



INSTITUTE OF
INTERNATIONAL
EDUCATION

**MEMORANDUM OF UNDERSTANDING
BETWEEN
INSTITUTE OF INTERNATIONAL EDUCATION
AND
RAMBHAI BARNI RAJABHAT UNIVERSITY**

This Agreement, dated on **August 25th, 2016** (this "Agreement") between the **Institute of International Education** (hereinafter referred to as "IIE"), and **Rambhat Barni Rajabhat University** (the "Institution").

WHEREAS, IIE is a TOEFL® ITP Representative in Thailand (the "Territory");

WHEREAS, Institution wishes to administer the TOEFL® ITP at the Institution's Test Center (the "Test Center");

NOW, THEREFORE, in consideration of the premises, representations and agreements hereinafter contained, the parties agree as follows:

In connection with the use of TOEFL® ITP testing procedures to be administered.

I. GENERAL RESPONSIBILITIES

IIE RESPONSIBILITIES

IIE will:

1. Provide first-time training on administration of the TOEFL® ITP test;
2. Supply *TOEFL® ITP Test Administration Procedures* to the chief test administrator, and *TOEFL® ITP Test Administration Supplement* to test administrators and proctors;
3. Provide TOEFL® ITP test books, answer sheets and CDs or cassettes;



4. Arrange for delivery of an adequate supply of test materials to your test site 5 working days prior to the date of test administration;
5. Provide a summary of TOEFL® ITP test performance of students in each session within 5 working days after the receipt of all used and unused test materials of the session.

THE INSTITUTION RESPONSIBILITIES

The Institution will,

With respect to permitted test administration:

1. Administer tests at its Test Center.
2. Allow its students to take the ITP test for admission for the following purposes:
 - **Admissions to short-term, non-degree programs in English-speaking countries** where the sending and receiving institutions agree to use *TOEFL® ITP* scores.
 - **Admissions to undergraduate and graduate degree programs in non-English speaking countries** where English is not the dominant form of instruction.
 - **Admissions and placement in collaborative international degree programs** where English language training will be a feature of the program.
 - **Placement** in intensive English-language programs requiring academic English proficiency at a college or graduate level.
 - **Progress monitoring** in English-language programs stressing academic English proficiency.
 - **Exiting** English-language programs by demonstrating proficiency in English listening and reading.
 - **Scholarship programs**, as contributing documentation for academic English proficiency.
3. Allow candidates who need to take the TOEFL test for admission to a university to register for the International TOEFL test.
4. Not administer or distribute any tests outside of its premises.
5. Commit to not use ITP scores for marketing an Institution's intensive English program.
6. Commit to not provide nor forward test-takers' ITP score reports to other institutions.
7. Administer the ITP tests according to the directions in the *TOEFL® ITP Test Administration Procedures* and *TOEFL® ITP Test Administration Supplement*, as well as other policies and procedures mentioned in this Agreement or provided from time to time by IIE.
8. Use ITP tests for one administration only, and send out both used and unused test materials within 1 working day after test date, to IIE.
9. Agree that all test materials are copyrighted by ETS and are not to be reproduced in any form. Test materials remain the property of ETS at all times.
10. Ensure that any copy of the test delivered to the Institution shall be kept secure, shall not be copied or distributed prior to or following the express administration for which use of such test is authorized and shall otherwise comply with all security policies and procedures mentioned in this Agreement.



With respect to oversight of the Test Center:

1. Send test schedule, test-takers roster and place an order with IIE through its Southeast Asia Office at least 2 weeks before the test date.
2. Ensure shipment and secured storage of all testing materials, and maintain accurate counts of materials received from IIE and sent back to IIE.
3. For purposes of security, ensure that appropriate examinee identification procedures are followed in accordance with the instructions set forth in the *TOEFL® ITP Test Administration Procedures*.
4. Ensure that all administrations begin on time and that no examinee is admitted to the examination rooms after the test has begun.
5. Promptly investigate any irregularity, take appropriate action, and report to IIE as soon as possible, both the irregularity and the action taken.
6. Use independent proctors at all administrations to ensure English teachers employed by Institution, if any, do not have access to the test materials.
7. Ensure uniform test administration to all examinees by following closely to the *TOEFL® ITP Test Administration Procedures*.
8. Must comply with the following for handling confidential test materials at each authorized test administration:
 - Confidential test materials must only be used for the sole purpose of performing professional services for TOEFL® ITP described in item 2 under Institution's Responsibilities above. Any other use of these materials requires the prior written consent of IIE.
 - Confidential test materials must be kept in a locked container when they are not being used. This security must be maintained in all phases of the authorized test administrations, including storing inventory of test materials, collecting used and unused test materials after each authorized test administration and returning or otherwise delivering such test materials to IIE. Materials will be sent directly to a specific individual in your organization who is responsible for implementing the security guidelines.
 - Confidential test materials must not be shared with any third parties without the written authorization of IIE. TOEFL® ITP scores may be disclosed only to the examinees and to Institution's personnel who require the information for making decisions.
 - Confidential test materials must be used for one administration only, and must not be copied in whole or in part. IIE will reserve the right to seek legal redress for any damage caused by such action.
 - Distribute test books, answer sheets and examinee handbooks to examinees at the authorized test administrations;
 - following completion of TOEFL ITP, send the test materials and answer sheets to IIE;
 - permit IIE or ETS, upon prior notice to Institution and at all reasonable times, to inspect the premises used by Institution in connection with the Institution's administered authorized test administrations;



- Comply with all applicable laws and regulations affecting the ETS products included under this Agreement and the Institution's performance hereunder, including local privacy laws.
 - Immediately, upon notice from IIE, cease all test administrations of TOEFL ITP and return all test materials in its inventory to IIE upon the termination or expiration of IIE's rights to resell and administer TOEFL ITP.
 - Comply with the provisions contained in the administration of exams described in the attached Schedule to this Agreement
9. It is understood that IIE will not send new materials or provide scores until all used and unused test materials have been returned, and all payments for prior administrations are made.
 10. In the event that the confidential test materials are stolen or lost, or in the event that an unauthorized party gains access to these materials, Institution shall notify IIE immediately.

II. Exams Cost, Prices and Payments

The Institution agrees to pay IIE a fixed price for the exams as follows.

1. The price per unit includes a test book, scoring, training and other services provided by IIE. Each unit price will be:
 - \$28.5 USD per unit for material requests of 10 to 500 units; and
 - \$26.5 USD per unit for each additional unit in excess of 500.

The prices above take effect from when this agreement is made until December 31st, 2015, after which the prices are subject to change.
2. Additionally, the Institution shall be charged an amount equal to seven percent (7 %) of the total amount owed to IIE on each invoice, which shall be for the value added tax ("VAT") applicable to the transaction under this Agreement, provided that if the Institution is exempt from VAT and provides IIE with evidence of such exemption, it can subtract such amount from payment.
3. Institution shall pay IIE mailing/shipping and handling costs and any other shipping costs, including insurance, for the units ordered.
4. Institution shall be responsible for all taxes and duties (including income taxes) related to its activities under this Agreement, and shall indemnify and hold IIE harmless with respect to any action or investigation by any governmental or regulatory entity or taxing authority in the Territory involving such taxes.
5. Cash payments are not accepted.
6. All payment forms must be made payable to "Institute of International Education" and preferably sent directly to IIE New York by wire transfer.



7. IIE will confirm each order by email or phone within 2 working days after it has received the order. If IIE has limited test materials, IIE will notify Institution that there is an insufficient supply as promptly as practicable.
8. The price for TOEFL® ITP tests certificate is \$5 USD per certificate.

