***\*\*\*DRAFT\*\*\* Exhibit E*** imab-adad-nov21item01a09

***California Assessment System #CN220002*** Attachment 9

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# EXHIBIT E

## ADDITIONAL PROVISIONS

### Contract Amendment

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and approved by the parties as required under this Agreement. No oral understanding or Agreement not incorporated in such written agreement between the parties shall be binding on the parties.

### Subcontractors

Nothing contained in the Agreement resulting from this RFQ or otherwise, shall create any contractual relation between the California Department of Education (CDE) and any subcontractors, and no subcontract shall relieve the contractor of their responsibilities and obligations hereunder. The contractor agrees to be as fully responsible to the CDE for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the contractor. The contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

### Subcontracting

The contractor is responsible for any work it subcontracts. Subcontracts must include all applicable terms and conditions of this Agreement. Any subcontractors, outside associates, or consultants required by the contractor in connection with the services covered by this Agreement shall be limited to such individuals or firms agreed to in this Agreement or as are specifically authorized in writing by the CDE and the California State Board of Education (SBE) Executive Director during the performance of this Agreement. Any substitutions in, or additions to, such subcontractors, associates or consultants shall be subject to prior written approval of the CDE Contract Monitor. Contractor warrants, represents, and agrees that it and its subcontractors, employees and representatives shall at all times comply with all applicable laws, codes, rules and regulations in the performance of this Agreement. Should the CDE or the SBE determine that the work performed by a subcontractor is substantially unsatisfactory and is not in substantial accordance with the Agreement terms and conditions, or that the subcontractor is substantially delaying or disrupting the process of work, the CDE or the SBE may demand substitution of the subcontractor.

### Prohibition Against Outside Agreements

The contractor and subcontractor(s) must not enter into agreements related to products and/or services developed specifically for the CDE under this Agreement without the prior approval by the CDE of a work proposal and budget for the work proposed.

The contractor shall not enter into agreements specifically for product and/or Services developed under the terms of this agreement or any predecessor agreements and paid for with CDE funds with any out-of-state agency or organization. The CDE reserves the right to review such materials referenced above that Educational Testing Service (ETS) intends to sell during the duration of this agreement to ensure that those products and/or services are outside the terms of this agreement. Any out-of-state agency or organization shall negotiate with the CDE for products and/or services developed under this agreement or any predecessor agreements.

### Disclosures of Information

The contractor shall not disclose CDE data or documents or disseminate the contents of documents or reports without express written permission from the CDE Contract Monitor.

Contractor shall not comment publicly to the press or any other media regarding the CDE data or documents, or CDE actions on the same, except as may be required at a public hearing, or in response to questions from a legislative committee or a judge in court of law pursuant to a judicial subpoena.

The contractor must immediately notify the CDE Contract Monitor if a third party requests or subpoenas documents or data related to this Agreement.

### Disclosure of Financial Interests

The contractor must disclose any financial interests that may allow any individual or organization to materially benefit from the state’s adoption of a course of action. During the performance of this Agreement, should the contractor become aware of a financial conflict of interest that may foreseeably allow an individual or organization involved in this Agreement to materially benefit from this Agreement, the contractor must inform the CDE in writing within 10 working days. If, in the CDE’s judgment, the financial interest will jeopardize the objectivity of the recommendations, the CDE shall have the option of terminating the Agreement.

Failure to disclose a relevant financial interest on the part of the contractor or any subcontractors will be deemed grounds for termination of the contract with all associated costs to be borne by the contractor and, in addition, the contractor may be excluded from participating in the State’s bid processes for a period of up to 36 months in accordance with Public Contract Code Section (PCC) 12102.2(i).

Contractor should also be aware of the following provisions of Government Code §1090 (a):

“Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.”

### Correspondence

Correspondence, including emails prepared by the contractor relating to the logistics of tasks to be performed by the contractor under the Scope of Work of this Agreement or correspondence of an informational nature related to the program supported by this Agreement which is prepared by the contractor must be reviewed by CDE prior to mailing or distribution.

As a standard business practice, unless otherwise provided for in the Agreement, the contractor must "copy" the CDE Contract Monitor on each final letter, email, and memorandum prepared by the contractor under the Scope of Work of this agreement.

### News Releases

The contractor must not issue any news releases or make any statement to the news media in any way pertaining to this Agreement without the prior written approval by CDE, and then only in cooperation with CDE.

