

KAPLAN NURSING

This agreement (the "Agreement") by and between Kaplan, Inc., ("Kaplan," a Delaware corporation with offices at 750 Third Avenue, New York, NY 10017, and Chabot Las Positas Community College District ("SCHOOL"), with its principal office at 7600 Dublin Blvd 3rd Floor, Dublin, CA 94568 (each, a "Party" and collectively, "Parties"), shall be effective when signed by both Parties ("Effective Date").

WHEREAS Kaplan has developed programs to evaluate the knowledge of students in undergraduate nursing programs and to prepare those students for licensure examination(s); and

WHEREAS, SCHOOL desires to provide Kaplan's programs to SCHOOL's nursing students;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

- a. "Service(s)" means the service(s) set forth in **Exhibit A** to this Agreement.
- b. "Participant" means any nursing student identified to Kaplan by SCHOOL in a Roster (defined below).
- c. "Kaplan Materials" means all Kaplan books, videos, online question banks (qbanks), assessments, questions, explanations, syllabi, interfaces, and other Kaplan content, in electronic and hard copy formats, delivered through any medium and used in the Service(s).
- d. "Kaplan Online Assets" means Kaplan Materials that are accessed via the internet through Kaplan's proprietary technology platform ("Kaplan Platform") and the applications and services accessed through the Kaplan Platform.
- e. "Administrator Services" means services and tools on the Kaplan Platform through which faculty and administrators authorized by SCHOOL ("Authorized Users") access various services including reporting relating to their Participants progress and performance in the Service.

2. KAPLAN OBLIGATIONS

- a. Deliver **Service(s)** to Participants.
- b. Provide Participants with personal licenses to access Online Assets for the duration of Services to such Participants ("**Access Period**"). Participant access to Kaplan Systems is personal to Participant and Participant may not share login credentials to Kaplan Systems with any other person.
- c. Provide Authorized Users with personal licenses to access to Administrator Services during the Term of this Agreement. Authorized Users shall receive limited, non-exclusive, non-assignable, non-sublicenseable license to use the Administrator Services. Authorized Users may not share login credentials with any Participant or any person not a faculty member or administrator at SCHOOL. Authorized Users are prohibited from copying, taking screen shots, downloading otherwise attempting to reproduce or publish Kaplan Materials.
- d. Kaplan may modify, enhance or change Service and any aspect of the Service at its sole discretion during the term (collectively, "**Enhancements**"), however Kaplan will make reasonable efforts to give advance notice of any Enhancements and no Enhancement may materially degrade the Service.
- e. Kaplan staffing decisions are within Kaplan's sole discretion.

3. SCHOOL OBLIGATIONS

- a. **Rosters**



- i. Each Academic Term (as defined in Exhibit A), SCHOOL shall provide Kaplan with a roster of Participants ("**Roster**") for each group of students who are scheduled to graduate at the same time ("**Cohort**"). Unless otherwise agreed by the Parties, the Roster must be provided not later than 30 days after the start of the Academic Term to which the Roster applies, which shall be referred to as the "**Deadline.**" SCHOOL may add or remove Participants from an Initial Roster by written notification to the Kaplan Account Manager on or before the Deadline. On the day following the Deadline, the Roster shall become an "**Official Roster.**"
- ii. Rosters shall provide all information reasonably required by Kaplan (collectively, "**Student Data**"), including: Participant first name, last name, email address, and anticipated graduation date. A sample Roster form is attached as **Exhibit C** to this Agreement.
- iii. If after the Deadline has passed SCHOOL requests to add one or more Participants or an entirely new Cohort for that Academic Term, Kaplan shall have the discretion whether add such Participants and/or Cohort to the Roster.
- iv. If SCHOOL does not provide any Roster by the Deadline, the Official Roster shall be based on the best information available to Kaplan at that time. If SCHOOL provided a Roster for the preceding Academic Term but does not provide an Official Roster for the current Academic Term, Kaplan may use the Official Roster for the prior Academic Term.

