



February 3, 2020

California Board of Forestry and Fire Protection
Dan Stapleton
PO Box 944246
Sacramento, CA, 94244-2460

Dear Dan Stapleton,

ExamSoft is proud to be a leading provider of assessment solutions and we're honored to partner with California Board of Forestry and Fire Protection to take your assessment needs to the next level.

We are invested in delivering products and services that are tailored to the needs of our clients and believe a commitment to quality service is critical to our future as a company. As we move forward in our partnership, we want to ensure your goals and benchmarks are being properly developed and implemented, and appreciate any feedback you may have on how we can best support your program initiatives.

Enclosed you will find contract documents to review. If you have any questions, please let me know.

We're excited to get started and look forward to working with you in the coming academic year and beyond.

Sincerely,

George Smith
Director of Sales
o: (469) 778-5706
e: gsmith@examsoft.com

ExamSoft Worldwide Incorporated Master Services Agreement

THIS MASTER SERVICES AGREEMENT (the "**Agreement**") is entered into as of **February 3, 2020** (the "**Effective Date**") by and between **ExamSoft Worldwide, Inc.**, ("**ExamSoft**") a Delaware corporation, having its principal place of business at 5001 LBJ Freeway, Suite 700, Dallas, TX 75244, USA, and **Office of Professional Foresters Registration**, the undersigned client ("**Client**") located at , Sacramento, CA , USA.

RECITALS

WHEREAS ExamSoft is in the business of providing certain services, access to and use of a proprietary ExamSoft portal, as well as software products and consulting services for use and to assist in assessment taking, authoring, administration, proctoring scoring and recording; and

WHEREAS Client is an educational institution or professional licensing organization that administers assessments as part of its business; and

WHEREAS Client wishes to obtain a license to use Service(s) (as defined below), and ExamSoft is willing to grant such license on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the parties hereby agree as follows:

AGREEMENT

1. **Definitions.** As used herein, the following capitalized terms shall have the meanings set forth below:
 - 1.1 "**Affiliated Entity**" The term "Affiliated Entity" as used herein shall mean any educational institution that directly or indirectly is controlled by or is under common control with Client, and uses the Client's resources, name or identity.
 - 1.2 "**Aggregate Data**" The term "Aggregate Data" as used herein shall have the meaning ascribed to it in Section 3.2(e).
 - 1.3 "**Assessment Administration**" The term "Assessment Administration" as used herein shall mean assessment administration, authoring, proctoring, scoring and recording of assessments using the Services.
 - 1.4 "**Claim**" The term "Claim" as used herein shall have the meaning ascribed to it in Section 9.6.
 - 1.5 "**Client**" The term "Client" as used herein shall mean the undersigned Client as identified above and any Affiliated Entity of the Client specifically named in an Exhibit A attached hereto.
 - 1.6 "**Consulting Services**" The term "Consulting Services" as used herein shall have the meaning ascribed to it in Section 4.
 - 1.7 "**Disclosing Party**" The term "Disclosing Party" as used herein shall have the meaning ascribed to it in Section 3.6.
 - 1.8 "**Documentation**" The term "Documentation" as used herein shall mean the electronic documentation for technical and use requirements for Service available through the Site.
 - 1.9 "**EULA**" The term "EULA" as used herein shall have the meaning ascribed to it in Section 3.3.
 - 1.10 "**Exam Taker**" The term "Exam Taker" as used herein shall mean any of Client's examinees who: installs any portion of Software application portions of the Service on personal computer equipment; downloads at least one assessment; or utilizes Software application portions of the Service to take an assessment on equipment provided by Client, or an examinee who takes an assessment manually using paper but whose test results are later input into Service for processing and analysis by

Client, or an examinee whose performance is otherwise assessed using Service (e.g. with rubrics).

