Integrated Testing Program with NCLEX-PN® Review Course Agreement

This agreement (the "Agreement") is entered into as of the 2nd day of December, 2013 ("**Effective Date**") by and between Kaplan Test Prep, a division of Kaplan, Inc., ("**Kaplan**,") and Palo Verde College ("**SCHOOL**") with its principal office at 1 College Dr, Blythe, CA 92225 (each, a "**Party**" and collectively, "**Parties**").

WHEREAS Kaplan has developed programs to evaluate the nursing knowledge of students in an undergraduate program leading to LPN/LVN licensure and to prepare students for the NCLEX-PN® examination; 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**" means the Integrated Testing Program (the "**IT Program**") combined with the NCLEX-PN® Review Course (the "**NCLEX-PN® Course**").
    b. The IT Program includes the following, each of which is a "**Program Element**":
        i. **Admission Test** means an online admission test, designed exclusively for nursing school candidates and comprised of reading, writing, math (for nursing), and science sections.
        ii. **Study Skills Workshops** means online workshops that teach study skills such as time management and note taking.
        iii. **Drug Dosage and Calculation Workshop** means an online workshop teaching basic math, ratio/proportions and dimensional analysis needed to effectively calculate drug dosage.
        iv. **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.
        v. **Focused Review Tests** means online practice tests, typically used for homework assignments. Each question comes with rationales and remediation text.
        vi. **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.
        vii. ***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 online and e-book formats.
        viii. **Predictive Test** means end-of-program test that predicts student success on the NCLEX-PN® exam.
    c. The NCLEX-PN® Course includes the following, each of which is a "**Course Element**":
        i. **NCLEX-PN® Review Course** means NCLEX-PN® review instruction provided by Kaplan Faculty either in an in-person, classroom format ("**Live NCLEX-PN® 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-PN® Review Course**").

ii. **NCLEX-PN® Qbank** means on online, practice test tool that allows students to choose from exam style questions to create customized practice tests based on test plan areas**.**

iii. ***Content Review for the NCLEX-PN®*** means a review of nursing content organized by the categories used in the NCLEX-PN® exam. *Content Review for the NCLEX-PN®* is available in online and e-book formats.

iv. **Online NCLEX Study Center** means online videos consisting of 1) content review for the NCLEX-PN® and 2) Review of the same questions taught in the Live or Live Online class.

d. **Administrator Website** means a web-based service through which SCHOOL can obtain data and reports from Kaplan's systems relating to their Participants' progress and performance in the Service. Reporting data include: percent correct, percentile by category, answer change analysis, time per question and level of question difficulty by system, school, cohort and individual student.

e. **Kaplan Faculty** means part-time Kaplan employees trained to teach the Kaplan NCLEX-PN® Review Course.

f. **Kaplan Materials** means all Kaplan books, videos, online question backs (qbanks), tests, quizzes, questions and other Kaplan content, used in the Service.

g. **Kaplan Nursing Consultant** means a full-time Kaplan employee with nurse educator background who consults with SCHOOL faculty and administration to maximize effectiveness of Kaplan program. Kaplan Nursing Consultant may train nursing faculty on the use of IT Program and Course Elements, review, analyze and make recommendations based on data reports generated from Kaplan's online systems, and advise SCHOOL on how to integrate the Service into SCHOOL's curriculum.

h. **Kaplan Online Assets** means Kaplan Materials that are accessed via the internet. Kaplan Online Assets are stored on Kaplan's technology system ("**Kaplan Systems")**.

i. **Kaplan Service Specialist** means full-time Kaplan employee who provides administrative support to the school for roster submission, test administration, invoicing and payment, and related issues.

j. **Participants** means any nursing student identified to Kaplan by SCHOOL in an Initial Roster or Updated Roster (defined below).

2. **KAPLAN OBLIGATIONS**

a. Deliver the NCLEX–PN® Review Course to Participants.

i. 25 or more Participants are required for dedicated Live NCLEX-PN® Review Course at SCHOOL. If there are fewer than 25 Participants for the NCLEX-PN® Review Course, SCHOOL students may join an existing Live Online NCLEX-PN® Review Course class or, if Kaplan agrees, SCHOOL may elect to open the Live NCLEX-PN® Review Course to students from other nursing schools in the area, in which case Kaplan will market the open course on Kaplan's website and through other marketing channels.

b. 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.

c. Provide an orientation to Participants.

d. Assign a Kaplan Service Specialist to SCHOOL.

e. 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 reasonable requested by Kaplan. Customizations are limited to one per test.

f. Provide Participants license and login credentials to Kaplan Online Assets. Participant access to Kaplan Systems is personal to Participant and Participant may not share login credentials to Kaplan Systems with any other person.

