

**AGREEMENT FOR THE PREPARATION OF  
BAR EXAM TESTING MATERIALS AND RELATED SERVICES  
BETWEEN  
THE STATE BAR OF CALIFORNIA  
AND  
KAPLAN**

**THIS AGREEMENT FOR THE PREPARATION OF BAR EXAM TESTING MATERIALS AND RELATED SERVICES** ("Agreement") is made by and between The State Bar of California ("State Bar"), a California public corporation having a principal place of business at 180 Howard Street, San Francisco, CA 94105, and Kaplan Exam Services, LLC ("Contractor"), a Delaware limited liability company having a principal place of business at 1515 W. Cypress Creek Road, Fort Lauderdale, FL 33309. This Agreement sets forth the terms and conditions by which Contractor will perform services for the State Bar. The State Bar and Contractor are sometimes referred to individually as a "Party," and collectively as the "Parties."

**RECITALS**

WHEREAS, the State Bar is charged with administering the California General Bar Examination ("Bar Exam"), which tests minimum competency for entry-level attorneys and is a prerequisite for admission to the practice of law.

WHEREAS, as currently structured, the Bar Exam is composed of five essay questions, 200 multiple choice questions, and one performance test ("PT").

WHEREAS, the State Bar does not intend to alter the Bar Exam "in a manner that requires the substantial modification of the training or preparation required for passage of the examination, except after giving two years' notice of that change." (Business & Professions Code § 6046.6).

WHEREAS, the State Bar seeks to procure the services of a qualified test question preparer to assist in the preparation of questions for its Bar Exam that do not require substantial modification of the training or preparation required for passage of the examination.

WHEREAS, the State Bar will require additional services to prepare the Bar Exam's essay questions and PTs once the State Bar exhausts its reserves of existing questions.

WHEREAS, the State Bar desires to retain Contractor to prepare the multiple choice, the essay and the PT portions of the Bar Exam, beginning with the administration of the February 2025 Bar Exam ("Testing Services"). The multiple choice questions, essay questions, and PTs prepared by Contractor, as more fully described and specified in this Agreement, are collectively referred to herein as the "Test Materials."

WHEREAS, the State Bar also desires to retain Contractor to prepare (i) a study guide designed for Bar Exam test takers ("Student Guide"); and (i) a study guide designed for law school faculty ("Faculty Guide") and together with the Student Guide, the "Study Guide Services" that provide

basic information about the content of the exam's multiple choice questions and include subject matter outlines of the tested subjects.

WHEREAS, this Agreement sets forth the terms and conditions upon which Contractor will provide the Testing Services and Study Guide Services (collectively, the "Services") to the State Bar.

WHEREAS, Contractor agrees to perform the Services on the terms and conditions set forth herein. Contractor is a subsidiary of Kaplan North America, LLC ("Contractor's Parent"), a Delaware limited liability company, which is a guarantor of Contractor's obligations to State Bar under this Agreement, as provided in Exhibit A.

WHEREAS, in entering into this Agreement, the Parties acknowledge that the State Bar and Contractor are not forming a partnership or other business venture and the purpose of this Agreement is solely intended to support the State Bar's important public mission of administering the Bar Exam with integrity. To that end, Contractor acknowledges that it will not market or advertise its services to the State Bar, except as provided herein.

WHEREAS, in entering into the Agreement, Contractor acknowledges that "protection of the public" is the highest priority for the State Bar of California in exercising its licensing function. (Business & Professions Code § 6001.1).

NOW, THEREFORE, in consideration of covenants and agreements herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

#### **ARTICLE 1 - SERVICES**

1.1 Testing Services. Beginning with the February 2025 Bar Exam administration and concluding with the July 2029 Bar Exam administration, Contractor agrees to perform the Testing Services in accordance to the State Bar's requirements as described below.

1.1.1 February 2025 Bar Exam. To allow sufficient time for the State Bar to conduct content validation, the following services are required in advance of the February 2025 Bar Exam administration:

1.1.1.1 Contractor shall deliver to the State Bar by no later than [REDACTED], a total of [REDACTED] multiple choice questions, inclusive of [REDACTED] questions in each of the seven (7) legal subjects currently tested on the multiple choice portion of the Bar Exam: Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts ("Seven Subjects").

1.1.1.2 Contractor shall deliver [REDACTED] additional separate batches of multiple choice questions: [REDACTED] by [REDACTED] [REDACTED] by [REDACTED] and [REDACTED] by [REDACTED]. Each batch will consist of questions covering the Seven Subjects in approximately equal

numbers. To clarify, Contractor shall have delivered a total of [REDACTED] multiple choice questions to the State Bar by [REDACTED] which are comprised of the Seven Subjects.

1.1.2 July 2025 Bar Exam and Beyond.

1.1.2.1 July 2025 Bar Exam. Contractor shall deliver [REDACTED] separate batches of [REDACTED] multiple choice questions each with [REDACTED] questions in each of the Seven Subjects, to the State Bar no later than the following three dates: [REDACTED]

To clarify, Contractor shall have delivered a total of [REDACTED] multiple choice questions to the State Bar by [REDACTED] for use on the July 2025 bar exam.

1.1.2.2 February 2026 Bar Exam through July 2029 Bar Exam. At least twelve (12) months prior to each Bar Exam administration between February 2026 and July 2029, the State Bar shall notify Contractor in writing of the number of multiple choice questions and, if any, essay questions and PTs for each Bar Exam administration. Contractor shall design and prepare all Test Materials in accordance with the State Bar's requirements. All multiple choice questions and, if any, essay questions and PTs shall be provided to the State Bar at least six (6) months prior to each successive Bar Exam. The State Bar shall provide Contractor with its request for a minimum of [REDACTED] and a maximum of [REDACTED] multiple choice questions for each such Bar Exam administration. For each of the February 2026 and July 2026 Bar Exam administrations, the State Bar will require [REDACTED] essay questions in each of the Thirteen Subjects listed in Section 1.1.4 and [REDACTED] PTs, for a total of [REDACTED] items for the year 2026, in order to build the written item bank. In each subsequent Bar Exam administration, the State Bar will require [REDACTED] essay questions in each of the Thirteen Subjects listed in Section 1.1.4 and [REDACTED] PTs, for a total of [REDACTED] items per year.

1.1.3 Multiple Choice Questions. The multiple choice questions prepared for each Bar Exam shall not result in substantial modification to the training or preparation required for passage of the Bar Exam and shall test the Seven Subjects, shall rely on the legal concepts set forth in subject matter outlines provided by the State Bar, and shall be substantially in the basic form of fact patterns, prompts, and four possible answers. The State Bar will provide Contractor with its library of subject matter outlines, at least [REDACTED] multiple choice questions that previously appeared on the First-Year Law Students' Examination, and prior essay questions and PTs previously appearing on the Bar Exam (collectively, "State Bar Resources"). Contractor may use such materials when drafting the multiple choice questions, along with any other materials it deems appropriate provided such use would not violate any other provision of this Agreement or infringe on a third party's copyright.

1.1.4 Essay Questions and PTs. The essay questions shall not result in substantial modification to the training or preparation required for passage of the Bar Exam and shall test the following thirteen (13) legal subjects: Business Associations, Criminal Law and Procedure, Remedies, Civil Procedure, Evidence, Torts, Community Property, Professional Responsibility,

Trusts, Constitutional Law, Real Property, Wills and Succession, and Contracts ("Thirteen Subjects"). The essay questions and PTs shall test the legal concepts set forth in subject matter outlines provided by the State Bar. The State Bar will provide specific content and style parameters and guidelines to be incorporated into such questions in accordance with the process described below. The State Bar will also provide Contractor with subject matter outlines, sample multiple choice questions that previously appeared on the First-Year Law Students' Examination, and prior essay questions and PTs previously appearing on the Bar Exam. Contractor may use such materials when drafting the essay questions and PTs, along with any other materials it deems appropriate provided such use would not violate any other provision of this Agreement or infringe on a third party's copyright.

1.1.5 Requirements for All Questions. All Test Materials shall comply with the following requirements, standards, and prohibitions:

1.1.5.1 Test Materials must be new, unique, and unexposed to anyone outside of Contractor prior to delivery to the State Bar, including customers and users of any of Contractor's products or services. Test Materials may be generated or reviewed by a subcontractor in accordance with Section 3.4.

1.1.5.2 Test Materials must be original and not duplicates, clones, or variants of existing materials.

1.1.5.3 Contractor shall not pretest Test Materials on any third parties.

1.1.5.4 Contractor shall provide the following information with each question: (1) model answer and reference to the tested legal principle in order for State Bar to verify each answer's accuracy (a citation to case law or statute is not necessary); (2) grading rubric for essay questions and PTs; and (3) the legal subject tested by the question.

1.1.5.5 Contractor shall not use artificial intelligence in a manner that violates the provisions of Article 18.

1.1.5.6 Test Materials must demonstrate content alignment with subject matter outlines provided by the State Bar for question development.

1.1.5.7 Test Materials must conform to State Bar guidelines provided, or as revised from time to time in writing, by the State Bar.

1.1.5.8 Contractor shall adhere to industry practices for preparing multiple choice questions (e.g., the current edition of "Developing and Validating Multiple Choice Items" by Thomas Haladyna).

1.1.5.9 The State Bar will provide Contractor with its library of subject matter outlines, at least [REDACTED] multiple choice questions that previously appeared on the First-Year Law Students' Examination, and prior essay questions and



PTs previously appearing on the California Bar Exam. Contractor may use such materials when drafting the multiple choice, essay and PT questions, along with any other materials it deems appropriate provided such use would not violate any other provision of this Agreement or infringe on a third party's copyright.