- 1.11 **"Exhibit A"** The term "Exhibit A" shall refer to the ordering document, setting forth certain commercial terms for the provision of Services hereunder, and may be styled, "Exhibit A", "Order Form", "Ordering Document", "Statement of Work", "Work Order".
- 1.12 **"Feedback"** The term "Feedback" as used herein shall have the meaning ascribed to it in Section 7.
- 1.13 **"Indemnitee"** The term "Indemnitee" as used herein shall have the meaning ascribed to it in Section 9.6.
- 1.14 **"Key Administrator"** The term "Key Administrator" as used herein shall mean a Client designated ExamSoft point of contact, tasked with receiving updates and other information from ExamSoft, and directing questions to ExamSoft, having top level access rights to the Portal Services.
- 1.15 **"Portal Services"** The term "Portal Services" as used herein shall mean those Services accessible to Users through the User Portal.
- 1.16 **"Privacy Policy"** The term "Privacy Policy" as used herein shall have the meaning ascribed to it in Section 3.2(l).
- 1.17 **"Product"** The term "Product" as used herein shall mean the software applications that ExamSoft provides to Client and End Users, as applicable, by the Product Access Services, and as more fully described in the Product Specifications.
- 1.18 **"Product Access Service"** The term "Product Access Service" as used herein shall mean ExamSoft's provision to End Users of the Software, Products and Systems as provided herein.
- 1.19 **"Product Specifications"** The term "Product Specification" as used herein shall have the meaning ascribed to it in Section 9.1.
- 1.20 **"Receiving Party"** The term "Receiving Party" as used herein shall have the meaning ascribed to it in Section 3.6.
- 1.21 **"Services"** means the Systems, Software, Product Access Service or Consulting Services, and associated services, as applicable, that ExamSoft provides Client to enable Client to engage in Assessment Administration
- 1.22 **"Service Period"** means the intervals established by ExamSoft and Client to which Service and invoicing may be tied.
- 1.23 **"Site"** means the ExamSoft website and unique User Portals that ExamSoft makes available to Client and Users from time to time to access to and use certain portal enabled Services in accordance with the terms hereof.
- 1.24 **"Software"** The term "Software" as used herein shall mean the proprietary software belonging to ExamSoft and/or its licensors, including those software modules set forth in Exhibit A, and any and all updates and enhancements thereto provided by ExamSoft pursuant to this Agreement.
- 1.25 **"Systems"** The term "Systems" as used herein shall mean the hardware and software platforms, owned, or used by ExamSoft and/or its licensors, in the course of providing the Services.
- 1.26 **"Term"** The term "Term" as used herein shall have the meaning ascribed to it in Section 8.1.
- 1.27 **"Test Data"** means information that ExamSoft collects from Exam Takers for the purpose of examination administration, including, but not limited to makes and models of computers used by Exam Takers, device identification number, types and versions of software used by Exam Takers, security and Software performance related information, and other assessment-related data.
- 1.28 **"User"** The term "User" as used herein shall mean a party to whom Client has permitted authorized access to the Services pursuant to the terms hereunder, and

includes Client Key Administrators, assessment managers and Exam Takers.

- 1.29 “**User Data**” means information that Users enter into the Software, including without limitation, personal data, assessment questions, answers, other assessment content, and all other data prepared or developed by Client in connection with the use of the Services, to the extent not containing or derived from ExamSoft Confidential Information.
 - 1.30 “**User Documentation**” means the written instructions and specifications, user manuals, user guides, technical manuals, release notes, and online help files regarding use of the Service, and any other materials prepared in connection with any Service, correction, or enhancement, and shall include any updated versions as may be provided by ExamSoft from time to time (a) in the course of providing the Service; or (b) as part of an online tutorials or help files provided with the Service.
 - 1.31 “**User Portal**” The term “User Portal” as used herein shall mean a unique webpage(s) on the Site that Client makes available to a particular User for access to and use of the Portal Services.
2. **Exhibit(s).** This Agreement includes the following Exhibits attached hereto:
 - 2.1 **Exhibit A.** Business Terms — sets forth the business terms of this Agreement and any statutorily required appendices.
3. **License.**
 - 3.1 **Grant of Rights.** Subject to the terms and conditions set forth herein, ExamSoft hereby grants to Client during the Term a non-exclusive, non-transferable, limited right, without right of sublicense, to:
 - (a) access, use and display the Product Access Services from the Site;
 - (b) access and use the Assessment Administration Services;
 - (c) display, manipulate, and print, where enabled, the User Data in the course of using the Services;
 - (d) access, use, display and print the applicable User Documentation solely in connection with the Portal Access Services;
 - (e) if applicable, permit Exam Takers to download and/or use the examinee testing Software only for the purpose of taking assessments;all foregoing only for Client’s internal business purposes, not for re-sale and not for use by third parties (including without limitation, vendors, third-party contractors, consultants or agents) provided such internal business operations shall not include commercial time-sharing, rental, outsourcing, service bureau or similar use. For avoidance of doubt, Client shall not share Client user credentials with any third party without ExamSoft’s prior written consent.
 - 3.2 **License to Data.**

For purposes of permitting ExamSoft to provide Services to Client, Client grants to ExamSoft and third-party vendors, if any, the perpetual, non-exclusive, worldwide, sub-licensable right and license to collect, copy, store, record, transmit, display, view, print or otherwise use User Data and Test Data solely to the extent necessary to:

 - (a) provide the Service to Client and Exam Takers;
 - (b) to use Client’s or Users input into the Services provided during the course of using the Services;
 - (c) improve or create new Service features or functionality;
 - (d) create benchmarks assessing Client and client-based performance and Service utilization;
 - (e) create aggregate and/or de-identified information (as defined by applicable

law) ("**Aggregate Data**");

- (f) use the Aggregated Data for purposes of improving the Services, or creating new Service offerings for its client base;
- (g) offer Client personalized suggestions based on Aggregate Data; or
- (h) engage in uses otherwise permitted by ExamSoft's Privacy Policy (as defined below) such as making disclosures to law enforcement pursuant an investigation.