g. Provide SCHOOL a limited number of licenses and login credential to Kaplan Online Assets. SCHOOL may use Kaplan Materials as teaching aids however SCHOOL may not copy, otherwise reproduce, modify or alter Kaplan Materials without the prior, written consent of Kaplan. SCHOOL may not share login credentials to Kaplan Systems with any Participant or any person not a faculty member or administrator at SCHOOL.

h. Provide SCHOOL license and login credentials to the Administrator Website. SCHOOL may not share login credentials to the Administrator Website with any Participant or any person not a faculty member or administrator at SCHOOL.

i. Kaplan may modify, enhance or change Service and any aspect of the Service, Program Element or Course Element at its sole discretion during the term (collectively, "**Enhancements**"), however Kaplan will make reasonable efforts to give advance notice of any Modifications and in no event will an Enhancement materially degrade the Service. Kaplan shall in its discretion assign the Kaplan NCLEX Faculty, Kaplan Nursing Consultant(s) and Kaplan Service Specialist(s) used in providing the Service to SCHOOL.

3. **SCHOOL OBLIGATIONS**

a. Standard start dates for SCHOOL's academic terms ("**Academic Terms**") are:

Spring: January

Fall: September

b. SCHOOL shall provide Kaplan with an initial roster of Participants ("**Initial Roster**") for each group of students who are scheduled to graduate at the same time ("**Cohort**"). Unless otherwise agreed by the Parties, the Initial 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 Service Specialist on or before the Deadline.

c. The first Academic Term for which SCHOOL will provide Initial Rosters will be January 2014.

d. For each subsequent Academic Term, SCHOOL shall provide Kaplan updated rosters for each existing Cohort ("**Updated Rosters")** that will reflect any adds or drops to that Cohort. SCHOOL must also provide Initial Rosters for any new Cohorts (e.g., group of students beginning their studies with SCHOOL). Updated Rosters and Initial Rosters must be provided by the Deadline. All Initial Roster and Updated Rosters must include all students in the Cohort.

e. Initial Rosters and the Updated Rosters shall provide all information reasonably required by Kaplan, including: Participant first name, last name, email address, and anticipated graduation date. A sample Roster form is attached as **Exhibit A**.

f. SCHOOL shall pay a **Tuition Fee** for each Participant on the Initial Roster and on each Participant on any Updated Roster. Tuition Fees are set forth in the attached **Exhibit B**. For the avoidance of doubt, if a Participant is studying for more than one Academic Term, SCHOOL will pay more than one Tuition Fee for that Participant.

g. If SCHOOL adds a Participant to an Initial Roster or Updated Roster during an Academic Term but after the Deadline for that Academic Term, SCHOOL shall pay the same Tuition Fee for that Participant as if the Participant had been added prior to such Deadline.

h. If SCHOOL does not timely provide an Initial Roster or Updated Roster, Kaplan shall invoice SCHOOL based on the best information available to Kaplan at that time ("**Forecasted Term**"). If Kaplan's information is incorrect (either too few or too many Participants), Kaplan will make adjustments in invoices for subsequent Terms, however SCHOOL will remain obligated to pay Tuition Fees for all Participants enrolled in SCHOOL during the Forecasted Term, with the exception of Participants who dropped prior to the relevant Deadline, and SCHOOL must provide Kaplan the dates of all adds and drops.

i. If SCHOOL decides not to add a new Cohort (for which it would submit an Initial Roster), for example because of insufficient enrollment interest, SCHOOL must promptly notify Kaplan and in no case later than 2 weeks prior to the start of the next Academic Term.

j. SCHOOL shall pay Kaplan the full invoiced amount in U.S. dollars within 30 days of the date of the Kaplan invoice. SCHOOL shall pay Kaplan via electronic transfer pursuant to directions provided by Kaplan. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, from the date due, plus all expenses of collection.

k. SCHOOL shall designate a person to serve as Kaplan's principal contact at SCHOOL.

l. SCHOOL shall administer Secured Benchmark Tests in a secure, proctored setting and SCHOOL 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.

m. SCHOOL shall provide a classroom(s) at SCHOOL free of charge upon a schedule mutually agreed upon by the Parties for all Elements designed to be delivered on-site or in a classroom.

n. SCHOOL will mutually determine NCLEX review course dates at least 90 days in advance of expected delivery with the Kaplan Service Specialist.

o. SCHOOL shall ensure that all SCHOOL faculty who use SERVICES participate in training provided by the Kaplan Nursing Consultant.

p. SCHOOL shall require all Participants to attend or watch Service orientations provided by Kaplan.