b. Tuition Fees

- i. Kaplan shall charge a Tuition Fee for each Participant on any Official Roster. Tuition Fees are set forth in the attached **Exhibit A**. For the avoidance of doubt, if a Participant is studying for more than one Academic Term, more than one Tuition Fee will be owed for that Participant.
- ii. Tuition Fees shall be paid in accordance with Exhibit A to this Agreement.
- iii. Kaplan has no obligation to provide Services to Participants for whom Kaplan has not received Tuition Fees.

c. Service Delivery

- i. Administer Secured Benchmark Tests in a secure, proctored setting and shall take all reasonable precautions to prevent cheating on any Kaplan tests. SCHOOL acknowledges that Secured Benchmark Tests are normed and that cheating by Participants at SCHOOL impairs a valuable asset of Kaplan. For Benchmark Tests administered by SCHOOL, any disability accommodations for Participants (such as extended time, human readers, separate testing rooms) is the responsibility of SCHOOL.
- ii. For any Services delivered by Kaplan at SCHOOL, SCHOOL shall provide free of charge classrooms or other premises that are safe, well maintained and reasonable for purpose.

4. INTELLECTUAL PROPERTY

- a. SCHOOL acknowledges and agrees that all Services, Kaplan Materials, Kaplan Online Assets, the Kaplan Platform, and all of their respective components and subparts Kaplan Systems and all intellectual property rights thereto, (collectively, "**Kaplan IP**"), are and shall remain the sole and exclusive property of Kaplan and its licensors and that SCHOOL has no rights to use Kaplan IP other than as expressly provided in this Agreement.
- b. SCHOOL shall use best efforts to prevent Participants from copying, reproducing, reverse engineering, decompiling or otherwise infringing Kaplan's intellectual property rights. SCHOOL shall promptly notify Kaplan if it becomes aware of any possible infringement of Kaplan's ownership rights in and to

the Kaplan IP and SCHOOL shall cooperate with Kaplan in good faith in taking whatever legal or other action may be appropriate under the circumstances in the event of a possible infringement.

5. CONFIDENTIALITY

- a. The Parties shall hold in confidence, and shall not disclose to any person outside its organization, Confidential Information of the other Party. The receiving Party shall use such Confidential Information only for the purpose of performing its obligations under this Agreement, and shall not use or exploit such Confidential Information for its own benefit or the benefit of any other Party without the prior written consent of the disclosing Party. The term "**Confidential Information**" means information that a Party has designated as confidential to the other Party as well as any and all information relating to the research, development, products, pricing, methods of manufacture, trade secrets, business plans, customers, finances, and personnel data related to the business or affairs of the Parties. The term Confidential Information does not include any information (a) which either Party knew before it was disclosed by the disclosing Party; (b) which has become publicly known through no wrongful act of either Party; (c) which was developed independently by either Party; or (iv) which was disclosed to the receiving Party by someone with no duty of confidentiality to the disclosing Party.