The license granted to ExamSoft in this Section 3.2 shall survive any termination of the Agreement.

Client acknowledges and agrees that ExamSoft has the exclusive ownership of any Aggregate Data or De-Identified Data and the exclusive right to use Aggregate or De-Identified Data for any purpose so long as ExamSoft does not use or distribute any Aggregate or De-Identified Data in a way which identifies Client or any Exam Taker, or otherwise makes available non-de-identified User Data except as otherwise permitted by this Agreement.

Client acknowledges and agrees that:

- (i) User Data and information may be transferred outside of the United States or any other jurisdiction where Client and Users are located;
- (j) it is Client's obligation to (i) inform Users that Client will process User Data and other information pursuant to this Agreement and (ii) ensure that such Users have given Client any necessary consent as required by any applicable data protection legislation to permit ExamSoft to process this data;
- (k) Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all User Data and Client provided information regarding Client and Users;
- (l) ExamSoft's collection, use, and disclosure of personal User Data is described in its Privacy Policy, available at <https://learn.examsoft.com/privacy-policy> (as may be amended and/or updated from time to time, the "Privacy Policy").

3.3 **Exam Taker Use.** In order for Exam Takers to access and use the Exam Taker portion of the Software portion of the Services, the Exam Taker will be required in some instance to download or otherwise access the Portal Services on or from the Exam Takers own device(s). As a condition precedent to the Exam Taker accessing and using these Services, the Exam Taker will be required to review an End User License Agreement ("**EULA**") containing the terms pursuant to which the Exam Taker must use the Services, and assent to these terms through an electronic acceptance process. In the course of providing use and access to the Exam Takers, for purposes of Service quality, support, account control, quality control, and assessment-related assistance, Exam Taker will be required to consent to ExamSoft's collection of Test Data. Client acknowledges that these requirements are a condition precedent to Exam Takers accessing and using the Exam Taker portion of the Services, and agrees to provide ExamSoft reasonable assistance in the processing of onboarding Exam Takers for use of the Services.

3.4 **Intellectual Property and Trade Secrets.** ExamSoft owns and/or its licensors own the Services, including without limitation, the Software, and the Services are protected by international intellectual property laws and treaties. The parties agree that ExamSoft and/or its licensors shall retain all right, title and interest in the Services, including all copyrights, trademarks, service marks, trade secrets and any patent or other intangible rights associated with any improvements, modifications, or derivative works related to Services (including Aggregate Data (subject to Client's license grant in Section 3.2 above)), now existing or developed by ExamSoft and/or its licensors. Client acknowledges that as between ExamSoft and Client, ExamSoft owns the Services, and, in addition, that the Services contain confidential proprietary techniques and ExamSoft's confidential trade secret information. All

rights not granted to Client herein are specifically retained by ExamSoft.

- 3.5 **Ownership of Data.** As between ExamSoft and Client, Client retains all right, title and interest in User Data and Test Data. ExamSoft makes no claims of authorship or ownership of User Data, and shall only collect, use, and disclose User Data and Test Data as permitted by this Agreement. However, any intellectual property and/or other proprietary right that is conceived, discovered, created, or developed from ExamSoft's Confidential Information will be owned exclusively by ExamSoft.
- 3.6 **Confidential Information.** The term "**Confidential Information**" shall mean any and all information that is disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether verbally, electronically, visually or in a written or other tangible form, and shall include any information that is identified as, or which should be reasonably understood to be, confidential or proprietary including, but not limited to, Software, the Documentation, trade secrets, patented or copyrighted information, computer programs, user interfaces, software specifications, passwords, know-how, formulas, data, inventions, algorithms, techniques, processes, product information, product pricing, market and sales information, marketing plans, strategies, business models, future business plans, forecasts, capitalization and financing information, training materials and customer lists. The Receiving Party shall keep the Disclosing Party's Confidential Information in strict confidence and shall not disclose it to any third-party except as otherwise allowed by this Agreement. The confidentiality provisions in this section shall not apply to any information that (a) is or becomes generally known to the public without a violation of this Agreement, or (b) is required to be disclosed by law or court order, provided that in such event the Receiving Party shall provide prompt notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy and, in the event that such protective order or other remedy is not obtained, then the Receiving Party agrees to furnish only that portion of the Confidential Information that it is legally required to disclose.
4. **Consulting Services.** From time to time during the Term hereof, ExamSoft may offer, and Client may purchase consulting services ("**Consulting Services**"), more fully described in a Work Order or Exhibit A, in both cases, being mutually executed by the parties.
5. **Administration and Support.** Upon receipt of the initial payment listed in Exhibit A, ExamSoft will provide the following:
- 5.1 **Administration.** ExamSoft shall provide Internet-based pages on the Site for Client's use in assessment and program administration. Client shall assign one or more Key Administrators to serve as ExamSoft's primary point(s) of contact with Client on Software related issues who will have password-protected access to the User Portal. Client shall maintain, and shall instruct its Users to maintain, the confidentiality of these passwords and shall be responsible for their security. If there is a breach of security through Client's account, then Client shall immediately inform ExamSoft of such breach, in no event making such notification later than 48 hours after Client becomes aware of or suspects such breach. Client may request that ExamSoft change or cause to be changed any affected password as applicable.
- 5.2 **Support.**
- a. Client shall use best efforts to follow all ExamSoft's instructions and guidelines to facilitate proper use of the Services.
 - b. Client's Key Administrator will receive technical support from ExamSoft during the term of the Agreement.
 - c. As indicated on Exhibit A, ExamSoft shall provide reasonable technical support to Client's Exam Takers and/or instructors/staff via telephone and electronic mail during ExamSoft's usual business hours.
 - d. ExamSoft will make reasonable commercial efforts to correct errors or malfunctions in Software reported to ExamSoft by Client that cause Software not to perform substantially in accordance with the Documentation.

