



Professional Services Agreement

This Professional Services Agreement (the "Agreement") is between **Kaplan, Inc. acting through its Kaplan Test Prep Division** ("Kaplan") with offices at 750 Third Avenue, New York, New York 10017 ("Kaplan") and **Yonkers Public School District** with offices at 1 Larkin Center, Yonkers, NY 10701 ("Organization"). The Agreement shall be effective when both Parties have signed the Agreement and Scope of Work ("Effective Date").

WHEREAS Kaplan owns and has developed proprietary programs to prepare K12 students for standardized tests; and

WHEREAS, Organization desires to have Kaplan provide its programs the Program and related educational services for the benefit of its 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:

Section 1. The Services

Kaplan will provide direct instruction, instructional sessions, testing sessions, instructional materials, access to digital assets, and related services (the "Services") for students of the Organization, in accordance with the terms of this Agreement and the applicable schedule ("Scope of Work"). Services may include "Classes" which are Kaplan taught programs typically consisting of multiple instructional and testing sessions delivered at the Organization's premises, each delivery location being a "Site." For Services delivered physically at a location (collectively, "On Site Services"), Organization shall be responsible for providing safe, accessible and appropriate facilities ("Facilities") for Kaplan's delivery of On Site Services at no cost to Kaplan. Organization shall be responsible for Facilities, including security, and shall permit Kaplan personnel reasonable access to the Facilities to the extent appropriate for the performance of the work under this Agreement, subject to all applicable on-site policies and procedures of the Organization.

Section 2. Term

The "Term" of the Agreement begins on the Effective Date and ends May 31, 2019, unless sooner terminated by the written mutual agreement of the parties.

Section 3. Fees

3.1 Fees. Organization will pay Kaplan the "Fees" set forth in the Scope of Work.

3.2 Final Rosters. Where Services include a class, a final roster ("Roster") of students for such class ("Students") will be due to Kaplan no later than two (2) weeks prior to the first class session, unless otherwise specified in the SOW.

3.3 Payment Schedule. Kaplan shall invoice as provided on the SOW, and Organization shall pay all invoiced amounts. Organization shall make full payment in US dollars to Kaplan within 30 days from the date of invoice. Organization agrees that invoices are provided solely for payment processing, and use of invoices does not waive any right of Kaplan or alter payment terms or schedule.

3.4 Purchase Orders.

1. If an Organization issues Kaplan a purchase order (“PO”) in connection with this Agreement, the PO shall exactly match the Scope of Work, including Fees described therein, unless otherwise agreed by Kaplan in which case the PO will become effective upon signing by both parties of an Amended Scope of Work. The PO may not add or revise terms (“Changes”) unless agreed to in writing by Kaplan. If a PO makes Changes, Changes shall be void however the PO will remain otherwise effective.
2. Purchase orders, if any, must be received by the following deadlines: Classes: 4 weeks prior to the first class session; books and other hard-copy materials: 2 weeks prior to delivery; Digital Assets: 1 week prior to the start of the applicable access period.

Section 4. Intellectual Property Matters

- 4.1 Organization acknowledges that Services and all intellectual property rights thereto, including any derivative works, (collectively, “Kaplan IP”), are and shall remain the sole and exclusive property of Kaplan and its licensors. Where Services include access to online content and services (“Digital Assets”), Students, as well as teachers and administrators who reasonably require access to Services, (collectively, “Authorized Users”), receive personal, non-transferable licenses (“Licenses”) to Digital Assets. Kaplan IP may not be copied or reproduced in any way, and Authorized Users may not share their access credentials (username; password). Organization shall promptly notify Kaplan of any actual or suspected unauthorized access to, or infringement of, any Kaplan IP and Organization shall cooperate with Kaplan in good faith in taking whatever legal or other action may be appropriate under the circumstances. Organization shall promptly return to Kaplan any unauthorized copies of Kaplan IP that come into its possession or control.
- 4.2 Kaplan acknowledges and agrees that this Agreement does not confer on Kaplan any rights or license to the trademarks or any other intellectual properties of Organization, except as expressly authorized in this Agreement.