4. **INTELLECTUAL PROPERTY**

a. SCHOOL acknowledges that Program Elements, Course Elements, Kaplan Materials, Kaplan Online Assets, 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. If requested by Kaplan, SCHOOL shall execute whatever documents may reasonably be required to confirm the ownership rights of Kaplan IP. SCHOOL agrees that SCHOOL, its officers, employees and agents will not make any copies of or otherwise reproduce Kaplan IP without the prior, written consent of Kaplan.

b. SCHOOL shall use best efforts to prevent Participants from copying, reproducing or otherwise infringing Kaplan IP. 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.

c. SCHOOL shall not use Kaplan's logo and any other Kaplan trademark without the prior, written consent of Kaplan except as otherwise agreed herein.

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.

   b. Except as otherwise set forth herein, neither of the parties will issue any press release(s) or make any public announcement(s) relating in any way whatsoever to this Agreement or the relationship established by this Agreement without the express prior written consent of the other Party. For the purposes of this Agreement, discussions with potential Participants in the normal course of business as contemplated by this Agreement shall not constitute a public announcement or press release.

6. **REPRESENTATION, 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. 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) 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.

   b. 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. SCHOOL agrees to indemnify and hold harmless Kaplan and its subsidiaries, affiliates, directors, shareholders, officers, employees and agents from and against all third party claims, damages, costs and expenses (including reasonable attorneys' fees and litigation expenses) arising out of or as a result of SCHOOL's breach of this Agreement, any breach of its representations and warranties herein, any claims arising from data SCHOOL provides to Kaplan, and any claims resulting or arising out of or related to any injuries, damages or any other actions or claims, whether in contract, tort or any other theory of recovery, due to its negligence or malfeasance in operating, maintaining, servicing or otherwise controlling or owning the premises on or off-campus where the Service is provided.

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 Exhibit B to the Agreement shall be replaced by the pricing set forth in the Pricing Change Notice.

b. If either Party terminates the Agreement under section 7(a) or 7(b) 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 of the Program Elements, Course Elements, 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.

e. During any Contract Term, SCHOOL shall not enter into any other contract, except as agreed in writing by Kaplan, for services similar to the Service.

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 SCHOOLFOR 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 SCHOOLHEREUNDER.

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

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. 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.

c. The captions and headings in this Agreement have been inserted solely for convenience of reference and shall not affect the interpretation of this Agreement.

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. 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.

f. 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.

g. 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):

<u>If to Kaplan:</u>
Kaplan Test Prep
395 Hudson Street, 3rd Floor
New York, NY 10014
Attention: Jon Zeitlin
Fax: 212-208-2691

<u>with a copy to:</u>
Kaplan Test Prep
395 Hudson Street, 3rd Floor
New York, NY 10014
Attention: Division Counsel

<u>If to SCHOOL:</u>
Sharron Burgeson
Nursing and Allied Health Coordinator
1 College Dr
Blythe, CA 92225
760-921-5444
sharron.burgeson@paloverde.edu

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 _____
Jon Zeitlin, M.Ed.
Vice-President and General Manager, Kaplan Nursing

SCHOOL

By: _____ Date _____
Sharron Burgeson
Nursing and Allied Health Coordinator

EXHIBIT A
Example of Roster Collection Form

Program Type (RN or PN):
School:
Class Graduation Date:
Date to send student access:
Faculty access to reports:

Student	First Name	Last Name	Email address	drops	adds	Cohort Name	Group Name
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

EXHIBIT B
TUTION FEES

As set forth in the Agreement, TUITION FEES are charged on a per Academic Term basis. The amount of Tuition Fees depends on anticipated graduation date of students in the Participant's Cohort.

1. For Schools with two semesters in an academic year, each an Academic Term, Tuition Fees are as follows:

   - Cohorts scheduled to graduate in 3 semesters and future cohorts: price per semester = $116.67
   - The December 2013 graduating cohort: price per semester = $200

EXHIBIT C
FORECAST WORKSHEET

Note: This Exhibit is intended solely a worksheet to use in forecasting financial commitments. It does not define legal rights and/or obligations. Any contradiction between this Exhibit C and any provision(s) in the Agreement or its other Exhibits shall be resolved in favor of the Agreement and its other Exhibits.

Estimated number of students and associated pricing

Palo Verde College PN - January 2014-16					
Start Date	**Sept, 2012**	**Jan, 2014**	**Sept, 2015**		
Grad Date	**Dec, 2013**	**May, 2015**	**Dec, 2016**		
Billing Period				**Total per seme**	
Jan., 2014	19	17			$5,783.39
Sept., 2014		15			$1,750.05
Jan., 2015		14			$1,633.38
Sept., 2015			17		$1,983.39
Cost per semester	$200.00	$116.67	$116.67		
Student cost this contract	$200.00	$350.00	$116.67		
Total cost per student	$200.00	$350.00	$350.00		
Cohort cost this contract	$3,800.00	$5,366.82	$1,983.39		
		Total contract value			**$11,150.21**