- e. ExamSoft will make available to Client those updates and enhancements to Software that ExamSoft generally makes available to its Clients who purchase the same Software at no additional charge.
6. **Payments.** In consideration for the licenses granted hereunder, Client agrees to pay to ExamSoft the license fees listed in Exhibit A.
7. **Feedback.** Client may provide ExamSoft with feedback about Client's experience with Services and the performance thereof, including but not limited to errors in Software, and any ideas, suggestions, modifications and the like regarding Services and Documentation (the "**Feedback**"). ExamSoft will not be obligated to implement any suggestions or correct any errors in Services except as otherwise provided herein. ExamSoft may elect, in the exercise of its discretion, to use Feedback in providing or improving the Services in any manner it reasonably elects. Client hereby assigns all right, title and interest worldwide in and to the Feedback and the intellectual property rights therein to ExamSoft. Client shall assist ExamSoft, at ExamSoft's request and expense, in perfecting and enforcing such assignments.
8. **Term and Termination.**
- 8.1 **Term.** This Agreement shall commence on the Effective Date and, unless otherwise terminated, continue in full force and effect for so long as Client has purchased Services pursuant to a then executory Exhibit A (the "**Term**").
- 8.2 **Suspension for Non-payment of Fees.**
- a. ExamSoft reserves the right to suspend Client's access to and/or use of the Service where any Fee for which payment is due, remains unpaid 30 days after ExamSoft sends Client written notice of delinquency. Client agrees that ExamSoft shall not be liable to Client, or to any third party, including any Exam Taker, for any suspension of the Services resulting from Client's non-payment of Fees.
 - b. Client agrees that ExamSoft, with reasonably contemporaneous telephonic or electronic mail notice to Client, may suspend Client's or any User's access to the Service if ExamSoft reasonably believes that Client's or any User's use of the Service is causing immediate and ongoing financial, physical or reputational harm to ExamSoft or others (including ExamSoft's clients). ExamSoft will use commercially reasonable efforts to assist Client to resolve the issues causing the suspension of Service. Client agrees that ExamSoft will not be liable to Client or to any third party, including any Exam Taker, for any suspension of the Service under the circumstances described in this Section.
- 8.3 **Use of Services Beyond Termination Date.** In the event the parties have not renewed the Services beyond the term set forth in an Exhibit A, but Client elects to continue to use the Services, ExamSoft reserves the right to permit Client to continue to access and use the Services pursuant to the terms of this Agreement for a period not to exceed 90 days; provided however, ExamSoft shall increase the then current Fees for such period, and Client shall pay such increase, in an amount equal to 120% of such then current Fees, or such other amount as may be set forth in the then current Exhibit A.
- 8.4 **Termination or Suspension Due to Third Party Service Provider.** In the event ExamSoft's ability to provide the Services is dependent upon a third-party provider of services, either used by ExamSoft or Client (in each case, "**Third-Party Services**"), and that third-party is unwilling or unable to provide the Third Party Services, ExamSoft reserves the right to terminate that particular Service by written notification to Client (which notification, notwithstanding Section 10.1, may be delivered by telephone or electronic communication), or suspend the affected Service until such time as the third-party service provider becomes capable or willing to provide the Third-Party Services.
- 8.5 **Termination for Breach.** If either party is in material breach of this Agreement,

and fails to cure such breach within thirty (30) days after written notice thereof, the non-breaching party may terminate this Agreement by subsequent written notice to the breaching party.

