

TECHNOLOGY LICENSE AGREEMENT for Commercial Use

This Commercial Use Technology License Agreement (the "Agreement") is made this _____ day of _____, 2014 (herein referred to as the "Effective Date"), by and between Caveon, LLC, a corporation duly authorized under the laws of the State of Utah and having its principal place of business at 6905 South 1300 East, #468, Midvale, Utah 84047 (hereinafter "Licensor") and _____, a _____ duly authorized under the laws of the State of _____ and having its principal place of business at _____ (hereinafter "Licensee"). Licensor and Licensee are referred to herein individually as Party and collectively as Parties.

RECITALS

A. WHEREAS, Licensor is the owner of certain rights, title and interest in and to certain inventions, technology, trade secrets, know-how, issued patents and patent applications relating to methods and systems for preparing Discrete Option Multiple-Choice (DOMC) test questions and presenting answer options to DOMC questions during administrations of a test;

B. WHEREAS, Licensor desires to grant Licensee a non-exclusive license to use, for commercial purposes, the methods, systems and patent rights for preparing DOMC test questions, presenting answer options to DOMC questions during administrations of a test, and preparing for and performing psychometric analysis of responses of DOMC questions;

C. WHEREAS, Licensee is desirous of acquiring from Licensor a non-exclusive license to use, for commercial purposes, the methods and systems for DOMC test questions, presenting answer options to DOMC questions during administrations of a test, and preparing for and performing psychometric analysis of responses of DOMC questions;

NOW, THEREFORE, in consideration of mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

ARTICLE 1: DEFINITIONS

1.1 "Technology".

As used in this Agreement, the term "Technology" shall mean trade secrets, know-how, technology, inventions, systems, methods, and documentation that relate to the methods and systems for preparing DOMC test questions, presenting answer options to DOMC questions during the administration of a test, and preparing for and performing psychometric analysis of responses to DOMC questions.

1.2 "Letters Patent".

As used in this Agreement, the term "Letters Patent" shall mean any and all United States Patent Applications identified in Schedule A, and all patent applications that are continuations,

divisions, reissues, or re-examinations, of any of the foregoing, and any patents granted on said United States applications.

1.3 “Licensed Technology”.

As used in this Agreement, the term “Licensed Technology” shall include the Technology and the Letters Patent as licensed pursuant to Article 2 herein. “Licensed Technology” shall also include any corresponding technical data, instructions and other specifications, specifically for use in conjunction with apparatus, systems, methods, computer-program products, and data structures for preparing DOMC test questions, presenting answer options to DOMC test questions, and preparing for and performing analysis of test results as disclosed in the Technology or in the Letters Patent.

1.4 “Confidential Information”.

As used in this Agreement, the term “Confidential Information” shall mean:

(a) any documents or things disclosed by either Party to this Agreement which at the time of disclosure is marked as “Confidential” or “Proprietary,” or which under the circumstances should reasonably be assumed to be confidential or proprietary; and

(b) any oral disclosure made by one Party to the other, which should reasonably be assumed to be confidential or within thirty days of the initial disclosure or of the effective date of this Agreement, whichever is later, is confirmed in writing by the disclosing Party and such writing is marked as “Confidential” or “Proprietary.” As used herein, the term “Confidential Information” specifically includes commercial as well as technical information relating to the Licensed Technology or the Licensed Product, which information has proprietary value to the disclosing Party and which is disclosed in the manner described in this Paragraph 1.4.

1.5 “Test”.

As used in this Agreement, the term “Test” shall mean any test created by or for Licensee, or which is administered by or for Licensee, which makes use or includes or may make use or may include any of the Licensed Technology. The term “Test” shall include tests, exams, quizzes, surveys or assessments of whatever form, including but not limited to both high-stakes and low-stakes purposes.

1.6 “Number of Annual Tests”.

