

# WEB ADMINISTRATION SYSTEM FOR IELTS ACCESS AGREEMENT

## BACKGROUND AND IMPORTANT NOTICE

The Chancellor, Masters and Scholars of the University of Cambridge, acting through its department Cambridge University Press & Assessment (**Cambridge**), The British Council and IELTS Australia Pty Ltd (**IELTS Australia**) are the joint owners of intellectual property in and relating to the IELTS exam as defined in an agreement between the three parties. Cambridge has developed software for use in relation to the IELTS exam known as the "**Web Administration System for IELTS**" and Cambridge owns all intellectual property rights in the Web Administration system for IELTS.

Pursuant to this access agreement (this "**Agreement**") Cambridge grants a licence to the Centre (the "**Centre**"), to whom a password was issued, and its employees and agents, accessing and using the Web Administration System for IELTS; the Centre's use of an exclusive password to access the Web Administration System for IELTS shall be deemed to be the Centre's acceptance of this Agreement to use the Web Administration System for IELTS and the Centre agrees that any use of the Web Administration System for IELTS shall be strictly in accordance with the terms of this Agreement.

Permission to use the Web Administration System for IELTS is subject to the terms set out below. Do not use the password to access the Web Administration System for IELTS unless you have read and accepted all the terms of this Agreement and wish to take a licence of the Web Administration System for IELTS. If the Centre does not wish to accept this Agreement the Centre must return the access password to Cambridge unused (before accessing the Web Administration System for IELTS) together with any and all documentation supplied with it within 14 days of receipt. Any fee the Centre may have paid together with the Centre's postage costs will be refunded to the Centre.

IT IS HEREBY AGREED as follows:

## 1 Grant of Access

1.1 In consideration of the Centre accepting the terms and conditions of this Agreement, Cambridge grants to the Centre a nonexclusive, non-transferable password protected access to and use of the Web Administration System for IELTS ("Access"). Throughout this Agreement, Access includes any use of the Web Administration System for IELTS website together with any instruction manuals and/or other information associated with or contained in the Web Administration System for IELTS, whether in electronic form or otherwise.

1.2 The Centre shall not sub-licence, re-distribute, lease, loan, copy, reproduce, modify or adapt Access or the Web Administration System for IELTS, or create derivative works based on the whole or any parts of the Web Administration System for IELTS.

1.3 The Centre shall only use the Web Administration System for IELTS for its internal business purposes associated with IELTS.

## 2 Acceptance

2.1 The terms and conditions of this Agreement are deemed to be accepted by the Centre upon the Centre's initial use of an exclusive password to access the Web Administration System for IELTS.

## 3 Centre Obligations

3.1 The Centre undertakes to supervise and control use of the Web Administration System for IELTS (or any part thereof): to ensure that any of its employees and agents which Access the Web Administration System for IELTS (or any part thereof) are notified of this Agreement and the terms hereof prior to such Access; to ensure the accuracy and timeliness of any and all information entered on the Web Administration System for IELTS; and to comply with all domestic and international laws, regulations and obligations for the protection of individuals with regard to the processing of personal data by the use of the Web Administration System for IELTS.

3.2 The Centre further warrants and undertakes that the Centre shall in no circumstances whatsoever:

(a) Use or present documentation, reports or other information generated or created by the Web Administration System for IELTS as official certification by the University of Cambridge;

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(b) represent itself or any premises owned, leased, hired or otherwise used by the

Centre as an accredited centre for the administration of Cambridge examinations, unless they are so accredited by Cambridge; or

(c) use any or all of Cambridge' trade marks or trade names (whether registered or unregistered), including without limitation the names The Chancellor, Masters and Scholars of the University of Cambridge, Cambridge University Press & Assessment, Cambridge, Cambridge English; Cambridge ESOL or the Web Administration System for IELTS.

## 4 Exclusion of Warranties and Limitation of Liability

4.1 Cambridge provides Access to the Centre on an 'as is' basis and all conditions, warranties, terms and undertakings, express or implied, whether by statute, common law, trade practice, custom or otherwise (including without limitation as to quality, performance or fitness for purpose) in respect of the package are excluded to the fullest extent permissible by law.

4.2 Cambridge shall not be liable for any special, indirect or consequential damages including any lost profit or savings arising out of or in connection with Access by the Centre. Cambridge shall not be liable for direct or other damages arising hereunder in excess of the amount paid by the Centre for Access.