1.1.5.10 Contractor shall ensure that personnel (including employees, agents, and subcontractors) involved in any way in the conception, development, drafting, and/or other creation of any Work Product as defined in Article 9 (collectively, the "Creators") will not have access, *i.e.*, a reasonable possibility of viewing, any materials created by the National Conference of Bar Examiners ("NCBE"), a non-profit corporation headquartered in Wisconsin, including but not limited to the NCBE's questions, exams, test blueprints, or subject matter outlines in which NCBE possesses Intellectual Property Rights subject to protection under State or federal law ("NCBE Materials"). Contractor shall take affirmative steps to satisfy this requirement, which shall include but are not limited to issuing protocols and monitoring compliance to ensure that: (1) no Creators have access to any NCBE Materials at any time during the Term of this Agreement; (2) any person who has access to any NCBE Materials, such as one acting in a supervisory role, shall not be a Creator; (3) Creators do not review, refer to, copy, or otherwise use any NCBE Materials; and (4) Creators contemporaneously document and maintain records of their independent creation of all Work Product.

1.1.5.11 Contractor shall deliver the Test Materials to the State Bar in an electronic format and secure delivery method as specifically requested by the State Bar.

1.1.6 State Bar Evaluation of Test Materials. State Bar shall review all Test Materials in accordance with the industry standard practice of content validation, upon delivery and promptly return comments to Contractor. Contractor shall address any comments identified by the State Bar and return a corrected version of the Test Materials that addresses such comments to the State Bar within thirty (30) calendar days of receipt of the State Bar's comments, except for the February 2025 cadence described in 1.1.1.2 whereby the accelerated schedule will require the revisions back within ten (10) calendar days of receipt. If necessary, the same comment resolution process shall be repeated until the State Bar is satisfied with the Test Materials.

1.2 Study Guide Services. In addition to the Testing Services, Contractor shall deliver two study guides in electronic form to the State Bar in accordance with the requirements of this section: (i) the Student Guide designed for Bar Exam test takers; and (ii) the Faculty Guide designed for law school faculty.

1.2.1 Student Guide. Contractor shall prepare and deliver to the State Bar an official Student Guide on the first, third and fifth years for that respective calendar year's two Bar Exam administrations during the Term. The State Bar shall distribute the Student Guide to all Bar Exam test takers. The Student Guide's content shall consist of a total of twenty-five (25) multiple choice questions covering the Seven Subjects. The Student Guide shall bear the name of the State Bar and shall not include Contractor's name or logo on any portion of the document, except that Contractor may acknowledge its preparation of the Student Guide in the manner described in

Article 11. The questions in the Student Guide shall comply with the provisions of Section 1.1.5. above and shall be substantially different than the questions in the Test Materials for each Bar Exam, meaning that the fact patterns and prompts must be substantially different even if the legal concepts and principles are the same. Contractor shall deliver a draft of the Student Guide to the State Bar for review and approval no later than November 1 for the February Bar Exam administration and the July Bar Exam administration, on the first, third and fifth years and shall address any comments identified by the State Bar. Contractor shall return a corrected version of the Student Guide to the State Bar within thirty (30) days of receipt of the State Bar's comments. If necessary, the comment resolution process shall be repeated until the State Bar is satisfied with the Student Guide.

1.2.2 Faculty Guide. Contractor shall prepare and deliver to the State Bar the Faculty Guide for use by law faculty beginning with the fall semester, 2024. Thus, this guide must be delivered no later than September 30, 2024. The Faculty Guide shall be substantially similar in form and content to the Student Guide, except that the multiple choice questions shall be substantially different from the Student Guide's multiple choice questions. Contractor shall update the Faculty Guide at least once during the Term, but may choose to do so more frequently at its discretion.

1.2.3 Form of Study Guides. Contractor shall deliver the Student Guide and Faculty Guide in the manner and times set forth in this section and in a form provided by the State Bar to Contractor in writing. Such forms may include PDF or Microsoft Word.

1.3 Standard of Performance. Contractor shall perform the Services in accordance with the generally accepted professional standards of practice and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently performing similar Services under similar conditions.

1.4 Change Orders. Either Party may request reasonable changes to the scope of Testing Services and Study Guide Services, project schedule or timeline, or any other Contractor obligations under this Agreement after the Effective Date by submitting a written request ("Change Order Proposal"). Any acceptance of the Change Order Proposal must be in writing and executed by the Parties, and such written and executed instrument ("Change Order Amendment") will state the Parties' agreement to enter into such Change Order Amendment to this Agreement. Contractor shall not proceed with any changes to its obligations unless first documented in a Change Order Amendment executed by both Parties.

## **ARTICLE 2 - TERM OF AGREEMENT**

2.1 Term. The term of this Agreement shall commence on August 9, 2024, provided the Board of Trustees of the State Bar has approved this Agreement by that date, or on such later date that the Board of Trustees has approved this Agreement and it has been executed by the State Bar ("Effective Date"), and shall continue in full force and effect until 11:59:59 pm Pacific Time on December 31, 2029 ("Expiration Date", together with the Effective Date, the "Term") unless terminated earlier in accordance under Article 10.

2.2 Extension of Term. Any extensions or renewal of the Term, inclusive of Contractor's preparation of Test Materials and Study Guides for Bar Exam administrations beyond July 2029, shall be subject to a written agreement between Contractor and the State Bar. If the Parties renew the Term, the terms and conditions during such extension or renewal term shall be the same as the terms and conditions in effect immediately prior to such renewal or extension, unless otherwise agreed to in writing by the Parties. If the Parties fail to renew or extend this Agreement, then, unless sooner terminated in accordance with its terms, this Agreement shall terminate on the Expiration Date.

2.3 Time of the Essence. The Parties agree that time is of the essence with respect to performance of each term and deadline under this Agreement.

### **ARTICLE 3 - RELATIONSHIP OF THE PARTIES**

3.1 Independent Contractor. The Parties agree that Contractor is an independent contractor and not an associate, employee, agent, joint-venturer, or partner of the State Bar. Nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee between the State Bar and Contractor or Contractor's assistant, employee, or agent of Contractor. Neither Contractor nor its employees or agents shall perform any acts that might lead others to believe that they are representatives of the State Bar, except as to the performance of the Services. Contractor has no authority (and shall not hold itself out as having authority) to bind the State Bar and Contractor shall not make any agreements or representations on the State Bar's behalf without its prior written consent. Neither Party shall control or direct the manner or means by which the Party, or its employees, agents or subcontractors ("Representatives"), will perform the obligations of this Agreement. The Parties agree that the Services performed are outside the usual course of the State Bar's business.

3.2 Contractor Capabilities. Contractor represents that its parent company, which has organized Contractor for the purpose of performing this Agreement, is or through its affiliated companies customarily engaged in an independently established trade, occupation, or business of the same nature as the Services performed hereunder.

3.3 Furnish Labor and Equipment. Unless otherwise provided in this Agreement, Contractor shall furnish, at its own expense, all labor, tools, equipment, and materials necessary to perform the Services. Contractor may, at Contractor's own expense, retain or employ such assistants, employees, or personnel as Contractor deems necessary to perform the Services and such individuals will be Contractor's employees. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants, employees, or personnel, including workers' compensation coverage as required, all federal, state, and local income taxes, unemployment and disability insurance, Social Security, or other applicable withholdings.

3.4 Subcontractors. State Bar may advise Contractor as to preferences or guidelines for Contractor's subcontractors, but does not have a right to review, refuse or replace Contractor's staff or subcontractors, except that if cause for concern or disqualification is

presented by State Bar, Contractor must review State Bar's objection in good faith and may take appropriate action in Contractor's discretion.

3.5 State Bar Benefits and Tax Withholdings. Contractor is not eligible to participate in any vacation benefits, group medical or life insurance, disability benefits, retirement benefits, or any other fringe benefits or benefit plans offered by the State Bar to its employees. The State Bar will not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes. The State Bar will not be responsible for making any insurance contributions, including for unemployment, disability, or workers' compensation insurance on Contractor's behalf.

#### **ARTICLE 4 - COMPENSATION**

4.1 Annual Fee. Except as provided in Article 10, during the Term, for the Services satisfactorily rendered pursuant to this Agreement, the State Bar will pay Contractor an annual fee ("Annual Fee") according to the following schedule.

Year	Annual Fee
Year 1	One Million Nine Hundred Fifty Thousand U.S. Dollars (\$1,950,000)
Year 2	One Million Eight Hundred Thousand U.S. Dollars (\$1,800,000)
Year 3	One Million Six Hundred Fifty Thousand U.S. Dollars (\$1,650,000)
Year 4	One Million Five Hundred Thousand U.S. Dollars (\$1,500,000)
Year 5	One Million Three Hundred Fifty Thousand U.S. Dollars (\$1,350,000)

4.2 Invoices; Schedule. Contractor will prepare and send to the State Bar invoices for the Annual Fee according to the following schedule:

Delivery Year	Examination Period	Invoice	Percentage of Annual Fee
Year 1	Feb & July 2025	12/1/2024	50%
Year 1	Feb & July 2025	3/2/2025	50%
Year 2	Feb 2026	8/15/2025	25%
Year 2	Feb 2026	10/15/2025	25%
Year 2	July 2026	1/15/2026	25%
Year 2	July 2026	3/15/2026	25%
Year 3	Feb 2027	8/15/2026	25%
Year 3	Feb 2027	10/15/2026	25%

Year 3	July 2027	1/15/2027	25%
Year 3	July 2027	3/15/2027	25%
Year 4	Feb 2028	8/15/2027	25%
Year 4	Feb 2028	10/15/2027	25%
Year 4	July 2028	1/15/2028	25%
Year 4	July 2028	3/15/2028	25%
Year 5	Feb 2029	8/15/2028	25%
Year 5	Feb 2029	10/15/2028	25%
Year 5	July 2029	1/15/2029	25%
Year 5	July 2029	3/15/2029	25%

4.3 The State Bar will pay all undisputed payments within thirty (30) calendar days after the State Bar's receipt of Contractor's invoice. Invoices shall include at least the following information: (i) the date(s) upon which the Services were performed or completed, as applicable; and (ii) a summary description of the Services performed. Each invoice submitted will reference the appropriate State Bar purchase order number SBC240389. Notwithstanding the above, if this Agreement terminates prior to expiration of the Term pursuant to Article 10, all outstanding invoices shall become immediately due.

4.4 Total Compensation. The total compensation for all the Services performed shall not exceed Eight Million Two Hundred Fifty Thousand U.S. Dollars (\$8,250,000) for the Term.

