
CONFIDENTIAL COLLABORATION AGREEMENT

By and Between

National Board of Medical Examiners
3750 Market Street, Philadelphia, PA 19104

AND

National Board of Veterinary Medical Examiners
619 Riverwood Drive, Suite 104, Bismarck, ND 58504

Dated as of February 27, 2014

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**Confidential Collaboration Agreement
between the
National Board of Medical Examiners
and the
National Board of Veterinary Medical Examiners**

This Confidential Collaboration Agreement (this “Agreement”) is made as of February 27, 2014 (the “Effective Date”), by and between the **National Board of Medical Examiners**, a District of Columbia corporation, having its principal place of business located at 3750 Market Street, Philadelphia, PA 19104 (“NBME”), and the **National Board of Veterinary Medical Examiners**, an Illinois corporation, having its principal place of business located at 619 Riverwood Drive, Suite 104, Bismarck, ND 58504 (“NBVME”). NBME and NBVME are each a “Parent” and jointly, the “Parents”.

WHEREAS, the NBME’s mission is to protect the health of the public in the United States and around the world through state of the art assessment of health professionals; and

WHEREAS, the NBVME’s mission is to provide psychometrically sound, defensible examinations for use by governmental licensing agencies and other entities so that they can assure the protection of public and animal health and welfare by assessing professional competency; and

WHEREAS, both Parents are not-for-profit corporations exempt from federal income taxation as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), that devote their resources to the public good; and

WHEREAS, the Parents agree that valid and reliable licensing examinations provide essential information for the regulatory agencies that license health care professionals and that the examination system known and administered under NBVME’s service marks NORTH AMERICAN VETERINARY LICENSING EXAMINATION™ and NAVLE® is such an examination; and

WHEREAS, the Parents are committed to the highest ethics in design, development, and implementation of systems that support the NAVLE Examination System (as defined below); and

WHEREAS, the Parents have a long history of working together to develop and deliver the NAVLE Examination System; and

WHEREAS, the Parents would like to collaborate to share experience and resources for the benefit of human and veterinary medicine and public stakeholders and to utilize the unique capabilities of each other to provide a high quality, rigorous system to support the NAVLE Examination System at a reasonable and equitable cost to the Parents and examinees; and

WHEREAS, the Parents believe that collaboration will preserve the identity and role of the NAVLE Examination System in veterinary licensure, enhance the efficiency of the examination design and delivery process, and permit the incorporation of new methods of assessment deemed relevant to the examination as efficiently as possible, while meeting the changing needs of the veterinary medical assessment process.

NOW THEREFORE, and in consideration of the mutual covenants and agreements contained herein, the sufficiency of which the Parents acknowledge, the Parents, intending legally to be bound, hereby agree to the following terms and conditions:

1. **The Collaboration.**

1.1 **Purpose.** The purpose of the collaboration is for the Parents jointly to develop, administer and operate the NAVLE Examination System for use in measuring and reporting an examinee's knowledge of veterinary medicine for the purpose of being licensed to practice veterinary medicine in all licensing jurisdictions in North America.

1.2 **Name.** For ease of reference, the name of the collaboration shall be the "Collaboration for Veterinary Assessments" or "CVA," or such other name as the CVA Governance Committee may designate.

2. **Term.** This Agreement shall commence on the Effective Date and shall continue until terminated pursuant to Section 10 of this Agreement (the "Term").

3. **CVA.**

3.1 **CVA.** CVA will be sponsored by NBVME and NBME as the parent organizations. The Parents hereby confirm that the ongoing development and administration of the NAVLE Examination System shall be the highest priority of CVA. The Parents acknowledge that the CVA Governance Committee, in conjunction with the Parents, shall govern the administration and operation of CVA as described herein.

3.2 **Development and Administrative Tasks.** In connection with the ongoing development and administration of CVA, each Parent shall perform the respective tasks assigned to such Parent as set forth in Appendix A, which may be amended from time to time by mutual agreement of the Parents.

4. **Definitions.**

4.1 **Definitions.** The following defined terms used in this Agreement shall have the meanings specified below:

- (a) **"Administrative Officer"** has the meaning set forth in Section 5.3(c).
- (b) **"ADR Individual"** has the meaning set forth in Section 11.
- (c) **"Agreement"** has the meaning set forth in the preamble.
- (d) **"Amortized Expense Schedule"** has the meaning set forth in Section 8.3(d).
- (e) **"Bankruptcy Event"** means a petition in bankruptcy filed by either Parent, a petition in bankruptcy filed against either Parent which remains undismissed after forty-five (45) days, or the general assignment for the benefit of creditors to take advantage of any insolvency act.
- (f) **"Brand Transition Period"** has the meaning set forth in Section 9.6(g).
- (g) **"Chair"** has the meaning set forth in Section 5.3(a).
- (h) **"Claimant"** has the meaning set forth in Section 16.3.

- (i) "**Co-Brand**" means any Mark incorporating as separate elements one or more Marks owned by each of the Parents.
- (j) "**Code**" has the meaning set forth in the recitals.
- (k) "**Confidential Information**" has the meaning set forth in Section 17.2.
- (l) "**CVA**" has the meaning set forth in Section 1.2.
- (m) "**CVA Governance Committee**" has the meaning set forth in Section 5.1.
- (n) "**Dispute**" has the meaning set forth in Section 11.
- (o) "**Effective Date**" has the meaning set forth in the preamble.
- (p) "**Equating Data**" means item usage statistics (i.e., the most recent proportion correct (P), biserial correlations (rbis), and point biserial correlations (rptbis)) and Rasch difficulty values (b) (if applicable, current values).
- (q) "**Executive Board of NBME**" means the NBME Board of Directors or the governing body of the NBME that has the authority to act on behalf of the NBME Board of Directors.
- (r) "**Joint Property**" has the meaning set forth in Section 9.2.
- (s) "**Live Items**" has the meaning set forth in Section 9.5(a).
- (t) "**Marks**" has the meaning set forth in Section 9.6(a)
- (u) "**Mediation Period**" has the meaning set forth in Section 10.1(a).
- (v) "**NAVLE Examination System**" means the comprehensive objective examination system provided to state, territorial, and provincial boards charged with the licensing of veterinarians known and administered under NBVME's service marks NORTH AMERICAN VETERINARY LICENSING EXAMINATION™ and NAVLE®.
- (w) "**NBME**" has the meaning set forth in the preamble.
- (x) "**NBME Preexisting Systems**" has the meaning set forth in Section 9.4(a).
- (y) "**NBVME**" has the meaning set forth in the preamble.
- (z) "**NBVME Preexisting Test Items**" has the meaning set forth in Section 9.3(a).
- (aa) "**Person**" means any corporation, partnership, limited liability company, joint venture, other entity or natural person.
- (bb) "**Point of Contact**" or "**POC**" has the meaning set forth in Section 7.

