

## TOP PRODUCER<sup>®</sup>

Top Producer Systems Company  
Move Sales, Inc.  
10271 Shellbridge Way  
Richmond, BC V6X 2W8, Canada

To: Applicants to a TOP PRODUCER<sup>®</sup> Certification Program

Dear applicant:

Enclosed with or attached to this letter are the following:

- Application for participation in and certification under a TOP PRODUCER<sup>®</sup> certification program; and
- Program Agreement.

The Application requires you to provide us with basic information about you and authorization to debit your credit card for the Program Fee. The Program Fee is a fee the Company charges for testing, materials (if applicable) and other administration concerning your application, and the required amount is set forth in the Application.

The Program Agreement sets forth various terms and conditions to which you must agree in order to pursue certification and otherwise participate in the Program.

In addition, various timing, procedural and policy particulars of the Program are posted on the Campus Website (i.e., the TOP PRODUCER<sup>®</sup> Customer Support website, the URL of which Campus Website will be provided to you by the Company from time to time) or on a sub-page thereof for your review.

**If you are willing to agree to the terms of the Application and Program Agreement, then please complete and sign (where indicated) the Application and fax it (3 pages only – no attachments need be sent), to the fax number indicated at the top of the Application.**

Before doing so, please carefully read the Application and Program Agreement (including the Usage Guidelines). Your Application, once submitted, will be considered accepted only after the Company debits your credit card for the Program Fee and receives availability of the funds.

Thank you very much for your interest in the Program. Should you have any questions not answered by this letter or the included documents, please submit them to the Program coordinator by way of the following email address:  
[certification@topproducer.com](mailto:certification@topproducer.com).

Sincerely,

Top Producer Systems Company  
Move Sales, Inc.

TOP PRODUCER®  
 10271 Shellbridge Way • Ste. 300  
 Richmond, BC V6X 2W8 • Canada  
 Attn: Certification Program – Customer Education  
 Telephone: 1-877-861-2790  
 Application Fax#: 1-604-270-8218

## APPLICATION

This is an application for participation in the following TOP PRODUCER® certification program:

**Program:** The TOP PRODUCER® Certification Program 2012<sup>SM</sup> program for Top Producer® (the “**Program**”)

**Program Fee** (check one option below):

Check One Option	Certification Type	Total Cost (excluding taxes)
<input type="checkbox"/> (Annual Fee)	Certified Professional Credential Fee	\$ 50.00
<input type="checkbox"/> (Initial Fee)	Certified Trainer Credential Fee	\$ 99.00
<input type="checkbox"/> (Annual Fee)	Certified Trainer Annual Credential Fee	\$ 49.00

**Requirements for Certification**, in addition to general compliance with the Program Agreement, include:

- A completed and signed Application from you;
- Payment to the Company of the Program Fee;
- Timely completion of the testing described in the “**Program Details**” (posted at the Campus Website or a subpage thereof, the URL of which Campus Website will be provided to you by Company from time to time) or otherwise required by Company and achievement of a passing score(s)/results(s); and
- Issuance by the Company to you of an award of Certification.

**What Certification MEANS regarding this Program:** Certification, if granted to you, means you have completed to Company’s satisfaction certain specified testing regarding your adeptness in use of the following product(s) or offering(s) of Company: the TOP PRODUCER® 8i® customer relationship manager (CRM) application (the “**Product(s)**”).

**The Program Logo and other Program Marks:**

The term “**Program Marks**” means (a) the Program Logos described below, (b) the certification phrase described below and (c) any other certification mark, trademark, service mark, name, phrase, logo, initials, symbol or other indicia that the Company hereafter authorizes you to use in order to identify yourself as a Program Participant.

The “**Program Logo**” is any of the following logos:



**Media Notice:** You are required to include, or if applicable (see Program Agreement) cause your employer to include, the following notice (the “**Media Notice**”) on any media in/on which the Program Logo or any other Program Mark is used, and must do so in accordance with the Usage Guidelines (which are part of the Program Agreement):

“Logos and other indicia of TOP PRODUCER® certification are the property of Top Producer Systems Co. No guarantee of particular services is implied.”

**Note:** Capitalized terms used in this Application have the meanings given them herein, or in the Program Agreement.

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I, the undersigned individual, wish to obtain from the Company (as defined in the Program Agreement) and hereby apply for (i) participation in the Program identified above and further described in this Application and (ii) Certification under that Program. I understand that Certification, if granted, will include my obtaining the right to use certain Program Marks, and I agree that my rights to use such Program Marks will be as set forth in the Program Agreement, including the Usage Guidelines. Certification, unless it sooner lapses, or is suspended, revoked or otherwise terminated as set forth in the Program Agreement, continues for one year (i.e., 365 days).