#### **ARTICLE 5 - WARRANTIES AND REPRESENTATIONS**

5.1 Qualifications. Contractor warrants that Contractor and its personnel, employees, and subcontractors have the education, qualifications, expertise, experience, and ability necessary to perform the Services in a diligent, timely, professional, and workmanlike manner consistent with the highest industry standards for similar services.

5.2 Legal Compliance. Each Party warrants and represents that it has, or it will obtain in a timely manner before the commencement of the performance of the Agreement, all permits, licenses, registrations, or approvals necessary or applicable to delivery of its obligations.

5.3 Title to Work. Contractor warrants that the State Bar will receive good and valid title to all Work Product, as defined in Article 9, free and clear of all encumbrances and liens of any kind.

5.4 Good Standing. Contractor represents and warrants that it has been duly organized, is validly existing and in good standing under the laws of the jurisdiction of its

organization, and is duly qualified to do business in and is in good standing in the State of California.

5.5 Qualifications. State Bar warrants that its personnel, employees, and subcontractors involved in the Services have the education, qualifications, expertise, experience, and ability necessary to administer the bar exam Work Product provided by Contractor in a diligent, timely, professional, and workmanlike manner, and grade bar exams thereof, consistent with applicable law.

## **ARTICLE 6 - INDEMNITY**

### **6.1 Indemnification Obligation.**

6.1.1 Indemnification. An indemnifying Party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the indemnified Party, including its parent companies, Board or Board of Trustees, commissions, committees and subentities, officers, directors, agents, attorneys, employees, successors, licensees, members, volunteers, and assigns and their respective boards, officers, directors, agents, attorneys, employees, and partners (as the same may be constituted from time to time, hereinafter referred to as the "Indemnified Party") from and against any and all third party claims, demands, damages, debts, liabilities, losses, obligations, costs, expenses, liens, judgments, awards, penalties, fines, actions, or causes of action (including but not limited to reasonable attorneys' fees, costs, and expenses), whether or not litigation is actually commenced (collectively, "Losses"), arising out of or in connection with any: (i) breach by the Indemnifying Party of this Agreement, including any warranty or representation; (ii) breach or potential breach of data security or privacy; (iii) gross negligence or willful act by the Indemnifying Party or its employees, agents, or subcontractors related to the performance of this Agreement, or (iv) claims of alleged defects of administration, grading or bias of the bar exam by exam takers for which State Bar shall be the Indemnifying Party. The foregoing indemnification and hold harmless obligation of an Indemnifying Party shall not apply to the extent that any such Losses arise out of the sole actions or omissions or willful misconduct of the Indemnified Party as established by final court decision or agreement of the Parties. Consistent with Article 17, it is the express agreement of the Parties not to provide indemnification for actual or alleged intellectual property infringement.

6.1.2 Costs and Expenses. Each Party shall be liable to the other for all costs (including but not limited to reasonable attorneys' fees, costs and expenses) incurred by such Party for the purposes of enforcing this indemnity provision.

6.1.3 Legal Counsel. The State Bar may, at its option, designate its Office of General Counsel as an equal participating counsel in any litigation wherein the State Bar is defended by Contractor. Contractor may, at its option, designate its in-house counsel as an equal participating counsel in any litigation wherein the Contractor is defended by State Bar.

6.1.4 Indemnification Cap. Each Party's maximum liability under this Article 6 shall not exceed a total of One-Million Six-Hundred Fifty-Thousand Dollars (\$1,650,000).

## 6.2 Indemnification Procedures.

6.2.1 Notice of Claims and Lawsuits. If any third-party claim is commenced against any Party entitled to indemnification under this Article, the Party against whom the claim is made ("Indemnified Party") will promptly give written notice thereof to the other Party ("Indemnifying Party"), and the Indemnifying Party shall immediately assume the defense of such claim with counsel mutually acceptable to both Parties. The failure of the Indemnified Party to provide notice to the Indemnifying Party under this section does not relieve the Indemnifying Party of any liability that the Indemnifying Party may have to the Indemnified Party. The Indemnified Party shall cooperate, at the sole cost of the Indemnifying Party, in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial, and defense of such claim, and in any appeal arising therefrom; provided, however, that the Indemnified Party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial, and defense of such claim, and any appeal arising therefrom. The Indemnifying Party shall coordinate the defense of any third-party claim with the Indemnified Party, including any investigation and trial, and any appeal therefrom. The Indemnifying Party shall not enter into a settlement of any claim that involves a remedy other than the payment of money by the Indemnifying Party without the prior written consent of the Indemnified Party. If the Indemnifying Party does not assume an immediate defense of a claim that the Indemnifying Party is obligated to defend, the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Indemnifying Party.

6.2.1.1 Selection of Counsel. Notwithstanding anything to the contrary in this Article, an Indemnified Party may select its own legal counsel to represent its interests in any matter arising under this Agreement. The Indemnifying Party shall:

6.2.1.2 Reimburse the Indemnified Party for its reasonable costs and attorneys' fees as they are incurred, upon presentation of an itemized statement of such costs and fees; and

6.2.1.3 Remain responsible to the Indemnified Party for any Losses indemnified under Section 6.1.1, in accordance with the terms of this Agreement.

## ARTICLE 7 - INSURANCE

7.1 Type and Limits of Insurance. During the Term of this Agreement, Contractor shall maintain and keep in full force and effect at Contractor's own cost and expense, the following insurance policies from insurer(s) authorized to provide insurance in the State of California, for the joint benefit of Contractor and the State Bar:

7.1.1 Professional Liability Insurance coverage with a minimum limit of Eight Million Dollars (\$8,000,000). Such professional liability insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A-VII. The policy shall include the duty to defend. If a "claims made" policy is used, it shall be endorsed to provide an extended reporting period of not less than three (3) years. The effective date of the policy shall not be later than the



Effective Date herein. The policy shall be applicable to all rights granted to the State Bar pursuant to this Agreement, all Work Product provided to the State Bar, and all uses made thereof by Contractor and/or the State Bar pursuant to this Agreement, insuring against liabilities relating to this Agreement.

7.1.2 Commercial General Liability Insurance coverage having a combined single limit of not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage liability, Four Million Dollars (\$4,000,000) annual aggregate, and Two Million Dollars (\$2,000,000) for products/completed operations. Such commercial general liability insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.1.3 Workers' Compensation Insurance coverage if Contractor has one (1) or more employees as defined by the State of California, coverage as required by applicable California state law and federal statutes covering liability for injuries to all persons employed by the insured in the conduct of its operations, together with employer's liability insurance in the amount of One Million Dollars (\$1,000,000) for each accident and One Million Dollars (\$1,000,000) policy limit for bodily injury by disease. Such workers' compensation insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.1.4 Privacy Security Liability/Cyber Insurance coverage for a minimum limit of Eight Million Dollars (\$8,000,000) per claim and annual aggregate. Such privacy security liability/cyber insurance will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.1.5 Umbrella Liability Insurance. coverage with a general aggregate limit of Five Million Dollars (\$5,000,000.00) and a per occurrence limit of at least Five Million Dollars (\$5,000,000.00). Such umbrella liability insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.2 Certificates and Endorsements. Within fifteen (15) calendar days of the Effective Date, Contractor shall deliver to the State Bar offices at 845 S. Figueroa St., Los Angeles, CA 90017 Attn: Procurement, certificates of insurance, together with original endorsements, evidencing compliance with the requirements in this Article. Contractor shall provide prompt written notice to the State Bar if there are any cancellations or lapses, reductions in coverage or coverage limit, or other material changes to the insurance policies. If Contractor fails to secure and maintain the required insurance policies as set forth in this Article, the State Bar may, in its sole discretion, purchase the required insurance coverage and Contractor shall reimburse the State Bar for all the associated costs, including any administrative costs incurred in securing such coverage.

7.3 Waiver of Subrogation. Contractor waives and releases all claims and all rights of recovery against the State Bar for any loss, injury, or damage arising from any claim that: (i) is of the type that is required to be insured against under the terms of this Agreement, regardless of whether such insurance coverage actually exists; or (ii) is actually insured against under any insurance policy carried by Contractor, regardless of whether such insurance is required hereunder. To the extent permitted by law, Contractor's waiver and release will apply



irrespective of the cause or origin of the claim, including the negligence or intentional misconduct of the State Bar, or of any person acting at the direction or under the control of the State Bar. Contractor agrees that the foregoing waiver will be binding upon its respective insurance carriers, and (except for any insurance policy that provides that the insured thereunder may effectively waive subrogation without further action on the part of the insured) Contractor shall obtain endorsements or take such other action as may be required to effect such insurer's waiver of subrogation under each such policy.

7.4 Waiver of Coverage. The State Bar agrees to waive any Automobile Liability Insurance requirements since Contractor represents that it will not use any vehicle or mobile equipment to perform the Services under this Agreement.

## **ARTICLE 8 - CONFIDENTIALITY**

8.1 Confidential Information. "Confidential Information" of either Party means any information, technical data, trade secrets or know-how (whether disclosed before or after the Effective Date of this Agreement), including, but not limited to information relating to records, documents, data, notes, analyses, compilations, studies, processes, plans or other information provided by the disclosing Party, which may include but is not limited to business practices, products, services, projections, forecasts, providers, employees, personnel, board members, volunteers, contractors, customer lists, human resources, personal information, technical data, computer object or source code, research, inventions, processes, designs, drawings, engineering, marketing, finance, operations, policies, procedures, board members, leadership, management, legal and regulatory affairs, licensees (former and current), applicants, and relationships with third-parties or other information of a confidential or proprietary nature which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Confidential Information does not include information that: (a) is or becomes a part of the public domain through no act or omission of its owner or owner's Representatives; (b) is lawfully disclosed to recipient or recipient's Representatives by a third-party without restrictions on disclosure; (c) was in a Party or Party's Representatives' lawful possession, as established by documentary evidence, prior to the disclosure by the disclosing Party or (d) is a public record, not exempt from disclosure pursuant to the California Public Records Act, Government Code Section 7920.000 et seq. To clarify, State Bar's Confidential Information shall include all Test Materials and Study Guides, including preliminary notes, memoranda, and other Work Product as defined below. Each Party and its Representatives shall have access to the other Party's Confidential Information on a need-to-know basis.