As used in this Agreement, “Number of Annual Tests” shall mean the total number of high-stakes and medium-stakes tests given by the licensee whether those tests use the DOMC format or not, the permissible Number of Annual Tests as elected by the Licensee and as specified in Schedule A, or as updated in accordance with the provisions herein. For any partial calendar year during the Term of this Agreement, the Number of Annual Tests shall be equal to a pro rata portion of the elected Number of Annual Tests specified in Schedule A or as updated in accordance with the provisions herein.

1.7 “Royalty”.

As used in this Agreement, the term “Royalty” shall mean the charges outlined in Schedule A.

1.8 “Term”.

As used in this Agreement, the term “Term” shall have the meaning set forth in Paragraph 8.1, including the initial period and any automatic renewals.

ARTICLE 2: LICENSE GRANT

2.1 License of Technology.

Subject to the terms and conditions of this Agreement, and in consideration of the mutual covenants and promises contained herein, and for the Royalty recited herein, Licensor hereby grants to Licensee, for the term of this Agreement, a non-exclusive, non-transferable, right and license to practice the Technology, including the trade secrets, know-how, inventions, systems, methods therein, in the Number of Annual Tests.

2.2 License of Letters Patent.

In further consideration of the mutual covenants and promises contained herein, and for the Royalty, Licensor further grants to Licensee, a non-exclusive, non-transferable, right and license to practice the invention(s) claimed in the Letters Patent in connection with the preparation and administration of Tests. The license granted in this paragraph shall extend only until the earliest of: (a) termination of this Agreement; (b) expiration of all of the Letters Patent; or (c) final adjudication that no valid and enforceable claim remains in any issued patent of the Letters Patent. The licenses granted in this Article 2 are without the right to sublicense the Technology or the Letters Patent, and no right or license is being conveyed to Licensee to practice the Technology or Letters Patent in any manner except as expressly conveyed herein.

ARTICLE 3: IMPROVEMENTS TO THE LICENSED TECHNOLOGY

3.1 Notice.

If during the term of this Agreement, Licensee develops an enhancement, improvement, extension, or change to the Licensed Technology, it shall disclose in a reasonable and timely manner such enhancement, improvement, extension, or change in the Licensed Technology to Licensor.

3.2 Improvements and the Letters Patent.

During the term of this Agreement, Licensee shall advise Licensor of any technical improvements and/or inventions relating to the Licensed Technology.

3.3 Cooperation Among the Parties.

Licensor and Licensee agree to cooperate fully, and to endeavor to have their respective employees, contractors, and agents cooperate fully and in good faith in exchanging information and in executing or procuring the execution of any and all documents deemed necessary or desirable by the Party obtaining such for the purpose of perfecting a right in the Licensed Technology, and in obtaining, maintaining, renewing or protecting United States or foreign patents related to the Licensed Technology.

ARTICLE 4: WARRANTIES

4.1 Authority.

Each Party to this Agreement warrants that it has full power and authority to convey the rights granted herein and to perform the obligations arising under this Agreement.

4.2 Ownership of the Licensed Technology.

Licensor warrants as follows: Licensor is the owner of the entire right, title, and interest in and to the Licensed Technology; Licensor has the sole right to grant licenses in relation thereto; and Licensor has granted no other license or interest in the Licensed Technology which it believes is currently exercisable by another to the exclusion of the rights granted herein to Licensee.

4.3 Fitness for a Particular Purpose.

Licensor does not warrant that the Licensed Technology or the Tests will meet the particular needs of Licensee or its customers. THE WARRANTIES MADE IN THIS ARTICLE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY OTHER TYPE OF WARRANTY, WHETHER EXPRESS OR IMPLIED.

4.4 Limitation on Liability.

In the event that Licensee shall assert any claim or claims for damage arising out of this Agreement, the liability of Licensor in respect to such claim or claims shall be limited in the aggregate to the amounts which have been paid to Licensor by Licensee under the terms of this Agreement. In no event shall Licensor be liable for loss of profit, goodwill, or any special or consequential damage suffered by Licensee under this Agreement, irrespective of whether the potential for such loss of profit, goodwill or other special or consequential damage was disclosed by Licensee or could have been reasonably foreseen by Licensor.