(cc) “**Preexisting Work**” means any technology, information, procedures, protocols, software (either in source or object code form), examination materials, data, information and works of authorship existing as of the Effective Date.

(dd) “**Proprietary Rights**” means, whether registered or not: (i) U.S. or foreign patents, or any divisions, continuations, renewals or extensions thereof; (ii) all trade secrets and trade secret rights arising under the common law, state law, federal law or the law of any foreign country; (iii) all copyrights, and all other literary property and author rights, whether or not copyrightable, as well as all rights, title and interest in and to all copyrights and copyrighted interests throughout the world; and (iv) all trademarks, trade names, service marks and logos, whether registered or arising under the common law, state law, federal law or the law of any foreign country, and all registrations thereof and interests therein throughout the world, together with all associated goodwill.

(ee) “**Retired Items**” has the meaning set forth in Section 9.5(b).

(ff) “**Term**” has the meaning set forth in Section 2.

(gg) “**Termination Notice**” has the meaning set forth in Section 10.1.

(hh) “**Transition Agreement**” has the meaning set forth in Section 10.1(b)(i).

(ii) “**Transition Period**” has the meaning set forth in Section 10.1(b)(i).

(jj) “**Unrelated Project**” has the meaning set forth in Section 9.5(b).

(kk) “**Vice Chair**” has the meaning set forth in Section 5.3(b).

5. **Governance.**

5.1 **Oversight Role.** The oversight of CVA will be conducted by the CVA Governance Committee, which will have the authority to coordinate and manage CVA, including the authority to make all decisions not expressly reserved to the Parents pursuant to Section 5.5 below or assigned to each Parent’s respective Point of Contact by this Agreement (the “CVA Governance Committee”).

5.2 **Membership of CVA Governance Committee.**

(a) The CVA Governance Committee will comprise an equal number of representatives appointed by each Parent.

(b) Initially, the CVA Governance Committee will consist of a total of eight (8) members. Each Parent will appoint four (4) voting representatives and one (1) alternate representative to serve as members of the CVA Governance Committee. The alternate representatives shall participate in meetings with voice and will be non-voting unless a voting representative from the Parent who appointed the alternate representative is absent, in which case, the alternate representative may vote in lieu of the absent voting representative. From time to time, the Parents, by mutual agreement, may increase or decrease the size of the CVA Governance Committee. At all times, each Parent retains the right to replace any of its voting or alternate

representatives serving as a member of the CVA Governance Committee. Each Parent also agrees that if it has concerns about a representative appointed by the other Parent it will meet with such other Parent to discuss such concerns as described in Section 6.

(c) CVA Governance Committee members will be appointed for three (3) year terms; provided that a Parent may appoint one of its officers to serve as an alternate representative in which case the term of such officer serving as the alternate representative if less than three (3) years shall be concurrent with his or her officer term. CVA Governance Committee members will be eligible to serve for two (2) consecutive full three (3) year terms, except that each Parent's chief executive officer may serve for the duration of his/her tenure in that position if he/she is then serving on the CVA Governance Committee. The terms of the members of the CVA Governance Committee shall be staggered so that as nearly as possible, the terms of one-third (1/3) of the members expire each year. Each Parent shall make appropriate arrangements to accomplish the staggering of terms by providing for the initial appointment of certain members for a one (1) year term, two (2) year term, and a three (3) year term; provided, however, that the term of any initial member which is less than three (3) years shall not count toward the foregoing term limit.

5.3 **Organization of CVA Governance Committee.**

(a) **Chair.** There shall be a chair of the CVA Governance Committee (the "Chair") who shall serve in such capacity for a period of two (2) years. The Chair of the CVA Governance Committee will be selected by the CVA Governance Committee from among the members appointed by NBVME.

(b) **Vice Chair.** There shall be a vice chair of the CVA Governance Committee (the "Vice Chair") who shall serve in such capacity for a period of two (2) years. The initial Vice Chair, however, shall serve in such capacity for only one (1) year. The Vice Chair of the CVA Governance Committee will be selected by the CVA Governance Committee from among the members appointed by NBME.

(c) **Administrative Officer.** Unless otherwise agreed by the Parents, secretarial functions for the CVA Governance Committee will be provided by the NBVME who shall appoint someone to serve as an administrative officer for the CVA (the "Administrative Officer"). The Administrative Officer or his or her designee shall attend all CVA Governance Committee meetings but shall not serve on the CVA Governance Committee.

(d) **Rules of Operation.** The CVA Governance Committee will establish rules for its operation subject to approval by the Parents as described in Section 5.5(d).

5.4 **Authority of CVA Governance Committee.** Subject to the reserved powers of the Parents set forth in Section 5.5 below, the CVA Governance Committee will:

- (a) monitor the operations of CVA activities;
- (b) provide general oversight of the test design, test development, scoring and quality assurance activities of the NAVLE Examination System;
- (c) approve all NAVLE Examination System evaluative objectives and blueprints, including testing formats, test length, and methods of test delivery except as limited in Section 5.5;

- (d) establish a scoring and standard setting system and policies regarding scoring and score reporting for the NAVLE Examination System;
- (e) establish test administration policies for the NAVLE Examination System;
- (f) provide general oversight of the NAVLE Examination System administration and examination security and establish policies for examination system security and for dealing with examinee irregular behavior and indeterminate scores;
- (g) determine administration frequency and establish test administration schedules for the NAVLE Examination System;
- (h) provide general oversight of the financial arrangements set forth in Section 8, including setting examination fees within the parameters set by the Parents as described in Section 5.5;
- (i) review and approve research plans for the NAVLE Examination System;
- (j) periodically review information about the capacity, cost and performance of the test delivery network for the NAVLE Examination System and recommend changes to the NBME based on such information which will be considered by NBME in good faith;
- (k) coordinate promotion and communication about CVA;
- (l) approve any trademarks or service marks used in connection with or to identify CVA; and
- (m) make decisions about increasing or decreasing NAVLE Examination System testing sites, including establishing sites outside of the United States and Canada.