### CDE Approval of Deliverables

All approvals, orders for correction, or disapprovals from CDE must be in writing. If the CDE deems a deliverable or product as unacceptable, the contractor shall make required corrections within the timeframe required by the CDE as referenced in Exhibit A, Scope of Work.

Failure of the contractor to obtain prior CDE approval of deliverables or products shall not relieve the contractor of performing the related Agreement responsibilities and providing related required deliverables or products to the CDE. The contractor must accept financial responsibility for failure to meet agreed-upon timelines and quality standards, provided that delays in deliverables or failure in quality are not directly caused by the CDE. Contractor is not responsible however for delays in deliverables or failure in quality cause by other CDE contractors (e.g., Smarter Balanced). The CDE shall have no liability for payment of any work, of any kind whatsoever, which commences without prior CDE approval.

The contractor is responsible for completing all tasks in sufficient time for CDE to review the materials and/or deliverables, and if necessary for the contractor to make modifications as directed by the CDE and for CDE to review and sign-off on the revised submission. Unless otherwise specified in the Scope of Work, in no case may the contractor allow less than ten working days for CDE to initially review the submission. Unless otherwise agreed to in the Scope of Work or subsequently in writing by the parties, the contractor must make any modifications requested by CDE within three working days of receipt of request for changes and allow the CDE five working days to review the modified submission. The contractor is responsible for any costs associated with making modifications to materials and deliverables necessary to obtain CDE’s approval.

All approvals, orders for correction, or disapprovals from CDE must be in writing. If CDE rejects a deliverable or product as unacceptable, the contractor shall make required corrections within the time frame required by CDE as referenced in the Scope of Work. Unless otherwise specified in the Scope of Work, the contractor will ensure that all materials and/or deliverables submitted to the CDE have been reviewed an approved by the Contractor’s Project Manager. The materials and/or deliverables should not contain any typographical or grammatical errors, must be presented in a professional format, meet Section 508 compliance, and, if being posted, meet WCAG 2.1 compliance. With each deliverable the Project Director must submit a signed certification with original siganture that each deliverable:

1. Meets all the requirements for the deliverable as specified in the Scope of Work for the specified test administration;
2. Is consistent with and does not conflict with any previously certified deliverable submitted for the specified test administration;
3. Meets the requirements of the CDE Correspondence Guide and CDE Style Manual;
4. That all numerical information provided has been reviewed and is accurate;
5. Is consistent with and does not conflict with the requirements for the CAASPP or ELPAC assessments as specified in state law, state regulations, and/or State Board of Education actions;
6. Is being submitted in a timely manner consistent with the CDE approved deliverables schedule and/or due dates as specified in the Scope of Work, state law, and/or state regulations.

If it is determined by the CDE that a certified deliverable submitted to the CDE by the contractor does not meet all of the requirements set forth in Article IX. a. through f., above, the CDE reserves the right to use this information as part of the criteria by which the CDE will recommend, and the SBE will determine, successful completion of each component task for payment of the final ten percent for each applicable test administration as set forth in the attached California Assessment Completion Criteria, in Exhibit E.

### Representational Conflicts of Interest

Contractor personnel and subcontractor personnel shall not advise, consult, or voluntarily testify on behalf of a party whose interests are adverse to the CDE or SBE. A party has interests adverse to the CDE or SBE when the party is contemplating taking legal action against the CDE or SBE or has taken legal action against the CDE or SBE for issues other than breach of Agreement by CDE or SBE. The contractor must disclose to the CDE Contract Monitor any known activities by contractor or subcontractor personnel involving representation of parties, or provision of services to parties, whose interests are known to be adverse to those of the CDE or SBE. The CDE may immediately terminate this Agreement if the contractor fails to disclose the information required by this section. The CDE may immediately terminate this Agreement if the CDE is not satisfied that any conflicts of interest have been resolved.

### Unlawful Denial of Services (GC Section 11135)

No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state or receives any financial assistance from the state.

With respect to discrimination on the basis of disability, programs and activities that are funded directly by the state or receive financial assistance from the state shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities funded by the state or receiving financial assistance from the state shall be subject to the stronger protections and prohibitions.

### Follow-on Contracts

No contractor, subcontractor, person, firm, or subsidiary thereof who has been awarded a consulting services Agreement, or an Agreement which includes a consulting component, (see PCC 10335.5) may be awarded a Agreement for the provision of services, delivery of goods or supplies, or any other related action, which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services Agreement (see PCC 10365.5).

