

**ASSOCIATION OF TEST PUBLISHERS
NATIONAL COLLEGE TESTING ASSOCIATION**

**OPERATING PROCEDURES FOR DEVELOPMENT OF PROCTORING
STANDARDS**

**ARTICLE I
JOINT MANAGEMENT COMMITTEE**

The Association of Test Publishers (“ATP”) and the National College Testing Association (“NCTA”), through their respective Boards of Directors, having agreed to jointly develop standards for proctoring tests, hereby adopt these Operating Procedures that shall govern this project (“Operating Procedures”). Because it is in the best interests of effective management of this project, the ATP and the NCTA agree to each name a person who shall serve together as co-managers and mutually shall manage and oversee all activities under the Operating Procedures requiring actions by the ATP and the NCTA (“Joint Management Committee” or “JMC”). A co-manager may only be replaced or removed by the Board of Directors of the organization that appointed the person to the JMC, in accordance with that Board’s procedures.

**ARTICLE II
TECHNICAL WORKING GROUP**

**Section 2.1
Technical Working Group**

The Association of Test Publishers (“ATP”) and the National College Testing Association (“NCTA”) shall jointly establish a Technical Working Group (“TWG”) that shall handle the development of proctoring standards (“the Project”). The scope of such standards shall be proposed initially by the Joint Management Committee, which shall not be developed as a “certification standard” (i.e., requiring users to be certified); however, the TWG shall review and propose modifications to the scope of the standards, which shall be submitted by the TWG and submitted for approval by the Joint Management Committee.

Section 2.2 Membership

Any member of the Association of Test Publishers (“ATP”) or the National College Testing Association (“NCTA”) that indicates its willingness to participate in the work, shall be allowed to appoint a representative to the Technical Working Group (“TWG”). In addition, the ATP and the NCTA shall provide a mechanism for allowing participation by members of the public that submit an application to the Joint Management Committee and agree to be bound by these Operating Procedures and comply with Section 2.3. A member of the public (e.g., a non-Member of the ATP and the NCTA) requesting to participate in the TWG shall be approved by the Joint Management Committee if that person is representing an organization that demonstrates an interest in the development of Proctoring Standards, conditioned on the organization making a commitment to participate fully in the work and acknowledging that its representative may be removed by the JMC if s/he fails to participate fully. Collectively, all members of the TWG are the “Participants.” Only one Participant per Member or Non-Member shall be entitled to vote on any matter at the TWG, whether it is a vote on a business decision (see Section 2.9) or a vote on a standard (see Section 4.2).

Section 2.3 Non-Member Participation

Non-members of the ATP or the NCTA (including consultants, lawyers, testing professionals, federal and state agency administrators, etc.) may attend meetings of the Technical Working Group without joining either organization, but such non-members may not vote or obtain access to standards and related documents unless they become a member of either the ATP or the NCTA, or pay the appropriate fee(s) as set from time to time by the Joint Management Committee, and ratified by the Board of Directors of both organizations, for such standards and documents. Non-members also may be charged a fee for attendance at any Technical Committee, Subcommittee, or Working Group meeting to help defray meeting costs, as determined from time to time by the Joint Management Committee.

Section 2.4 Responsibilities

The Technical Working Group shall oversee and direct the development of standards for test proctoring, including both physical and remote proctoring (“Proctoring Standard”). The scope of which shall be proposed initially by the JMC and reviewed and confirmed by the TWG; the TWG may propose

modification of the scope of the standards, which must be approved the JMC. The responsibilities of the TWG shall include the management of any Subcommittee(s) that might be formed to handle specific topics or portions of the work. At least quarterly, the TWG shall report to the JMC on the status of all activities within its jurisdiction.

Section 2.5 Co-Chairs

The Co-Chairs of the TWG shall be appointed by the Joint Management Committee, one from the ATP and one from the NCTA. A Co-Chair of the TWG may only be replaced or removed by the JMC for failure to fairly and/or diligently fulfill his/her duties and responsibilities as set forth in these Operating Procedures.

Section 2.6 Other Officers

The TWG Participants shall be able to designate other officers from among its Participants, including, but not limited to a Vice Chair. The Co-Chairs of the TWG may delegate any of their duties to other officers duly designated by the TWG.

Section 2.7 Meetings

The Technical Working Group Chair shall call meetings consistent with Section 2.8 and Section 3.3.

Section 2.8 Notice

Notice of each meeting of the Technical Working Group stating the date, time, place, and purpose(s) of the meeting shall be given to each Participant at least five (5) business days prior thereto by e-mail or personal delivery of written notice (the method of notice need not be the same as to each member), by facsimile, or by any other method approved by the TWG. Any TWG Participant may waive notice of any meeting before, at, or after such meeting. The attendance of a TWG Participant at a meeting shall constitute a waiver of notice of such meeting.