6. REPRESENTATIONS, WARRANTIES & INDEMNITIES

- a. Kaplan warrants and represents that: (a) it has the necessary rights to enter into this Agreement; (b) its entry into this Agreement will not cause any breach of its obligations to third parties; (c) to the best of its knowledge, no Kaplan IP infringes any personal, intellectual property or other rights of any third party.
- b. Kaplan agrees to indemnify and hold harmless SCHOOL and its trustees officers, employees and agents from and against all third party claims, damages, costs and expenses (including reasonable attorneys' fees and litigation expenses) (collectively, "**Claims**") arising out of or as a result of Kaplan's breach of this Agreement, any breach of Kaplan's representations and warranties herein, or any claims resulting from or arising out of the infringement of any third party intellectual property rights by Kaplan Materials.
- c. SCHOOL warrants and represents that: (a) it has the necessary rights to enter into this Agreement; (b) its entry into this Agreement will not cause any breach of its obligations to third parties; and (c) in performing its obligations hereunder, it will comply with all laws, rules and regulations of all governmental bodies having jurisdiction thereof.
- d. SCHOOL agrees to indemnify and hold harmless Kaplan and its subsidiaries, affiliates, directors, shareholders, officers, employees and agents from and against all Claims arising out of or as a result of SCHOOL's breach of this Agreement, any breach of its representations and warranties herein, any Student Data SCHOOL provides to Kaplan, any claims relating to the scheduling, administration and/or proctoring of the Kaplan Nursing Admissions Test by SCHOOL, and any claims resulting or arising out of or related to any injuries or other damages due to SCHOOL'S negligence or malfeasance in operating, maintaining, servicing or otherwise controlling or owning the premises on or off-campus where the Services are provided.
 - i. SCHOOL also acknowledges and agrees that Kaplan does not make any grading, pass/fail or academic integrity decisions with respect to Participants ("**Decisions**"), and SCHOOL indemnifies Kaplan to the full extent of the indemnities described in paragraph 6(d) for all Claims arising out of or as a result of Decisions.
 - ii. IF SCHOOL elects Bookstore Pay (in Exhibit A), SCHOOL represents and warrants that Kaplan's provision of Student Data to SCHOOL's Bookstore does not violate any privacy or other rights

of Participants and SCHOOL indemnifies Kaplan, to the full extent of the indemnities described in this paragraph 6(d), for all Claims arising out of or as a result of Kaplan's sharing of Student Data with Bookstore and for the acts or omissions of Bookstore.

7. TERM AND TERMINATION

- a. The term of this Agreement shall begin on the Effective Date and initially continue for two consecutive years ("**Contract Term**"). Sixty days prior to the end of the initial Contract Term and any subsequent Contract Term, Kaplan shall notify SCHOOL of any changes in terms ("**Terms Change Notice**"). Unless either Party sends the other Party written notice of termination within 30 days prior to the end of the applicable Contract Term, the Agreement shall automatically renew at the end of the applicable Contract Term for an additional two year period and any terms in the Terms Change Notice shall automatically become part of this Agreement and shall control in the event of any conflict between them and any other provisions of the Agreement.
- b. If either Party terminates the Agreement under section 7(a) during an Academic Term, both Parties shall fulfill their obligations under this Agreement, including SCHOOL's payment obligations, for the remainder of that Academic Term.
- c. If either Party (i) fails to make any payment of money to the other Party when due hereunder or (ii) materially breaches its obligations hereunder and fails to cure such breach within thirty (30) days after receiving written notice thereof from the non-breaching Party (except for a failure to pay monies owed, in which case such period shall be ten (10) days), then the non-breaching Party may, in addition to whatever remedies it may have at law or otherwise arising out of such breach, elect to terminate this Agreement, in whole or in part, in which event the non-breaching Party shall be entitled to cease performance of the terminated portion of the Agreement and all amounts owed hereunder shall become immediately due and payable.
- d. Upon termination of this Agreement, SCHOOL shall, at its sole expense, deliver to Kaplan all of the Kaplan Materials then in its possession or control and shall cease to make any Kaplan Materials or Kaplan Online Assets available to Participants, SCHOOL students or any other persons. For termination under section 7(a) or 7(b), SCHOOL must take all action described in the preceding sentence by the end of the Academic Term in which the termination became effective; whereas for termination under 7(c), SCHOOL must take all such actions within 10 days of termination.

8. **GOVERNING LAW; JURISDICTION:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, exclusive of its choice of law provisions. Both Parties consent to the exclusive jurisdiction of the federal and state courts of New York, New York.

9. **LIMITATION OF LIABILITY:** EXCEPT FOR LIABILITY ARISING AS A RESULT OF GROSS NEGLIGENCE OR WILFULL MISCONDUCT OF KAPLAN, IN NO EVENT SHALL KAPLAN BE LIABLE TO SCHOOL FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT KAPLAN IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL KAPLAN'S LIABILITY EXCEED THE TOTAL AMOUNT PAID TO KAPLAN BY SCHOOL HEREUNDER.