Section 5. Confidential Information

- 5.1 Confidentiality. During the Term of this Agreement and also for three (3) years thereafter, both Parties shall keep in strict confidence and shall not use for any purposes other than for such purposes granted or permitted under this Agreement any Confidential Information of the other party that comes into its possession pursuant to, as a result of, or in the performance of this Agreement. Confidential Information shall include all documents and communications that the disclosing party identified as confidential and all documents and communications that the receiving knew or should have known were regarded by the disclosing party at the time of disclosure. The Terms of this Agreement are also Confidential Information. The above confidentiality obligation shall not apply to any information that: (i) is generally known to the public without the default of the information-receiving party; (ii) is independently developed by the information-receiving party; (iii) the information-receiving party receives from a third party who has no confidential obligation for such information; (iv) is already known to the receiving party prior to receipt of such information; or (v) is disclosed pursuant to the valid and verifiable legal process of a government agency or a court of law.
- 5.2 Student Information. Organization shall be responsible for obtaining consent from or providing the appropriate disclosures to students/parents of students prior to sharing any student information with Kaplan in accordance with all relevant state or federal regulations and policies including the Family Educational Rights and Privacy Act (“FERPA”)(20 U.S.C. §1232g; 34 CFR Part 99).

Section 6. Relationship of the Parties

Neither Kaplan nor its employees or agents are employees of Organization. Kaplan and Organization are entering into this Agreement as independent contractors. Neither Kaplan nor Organization intends this Agreement to be for the benefit of any third party. Nothing contained in this Agreement shall be deemed to create a partnership, joint venture, agency, employment, fiduciary or other relationship between Kaplan and Organization.

Section 7. Notices

Any communications or notices regarding this agreement and its terms must be sent by next-day delivery service (with proof of delivery) or mailed by certified or registered mail return receipt requested, to the address stated below or by facsimile transmission or electronic mail (provided there is confirmation thereof). Kaplan and Organization may change these designations by informing the other party in writing.

To Kaplan:

Kaplan Test Prep
750 Third Avenue, 7th Floor
New York, NY 10017
Attn: Brandon Jones, President of Admissions Group
Facsimile: 877-712-5487

With cc to:

Kaplan Test Prep
750 Third Avenue, 7th Floor
New York, NY 10017
Attn: Matthew Griffin, General Counsel
Facsimile: 212-208-0912

To Organization:

Yonkers Public School District
1 Larkin Center
Yonkers, NY 10701

Section 8. Restrictions on Assignments; Successors and Assigns

Neither this Agreement nor any of the rights or interests contained in this Agreement may be assigned by either party without the prior written consent of the other party; however either party may assign this Agreement (i) in connection with the sale, transfer or merger of that party in which that party is not the surviving entity, (ii) in connection with a sale or transfer of all or substantially all of the assets of that party or (iii) to an affiliated entity if such transferee entity is controlled by, or under common control with, the transferor; provided, in all cases, that the transferee entity agrees to be bound by the terms and conditions of this agreement.

Section 9. Choice of Law; Integration; Waiver

This Agreement will be interpreted under New York law without regard to conflict of law principles. This Agreement, together with the Attachments hereto, constitutes the complete Agreement between Kaplan and Organization regarding the subject matter hereof, and supersedes all prior or contemporaneous verbal or written understandings or agreements not specifically incorporated into this Agreement. No modification of this Agreement is valid unless it is in writing and signed by an authorized representative from each party. No waiver of any breach or default is a waiver of any other breach or default. Oral amendments or waivers are not valid.

Section 10. Representations, Disclaimer of Warranties and Limitations of Liability:

10.1 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 Organization and its trustees, officers, employees and agents from and against all claims, damages, costs and expenses (including reasonable attorneys' fees and litigation expenses) (collectively, "Claims") brought by third parties arising out of Kaplan's breach of this Agreement, Kaplan's breach of any warranties herein, or Kaplan's infringement of the intellectual property rights of any third party.