III. RESTRICTIVE COVENANTS; ETS DISCLAIMER; INDEMNIFICATION

III.1. Restrictive Covenant on Institution and Test Center

You acknowledge and agree that ETS is, and at all times will remain, the sole and exclusive owner of all Test Data. For purposes of this Agreement, "Test Data" shall mean "the examinees' responses to questions asked in the TOEFL ITP, examinee scores and the following data collected or obtained from each examinee by IIE or you in connection with any administration of the TOEFL ITP in accordance with this agreement: name, gender and date of birth, as such categories of data may be updated by ETS with notice to you from time to time."

III.2. ETS Disclaimers

IIE hereby notifies you that:

- (i) ETS disclaims all warranties relating to TOEFL ITP and other ETS IP; (ii) ETS disclaims any implication that use of TOEFL ITP guarantees any level of performance on the official TOEFL paper-based or Internet-based tests; (iii) ETS does not warrant that the access to or use of TOEFL ITP will be immediately available, uninterrupted or error-free; (iv) ETS will have no liability to you or any examinee for damages resulting, or alleged to have resulted, from any error or omission in TOEFL ITP or score reports or any action taken or not taken by you or an examinee based on the examinee's scores from TOEFL ITP; and (v) the Internet is an unregulated, public network over which ETS exerts no control, and ETS makes no representations or warranties whatsoever, and shall have no liability whatsoever, with respect to the accuracy, dependability, privacy, security, authenticity or completeness of data transmitted over or obtained using the Internet, or any intrusion, virus, disruption, loss of communication, loss or corruption of data, or other error or event caused or permitted by or introduced through the use of the Internet.

III.3. Indemnification

Institution shall indemnify and hold harmless (but not defend) IIE, its affiliates, their respective directors, officers, employees, agents and their respective successors and assigns from and against any and all third



party costs, liabilities, losses, damages, penalties, fines and expenses (including reasonable attorneys' fees), settlements, claims, allegations, actions or suits incurred by or asserted against any such indemnitee in connection with or arising out of: (a) breach by Institution or its TOEFL Administrators of this Agreement or the procedures for securing and administering Institutional TOEFL exams; (b) the negligence or willful misconduct of the Institution, its employees, officers, directors or agents (including TOEFL Administrators); or (c) the infringement of any patent, copyright, trade secret, trademark, confidential information or other proprietary right of any third party (including ETS). The Institution shall not agree to settle the claim without IIE's written consent.

IV. OTHER PROVISIONS

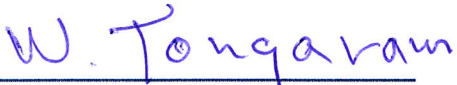
IV.1 Term of Agreement

This Agreement will be effective as of the date above first written, and will continue in full force and effect until the earlier (i) **December 31st, 2019** or (ii) the effective date of a termination in accordance with Section III.2 of this Agreement. Institution agrees to immediately cease all authorized administrations of TOEFL ITP and return all test materials in its possession to IIE upon the termination or expiration of IIE's rights to resell and administer TOEFL pursuant to IIE's agreement with ETS.

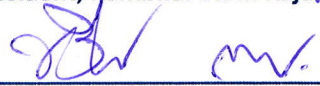
IV.2 Cancellation of Agreement

This Agreement can be cancelled, with or without cause, by either party within 30 days of its termination. Unless otherwise specified herein, any provision of this Agreement that may reasonably be expected to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.


On behalf of the Institution



Asst. Prof. Waigoon Tongaram
President, Rambhai Barni Rajabhat University

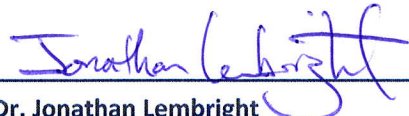


Asst. Prof. Dr. Preeyanan Sittijinda
Vice President for Planning and Development

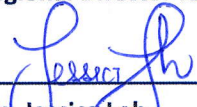


Dr. Jakrapan Wongpa
Assistant to President for International Affairs


On behalf of IIE



Dr. Jonathan Lembright
Regional Director for Southeast Asia



Ms. Jessica Loh
Director, Outreach and Marketing



Mr. Sinchai Lekwanitchakul
Senior Assessment Officer

