

# Test Licensing Agreement

## 1. Scope of Agreement

Ergometrics, Inc. ("Licensor") grants to the Licensee the right to use the Licensor's tests, outlined in Attachment A to this Agreement, incorporated herein by reference, and all associated materials (collectively, the "Test"), for the sole purpose of pre-employment and promotional testing. The Test may not be used for training purposes under any circumstances. The Licensee may not lease, rent, loan, transfer or administer this test to or for any other agency or entity without express written permission from the Licensor. The Test meets and/or exceeds all Equal Employment Opportunity Commission guidelines and professional standards. This agreement does not include local validation for the Licensee. The Licensor will provide general validation reports upon request. In the event of challenge, the Licensor will provide expert testimony at its regular consulting rates. The Licensor assumes no liability for the use or misapplication of this product.

## 2. Copyright

The Test is owned by the Licensor and protected by United States copyright laws and international treaty provisions. The Licensee is not authorized to copy any videos or DVD's. Printed materials may only be copied with express permission from the Licensor and may only be used for the purposes described in this Agreement or as otherwise approved by the Licensor.

## 3. Implementation

The Licensor will provide the Licensee general written or telephone instructions on the administration and use of the Test. The Licensor warrants that the video, audio, and printed materials are free from defects in material and workmanship. Licensor will assist Licensee with interpretation of score results and scoring methodology.

## 4. Test Security

Licensee will maintain strict security of the Test in accordance with accepted security practices and those incorporated herein. Licensee shall be fully responsible for the secure storage and use of the Test and will establish and maintain strict test security procedures, including precautions preventing materials from being stolen, copied, or otherwise compromised.

a. The Test must not be left unattended at any time, and when not in use, the Test must be kept in a secured and locked location. Trash containing confidential material will be disposed of securely.

b. All persons having access to the Test must sign the Individual Statement of Understanding, found in the Administration Packet, and all signed copies kept on file with the Licensee for one year from the date of signature.

c. Certification of Compliance with Confidentiality and Copyright, found in the Administration Packet, must be collected from each applicant before testing sessions begin, and all signed copies kept on file with the Licensee for one year from the date of signature.

d. The Test maintained in electronic format must be kept on a non-networked, standalone computer.

e. Cell phones and electronic devices are not allowed in the test administrations.

f. No one, other than the official test monitor, should take notes or any other confidential materials from a testing room. In the event of loss or theft of the Test, or cheating, Licensor must be notified immediately.

g. Any testing materials shipped must use a form of registered service with tracking number and signature for delivery.

h. Test content is confidential and copyrighted. Any conversations about Test content must only be conducted formally in conjunction with the Licensor.

## 5. Subcontracting the Test

The Test is licensed for use only by the Licensee. The Licensee must contact the Licensor to obtain permission if the Licensee wishes to subcontract test administration or other services that involve the outside handling of the Test. The Licensee will remain fully responsible for the security of materials that are handled in this manner.

## 6. Termination

a. This Agreement may be terminated in whole in the event that the Licensee or Licensor breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days after the non-breaching party delivers written notice of such breach to the breaching Party. Upon termination, Licensor will be entitled to payment, determined on a pro rata basis for services performed or rendered, and all Test materials must be returned immediately to the Licensor once the Agreement has been terminated. At the end of the term, the Agreement will automatically renew for successive one-year terms unless one of the parties provides notice of its intent to terminate the Agreement.

b. Terminations for Convenience. This agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving ninety (90) days written notice thereof. In the event of termination, Williamson County will only be liable for its pro rata share of services rendered and goods actually received.

c. Mediation. The parties agree to use mediation for dispute resolution prior to a formal legal action being taken on this Contract.

## 7. Events Upon License Expiration or Termination

Upon any termination or expiration of this Agreement for any reason, Licensee will cease use of all testing materials and return such materials within 15 days of expiration or termination of the Agreement. Late or lost Test materials will be subject to additional fees Attachment A to this Agreement sets out additional provisions in respect of the parties' obligations upon termination.

## 8. No Waiver

The waiver or failure of either Party to exercise in any respect any right provided in this Agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

## 9. Entirety of Agreement

The terms and conditions set forth herein constitute the entire Agreement between the Parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No change can be made to this Agreement other than in writing and signed by both Parties. Any previous Test Licensing agreements between Licensee and Licensor are null and void, replaced by this one.

## 10. Headings in this Agreement

The headings in this Agreement are for convenience only, confirm no rights or obligations in either party, and do not alter any terms of this Agreement.

## 11. Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

## 12. Venue and Governing Law

Venue of this contract shall be Williamson County, Texas, and the law of the State of Texas shall govern.

## 13. No Waiver of Sovereign Immunity or Powers

Nothing in this agreement will be deemed to constitute a waiver of sovereign immunity or powers of Licensee, the Williamson County Commissioners Court, or the Williamson County Judge.

#### 14. Texas Prompt Payment Act Compliance

Payment for goods and services shall be governed by chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date licensee receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by licensee in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of Licensee's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day

#### Test Licensing Agreement

This is a legal agreement between the Licensing Agency (Licensee) and Ergometrics and Applied Personnel Research, Inc. (Licensor) By accepting the Ergometrics test materials for use, you are agreeing to the terms of this agreement and that you have authority to enter into such an agreement on behalf of the Agency.

#### Licensee

Dan Rattis 02-11-2018  
Principal Signer Date  
[Signature]  
Signature  
County Judge - Williamson  
Title  
Williamson County Emergency Communications  
Agency Name  
911 Tracy Chambers Lane  
Physical Address  
Georgetown TX 78626  
City State Zip  
512-864-8243 gsmith@wilco.org  
Telephone EMail

#### Authorized Contacts

Please list, in addition to the Principal Signer, anyone who is authorized to receive materials, scores or discuss scores with Ergometrics. Licensee is responsible for updating Ergometrics of any changes to Authorized Contacts.

Gene Smith  
Authorized Contact  
Assistant Director  
Title  
512-864-8243  
Telephone  
gsmith@wilco.org  
EMail

Melissa Pogue  
Authorized Contact  
Deputy Director  
Title  
512-864-8246  
Telephone  
mpogue@wilco.org  
EMail



Return to:  
Ergometrics &  
Applied Personnel Research, Inc.  
18720 33<sup>rd</sup> Avenue West  
Lynnwood, WA 98037  
FAX: 425-774-0829  
Or email to your current  
Client Services Representative

Failure to return the signed licensing agreement,  
will delay the processing of your order.

#### For Office use only:

Product: \_\_\_\_\_  
License Type: \_\_\_\_\_  
Highrise: \_\_\_\_\_  
Exam HQ: \_\_\_\_\_

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Ergometrics and Applied Personnel Research, Inc.  
Lynnwood, WA United States

Certificate Number:  
2018-305580

Date Filed:  
01/24/2018

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Williamson County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

NA  
ECOMM testing - license and scoring

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO interested Party.



### 6 UNSWORN DECLARATION

My name is Barbara Erickson, and my date of birth is \_\_\_\_\_.

My address is 18720 33rd Ave W, Lynnwood, WA, 98037, USA.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Snohomish County, State of WA, on the 24<sup>th</sup> day of Jan, 2018.  
(month) (year)

Barbara Erickson  
Signature of authorized agent of contracting business entity  
(Declarant)