8.2 Obligation to Maintain Confidentiality. Excluding licenses of Exposed Materials granted to Contractor in Article 9 and the State Bar's provision of the Test Materials and Study Guides to their intended audiences (e.g., test takers, law students, law professors, etc.) and to persons authorized by the State Bar to review or evaluate the Test Materials and Study Guides (including the State Bar's psychometricians) and administer the Bar Exam, each Party agrees to maintain in strictest confidence Confidential Information of the other Party, whether provided orally, in writing, electronically or in any other form or medium, or that the Party or Party's

Representatives may otherwise receive access thereby. Contractor shall be responsible for compliance with all confidentiality obligations herein by its subcontractors, agents, and any other person or entity providing services or support to Contractor in connection with this Agreement.

8.3 Safeguarding Confidential Information. Excluding licenses of Exposed Materials granted in Article 9, each Party shall safeguard and shall take all necessary steps to protect Confidential Information. Each Party shall only use and disclose Confidential Information to its Representatives necessary to perform or receive the Services pursuant to this Agreement. A Party shall notify the other Party immediately of any unauthorized use, access, or disclosure of Confidential Information and take all commercially reasonable steps to prevent further use, access, or disclosure.

8.4 Unauthorized Disclosure. Excluding licenses of Exposed Materials granted in Article 9, each Party shall not disclose Confidential Information or permit it to be disclosed, in whole or part, to any third-party without the prior written consent of the owner. If any person or entity requests by a subpoena or court order any information or materials relating to this Agreement which is within the possession, custody, or control of a Party or Party's Representatives, that Party shall promptly inform the other Party of such request and cooperate to the extent the owner objects or moves to quash such request or subpoena. Notwithstanding any contrary provision contained herein, either Party may disclose Confidential Information to the extent that such disclosure is required by law or regulation, or is pursuant to a valid order of a court of competent jurisdiction or an authorized governmental authority; provided that the disclosing Party: (a) immediately notifies the owner in writing of the disclosure request and to the extent not prevented from doing so by an applicable government authority, provides the owner a copy of the order by the applicable court or governmental authority so the owner may seek a protective order or another appropriate remedy; (b) cooperates with the owner if it seeks a protective order or other appropriate remedy preventing or limiting disclosure; and (c) seeks confidential treatment of any Confidential Information required to be disclosed before disclosure, and attorney's eyes only treatment for highly sensitive information for which the owner believes attorneys' eyes only treatment is appropriate. If the owner cannot obtain a protective order, another appropriate remedy, or otherwise fails to quash the legal process requiring disclosure, the disclosing Party will work with the owner to disclose the requested Confidential Information only to the extent required by such law, regulation, or order.

8.5 Additional Remedies for Unauthorized Disclosure. Each Party acknowledges that irreparable harm can result to the Parties and to third-parties by disclosure or threatened disclosure of Confidential Information that cannot be adequately relieved by monetary damages alone. Accordingly, a Party may seek equitable remedies including a temporary or permanent injunction or other equitable relief from any court of competent jurisdiction, without the necessity of showing actual damages and without the necessity of posting any bond or other security. The equitable relief will be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief. If the Party incurs any loss or liability arising out of disclosure or use of any Work Product or Confidential Information by any one or more of either Party or its agents or representatives other than as authorized herein, that disclosure or use will

be deemed to have been by the Party for purposes of determining whether the Party breached any of its obligations under the Agreement.

#### **ARTICLE 9 - INTELLECTUAL PROPERTY RIGHTS**

9.1 Intellectual Property Rights Defined. For purposes of this Agreement, the term "Intellectual Property Rights" means know-how, inventions, patents, patent rights, and registrations and applications, renewals, continuations and extensions thereof, works of authorship and art, copyrightable materials and copyrights (including, but not limited to, titles, computer code, designs, themes, concepts, artwork, graphics and visual elements, and methods of operation, and any related documentation), copyright registrations and applications, renewals and extensions thereof, mask works, industrial rights, trademarks, service marks, trade names, logos, trademark registrations and applications, renewals and extensions thereof, derivative works, trade secrets, rights in trade dress and packaging, publicity, personality and privacy rights, rights of attribution, authorship, integrity and other similarly afforded "moral" rights, and all other forms of intellectual property and proprietary rights recognized by the U.S. laws, and other applicable foreign and international laws, treaties and conventions.

9.2 Work Product. Contractor recognizes and agrees that all rights, titles, and interests, including all Intellectual Property Rights, which may be prepared, procured, or produced in whole or in part in, or resulting from, the Services rendered by Contractor pursuant to this Agreement, including, without limitation, any and all deliverables, research, proposals, materials, reports, plans, other writings, and other work product (collectively referred to as "Work Product"), including all Intellectual Property Rights, are "works made for hire" for the benefit of the State Bar. Accordingly, all rights, titles, and interests shall vest in the State Bar as the author and as the sole and exclusive copyright owner of the Work Product. To the extent that any Work Product may not, by operation of law, vest in the State Bar or any Work Product may not be considered "works made for hire," in consideration of the mutual promises contained in this Agreement, Contractor hereby irrevocably assigns and transfers (by way of future assignment and transfer when necessary), in perpetuity, without separate compensation, to the State Bar all of the rights, titles, and interests in the Work Product that Contractor or its Representatives may have or may hereafter acquire in the Work Product, in the United States of America and throughout the world, in all mediums now known or hereafter invented, free of any encumbrances or liens, and hereby assigns any and all such rights, including renewals and extensions of each such copyright(s) that may be secured under the laws now or hereafter. All rights granted or agreed to be granted to the State Bar hereunder shall vest in the State Bar immediately and shall remain so vested whether this Agreement expires or is terminated for any or no cause or reason. At the State Bar's request and expense, Contractor will execute, during and after the Term, all further actions including execution and delivery of documents reasonably required to perfect the foregoing rights in the State Bar. In the event Contractor fails to execute any documents within thirty (30) days of the State Bar's written request, Contractor appoints the State Bar as its attorney-in-fact to execute such documents on Contractor's behalf. Contractor hereby waives or transfers any and all moral rights, including without limitation any right to attribution, identification, integrity, disclosure, authorship or any other rights that may be known

as “moral rights,” or limitation on a subsequent modification that Contractor or its Representatives has or may have in the Work Product or any part thereof. Following delivery of the Work Product to State Bar, all subsequent actions taken with respect to the Work Product, such as duplication, publication or otherwise, are actions taken by the State Bar.

9.3 Contractor’s Employees, Agents, and Subcontractors. At all times throughout the Term, Contractor will ensure that it has and will maintain appropriate agreements in place (and Contractor will provide the form of said agreements to the State Bar upon request) with all of its Creators which: (i) provides transfer of Creator’s Intellectual Property Rights to Contractor; (ii) is consistent with the rights being granted by Contractor to the State Bar under this Agreement; and (iii) contains a waiver by the Creator of any claim against Contractor in respect of any moral rights owned by each such person to all and any Work Product created by them and provided to Contractor.

9.4 Limited License to Nevada. The State of Nevada’s Board of Bar Examiners (“Nevada”) has expressed interest in using the Test Materials for the 2025 Nevada bar exam. State Bar reserves the right to license the Test Materials to Nevada for use in the February and July 2025 Nevada bar exams. If said license is provided to Nevada by State Bar, then Contractor shall be entitled to market such license in accordance with the terms of Section 11.4. For clarity, this section and Agreement shall not be construed to require Contractor to restrict its test prep or bar exam prep business in the State of Nevada. Any and all communications or data transmissions with Nevada regarding such a prospective limited license shall be handled by State Bar and Contractor shall have no obligations to communicate nor transmit materials directly with Nevada. State Bar further assumes all security obligations, risks and damages that may be incurred in licensing and sharing any Test Materials or Work Product with Nevada.

9.5 Prohibition of Licenses to Other States. The Parties acknowledge the State Bar’s ownership of the Test Materials, in addition to the limited license to Nevada described above; however, the Parties further contractually agree that the State Bar shall not license the Test Materials to any other third party (other than Nevada in the February and July 2025 bar exams) during the Term of the Agreement.

9.6 Licenses of Test Materials; Covenant Not to Sue.

9.6.1 Exposed Materials. Following each Bar Exam administration, State Bar shall designate certain of the Test Materials that have been used on a Bar Exam as “Exposed Materials,” with the number and specific questions to be designated by the State Bar at its sole discretion. Contractor agrees it cannot itself or authorize others to use or otherwise exploit any Work Product or Test Materials, except in the limited circumstances provided in the following sections. Once certain Test Materials have been designated by State Bar as Exposed Materials, they shall remain Exposed Materials.

9.6.2 License to Use Exposed Materials in Guides. State Bar herein provides Contractor a no-cost, perpetual, non-exclusive, and irrevocable license to use Exposed Materials for preparation of and use in Student Guide(s) and Faculty Guide(s) during the Term.

**9.6.3 Sublicense of Exposed Materials to Contractor's Parent.** Following the Term of this Agreement, State Bar herein provides to Contractor a no-cost, perpetual, non-exclusive, and irrevocable license, that can be transferred or otherwise sublicensed to Contractor's Parent only and no other third parties, for Contractor's Parent to reproduce, distribute, publicly display or create derivative works from the Exposed Materials on bar exam preparation products and materials prepared by and/or distributed by Contractor's Parent. To clarify, said sublicense to Contractor's Parent does not authorize Contractor's Parent to further sublicense the Exposed Materials to any other third parties, nor further reproduce, distribute, publicly display, create derivative works from, or otherwise exploit any non-exposed Work Product nor non-exposed Test Materials. The terms of this section, namely the Sublicense to Contractor's Parent, shall survive any termination of this Agreement.

