



CONTRACTUAL NONDISCLOSURE AND NONCOMPETE AGREEMENT

THIS AGREEMENT is by and between Koontz Cram Course LLC having a principal place of business in Maryville, Tennessee (hereinafter “KCC”) and the undersigned individual or entity (hereinafter “Second Party”);

WHEREAS KCC and Second Party desire to discuss a transaction or relationship between the parties and acknowledge that the discussions may include disclosure of information constituting secret, valuable, special, and unique property of either party that has been maintained in confidence; that the competitive advantage held by such party and/or the economic value of such information will be greatly reduced or destroyed if secrecy is not maintained; and that the discussions will not proceed unless and until an agreement restricting the use and further disclosure of such information is executed.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants, terms, and conditions hereinafter expressed, it is agreed as follows:

1. **Definitions.**

- A. “Disclosing Party” means a party to this Agreement disclosing information to another party to this Agreement;
- B. “Receiving Party” means a party to this Agreement receiving information from another party to this Agreement;
- C. “KCC Business Area” means the substantial body of information, knowledge, experience, know-how, and intellectual property relating to the acquisition, conception, design, development, improvement, evaluation, testing, manufacture, marketing, and sale of test preparation services, including but not limited to test preparation courses and coursework conceived, invented, designed, developed, manufactured, marketed, and/or acquired at great expense and effort on the part of KCC.
- D. “Confidential Information” means any and all scientific, clinical, technical, engineering, business, financial, or marketing information maintained in confidence by Disclosing Party including, but not limited to, concepts, ideas, know-how, designs, inventions, research, processes, plans (marketing, business, product development, manufacturing, etc.), strategies, capabilities, systems, patent applications, trade secrets, trademarks, copyright applications, improvements, drawings, diagrams, flow charts, specifications, test results, analyses, bill of materials, algorithms, software, source code, cost data, pricing data, sales figures, sales forecasts, customer data, lists (parts, customer, supplier, vendor, manufacturer, distributor, etc.), business practices, day-to-day operational practices, and any materials depicting or referring to such information that are disclosed to or learned by Receiving Party during discussions with Disclosing Party or visits to Disclosing Party facilities.

2. **Purpose.** KCC and Second Party intend to enter into discussions for the purpose of evaluating the interest, ability, and/or feasibility of the parties to engage in a transaction or enter into a relationship pertaining to the KCC Business Area, such as the administration and organization of test preparation services encompassed by the KCC Business Area, and, if desired, to pursue such relationship or transaction.

3. **Use.** All Confidential Information shall be maintained in confidence by Receiving Party and shall not be used or disclosed except in furtherance of the transaction or the relationship between the parties. Confidential

Information shall not be disclosed by Receiving Party to any third party, in whole or in part except with prior written consent of Disclosing Party and then only to the extent specified in such consent. All Confidential Information shall be protected with the same degree of care as Receiving Party normally uses in the protection of its own confidential and proprietary information, but in no case with any less degree than reasonable care. Receiving Party shall limit access to such Confidential Information to those employees, officers, partners, representatives, and agents, if any, who have entered into appropriate confidentiality agreements consistent with this Agreement and shall ensure compliance with the terms of such agreements.

4. **Required Disclosure.** In the event that Receiving Party is required to be disclosed in a legal action or legally compelled by operation of law, Receiving Party shall give prompt notice to Disclosing Party of the disclosure to allow Disclosing Party to seek a protective order and/or other available relief to limit or prohibit such disclosure. Receiving Party shall fully cooperate with Disclosing Party and shall limit any disclosure of the Confidential Information to the extent necessary to comply with Receiving Party's legal obligations based on the opinion of Receiving Party's legal counsel.

5. **Ownership.** All tangible information of Disclosing Party disclosed under this Agreement shall remain the property of Disclosing Party. Unless authorized by a subsequent written agreement, Receiving Party shall not use Confidential Information to develop any intellectual property rights including patents, trademarks, copyrights, designs, trade secrets, databases, and other protections similar in form or effect whether registered or unregistered and shall not apply for or assert such intellectual property rights anywhere in the world. In the event of a breach of this paragraph, Disclosing Party is hereby granted all right, title, and interest in and to such intellectual property rights in all the world and Receiving Party agrees to assist Disclosing Party with perfecting such intellectual property rights. Any inventions, improvements, or modifications made by Receiving Party relating to or based on the Confidential Information disclosed under this Agreement shall be promptly and fully disclosed to and become the property of Disclosing Party and shall be protected under this Agreement.