Accordingly, please arrange for me to participate in Program examination(s)/testing. I agree to pay the charges assessed by the Company (the "Program Fee") for testing, materials and/or other administration concerning my Application, the amount of which is set forth in the Application. I also hereby authorize the Company to debit my credit card (as indicated below) for the Program Fee and any sales tax, use tax, value-add tax or other tax or levy assessed in connection with the Program or the Program Fee. I agree that such charges are non-refundable except as otherwise specified in the Program Agreement. I further hereby agree to, and consent to be bound by, the terms and conditions of the Program Agreement, which agreement accompanies this Application.

BY SIGNING THIS APPLICATION, I AUTHORIZE MY CREDIT CARD TO BE DEBITED (AS PROVIDED ABOVE) AND I REPRESENT AND PROMISE THAT ALL OF THE INFORMATION BELOW IS ACCURATE, COMPLETE AND PROVIDED HONESTLY AND IN GOOD FAITH, AND THAT I HAVE READ AND UNDERSTAND ALL THE TERMS AND CONDITIONS OF THIS APPLICATION, THE PROGRAM DETAILS AND THE PROGRAM AGREEMENT (INCLUDING THE USAGE GUIDELINES):

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

Full legal name: \_\_\_\_\_

Name to appear on certificate and online registry: \_\_\_\_\_

Address of residence: \_\_\_\_\_ Postal code: \_\_\_\_\_

City of residence: \_\_\_\_\_ State: \_\_\_\_\_

Email address: \_\_\_\_\_

Phone nos.: Home: \_\_\_\_\_ Cell: \_\_\_\_\_ Work: \_\_\_\_\_

**Credit card information:**

Type (check one): Amer. Express \_\_\_\_\_ MasterCard \_\_\_\_\_ VISA \_\_\_\_\_

Exact name on the Card: \_\_\_\_\_

Credit Card No.: \_\_\_\_\_

Expiration date (mo. and yr.): \_\_\_\_\_, 20\_\_\_\_ CVV code (on reverse side of card): \_\_\_\_\_

Billing address for the card: \_\_\_\_\_

Attachment(s) to this Application: • Program Agreement (including Usage Guidelines)

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**INSTRUCTIONS:** Complete, print, and sign this Application; then fax (or mail) the three Application pages to the fax no. (or mailing address) indicated at the top of this form. The Company assumes no responsibility regarding illegible, incomplete or un-received Applications or failed or incomplete fax transmissions.

TOP PRODUCER®  
10271 Shellbridge Way • Ste. 300  
Richmond, BC V6X 2W8 • Canada  
Telephone: 1-800/444-8580  
Fax no.: 1-604-270-8218

## PROGRAM AGREEMENT

for

### TOP PRODUCER® Certification Program

This Program Agreement is an agreement between the person who has signed an Application (the “**Participant**,” or “**you**”) and the Company (as defined below). This Agreement becomes effective once (a) you have signed and submitted an Application and (b) the Company has successfully debited your credit card for the Program Fee (as defined in the Application), has otherwise received and accepted payment from you for the Program Fee, or has provided you a written waiver of the Program Fee. Also, any person making any use of the Program Logo or any other Program Mark after having knowledge of this Program Agreement agrees, by virtue of that use, to be bound by the Participant obligations and restrictions set forth in this Program Agreement.

#### THE PARTIES TO THIS AGREEMENT:

If you reside in Canada (a “**Canada Participant**”), then this Agreement is between you and *Top Producer Systems Company*. In that case, “**Company**,” when used herein, means Top Producer Systems Company, a ULL corporation organized under the laws of Nova Scotia and having a principal place of business at 10651 Shellbridge Way, Richmond, BC V6X 2W8, Canada. If you reside in the U.S.A. or anywhere other than Canada (a “**USA Participant**”), then this Agreement is between you and *Move Sales, Inc.* In that case, “**Company**,” when used herein, means Move Sales, Inc., a corporation organized under the laws of Delaware and having a principal place of business at 30700 Russell Ranch Road, Westlake Village, California 91362.

#### CERTAIN DEFINITIONS:

The term “**Application**” means the *APPLICATION* form that accompanies this “Program Agreement” document. The term “**Program Agreement**” (or “**Agreement**”) means this agreement instrument, the attached Usage Guidelines, the Application, and the Program Details. The terms “**Product(s)**,” “**Program**,” “**Program Details**,” “**Program Fee**,” “**Program Logo**” and “**Program Marks**” are defined in the Application. The term “**Company Mark(s)**” is defined in **Schedule 1** to this Agreement (the “**Usage Guidelines**”). Other capitalized terms used in this Agreement have the meanings given them in this agreement instrument or in any other document comprising a part of this Program Agreement.