5.5 **Powers Reserved to the Parents.** The CVA Governance Committee must consult with and obtain the approval of both Parents prior to taking any of the following actions:

- (a) the approval of any significant policy decision involving a material change in the method or scope of the NAVLE Examination System (such as the addition of a clinical skills component or administration in a language other than English or French);
- (b) the approval of any capital investment related to the NAVLE Examination System or CVA;
- (c) the use of any trade name or trademark that is owned exclusively by one Parent (other than the respective names of the Parents) in connection with the NAVLE Examination System or CVA;
- (d) a change in the Rules of Operation of the CVA Governance Committee; and
- (e) the approval of or the response to any international inquiries for services and/or certification.

(f) the approval of any change in examination fees outside the parameters set forth by each Parent as described below.

The Parents will review relevant data from the external environment and such matters as historical practice, inflation, and current and/or future financial needs of the NAVLE Examination System when setting the parameters for the examination fee structure. Based on the foregoing, each Parent will set parameters for its representatives on the CVA Governance Committee to apply to any change in examination fees. The Parents agree that any increase in examination fees inconsistent with historical practice or inflation will be based on material changes to the NAVLE Examination System.

In addition, the Parents may, from time to time, jointly require that the CVA Governance Committee consult with or obtain the approval of the Parents prior to making decisions about specific matters or, alternatively, to defer decisions about specific matters to the Parents.

For the avoidance of doubt, any decisions unrelated to CVA and the NAVLE Examination System are reserved to the Parents and shall not be decided by the CVA Governance Committee unless the Parents mutually agree to the contrary.

5.6 **Meetings of CVA Governance Committee.**

(a) **Frequency.** The CVA Governance Committee will meet at least twice per year at a venue agreed upon by the Parents.

(b) **Quorum.** A minimum of four (4) members of the CVA Governance Committee are required to hold a meeting. Such quorum must include at least two (2) members appointed by each Parent.

(c) **Voting.** CVA Governance Committee members and alternates, where applicable, may vote in person or electronically. If voting electronically, each vote must set forth information from which the CVA Governance Committee can reasonably conclude that the vote was sent by the purported sender and must be delivered to the Administrative Officer. For every vote taken by the CVA Governance Committee, an equal number of members appointed by each Parent must vote. If necessary to maintain equal representation, an alternate member may vote or a voting member may refrain from voting. For avoidance of doubt, if a member of the CVA Governance Committee refrains from voting and thereby causes an unequal representation of the Parents in a vote, no offsetting abstention is required by a representative of the other Parent to maintain equal representation.

(i) **Proportionate Voting.** For purposes of the CVA Governance Committee taking any action related to the business of CVA and the application of standards of professional testing to the NAVLE Examination System, each member of the CVA Governance Committee shall have one (1) vote. A majority vote shall be required to approve any action.

(ii) **Asymmetrical Voting.** For purposes of the CVA Governance Committee taking any action related to subjects enumerated in Appendix B, which is attached hereto and incorporated by reference herein and may be amended from time to time by mutual agreement of the Parents, the NBVME appointed members shall each have two (2) votes

and the NBME appointed members shall each have one (1) vote. A majority vote shall be required to approve any action.

(iii) Determination of Voting Process. If the members of the CVA Governance Committee cannot agree in good faith whether Section 5.6(c)(i) or 5.6(c)(ii) applies to a specific vote, the chief executive officers of each Parent shall discuss and mutually agree upon which voting structure shall apply or whether the issue should be reserved and decided by the Parents. In the event the chief executive officers of each Parent cannot reach mutual agreement, then the issue shall be referred to the Parents.

(iv) Tie Votes.

(1) By Organization. In the event the CVA Governance Committee members are unable to reach agreement on a particular issue and the vote related to such issue is deadlocked along organizational lines, the issue shall be referred to the Parents.

(2) Not by Organization. In the event the CVA Governance Committee members are unable to reach agreement on a particular issue but the vote related to such issue is not deadlocked along organizational lines, the CVA Governance Committee may vote to refer the issue to the Parents.

(d) One or more members of the CVA Governance Committee may participate in a meeting of the CVA Governance Committee by means of conference telephone or similar communications equipment by which the members may simultaneously hear each other during the meeting.

(e) Every meeting of the CVA Governance Committee shall be presided over by the Chair, or in the absence of the Chair, the Vice Chair. In the absence of both the Chair and the Vice Chair, a chair chosen by the majority of members of the CVA Governance Committee present will preside. Records of every meeting, including any specific action taken, shall be maintained by the Administrative Officer.

(f) Agenda. For every meeting, the Administrative Officer will develop an agenda in consultation with the Chair, the Vice Chair, and the chief executive officers of each Parent. Each agenda will begin with the determination of whether a quorum is present. If a quorum is established, the meeting will continue. If a quorum is not established, a majority of the members present may adjourn a meeting from time to time until a quorum is established. The tasks of the CVA Governance Committee include, but are not limited to the tasks described in Appendix C, attached hereto and incorporated by reference herein, and which may be amended and substituted from time to time by mutual agreement of the Parents.

(g) CVA Governance Committee Decisions.

(i) Discretionary Referral. The CVA Governance Committee may, at its discretion, vote to refer any issue to the Parents.

(ii) Discretionary Removal. Upon the approval of the Board of Directors of the NBVME and the Executive Board of NBME, any issue can be removed from the authority

of the CVA Governance Committee. In such situation, the Parents, by mutual agreement, may override any decision made by the CVA Governance Committee.

6. **Meetings of Representatives of the Parents.** From time to time, the Parents may have representatives of their respective Boards meet jointly to discuss significant policy matters concerning CVA.

7. **Point of Contact.** Each Parent shall designate a point of contact (each, a “Point of Contact” or “POC”) who shall be responsible for addressing the contractual details and overall relationship between the Parents with regard to the operation of the CVA. If a Parent has not designated a POC, the chief executive officer of such Parent shall serve as the POC for such Parent.

8. **Financial Terms.**

8.1 **General Principles.** The Parents have agreed upon certain financial arrangements upon implementation of the CVA and to the processes to be followed for purposes of setting fees, paying and reimbursing expenses, and dividing excesses of revenue over expenses as set forth below. Each Parent agrees to follow the processes described below.