**9.6.4 Covenant Not To Sue; License To Cross-Check Test Materials.** Since Contractor is the creator of Test Materials as works made for hire owned by State Bar with the prospect of copyright registration, the Parties seek to prevent circumstances where Contractor, in the process of providing similar bar exam preparation services for other bar exam jurisdictions, could be in the position of alleged infringement of State Bar's Testing Materials through the creation of test materials for other states ("Other States' Test Materials"), being that the Other States' Test Materials necessarily would be created through the same legal entity, with the same personnel, using the same Contractor resources (of course, excluding State Bar Resources). Therefore, provided: (a) that Contractor does not refer to, review, copy or otherwise utilize any of State Bar Resources in the creation of Other State's Test Materials, except as authorized by the QA License (as defined below), and (b) that Contractor does not "literally infringe" (that is, copy verbatim or create an exact duplication of) any of State Bar's Test Materials, then State Bar herein agrees and covenants not to sue, or otherwise initiate copyright infringement claims against Contractor for Other State's Test Materials ("Covenant Not To Sue"). To further reduce the possibility of literal infringement occurring by coincidence, State Bar herein provides Contractor a no-cost, perpetual, non-exclusive, and irrevocable license ("QA License") solely to maintain an internal-only database of historical Test Materials as a means to cross-check and prevent any identical work product as between Test Materials and Other States' Test Materials. Said QA License cannot be transferred, transmitted nor otherwise provided in any form to Contractor's Parent, nor any other third party. The terms of this section, namely the Covenant Not To Sue and the QA License, shall survive any termination of this Agreement.

**9.7 No Transfer of Title in and to Contractor's Pre-Existing IP.** Notwithstanding the foregoing, the State Bar acknowledges that independent of this Agreement, Contractor has created, acquired, or otherwise has rights in and may, in connection with the performance of this Agreement, employ certain intellectual property, including, without limitation, various concepts, ideas, methods, methodologies, procedures, processes, know-how, or techniques (collectively, "Pre-Existing IP"). The State Bar and Contractor intend that Contractor's interests in or title to such Pre-Existing IP will remain vested in Contractor. Contractor represents that none of the Work Product delivered to the State Bar will contain Pre-Existing IP.

9.8 No Transfer of Title in and to State Bar's Pre-Existing IP. As between Contractor and the State Bar, the State Bar is, and will remain, the sole and exclusive owner of all rights, titles, and interests in and to any documents, specifications, data, know-how, methodologies, software, Confidential Information and other materials provided or made accessible to Contractor by the State Bar ("State Bar Materials"), including all Intellectual Property Rights therein. Contractor has no right or license to reproduce or use any State Bar Materials except solely during the Term to the extent necessary to perform Contractor's obligations under this Agreement. All other rights in and to the State Bar Materials are expressly reserved by the State Bar. Contractor has no right or license to use the State Bar's trademarks, service marks, trade names, logos, symbols, or brand names, other than those authorized under Section 11.5.

#### **ARTICLE 10 - TERMINATION OF AGREEMENT**

10.1 Termination for Cause. The State Bar may terminate this Agreement with cause based upon Contractor's breach of any terms of this Agreement, including Contractor's uncured material failure to comply with the standards of performance and all requirements pertaining to the preparation of Test Materials as set forth in Section 1.1.5, upon thirty (30) calendar days' written notice to Contractor, or based upon the assertion or filing of claims against Contractor or the State Bar relating to this Agreement. Contractor's sole compensation will be for that portion of the Services satisfactorily performed by Contractor to the date of termination then due pursuant to the Agreement; provided, however, the State Bar will withhold an amount reasonably expected to address the State Bar's costs and expenses arising out of the breach of this Agreement. Contractor will not be paid for any services associated with any work or service which was not authorized by the State Bar pursuant to this Agreement.

10.2 Termination without Cause. The State Bar may terminate this Agreement and avoid accrual of an Annual Fee for the fourth and/or fifth years of the Term, in its sole discretion, with or without cause and for any reason, provided that sufficient written notice is provided to Contractor. Sufficient written notice to avoid accrual of Annual Fees for both the fourth and fifth years during the Term must be received by Contractor prior to 11:59:59 pm Pacific Time on February 28, 2027; and, such early termination shall incur an early termination fee payable to Contractor of Seven Hundred Twelve Thousand Five Hundred U.S. Dollars (\$712,500) in lieu of the Annual Fees representing the fourth and fifth years (i.e., \$2,850,000) that would otherwise become due. Alternatively, sufficient written notice to avoid accrual of the Annual Fee for the fifth year only during the Term must be received by Contractor prior to 11:59:59 pm Pacific Time on February 28, 2028; and, such early termination shall incur an early termination fee payable to Contractor of Three Hundred Thirty Seven Thousand Five Hundred U.S. Dollars (\$337,500) in lieu of the Annual Fee of the fifth year (i.e., \$1,350,000) that would otherwise become due.

10.3 Termination for Bankruptcy. This Agreement will terminate automatically in the event of the bankruptcy or insolvency ("Bankruptcy") of either Party. In the event of Contractor's Bankruptcy, Contractor's sole compensation will be for that portion of the Services satisfactorily performed by Contractor to the date of termination then due pursuant to the Agreement.

10.4 Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any terms of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, other specific potential disasters or catastrophes, such as epidemics, pandemics, or quarantines, or explosions; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national, regional, or local emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; or (i) shortage of adequate power or transportation facilities. The Impacted Party shall give notice within seven (7) days of the Force Majeure Event to the other Party, stating the period of time the Force Majeure Event is expected to continue, and describing the impact on performance of the Services and other obligations under the Agreement. Notwithstanding the preceding sentence, if either Party's performance is affected by any Force Majeure Event, either Party may terminate this Agreement by written notice to the other Party, without any penalty, liability, or any other costs or damages, whatsoever.

10.5 Obligations of Contractor Upon Expiration, Cancellation, Termination or Request. Upon expiration, cancellation, or termination of this Agreement, or at any other time upon the State Bar's written request, Contractor shall, within twenty-one (21) calendar days after such expiration, cancellation, termination, or written request:

10.5.1 deliver to the State Bar and, to the extent not otherwise assigned herein, assign all rights of ownership, including Intellectual Property Rights, in and to all Test Materials and Study Guide Materials (whether complete or incomplete) and Work Product and all materials, equipment, and other property provided for Contractor's use by the State Bar;

10.5.2 deliver to the State Bar all tangible documents and other physical media received from the State Bar, including any copies, containing, reflecting, incorporating, or based on the Confidential Information; and

10.5.3 upon request, certify in writing within one month to State Bar that Contractor has complied with the requirements of this section.

10.6 Obligations of Contractor Upon Expiration, Cancellation or Termination. Upon expiration, cancellation, or termination of this Agreement, Contractor shall, within twenty-one (21) calendar days after such expiration, cancellation or termination:

10.6.1 permanently erase all the Confidential Information from Contractor's computer and phone systems in accordance with Section 15.12; and

10.6.2 upon request, certify in writing within one month to the State Bar that Contractor has complied with the requirements of this section.



10.7 Obligations of State Bar Upon Expiration, Cancellation or Termination or Request. Upon expiration, cancellation, termination of this Agreement, or at any other time upon the Contractor's written request, State Bar shall, within twenty-one (21) calendar days after such expiration, cancellation, termination or written request:

10.7.1 deliver to the Contractor and, to the extent not otherwise licensed herein, all rights to the exposed Test Materials and Study Guide Materials in accordance with this Agreement; and

10.7.2 upon request, certify in writing within one month to Contractor that State Bar has complied with the requirements of this section.

#### **ARTICLE 11 - CONFLICT OF INTEREST, ETHICS, AND BUSINESS LIMITATIONS**

11.1 Conflicts of Interest. Each Party represents that it is not currently aware of any facts that create a potential or actual conflict of interest, including offering or providing any incentive, directly or indirectly, to any member of the other Party's Board or Board of Trustees, officers, directors, and employees or consultants involved in the making of this Agreement in order to secure or influence the performance of this Agreement. Each Party agrees to promptly disclose to the other any situation that may arise during the term of this Agreement that is reasonably likely to result in a conflict of interest.

11.2 Additional Conflicts of Interest Requirements. Contractor understands and acknowledges that the State Bar is a public corporation, and as such, the organization and its Board of Trustees, officers, directors and employees are subject to various rules, laws and regulations relating to conflict of interests, gifts, honoraria and travel or other payments. Accordingly, Contractor acknowledges and agrees that Contractor shall, and ensure that any Contractor personnel assigned to provide the Services under this Agreement, comply with the following additional requirements:

11.2.1 Contractor and Contractor's personnel must comply with all applicable federal, state, and local laws and regulations pertaining to conflicts of interest laws, including without limitation State Bar's Conflict of Interest Code available <https://www.calbar.ca.gov/Portals/0/documents/Conflict-of-Interest-Code-State-Bar.pdf>, filing of Statement of Economic Interests (Form 700) (if applicable), the California Political Reform Act (Government Code Section 81000 et seq.), Government Code Section 1090 et seq. and/or common law conflict of interest laws (collectively, the "Conflicts of Interest Laws").

11.2.2 During the term of this Agreement, Contractor shall not perform any work for State Bar or any another person, entity or business, which would: (i) result in an actual or potential conflict of interest under the Conflict of Interest Laws; (ii) require Contractor to abstain from any decision under this Agreement or prospective services of the Vendor its affiliate companies pursuant to the Conflict of Interest Laws and/or (iii) violate the Conflict of Interests Laws. Contractor represents that it is not now aware of any facts, which violate any of these provisions and the Conflict of Interest Laws.



11.2.3 Contractor understands that, if this Agreement is made in violation of Government Code Section 1090 et seq., the entire Agreement is voidable and Contractor will not be entitled to any compensation for Services performed pursuant to this Agreement and Contractor will be required to reimburse State Bar any sums paid to Contractor. Contractor further understands that, in addition to the foregoing, Vendor may be subject to criminal prosecution for a violation of Government Code Section 1090.

11.3 Disclosure of Conflicts of Interest. If Contractor hereafter becomes aware of any facts that might reasonably be expected to either create a conflict of interest under the Conflict of Interest Laws or violate the provisions of this Article 11, Contractor shall immediately make full written disclosure of such facts to State Bar. Full written disclosure shall include, without limitation, identification of all persons, entities and businesses implicated and a complete description of all relevant circumstances. Vendor shall submit any disclosures required by this Article 11 to the address in Article 13 (Notices), with a copy to the attention of the General Counsel.