IN CONSIDERATION OF the covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges, the parties further agree as follows, intending to enter into and be bound by this Agreement.

## AGREEMENT

### 1. REPRESENTATION USING PROGRAM MARKS.

1.1 Representation by You. So long as a Certification granted to you by Company has not expired or been suspended, revoked or otherwise terminated as provided for in this Agreement, you may represent such achievement and status through use of the Program Marks (defined in the Application), but only with reference to the Products and as expressly authorized by this Agreement, including the Usage Guidelines. “**Certification**” means the Company’s written award of certification to a Program applicant that he or she (i) has to Company’s satisfaction completed the requisite Program testing and any other Program requirements (e.g., as set forth in the Program Details) or (ii) has been granted a waiver of such testing and/or other requirements.

1.2 Representation by Third Parties. You may not authorize or permit anyone else to make use of any Program Mark; except that you may permit your employer to do so but only in the context of its making specific reference to you personally, and only in accordance with and subject to this Agreement.

1.3 Dissemination by Company. Company may, at its sole discretion, advertise and otherwise promote the Program, as well as any Certified Participants. “**Certified Participant(s)**” means a person(s) upon whom the Company has conferred Certification, which Certification has not lapsed or been suspended, revoked or otherwise terminated. In particular, but without limiting the foregoing, the Company may create, distribute, publicize and/or otherwise use a full and/or partial list(s) of Certified Participants (e.g., on its website) and may make use of a Certified Participant’s name, image, voice, likeness and/or other aspects of his/her persona (and that of his/her employer or business). Certified Participants who do not wish to have their names publicized for advertising and promotion purposes should provide a written request to Company to that effect.

Without limiting the above, it is understood that Company might receive requests from third parties seeking verification of an individual’s Certification status. In response to such

requests, Company may, but has no obligation to, provide to others such information as is then in its possession. Company may also depend upon you to periodically verify with Company that such information is correct, complete and up to date. Company shall have no liability for providing incomplete or inaccurate information unless it does so in bad faith.

## 2. CERTIFICATION REQUIREMENTS.

2.1 The following are the basic requirements for initial Certification under the Program (the “**Basic Certification Requirements**”):

- **TESTING.** You must have completed to the Company’s satisfaction the testing and other steps required by the Company for Certification. Certification must be renewed (see Section 4.3, below) on an annual basis; and
- **FEE.** You must have paid the Program Fee.

2.2 You agree to pay the Program Fee required for initial Certification and any additional fee required for a new Certification renewal granted to you pursuant to this Agreement in accordance with the terms hereof. You also agree to be responsible for, and agree to reimburse Company for any payment by it of any and all taxes of any kind or nature and all penalties, interest or other assessments relating thereto, arising from this Agreement (excepting taxes based on Company’s own net income).

## 3. PROGRAM-RELATED CHANGES.

3.1 At any time in its sole discretion, Company may add to, narrow, upgrade, enhance, discontinue, or otherwise modify the Program and/or any functions or components thereof, including, without limitation, the Program Marks, the Usage Guidelines, the Basic Certification Requirements, any Certification Guidelines and any Program FAQ’s (collectively, the “**Modification(s)**”). If Modifications are implemented by the Company, you must comply with all requirements of any such Modifications unless you withdraw from the Program in accordance with this Section 3. Modifications may be notified to you by way of a posting(s) to the Campus Website or any other notification method provided for at Section 5 hereof.

3.2 If the Company implements a Modification that you disagree with, and you notify Company, in accordance with this Agreement, of your decision to withdraw from the Program for that reason not later than thirty (30) days after such initial notification, then effective automatically upon Company’s timely receipt of such withdrawal notice from you: you will be withdrawn from the Program; your Certification will be revoked; and you will be entitled to receive a pro-rated rebate of the Program Fee you paid for the then current annual period of your Certification. Immediately upon providing such withdrawal notice, you shall commence terminating all use of the Program Marks and other benefits or attributes of the Program. No later than thirty (30) days after the date you provide such withdrawal notice: you must have ceased all use of Program Marks and other benefits or attributes of the Program and you must certify to Company in a signed writing and to Company’s satisfaction, that you have done so. The rebate amount due you in the event of such a withdrawal will be 1/365<sup>th</sup> of the total Program Fee you paid for the then current annual period of your Certification *multiplied by* the

number of days remaining in such annual period as of the date that is thirty (30) days after the date Company receives your withdrawal notice. Company will refund such rebate amount to you within forty-five (45) days after Company’s timely receipt of such withdrawal notice from you, but you are deemed to have waived such rebate if you do not timely certify (as required above) to Company’s satisfaction that you have ceased all use of Program Marks and other benefits or attributes.