Section 2.9 Quorum and Voting on Business Decisions

Unless otherwise provided by both the ATP Board of Directors and the NCTA Board of Directors, twenty-five percent (25%) of the Participants of the Technical Working Group who are eligible to vote shall constitute a quorum for the transaction of any business at any meeting, except for votes on recommending adoption of the draft or final standard, for which Section

4.2 shall apply, and the vote of the majority of the eligible Participants present in person at a meeting at which a quorum is present shall be the act of the Technical Working Group, unless specifically provided otherwise in these Operating Procedures. If less than a quorum is present at any meeting properly noticed and called, the Participants present may continue the meeting. If a quorum is not available and a formal vote is required, an electronic vote shall be undertaken, and a majority of those voting shall constitute the disposition of the question.

Section 2.10 Electronic Balloting

The Technical Working Group is expressly permitted to conduct electronic votes.

Section 2.11 Meetings by Telephone

Participants may participate in a meeting of the Technical Working Group by means of conference telephone by which all persons in the meeting can hear each other at the same time. Such participation shall constitute being present in person at a meeting of the Technical Working Group.

Section 2.12 Minutes

The minutes of each Technical Working Group meeting shall be made available to all Participants and submitted within a reasonable time frame to NCTA counsel and ATP counsel for legal review. Minutes shall be presented in draft form for approval by the TWG subject to review by NCTA counsel and ATP counsel.

ARTICLE III OPERATING PROCEDURES

Section 3.1 Operating Procedures

Procedures for governing the operation of Technical Working Group (“TWG”) shall be adopted by the respective Board of Directors for the ATP and the NCTA, which procedures may be changed from time to time as required assure the smooth functioning of the TWG. The Joint Management Committee shall maintain such Operating Procedures, as well as a list of the members of the TWG. A copy of these Operating Procedures shall be made available to each Participant of the TWG.

Section 3.2 Technical Working Group Officers

Section 3.2.1 The TWG Co-Chair, as established under Section 2.5, are the principal agents of the Joint Management Committee and shall have the following duties, which shall be apportioned between them, or delegated by them to other officers designated by the TWG:

- Calling the required meetings of the Technical Working Group consistent with Section 2.9 and 3.3;
- Preparing in advance of each meeting an agenda (and any pre-reads) for that meeting;
- Chairing meetings of the TWG and ensuring they are conducted impartially;
- Ensuring that the Working Group Antitrust and IP Policies are summarized for each participant at each meeting;
- Arranging for minutes of each meeting to be kept and submitted to the ATP Counsel and NCTA Counsel for legal review and recording;
- Responding to inquiries from the Joint Management Committee, and others, including from the public at large;
- Reviewing the TWG actions/progress for the ATP and the NCTA Boards of Directors meetings and providing updates to the Joint Management Committee on the work of the TWG;
- Encouraging the members to reach consensus on issues being addressed by the TWG;
- Ensuring prompt and efficient progress of the TWG's work;
- Acting as a secretary to keep minutes of each meeting of the TWG, or overseeing the delegation of these duties to another Participant at each meeting;
- Coordinating with any technical writer for the TWG to ensure accuracy in all versions of the draft Standard;
- Acting as parliamentarian at meetings, when required;
- Serving on ad hoc subgroups, as needed.

- Tracking the status of TWG work/action items;
- Assisting the Joint Management Committee in developing explanatory material for letter ballots; and
- Carrying out or delegating all other duties not specifically enumerated herein.

Section 3.3 Meetings

Meetings of the Technical Working Group shall be held as necessary to carry out their duties and functions when called by the Co-Chairs; provided, however, that the TWG shall meet either in-person or via teleconference at least quarterly. Failure to conform to this schedule is grounds for replacement of the Co-Chairs. Minutes of each Technical Working Group meeting shall be kept, which shall be in writing and submitted in a reasonably timely manner to counsel for each of ATP and NCTA for review. Once minutes have been approved by the TWG, the Joint Management Committee shall cause them to be posted on the ATP website and the NCTA website.

Section 3.4 Notice

Section 3.4.1 Notice of each Technical Working Group meeting stating the date, time, place, and purpose(s) of the meeting shall be given to its members at the last known business email address of each member as shown by the books of the Organization at least five (5) business days prior thereto by e-mail or personal delivery of written notice (the method of notice need not be the same as to each TWG member), by facsimile, or by any other method approved by the Joint Management Committee.