- 8.6 **Mutual Agreement of Parties.** Upon mutual agreement by the parties, this Agreement may be terminated at any time provided that the terms of the termination are memorialized in writing and signed by both parties. Except as set forth in Section 8.2, 8.3, 8.4 or 8.7, neither party may unilaterally terminate the Agreement for convenience.
- 8.7 **Immediate Right of Termination.** ExamSoft shall have the right to immediately terminate this Agreement by giving written notice to Client if Client or any of its Users does or attempts to do any of the following:
- a. Decodes, decompiles, reverse engineers, merges, modifies, translates, attempts to defeat or disable Software, or otherwise alters Software in any form; or
 - b. Reproduces, duplicates or copies Software or creates derivative works based on Software, transfers, resells or grants any other rights of any kind for any copy of Software; or
 - c. Uses Services for purposes of: (i) benchmarking or competitive analysis of Services; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to ExamSoft's detriment or commercial disadvantage;
 - d. Probes, scans, penetrates or tests the vulnerability of the Systems or breaches the Systems' security or authentication measures, whether actively or passively;
 - e. Impersonates or misrepresents ExamSoft, an ExamSoft employee, another user, or any other person or entity (including without limitation, by using email addresses associated with any of the foregoing);
 - f. Introduces any programs that contain viruses, worms, and/or Trojan horses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of the Systems;
 - g. Fails, within thirty (30) days, after receipt of written notice from ExamSoft, to immediately discontinue the distribution or use of software that infringes any copyright of ExamSoft; or
 - h. Uses the Services in any manner that breaches the terms of this Agreement or fails to follow the operating instructions provided by ExamSoft; or
 - i. Fails, within thirty (30) days, after receipt of written notice from ExamSoft, to pay any license fees due and payable pursuant to this Agreement; or
 - j. On the occurrence of bankruptcy or insolvency of a party.
- 8.8 **Effect of Termination.** In the event of termination of this Agreement, all License Fees paid to ExamSoft shall be deemed non-refundable, all outstanding License Fees shall be immediately due and payable but Client shall have no obligation to pay ExamSoft for future periods, unless ExamSoft has terminated this Agreement for uncured breach by Client. Upon termination of this Agreement, Client will stop all use of Services and return to ExamSoft or destroy all copies Confidential Information in Client's possession or control.
- 8.9 **Return of Data.** Upon request by Client within ninety (90) days after the termination of the Agreement, ExamSoft shall provide access to Services for the sole purpose of Client downloading User Data or Test Data using ExamSoft standard processes. After such 90-day period, ExamSoft will have no obligation to maintain or provide Client access to User Data or Test Data and may thereafter, unless legally prohibited, delete all of Test Data or User Data in ExamSoft's systems or otherwise in ExamSoft's possession or under its control. In the event of Termination, ExamSoft shall not use User Data or Test Data that is not deleted except as

otherwise permitted by this Agreement.

9. **Warranties.**

9.1 **Limited Warranty.** ExamSoft warrants to Client that for the term of this Agreement, Software will substantially conform to the Product Specifications found at <https://examsoft.com/about/product-specifications> ("**Product Specifications**"), if:

- a. The Exam Taker operates the Software appropriately, and, properly follows all installation instructions and any recommendations of ExamSoft technical support staff;
- b. Any computer running the Software is in proper working order;
- c. The Exam Taker's computer complies with the minimum specifications set forth on the ExamSoft Internet site.

ExamSoft may modify the Product Specifications from time to time where ExamSoft modifies or enhances Software functionality.

If Software fails to conform to the foregoing warranty, ExamSoft, as its sole obligation, and Client's sole remedy will:

- a. use commercially reasonable efforts to correct the non-conformity, and to redeliver the corrected Software to Client; or
- b. where ExamSoft cannot correct the non-conformity, refund to Client the Fee paid for the non-conforming Software.

The foregoing shall be Client's sole and exclusive remedy for breach of warranty under this Agreement.

9.2 **Warranty for Consulting Services.** ExamSoft warrants that it will provide the Consulting Services in a good and workmanlike manner, using personnel with sufficient background, skill and experience to provide the Consulting Services as warranted in this Section.

If the Consulting Services fail to conform to the foregoing warranty, ExamSoft, as its sole obligation, and Client's sole remedy, will:

- a. re-perform the non-conforming Consulting Service in a manner that conforms to the warranty; or
- b. where ExamSoft cannot re-perform non-conforming Consulting Service, refund to Client the Fee paid for the non-conforming Consulting Service¹.

The foregoing shall be Client's sole and exclusive remedy for breach of warranty under this Agreement.

9.3 **Conditions of Warranty.** The warranty set forth in this Agreement is conditioned upon Client and each User following all instructions and guidelines for proper Software use. Should Client operate Software inconsistent with any of ExamSoft's instructions, guidelines, notices for use, or provisions of this Agreement, any warranty given herein is void.

9.4 **Disclaimer of Warranty.** EXCEPT AS SET FORTH IN THIS AGREEMENT, EXAMSOFT DOES NOT MAKE AND HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES RELATING TO SERVICES, SYSTEMS, SOFTWARE OR THE ADMINISTRATION PAGE, INTEROPERABILITY, OR THE SUITABILITY OF SERVICES FOR CLIENT'S USE, AS WELL AS ANY ASSESSMENT RESULTS (IN AGGREGATE OR INDIVIDUALLY), INCLUDING BUT NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES THAT MIGHT ARISE FROM A COURSE OF DEALING, USAGE OR

¹ Excluding any travel related expenses, and other billed consumables.