### Contractor Evaluation

Within sixty (60) days after the completion of this agreement, the CDE Contract Monitor shall complete a written evaluation of Contractor’s performance under this agreement. If the Contractor did not satisfactorily perform the work, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, and to the Contractor within 15 working days of the completion of the evaluation. (PCC 10369)

### Staff Replacements

Changes to any of the contractor’s professional project management team (e.g., project manager, fiscal manager, technology manager, or key personnel, etc.) require formal written approval by the CDE Contract Monitor. The staffing change may not occur until the contractor receives written approval of the change by the CDE Contract Monitor. The CDE shall not arbitrarily withhold approval or withhold approval for reasons that would constitute unlawful discrimination.

### Ownership of Materials

All materials developed under the terms of this agreement, or any predecessor agreement, and paid for using CDE funds, are the property of the CDE. ETS acknowledges that the rights to any report, computer program, documentation for programs, exams, exam items or other material developed or modified by ETS or its subcontractors and paid for with CDE funds under the terms of this agreement or the terms of predecessor agreements shall belong to the CDE. The CDE reserves the exclusive right to copyright such material, and to publish, disseminate, and otherwise use materials developed under the terms of this agreement and paid for using CDE funds. No contractor or subcontractor staff may participate in any meeting or activity without prior written permission from the CDE Contract Monitor.

Copyright for the CDE must be noted on all materials produced for the purposes of this Agreement. The CDE acknowledges that any materials and proprietary computer programs previously developed by the contractor or its subcontractors shall belong to the contractor or its subcontractors, not paid for with CDE funds under the terms of this agreement or the terms of the predecessor agreements, shall belong to the contractor or its subcontractors. Unless otherwise stated in the Scope of Work, any materials and proprietary computer programs previously developed by the contractor or its subcontractors shall be owned by and remain the property of the contractor or its subcontractors.

### Retention of Records

The contractor shall maintain accounting records and other evidence pertaining to costs incurred, with the provision that they shall be kept available by the contractor during the Agreement period and thereafter for five full years from the date of the final payment. The CDE must be permitted to audit, review, and inspect the contractor's activities, books, documents, papers and records during progress of the work during reasonable business hours at a time mutually agreed to and for five years following final payment.

### Ownership and Disposition of Equipment

The purchasing of equipment is not allowed without approval of the CDE. Equipment purchased under the provisions of this agreement is the property of the State and shall be used for its intended purpose during the term of this agreement. An inventory of all equipment purchased under this agreement shall be maintained. After the term of this agreement, the equipment shall be disposed of in accordance with instructions from the CDE.

### Insurance Requirements

Contractor, at their own expense, shall maintain the following insurance coverage for the term of this Agreement:

* + - * 1. General Liability:

General liability with limits of not less than $1,000,000 per occurrence for both injury and property damage combined. The policy should include coverage for liabilities arising out of premises, operations, independent contractors, products completed operations, personal and advertising injury and liability assumed under an insured Agreement. This insurance shall apply separately for each insured against whom claim is made or suit is brought subject to the contractor’s limit of liability. If the policy contains an annual aggregate, this should be at least double the per occurrence limit.

* + - * 1. Automobile Liability:

Motor vehicle liability with limits not less than $1,000,000 per accident. Such insurance shall cover liability arising out of a motor vehicle accident including owned, hired, and non-owned motor vehicles. The contractor shall insure that any subcontracts include the same provisions as stated herein.

* + - * 1. Workers Compensation and Employers Liability:

 Contractor shall maintain statutory workers compensation and employer’s liability coverage for all its employees who will engage in the performance of the Agreement. Employer’s liability limits of $1,000,000 are required. Contractor shall furnish a certificate for Workers’ Compensation Insurance in the State of California, including the name of the carrier and the date of expiration of insurance, or a Certificate of Consent to Self-Insure issued by the Department of Industrial Relations.

* + - * 1. Professional Liability:

Professional liability with limits no less than $1,000,000 per claim and $3,000,000 aggregate. The policy retro date must be shown on the certificate and must be no later than the date of the Agreement or the date work under the Agreement begins.

The insurance required above shall cover all contractor-supplied personnel and equipment used in the performance of the Agreement. If subcontractors performing work under this Agreement do not have insurance equivalent to the above, contractor liability shall provide such coverage for the subcontractor, except for coverage for error, mistake omissions, or malpractice, which shall be provided by the subcontractor if such insurance is required by the State.