8.2 **Budget Development.**

(a) Each Parent will develop expense budgets for task categories defined in the mutually agreed upon task list, attached to this Agreement as Appendix A, which may be amended from time to time by mutual agreement of the Parents. As necessary or appropriate, the task list may be revised by mutual agreement of the Parents, and any such revised task list will be attached to and become an Appendix to this Agreement.

(b) Such expense budgets will be developed by the Parents by the end of each calendar year for the calendar year one (1) year after. For example, by the end of 2013, the Parents will have developed expense budgets for 2014 activities as specified in the task list. Examination fees will be finalized in January to be effective on June 1 of the same calendar year.

(c) The estimation of expenses for purposes of such budgets will be based upon the following: (1) the staff hours estimated to complete tasks identified in the task list, with such hours converted to costs, including salary and benefits for time on tasks; plus (2) direct costs for the completion of tasks identified in the task list.

8.3 **Acquisition of Capital Assets and Development Costs.**

(a) The Parents agree that proprietary systems, software or other property developed or owned by a third party may be licensed or acquired for use by CVA in connection with the NAVLE Examination System. The decision to use such property in connection with the NAVLE Examination System will be made by the CVA Governance Committee except in instances in which decision making authority has been retained by the Parents.

(b) The purchase price or licensing fees for such property will be considered legitimate program expenses, may be amortized over future periods, and will be included in the estimation of expenses for purposes of budgets presented to the CVA Governance Committee. The indirect cost

component to expenses, as described in Section 8.4 of this Agreement, will not be applicable to such purchase price or licensing fees.

(c) Mutually agreed upon development costs related to the NAVLE Examination System will be considered legitimate program expenses and, if substantial, may be amortized over future periods. Such amortization expenses will be included in the estimation of expenses for purposes of budgets presented to the CVA Governance Committee.

(d) During the Term of this Agreement, the Parents shall keep a schedule of mutually agreed upon substantial developmental costs that have been incurred by each Parent on behalf of the CVA which are to be amortized over time (“Amortized Expense Schedule”).

8.4 **Indirect Costs**. Each Parent will determine the indirect cost component to be added to and become a part of its CVA expense budget. This indirect cost component will be calculated by each Parent as specified below:

(a) For the NBME: Total institutional expense budget for NBME (NBME TE) less expense budget for all institutional program activities that generate external revenue (NBME PE) equals unfunded expenses (NBME UE).

(i) The NBME TE and, therefore, the NBME UE resulting from the above calculation, includes administrative costs and support costs that cannot be readily allocated to specific programs and research and development not funded by external sources.

(ii) The NBME UE divided by NBME PE equals the indirect percent.

(iii) The NBME expense budget associated with the CVA multiplied by the indirect percent equals the indirect cost component to be added to the NBME’s CVA expense budget.

(b) For the NBVME: Total expenses for NBVME (NBVME TE) less expenses allocated to specific programs that generate external revenue (NBVME PE) equals unfunded expenses (NBVME UE)

(i) The NBVME TE and, therefore, the NBVME UE resulting from the above calculation, includes administrative costs and support costs that cannot be readily allocated to specific programs and research and development not funded by external sources.

(ii) The NBVME UE divided by NBVME PE equals the indirect percent.

(iii) The NBVME expense budget associated with CVA multiplied by the indirect percent equals the indirect cost component to be added to the NBVME’s CVA expense budget.

(c) The Parents recognize the importance of being clear and transparent when calculating indirect expenses. Each Parent will share its formula and the components for calculating its indirect expense allocation. Each Parent agrees to explain and discuss any unusual variance of indirect percents from prior years. The CVA Governance Committee will review and discuss any such variation(s).

8.5 **Revenue.** NBVME will develop NAVLE Examination System examination service utilization estimates for the following year for CVA. These utilization estimates will be multiplied by the then-current fee structure to create a revenue budget assuming no change(s) in fees.

8.6 **Fees for Use of Unilaterally Developed Systems and Software.** If either Parent unilaterally develops its own proprietary data systems and other software systems and permits their use in connection with CVA or the NAVLE Examination System pursuant to Section 9.1, such Parent shall be entitled to reasonable licensing fees. The Parents shall negotiate the amount of such fees and the terms of such license in good faith and approve the licensing fees. Once approved, such agreed-upon licensing fees will be considered legitimate program expenses and will be included in the estimation of expenses for purposes of the development of the expense budgets presented to the CVA Governance Committee. The indirect cost component to CVA expenses, as described in Section 8.4 of this Agreement, will not be added to such licensing fees.

8.7 **Annual Financial Meeting.**

(a) The CVA Governance Committee shall meet as described in Appendix C, which may be amended from time to time by mutual agreement of the Parents, to review the expense and revenue budgets for the following calendar year resulting from the processes described above and to take those other actions described in this Section 8.7. At each year's first meeting, the agenda will include a review of the prior year's actual performance and the approval of the current budget. At each year's second meeting, the agenda will include a discussion and determination of whether any budget revisions and subsequent payments under this Section 8.7 are necessary.

(i) The Administrative Officer will schedule this annual financial meeting and provide written notification thereof reasonably in advance.

(ii) Whenever possible, the expense budgets of the Parents will be adjusted to achieve mutually agreed upon efficiencies.

(iii) The Parents will mutually agree on the accounting cycle.

(b) At the commencement of this Agreement and every three (3) years thereafter, the CVA Governance Committee will set budgeted margin amounts to be generated from CVA in excess of expenses, which shall be separate and apart from the actual budget (which shall be set annually). The CVA Governance Committee will then agree to a percentage of the annual net revenues that will be allocated towards research and development expenses ("R & D Expenses"). The Parents will divide any margin (loss or gain) up to and including the budget (after R & D Expenses are deducted) in the ratio of 60% to NBVME and 40% to NBME. Any margin in excess of budget will be shared equally between the Parents. Appendix D provides an example of the foregoing allocation of margins which is solely used for illustration purposes only. The Parents may adjust any three (3) year budgeted margin amounts upon mutual agreement.

(i) One representative from the CVA appointed by each Parent will present the margin amount for its appointing Parent to the CVA Governance Committee together with the rationale for the specified amount, which rationale might include, for example, such matters as historical returns and current and/or future financial needs of the Parent.

(c) The CVA Governance Committee will compare the expense budget plus the desired margin amount with the revenue budget and, if necessary, the current examination fee structure will be adjusted to result in a balanced budget.

(i) Efforts will be made to provide reasonable advance notification of adjustments in the examination fee structure to examinees and licensing authorities.

