



ETSSM Criterion Online Writing Evaluation for Higher Education **SUBSCRIBER AGREEMENT**
Terms and Conditions of Use — College Bookstore Client

Contact Information

Name _____
 Title _____
 Institution ("Subscriber") _____
 Address 1 _____
 Address 2 _____
 City _____
 State _____ Zip Code _____
 Phone _____ Fax _____
 Fax _____
 E-mail _____
 Signature _____

Subject to all terms and conditions listed below.

Criterion Administrator

Name _____
 Phone _____
 E-mail _____

Bookstore Contact Information

Name _____
 Phone _____
 E-mail _____

Activation Periods	Start Date (mm/dd/yyyy)	Stop Date (mm/dd/yyyy)	Number of Subscriptions Required	Indicate if Student Will Use Criterion in Multiple Classes
<i>Fall Semester</i>				
<i>Spring Semester</i>				
<i>Summer Semester</i>				

The *Criterion*SM Online Writing Evaluation service (the "Service") is ETS's Web-based service that evaluates students' essay writing skills. Students may write essays on a variety of topics and receive a score in real time. Users may access the Service through Internet connections (from the classroom, home, or wherever they have an Internet connection).

Automated scores should be used in conjunction with other measures or information about the student's writing ability. When essays scored with *Criterion* are used for decisions about placement, faculty should have procedures in place for misplacement such that the student can move to a more appropriate course.

Upon completion of the Subscriber Agreement for the College Bookstore Client, and in consideration of ETS making the Service available to Subscriber, Subscriber hereby agrees to be legally bound by the terms and conditions of this Agreement.

- Definitions.** As used in this Subscriber Agreement, the following terms shall have the meanings set forth below:
 - "Agreement" means this Subscriber Agreement.
 - "Bookstore" means the Subscriber-authorized bookstore(s) that orders and purchases the *Criterion* Registration Cards, necessary for the activation of User's access to the Service.
 - "*Criterion* Registration Card" means the subscription activation card provided to Subscriber-authorized Users who purchase them from Bookstore(s) servicing the institution.
 - "Order Form" means the order form that includes pricing and subscription information regarding Bookstore's purchase of the *Criterion* Registration Cards.
 - "Subscriber" means the subscribing institution to whom ETS will provide the Service as the client with *Criterion* Administrator access who has agreed to be bound by the terms and conditions of this Agreement. The institution's *Criterion* Administrator will then assign access to instructors at that institution as deemed appropriate.
 - "Users" mean individual humans who are authorized by Subscriber and have purchased a *Criterion* Registration Card to use the Service.
- Upon execution of this Agreement, and submission of a completed Order Form and Purchase Order by Bookstore on behalf of Subscriber, ETS grants to Subscriber, a limited, non-exclusive, revocable license to permit Users access to the Service pursuant to the terms and conditions hereunder.
- Subscriber will authorize Bookstore(s) to complete and submit an Order Form and Purchase Order, and make payments to ETS for the number of *Criterion* Registration Cards as directed by Subscriber. Users are required to use the unique serial number provided on the *Criterion* Registration Card, in conjunction with the Access ID and password provided by their instructor, to activate a subscription.
- Subscriber will provide, or shall require its Users to provide, or have access to, the following:
 - Personal computer (PC) and IBM compatible PCs with a Pentium II or III CPU with either Microsoft Windows 98SE, NT4, 2000, ME or XP or Novel Linux Desktop 9, Linspire 5.0 or Power Macintosh and G3/G4/G5 systems with operating system 9.2 or OS X 10.1 or 10.2 equipped with a standard, commercial word processing software package;
 - Windows: Microsoft Internet Explorer 6.0, or Netscape Navigator 7.2, Linux; Firefox v1.x Netscape v7.x; Mac: IE 5.2, Netscape 7.1, Firefox 1.0.1, Safari 1.2.4 or 1.3 (compatible with only Mac OS X, not OS 9); (Beta versions of browsers are not supported); and
 - A continuous Internet connection while an essay is being submitted for scoring with Building/Facility Bandwidth minimum 256KB recommended T-1 (1.54MB) or greater; LAN Connectivity min=10MB rec=100MB.