The contractor agrees that the insurance herein provided for shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of the Agreement, the contractor agrees to provide at least 30 working days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for not less than one year.

The certificate(s) of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured’s coverage without 30 working days prior written notice to the State; and
2. The State of California, its officers, agents, and employees are included as additional insured for General Liability, but only with respect to work performed for the State of California under this Agreement.

Certificates evidencing contractor’s insurance coverage shall be filed with the CDE prior to execution of this Agreement.

### CALIFORNIA ITEM BANK (CA Item Bank)

1. License of the CA Item Banking System: ETS grants to CDE a perpetual, non-transferable, non-exclusive license to use and modify the legacy CA Item Banking System (not IBIS) solely as part of the state assessment programs and solely for the benefit of the State of California and the state assessment programs participants. This license may be sublicensed by CDE (i) only in the event ETS is no longer a current vendor of CDE with respect to the CA Item Bank under this Agreement; or (ii) only for purposes of permitting such a sublicensee to use and/or modify the CA Item Banking System on behalf of CDE and as part of the state assessment programs. No other sublicenses of the CA Item Banking System may be granted. To the extent the CA Item Banking System includes source code for any software, the license to such source code shall be subject to the further restrictions that:
	1. CDE may not resell, rent, lease, sublicense or distribute the Source Code of the CA Item Banking System in any way that would compete with ETS, except as set forth above.
	2. CDE shall maintain the confidentiality of, protect and keep secure all Source Code provided by ETS.
	3. CDE shall not resell, rent, lease or distribute products created from the Source Code in any way that would compete with ETS, except as set forth above.
	4. All copyright, ownership and any other notices may not be removed from the Source Code.
2. CDE Ownership: The CDE shall own all right, title and interest in any and all improvements or modifications to the CA legacy Item Banking System (not IBIS) that have been newly developed pursuant to this agreement, or any predecessor agreement, and at CDE’s expense, subject to a non-exclusive, perpetual, fully paid-up, sublicenseable, worldwide license to such improvements or modifications that is hereby reserved to ETS. The CDE acknowledges and agrees that ETS shall have the right to make improvements or modifications to the CA Item Banking System independent of this agreement and, in the event such modifications or improvements are not paid for by CDE, ETS shall own all right, title, and interest in and to such modifications or improvements.

### ETS ITEM BANKING INFORMATION SYSTEM (ETS IBIS)

In order to provide the CDE with a data warehouse for the new CAASPP and ELPAC assessments, ETS will use its proprietary item banking system, IBIS, during the development and reviews of the new CAASPP and ELPAC assessments. ETS does not include customization of IBIS for California. CDE staff and approved California item reviewers shall have direct access to the item bank through a secure Web-based interface. User authentication, controlled by ETS-managed credentials, secures access through the interface. To establish the complete security of all data moving across the Internet, ETS implements a 256-bit secure socket layer (SSL) encryption.

### Rights/Licenses

The contractor warrants that it has secured, or shall have secured, any and all necessary rights, clearances, and/or licenses with respect to all materials and elements embodied in or used in connection with the performance of this Agreement, and that all included material shall neither violate nor infringe upon the copyright, service mark, trademark, privacy, creative, or other rights of any person, firm, corporation, or other third party. The contractor must provide CDE with documentation indicating a third party’s permission for CDE’s use, for a period of eight years, of the third party’s materials, such as a reading passage excerpted from a book or short story or artwork, or for such term that the third party is willing to negotiate. Contractor agrees to defend the CDE against any third-party claims and to fully indemnify CDE for any and all losses sustained or for any damages or losses suffered as a result of any violation of this clause.

# California Assessment System for the California Assessment of Student Performance and Progress (CAASPP) and the English Language Proficiency Assessments for California (ELPAC) Completion Criteria

The criteria by which the CDE will recommend and the SBE will determine the successful completion of each separate and distinct component task for payment of the final 10 percent is set forth in the following table for each test administration covered in Exhibit A, Scope of Work of the Agreement.

If it is determined by the CDE that a certified deliverable submitted to the CDE by the contractor does not meet all of the criteria in Exhibit E, the CDE reserves the right to use this information as part of the criteria by which the CDE will recommend, and the SBE will determine, successful completion of each separate and distinct component task for payment of the final 10 percent for each applicable test administration as set forth in the attached California Assessment System completion criteria.