Section 3.4.2 Any Participant in the Technical Working Group may waive notice of any meeting before, at, or after such meeting. The attendance of any Participant at a meeting shall constitute a waiver of notice of such meeting, except where a Participant attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.4.3 Notice of Technical Working Group meetings must be sent to the Joint Management Committee, which shall ensure that both the ATP and the NCTA publish each such notice.

Section 3.5 Submissions to the Technical Working Group

Section 3.5.1 "Submission" means any contribution of ideas, suggestions, and/or materials made by any Participant in the Technical Working Group for incorporation into, or modification of, the draft Proctoring Standard, whether it is submitted in writing, electronically, or orally.

Section 3.5.2 No Participant or other contributing party ("Submitter") shall knowingly make a Submission to the Technical Working Group that: (1) infringes the intellectual property rights of any third party, including any copyright or trade secret rights; or (2) would require any implementing product to be disclosed or distributed in source code form. All submissions shall conform to the IP Policy (see Article VI).

Section 3.5.3 All Submissions shall become the work product jointly owned by the ATP and the NCTA, subject to the Intellectual Property Policy (Section 6.1), unless an appropriate IP disclosure is made by the Submitter or until the Joint Management Committee determines not to use the Submission, in which case IP ownership shall revert to the Submitter. Joint mutually-agreed procedures governing Submissions made pursuant to this provision shall be adopted by the JMC, which may be changed from time to time as required pursuant to the provision in Section 9.1. The Joint Management Committee, or its designee, shall maintain such Submissions procedures, and ensure that they are followed by the TWG.

ARTICLE IV STANDARDS APPROVAL AND ADOPTION PROCESS

Section 4.1 Definition of Proctoring Standard

The term "Draft Standard" shall mean the proposed or recommended proctoring standards, specifications, technical guidance documents, implementation guides, or other related documentation developed by the Technical Working Group. The term "Final Standard" shall mean such final version of the Proctoring Standard adopted by a vote of the TWG and the respective Boards of Directors of the ATP and the NCTA.

Section 4.2 Consensus Voting

Votes on approval of the Draft Standard for recommendation to the Joint Management Committee and then to the respective Boards of Directors for the ATP and the NCTA, shall be consensus votes. Negative votes or comments on the Draft Standard are to be reviewed and addressed first by the Working Group considering the draft, and the resolution of those comments, including any correspondence with the parties, shall be forwarded to the Joint Management Committee following any vote, consistent with the procedures set forth in Section 4.4 (see below) governing Public Comments, whether or not the draft has been circulated for Public Comment or is still in preliminary draft form and has not yet been released for Public Comment. Although this development process for the Proctoring Standard is not accredited by the American National Standards Institute (“ANSI”), consistent with ANSI procedures, consensus is defined as more than a mere majority of the members of the Working Group, but not a unanimous approval. Only eligible Participants in good standing may vote to reach such a consensus to recommend approval of draft Standards or adoption of the Final Proctoring Standard. The Joint Management Committee shall maintain this correspondence in the official files.

Section 4.3 Standards Adoption

The Co-Chairs of the Technical Working Group shall send the final voting tally on any proposed Draft Standard by the Working Group, including all negative comments, to the Joint Management Committee, which shall ensure that the Draft Standard conforms to all Operating Procedures and which shall submit the Draft Standard to legal counsel for review. After any affirmative consensus on a proposed Draft Standard is confirmed, the Joint Management Committee shall send the final voting tally, including the resolution of all negative comments, to the Boards of Directors of the ATP and the NCTA for their respective review and vote on adoption of a Final Standard.

Section 4.4 Public Comments

Section 4.4.1 The Technical Working Group shall release any Draft Standard or related document for Public Review and Comment following adoption of the initial draft proposal. The Public Review and Comment period shall be at least sixty (60) calendar days. A notice shall be posted to

the home pages of both the ATP and NCTA websites, notifying all members and other interested parties of the availability of the Draft Standard.

Section 4.4.2 Comments received during this 60-day period shall be considered by the Technical Working Group in accordance with Section 4.2. Negative votes shall be accompanied by documentation that includes the following: (a) a specific paragraph, sections, or parts to which the negative ballot pertains; (b) specific substantive reason(s) for the objection; and (c) proposed wording or action requested to resolve the objection.

Section 4.4.3 Every comment shall be considered and resolved in accordance with this subsection before a ballot is considered to have been approved by the Technical Working Group. Consideration given to all comments, including an explanation of resolution decisions, shall be documented in meeting notes, minutes, or other records and submitted to the Joint Management Committee. If comments are received pertaining to these policies and procedures, the TWG shall seek input from the Joint Management Committee on how to resolve those questions, but the eventual resolution of comments shall rest with the TWG, subject to the following general guidelines, which are consistent with those stated in the ANSI Essential Requirements (2015).

