and the awarding of a state issued high school equivalency diploma. The DE will not possess or assert any lien or other right against the vendor's data. Without limiting the generality of this section, the DE shall only use personally identifiable information as strictly necessary to utilize the services and shall disclose such information only to its employees who have a strict need to know such

DE and ETS MOU  
HiSET

information, except as provided by law. The DE shall comply at all times with all laws and regulations applicable to such personally identifiable information.

- 9.3 ETS shall provide unfettered access to DE's Test Scoring data, which requires the transmission of data as follows:

Transfer of scoring data to the DE and/or the DE's contracted vendor for the credentialing, document fulfillment and database of record services. The DE acknowledges that such a transfer is at the direction of the DE; and

Data transmission will occur by secure FTP in XML format as determined by the DE at a regularly scheduled mutually agreed upon time.

10. Confidentiality.

The Parties agree to keep Confidential Information, including but not limited to performance, financial, contractual and technical information which may be exchanged during the Term of this MOU, in confidence at least to the extent it uses to protect its own confidential information. Such Confidential Information shall not be disclosed to any third party without the prior written approval of the Party whose Confidential Information may be disclosed. Restrictions as to the disclosure and use of Confidential Information shall continue for five years beyond the expiration date of this MOU.

11. ETS Trademarks.

- 10.1 Notwithstanding the limitations set forth in Section 8.2 of this MOU, ETS grants to DE, a limited, non-exclusive, non-transferable, revocable license to use the ETS Trademarks in order to fulfill its responsibilities as stated in this MOU, and to reproduce or create promotional materials and signage to inform the public about the HiSET test and the locations of Test Centers, provided that (i) DE shall comply with all ETS standards for quality in delivering and administering the HiSET test, (ii) DE shall comply with all trademark and branding guidelines developed for use of the ETS Trademarks, and (iii) DE shall submit all promotional materials for review and prior approval by the Office of the General Counsel of ETS before production and distribution of such promotional materials. DE shall submit such promotional materials for review and approval by email to [mshepherd@ets.org](mailto:mshepherd@ets.org), or by mail or fax to: Mary Shepherd, Senior Trademark Administrator, Office of the General Counsel – TDI Group, 660 Rosedale Rd, MS 05-C, Princeton, NJ 08541; Fax: +1 (609) 734-1700.

- 10.2 Except for ETS-approved promotional materials and/or signage provided to authorized Test Centers by ETS or DE, DE acknowledges and agrees that (i) its Test Centers are not authorized to use, reproduce, copy or create materials for promotional purposes or to register and use any Internet Domain Name bearing the ETS name, trademarks or service marks, or the marks of ETS clients or service providers, whether such marks or names now exist or may exist during the Term of this Agreement, without the prior written approval and review of such materials by

DE and ETS MOU  
HiSET

the Office of the General Counsel of ETS, and (ii) that DE will assist ETS in taking corrective action in the event ETS identifies a violation of ETS's trademark rights by any Test Center. Notwithstanding anything to the contrary in this Agreement, no trademark license is hereby granted to any Test Center.

12. Rights upon Expiration or Termination.

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

13. Force Majeure.

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

13. Governing Law.

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

14. Entire Agreement.

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

*[Signature Page Follows]*



DE and ETS MOU  
HiSET

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

EDUCATIONAL TESTING SERVICE

IOWA DEPARTMENT OF EDUCATION

By: John H. Oswald

By: John Berger

Name: John H. Oswald

Name: John Berger

Title: Vice President & GM

Title: CFO

Date: 8/5/13

Date: 8/5/13

Attached  
Exhibit 1 – Iowa Specific Registration Requirements  
Exhibit 2 – Iowa Fee Schedule

DE and ETS MOU  
HiSET

Exhibit 1  
Iowa Specific Registration

In accordance with Paragraph 3.1(e) Pre-registering Test Takers for PBT or CBT assessments (based on individual Test Taker choice) via an ETS-managed, web-based portal based upon Iowa specific conditions are detailed as follows:

Iowa policies require all test-takers to meet with adult education instructors to meet certain requirements for testing. Those requirements include successful completion of an assessment to determine readiness for testing. Test Takers must successfully pass individual practice tests for each area of the High School Equivalency Diploma assessment. Test Takers will receive a Verification Form upon successful completion of each individual test. Test Takers must present this form along with appropriate identification in order to be admitted for each official testing session. Test-takers will have to agree to the following acknowledgement statement when registering for the HiSET®:

*As an Iowa HiSET® test-taker I acknowledge that I must:*

- *Meet with an adult education instructor to complete a test to determine my readiness for testing.*
- *Meet the testing age requirements in Iowa.*  
*No one under 16 years of age is allowed to test. Testing of 16 years old are restricted to these conditions: a) resident of an Iowa Juvenile Institution; or b) under the supervision of a probation office. To take the high school equivalency test, anyone 17 years of age or older who is not enrolled in a secondary school or a high school graduate may be admitted to testing. The only requirement for admission for testing is proof of age and for applicants 17-18 years of age verification of non-enrolled status and has the consent of his/her parent or guardian. The applicant can not receive their diploma until age 18 and his/her class from 9th grade has graduated.*
- *Present my Verification Form for each individual test area when arriving at each testing session scheduled. I understand that I cannot schedule a subtest in an area that I have not been recommended for by my teacher and that I must have a Verification Form to do so. I understand that if I do not have my Verification Form, I will be denied admission to testing and will forfeit my testing fees.*

Testing Center staff will verify that test-takers have been approved by meeting the age requirement in Iowa and by passing the practice test for the content area during admission for the testing session.

DE and ETS MOU  
HiSET

Exhibit 2  
Iowa Fee Schedule

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

<b>Description</b>	<b>Unit of Measure</b>	<b>Fee</b>
Paper-based full test battery*	Each	\$50.00 per test taker
Computer-based full test battery*	Each	\$50.00 per test taker
Paper-based sub-test*	Each	\$15.00 per test taker
Computer-based sub-test* (including Alternate Test Forms at no additional fee)	Each	\$15.00 per test taker
<b>Retest Policy</b>		
In the year of 1 <sup>st</sup> test attempt	Up to two additional attempts included in full test battery fee	No additional cost*
	Sub-test fee	\$15.00 per test taker per sub-test
<b>Practice Tests</b>		
Paper-based practice test	Each	\$7.50 per sub-test
Computer-based practice test	Each	Price to be determined

\*The retest attempts must be completed within 12 months from the date of test battery purchase. The retest fee waiver is only applicable to Test Takers scheduling the full battery. Individuals scheduling Subtests rather than full battery testing cannot take advantage of the retest fee waiver.

Practice Tests

Additional provisions regarding practice tests follow:

- a) ETS will offer one practice test in all five subject areas (Subtests) at no additional charge as a downloadable PDF on the informational website.
- b) ETS will offer a second practice test in each of the five subject areas (Subtests) which will be available for purchase in November 2013.
- c) ETS will offer a Computer-based practice test in Spring 2014 at a price to be determined.
- d) ETS will work with Test Centers to enable them to be of assistance to Test Takers who are not able to download practice tests independently.

General Policies and Procedures

Collection and payment of Testing Fees will be guided by the following policies:

- a) ETS will not accept mail-in applications for scheduling.
- b) ETS will provide a Computer-based, online registration system for Test Taker registration and payment.

General Payment and refund policies are as follows:

- a) All fees are stated in U.S. dollars.
- b) Mail in payments are not accepted.
- c) E-checks will be accepted in the ETS HiSET registration process.
- d) If Test Takers do not have sufficient credit or funds in their accounts to cover a registration or service that ETS has processed on their behalf, the Test Taker's scores will be flagged and withheld until payment is up to date.
- e) Taxes must be included where acceptable.
- f) Refunds will be made in U.S. dollars.
- g) Services may be withheld for non-payment of fees.
- i) ETS reserves the right to add or remove criteria regarding online payment and will provide the DE thirty 30 days notice of changes.
- j) Test Takers who cancel a scheduled test administration at any time up until the third business day preceding a scheduled testing date, shall be refunded a portion of the assessment fee paid, as follows:

<b>Fee Description</b>	<b>Refund Available</b>
Test or Subtest fee	50% of amount paid
Testing Center fee (if any)	Test Centers are paid directly to the Center by the Test Taker; refund policy is at the discretion of the Test Centers

- k) ETS will consider refund requests for hardship cases on an individual basis and with appropriate documentation. ETS will be the point of contact and approval/denial authority for hardship cases.