## CRITERIA FOR SUCCESSFUL COMPLETION OF COMPONENT TASKS

| **Component Task** | **Criteria** |
| --- | --- |
| Task 1: Comprehensive Plan and Schedule of Deliverables | * The contractor provided all reports, plans and schedules required in the task as specified in the Scope of Work.
* All materials, documents, and/or deliverables developed in conjunction with this contract were submitted to the CDE for approval.
* The contractor provided the LEA Coordinators with all data, forms, and agreements as outlined in the Scope of Work.
* The contractor provided and maintained a secure web-based project management system as specified in the Scope of Work.
* The contractor delivered all electronic data files and documentation as specified in the Scope of Work.
* At the end of the contract, ETS will develop and implement a plan and schedule for transition to another vendor, including the delivery of all California-owned materials, developed specifically for California Assessment System. This will not include any third party or previously developed, proprietary software embedded in the System.
 |
| Task 2: Program Support Services | * The contractor provided all trainings, focus groups, workshops, and webcasts as specified in the Scope of Work.
* The California Technical Assistance Center (CalTAC) provided assistance to local educational agencies as specified, and within the response times specified, in the Scope of Work.
* The CDE and LEAs received electronic files and other reports as specified in the Scope of Work.
 |
| Task 3: Technology Services | * The Assessment Technology Platform meets all system requirements as specified in the Scope of Work.
* The contractor provided an access management system as detailed in the Scope of Work.
* Contractor provided and maintained a Project Management Plan as detailed in the Scope of Work.
* The Assessment Technology Platform supported up to 2 million concurrent users as specified in the Scope of Work.
* The Assessment Technology Platform system supported at least 99.982 percent availability as specified in the Scope of Work.
 |
| Task 4: Test Security | * All test items, test materials, electronic files, data, (including student-identifiable data) were developed, used, transferred, delivered, and maintained in a secure manner as specified in the Scope of Work.
* The contractor completed all monitoring (including but not limited to on-site visits, social media monitoring, inventorying of materials) of schools before, during, and after testing as specified in the Scope of Work.
* The contractor conducted security breach investigations as specified in the Scope of Work.
* The contractor provided the CDE with summary reports of the results of each security breach investigation.
 |
| Task 5: Accessibility and Accommodations | * The contractor provided all universal tools, designated supports, and accommodations as required in the Scope of Work.
* All items developed (as specified in Task 6) include all the embedded accessibility supports, functionality, and render within the test delivery system as specified in the Scope of Work.
 |
| Task 6: Assessment Development | * The contractor developed for all grades and subjects the number and types of items specified in the Scope of Work.
* The contractor pilot tested or field tested the minimum required number of items as specified in the Scope of Work.
* The contractor provided and followed high-level test design and blueprints for assessments as specified in the Scope of Work.
* A review of the scaling and equating processes showed items to meet or exceed industry standard.
* The performance and achievement level settings generated results for all content areas and performance levels were reported to local educational agencies and the CDE.
* The contractor provided all documentation and supported submissions of federal assessment peer review, where applicable.
 |
| Task 7: Test Administration | * All test materials required in the Scope of Work were produced on time and in sufficient quantities.
* All test materials were delivered to and retrieved from local educational agencies as specified in the Scope of Work.
* The contractor hosted the Assessment Delivery System as specified in the Scope of Work.
* The hosting systems (TOMS, Appeals, and Assessment Delivery System) were operational and functioned as specified in the Scope of Work, including the authentication of users.
* Smarter Balanced Interim Assessments were hosted and scoring provided as specified in the Scope of Work.
 |
| Task 8: Scoring and Analysis | * All tests were correctly processed and scored within timelines specified in the Scope of Work.
* All data analyses were completed as specified in the Scope of Work.
* The contractor delivered all electronic data files and documentation as specified in the Scope of Work.
 |
| Task 9: Reporting Results | * The contractor provided accurate and complete reports of test results to local educational agencies that met all reporting requirements as specified in the Scope of Work.
* The contractor provided accurate and complete data to the designated CDE vendor for the California Educator Reporting System that met all requirements as specified in the Scope of Work.
* The contractor provided accurate and complete reports of test results for the public reporting websites that met all reporting requirements as specified in the Scope of Work.
* The contractor met all reporting requirements to the CDE as specified in the Scope of Work.
* The annual technical reports were received by the CDE as specified in the Scope of Work.
* The contractor will propose and execute special studies as described in the Scope of Work.
 |