## 4. TERM, TERMINATION.

4.1 **DURATION.** A Certification will begin when the Company grants you an award of such Certification (usually via email) and will continue unless and until it lapses, or is suspended, revoked or otherwise terminated in accordance with this Agreement.

4.2 **LAPSE.** Your Certification will lapse automatically upon the one-year anniversary of the effective date of the Company’s initial award of Certification to you. Subject to any differing terms of a renewal, any renewal of your Certification will lapse automatically upon the one-year anniversary of such renewal unless again renewed in accordance with this Agreement.

4.3 **RENEWAL.** Renewal is not automatic. If you wish to renew your Certification for an additional annual period, you must apply for renewal and comply with the Company’s then applicable renewal requirements. Unless timely renewed, your Certification will terminate pursuant to Section 4.2 above.

4.4 **TERMINATION FOR CONVENIENCE.** Solely for your own convenience, you may terminate your Certification at any time by providing Company written notice of such termination. In such case, you will not be entitled to any refund of fees or charges and you will remain responsible for paying Company any fees or charges that are then due but not paid by you. Company, solely for its own convenience, may terminate your Certification at any time by providing you at least forty-five (45) days prior written notice of such termination. In such case, you will be entitled to receive a pro-rated rebate of the Program Fee you paid for the then current annual period of your Certification, which rebate will be 1/365<sup>th</sup> of the total Program Fee you paid for the then current annual period of your Certification *multiplied by* the number of days remaining in such annual period as of the effective date of termination as determined from the Company’s written notice of termination. Company will refund such rebate amount to you within forty-five (45) days after such effective date of termination, but you are deemed to have waived such rebate if you do not timely certify (as required in Section 4.6 below) to Company’s satisfaction that you have ceased all use of Program Marks and other benefits or attributes of the Program.

4.5 **TERMINATION FOR CAUSE.** Company may, in its sole discretion, terminate your Certification immediately upon written notice to you in the event of one or more of the following causes, as determined by Company in its sole but good faith discretion:

- use of any Program Mark or Company Mark or of any other advertisement, statement, communication or practice that in any way (i) disparages or reflects negatively on the Program, the Company or the Company’s personnel, representatives, business offerings, or (ii) is false, misleading, dishonest, in bad faith or illegal, or (iii) dilutes or infringes on any Program Mark or Company Mark;

- breach of or failure to abide by the Usage Guidelines;
- failure to timely make payment of any fee, charge or other amount required under this Agreement;
- any compromise of the security, integrity or confidentiality of an examination or of any other aspect of the Program;
- your continued Certification status is deemed to present an unacceptable risk to the Program or Company's reputation or business based on circumstances that may include but are not limited to the following: Services performed by you for customers are not performed in a professional manner or are not performed in a manner that reflects positively on the Company and its offerings; your relations with customers and others are not undertaken in a professional manner or are not undertaken in a manner that reflects positively on the Company and its offerings; and you are not in compliance with guidelines that are designated as Program Guidelines and are posted at the Campus Website (see Section 5.5, below, for URL) or otherwise notified to you (for example, by way of email). It is your responsibility to stay current with your email and postal mail and to check the Campus Website for postings from time to time; or
- any breach of any of the terms of this Agreement.

In the event of a termination based on this Section 4.5, you will not be entitled to any rebate or refund of any Program Fee or other amount, nor any portion thereof.

**4.6 EFFECTS OF TERMINATION.** Regardless of the reason, basis or other circumstances of any lapse or other termination of your Certification: (a) Except as expressly set forth herein, you will remain responsible for all monetary and other obligations that accrue under this Agreement prior to the effective date of such lapse or other termination; and (b) immediately upon any lapse or other termination of your Certification, you must commence cessation of all use – whether by you or permitted by you – of the Program Marks and all other benefits or attributes of the Program. You must cause such cessation to be fully completed not later than thirty (30) days after the effective date of any such lapse or other termination, and must by that time certify to Company in a signed writing, and to Company's satisfaction, that you have done so..

You agree that Company will not be responsible for any cost, inconvenience, loss, investment, harm, damage or other liability associated with any marketing or business materials, signage, web content, or change in position undertaken by you in reliance on or otherwise in connection with the Program, the Program Marks, this Agreement, your Certification or any lapse, termination or change in or regarding any of them.

**4.8 SURVIVAL.** The following terms of this Agreement shall survive any non-renewal or termination of your Certification (or of this Agreement itself): Sections 1.2, 1.3, 2.2, 3.3, 4.4 (the last sentence), 4.6, 4.8 and 5; and Sections 8 through 13.