10. **DISCLAIMER OF WARRANTIES:** EXCEPT AS SPECIFIED IN THIS AGREEMENT, KAPLAN MAKES NO WARRANTY IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT OR TO SERVICES AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. SERVICES ARE DELIVERED "AS IS."

11. GENERAL PROVISIONS

- a. This Agreement may not be assigned without the prior written permission of other Party. Notwithstanding the foregoing, Kaplan may assign its rights and delegate its duties under this Agreement to any subsidiary, parent or affiliated company of Kaplan if such entity agrees to be bound by all of the terms hereof.
- b. Any conflict between the Agreement and any SOW shall be resolved in favor of the SOW.
- c. This Agreement may be executed in one or more counterparts, which together shall constitute one Agreement. A facsimile signature on this Agreement shall constitute an original signature.
- d. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter of this Agreement and merges all prior discussions between them.
- e. If School issues Kaplan a purchase order ("PO") in connection with this Agreement, the PO shall expressly incorporate this Agreement and shall exactly match the Services set forth in Exhibit A and B, including Fees described therein, unless otherwise agreed by Kaplan. The PO may not add or revise terms ("Changes") unless agreed to in writing by Kaplan. If a PO makes Changes that have not been approved by Kaplan such Changes shall be void however the PO will remain otherwise effective notwithstanding anything to the contrary in the PO.
- f. Kaplan and SCHOOL are entering this Agreement as independent contractors. Nothing contained in this Agreement shall be deemed to create a partnership, joint venture, agency, employment, fiduciary or other relationship between Kaplan and SCHOOL.
- g. Kaplan shall not be liable for any damages caused by its failure or delay in performing its duties hereunder if such failure was due to causes beyond Kaplan's control, including, but not limited to, acts of God, acts of public enemy, acts of U.S. or foreign government, fires floods, earthquakes, epidemics, strikes, embargoes, or severely inclement weather condition.
- h. Any written notice permitted or required by this Agreement shall be sent or delivered to the Party to receive the same by Federal Express, DHL or other carrier, charges prepaid, or by facsimile transmission (including confirmation thereof) as set forth below (or as otherwise shall be designated by like notice):

If to Kaplan:

Kaplan, Inc.
 750 Third Avenue, 8th Floor
 New York, NY 10017
 Attention: Erika Blumenthal
 Fax: 215-987-5927

with a copy to:

Kaplan, Inc.
 750 Third Avenue, 8th Floor
 New York, NY 10017
 Attention: Division Counsel

If to SCHOOL: See Exhibit A.

Any notice shall be deemed given on the date of receipt thereof.



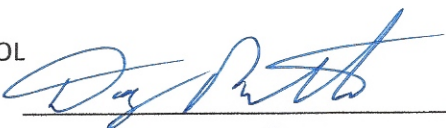
IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

KAPLAN, INC.

By: _____ Date _____

Anne Clark, Executive Director of Nursing Sales

SCHOOL

By:  _____

Date 3-20-2020

Doug Roberts 

Acting Vice Chancellor Business Services, Chabot Las Positas Community College District

Exhibit A
Services & Tuition Fees

1. **Services:** School orders the following Services, descriptions for which are provided in Exhibit B:
 - a. Complete Program w/ NCLEX-RN Course
2. **Academic Term**
 - a. Academic Term shall mean: August – December, January – May.
 - b. The first Academic Term for which SCHOOL will provide Initial Rosters will be August 2020.
3. **Tuition Fees:**
 - a. The Tuition fee for the Cohort graduating in May 2021 shall be \$145 per student, per Academic Term. Tuition Fees for all other Cohorts shall be \$150 per student, per Academic Term.
 - b. Tuition Fees shall be paid by: Student.
 - i. Student Pay:
 1. SCHOOL shall require its student body to purchase Services and Kaplan shall provide Participants on Official Rosters a means to securely pay for Tuition Fees.
 - c. **Notices:** Notices to SCHOOL shall be sent to:

Chabot College
Nursing Program
25555 Hesperian Blvd
Hayward, CA 94545
Attn: Connie Telles