11.4 Prohibition on California Bar Exam Preparation Business.

11.4.1 Contractor, any of its subsidiaries, Contractor's Parent, its subsidiaries, and its parent companies and their subsidiaries, must cease offering or advertising test preparation materials and courses specific to the California Bar Exam or offer courses advertised as preparation for the California bar exam by October 1, 2024 and throughout the Term, subject to 11.4.2 below. This means that such entities may only offer or advertise test preparation materials and courses specific to other states' bar exams.

11.4.2 Contractor's Parent and its subsidiaries (other than Contractor) may continue to provide test preparation materials and courses for other nationwide or state bar exams, provided that the questions in the Test Materials, Student Guide and Faculty Guide for any California Bar Exam are not included in out-of-state test preparation materials and courses or used elsewhere. Contractor's Parent may also continue to provide nationwide test preparation materials and courses as part of Contractor Parent's "PMBR" program, provided that Contractor's Parent does not market PMBR directly to California law schools. Contractor's Parent shall display a prominent disclaimer on the front page of its PMBR website notifying potential consumers that PMBR is not intended as a resource to prepare for the California Bar Exam. Moreover, throughout the term of the Agreement, Contractor agrees to the following prohibitions: (i) no personnel assigned to prepare the Test Materials shall be assigned to prepare or teach PMBR course materials or have access to PMBR course materials; (ii) no personnel assigned to prepare or teach PMBR course materials shall be assigned to prepare the Test Materials; and (iii) Contractor shall not provide any Work Product nor Testing Materials, directly or indirectly, to personnel assigned to prepare or teach the PMBR course materials. The Confidentiality provisions in this Agreement shall be applicable to, and enforced against, any separate entity that exerts control over and/or operates PMBR.

11.5 Marketing and Advertising. The State Bar seeks to avoid any perception that test takers will obtain an unfair advantage in the Bar Exam by obtaining other products and services from Contractor that will provide inside information about test or essay questions.

11.5.1 In recognition of this important interest, when marketing, advertising or making public statements, Contractor shall not: (i) represent in any manner that its relationship with the State Bar constitutes a “partnership,” “exclusive partnership,” or any other business relationship outside the scope of this Agreement; (ii) represent in any manner that the State Bar has endorsed, sponsored, approved, or otherwise supported products or services provided by Contractor, its subsidiaries, or any of its parent companies and their subsidiaries; or (iii) use the State Bar logo for any purpose, except as authorized herein.

11.5.2 Notwithstanding the foregoing, the State Bar and Contractor from time to time may come to mutual understanding of pre-approved marketing, advertising or public statements that fulfill the conditions of Section 11.5.1.

11.5.3 Notwithstanding the foregoing, the State Bar consents to Contractor disclosing any disclosures required by law such as a public company’s SEC filings.

11.6 Restrictions During Term Only. This Article 11 shall be effective only through the Term of this Agreement. If/when this Agreement expires, cancels or otherwise terminates, all such limitations and restrictions recited in this Article 11 shall become null or otherwise unenforceable.

## **ARTICLE 12 - COMPLIANCE WITH LAWS**

Contractor, and its personnel, employees, and subcontractors shall comply with all applicable laws, ordinances, and regulations adopted or established by federal, state, or local governmental bodies or agencies, including but not limited to the provisions of the Fair Employment and Housing Act (California Government Code, section 12900 et seq.) and any applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.), ADA/ADAAA, and section 508 of the Rehabilitation Act. Contractor shall include the non-discrimination and compliance provisions of this Article in all subcontracts for the performance of work under the Agreement.

## **ARTICLE 13 - NOTICES**

Unless otherwise specifically stated in this Agreement, any notices to be given by either Party to the other must be in writing and delivered either personally, by express mail, or electronic transmission, with a copy sent by regular mail to the address set forth below. If notice is given by personal delivery or express mail, a courtesy copy shall also be provided by electronic mail.

<p>THE STATE BAR OF CALIFORNIA</p> <p>Attn: Procurement 845 S. Figueroa St. Los Angeles, CA 90017</p> <p>WITH COPIES TO</p> <p>General Counsel: gc@calbar.ca.gov</p> <p>Executive Director: executivedirector@calbar.ca.gov</p>	<p>KAPLAN EXAM SERVICES, LLC</p> <p>Attn: Chief Financial Officer 1515 W. Cypress Creek Road Fort Lauderdale, FL 33309</p> <p>WITH COPIES TO</p> <p>CFO: jdervin@kaplan.edu</p> <p>Legal Department: <a href="mailto:knalegal@kaplan.com">knalegal@kaplan.com</a></p>
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Each Party may change the notice address appearing above by giving the other Party written notice in accordance with this Article.

#### **ARTICLE 14 - AUDIT**

The State Bar reserves the right to have an independent audit conducted of Contractor's compliance with the terms of this Agreement, if the State Bar reasonably believes such audit is necessary to ensure confidentiality, or financial or program accountability or integrity. Contractor shall retain all records associated with the Services performed for a period of four (4) years from the expiration, cancellation, or termination of this Agreement.

#### **ARTICLE 15 - DATA SECURITY**

15.1 Network Security. Contractor agrees at all times to maintain network security that, at a minimum, includes network firewall provisioning, intrusion detection, and regular (annual) third party vulnerability assessments. State Bar reserves the right, upon fifteen (15) business days' notice to Contractor, to have a third-party perform a vulnerability assessment at its own expense. Contractor agrees to maintain network security that conforms to generally recognized industry standards and best practices.

15.2 Application Security. Contractor agrees at all times to provide, maintain and support its Software and subsequent updates, upgrades, and bug fixes such that the Software is, and remains secure from those vulnerabilities.

15.3 Data Security. Contractor agrees to protect and maintain the security of Test Materials, Confidential Information, Work Product, and any and all other information or data exchanged between the parties, or otherwise made accessible to Contractor by the State Bar (collectively "Data" in this Section 15) with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority (e.g., Microsoft notifications, etc.). Unless otherwise agreed to in writing by the State Bar or as provided herein, Contractor shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantially

similar to the security controls identified in the current version of NIST Special Publication 800-53, and that is designed to: (a) ensure the security and confidentiality of the Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Data; (c) protect against unauthorized disclosure, access to, or use of the Data; (d) ensure the proper disposal of the Data; and, (e) ensure that all employees, agents, and subcontractors of Contractor comply with all of the foregoing.

15.4 Data Storage and Backup. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by an agent of the State Bar with designated Data, security, or signature authority. Contractor agrees to store all State Bar backup Data stored as part of its backup and recovery processes in encrypted form, using no less than 128 bit key. Any and all cloud based storage of Data shall comply with ISO/IEC 27001, or successor provision(s).

15.5 Encryption. All State Bar Data must be rendered unusable, unreadable, or indecipherable to unauthorized individuals. Without limiting the generality of the foregoing, Contractor shall encrypt all workstations, portable devices (such as mobile, wearables, tablets,) and removable media (such as portable or removable hard disks, floppy disks, USB memory drives, CDs, DVDs, magnetic tape, and all other removable storage media) that store State Bar Data in accordance with Federal Information Processing Standard (FIPS) 140-3. All mobile devices storing State Bar Data must be managed by a Mobile Device Management system. All workstations/Personal Computers (including laptops, 2-in-1s, and tablets) will maintain the latest operating system security patches, and the latest virus definitions. Virus scans must be performed at least monthly.

15.6 Data Transmission. Contractor agrees that any and all transmission or exchange of system application and/or other Data with the State Bar and other parties shall take place via secure means, e.g., HTTPS, FTPS, SFTP, or equivalent means. Contractor shall encrypt, end-to-end, State Bar Information transmitted on networks outside of Contractor's control with Transport Layer Security (TLS) or Internet Protocol Security (IPSec) at a minimum cipher strength of 128 bit or an equivalent secure transmission protocol. All Data, Work Product, Test Materials, Confidential Information, and all other deliverables hereunder shall be comprised by Contractor as structured data for transmission purposes, using a standardized format acceptable to the State Bar.

15.7 Data Re-Use. Contractor agrees that any and all Data exchanged shall be used expressly and solely for the purposes enumerated in this Agreement. State Bar Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor further agrees that no Data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other persons or interested parties except on a case-by-case basis as specifically agreed to in writing by a State Bar officer with designated data, security, or signature authority.

15.8 Data Encryption. Contractor agrees to store all State Bar backup Data, as applicable, as part of its designated backup and recovery processes in encrypted form, using a commercially supported encryption solution. Contractor further agrees that any and all Data defined as personally identifiable information under current legislation or regulations stored on any portable or laptop computing device or any portable storage medium is likewise encrypted.

15.9 Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting State Bar Data that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

15.10 Notification of Breach. In addition to Contractor's responsibilities under the law, Contractor shall immediately upon discovery, but in no case more than twenty-four (24) hours after discovery, report to the State Bar of California in writing (i) any Breach of Security involving the State Bar Data, or (ii) any use or disclosure of State Bar Data other than the Permitted Uses (each, a "Report"). Contractor shall fully cooperate with the State Bar with respect thereto. Each Report shall include, at a minimum: (i) the nature of the unauthorized use or disclosure, (ii) the State Bar Data used or disclosed, (iii) who made the unauthorized use and received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure; and, (vi) any other information, including a written report, as reasonably requested by the State Bar of California.

15.11 Incident Response Plan. Contractor shall have a written incident response plan, to include prompt notification to the State Bar of California in the event of a security or privacy incident, as well as best practices for responding to a breach of the State Bar Protected Information and Data. Provider agrees to share its incident response plan upon request. Upon the occurrence of any actual or suspected unauthorized use or disclosure of State Bar Protected Information and Data. Contractor shall take reasonable steps to minimize or mitigate the risk of harmful or potentially harmful effects resulting from said actual or suspected unauthorized use or disclosure.

15.12 Contractor Obligations for Subcontractors. Contractor shall be responsible for compliance with all data security obligations herein by its subcontractors, agents, and any other person or entity providing services or support to Contractor in connection with this Agreement.

## **ARTICLE 16 - ASSIGNMENT**

16.1 Prohibition on Assignments. Contractor shall not assign or otherwise transfer this Agreement to any third-party without the prior written consent of the State Bar.