ARTICLE 5: INFRINGEMENT OF LETTERS PATENT BY THIRD PARTIES

5.1 Notice of Infringement.

Should Licensee become aware of any infringement or alleged infringement of any of the Licensed Technology, including any actual or alleged misappropriation of the Technology or infringement of the Letters Patent, Licensee shall immediately notify Licensor in writing, and provide the alleged acts of infringement and any available evidence of infringement.

5.2 Patent Infringement Option of Licensor.

Licensor shall have the sole right and discretion to bring legal action against any alleged infringer of any of the Licensed Technology or to negotiate in accordance with its sole discretion an agreement with such alleged infringer providing for the termination of the alleged infringing activity or continuation on such terms and conditions as Licensor may see fit to accept. In the event Licensor elects to initiate legal action for infringement, Licensor shall bear any and all

expenses incurred in connection with such legal action and shall retain any and all monies or other benefits derived therefrom.

ARTICLE 6: ROYALTIES, PAYMENTS AND RECORDS

6.1 Royalty Basis and Rates.

For the license for Technology as extended to Licensee in Article 2 of this Agreement, Licensee agrees to pay Licensor a Royalty for the Tests administered according to the tiered royalty system set forth in Schedule A, which royalty schedule may be updated by Licensor from time to time, but not more than once per calendar year. Except where Licensee changes the Number of Annual Tests in accordance with Paragraph 6.3, where an adjustment to the Number of Annual Tests is made in accordance with Paragraph 6.6, or where the License of the Letters Patent expire in accordance with Paragraph 6.2, all Tests administered during the calendar year shall be based on the same royalty rate consistent with the Number of Annual Tests elected by Licensee.

6.2 Royalty Rate.

Upon expiration of the license granted for the Letters Patent in accordance with Article 2.2 of this Agreement, the Parties hereby agree that the Royalty as set forth herein shall be applicable after expiration of the license for the Letters Patent. The Royalty established in this Agreement is established at arms length.

6.3 Discounts.

Licensee shall be entitled to potential discounts set forth in Schedule A, only to the extent Licensee qualifies for the discount as an Educational Organization or Reseller, and has received a written statement from Licensor acknowledging Licensee's status and entitlement to one or more of the discounts set forth in Schedule A.

6.4 Number of Annual Tests.

If Licensee wishes to change the Number of Annual Tests to receive a different per-Test royalty rate in accordance with the Royalty outlined in Schedule A, it shall notify Licensor of the same and the number of annual Tests requested. Following receipt of such notification, Licensor shall agree to such Royalty, in which case Licensor shall charge Licensee the applicable per-Test royalty rate on all Tests prepared or administered after receipt of such notification.

6.5 Quarterly Reports.

Within fifteen (15) business days of the conclusion of each calendar quarter, Licensee shall provide Licensor with a report detailing the number of Tests administered during the pertinent calendar quarter. Licensor reserves the right to require such a report to be provided according to a format or form as set forth by Licensor, and include any other information reasonably required by Licensor. Otherwise, Licensee shall be entitled to provide the report in any suitable form provided it contains the required number of Tests.

6.6 Payment Date for Royalties.

Licensee shall be invoiced on a quarterly basis. All applicable royalty payments under this Agreement shall be due and payable to Licensor net forty-five (45) days from the date of the applicable Invoice. Late payments shall incur interest at the rate of eighteen percent (18%) per month, or the maximum amount allowable by law, whichever is less, from the date such payments were originally due to Licensor. Where invoicing is delayed due to failure of the Licensee to timely provide a report as set forth in Paragraph 6.4, a payment penalty shall be applied at the rate of eighteen percent (18%), or the maximum amount allowable by law, whichever is less, from the date such report was originally due to Licensor until the time actually received by Licensor.