## 5. NOTIFICATIONS.

5.1 Any notice that this Agreement requires or expressly provides for (“Notice”) may be given to the Company by:

- Sending an email to Company at the following email address: [certification@topproducer.com](mailto:certification@topproducer.com). This is the preferred method of notification to Company.

- deliver such Notice personally at the Company's offices or by sending written correspondence to Company by regular mail or a recognized and reliable commercial courier service, addressed as follows: *c/o Top Producer Systems Company, 10271 Shellbridge Way, Richmond, British Columbia, V6X 2W8, Canada; ATTN: Program Coordinator - Top Producer® Certification Program.*

5.2 Contacting the Company by telephone or fax does not satisfy or relieve you of any duty you have under this Agreement to provide Notice to the Company.

5.3 Any Notice required to be given pursuant to this Agreement shall be in writing and shall be effective the sooner of: (i) when delivered personally to the party for whom intended; or (ii) five (5) days following deposit with the U.S. or Canadian national postal service, properly addressed to the recipient party; or (iii) upon acknowledgment by the receiving party that that party has received the Notice by way of email (in which case any “in writing” requirement under this Agreement will be deemed satisfied by such email). Either party may designate a different address by notice to the other given in accordance herewith.

5.4 Notwithstanding the foregoing (or any other terms hereof) and without limiting the means by which Company may notify you, Company may provide a Notice or other communication to you via any of the following methods of notification:

- an email message sent to the email address Company has on file for you, which shall be deemed effective as of the date that is three (3) business days after the date of such emailing by Company, as shown by Company's records;
- personal delivery to you, which shall be deemed effective as of the date of such delivery;
- written correspondence to you, sent by regular mail or a recognized and reliable commercial courier service and addressed to you at the most recent address the Company has on file for you, which shall be deemed effective five (5) days following deposit with the U.S. or Canadian national postal service; or
- where this Agreement specifically provides for such Website form of notification, a posting to the Top Producer® Customer Support website, the URL of which website will be provided to you by Top Producer from time to time (the “**Campus Website**”), which shall be deemed effective as of the date of the posting, as shown by Company's records.

5.6 Notwithstanding the other provisions of this Section 5, and subject to any waiver Company might make (which it may do in its sole discretion), a Notice purported to have been given by you in connection with this Agreement will not be considered received by or binding on the Company if such Notice is not in compliance with the requirements of this Section 5.

## 6. MEANS OF PAYMENT.

6.1 All fees, charges or other amounts owed by you under this Agreement will be billed to such credit card as you designate in the Application or otherwise designate from time to time. Program Fees are due and will be billed automatically to your credit card prior to the start of the Certification period. Program Fees are non-refundable except as expressly set forth herein. At Company's discretion, Program Fees that are past

due are subject to a late-payment service charge at the lesser of the rate of 1.5% per month or the maximum permitted by law. You shall reimburse Company for all expenses (including, without limitation, reasonable attorneys' fees) incurred by Company in connection with the collection of any past-due Program Fees or other amounts.

6.2 You hereby authorize Company to debit your credit card for any and all amounts owed by you hereunder, and you will keep such credit card in effect and in good standing and with available open credit sufficient to cover any such amounts. If for any reason the credit card that Company has on file for you becomes, in Company's judgment, cancelled, invalid, insufficient, non-authorized or for any reason unusable or ineffective for prompt payment to Company, then you will immediately provide Company with a replacement credit card; all authorizations hereunder will apply to any such replacement credit card(s). You authorize Company, its Affiliates, contractors and service providers to have access to, use, store and communicate your credit card information, contact information and all other data pertaining to you but only insofar as is reasonably related to the performance or administration of this Agreement; Company will comply with the applicable terms of the Privacy Statement regarding such information/data. "Privacy Statement" means the privacy policy currently located at <http://www.move.com/company/privacy.aspx?poe=move>, or its successor. Company reserves the right to invoice or otherwise request or demand payment from you in any other lawful method, in which case you will make payment of such invoice or other demand or request in no event later than ten (10) business days after your receipt of same. You are responsible for and shall immediately reimburse Company for all chargebacks, penalties and other related charges, assessments and costs asserted by any credit card company, bank, payment processor or other organization involved in the payment process ("CC Assessments") unless the sole cause of the CC Assessment was Company's breach of this Agreement or violation of applicable law.