District Office
Chabot Las Positas Community College District
7600 Dublin Blvd, 3rd Floor
Dublin, CA 94568
Attn: Business Services



EXHIBIT B
PROGRAM DESCRIPTIONS

Complete Program with NCLEX RN® Course

The Complete Program includes the following, each of which is a “**Program Element**”:

- i. **Secured Benchmark Tests** means online, end-of course, subject matter specific tests that have been normed to a national average so that students and faculty can see how they compare to other students nationwide across a variety of measures. Every question comes with rationales and remediation text.
- ii. **Remediation** means multi-level text and/or video review of content covered in Benchmark testing.
- iii. **Academic Workshops** means online workshops that teach study skills, test-taking skills, or other relevant content & strategy such as time management, note taking, and dosage and calculation.
- iv. **Practice Tests** means online practice tests, typically used for homework assignments. Each question comes with rationales and remediation text.
- v. **Skills Modules** means online modules that provide didactic training, video instruction, and quizzes to enforce key skills such as intradermal medication administration, temperature, and venipuncture.
- vi. **Nursing School Basics** means comprehensive but concise reviews of basic nursing content with easy-to-understand outlines, tables, and graphs. *Nursing School Basics* is available in digital and hard copies at no additional cost.
- vii. **Predictive Test** means end-of-program test that predicts student success on the NCLEX-RN® exam.

The Complete Program includes the NCLEX-RN® Course. The following are each a “**Course Element**”:

- i. **NCLEX-RN® Review Course** means NCLEX-RN® review instruction provided by Kaplan Faculty either in an in-person, classroom format (“**Live NCLEX-RN® Review Course**”) or in a real-time, live online format by Kaplan Faculty with online moderators to guide question and answer flow (“**Live Online NCLEX-RN® Review Course**”).
- ii. **NCLEX-RN® Qbank** means online, practice test tool that allows students to choose from exam style questions to create customized practice tests based on test plan areas.
- iii. **Question Trainer Tests** means online practice tests with individualized feedback that increase in length and difficulty made up of one thousand (1,000) questions in total.
- iv. **Content Review Guide for the NCLEX-RN®** means a review of nursing content organized by the categories used in the NCLEX-RN® exam. *Content Review Guide for the NCLEX-RN®* is available in digital and hard copies at no additional costs.
- v. **Online NCLEX-RN® Study Center** means online study plan providing access to questions, practice tests, videos, and streaming content.

- vi. **Practice Tests** means a variety of tests including diagnostic and readiness tests, as well as short sample tests that help prepare students to take the NCLEX-RN® exam.

Course Delivery:

- i. If School has submitted twenty (20) or more participants on a Roster per scheduled Course to Kaplan, Kaplan will deliver the classroom component of the NCLEX-RN® Review Course to Participants Live, On Site (In-Person).
- ii. If there are fewer than twenty (20) Participants submitted on a Roster, SCHOOL's Participants may join an existing Online NCLEX-RN® Review Course.

Kaplan shall also:

- i. Provide training on the Service to SCHOOL faculty. The Kaplan Nursing Consultant shall provide on-site training at a mutually agreed upon time. At SCHOOL's request, Kaplan will reasonably schedule supplemental consultations and additional faculty training either on-site or online.
- ii. Provide an orientation to Participants.
- iii. Assign a Kaplan Account Manager to SCHOOL
- iv. Customize Kaplan's standardized end-of-course exams to SCHOOL'S curriculum. SCHOOL must submit a customization request in writing via email to Kaplan Nursing at least 12 weeks prior to the start of the Academic Term for which the customized test is needed ("**Customization Request**"). Customization Requests must provide all information reasonably requested by Kaplan. Customizations are limited to one per course.