6.7 Adjustment to the Number of Annual Tests.

At the end of a calendar year, should Licensee fail to administer the Number of Annual Tests necessary for the applicable royalty rate, an adjustment shall be made to the Number of Annual Tests, and an adjustment for all Tests administered during the applicable calendar year shall be invoiced to Licensee.

6.8 Currency.

All royalty payments hereunder shall be made in United States dollars.

6.9 Inspection.

All books and records relative to Licensee's obligations hereunder shall be maintained and made accessible to Licensor for inspection throughout the Term and for two (2) years following termination of this Agreement. Licensee shall make available to Licensor or its representatives, for inspection and/or audit, all records and supporting documentation reasonably relating to Licensee's obligations or performance under this Agreement, including all records necessary to audit the calculation of Tests for the determination of royalty payments. Licensee shall permit the inspection at Licensor's expense, during regular business hours and with reasonable notice, of all records reasonably needed by Licensor or its representatives to audit the accuracy of the quarterly reports made by Licensee hereunder. In the event that an audit results in a deficiency of royalty payments due Licensor of more than ten percent (10%) for any reporting quarter or invoicing period, then Licensee shall pay all reasonable costs for such audit.

ARTICLE 7: IMPLEMENTATION AND ADDITIONAL SERVICES

In connection with the license granted herein with respect to the Licensed Technology in accordance with Article 2, Licensor hereby agrees to provide, upon request made by Licensee, a reasonable amount of consultation services to assist Licensee in planning, implementing and/or achieving operational use of the Licensed Technology. Any request made by Licensee shall be deemed reasonable provided such request requires that Licensor expend no more than 20 hours during the first calendar year and 10 hours during any subsequent calendar year in the provision of such services ("Included Services"). Any services provided by Licensor and which exceed the Included Services shall be completed upon an agreement by the Parties of a rate charged for such services.

ARTICLE 8: TERM AND TERMINATION

8.1 Term and Renewal.

The term of this Agreement shall commence with an initial period of two (2) years running from the Effective Date of this Agreement. Following the initial period, the term of this Agreement shall be automatically renewed an unlimited number of times for individual successive renewal periods constituting one (1) year running from the end of the preceding initial period or renewal period, as appropriate. The automatic renewal of the term of this Agreement may be prevented pursuant to Paragraph 8.2.

8.2 Non-Renewal.

Licensee may prevent the automatic renewal of the Term of this Agreement pursuant to Paragraph 8.1 by providing to Licensor written notice of its desire to prevent renewal at least three (3) months prior to the end of the initial period or renewal period then in effect.

8.3 Default by Licensee.

If Licensee shall at any time default in any material obligation of this Agreement, including failing to timely pay any royalty, timely provide any notice or report, or permit the inspection of its books and records as required, and such default shall not be cured within ten (10) days, Licensor may terminate this Agreement.

8.4 Default by Licensor.

If Licensor should at any time default in any intended obligation of this Agreement, Licensee may terminate this Agreement upon giving sixty (60) days written notice of termination to Licensor, during which term Licensor shall have the opportunity to cure the default.

8.5 Bankruptcy.

To the extent permitted by law, either Party may terminate this Agreement at any time, upon ten (10) days written notice, if the other Party makes an assignment of its assets for the benefit of creditors, applies for the appointment of a receiver or trustee of its assets, or files (or has filed against it) a petition under the bankruptcy or insolvency laws of any jurisdiction, or is adjudicated as bankrupt or insolvent.

8.6 Obligations Accrued or Owing at Termination.

Termination of this Agreement shall not relieve either Party of any obligation or liability accrued prior to such termination or give rise to any right to rescind anything done or other consideration given hereunder prior to the time such termination, and shall not affect in any manner any remedies of either Party arising out of this Agreement prior to such termination.

ARTICLE 9: CONFIDENTIALITY

9.1 Acknowledgements.

The Parties recognize and acknowledge that during the term of this Agreement, each may have access to and/or possession of Confidential Information of the other. The Parties recognize

and acknowledge that Confidential Information constitutes a valuable, special and unique asset and that the provisions of this Article 9 are necessary to protect the Confidential Information.