**8. USER NAMES AND PASSWORDS.** You may be required to choose (or, at Company's discretion, you may be assigned) a user name and/or password to access Internet resources relating to the Program. You are solely responsible for maintaining the confidentiality and security of any such user name and password, and for all activities that occur under your user name and password. You must notify Company immediately if you become aware of any unauthorized use of your user name or password or of any other breach of security, integrity or confidentiality regarding the Program. Company will not be liable for any loss or damage that you may incur as a result of someone else using your user name or password, either with or without your knowledge, and you agree to indemnify and hold harmless Company from and against any and all losses it may suffer as a result of such unauthorized use. Company is entitled to assume that anyone who provides your user name and password is you or is acting on your behalf and with your full consent. You authorize Company to deal openly and fully with any such person. Additionally, participation in the Program, or certain aspects thereof, may require particular equipment, software, data access and/or telecommunications services, and Company may change those requirements from time to time in its sole discretion and without prior notice. You are solely responsible for obtaining, configuring, maintaining, and paying all fees, taxes, expenses and other charges related to

any such equipment, software, data access and/or telecommunications services.

## **8 CONFIDENTIALITY; INTELLECTUAL PROPERTY OWNERSHIP/LICENSE.**

8.1 You agree that examinations, exam answers, exam questions, study or preparation materials, work flows, length or number of exam segments or questions and any communication relating to any of the foregoing (collectively, "Exam Materials") and any non-public materials, processes, methods, tools or information pertaining in any way to tests, testing or the Program itself (all, collectively, "Confidential Information") are proprietary to Company and represent valuable and sensitive information that is confidential to Company, and you agree that the disclosure of any Confidential Information could compromise the integrity of the Program and cause other irreparable harm to Company. Any Exam Materials or other Confidential Information made available to you is made available solely for your use consistent with this Agreement as a participant in the Program; you agree not to use any Confidential Information for any other purpose. You further agree: (a) not to copy any Confidential Information (in whole or in part) except as may be authorized by Company; and (b) not to post, publish, share, email, transmit or in any way disclose any Confidential Information (in whole or in part) to any other person (including, without limitation, your employer) in any form, by any means and for any purpose or reason. If you are required by court order or other similar legal process to make any such disclosure, you agree not to do so unless you have first notified Company of the demand for such disclosure, given Company an opportunity to protect against harm from any such demand or disclosure, and cooperated with any such efforts of Company; thereafter you shall be free to make disclosure without being in breach of this Agreement insofar as is necessary to comply with the demand as issued and as it may have been limited, but no further.

8.2 You hereby acknowledge and agree, as between Company and you, that Company is and shall remain the exclusive owner of (i) all Exam Materials, all other Confidential Information, the Program Logo, the other Program Marks (as defined in the Usage Guidelines) and any other item relating to the Program and supplied by Company or used by Company in connection with offering, operating or administering the Program ("Program Materials"); and (ii) all right, title and interest in and to all Program Materials (including, without limitation, all patent, copyright, trademark and trade secret rights associated therewith at any time). All goodwill associated with the Program Logo, with any other Program Marks or with any use of any of the foregoing shall inure to Company and not to you, and you obtain no ownership or proprietary right, title or interest of any kind in any Program Materials. Any right you may have to make use of the Program Logo or any other Program Materials is a non-exclusive, revocable license only and is limited to such specific permissions as are expressly granted to you herein. Any and all rights in respect of the Program Logo and any other Program Materials not expressly granted by Company to you herein are hereby expressly reserved to Company.

**9. NO REPRESENTATIONS OR WARRANTIES. YOU AGREE THAT THE PROGRAM, ANY PROGRAM MATERIAL, ANY CERTIFICATION AND ALL OTHER SUBJECT MATTER OF, PERFORMANCE OF OR**

CONDUCT IN CONNECTION WITH THIS AGREEMENT IS PROVIDED BY COMPANY STRICTLY ON AN “AS IS” AND “AS AVAILABLE,” BASIS, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR OTHERWISE.

**10. LIMITATIONS ON AND EXCLUSIONS OF LIABILITY.** IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA OR CONTENT, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE PROGRAM). IN ANY CASE, COMPANY'S ENTIRE LIABILITY IN ANY WAY RELATING TO THIS AGREEMENT SHALL BE LIMITED, IN THE AGGREGATE AND REGARDLESS OF THE NUMBER OR TIMING OF CLAIMS ASSERTED, TO THE GREATER OF \$2,000 OR THE TOTAL FEES RECEIVED BY COMPANY UNDER THIS AGREEMENT. THE TERMS OF THIS PARAGRAPH SHALL APPLY WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF THE LOSS, INJURY, DAMAGE OR LIABILITY SUFFERED OR EXCLUDED, AND REGARDLESS OF THE THEORY OF RELIEF ASSERTED AND REGARDLESS OF FAILURE OF ESSENTIAL PURPOSE. ANY ACTION AGAINST COMPANY FOR RELIEF OF ANY KIND MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION AROSE. THE TERMS OF THIS PARAGRAPH REPRESENT IMPORTANT AGREED AND BARGAINED-FOR UNDERSTANDINGS OF THE PARTIES.