5. Subscriber will designate an administrator to serve as the sole contact person regarding the use of the Service (the "Administrator"). The Administrator will:
 - disseminate information to Users regarding access to and use of the Service;
 - provide subscription information, if applicable (for example, where Users are located or assigned) to ETS; and
 - provide required account setup information to the ETS Account Manager.
6. Subscriber will have a *Criterion* account established with ETS, whereby Users, each, are identified by a unique user name and password, required to log in to the Service, either through Subscriber's facilities or other sites where the Internet can be accessed. In addition, Subscriber hereby grants ETS permission, to the extent that it may be required, to use the institution name in ETS marketing and promotional materials.
7. ETS will provide automated essay scoring services through its *e-rater*[®] scoring engine for essays written on standard topics selected by Subscriber. Students can either type their essays while online or develop their essays offline in a standard commercial word processing package and then copy and paste the essay into the *Criterion* Web site for scoring. The Service will be available to Users on a continuous (7 x 24) basis, *subject to reasonable downtime*, for the specific duration of each activation period indicated in this Agreement. If Subscriber's account is configured for real-time score reporting, ETS will use commercially reasonable efforts to process essays and return scores in real time. If Internet traffic or systems limitations preclude the return of a score in real time, a message will be returned to the sender indicating that the essay could not be scored, and providing a system error code. ETS will then permit re-submission of the essay. Subscriber is solely responsible for configuring its computer systems so that they interface properly with the Service.
8. ETS will maintain and provide Subscriber with access to essay and score data for a period of twelve (12) months after an essay is submitted.
9. ETS will provide a user manual, administrator's supplement, and quick reference guides in electronic format.
10. ETS will monitor the number of User registrations during the subscription period and notify the Subscriber's *Criterion* Administrator via email when the number of remaining unused subscriptions for the specific activation period falls below 10% NOTICE: Regardless of when this Agreement expires, if Subscriber has used up all of the subscriptions it has indicated for the specific activation period, the Service will automatically be rendered unavailable to additional Users or students.
11. Nothing contained in this Agreement shall be construed to imply a joint venture, partnership, or principal-agent relationship between the parties; and no party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, expressed or implied, on behalf of the other party.
12. Subscriber shall be solely responsible for whom it permits to be Users of the Service, and Subscriber agrees that it shall be responsible and liable for all Users of the Service. Further, Subscriber agrees that it shall be responsible for Bookstores with whom it authorizes to purchase and resell *Criterion* Registration Cards. Subscriber understands and agrees that the Service may not be used for any other purpose, or be provided to any other party, than as described herein. Except as expressly permitted by this Agreement, **SUBSCRIBER MAY NOT RESELL, LICENSE, ASSIGN OR OTHERWISE TRANSFER THIS SUBSCRIPTION AGREEMENT OR ITS RIGHTS OR OBLIGATIONS HEREUNDER TO ANY PERSON OR ENTITY.** Subscriber shall indemnify and hold ETS harmless from any and all claims arising out of the use of the Service or use of the scores to determine placement of, or grades for, students.
13. Subscriber agrees that the privacy of User information, essays, and score data is the sole responsibility of Subscriber and its Users. User names, user identification, passwords, essays, and score data are maintained by ETS on a secure server. ETS does not share User or Subscriber information with anyone other than: (a) with respect to the User, the particular User's own information only; and (b) with respect to Subscriber, Subscriber's own information and the information regarding its Users. Notwithstanding the foregoing, ETS shall retain the right to use any non-personally identifiable information collected as a result of the Service for research and development purposes.