TRADE PRACTICE.

- 9.5 **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR THE COST OF SUBSTITUTE GOODS, ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, DAMAGES BASED ON LOSS OF PROFITS, DATA OR BUSINESS OPPORTUNITY, BUSINESS LOSSES, LOST REVENUES, ANTICIPATED SAVINGS, LOST GOODWILL, REPUTATIONAL DAMAGE), AND WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. EXAMSOFT'S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES AND LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL PAYMENTS MADE BY CLIENT (OR, IN THE CASE OF AN AFFILIATED ENTITY, BY SUCH AFFILIATED ENTITY) TO EXAMSOFT DURING THE TERM OF THE AGREEMENT, OR, WHERE RENEWED, THE TOTAL PAYMENTS MADE BY SUCH PARTY TO EXAMSOFT DURING THE THEN CURRENT RENEWAL TERM DESCRIBED IN EXHIBIT A.
- 9.6 **Indemnity.** ExamSoft agrees to defend Client and Exam Takers ("**Indemnitee(s)**") against any third-party claims, actions or demands alleging that an Indemnitee's use of Software as provided in this Agreement infringes any copyrights, patents, trademarks or trade secrets of any third-party (a "**Claim**") and ExamSoft agrees to indemnify Indemnitee from the cost of such defense, any final award of damages by a court of competent jurisdiction, or any settlement amount and, subject to the terms of this Section, expenses incurred by an Indemnitee in connection with any such Claim (including reasonable attorney's fees) that any Indemnitee incurs prior to tendering to ExamSoft defense of any Claim. The foregoing obligations are contingent upon (a) an Indemnitee providing to ExamSoft prompt written notice of any such Claim, (b) Indemnitee permitting ExamSoft sole control of the defense and related settlement negotiations for the Claim and (c) Indemnitee fully assisting and cooperating with ExamSoft in the defense of any Claim. Subject to ExamSoft's right to control the defense and settlement of such Claims, an Indemnitee may, at its own cost and expense, engage counsel of its choosing. In the event of a Claim or if ExamSoft believes such a Claim is likely, ExamSoft may, in its discretion, modify any alleged infringing Software so that it is no longer infringing, obtain a license for Client to continue using the infringe Software or terminate this Agreement. ***The obligations and remedies set forth in this Section shall be the sole and exclusive remedies of an Indemnitee for the infringement of third-party rights for use of Services.*** ExamSoft shall have no obligation under this Agreement for any Claims which result from or arise in connection with (d) any use of the Services in combination with other software, hardware or databases, to the extent such infringement would not have occurred but for such combination, (e) modification or attempted modification of Software, (f) use of Services other than as permitted herein, or (g) a breach by an Indemnitee of any right or restriction set forth in this Agreement.

10. **Miscellaneous.**

- 10.1 **Notices.** Except as otherwise specified in this Agreement, all notices, reports, consents, and approvals required or permitted to be given hereunder shall be in writing, signed by the party sending such notice, and sent postage or shipping receipted and charges prepaid by a nationally recognized overnight courier service at the address set forth above or in Exhibit A hereto or to such other address as may from time to time be designated by either party to the other in writing. Notice shall be deemed given upon receipt by the party to which it was mailed or transmitted as provided in this Section.
- 10.2 **Assignment.** Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without of the prior written consent of the other party (not to be unreasonably withheld). However, either party may assign this Agreement in its entirety without consent of the other party, to its affiliate and or Affiliated Entity, or in connection with a merger, acquisition, corporate reorganization, or sale of substantially all of its assets not involving a direct competitor of the other party.
- 10.3 **Waiver.** No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent by any party to or waiver of a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- 10.4 **Severability.** Should any term, condition, provision or part of this Agreement be found to be unlawful, invalid, illegal or unenforceable, that portion shall be deemed null and void and severed from the Agreement for all purposes, but such illegality, or invalidity or unenforceability shall not affect the legality, validity or enforceability of the remaining parts of this Agreement, and the remainder of the Agreement shall remain in full force and effect, unless such would be manifestly inequitable or would serve to deprive either party of a material part of what it bargained for in entering into this Agreement.
- 10.5 **No Agency.** Nothing contained in this Agreement and no action by either party will be deemed to constitute any party or any of such party's employees or agents to be an employee or agent of the other party or will be deemed to create any partnership, joint venture, association, syndicate among or between any of the parties, or will be deemed to confer on any party any express or implied right, power or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of the other party.
- 10.6 **FERPA.** ExamSoft acknowledges that access to and use of Exam Taker certain User Data is subject to the requirements of Family Educational Rights and Privacy Act of 1974 (FERPA). ExamSoft hereby acknowledge and agrees to comply 34 CFR § 99.31(a)(1)(B)(1-3). ExamSoft further acknowledges and agrees that it shall maintain the confidentiality, and shall not re-disclose, personally identifiable information from education records except as authorized by the University in writing pursuant to the requirements of §99.33(a) governing the use and redisclosure of personally identifiable information from education records.
- 10.7 **ADA Compliance.** ExamSoft represents that it has retained a consultant to conduct a gap analysis of the Services to determine if the Services are in compliance with applicable rules and regulations regarding the Americans with Disabilities Act (ASA) and are in conformance with, at a minimum, Web Contact Accessibility Guidelines (WCAG) 2.1, Level AA, and if not ExamSoft will use all commercially reasonable efforts to update the Services so as to be in conformance therewith. If the consultant identifies gaps between the Services that such standards, ExamSoft will use commercially reasonable efforts to conform the Service with reasonable diligence to such standard.