(ii) The CVA Governance Committee will adjust the examination fee structure in accordance with the parameters set by the Parents as described in Section 5.5.

(d) The CVA Governance Committee will calculate an estimated per capita payment based on the following formula, which will be paid during the year by NBVME to NBME with the first payment due thirty (30) days after the commencement of this Agreement: (a) budgeted NBME net from CVA activities (i.e., budgeted revenues (if any) received by NBME for CVA activities less NBME's budgeted CVA expenses, including an indirect cost component); plus (b) NBME share of budgeted margin; divided by (c) estimated number of NAVLE Examination System examinees based on the utilization estimates for NAVLE Examination System. NBVME shall make the estimated payment to NBME on a periodic basis as mutually agreed by the Parents.

(i) If, during the course of a year, it is determined that the budgeted amounts and/or estimated numbers used in the above formula are or will be substantially different from actual amounts and/or estimated numbers, the CVA Governance Committee will meet to review such variation(s) and to make such mutually agreeable adjustments in the per capita payment as may be appropriate.

(e) The CVA Governance Committee will review the actual results of the previous year's financial transactions and make any necessary adjustments, as described below:

(i) Review the actual revenues and the actual expenses, including the indirect cost component, of each Parent for CVA.

(ii) Calculate the actual total program revenues (i.e., the sum of the actual revenues from CVA) in excess of actual total program expenses (i.e., the sum of the actual expenses of each Parent from CVA), and allocate this excess of revenues over expenses based on the formula previously agreed to by them pursuant to Section 8.7(b) of this Agreement.

(iii) The actual expenses of each Parent plus each Parent's proportionate margin calculated as described above, equals the amount each Parent should have received for the previous year.

(iv) The amount each Parent should have received, calculated as described above, will be compared with the amount that each Parent actually received in the estimated payment, and an additional transfer of funds will be made, as necessary, to reconcile these amounts for the fiscal year.

(1) Any such transfer of funds which may be needed will be made within thirty (30) days of the annual financial meeting.

9. **Ownership and Use of Intellectual Property.**

9.1 **Use of Unilaterally Developed Systems and Software.** The Parents agree that proprietary data systems and other software unilaterally developed by either Parent prior to or during the Term may be made available for use by CVA in connection with the NAVLE Examination System. The decision to use a Parent's proprietary systems or software in connection with the NAVLE Examination System will be made by the CVA Governance Committee except in instances in which decision-making authority has been retained by the Parents. The use of such proprietary systems or software in connection with the NAVLE Examination System does not limit the rights of use of the owner, except as may be otherwise agreed to in writing by the Parents. Terms of use pertaining to such use shall be negotiated in good faith between the Parents and documented in writing prior to any such use by CVA.

9.2 **Joint Property.** The Parents agree that any technology, information, procedures, protocols, software (in either source or object code form), examination materials, and materials developed, discovered, conceived, or reduced to practice that are jointly developed by the Parents, in the course of performing their respective obligations under this Agreement is jointly owned property ("Joint Property"). For the avoidance of doubt, modifications, improvements or other derivatives of one Parent's Preexisting Work made by the other Parent shall remain solely owned by the owner of the Preexisting Work and shall not constitute Joint Property. All Joint Property (including, without limitation, any Proprietary Rights relating thereto) is and shall be jointly owned by both Parents. Each Parent shall execute such documents and perform such other acts as may be necessary or reasonably requested by the other Parent to evidence the Parent's joint ownership of all Joint Property (including, without limitation, any Proprietary Rights relating thereto). Each Parent shall only be entitled to use of Joint Property during the Term solely in connection with CVA activities (specifically the NAVLE Examination System) unless pursuant to prior written authorization from the other Parent, which shall not be unreasonably withheld. If the Parents agree to use of Joint Property for other than CVA purposes, the Parents shall create an agreement describing the terms and conditions associated with the use of such Joint Property, including but not limited to financial arrangements.

9.3 **Test Items.**

(a) **Preexisting Items.** The Parents agree that NBVME shall retain all right, title and interest in any live test items used in the NAVLE Examination System as of the Effective Date of this Agreement, including all enhancements thereto regardless of when such enhancements were created or developed or by whom, and test items that are retired as of the Effective Date of this Agreement ("NBVME Preexisting Test Items"). NBVME hereby grants to NBME a nonexclusive, limited right and license to use and modify the NBVME Preexisting Test Items during the Term solely in connection with CVA activities, specifically the NAVLE Examination System. Except as explicitly set forth herein or as permitted by NBVME, nothing in this Agreement shall be deemed to grant NBME any rights in or to the NBVME Preexisting Test Items.

(b) **Newly Developed Items.** The Parents agree that test items that do not incorporate Preexisting Work that are developed by either Parent unilaterally or by both Parents jointly for and/or first used on the NAVLE Examination System after the Effective Date of this Agreement will be jointly owned by the Parents and considered Joint Property.

(c) **Retired Items.** The Parents agree that any Retired Items, as defined below, are jointly owned by the Parents and considered Joint Property.

(d) Data. The Parents agree that examination performance data gathered during the Term will be owned jointly by the Parents and considered Joint Property.

9.4 Systems.

(a) Preexisting Systems. The Parents agree that NBME shall retain all right, title and interest in its preexisting systems (“NBME Preexisting Systems”). NBME Preexisting Systems include its Preexisting Works and other materials developed, discovered, conceived, and/or reduced to practice by NBME that were developed, discovered, conceived, or reduced to practice by NBME prior to the Effective Date of this Agreement, including all enhancements thereto regardless of when such enhancements were created or developed or by whom. NBME hereby grants to NBVME a nonexclusive, limited right and license to use and modify the NBME Preexisting Systems during the Term solely in connection with CVA activities, specifically the NAVLE Examination System. Except as explicitly set forth herein, nothing in this Agreement shall be deemed to grant NBVME any rights in or to the NBME Preexisting Systems.

(b) Newly Developed Systems. The Parents agree that systems that do not incorporate Preexisting Work that are developed by either Parent unilaterally or by both Parents jointly for and/or first used on the NAVLE Examination System after the Effective Date of this Agreement will be jointly owned by the Parents and considered Joint Property.

9.5 Use of Examination Materials.

(a) Live Items. The Parents agree that it is their intent to use the NAVLE Examination System test item library only for examinations for veterinary licensure and assessment. Items being used in the NAVLE Examination System (“Live Items”) shall not be used concurrently in any other examination or for any other purpose without the prior approval of the CVA Governance Committee. The Parents agree that any permitted use by either or both of them of items from the NAVLE Examination System test item library will not result in the overexposure of such test items or otherwise compromise the integrity of NAVLE Examination System. Policies regarding item exposure will be established by the CVA Governance Committee, which will monitor the exposure of test items.