## **ARTICLE 17 - COST SHARING OF ANY COPYRIGHT INFRINGEMENT LITIGATION**

17.1 Cost Sharing Commitment and Conditions. If the NCBE initiates one or more claims for copyright infringement (the "Covered Claims") regarding Work Product or Test Materials created within the scope of this Agreement, against one Party or both Parties in a court of

competent jurisdiction, the Parties shall equally share ("Cost Sharing"), that is pay fifty percent (50%) of, the combined total of: (a) reasonable defense costs solely relating to the Covered Claims and (b) any damages awarded by the court solely relating to the Covered Claims, up to the amount set forth in Section 17.1.4.

17.1.1 Each Party shall have a right to choose and engage its own counsel at its own expense until reimbursement is requested pursuant to Section 17.4.

17.1.2 Claims other than NCBE copyright infringement (e.g. breach of any licensing agreement between Contractor's Parent and NCBE, third-party claims regarding administration or grading of the bar exam, non-NCBE copyright infringement, etc.) shall not be considered part of the Covered Claims and are not subject to such cost sharing.

17.1.3 No final judgment nor finding by the court is required for such Cost Sharing.

17.2 Cost Sharing If Covered Claims are Settled. If Covered Claims are resolved pursuant to a settlement agreement between one or more Parties and NCBE, then the Parties agree to Cost Sharing of reasonable defense costs and settlement costs incurred to defend and settle the Covered Claims.

17.2.1 Named parties in Covered Claims shall not be required to have consent from non-parties to the Covered Claims.

17.3 For a Party to benefit from such Cost Sharing with the other Party, whether through a lawsuit or through settlement, there must not be any judgment or finding by the court that its conduct violated any term of this Agreement with respect to such conduct contributing to the alleged copyright infringement. This means a Party shall not be entitled to Cost Sharing if there is any judgment or finding by a court that the Party engaged in any willful infringement.

17.4 Timing of Invoice for Shared Costs. If all conditions in Section 17.1 or Section 17.2, and Section 17.3 are satisfied, a Party shall be entitled to Cost Sharing reimbursement from the other Party within sixty (60) days of such a request in writing to the other Party and presentation of an itemized statement of such costs and fees. If both Parties have been named in Covered Claims and both have respectfully expended defense costs or incurred damages or settlement costs respectively, such reimbursements may be offset by amounts owed to the other Party.

17.5 Reasonable Defense Costs and Damages Defined. For purposes of this Article 17, "reasonable defense costs" means reasonable attorneys' fees, expert witnesses retained by such attorney(s), and documented court costs reasonably incurred by the Party in the defense of the Covered Claims. "Reasonable defense costs" do not include time or expenses associated with the Party's own employees, including their labor or services. For purposes of this Article 17, the term "damages" means actual, statutory or other damages (e.g. lost profits), including attorneys fees or costs of prevailing party that may be awarded to the NCBE, but does not include punitive, treble or increased damages that may be imposed on a finding of willfulness.

17.6 Cost Sharing Cap. Neither Party's maximum liability for Cost Sharing in this Article 17 shall not exceed a total of Six-Million, Seven-Hundred Fifty-Thousand Dollars (\$6,750,000).

17.7 Reservation of Rights. Notwithstanding anything in this Article 17, each Party reserves all of its rights to enforce its rights under this Agreement, including the representations and warranties under Article 5 and indemnification under Article 6, and any and all other rights provided by law.

## **ARTICLE 18 - USE OF ARTIFICIAL INTELLIGENCE**

18.1 Contractor warrants and represents that it (including its Representatives) shall not use artificial intelligence ("AI") in a manner that causes or may cause a dilution of Intellectual Property Rights for, or in any way preclude the copyrightability or State Bar copyright ownership of, any Work Product, Test Materials, or individual test item, including any stimulus, stem, and response options. Without limiting the generality of the foregoing, Contractor warrants and represents that (a) it shall not use AI in a manner that does not conform to the US Copyright Office Guidance ([https://copyright.gov/ai/ai\\_policy\\_guidance.pdf](https://copyright.gov/ai/ai_policy_guidance.pdf)) (or any update, amendment, or new guidance) regarding the requirements for copyrightability and ownership; (b) the elements of authorship in any Work Product, Test Materials, and individual test item (the literary expression and any elements of selection, arrangement, etc.) shall be conceived, executed, and actually formed by humans, not the AI; (c) any use of AI tools shall be solely to enhance limited elements of existing human-created Work Product, and any AI contributions shall be the result of human original mental conception; (d) any AI-generated content shall be de minimis; and (e) any use of AI shall not require the State Bar to exclude or disclaim any content from any copyright registration application for any Work Product.

18.2 Contractor further warrants and represents that it shall ensure that any AI tools or systems that it (including its Representatives) may use, are closed to any third party, and that it shall not use or authorize any third party to use any Work Product or drafts thereof for purposes of AI training or development of machine learning language models (LLMs), or to reproduce or otherwise exploit any Work Product.

18.3 Contractor shall (i) bear all risk and responsibility should any Work Product be deemed ineligible for copyright protection due to use or incorporation; and (ii) indemnify, defend, and hold harmless the State Bar from and against any and all third party claims, defenses, demands, damages, debts, liabilities, losses, obligations, costs, expenses, liens, judgments, awards, penalties, fines, actions, or causes of action (including but not limited to reasonable attorneys' fees, costs, and expenses), whether or not litigation is actually commenced, arising out of or in connection with any claim that the Work Product is not the intellectual property of the State Bar due to use or incorporation of AI or with any alleged breach of these warranties and representations.

18.4 Contractor shall disclose the extent and nature of its use of AI in connection with the creation of any Work Product, in writing prior to delivery of any affected Work Product. Contractor shall maintain records documenting Contractor's use of AI in connection with the

creation of the Work Product, for not less than four (4) years following termination or expiration of this Agreement, and shall provide such records to the State Bar upon its request.

#### **ARTICLE 19 - GENERAL PROVISIONS**

19.1 **Entire Agreement.** This Agreement, together with any attachments or appendices attached hereto, supersedes any and all other agreements, either oral or written, which may exist between the Parties with respect to the subject matter hereof, and contains all of the covenants and agreements between the Parties as of the Effective Date of this Agreement. By signing below, each Party acknowledges that no agreements, statements, or promises outside of those expressly set forth in this Agreement will be binding on the Parties.

19.2 **Governing Law/Jurisdiction/Venue.** This Agreement is deemed to have been made and entered into by the Parties at San Francisco, California, and will be governed and construed according to the laws of the State of California, without giving effect to any conflict of laws principles that would cause the laws of any other jurisdiction to apply. Contractor agrees to bring any action or proceeding to enforce this Agreement only in the appropriate state court located in the City and County of San Francisco, California or the County of Los Angeles, California. Contractor irrevocably submits to the exclusive jurisdiction of these courts and waives the defense of inconvenient forum to the maintenance of any action or proceeding in such venue. Nothing contained in this Agreement, including, but not limited to, Article 17 or Article 8, constitutes a waiver of the State Bar's sovereign immunity or any individual's good faith, official, or otherwise applicable immunities.

19.3 **Waiver.** No waiver of a breach, failure of any condition, right, or remedy contained in or granted by the provisions of the Agreement will be effective unless and until it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing so specifies.

19.4 **Modifications.** No amendment, alteration, or variation of the terms of this Agreement will be valid unless made in writing and signed by both Parties.

19.5 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which, will constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email, or any other reliable means will be effective for all purposes as the delivery of a manually executed original counterpart. Either Party may maintain a copy of this Agreement in an electronic form. The Parties further agree that a copy produced from the delivered counterpart or electronic form by any reliable means (for example, photocopy, facsimile, or printed image) will be considered an original in all respects.

19.6 **Electronic Signature.** The Parties acknowledge and agree that this Agreement may be executed by an electronic signature (digital, encrypted, or any other form), which will be



considered an original and manual signature for all purposes and will have the same force and effect as an original and manual signature. Without limitation, an “electronic signature” will include faxed versions of an original signature, electronically scanned, and transmitted versions (e.g., via pdf) of an original signature, or transmittal via any other electronic means, and will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

19.7 Titles. The titles used are not a part of this Agreement and are included solely for convenience and have no bearing upon and do not in any way limit the application of the terms and conditions of this Agreement.

19.8 Severability. If any phrase, sentence, clause, or provision in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being affected, impaired, or invalidated in any way.

19.9 Survival. The provisions of Articles 5, 6, 8, 9, 10.5-10.7, 14, 15, 17, 18, and 19 (Warranties and Representations, Indemnity, Confidentiality, Intellectual Property Rights, Termination of Agreement, Conflict of Interest, Audit, Data Security, Cost Sharing of any Copyright Infringement Litigation, Use of Artificial Intelligence, and General Provisions) will survive the cancellation, termination, or expiration of this Agreement.

19.10 Disputes. In the event of a dispute, each Party will continue with its responsibilities under this Agreement, including but not limited to, continuing to provide the Services, unless and until the other Party instructs otherwise in writing.

19.11 Authority to Contract. Each Party represents and warrants that it has full power to enter into and perform its respective obligations under this Agreement and that the person signing this Agreement has been properly authorized and empowered to enter into this Agreement. Each Party acknowledges that it has read and understands this Agreement and will be bound by it.