- 10.8 **Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Texas (without regard to the principles of conflicts of law). This Agreement has been entered into in Dallas County, Texas and it shall be performable for all purposes in Dallas County, Texas. Any action or proceeding concerning, related to, regarding, or commenced in connection with the Agreement must be brought in a state or federal court located in Dallas County, Texas, and the parties to the Agreement hereby irrevocably submit to the personal jurisdiction of such courts and waive any objection they may now or hereafter have as to the venue of any such action or proceeding brought in any such court, or that any such court is an inconvenient forum.
- 10.9 **Survival.** The provisions of this Agreement setting forth the parties' rights and obligations with respect to warranties, intellectual property, indemnity, confidentiality, governing law, and notice, in addition to any amounts due and owing from one party to the other shall survive termination or expiration of this Agreement.
- 10.10 **Authority.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that execution and delivery of this Agreement, and the performance of such party's obligations hereunder, have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
- 10.11 **Entire Agreement.** This Agreement, including the Exhibits or Work Order appended hereto or made a part hereof by reference, constitutes the final, complete, and exclusive statement of the terms of the Agreement between the parties, including without limitation Client's rights to use Services and the payments due, and supersedes all prior agreements, either written or oral, between the parties, and is intended as a final expression of their Agreement. The Agreement shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents, which may conflict with said Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Client:	Office of Professional Foresters Registration	Corp:	ExamSoft Worldwide, Inc.
	_____		_____
Signature:	_____	Signature:	_____
Printed:	_____	Printed:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

Tax Identification: 65 0836105

Exhibit A

Business Terms to the ExamSoft Master Services Agreement

Client/Affiliated Entity: <u>California Board of Forestry and Fire Protection</u>			
Key Admin Name: <u>Dan Stapleton</u>			
Title: <u>Assistant Executive Officer, Foresters Licensing</u>		Address: <u>PO Box 944246</u>	
City: <u>Sacramento</u>	State: <u>CA</u>	Zip: <u>94244-2460</u>	Country: <u>USA</u>
Email: <u>dan.stapleton@bof.ca.gov</u>	Phone: <u>9166536634</u>	Salesperson: <u>George Smith</u>	

The ExamSoft Worldwide, Inc. Master Services Agreement (the "Master License Agreement") between ExamSoft Worldwide, Inc. ("ExamSoft") and the Office of Professional Foresters Registration dated February 3, 2020 is incorporated herein by reference in its entirety. As used in this Exhibit A, the term "Agreement" means collectively (i) the Master Services Agreement, and (ii) this Exhibit A. In the event of a conflict between provisions of the Master Service Agreement and this Exhibit A, the provisions in this Exhibit A shall govern.

Effective upon execution by both parties, this Exhibit A replaces and supersedes all prior Exhibit A Business Terms, if any, between ExamSoft and Client named in this Exhibit A, and the provisions herein apply solely to the new Term of this Agreement as set forth below.

I. Term

The term of this Addendum covers the following academic periods ("Period"). The initial Period of this Exhibit A begins Wednesday, April 01, 2020 and ends September 30, 2023.

II. Fees

In consideration for the license granted hereunder, Client agrees to prepay a "Base Amount" as follows:

Period	Begin Date	End Date	Product/Service	Description	License Fee	Minimum Licenses	Base Amount
RAMP UP	4/1/2020	9/30/2020	Early Item Banking Only	Early access to training & ExamSoft Ei website to item bank (flat fee of \$800/month)	\$0.00	1.00	\$0.00
RAMP UP	10/1/2020	12/31/2020	Implementation Package: Fundamental	Designated Implementation Consultant and Trainer, up to 8 virtual training/consultation sessions, and access to ExamSoft 101 resources. Initial creation/import of: up to 1,000 questions provided by client (must be same format; categories/titles not included), Exemplify mock exam for students, ExamSoft pre-built category structure for program type. One mutually agreed upon day of onsite training to be booked 30 days in advance OR import of 1,000 additional questions provided by client (must be same format; categories/titles not included). (Duration: 90 days)	\$3,500.00	1.00	\$3,500.00
1	10/1/2020	9/30/2021	ExamSoft Essential Solution (Per Exam)	The Essential Solution includes the following products: Portal access for exam authoring/delivery, scoring & reporting, Exemplify (Windows + Mac & iPad usage), and faculty and exam taker support.	\$39.00	100.00	\$3,900.00