14. ETS shall retain ownership of and proprietary rights, including but not limited to patent, copyright, trademark and trade secret in the *Criterion*SM Online Writing Evaluation Service, *e-rater*[®] software, CritiqueTM Writing Analysis Tools, the ETS essay topics, scoring guide, as well as any other ETS materials, software programs, and associated techniques, concepts, and methodologies that may be used to provide services under this Agreement.
15. During the term of this Agreement, the parties may have access to information that is confidential and proprietary to the other party. Confidential and proprietary information may include, but not be limited to, any information marked, labeled or identified as "Proprietary and Confidential"; any proprietary or unpublished technologies, methodologies, software programs, algorithms, or product concepts; inventions, enhancements, improvements thereto, client or customer lists; any student or candidate testing or demographic data, and test materials. Each party shall keep confidential the confidential information of the other party. Neither party shall use or disclose such information in any way other than that intended by the disclosing party or as otherwise permitted under this Agreement.
16. This Agreement is effective as of the date for the first activation period indicated above and shall remain in effect for each activation period selected by the Subscriber as indicated above, up to 120 consecutive days per period, ending on the last business day of the final month of the activation period. ETS may terminate this Agreement by providing Subscriber with written notice in the event that Subscriber fails to abide by the restrictions on the use and disclosure of the Service, or breaches any other term or condition of this Agreement.
17. Limitation of Liability
 - a. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE AND DOCUMENTATION PROVIDED HEREUNDER ARE PROVIDED TO SUBSCRIBER "AS-IS". ETS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF ACCURACY, COMPLETENESS, NON- INFRINGEMENT, TITLE, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
 - b. IN NO EVENT WILL ETS' LIABILITY, IN THE AGGREGATE, FOR DAMAGES ARISING OUT OF THE USE OF THE SERVICES AND DOCUMENTATION OR ARISING UNDER THIS AGREEMENT, WHETHER IN TORT, CONTRACT OR OTHERWISE, TO SUBSCRIBER OR ANY OTHER PERSON OR ENTITY EXCEED THE AMOUNT OF FEES PAID BY SUBSCRIBER OR USER FOR THE SERVICES AS TO WHICH THE LIABILITY RELATES. ETS SHALL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF THE USE OF *CRITERION*, WHETHER IN TORT, CONTRACT OR OTHERWISE, TO SUBSCRIBER, BOOKSTORE, USER OR ANY OTHER PERSON OR ENTITY.
 - c. ETS DOES NOT CERTIFY PARTICIPANTS AS OFFICIAL TRAINERS UPON COMPLETION OF ANY *CRITERION* TRAINING WORKSHOP (THE "WORKSHOP"). THE WORKSHOP IS DESIGNED TO PRESENT INSTRUCTIONAL INFORMATION THAT PARTICIPANTS MAY WANT TO SHARE WITH OTHER *CRITERION* USERS IN THEIR SCHOOL/SUBSCRIBER. IT IS THE SUBSCRIBER'S SOLE RESPONSIBILITY TO SCREEN AND EXAMINE SUBSCRIBER PARTICIPANTS PRIOR TO ALLOWING ANY PARTICIPANT TO "TRAIN" OTHER *CRITERION* USERS IN THEIR SUBSCRIBER. ETS EXPRESSLY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING FITNESS FOR A PARTICULAR PURPOSE, AND ASSUMES NO RESPONSIBILITY OR LIABILITY TO SCHOOL, SUBSCRIBER, PARTICIPANT OR ANY OTHER PERSON OR THIRD PARTY WITH REGARD TO THE EFFECTIVENESS OF THE WORKSHOP, THE MATERIALS PROVIDED TO PARTICIPANT DURING THE WORKSHOP, PARTICIPANT'S KNOWLEDGE REGARDING *CRITERION* UPON COMPLETING THE WORKSHOP, AND THE PARTICIPANT'S ABILITY TO TRAIN *CRITERION* USERS.

18. Force Majeure. ETS shall be excused from performance hereunder during any period and to the extent that it is prevented from performing any obligation pursuant thereto, in whole or in part, as a result of delays caused by ETS or any cause beyond its control, including without limitation interruption or failure of telecommunications or digital transmission links to Internet slow downs or failures and computer hacking. Such nonperformance shall not be a default hereunder or a ground for termination hereof.
19. This Agreement shall be governed by and construed in accordance with the federal laws of the United States and the state laws of New Jersey, U.S.A.

This Agreement constitutes the entire agreement and understanding between ETS and Subscriber concerning the subject matter hereof. Any preprinted terms and conditions on Subscriber's or Bookstore's purchase orders shall not amend or supplement this Agreement and shall be of no force or effect. Any modification or amendment to this Agreement shall not be binding unless it is in writing and signed by ETS and Subscriber. If any of the provisions of this Agreement are found to be invalid by a court of competent jurisdiction, the remaining provisions shall continue to be valid and enforceable.