Comments should in most instances be resolved in one of the following ways:

- (a) Comments on affirmative ballots determined to be persuasive and editorial in nature: the proposed editorial changes are incorporated into the document and the draft shall be approved with those changes.
- (b) Comments on affirmative ballots determined to be persuasive and substantive in nature: accepted substantive changes are treated as a negative comments and the revised draft must be re-balloted.
- (c) Comments on affirmative ballots determined not to be technically persuasive: such comments are not considered further.

(d) Comments on negative ballots that are determined to be persuasive and substantive will be accepted as substantive changes and will be re-balloted, as provided in subsection 4.5 below.

(e) Comments on negative ballots may be withdrawn by the commenter after consultation with the Chair of the Technical Working Group and that Participant's vote shall be changed in writing or through electronic communications to either an abstention or an affirmative vote. If a negative vote is not changed in writing or through electronic communication, it shall be reported as an outstanding negative comment and must be reported as such to the Joint Management Committee.

(f) Comments on negative ballots that are determined to be technically non-persuasive or are found to be unrelated to the item being balloted will not be considered further.

Section 4.5 Re-balloting

If any substantive changes are made to a Draft Standard as a result of comments received to an initial ballot or through Public Comment, the entire document may be re-balloted, or only those items that were substantively changed during ballot resolution may be re-balloted. Re-balloting procedures are the same as balloting procedures, including provision of another 60-day Public Comment period.

Section 4.6 Adoption of Final Standard

Only after all comments have been addressed by the Technical Working Group shall the Draft Standard be submitted as the Final Proctoring Standard to the Boards of Directors of the ATP and the NCTA for final adoption. Disagreements between the Boards shall be resolved by the TWG reviewing the issues of disagreement and proposing revised language for resubmission to both Boards.

4.7 Appeals

Any person having a material interest in the Final Proctoring Standard shall have the right to bring a timely appeal to raise objections to the procedures used to adopt the final standard; provided, however, that such person must have exhausted all operating procedures for conflict resolution in the standards development process, including consideration of negative ballots, before lodging any appeal. Appeals shall be considered by the Technical Working Group, with the right of further appeal to the Joint

Management Committee; provided that no member of the Joint Management Committee who has an interest in the outcome of any appeal shall participate in such resolution. The Joint Management Committee may call upon experts familiar with the issues of the dispute. The appellant shall be given the opportunity to appear before the Committee to present evidence and arguments in support of its objections.

Initially, the Joint Management Committee shall consider whether applicable policies and procedures were satisfied and whether the procedural and substantive actions or requirements complained of merit corrective action. The Committee shall issue a written decision within forty-five (45) calendar days after any hearing or submission of evidence by the appellant. The decision shall indicate the conclusions reached, their bases, and the right of further appeal. The Joint Management Committee shall ensure that a complete record of the appeal is compiled and maintained in conformance with these Joint Operating Procedures.

Section 4.8 Electronic Balloting

The Technical Working Group is expressly permitted to conduct electronic votes on adoption of draft standards and recommendation of the Draft Standard to the next level of review.

ARTICLE V REVISIONS TO STANDARD

Section 5.1 Authority to Maintain the Proctoring Standard

The Technical Working Group may continue in existence, or be re-established, to function in a manner that provides for periodic review and updating of the Proctoring Standard if the ATP and/or the NCTA receives requests to maintain, change, or update the Proctoring Standard submitted by a member, or by members of the industry. In that event, the Joint Management Committee shall initially consider such request, and if the Committee determines that such a change is merited, it shall be submitted to the Technical Working Group for consideration in accordance with the following procedure.

Section 5.2 Procedures for Approving Change Requests

Section 5.2.1 Change Requests shall be submitted electronically to the ATP or the NCTA and, upon the decision of the Joint Management Committee to continue or re-establish the Technical Working Group, any such Change Requests shall be provided to the TWG for review. Based on that preliminary review, the TWG may decide to schedule a meeting to consider the requested change(s).

Section 5.2.2 At least fifteen (15) calendar days in advance of such meeting of the Technical Working Group, the Joint Management Committee shall simultaneously post any proposed Change Request that has been received on the ATP website and the NCTA website and circulate it to all Participants of the TWG. A formal vote on all Change Requests received, posted, and circulated in accordance with these procedures, as well as Change Requests originated by Participants during the course of a TWG meeting and agreed to be voted on at such meeting, will be taken at the upcoming meeting, or by electronic ballot subsequent to the meeting, if the Members in attendance at the meeting failed to reach a consensus.

