



EDUCATIONAL MASTER SERVICES AGREEMENT

This Educational Master Services Agreement (this "Agreement") is made effective March 25, 2020 (the "Effective Date") between Kaplan Inc. ("Kaplan") and Black Horse Pike Regional School District ("School"), each a "Party" and collectively, the "Parties".

For good and valuable consideration, the receipt of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. Program Delivery.

- a. Kaplan shall provide the products and services (collectively, "Programs") in accordance with a statement of work made pursuant to this Agreement ("SOW").
- b. A "Designated Student" is a current student of School that School designates for participation in a Program in an applicable SOW and that meets any eligibility requirements set forth in the applicable SOW, except as otherwise noted in the applicable SOW ("Eligibility Requirements"). Any deadline for Designated Students to begin or end Programs shall be identified in the SOW ("Program Deadlines"). Programs may have access periods during which Students shall have access to a Program's digital or other assets ("Access Period").
- c. "Class" means the delivery of a Program by Kaplan to a single cohort of students and usually has a start date and schedule. Programs shall be delivered to Designated Students.
- d. School shall provide a "Roster" with first name, last name, email address and class year for each Designated Student, as well as any other information that Kaplan may reasonably require, ("Student Information"). Rosters for Classes with live instruction ("Live Classes") must include the relevant Class Codes from Kaplan's website. Rosters for asynchronous Classes and other products that are not Live Classes, ("General Rosters"), shall indicate the requested start of the Access Period of the Program (where applicable). "Standard" Rosters are used for enrolling Designated Students in Kaplan's regularly scheduled and advertised, retail Classes and Programs, ("Standard Programs"). "Custom" Rosters are used to enroll Designated Students in a Live Class that will take place at School or is otherwise not available on kaptest.com (a "Custom Program"). If applicable, upon receipt of a Custom Roster that includes or exceeds the "Class Minimum" specified in the applicable SOW, Kaplan shall schedule a Class of that Program. Kaplan shall work with School to accommodate School's "Requested Start Date & Schedule," however all scheduling decisions shall be made by Kaplan based on teacher availability and other reasonable considerations. Kaplan shall have sole discretion to postpone or cancel delivery of a Class subject to Kaplan's refund policies. Where the Custom Program is to be delivered at School, School shall provide reasonable, safe, well maintained and appropriate facilities for the Custom Program at no cost to Kaplan. School shall be solely responsible for the security, management and safety of the facility.
- e. The deadline for submitting a Roster ("Roster Deadline") for any Live Class shall be 14 days prior to the first session of the Class unless otherwise indicated in the applicable SOW. Once the Roster Deadline has passed the Roster becomes a "Final Roster." It is within Kaplan's sole discretion whether to add or delete Designated Students to or from a Final Roster when School makes designations after the Roster Deadline.

- f. Kaplan reserves the right to make changes to and/or discontinue Programs in its discretion at any time. If Kaplan discontinues a Program after submission of a Roster, Kaplan shall refund School any Program Fees paid pursuant to that Roster for the discontinued Program.
 - g. Kaplan shall deliver Programs in a professional and workmanlike manner. Staffing of Classes is within Kaplan's sole discretion. SOWs may not be amended except in a writing signed by both Parties. Any conflict between this Agreement and any SOW shall be resolved in favor of the applicable SOW.
2. Program Fees & Invoices.
 - a. "Program Fees," including the fee per Designated Student ("Tuition") any applicable "Guarantee" shall be set forth in the applicable SOW. Except as provided in the applicable SOW, Kaplan shall invoice on the basis of Final Rosters, and School shall pay all invoiced amounts ("School Pay"). School shall pay all Program Fees and School shall make full payment in US dollars to Kaplan within 30 days from the date of invoice. Program Fees are non-refundable, except for discontinued Programs and cancelled Classes. Unless otherwise provided in the applicable SOW, if School collects any money from Students to participate in the Program, such amount may not exceed the Tuition and School may not offer discounts, rebates, scholarships or other promotions without the prior written consent of Kaplan. Notwithstanding the foregoing, if the applicable SOW provides that Designated Students and not School shall be responsible for payment of Tuition to Kaplan ("Student Pay") Kaplan shall have no obligations to School or to Designated Students in connection with Students who have not paid Tuition in full to Kaplan prior to the first Class and/or the beginning of the Access Period.
 - b. School agrees that the only agreement between the Parties concerning Programs is the Agreement and School represents and warrants that it shall not assert any position to the contrary or assert that any purchase order is binding upon Kaplan except as otherwise agreed by the Parties in the applicable SOW(s).
3. Term & Termination: The term of this Agreement shall begin on the Effective Date and shall continue until terminated by either Party upon 30 days written notice. Such termination shall only become effective when the Parties have performed all of their obligations under any SOW under this Agreement. Either Party may also terminate this Agreement and any SOW if thirty (30) days after giving the other Party written notice of a material breach of this Agreement the breaching Party fails to cure the breach. If School terminates an SOW in the absence of a material breach by Kaplan of this Agreement or of that SOW, School shall remain obligated to pay Tuition for Designated Students identified in any Roster and School shall be obligated to pay any Guarantee under that SOW. Kaplan shall cease all services as of the effective date of termination.
4. Indemnification. Each Party assumes liability for, and agrees to indemnify, protect, defend, save and hold harmless the other Party, and all of its parent and subsidiary companies and each of their respective agents, officers, and employees, from and against any and all third party liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including, without limitation, reasonable legal and investigative fees and expenses, of whatsoever kind and nature (hereinafter called "Claims") which may arise at any time (whether during the Term or thereafter) as a result of the indemnifying Party's breach of this Agreement, violation of any applicable laws or regulations, or other acts or omissions. In the event a Claim arises from both Parties' acts or omissions in implementing its obligations of the Agreement, each Party shall indemnify the other to the extent its acts or omissions contributed to the Claim.