EXHIBIT C**Example of Roster Collection Form**

Program Type (RN or PN):

School:

Class Graduation Date:

Date to send student access:

Faculty access to reports:

| <u>Student</u> | <u>First Name</u> | <u>Last Name</u> | <u>Email address</u> | <u>drops</u> | <u>adds</u> | <u>Cohort Name</u> |
|----------------|-------------------|------------------|----------------------|--------------|-------------|--------------------|
| 1 | | | | | | |
| 2 | | | | | | |
| 3 | | | | | | |
| 4 | | | | | | |
| 5 | | | | | | |
| 6 | | | | | | |
| 7 | | | | | | |
| 8 | | | | | | |
| 9 | | | | | | |
| 10 | | | | | | |



2019

Number of Candidates Taking NCLEX Examination and Percent Passing, by Type of Candidate

| RN | Jan-Mar 2019 ³ | | Apr-Jun 2019 | | Jul-Sep 2019 | | Oct-Dec 2019 | | Year to Date Total | |
|---|---------------------------|----------------|---------------|---------------|---------------|---------------|---------------|---------------|--------------------|---------------|
| | # ¹ | % ² | # | % | # | % | # | % | # | % |
| First Time, US Educated | | | | | | | | | | |
| <i>Diploma</i> | 547 | 88.85% | 607 | 88.30% | 767 | 89.57% | 326 | 81.60% | 2,247 | 87.89% |
| <i>Baccalaureate Degree</i> | 22,546 | 92.80% | 26,353 | 92.13% | 27,597 | 90.62% | 7,802 | 85.72% | 84,298 | 91.22% |
| <i>Associate Degree</i> | 23,920 | 87.30% | 26,977 | 86.49% | 26,076 | 85.67% | 7,821 | 72.50% | 84,794 | 85.17% |
| <i>Invalid or Special Program Codes</i> | 18 | 55.56% | 9 | 88.89% | 9 | 55.56% | 12 | 66.67% | 48 | 64.58% |
| Total First Time, US Educated | 47,031 | 89.94% | 53,946 | 89.27% | 54,449 | 88.23% | 15,961 | 79.14% | 171,387 | 88.18% |
| Repeat, US Educated | 8,868 | 45.08% | 9,148 | 37.08% | 11,507 | 52.06% | 10,499 | 40.37% | 40,022 | 44.02% |
| First Time, Internationally Educated | 4,815 | 47.60% | 5,065 | 46.46% | 5,173 | 48.29% | 5,988 | 40.50% | 21,041 | 45.47% |
| Repeat, Internationally Educated | 4,704 | 29.95% | 4,969 | 27.53% | 4,768 | 29.49% | 5,420 | 21.77% | 19,861 | 27.00% |
| All Candidates | 65,418 | 76.43% | 73,128 | 75.58% | 75,897 | 76.33% | 37,868 | 54.07% | 252,311 | 72.80% |

| PN | Jan-Mar 2019 ⁴ | | Apr-Jun 2019 | | Jul-Sep 2019 | | Oct-Dec 2019 | | Year to Date Total | |
|---|---------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|--------------------|---------------|
| | # | % | # | % | # | % | # | % | # | % |
| First Time, US Educated | 11,096 | 84.72% | 10,186 | 86.73% | 17,050 | 86.81% | 9,902 | 83.49% | 48,234 | 85.63% |
| Repeat, US Educated | 3,264 | 32.84% | 3,804 | 40.14% | 3,430 | 34.05% | 3,665 | 38.99% | 14,163 | 36.69% |
| First Time, Internationally Educated | 121 | 52.07% | 120 | 60.00% | 138 | 50.73% | 144 | 56.25% | 523 | 54.68% |
| Repeat, Internationally Educated | 202 | 18.81% | 216 | 29.63% | 196 | 27.04% | 229 | 27.95% | 843 | 25.98% |
| All Candidates | 14,683 | 72.01% | 14,326 | 73.27% | 20,814 | 77.31% | 13,940 | 70.60% | 63,763 | 73.71% |

¹ The # symbol denotes the number of candidates who took the exam.
² The % symbol denotes the percentage of candidates that passed the exam.
³ The RN Passing Standard is 0.00 logits.
⁴ The PN Passing Standard is -0.21 logits.