Section 5.2.3 Approval of any Change Request shall require that at least a majority of the Participants of the Technical Working Group who are eligible to vote cast a ballot and that each individual Change Request is agreed to by at least two-thirds (2/3) of the actual votes cast.

Section 5.3 Procedures for Versioning Standards

Versioning of the Final Proctoring Standard will be strictly controlled to ensure fairness to all implementers and the industry as a whole. The Technical Working Group shall make its recommendation concerning whether any proposed changes or update to the current version of the Proctoring Standard constitutes a major, minor, or point release. Final approval of such versioning decision for the Final Proctoring Standard shall rest with the Joint Management Committee. At the time that such a versioning decision is made, the Joint Management Committee shall also determine whether the preceding version of the Standard will continue to be supported by the ATP and the NCTA.

ARTICLE VI INTELLECTUAL PROPERTY POLICY

Section 6.1 General Policy

The ATP and the NCTA have jointly developed and funded the Technical Working Group. The goals of the efforts are to research, develop, and maintain proctoring standards that enable members of the ATP and the NCTA, as well as the testing industry in general, to become more efficient, to reduce costs, and to increase profitability. Work on this Project includes development of intellectual property. Because of the serious implications such intellectual property holds for the standards process, the ATP and the NCTA have jointly adopted a Policy respecting how they, and their members, as well as any non-members who participate in standards development activities (collectively "Participants"), will treat any intellectual property assets.

This Policy governs the development of the Draft Standard, as well as adoption of the Final Proctoring Standard, including the protection and administration of intellectual property that may be associated with the Standard after it has been adopted.

Section 6.2 Compliance and Openness

Section 6.2.1 This IP Policy is consistent with the Standards Development procedures adopted by the American National Standards Institute (ANSI), including the ANSI Patent Policy as approved periodically by the ANSI Board of Directors (the "ANSI Procedures"), which is incorporated herein.

This Policy conforms in all material respects to the ANSI Procedures in order to ensure that nondiscriminatory licenses for free or reasonable royalties are available if patented or patentable elements are included within the Proctoring Standard.

Section 6.2.2 Meetings of the Technical Working Group are open to all parties that have a direct or material interest in developing, maintaining and using a standard for test proctoring, including all industry retailers and

vendors, subject to the voting rights for each class of membership (Participants).

A summary of this Intellectual Property Policy will be presented at the beginning of each standards development meeting in order to ensure that all Participants are aware of its requirements and effects. The ATP and NCTA shall provide timely and adequate notice of all meetings in accordance with Section 3.4, and meeting agendas will be published prior to each meeting. Detailed minutes of each meeting are promptly published for Participants.

Section 6.3 Duty to Disclose Intellectual Property

Section 6.3.1 Because Participants and the testing industry as a whole will rely upon the Proctoring Standard, the ATP and the NCTA have adopted a duty to disclose Intellectual Property Rights in any work undertaken by the Technical Working Group. It is imperative that every Participant in the standards process knows what potential patents or copyrights might affect the proposed Proctoring Standard as it is being discussed, debated, and modified. Early disclosure of the patented/copyrighted technology enhances the efficiency of the process used to develop and finalize the Proctoring Standard, giving the ATP, the NCTA, and other Participants the greatest opportunity to evaluate the propriety of standardizing any such technology while allowing a patent holder ample time to determine how it wants to treat standardizing the IP. The failure to disclose claimed intellectual property rights may induce other Participants to act to their detriment and seriously undermines the utility of the Proctoring Standard.

Section 6.3.2

(A). A Participant is obligated to disclose to the Joint Management Committee any patents that it owns or any patent applications that it files in any form with the US Patent and Trademark Office, as well as to disclose the existence of any copyrights that it owns, to the extent claims in the patent are in conflict with a Draft Standard (also referred to as “essential elements” of the patent in the ANSI procedures or “necessary IP” where it is not possible to use or practice the standard without infringing the patent

claim or copyright) or are necessary to use or implement the proposed Draft Standard when it is adopted as a Final Proctoring Standard ("Exclusive IP Rights") (i.e., it is not possible to use or practice the standard without infringing the patent claim). In addition, a Participant is encouraged to disclose any potentially relevant patents, patent applications, or copyrights owned by any third party of which it becomes aware during the standards development process. Disclosure of Exclusive IP Rights should be made as soon as a Participant realizes or becomes aware that its Exclusive IP Rights are or may be in conflict with the language in the Draft Standard, or a subsequent version thereof, and is an ongoing responsibility during the development of the Final Proctoring Standard, although a Participant shall have a reasonable period of time to disclose not to exceed forty-five (45) calendar days, following any new or revised language, to review it, conduct any necessary patent searches, and prepare and make a required disclosure. Once the Disclosure Notice is received, the Joint Management Committee will disclose the information to the TWG within five (5) business days.