(b) Retired Items. From time to time during the NAVLE Examination System pool review process, NAVLE Examination System items and their associated data and pictorial images will be retired from use on the NAVLE Examination System (“Retired Items”). There shall be a reasonable schedule for the retirement of test items, which retirement schedule will be adequate to maintain statistical links of derivative examinations with the NAVLE Examination System. Further uses of the Retired Items shall require the agreement of the Parents. If one Parent wishes to use Retired Items for a project/examination program unrelated to CVA (“Unrelated Project”), such Parent must give the other Parent an opportunity to participate in such Unrelated Project. If the other Parent wishes to participate in the Unrelated Project, the Parents will negotiate in good faith a separate agreement to work together on the Unrelated Project. If the other Parent does not wish to participate in the Unrelated Project, the Parents will negotiate in good faith a separate

agreement that will include such terms and conditions that will allow the participating Parent to continue with the Unrelated Project and will establish permitted use, if any, of the Retired Items.

(c) Item Format. The Parents agree that either Parent may use any item format developed for NAVLE Examination System in other examinations or education programs only upon approval from the CVA Governance Committee.

9.6 **Trademarks; Service Marks; Parent Marks**. The Parents agree that each Parent shall retain all right, title and interest in each trademark, trade name, service mark and logo, whether registered or arising under the common law, state law, federal law or the law of any foreign country, and all registrations thereof and interests therein throughout the world, together with all associated goodwill owned by such Parent before or after the Effective Date (collectively, the “Marks”). Marks owned by each Parent include but are not limited to those appearing on Schedule 9.6(a) hereto, which may be amended from time to time by written agreement between the Parents. Each Parent grants to the other a non-transferable, non-sublicenseable, worldwide limited right and license to use its Marks appearing on Schedule 9.6(a) during the Term solely in connection with CVA activities, specifically the NAVLE Examination System; provided, however, that any such use must be approved in advance by the owning Parent, such consent not to be unreasonably withheld.

(b) Co-Branding. The Parents agree that the CVA Governance Committee may explore the possibility of developing one or more Co-Brands. If any such Co-Brand is selected by the CVA Governance Committee, each Parent grants to the other a non-transferable, non-sublicenseable, worldwide limited right and license to use the Co-Brand during the Term solely in connection with CVA activities, specifically the NAVLE Examination System. Neither Parent shall apply for registration of any Co-Brand without the prior written consent of the other Parent, and in any event, unless otherwise agreed to by the Parents, both Parents will be co-registrants of the Co-Brand. Neither Parent shall use, or permit the use of, any Co-Brand upon termination of this Agreement, except as permitted in Section 9.6(f).

(c) Quality Assurance and Approval. Each Parent recognizes that the valuable reputation and goodwill attaching to the Marks of the other Parent are dependent for their preservation on the high quality standards prescribed and established by the owning Parent and, accordingly, is willing to comply with the owning Parent’s standards in order to obtain such quality and to cooperate with the owning Parent in preserving the reputation and goodwill attaching to the Marks. The Parents intend that all future products and services produced as a result of this Agreement shall be of the quality and nature equivalent to, or better than, those produced by NBVME prior to entering into this Agreement. At the request of either Parent, acting reasonably, the other Parent shall promptly provide the requesting Parent with samples of all advertising, marketing, brochures, testing material and any related documentation prepared by, for or with the permission of such Parent that bears or refers to any of the Marks owned by the requesting Parent for inspection and approval by the requesting Parent.

(d) Permitted Uses. Each Parent agrees to only use the Marks of the other (including as part of any Co-Brand) in accordance with (i) the policies, specifications, directions and standards of the owning Parent concerning the character and/or quality of the associated services and (ii) the policies, specifications, directions and standards of the owning Parent and CVA Governance Committee concerning the use and appearance of the Marks and each Co-Brand, respectively, in each case as may reasonably be required from time to time. Neither Parent, nor

the CVA shall, directly or indirectly, use the Marks of the other Parent in any other way, and without limiting the foregoing, shall not use such Marks or any Co-Brand in any corporate, trade, business, or other entity name or as part of any composite trademark or composite service mark, that is, in close association or in combination with any trademark(s) and/or service mark(s) owned by such Parent or any third party.

(e) Ownership. Each Parent acknowledges the other Parent's exclusive right, title and interest in and to its Marks, and agrees that it will not at any time do, or cause to be done, any act or thing contesting, opposing, seeking to cancel or in any way impairing, or tending to impair, any part of such right, title and interest. All use by one Parent of the other Parent's Marks and all goodwill associated with such use shall inure to the benefit of the owning Parent.

(f) Unauthorized Use. Each Parent agrees to notify the other of any unauthorized use, unfair competition or other infringement by any Person relating to any Co-Brand or any Mark owned by the other Parent promptly after it comes to the notifying Parent's attention. The Parents shall have the right to determine what action, if any, will be taken to remedy any infringement(s) of or related to their respective Marks, either standing alone or as incorporated in any Co-Brand. Neither Parent shall take any action with respect to such infringements of the other Parent's Marks, standing alone, without the prior written consent of the other Parent. Notwithstanding the foregoing, the Parents agree to cooperate in good faith in determining what action to take regarding any infringement of any Co-Brand. Any amounts which may be recovered as damages or otherwise in connection with a claim of infringement of any Co-Brand will first be used to reimburse any expense incurred by a Parent in the pursuit of such claim and the balance, if any, will be divided equally between the Parents.

(g) Use of Marks and Co-Brand at Termination. Each Parent shall within one hundred eighty (180) days following the date of expiration or termination of this Agreement other than pursuant to Section 10.2(a) (the "Brand Transition Period") discontinue use of, and by the end of the Brand Transition Period shall have ceased all use or display in any manner of each Co-Brand and Marks of the other Parent in any context unless the Parents expressly agree otherwise in writing. If the Agreement is terminated pursuant to Section 10.2(a), the breaching Parent shall immediately cease all use of each Co-Brand and other Parent's Marks at termination while the non-breaching Parent may, in its sole discretion, maintain use of any Co-Brand and breaching Parent's Marks until the end of the Brand Transition Period.