10.2 Organization 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. Organization agrees to indemnify and hold harmless Kaplan and its subsidiaries, affiliates, directors, shareholders, officers, employees and agents from and against all Claims brought by third parties arising out of or as a result of Organization's breach of this Agreement, Organization's breach of any warranties herein, Organization's disclosure of student information or records to Kaplan, and or injuries, damages or any other harms related to Facilities.

10.3. ALL SERVICES 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 ORGANIZATION 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.

Section 11. Miscellaneous

- a. This Agreement may be executed in one or more counterparts, which together shall constitute one Agreement. A photocopied, scanned or faxed signature shall be treated as the same as an original signature to this Agreement.
- b. The captions and headings in this Agreement have been inserted solely for convenience of reference and shall not affect the interpretation of this Agreement.
- c. Kaplan may identify Organization as a client of Kaplan in marketing materials.
- 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. In the event of a conflict in the provisions of this Agreement and any of the documents referenced below, the following shall prevail in the order set forth below:
 1. Terms and Conditions of this Agreement;
 2. Scope of Work;
 3. Purchase Order, if applicable.
- 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.

Section 12. Authority

Each party represents and warrants to the other party that the person signing this Agreement is authorized to execute this Agreement on behalf of that party and has full authority to bind that party accordingly.

Organization must initial next to **one** of the below:

___ A purchase order is attached to this Agreement and is incorporated by reference. Please include **Contract # KSF-1809204933** on your purchase order.

___ Organization will issue a Purchase Order by the following date: _____ and it is incorporated by reference. Please include **Contract # KSF-1809204933** on your purchase order. (Please note the purchase order is needed at least four weeks prior to the start of classes).

___ Organization does not need to issue a Purchase Order for the services in this Agreement; Organization is authorized to make payments based solely on the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

Yonkers Public School District

By: _____ Date: _____

Name: _____
Title: _____
Email: _____
Fax: _____

Kaplan, Inc. acting through its Kaplan Test Prep Division

By: _____ Date: _____

Name: _____
Title: _____

Scope of Work

Services shall include the following:

Kaplan-Taught Classes

A purchase order and/or a contract is needed at least four (4) weeks prior to the class start.

- Kaplan instructors to deliver lessons as outlined in the chart.
- Site-led¹ testing whereby the purchaser delivers all tests to students.
- Operations support to manage program logistics and implementation needs.
- Materials (with shipping) for the students to use during class (including Course Books and Big Book of Practice Tests).
- Online student licenses for up to three months for online multiple-choice scoring, reports, supplemental lessons, and additional practice tests.
- Online educator licenses to access aggregate reports.

Implementation Model – SAT					
# Sites	1 (Gorton High School)	# Classes	1	# Students	30 (Up to 25 included; up to 5 more added)
Subject	SAT	Program Duration	April – May 2019	Days Per Week	Up to 2
Instructional Sessions	Kaplan-led 9 sessions (2 hours per session; 18 hours total)	Testing Sessions (essay not included) (Online Scoring in Class)	Site-led 2 sessions (3.5 hours per session; 7 hours total)	Total Program Length	11 sessions (25 hours total)

Fees: Total fees = **\$7,550.00**. The breakdown of that amount is as follows:

Product Name	Quantity	Unit Price	Item Total
SAT Prep – In Person ~25 hour class for up to 25 students with Course Books, tests, online assets/reports (9 2-hour classes led by Kaplan; 2 3.5-hour tests proctored and self-scored by the school or students using Kaplan materials and webgrid)	1	\$7,550.00	\$7,550.00
SAT Prep – In Person - Additional Student(s) Added to an Existing Class	5	\$302.00	\$1,510.00
Subtotal:			\$9,060.00
Partnership In-Kind:			(\$1,510.00)
Total:			\$7,550.00

¹For Site-led Testing, the **purchaser takes full responsibility for proctoring and scoring tests following Kaplan protocols**. This means: distributing tests to students; proctoring the test using the provided scripts; following protocols for scoring; and ensuring scoring occurs in a timely manner.

Yonkers Public School District

By: _____

Date: _____

Name: _____

Title: _____

Kaplan Inc., acting through its Kaplan Test Prep division

By: _____

Date: _____

Name: _____

Title: _____