(B) Because the ATP and the NCTA have adopted a New Work Item to develop the Proctoring Standard, they will immediately call for disclosure of intellectual property from the members of the Technical Working Group as soon as it is formed, related to the proposed work and shall grant Participants a reasonable period of time not to exceed forty-five (45) calendar days to respond to a call for disclosure of intellectual property. The Joint Management Committee will gather any submissions and disclose the information to the TWG involved within fifteen (15) business days after the initial meeting.

(C). The written notification by a Participant to the Joint Management Committee ("Disclosure Notice"), using the approved form, should, at a minimum, include identification of the specific element(s) of the Exclusive IP Rights that it considers to be in conflict with the proposed standard and information to identify how the Exclusive IP Rights would interfere with or hinder adoption of the proposed standard; however, in the case of pending filed patent applications the Participant must only identify with reasonable

particularly the specific claims or elements it believes would be essential to use or implement the proposed Draft Standard.

Section 6.3.3

(A) A Participant claiming Exclusive IP Rights in a Disclosure Notice that may affect the use or implementation of the proposed Draft Standards, and who agrees the Exclusive IP may be incorporated, must also agree to give assurances to the Joint Management Committee either to disclaim such Exclusive IP Rights or to provide licenses to all potential users of the Final Proctoring Standard with no fee or on fair, reasonable and nondiscriminatory terms and conditions, including a commitment that its assurances are binding on any transfer of such Exclusive IP Rights, and that the transferee will similarly include appropriate provisions in the event of future transfers with the goal of binding each successor-in-interest. Alternatively, a Participant retains the right to inform the Joint Management Committee that its Exclusive IP Rights will not be made available for use in the Draft Standard.

(B) In the event a Participant fails to notify the Joint Management Committee of Exclusive IP Rights in accordance with Section 6.3.2, and a Standard is adopted that is in conflict with later-discovered Exclusive IP Rights, the Participant agrees that it shall: (1) disclaim the Exclusive IP Rights with respect to its inclusion in the Final Proctoring Standard; and (2) not seek to enforce the non-disclosed conflicting Exclusive IP Rights against any implementer of the Final Proctoring Standard.

(C) If the Joint Management Committee determines that a Participant has violated the provisions of the IP Policy, it shall be entitled to seek approval of the respective Boards of Directors of the ATP and the NCTA to immediately suspend the Participant's right to participate in the Technical Working Group, pending the resolution of a formal suspension or expulsion.

Section 6.4 Ownership of Rights and License

Section 6.4.1 The value of the standards process lies in the Final Proctoring Standard jointly developed and adopted by the ATP and the NCTA. The ATP and the NCTA respectively agree to act as stewards of the

final Standard. By doing so, the ATP and the NCTA can obtain jointly owned copyrights to protect the dissemination of the Standard and any derivative works. The ATP and the NCTA shall use this copyright protection to secure control over the proposed and Final Proctoring Standard and related documents for purposes of their maintenance, sales and use, thereby assuring that only one interpretation of the Standard is accepted by the testing industry. By participating in the Technical Working Group, Members agree that the ATP and the NCTA shall retain all right, title and interest in and to the Proctoring Standard and that Participants agree to assign jointly to the ATP and the NCTA all right, title and interest in and to the Standards adopted by the ATP and the NCTA, including all working papers, electronic files and correspondence related thereto. Participants who have agreed to the terms of this Policy shall be deemed to receive a license from the ATP and the NCTA to use and adopt the Standard, but may not automatically claim compliance with such Standard.

Section 6.4.2 In order to facilitate this copyright policy, the ATP and the NCTA shall make available the Final Proctoring Standard and related documents to members and non-members on different bases. All copyright notices on the Final Proctoring Standard and all standard-related documentation shall include at least the following notice, along with any other specific notices required for specific circumstances:

“Copyright © ASSOCIATION OF TEST PUBLISHERS and NATIONAL COLLEGE TESTING ASSOCIATION (Date). All Rights Reserved.”

Section 6.4.3 In addition to the general notice contained in Subsection 6.4.2, documents for public distribution without charge, including those being posted to the non-member section of the website, shall contain language noting that these documents do not contain explanatory implementation documentation or other proprietary information, and may be shared with anyone without restriction or permission from the ATP and the NCTA, except that any derivative work for publication, including documents quoting, citing, or based upon the Proctoring Standard, is expressly prohibited, unless the user obtains prior, written permission from the ATP and the NCTA. All copyright notices for public standards and related documents shall include the following notice:

“This document may be furnished to others, along with derivative works that comment on or otherwise explain it or assist in its implementation that cite or refer to the standard, specification,

protocol or guideline, in whole or in part. All other uses must be pre-approved in writing by the Association of Test Publishers (“ATP”) and the National College Testing Association (“NCTA”). Moreover, this document may not be modified in any way, including removal of the copyright notice or references to the ATP and/or the NCTA. Translations of this document into languages other than English shall continue to reflect the ATP and NCTA copyright notice.