5. Intellectual Property.
 - a. "Kaplan IP" means the Programs and all books, questions, answers, explanations, videos, animations, simulations, handouts, audio and video recordings (including of lectures), curricula, teacher's guides and other content and materials, and all derivative works thereof, used in the Program or to which School or Students have access to by virtue of this Agreement or any SOW thereto, (collectively, "Content"); all technology, and software used in the delivery of Programs; all know how, methods and processes incorporated in Programs; and all Kaplan trademarks and logos. All Kaplan IP is and shall remain the sole and exclusive property of Kaplan and its licensors. School acknowledges that this Agreement does not confer upon School any interest in or right to use any Kaplan IP other than as expressly provided in this Agreement or in any applicable SOW. Kaplan IP may be accessed or delivered online or through mobile applications ("Digital Assets").
 - b. Each Designated Student receives a personal, non-exclusive, non-assignable, non-sublicenseable license to access Digital Assets during the Program. It is prohibited for Designated Students to share their access credentials (e.g., username and password) to Digital Assets ("Access Credentials") or share other Content.
6. Reps & Warranties. Kaplan represents and warrants that (a) it has the authority to enter into this Agreement and to deliver Programs and (b) Programs shall not violate the intellectual property of any third parties. School represents and warrants that it has obtained any necessary consents to share Student Information with Kaplan and for Kaplan to use such Personal Information in the performance of this Agreement.
7. EXCEPT AS OTHERWISE PROVIDED HEREIN, PROGRAMS ARE PROVIDED "AS IS" AND KAPLAN DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN NO EVENT SHALL KAPLAN BE LIABLE TO SCHOOL FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, EVEN IF KAPLAN HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT IS KAPLAN LIABLE TO SCHOOL FOR DAMAGES IN EXCESS OF THE AMOUNT OF FEES PAID BY SCHOOL TO KAPLAN.
8. Force Majeure. Neither party is liable to the other for any delay or failure to perform an obligation under this Agreement if the delay or failure to perform is due to causes beyond the control of that party, including, but not limited to, acts of nature; acts of the public enemy; acts of the United States of America, or any state, territory or political division of the United States of America, or of the District of Columbia; fires; riots; Internet infrastructure failures; hacker attacks; floods; epidemics; quarantine restrictions; strikes or any other labor disputes; and freight embargoes.
9. Taxes: Each Party shall be responsible for its own taxes. School shall be responsible for any taxes, VAT, levies or other duties, (collectively, "Taxes") imposed by relevant taxation authorities or other governmental agencies for School's receipt of Tuition. School may not make any deductions from Payments.
10. Governing Law & Forum Selection. This Agreement and any SOW shall be governed by New York law. All disputes arising from or related to this Agreement shall be exclusively litigated in the State and Federal courts located in New York City.
11. Counterparts. This Agreement may be executed in any number of counterparts.