**11. INDEMNIFICATION.** You agree to indemnify, defend, and hold harmless Company from and against any and all allegations, demands, claims, actions, lawsuits, liabilities, losses, damages, fines, penalties, judgments, settlements, awards, costs, and other expenses of any kind (including, without limitation, reasonable attorneys' fees and litigation costs) arising out of or relating to (a) any breach of this Agreement by you (or by your employer or by any of your agents, representatives, suppliers, contractors or relations), (b) any use of your Certification, the Program Logo or any Program Material by you (or by your employer or by any of your agents, representatives, suppliers, contractors or relations), (c) any non-renewal or termination of Certification, or (d) any products, services or other offerings provided, advertised or offered by you (or by your employer or by any of your agents, representatives, suppliers, contractors or relations). It shall at all times remain Company's right (i) to itself defend and settle any claims, actions or proceedings that are subject to indemnification hereunder (although it will not settle any such claim or action without your consent, which in no event shall be unreasonably withheld, delayed or conditioned) and receive, upon demand, reimbursement for the costs thereof or (ii) require Participant, at its own expense, to defend and settle any such claims, actions or proceedings (although Participant will not settle any such claim or action without Company's consent, which in no event shall be unreasonably withheld, delayed or conditioned).

## **12. EXTENSION OF CERTAIN PROVISIONS TO THE BENEFIT OF OTHERS.**

The disclaimers and protections of Section 9 hereof, the limitations on liability, exclusions of liability and protections of Section 10 hereof and the indemnification rights and protections of Section 11 hereof are hereby specifically extended to and for the benefit and protection of each Affiliate of Company and each director, officer, employee, agent and representative of Company or any such Affiliate. An “Affiliate” of Company shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company.

The rights and benefits of this Agreement may be extended by Company to its Affiliates, and exercised personally or through use of contractors, provided such Affiliates and contractors commit to be bound by any relevant restrictions set forth in this Agreement.

You also agree that your sole recourse (unless expressly waived by Company in a signed writing dedicated to that purpose) as to any breach or other allegation regarding this Agreement is exclusively a claim against Company and no other person, and that any other person named in any claim by you that runs contrary to this provision shall have the right to enforce this provision directly, as shall Company itself.

## **13. MISCELLANEOUS TERMS.**

If you are a *USA Participant*, then this Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, and any action or proceeding arising from or relating to this Agreement or its subject matter may be brought or maintained only in courts located in Los Angeles County, California, and their applicable courts of appeal, and the parties hereby submit to the personal jurisdiction of such courts for purposes of any such action or proceeding. If you are a *Canada Participant*, however, then this Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, Canada, and any action or proceeding arising from or relating to this Agreement or its subject matter may be brought or maintained only in courts located in the Province of British Columbia, Canada, and their applicable courts of appeal, and the parties hereby submit to the personal jurisdiction of such courts for purposes of any such action or proceeding. **THIS AGREEMENT SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** Monetary amounts stated or referred to in this Agreement are expressed in U.S. currency, and all fees, charges and other amounts required hereunder shall be paid in U.S. currency. You confirm your request that this Agreement and all documents related directly or indirectly thereto be drafted in the English language. Vous reconnaissez avoir requis que la présente convention ainsi que tous les documents qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions of this Agreement or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision cured of any such invalidity, illegality or enforceability. Any failure by Company to strictly enforce any

provision of this Agreement will not operate as a waiver of that provision or of any subsequent breach of that provision. Company shall not be responsible for any delays, errors or failures to perform caused by any acts of God, strikes, unavailability of labor, parts or resources, lockouts, riots, acts of war, changes in law or regulations, fire, flood, earthquake, storm, power failure, or failures of the Internet or any other cause outside of Company's reasonable control. In any efforts or action to enforce this Agreement, to the extent Company prevails in such efforts or action, you agree to reimburse Company for its costs, fees (including, without limitation, reasonable attorneys' and experts fees and costs) and expenses incurred in preparing, prosecuting and recovering on such efforts or action. This Agreement is binding on each party hereto and on each of its permitted successors, assigns and legal representatives. No part of this Agreement may be assigned or otherwise transferred by you without the prior

written consent of Company; any action to the contrary is void. Nothing in this shall be deemed or construed to create a joint venture, partnership, agency, fiduciary or trustee relationship between the parties for any purpose. Except as may otherwise be provided in this Agreement, you shall bear all expense of your entering into and performing this Agreement. Except as may be expressly provided herein to the contrary, this Agreement may not be changed in any way except by the mutual written agreement of both parties, as reflected in a written amendment signed by both of them. This Agreement constitutes the entire understanding and agreement between Company and you with respect to the subject matter hereof, and supersedes all prior or contemporaneous oral or written agreements, promises, inducements, offers, representations and other communications with respect to the subject matter hereof, all of which are merged herein.