The limited permissions granted above are perpetual and will not be revoked by the ATP and/or the NCTA, or their successors or assigns.”

Section 6.4.4 In addition to the general notice contained in Subsection 6.4.2, documents being sold to non-members shall contain language noting that such documents may be shared only on a limited basis, that any inconsistent use requires written permission from the JMC, and that any derivative work for publication, including documents quoting, citing, or based upon the Final Proctoring Standard, is expressly prohibited, unless the user obtains prior, written permission from the JMC. All copyright notices for non-member standards and related documents shall include the following notice:

“This document may be copied or used exclusively for the benefit of the purchaser for purposes consistent with adoption of the Final Proctoring Standard; however, any inconsistent uses must be pre-approved in writing by the Association of Test Publishers (“ATP”) and the National College Testing Association (“NCTA”). As such, this document may not be furnished to non-members of either the ATP or the NCTA, except for the limited sharing with a direct contractor of purchaser whose responsibility is to implement the standard for purchaser; however, any derivative works that comment on or otherwise explain it or assist in its implementation may not cite or refer to the standard, specification, protocol or guideline, in whole or in part, without such permission. Moreover, this document may not be modified in any way, including removal of the copyright notice or references to the ATP and the NCTA. Translations of this document into languages other than English shall continue to reflect the joint ATP/NCTA copyright notice.

The limited permissions granted above are perpetual and will not be revoked by the Association of Test Publishers and/or the National College Testing Association, or their successors or assigns, except in the circumstance where an entity, who is no longer a member in good standing but who rightfully obtained the Proctoring Standard as a former member, is acquired by a non-member entity. In such circumstances, the ATP and the NCTA may revoke the grant of limited permissions or require the acquiring entity to establish rightful access to the current Proctoring Standard through membership.”

Section 6.4.5 Documents available to Members shall be made available only to Members and shall contain language noting that such documents contain explanatory implementation documentation or other proprietary information and that members of the ATP and the NCTA shall not share them with any other party who is not a member of either the ATP or the NCTA. Any derivative work for publication, including documents quoting, citing, or based upon the Proctoring Standard, is allowed, but the member of either the ATP or the NCTA is restricted to sharing such derivative works only with other members who possess document rights or with direct contractors who are responsible for implementing the standard for the member. Members of the ATP and the NCTA also are expected to inform any non-member with which it deals that, in order to gain access to the explanatory or implementation Standard or related materials, the non-member must purchase the underlying Standard or other proprietary material, or join the ATP or the NCTA. All notices for member standards and related documents shall include the following notice:

“A member of the ATP or the NCTA may use this document for purposes consistent with the adoption of the Proctoring Standard; however, the ATP and the NCTA must pre-approve any inconsistent uses in writing.

The ATP and the NCTA recognize that one of their members may wish to create a derivative work that comments on, or otherwise explains or assists in implementation, including citing or referring to the standard, specification, protocol, schema, or guideline, in whole or in part.

This document may not be modified in any way, including removal of the copyright notice or references to the Association of Test Publishers or the National College Testing Association. Translations of this document into languages other than English shall continue to reflect the joint ATP/NCTA copyright notice.

Section 6.4.6 Notwithstanding any of the terms contained in the Operating Procedures, NCTA and/or its designee shall have the right to use the Proctoring Standard to develop, market, operate and/or license a proctor training and certification program (“Proctor Certification Program”), and NCTA will not be obligated to pay any license fees for the use of the Proctoring Standard or share any revenue derived from the Proctor Certification Program with ATP.

ARTICLE VII ANTITRUST POLICY

7.1 General Policy

As trade organizations, the ATP and the NCTA are recognized as valuable tools of American business. However, one of the potential dangers which members of any organization face is compliance with federal and state antitrust laws, which generally forbid any combination, contract, or conspiracy between two or more entities that restrains trade. Because the Proctoring Standards Technical Working Group is by nature comprised of a combination of competitors, all Participants must ensure that their activities do not violate the law. Accordingly, the ATP and the NCTA shall require that each Participant in the Technical Working Group abides by this Antitrust Policy, including the specific restrictions summarized herein.