4.3 Cambridge shall be under no liability to the Centre or any potential or actual candidate, and the Centre shall be liable to such candidates, with respect to: (1) anything related to the accuracy or timeliness of any information entered onto the Web Administration System for IELTS by the Centre, including but not limited to any complaint or action, and (2) anything related to any candidate payments or refunds or the processing of any such payments or refunds whether through the Web Administration System for IELTS online, any online payment company, or otherwise. Cambridge shall be under no liability to the Centre with regard to any online payment company or system, whether or not accessible on the Web Administration System for IELTS, with whom the Centre enters a payment processing agreement.

4.4 The Centre releases and shall indemnify and hold harmless The British Council and IELTS Australia (and each of them) from all loss and damage in relation to any and all claims arising from use of the Web Administration System for IELTS by the Centre, its agents and employees, and any other person accessing the Web Administration System for IELTS by or through the Centre.

## 5 Intellectual Property Rights

5.1 The Centre acknowledges that the Web Administration System for IELTS and the related documentation is the subject of copyright. The Centre shall not during or any time after the expiry or termination of this Agreement permit any act which infringes that copyright and, without limiting the foregoing, the

Centre specifically acknowledges that it may not copy the program except as otherwise expressly agreed by Cambridge.

5.2 The Centre acknowledges that any and all of the trade marks, trade names, copyright, patents and other intellectual property rights used or embodied in or in connection with the Web Administration System for IELTS, shall be and remain the property of Cambridge.

5.3 The Centre acknowledges that it is only granted those rights specified in this Agreement.

## 6 Confidential Information

6.1 The Centre undertakes that it shall keep (and shall procure that its employees keep) confidential and shall not disclose to third parties any information disclosed to it by Cambridge (including through use of the Web Administration System for IELTS), which shall include all data, documentation, source or object code or other information of any kind whatsoever. The Centre hereby agrees that it shall use the same solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of Access and/or this Agreement, disclose the same, whether directly or indirectly, to any third party unless required to do so by law or with the written permission of Cambridge.

6.2 The Centre further agrees that it shall not itself or through any agent modify, vary, enhance, copy, sell, lease, license, sublicense or otherwise deal with Access or the Web Administration System for IELTS itself or any part or parts or copies thereof, or have any program written or developed for itself based on any confidential information supplied by Cambridge.

## 7 Termination

7.1 Cambridge may by notice in writing to the Centre terminate Access and/or this Agreement, and remove any and all Centre information from the Web Administration System for IELTS, forthwith if any of the following events shall occur, namely:

- (a) if the Centre, in Cambridge' opinion, is in breach of any term, condition or provision of this Agreement;
- (b) if the Centre, being a body corporate, shall present a petition or have a petition presented by a creditor for its winding-up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation); shall call a meeting of its creditors, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be deemed by virtue of section 123 of the Insolvency Act 1986 to be unable to pay its debts or anything analogous shall apply to the Centre in the jurisdiction to which it is subject;
- (c) if the Centre shall be dissolved or shall commit any act of bankruptcy or have a receiving order made against it or shall make or negotiate for any composition or arrangement with or assignment for the benefit of its creditors or anything analogous shall apply to the Centre in the jurisdiction to which it is subject.

7.2 Termination, howsoever or whenever occasioned, shall not affect any rights and remedies Cambridge may have under this Agreement or in law.

## 8 General

8.1 The Centre shall not assign or otherwise transfer all or any part of its Access or this Agreement.

8.2 Cambridge shall not be under any liability to the Centre in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of circumstances, in the opinion of Cambridge, beyond its control.

8.3 The Centre shall indemnify, defend and hold harmless Cambridge from and against any and all damages, claims, penalties, actions, proceedings, losses, liabilities or expenses whatsoever arising in any way out of or in connection with the failure of the Centre to comply with any of its obligations under this Agreement.

8.4 Failure or neglect by Cambridge to enforce at any time any of the provisions hereof shall not be construed nor deemed to be a waiver of any rights hereunder nor in any way affect the validity of the whole or any part of this Agreement.

8.5 The UK Contracts (Rights of Third Parties) Act 1999 is excluded from applying to this Access except in relation to the right of Cambridge to benefit or enforce the terms of this Access so far as it relates to the intellectual property rights of any of Cambridge or any liability of those parties to the Centre and nothing in this Agreement confers or purports to confer on any third party other than Cambridge any benefit or any right to enforce any term of this Agreement.

8.6 In the event that any of these terms and conditions or provisions shall be determined invalid, unlawful or unenforceable to any extent such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

8.7 This Agreement constitutes the final, complete and exclusive agreement and understanding between Cambridge and the Centre, and supersedes all previous communications, representations or agreements, whether written or oral, with respect to the subject matter hereof.

8.8 The parties hereby agree that this Agreement shall be construed in accordance with and be subject to English law and all disputes shall be subject to the non-exclusive jurisdiction of the High Court of Justice in England and Wales.