1	10/1/2020	9/30/2021	Ei: Exam Intelligence (Win + Mac only)	Item banking, exam authoring/delivery (Win+Mac only), scoring & reporting, Admin Portal. Includes initial consultation and standard setup support of one computer lab for use of Exemplify, to be completed within 30 days of agreement start date.	\$0.00	100.00	\$0.00
1	10/1/2020	9/30/2021	Exemplify for iPad	Secure iPad testing	\$0.00	100.00	\$0.00
1	10/1/2020	9/30/2021	Full Support Package	Unlimited phone, email and live chat support for exam takers and unlimited phone and email support for all program faculty including a designated Client Success Specialist, ExamSoft University (self-help resources) and Get Satisfaction Community Exchange.	\$0.00	1.00	\$0.00
2	10/1/2021	9/30/2022	ExamSoft Essential Solution (Per Exam)	The Essential Solution includes the following products: Portal access for exam authoring/delivery, scoring & reporting, Exemplify (Windows + Mac & iPad usage), and faculty and exam taker support.	\$39.00	100.00	\$3,900.00
2	10/1/2021	9/30/2022	Ei: Exam Intelligence (Win + Mac only)	Item banking, exam authoring/delivery (Win+Mac only), scoring & reporting, Admin Portal. Includes initial consultation and standard setup support of one computer lab for use of Exemplify, to be completed within 30 days of agreement start date.	\$0.00	100.00	\$0.00
2	10/1/2021	9/30/2022	Exemplify for iPad	Secure iPad testing	\$0.00	100.00	\$0.00
2	10/1/2021	9/30/2022	Full Support Package	Unlimited phone, email and live chat support for exam takers and unlimited phone and email support for all program faculty including a designated Client Success Specialist, ExamSoft University (self-help resources) and Get Satisfaction Community Exchange.	\$0.00	1.00	\$0.00
3	10/1/2022	9/30/2023	ExamSoft Essential Solution (Per Exam)	The Essential Solution includes the following products: Portal access for exam authoring/delivery, scoring & reporting, Exemplify (Windows + Mac & iPad usage), and faculty and exam taker support.	\$39.00	100.00	\$3,900.00
3	10/1/2022	9/30/2023	Ei: Exam Intelligence (Win + Mac only)	Item banking, exam authoring/delivery (Win+Mac only), scoring & reporting, Admin Portal. Includes initial consultation and standard setup support of one	\$0.00	100.00	\$0.00

				computer lab for use of Exemplify, to be completed within 30 days of agreement start date.			
3	10/1/2022	9/30/2023	Exemplify for iPad	Secure iPad testing	\$0.00	100.00	\$0.00
3	10/1/2022	9/30/2023	Full Support Package	Unlimited phone, email and live chat support for exam takers and unlimited phone and email support for all program faculty including a designated Client Success Specialist, ExamSoft University (self-help resources) and Get Satisfaction Community Exchange.	\$0.00	1.00	\$0.00

*All prices quoted in USD

First Payment Invoiced: Wednesday, April 01, 2020

Ramp Up Period Total: \$3,500.00 **Period 1 Total:** \$3,900.00

A billable Exam Taker shall be defined as one who uses the testing software to download at least one exam, or who takes a bubble sheet/Scantron-type exam which is processed and graded through Software, or is otherwise assessed via the Software (e.g. rubrics).

The Base Amount during each Period shall enable up to the indicated "Minimum Licenses" number of Client's Exam Takers to become an Exam Taker. For every Exam Taker in excess of each Period's Minimum Licenses, Client shall pay the License Fee for that respective Period as provided above ("Surplus"). The Base Amount shall be due upon receipt of invoice on or about each Period's respective Begin Date. ExamSoft shall invoice Client for any Surplus s periodically according to the Client applicable schedule (e.g. end of a semester, trimester, cohort, etc.).

All payments required by this Agreement are exclusive of all sales, use, excise and other taxes, if any, and Client will bear and be responsible for the payment of all such charges, regardless of when invoiced, excluding taxes based upon ExamSoft's net income.

Send all payments to: ExamSoft Worldwide, Inc. Phone: (954) 429-8889
5001 LBJ Freeway, Suite 700
Dallas, TX 75244 USA

[SIGNATURE PAGE FOLLOWS]

In consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties through their authorized representative have executed this Exhibit A as of the Exhibit A Effective Date.

	Client		ExamSoft
Client/Affiliated Entity:	<u>California Board of Forestry and Fire Protection</u>	Corp:	<u>ExamSoft Worldwide, Inc.</u>
Signature:	_____	Signature:	_____
Printed:	_____	Printed:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

Tax Identification: 65 0836105