7.2 Prohibited Actions

The following activities are among those that have been held to be per se illegal under the antitrust laws:

- Agreements to fix prices, regardless of whether prices are increased, decreased, stabilized or set according to an agreed formula or subject to uniform discounts or allowances, including topics that might indirectly affect prices, such as costs, discounts, profit levels, production

schedules or cost margins, standardization or stabilization of prices, pricing procedures, credit terms, or control of sales.

- Agreements to restrict volume or production;
- Agreements to divide or allocate territories or customers;
- Agreements not to deal with a specific customer or supplier or group of customers or suppliers (i.e. a boycott); while Participants can talk about their dissatisfaction or satisfaction with a class of goods or services, they cannot single out a specific supplier/vendor for derision or criticism in a group setting.

Participants in the TWG should, therefore, refrain from any discussion that could be interpreted as an agreement to take common action on prices or production or allocation of customers or markets. This is especially true in the setting of an informal gathering, either before or after a regular meeting.

7.3 Guidelines for the Technical Working Group

In order to avoid potential antitrust problems, the ATP and the NCTA adhere strictly to the following guidelines:

- Meetings of the Technical Working Group are held only when there is appropriate business or standards work to discuss.
- New members will receive a copy of the full Antitrust Policy that explains the antitrust laws and outlines their responsibilities as members of this Technical Working Group, under the antitrust laws.
- Agendas of TWG meeting are prepared, reviewed by NCTA counsel and ATP counsel and circulated to members.
- An antitrust statement and acknowledgement by the Participants in attendance will precede all regularly scheduled meetings.
- NCTA counsel and ATP counsel participates in the drafting of minutes and attends meetings of the Technical Working Group, when appropriate, unless the chair of the Technical Working Group has been trained in these areas.
- If Participants in the TWG at any time have questions regarding the propriety of any activities of this Technical Working Group, or have

questions in general regarding the antitrust laws, they are encouraged to seek legal counsel through the organizations that they represent and/or through NCTA counsel and ATP counsel. Participants should contact the Joint Management Committee if they have any question regarding their compliance with antitrust laws, so that counsel for each of the NCTA and ATP can review the issue and render advice as appropriate.

ARTICLE VIII MISCELLANEOUS PROVISIONS

Section 8.1 Changes to Procedures

The ATP and the NCTA, by and through authority granted to their respective Boards of Directors, reserve the right to establish, change or update any operating procedures at any time by posting a notice to that effect on their respective websites, or by sending notice of the change to the Participants of the TWG either by first class mail, or by e-mail. The updated Operating Procedures and Guidelines will become effective upon such notice.

Section 8.2 Parliamentary Procedures in the Absence of an Existing Rule or Procedure

In the absence of a conflicting procedure set forth herein, or any other conflicting procedure that applies to decision making by the respective Boards of the ATP or NCTA, all decisions made in relation to the joint efforts of the ATP and NCTA to develop and manage the Proctoring Standards shall be made in accordance with the parliamentary procedures set forth in the most current version of Robert's Rules of Order.

Section 8.3 Maintenance Agencies

Section 8.3.1 The Technical Working Group should notify the Joint Management Committee of the need to maintain the Final Proctoring Standard as soon as that potential is obvious in order that the ATP and the NCTA may take appropriate action at the most appropriate time. This notification should preferably be in advance of the publication of the draft standard in order that any interim functions may have full authority by the respective Boards of Directors of the ATP and the NCTA.

Section 8.3.2 The ATP and the NCTA shall have the authority to designate one or other of themselves, or any approved entity, as a maintenance agency in connection with the Final Proctoring Standard, including the designation of the Technical Working Group to perform that function.

Section 8.3.3 The membership of any maintenance agency within the ATP or the NCTA shall be approved by both Boards of Directors.

Section 8.3.4 The rules of procedure of any maintenance agency designated shall be subject to approval by the ATP and the NCTA, and any other requested delegation of authority in connection with the updating of the Proctoring Standard or the issuing of amendments shall be specifically authorized by the ATP and the NCTA.

Section 8.4 Website

The ATP and the NCTA shall maintain at least one website or web-based application for the use of the Technical Working Group (“Website”). Such Website, or such separate websites as deemed appropriate by each organization, shall enable members of the ATP and the NCTA, as well as the Participants of the Technical Working Group, to gain appropriate access to all relevant documents, including the draft and final standard, technical guidance documentation and implementation guides. Different classes of memberships may have access to different materials on the Website. In addition, the general public shall have access to other materials, as determined respectively by each organization, consistent with the IP Policy contained in these Operating Procedures.

Section 8.5 Costs

The ATP and the NCTA shall each bear its own costs related to the Project.