9.2 Duty to Preserve Confidential Information.

The Parties agree to take all reasonable precautions to safeguard Confidential Information in its possession and to prevent wrongful use of Confidential Information by its employees. Each Party shall require that its employees understand to treat and hold Confidential Information in confidence consistent with the provisions herein. The Parties further agree to utilize Confidential Information solely for furthering the objectives of this Agreement.

9.3 Non-Disclosure.

The Parties agree that, except as specifically allowed by the other, they will not at any time, whether during or after the term of this Agreement, use or disclose Confidential Information to any other person or entity, or permit any other person or entity to use, examine and/or make copies of any documents, files, data, or other information sources which contain or are derived from Confidential Information, unless required by law.

9.4 Survival of Obligation of Confidentiality.

The obligations of this Article 9 shall survive termination of this Agreement, provided, however, that such obligations shall not apply to any of the following:

- (a) information which was disclosed to one Party to this Agreement by a third party who was under no obligation of confidentiality to the other Party to this Agreement;
- (b) information which a Party through documentation can reasonably demonstrate has become generally known through no fault of that Party; or
- (c) information which was developed by or known to a receiving Party prior to disclosure by the disclosing Party, as evidenced by written records.

9.5 Obligation of Parties at Termination.

Within ninety days after the date of termination of this Agreement, for any reason whatsoever, each Party shall furnish the other with written notice specifying that through reasonable care and to the best of its knowledge that following have occurred:

- (a) all Confidential Information embodied in documents or things, including copies thereof, have been returned to the originating Party; and
- (b) the originals and all copies of any machine readable documentation containing any Confidential Information have been destroyed or returned to the originating Party.

ARTICLE 10: ASSIGNMENT

Either party may assign this Agreement in connection with any sale, merger or other business combination involving all or substantially all of a Party's assets. Additionally, Licensor may assign or otherwise transfer any right or interest in this Agreement, or delegate any obligation arising under this Agreement, provided it gives written notice of such assignment, transfer or delegation to Licensee. Except in connection with a sale, merger, or other business combination involving all or substantially all of Licensee's assets, Licensee shall not assign, transfer or delegate its rights or obligations herein without the express written consent of

Licensor. Any assignment, transfer or delegation under this Article 10 shall not be deemed effective until such assignee, transferee, or delegate has agreed in writing to be bound by the terms and conditions of this Agreement.

ARTICLE 11: NOTICE

Any notice, report or demand permitted or required in this Agreement shall be in writing and shall be addressed to the Party for whom intended, with the attention to the undersigned, at its address appearing below, or to such other address as either such Party shall theretofore have designated for such purpose from time to time. All notices under the Agreement must be in writing and shall be sent by certified mail, postage prepaid; by personal delivery; by Federal Express or a similar overnight courier; or by email or facsimile (with a confirming copy by certified mail or overnight courier). Any such notice shall be deemed received five (5) business days after the date it is sent unless the sender receives confirmation of its earlier delivery.

If to Licensor

Caveon, LLC
6905 South 1300 East
Midvale, Utah 84047
Attn: Steve Addicott

If to Licensee:

Attn: _____

ARTICLE 12: GENERAL PROVISIONS

12.1 Entire Agreement.

This Agreement includes all schedules, addenda, and attachments referenced herein or attached hereto, and is the entire agreement between the Parties and supersedes all prior and contemporaneous understandings, communications and agreements between the parties, whether such be oral or written. There are no representations, warranties or other agreements between the Parties which in any manner modify or change the terms of this Agreement. Any changes to this agreement shall be in writing and signed by both parties.

12.2 Amendments; Waiver.

This Agreement may not be amended orally, but only by agreement in writing signed by both Parties. No failure on the part of either Party to object to the other Party's noncompliance with this Agreement, or failure to exercise its remedies for that noncompliance, shall prejudice

that Party's right to object to or its remedy for any subsequent noncompliance. Any waiver by either Party of any breach or noncompliance with any term or condition of this Agreement shall be limited to the particular instance and shall not operate or be deemed to operate as a waiver of any remedy for any future breach or noncompliance with any such term or condition.