9.7 **No Security Interest, Lien, Claim, Encumbrance or Transfer**. Neither of the Parents shall create or permit to exist any security interest, lien, claim or encumbrance in or on any preexisting materials or Joint Property used in the NAVLE Examination System or other CVA activities, or transfer any interest therein to any third party without the prior written consent of the other Parent.

9.8 **Use of Joint Property upon Termination**. At the termination of this Agreement, as provided for in Section 10, Joint Property, as described in Section 9.2, will be disposed of or distributed in the manner described below, unless the Parents agree, in writing, to some other manner or method for disposing of Joint Property.

(a) Joint Property will continue to be owned jointly but will not be used by either Parent in any manner that would compromise the integrity or value of the NAVLE Examination System.

(b) The Parents will each own and separately maintain NAVLE Examination System performance data which the NBVME will provide to licensing boards and educational institutions.

(c) NBME will not use the Joint Property or any Equating Data to develop any licensing exam in the field of veterinary medicine.

(d) NBVME will not use the Joint Property or any Equating Data to develop any licensing exam in the field of human medicine.

10. **Termination.**

10.1 **Termination Without Cause.** Either Parent may terminate this Agreement without cause at any time upon two (2) years' prior written notice to the other Parent (the "Termination Notice"). In such event, the following shall apply:

(a) The Parents shall follow the dispute resolution and mediation procedures set forth in Section 11 below (Dispute Resolution and Mediation) in which the Termination Notice operates as a "Dispute." Should such Dispute under this Section 10.1 end up in mediation, such mediation shall occur for a period of three (3) months (the "Mediation Period") instead of sixty (60) days. The Parents may extend the Mediation Period upon mutual agreement.

(b) If, by the end of the Mediation Period, the Parents have not agreed to continue this Agreement, then the following shall apply:

(i) The terminating Parent shall pay the non-terminating Parent 50% of the amount remaining on the Amortized Expense Schedule for each expense incurred by the non-terminating Parent subject to the following:

- a. the Parents shall review the Amortized Expenses remaining on the Amortized Expense Schedule and determine whether the terminating Parent should pay less than 50% for any particular Amortized Expense based on the ability of the non-terminating Parent to use the product that resulted from the expenses remaining on the Amortized Expense Schedule for other purposes;
- b. the non-terminating Parent shall act in good faith to reduce any amount remaining on the Amortized Expense Schedule;
- c. the terminating Parent shall jointly own any product that results from expenses remaining on the Amortized Expense Schedule;
- d. upon mutual agreement of the Parents, one Parent may purchase the other Parent's interest in any product that results from expenses remaining on the Amortized Expense Schedule for the remaining 50% of expenses not paid; and
- e. the payment schedule shall not jeopardize the terminating Parent's ability to carry out its mission which shall be determined by mutual agreement or binding arbitration in the event the Parents fail to mutually agree.

(ii) Upon NBVME's request, NBME will provide services to NBVME to support CVA for the remainder of the two (2) year period set by the Termination Notice (the "Transition Period"). The Parents shall negotiate in good faith an agreement

(“Transition Agreement”) for provision by NBME of such services under the nonfinancial terms similar in scope to those in the current Master Services Agreement between the Parents, attached hereto as Appendix E. The Parents shall negotiate new financial terms for the Transition Agreement. After such Transition Period, or immediately if NBVME does not request a Transition Period, NBME shall work with NBVME to transition the NAVLE Examination System from CVA to NBVME. In addition, NBME shall provide to NBVME without charge all NBVME Preexisting Test Items, Retired Items and Equating Data related to the Joint Property. For avoidance of doubt, NBVME understands and agrees that NBME will not provide information related to proprietary or trade secret processes, business practices, algorithms, or option settings which may inhibit exact replication and some uses. Specifically, NBME will not provide a data dictionary or other information related to the structure and manner in which item information is stored in NBME proprietary databases.

10.2 **Termination for Cause.** This Agreement may be terminated by either Parent upon the occurrence of any of the following events:

- (a) a breach of this Agreement by the other Parent which impairs the quality or viability of CVA or the NAVLE Examination System or otherwise damages or threatens to damage the value of the non-breaching Parent’s Marks, each in any material respect and which remains uncured for a period of ninety (90) days after notice of such breach, describing the breach in reasonable detail, is given to the breaching Parent;
- (b) the occurrence of a Bankruptcy Event with respect to the other Parent;
- (c) the loss by the other Parent of its tax exempt status as an organization qualifying for such status as an organization described in Section 501(c)(3) of the Code; or
- (d) the merger or consolidation of the other Parent with or into another Person, a sale by the other Parent of all or substantially all its assets, the dissolution of the other Parent, or the taking of any action by the Board of Directors of the other Parent to approve any of the foregoing only in the event that such merger or consolidation, sale, dissolution, or taking of action undermines the goals of CVA. For the avoidance of doubt, this section does not apply in the event of an acquisition by either Parent of all or substantially all of the assets of a third party.

10.3 **Performance for Breaching Parent.** If a Parent breaches this Agreement and such breach continues for a period of thirty (30) days after notice of such breach is given to the breaching Parent, in addition to any rights or remedies the non-breaching Parent may have under this Agreement or at law or equity, the non-breaching Parent shall have the right, but not the obligation, to step in and perform the obligations of the breaching Parent and shall be entitled to reimbursement from the breaching Parent for the reasonable cost of such performance.

11. **Dispute Resolution and Mediation.** Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity thereof (each, a “Dispute”) that is not resolved by the CVA Governance Committee through good faith negotiations shall be referred to NBVME and the Board of Directors of NBME. If the Parents cannot resolve the Dispute within thirty (30) days following such referral, either Parent may, by written notice to the other, require that the Dispute be submitted to

non-binding mediation administered by JAMS, or its successor. The presiding mediator (an “ADR Individual”) shall have experience with disputes involving the subject matter of this Agreement. If the Parents do not unanimously agree on the ADR Individual, then each Parent shall choose an independent person with a background in alternative dispute resolution, and the two (2) people so chosen shall choose the applicable ADR Individual hereunder. The mediation shall be conducted in the English language and all mediation sessions shall take place in a location mutually agreed upon by the Parents. The Parents shall each be responsible for one-half of any fees or other amounts payable to JAMS or the mediator, and each Parent shall bear its own attorneys’ fees and other expenses in connection with the mediation; provided, however, that in any mediation, the ADR Individual shall have the right to award fees and expenses to a Parent if the ADR Individual determines that the other Parent did not participate in good faith. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by either of the Parents or any of their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parents, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If efforts at mediation are unsuccessful in resolving the Dispute within sixty (60) days after the first mediation session, either Parent may pursue any and all legal or equitable remedies available to it, subject to the remaining provisions of this Agreement. The Parents agree that the procedures set forth in this paragraph shall be the sole and exclusive means of resolving any and all Disputes. Notwithstanding the foregoing and subject to the remaining provisions of this Agreement, either Parent may seek injunctive or other equitable relief in a court of competent jurisdiction pending the outcome of any negotiations or mediation conducted hereunder.