Attachments to this Program Agreement (each incorporated into and made a part hereof):

- The Application completed, signed and submitted by Participant; and
- Schedule 1 – Usage Guidelines for the Program Marks

**Schedule 1 to the Program Agreement**  
**Usage Guidelines for the Program Marks**

**INTRODUCTION**

The term “**Company Mark(s)**” means (i) the Program Marks, (ii) any other mark, trademark, service mark, name, phrase, logo, or other indicia belonging to or used in business by Company or any of its Affiliates, and (iii) any term, phrase, logo, initials, symbol name or other indicia that Company deems confusingly similar to or otherwise infringing on, dilutive of or disparaging toward any of the foregoing. Other capitalized terms used in this Schedule have the meanings given them in this Program Agreement.

Upon your Certification, you will be given access, in digital or electronic form, to one or more Program Marks. The Program Agreement, including these Usage Guidelines, governs your permitted use of such Program Marks. Company reserves the right to suspend, cancel or modify any authorization to use a Program Mark if in Company’s good faith judgment the use of the Program Mark is not in conformance with these Usage Guidelines, the Program Agreement generally, or applicable law, or if such use impairs or threatens to impair the Program Mark, Company (or an Affiliate), or Company’s (or an Affiliate’s) reputation.

Company may at any time update, modify, withdraw or otherwise change (a) these Usage Guidelines and/or (b) any Program Mark. Any such change shall be effective upon posting to the Campus Website or by other notification (e.g., email, correspondence, etc.). If you are uncertain as to whether a contemplated use of a Program Mark is consistent with these Usage Guidelines, you must request that Company approve the use and must then comply with any good faith requirements of Company as to such use.

**RULES REGARDING USE**

- 1) A Program Mark must be used in the same form, typeface, size, dimensions, color, design and other attributes as provided by Company. You may not make any change to or modification of any Program Mark in any way or to any degree whatsoever.
- 2) A Program Mark must stand alone, and have reasonable blank or background space around its entirety.
- 3) You may not combine or abut with any Program Mark any other mark, logo, initials, symbol, word, phrase or other indicia, nor incorporate any Program Mark into any other design, nor abut or combine two or more Program Marks together.
- 4) The Program Marks shall not appear in headlines or similar highest-profile areas of any websites, web pages, emails, stationary, ads, marketing or promotional material, business cards, brochures, or other means of communication (a “**Communication Medium**”).
- 5) Any Communication Medium in which a Program Mark is used must **CLEARLY AND CONSPICUOUSLY** display the name of the person responsible for the communication and at least two means of contacting such person.
- 6) No use of the Program Marks in any way that might make it appear that the applicable Communication Medium belongs to, is issued/co-issued by, or is sponsored/co-sponsored or endorsed/co-endorse by Company or any Company Affiliate is permitted.
- 7) No use of the Program Marks in any way that might make it appear that the Company or any Company Affiliate sponsors, endorses, guarantees or is affiliated with the Participant, any employer of the Participant, any other third party, or any product, service or other offering of Participant, of any employer of the Participant or of any other third party is permitted.
- 8) There must not be any use of the Program Marks in a way that juxtaposes them with any other person's or company's name, logo, trademark or other indicia such that there is made possible any reasonable implication or inference that there is an affiliation or association between Company (or any Company Affiliate) and such other person or company.
- 9) Any use of Program Marks must not, in perspective with the rest of the content of the applicable Communication Medium, be so physically large, dominating, voluminous, cluttered, repetitive, etc. as to be disproportionate, confusing, misleading or inappropriate.
- 10) Any use of Program Marks must be done in such a way as to present in an accurate, non-exaggerated and positive way the role of Company (i.e., as having ascertained that Participant met the testing requirements for Certification).
- 11) There must be included in any Communication Medium bearing a Program Mark the *Media Notice* set forth in the Application. Such notice must be included in reasonably conspicuous size, position, type font and appearance and it must be placed, and as necessary repeated, so that it would be highly unlikely to be missed or overlooked when ever and where ever a Program Mark will be seen.
- 12) You must comply with all other usage rules, requirements and guidelines issued by the Company from time to time.
- 13) Subject to any specific requirements contained in this Schedule or elsewhere in this Program Agreement, any and all use of a Program Mark must follow ordinary and customary trademark usage consistent with the laws and common practices of any country and/or other jurisdiction in which or with respect to which the Program Mark is used, and no Program Mark may be used in any place, medium or manner prohibited by or otherwise contrary to or inconsistent with applicable law.