6. **Rights, Licenses, and Relationship.** This Agreement and the furnishing of Confidential Information as provided herein shall not be construed as granting any rights or licenses, express or by implied, to Receiving Party or under any trademark, patent, copyright, mask work, or other intellectual property right held by Disclosing Party or as establishing any partnership or agency between Disclosing Party and Receiving Party.

7. **Non-Compete.** Second Party agrees that for a period of three (5) years after, the latter of, the disclosure of confidential information or termination of his/her engagement with KCC in any manner, whether with or without cause, Second Party will not, directly or indirectly engage in any business competitive with KCC. Directly or indirectly engaging in any competitive business shall include engaging in any business as owner, partner or agent, or as an independent contractor of, or employee of any person, firm or corporation engaged in such business, or being interested directly or indirectly in the KCC Business Area conducted by any person, firm or corporation.

8. **Remedies.** Both parties agree to pay any and all damages resulting from the breach of any term of this agreement including but not limited to lost profits, lost opportunities and loss of good will. In addition, they agree to pay reasonable costs incurred by the other, including but not limited to court costs and attorney's fees, should the plaintiff prevail in a proceeding to enforce this agreement by injunction, for damages, or other similar legal relief. Receiving Party acknowledges that breach of this Agreement will result in irreparable injury and monetary damages are inadequate to restore Disclosing Party. In the event of a breach or threatened breach of the provisions of this Agreement by Receiving Party, Disclosing Party shall be entitled to an injunction restraining Receiving Party from disclosing, in whole or in part, the Confidential Information. Nothing herein shall be construed as prohibiting Disclosing Party from pursuing any other remedies available to Disclosing Party for such breach or threatened breach, including the recovery of damages from Receiving Party. The failure of Disclosing Party to insist upon strict performance of any of the provisions of this Agreement in the event of a breach by Receiving Party or to enforce any of its rights under this Agreement shall not operate as a continuing waiver of such rights.

9. **Return of Information.** Upon written request by Disclosing Party, termination of this Agreement, or termination of the relationship or transaction between the parties, Receiving Party will return all tangible information and copies thereof relating to the Confidential Information to Disclosing Party with a letter confirming that the information has in no way been reproduced or copied provided that Receiving Party may have its legal counsel retain a single copy of the Confidential Information for the sole purpose of establishing a record of the Confidential Information received.
10. **Choice of Law.** The parties agree that this Agreement is to be construed in accordance with the laws of the State of Tennessee in the United States of America and consent to the personal jurisdiction of all courts of the State of Tennessee and the U.S. District Court for the Eastern District of Tennessee regarding any cause of action arising under this Agreement or arising out of the subject matter relating to this Agreement.
11. **Completeness.** This Agreement represents the entire understanding between KCC and Second Party with respect to the matters set forth herein and there are no other terms or conditions with respect thereto. This Agreement supersedes any previous or contemporaneous contracts, agreements, or understandings, whether oral or written, pertaining to the matters set forth herein. This Agreement shall not be changed except by a separate written agreement signed by both parties.
12. **Notice.** All notices shall be made in writing and shall be deemed to have properly given if sent by registered mail, facsimile, electronic mail, or by hand delivery to either party at the address set forth below. Delivery by facsimile or electronic mail shall be simultaneously confirmed by registered mail.
13. **Execution.** This Agreement may be executed in two or more identical counterparts each of which shall be deemed to be an original. Identical counterparts are executed independently shall taken together shall constitute a single instrument.
14. **Headings.** The headings used in this Agreement are intended only as a convenience and shall not be used to interpret or construe its provisions.
15. **Severability and Reform.** Should any provision of this Agreement or the application thereof, to any extent, be found to be unenforceable, the parties continue to be bound under the remaining provisions of this Agreement. Where any provision of this Agreement is subject to reform, that provision shall be reformed to the minimum extent necessary to comply with applicable laws and any time limitation shall be reformed to the minimum or maximum time limitation permitted by applicable laws and consistent with the original intent of the provision.

IN WITNESS WHEREOF, both parties, through their duly appointed representatives, have caused this Agreement to be executed.