12.3 Attorney Fees.

In any suit, proceeding or action to enforce any term, condition or covenant of this Agreement or to procure an adjudication or determination of the rights of the Parties, the prevailing Party shall be entitled to recover from the other Party, in addition to any award of costs or disbursements provided by statute, reasonable sums as attorney fees and costs and expenses in connection with such suit, proceeding or action, including appeal, which sums shall be included in any judgment or decree entered therein.

12.4 Choice of Law.

The Parties agree that this Agreement shall be governed by and construed in accordance with the substantive laws of the State of Utah, irrespective of the choice of law provisions of any jurisdiction.

12.5 Venue.

The Parties agree that (a) venue for any federal action or proceeding filed under this Agreement shall be in a United States District Court for the District of Utah; and (b) venue for any state action or proceeding filed under this Agreement shall be in Salt Lake County, Utah.

12.6 Consent to Service.

The parties hereby irrevocably consent to the service of process, including the summons and compliant, in any such action or proceeding instituted pursuant to this Agreement by mailing copies thereof to the Party.

12.7 Counterparts.

This Agreement or any amendments hereto may be executed in any number of counterparts, all of which, taken together, shall constitute one instrument.

12.8 Headings.

The headings appearing in this Agreement are for convenience of reference only and in no way define limit or circumscribe the scope and intent of this Agreement or any provision herein.

12.9 Severability of Provisions.

All representations, covenants, and conditions contained in this Agreement shall be construed as independent of one another. If all or a portion of any covenant is held to be unenforceable, the Parties shall be bound by any lesser covenant subsumed within its terms, as if the lesser covenant were separately stated in this Agreement, and the remainder of this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date stated above.

LICENSOR

Dated: _____

Company: Caveon, LLC.

Signature: _____

Printed Name: _____

Title: _____

LICENSEE

Dated: _____

Company: _____

Signature: _____

Printed Name: _____

Title: _____

SCHEDULE A

Royalty Rates:

Tier	Annual High- and Medium-Stakes Tests	High- and Medium-Stakes Tests Per-Test Fee	Low-Stakes Tests Per-Test Fee
A	1 to 999	\$1.20	FREE
B	1,000 to 9,999	\$.60	FREE
C	10,000 to 99,999	\$.30	FREE
D	100,000 to 999,999	\$.15	FREE
E	1,000,000 to 9,999,999	\$.08	FREE
F	10,000,000 +	\$.04	FREE

Type of Organizations

_____ Testing Program Please indicate Yes No. My Test Administration Services Provider (TASP) is authorized to support DOMC.

(If you are a testing program, and your TASP has a Commercial License to support DOMC, then there is no need for you to also have a license. You are automatically authorized to administer tests with DOMC items under the TASP's license and it is not necessary to complete this license agreement. If your TASP does not have a Commercial License, or you do not have a TASP, calculate your Annual Fees below.)

_____ Test Administration Services Provider

Standard Discounts (Choose One Only):

_____ Education Discount: 80% (Fees stated above shall be reduced by 80%)

_____ Reseller Discount for Test Administration Services Provider: 40% (Fees stated above shall be reduced by 40%)

Declared Tier:

_____ Tier A

_____ Tier B

_____ Tier C

_____ Tier D

_____ Tier E

_____ Tier F

Fee Calculation:

A. Minimum Annual Fee: \$1000

B. First-Year Annual Fee: Lower-Boundary of Tier Volume multiplied by Per-Test Fee

C. Apply Appropriate Discount of _____ %.

Total Annual Fee Due: _____

Letters Patent:

Title: PRESENTING ANSWER OPTIONS TO MULTIPLE-CHOICE QUESTIONS
DURING ADMINISTRATION OF A COMPUTERIZED TEST

Inventors: David F. Foster

Publication Number: US-2007-0166686-A1

Publication Date: July 19, 2007