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BY INSTALLING, OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT INSTALL, OR USE THE SOFTWARE. PLEASE INDICATE YOUR AGREEMENT TO THIS AGREEMENT BY CLICKING THE “I AGREE” BUTTON BELOW. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU SHOULD NOT INSTALL OR USE THE SOFTWARE AND SHOULD EXIT NOW.

1. GRANT OF LICENSE:

Unless otherwise agreed to in writing, ExamSoft hereby grants Exam Taker the non-exclusive, non-transferable right to use the SOFTWARE on a single computer until the expiration date displayed on SOFTWARE’S start window following registration. The SOFTWARE is considered in use on a computer when it is loaded into temporary memory or installed into permanent memory.

2. UPGRADES:

During the term of this Agreement, Exam Taker is entitled to any version-specific upgrades to the SOFTWARE. Full version upgrades may be provided to Exam Taker at the sole discretion of ExamSoft.

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5. NO WARRANTY:

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6. LIMITATION OF LIABILITY:

EXAM TAKER’S EXCLUSIVE REMEDY UNDER THIS AGREEMENT SHALL BE A DOLLAR AMOUNT UP TO THAT PORTION OF THE LICENSE FEE THAT RELATES DIRECTLY TO THE SOFTWARE LICENSE, EXCLUDING ANY PORTION OF SUCH LICENSE FEE THAT RELATES TO THIRD-PARTY OR ADMINISTRATIVE SERVICES (E.G., PRINTING, SITE SUPPORT). OTHER THAN AS DESCRIBED HEREIN, IN NO EVENT SHALL EXAMSOFT BE LIABLE FOR ANY CLAIM FOR ACTUAL OR DIRECT DAMAGES WHATSOEVER RELATED TO THE USE OF THE SOFTWARE, THE INABILITY TO USE THE SOFTWARE OR ANY OTHER CLAIM ARISING UNDER OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR NEGLIGENCE, NEGLIGENT MISREPRESENTATION, NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, UNFAIR BUSINESS PRACTICES, BREACH OF CONTRACT, OR UNJUST ENRICHMENT. FURTHER, EXAMSOFT SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER RELATED TO THE USE OF THE SOFTWARE, THE INABILITY TO USE THE SOFTWARE OR ANY OTHER CLAIM ARISING UNDER OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR NEGLIGENCE, NEGLIGENT MISREPRESENTATION, UNFAIR BUSINESS PRACTICES, BREACH OF CONTRACT, OR UNJUST ENRICHMENT.

7. COMPLIANCE WITH INSTRUCTIONS:

Exam Taker agrees that the computer and operating system onto which the SOFTWARE is to be installed complies with the minimum system requirements for the SOFTWARE. Exam Taker further agrees to follow and perform all installation and use procedures in accordance with the instructions included with the SOFTWARE or provided by the exam administrator. ExamSoft reserves the right to update the version of the SOFTWARE available for use by Exam Taker at any time, including automatically updating Exam Taker’s installed version of the SOFTWARE.

8. INFORMATION GATHERED:

For purposes of support, accountability, quality control, and exam-related assistance, ExamSoft shall have the right to collect certain information, whether from Exam Taker or exam administrator (including, but not limited to, photograph, IP address, name, email, user ID, makes and models of computers used by Exam Taker, types and versions of software used by Exam Taker, security and software performance information, log files and software usage patterns such as keystroke data), necessary to provide Exam Taker with services allowing Exam Taker to participate in the applicable examination(s). ExamSoft shall perform such examination administration and related data collection pursuant to ExamSoft’s agreement with educational institution or certifying board.

Personally identifiable information, including Exam Taker’s exam questions and answers, will be kept confidential and shall be considered the property of the administrator of the exam, and any questions regarding its existence, details, or use should be directed to the administrator of the exam.

9. RELATIONSHIP:

Other than the license granted to Exam Taker hereunder, which permits Exam Taker certain limited use of the SOFTWARE, there is no relationship or contract between ExamSoft and the Exam Taker. ExamSoft has no responsibility whatsoever to Exam Taker with regard to any exams or exam results, and all inquiries regarding the exam and exam results should be directed to the administrator of the exam. Exam Taker agrees that ExamSoft shall have no obligation to provide Exam Taker with any information concerning the SOFTWARE or any particular exam or answer thereto.

10. TERMINATION:

Without prejudice to any other rights, ExamSoft may terminate this agreement if Exam Taker fails to comply with the terms and conditions of this Agreement. In such event, Exam Taker must destroy all copies of the SOFTWARE and all of its component parts, and ExamSoft may suspend or deactivate Exam Taker's use of the SOFTWARE without notice. Any activities of Exam Taker giving rise to the termination of Exam Taker's use of SOFTWARE shall be reported to the respective exam administration authorities.

11. GOVERNING LAW AND ARBITRATION:

Except as otherwise provided, any claim, demand, dispute or controversy of any kind or nature between the parties hereto arising out of or relating to this Agreement, its construction, interpretation, performance or alleged breach (any "Claim") shall be governed by, and construed in accordance with the laws of the State of Texas without regard to its conflict of laws rules. Further, any Claim (except as discussed below) that is not otherwise settled by agreement of the parties shall be resolved by binding bi-lateral arbitration. ExamSoft does not consent to any class arbitration or representative arbitration proceeding. Licensee and ExamSoft waive any right to arbitrate any dispute or to pursue relief against the other in a class arbitration or other representative proceeding, and agree that each may bring claims against the other only in an individual capacity. Further, unless ExamSoft and Licensee agree otherwise in writing, the arbitrator may not consolidate or join more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Any decision rendered in such arbitration is binding on each party, and judgment may be entered in any court of competent jurisdiction. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the preceding provision with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act. Any such arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Such arbitration shall be in accordance with the JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness, which shall be deemed incorporated into this Agreement. Any arbitration shall be presided over by one arbitrator whose selection shall be governed by Rule 15 of the JAMS Rules referred to above. The parties shall maintain the confidential nature of the arbitration proceeding, filings, and award, except as necessary to confirm or vacate any arbitration award. Additionally, any dispute as to the scope or applicability of this agreement to arbitrate shall be determined exclusively by any state or federal court located in Dallas County, Texas. The parties consent to personal jurisdiction in all state and federal courts located in Dallas County, Texas for the purposes of such court actions or determinations. Except where prohibited by applicable law or by JAMS Rules or policy, in any arbitration arising out of or related to this Agreement, the prevailing party shall be entitled to its costs, expenses, and reasonable attorneys' fees. If the arbitrator determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims or counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the costs, expenses, and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. Notwithstanding any of the foregoing, the right to seek to confirm or vacate any arbitration award hereunder is preserved. Except where prohibited by applicable law or by JAMS Rules or policy, any such decision to confirm or vacate any arbitration award hereunder shall be determined exclusively by any state or federal court located in Dallas County, Texas. The parties consent to personal jurisdiction in all state and federal courts located in Dallas County, Texas, for the purposes of such actions.

12. SEVERABILITY:

In the event that any provision of this Agreement is deemed unenforceable, invalid, or void, such provision shall be modified as little as possible to make it valid and enforceable, and the remainder of the Agreement shall remain in full force and effect.

13. PRIVACY:

ExamSoft's collection, use, and disclosure of personal data is described and governed by its Privacy Policy, available at <https://learn.examssoft.com/privacy-policy>. Where such consent is permitted by applicable law, by installing or using the SOFTWARE or by providing ExamSoft any personal data in connection with your registration for and use of the SOFTWARE, you consent to the terms of the Privacy Policy.

I acknowledge that I am at least 13 years old.

End User License Agreement (v1.0 2019)