12. Independent Contractor Status. The relationship between Kaplan and School is as independent contractors. Neither Party shall have the right to obligate or bind the other Party in any manner whatsoever.
13. Assignment & Modification. Neither Party may assign any rights or obligations under this Agreement unless approved in writing by the other Party. Any modification of or amendment to this Agreement will be effective only if it is in writing signed by both Parties.
14. Invalidity. Any provision of this Agreement found to be invalid, unenforceable, or prohibited by law will be ineffective only to the extent of such invalidity, unenforceability, or prohibition without invalidating the rest of this Agreement.
15. Entire Agreement & No Waiver. This Agreement and its SOWs set forth the entire understanding of the Parties with respect to the subject matter herein. No waiver of any breach or default will be deemed a waiver of any preceding or subsequent breach or default whether of a similar or dissimilar nature.

AGREED:

Black Horse Pike Regional School District

By: _____ Date: _____

Name: _____ Title: _____

Kaplan, Inc.

By: _____ Date: _____

Name: Brian Carlidge Title: Vice President and General Manager, Admissions

SOW # 1

This Statement of Work Number One ("SOW #1") is made pursuant to and is incorporated into the Educational Services Agreement (Contract # PO-1909-0017780; the "Agreement") between Kaplan, Inc. and Black Horse Pike Regional School District ("School") on or about March 25, 2020. This SOW #1 shall be effective when signed by both Parties ("SOW # 1 Effective Date"). Terms that are defined in the Agreement shall have the same meaning in this SOW#1 unless otherwise stated herein. The Parties agree as follows:

1. Custom Programs:

a. Custom Program: SAT Prep – In Person

- i. Number of Classes: 4
- ii. Class Minimum: N/A
- iii. Fixed Fee: \$ 8,350.00 Per Class. School shall pay a fixed fee of \$ 33,400.00 on or before March 25, 2020. For each additional Designated Student (e.g., the 26th), School shall pay Kaplan Tuition of \$ 334.00. Kaplan shall invoice for the additional Designated Students on the basis of the final Roster.
- iv. Requested Start Date & Schedule:
 - a) Classes #1 - #3: March 25, 2020 – April 29, 2020
 - b) Class #4: July 27, 2020 – August 6, 2020
- v. Location: Black Horse Pike Regional School District campus.
- vi. Access Period: As set forth on the Custom Roster.
- vii. Roster Deadline:
 - a) Classes #1 - #3: March 10, 2020
 - b) Class #4: July 10, 2020
- viii. Payment Method: School Pay

• SAT Prep - In Person

- o Maximum of 25 students per class
- o 18 hours of live instruction
- o 2 Kaplan-proctored practice tests in class
- o A total of 8 online tests, including 4 Official College Board tests
- o Online Quiz Bank; up to 30 hours of online, elective instruction on *The SAT Channel*[®]; and up to 40 hours of supplemental, on-demand lessons
- o Prep books for the SAT
- o Online educator reporting

2. Rosters should be submitted to: Connell Boyle (connell.boyle@kaplan.com)

3. Select one of the following:

- a. _____ School will make payment solely based on the terms of this SOW and will not issue a separate PO.
- b. _____ A PO is attached to this SOW and is incorporated by reference except to the extent that any PO term or condition is inconsistent with the Agreement or this SOW.
- c. _____ Customer will issue PO(s) expressly referencing the Agreement and this SOW and such PO(s) shall be incorporated in this SOW except to the extent that any PO term or condition is inconsistent with the Agreement or this SOW. POs must be received by the following deadlines: 4 weeks prior to the first class session for Live Classes; 2 weeks prior to the Access Period start date for any Program other than a Live Class.

Black Horse Pike Regional School District

By: _____ Date: _____

Name: _____ Title: _____

Kaplan, Inc.

By: _____

Date: _____

Name: Brian Carlidge

Title: Vice President and General Manager, Admissions

SAMPLE CUSTOM ROSTER FOR LIVE CLASSES

This Roster is submitted pursuant to SOW#1 to the Educational Services Agreement between Kaplan, Inc. and Black Horse Pike Regional School District.

Program: _____

Location: _____

Requested Start Date & Schedule: _____

Access Period: _____

Designated Students:

First Name	Last Name	Email Address	Class Year

Black Horse Pike Regional School District

By: _____ Date: _____

Name: _____ Title: _____