19.12 Attorneys’ Fees. The prevailing party in any legal action brought for breach or to enforce any provision of this Agreement, shall be entitled to receive reasonable attorneys’ fees, experts’ costs, and all costs of suit.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

<p>THE STATE BAR OF CALIFORNIA, a public corporation</p> <p>DocuSigned by: By: <u>Leah Wilson</u> 5C1D881F4D5F436...</p> <p>Print: <u>Leah Wilson</u></p> <p>Title: <u>Executive Director</u></p> <p>Date: <u>8/9/2024   2:54 PM PDT</u></p> <p>Signed by: By: <u>Brandon Stallings</u> 41045772D71F4B9...</p> <p>Print: <u>Brandon Stallings</u></p> <p>Title: <u>Chair, Board of Trustees</u></p> <p>Date: <u>8/9/2024   2:57 PM PDT</u></p>	<p>KAPLAN EXAM SERVICES, LLC a Delaware limited liability company</p> <p>DocuSigned by: By: <u>Greg Marino</u> 77DD02B4F16947C...</p> <p>Print: <u>Greg Marino</u></p> <p>Title: <u>Chief Executive Officer</u></p> <p>Date: <u>8/9/2024   4:51 PM PDT</u></p>
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## **EXHIBIT A – GUARANTOR AGREEMENT**

### **GUARANTOR AGREEMENT BETWEEN KAPLAN NORTH AMERICA, LLC AND KAPLAN EXAM SERVICES, LLC**

This guarantor agreement ("Guarantor Agreement") is executed by Kaplan North America, LLC ("Guarantor"), a Delaware limited liability company having a principal place of business at 1515 W. Cypress Creek Road, Fort Lauderdale, FL 33309, in favor of The State Bar of California ("State Bar"), a California public corporation having a principal place of business at 180 Howard Street, San Francisco, CA 94105 with respect to the obligations of Kaplan Exam Services, LLC ("Contractor"), a Delaware limited liability company having a principal place of business at 1515 W. Cypress Creek Road, Fort Lauderdale, FL 33309, under that certain bar exam test materials preparation services agreement (as may be modified, "Agreement") executed between Contractor and the State Bar.

### **RECITALS**

WHEREAS, Guarantor wholly owns Contractor, which is a newly formed subsidiary of Guarantor.

WHEREAS, State Bar requires reassurance and a guarantee from Guarantor that Contractor, as a new company, can and shall financially and otherwise fulfill all its obligations of the Agreement.

WHEREAS, it is in the interest of Contractor that said guarantee be provided by Guarantor.

WHEREAS, State Bar would not enter into the Agreement without this Guarantor Agreement from Guarantor, and Guarantor as owner of the Contractor, will materially benefit from the Agreement; consequently, by its execution and delivery of this Agreement, Guarantor desires to induce State Bar to execute the Agreement and State Bar is relying on this Guarantor Agreement in executing the Agreement.

NOW, THEREFORE, in consideration of covenants and agreements herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

Guarantor hereby unconditionally guarantees to State Bar the full and prompt performance of Contractor's financial and other obligations (the "Obligations") under the Agreement and agrees to provide funds to Contractor sufficient to enable Contractor to perform the Obligations.

Guarantor's obligations under this Guarantor Agreement are absolute and unconditional, and should Contractor not be capable of fulfilling any financial or other obligation of the Agreement, Guarantor shall provide all unfulfilled financial and other Obligations to the Contractor, such that Contractor can and shall fulfill its Obligations to State Bar, without any defense or offset.



Upon the occurrence of any default, breach of performance or unfulfilled financial or other obligation by Contractor under the Agreement, Guarantor shall provide cure, financial support or other support to fulfill the Obligation and assure Contractor is in good standing with State Bar.

Any act of State Bar, or its successors or assigns, consisting of a waiver of any of the terms, covenants or conditions of the Agreement, or the giving of any consent to any manner or thing relating to the Agreement, or the granting of any indulgences or extensions of time to Contractor, may be done without notice to Guarantor and without releasing Guarantor from any of its obligations hereunder. No delay on the part of State Bar in exercising any right hereunder or under the Agreement shall operate as a waiver of such right or of any other right of State Bar, nor shall any delay, omission or waiver on any one occasion be deemed to be a bar to or a waiver of the same or any other right on any further occasion.

The obligations of Guarantor hereunder shall not be released by State Bar's receipt, application or release of any security given for the payment, performance or observance of any term, covenant or condition in the Agreement contained on Contractor's part to be paid, performed or observed, nor by any modification of the Agreement, regardless of whether Guarantor consents thereto or receives notice thereof. The liability of Guarantor hereunder shall in no way be affected by, and Guarantor hereby waives any defense arising by reason of: (a) the release or discharge of Contractor in any creditor's receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of (i) the liability of Contractor or the estate of Contractor in bankruptcy or (ii) any remedy for the enforcement of Contractor's liability under the Agreement resulting from the operation of any present or future provision of the Bankruptcy Code or other statute or from the decision of any court; (c) the rejection or disaffirmance of the Agreement in any such proceedings; (d) the assignment or transfer of the Agreement by Contractor; (e) any disability or other defense of Contractor; (f) the cessation from any cause whatsoever of the liability of Contractor under the Agreement; (g) the exercise by State Bar of any of its rights or remedies reserved under the Agreement or applicable law; or (h) any amendment, modification, renewal, extension, termination or any other change in the terms of the Agreement.

Guarantor may be joined in any action against Contractor in connection with said Obligations of Contractor and recovery may be had against Guarantor hereunder without first taking any action whatsoever against Contractor or its successors and assigns, pursuing any other remedy or applying any security State Bar may hold, and Guarantor hereby waives all right to assert or plead at any time any statute of limitations as relating to the Agreement or the obligations of Guarantor hereunder and waives any and all surety or other defenses in the nature thereof including, without limitation, any provision of law requiring State Bar to proceed first against Contractor. Guarantor further waives any defense arising by reason of: (a) any act or omission of Contractor or others which directly or indirectly results in or aids the discharge of any of the Obligations guaranteed hereunder by operation of law or otherwise; (b) the forbearance by State Bar from the strict and timely enforcement of any of its rights under the Agreement; or (c) any defense to liability under this Guarantor Agreement based upon Guarantor's inability to exercise any right of subrogation to the rights of State Bar against Contractor. Guarantor waives any right to enforce



any remedy that Contractor now has or may hereafter have against any person, and waives any benefit of, and any right to participate in, any security, now or hereafter held by Contractor or State Bar. Guarantor's obligations hereunder shall not be affected by any right of setoff or any counterclaim, and Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guarantor Agreement and of the existence, creation, or incurring of new or additional Obligations, and all other notices and demands of any kind and description now or hereafter provided for by any statute or rule of law. Guarantor specifically agrees that Guarantor shall not be released from liability hereunder by any action taken by Contractor or State Bar. Guarantor further expressly waives all rights and benefits which might otherwise be available to Guarantor under California Civil Code Sections 2787 to 2855, or any other applicable laws, including any provisions which would require State Bar to proceed first against Contractor or any assignee or subcontractor of Contractor prior to enforcement of Guarantor's obligations under this Guarantor Agreement.

Until all the terms, covenants and conditions in the Agreement on Contractor's part to be paid, performed and observed, are fully paid, performed and observed, Guarantor (a) shall have no right of subrogation against Contractor by reason of any payments or acts of performance by Guarantor hereunder; and (b) subordinates any liability or indebtedness of Contractor now or hereafter held by Guarantor to Contractor's Obligations to State Bar under the Agreement.

Guarantor hereby agrees to deliver to State Bar such financial statements of Guarantor as may be reasonably requested by State Bar.

This Guarantor Agreement shall apply to the Agreement and any extension, renewal, modification or amendment thereof. In the event this Guarantor Agreement shall be held ineffective or unenforceable by any court of competent jurisdiction or in the event of any limitation of Guarantor's liability hereunder, other than as expressly provided herein, then Guarantor shall be deemed to be the Contractor under the Agreement with the same force and effect as if Guarantor were expressly named as a joint and several party thereto with respect to the Obligations of Contractor thereunder hereby guaranteed.

This Guarantor Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to declare or enforce any rights or obligations under this Guarantor Agreement may be commenced by State Bar in a state court of general jurisdiction of the City and County of San Francisco or the County of Los Angeles in the State of California. Guarantor hereby consents to the jurisdiction of such Court for such purposes, and agrees that any notice, complaint or legal process so delivered shall constitute adequate notice and service of process for all purposes and shall subject Guarantor to the jurisdiction of such court for purposes of adjudicating any matter related to this Guarantor Agreement.

Guarantor shall pay to State Bar, without demand, any and all costs and/or expenses, including, without limitation, attorneys' fees and costs and court costs that State Bar expends or incurs in collecting or compromising the Obligations guaranteed hereunder or in enforcing this Guarantor Agreement against Guarantor, whether or not suit is filed, expressly including, without limitation,

all court costs and attorneys' fees incurred by State Bar in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving the Guarantor as the insolvent or bankrupt party which in any way affects the exercise by State Bar of any of its rights or remedies hereunder.

Notices to Guarantor shall be addressed to the address for Guarantor set forth in the first paragraph above, or to such other address designated by Guarantor to State Bar in writing. Under no circumstances shall State Bar be obligated to give Guarantor any notice not specifically required to be given by State Bar pursuant to this Guarantor Agreement.

Guarantor represents and warrants to State Bar that (a) the Agreement indirectly confers substantial and material benefits to Guarantor; (b) there are no actions, suits or proceedings pending, or to the knowledge of Guarantor threatened, against or affecting the Guarantor which could have a material adverse effect on the ability of the Guarantor to honor the Obligations guaranteed hereunder, or involving the validity or enforceability of this Guarantor Agreement, at law or in equity, and Guarantor, to the best of its knowledge after due investigation, is not in default or in violation with respect to, or operating under or subject to, any order, writ, injunction, decree or demand of any court or any governmental authority; (c) Guarantor is not insolvent (as such term is defined in the Bankruptcy Code of 1978, 11 U.S.C. Section 101, et seq., as amended) and will not be rendered insolvent by execution of this Guarantor Agreement or the consummation of the transactions contemplated hereby; and (d) Guarantor has no counterclaims, offsets or defenses with respect to this Guarantor Agreement.

Guarantor warrants and agrees that each of the waivers set forth in this Guarantor Agreement is made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law.

Nothing contained in this Guarantor Agreement constitutes a waiver of the State Bar's sovereign immunity or any individual's good faith, official, or otherwise applicable immunities.

This Guarantor Agreement shall constitute the entire agreement of Guarantor with State Bar with respect to the subject matter hereof.

**IN WITNESS WHEREOF**, Guarantor has executed this Guarantor Agreement concurrently with the execution and delivery of the Agreement.

KAPLAN NORTH AMERICA, LLC  
a Delaware limited liability company

By:   
77DD2B4E16947C

Date: 8/9/2024 | 4:51 PM PDT

Greg Marino, Chief Executive Officer