12. **Representations and Warranties.**

12.1 **Representations and Warranties of NBME.** NBME represents and warrants to NBVME as follows:

(a) **Status.** NBME is a not-for-profit corporation validly existing under the laws of its jurisdiction of organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder. NBME is a tax exempt organization described in Section 501(c)(3) of the Code.

(b) **Binding Obligations.** This Agreement constitutes the legal, valid and binding obligation of NBME, enforceable against NBME in accordance with its terms, except as such enforceability may be limited by bankruptcy laws and other similar laws affecting creditors’ rights generally and by general principles of equity.

(c) **No Conflicts.** The execution, delivery and performance of this Agreement by NBME do not and will not (i) conflict with, or constitute a breach or default under, its charter documents or any agreement, contract, commitment or instrument to which it is a party, or (ii) require the consent, approval or authorization of, or notice, declaration, filing or registration with, any third party or any governmental or regulatory authority.

(d) **Title to Certain Assets.** NBME has good and marketable title or valid licenses to all of the NBME Preexisting Systems and NBME Marks to be provided by it for use by CVA, free

and clear of all liens, claims, and encumbrances, and NBME has the unrestricted right to grant to NBVME the rights set forth in Sections 9.4(a), 9.6(a) and 9.6(b).

(e) **No Claims**. There is no action or proceeding pending or, to the knowledge of NBME, threatened against NBME or any of its affiliates before any court, administrative agency or other tribunal (i) seeking to enjoin or otherwise restrict the transactions contemplated by this Agreement, or (ii) which could be reasonably expected to have a material adverse effect on NBME's business or condition, financial or otherwise.

12.2 **Representations and Warranties of NBVME**. NBVME represents and warrants to NBME as follows:

(a) **Status**. NBVME is a not-for-profit corporation validly existing under the laws of its jurisdiction of organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder. NBVME is a tax exempt organization described in Section 501(c)(3) of the Code.

(b) **Binding Obligations**. This Agreement constitutes the legal, valid and binding obligation of NBVME, enforceable against NBVME in accordance with its terms, except as such enforceability may be limited by bankruptcy laws and other similar laws affecting creditors' rights generally and by general principles of equity.

(c) **No Conflicts**. The execution, delivery and performance of this Agreement by NBVME do not and will not (i) conflict with, or constitute a breach or default under, its charter documents or any agreement, contract, commitment or instrument to which it is a party, or (ii) require the consent, approval or authorization of, or notice, declaration, filing or registration with, any third party or any governmental or regulatory authority.

(d) **Title to Certain Assets**. NBVME has good and marketable title to all of the NBVME Preexisting Test Items and NBVME Marks to be provided by it for use by CVA in connection with the NAVLE Examination System, free and clear of all liens, claims, and encumbrances, and NBVME has the unrestricted right to grant to NBME the rights set forth in Sections 9.3(a), 9.6(a) and 9.6(b).

(e) **No Claims**. There is no action or proceeding pending or, to the knowledge of NBVME, threatened against NBVME or any of its affiliates before any court, administrative agency or other tribunal (i) seeking to enjoin or otherwise restrict the transactions contemplated by this Agreement, or (ii) which could be reasonably expected to have a material adverse effect on NBVME's business or condition, financial or otherwise.

13. **Insurance**. During the Term of this Agreement each Parent shall maintain adequate insurance coverage with regard to its obligations under this Agreement. Such coverage shall be provided by carriers having an A.M. Best rating of "A" or higher. Each Parent shall name the other Parent as an additional insured with respect to all claims, demands or suits arising out of CVA activities. In the event either Parent procures a "claims-made" policy to meet the insurance requirements herein, said Parent agrees to purchase "tail" coverage upon the termination of any such policy or upon termination of the Agreement.

Said “tail” coverage shall provide for an indefinite reporting period. Upon reasonable request, each Parent shall provide copies of any and all insurance policies to the other Parent.

14. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given upon personal delivery, five (5) days after being mailed by registered or certified mail, return receipt requested, or one (1) business day after being sent by a nationally recognized overnight courier. Notices shall be addressed as follows and the Parents shall notify each other of any change of address:

If to NBVME:

NBVME
Attention: Executive Director
P.O. Box 1356
Bismarck, ND 58502

If to NBME:

NBME
Attention: President
3750 Market Street
Philadelphia, PA 19104

15. **Limitation of Liability.**

15.1 **Damages.** EXCEPT IN CONNECTION WITH A BREACH OF ANY OBLIGATION, TERM, OR CONDITION SET FORTH IN SECTIONS 17 (CONFIDENTIALITY) AND 18 (NON-COMPETITION), IN NO EVENT (UNLESS AWARDED TO A THIRD PARTY) SHALL EITHER PARENT BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), INCLUDING WITHOUT LIMITATION LOST DATA, PROFITS, AND REVENUES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION 15 IS NOT INTENDED TO LIMIT THE SCOPE OR AMOUNT OF ANY INDEMNIFICATION OBLIGATION THAT MAY ARISE UNDER SECTION 16 OF THIS AGREEMENT.

15.2 **Allocation of Risk.** THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION 15 REFLECT A DELIBERATE AND BARGAINED FOR ALLOCATION OF RISK BETWEEN THE PARENTS AND ARE INTENDED TO BE INDEPENDENT OF ANY EXCLUSIVE REMEDIES AVAILABLE UNDER THIS AGREEMENT, INCLUDING ANY FAILURE OF SUCH REMEDIES TO ACHIEVE THEIR ESSENTIAL PURPOSE.

16. **Indemnification.**

16.1 **By NBVME.** Subject to the provisions of Section 15, NBVME shall indemnify, defend and hold harmless NBME, its affiliates, and their respective officers, directors, members, employees, agents, and representatives, against any liability, loss or expense (including reasonable attorneys’ fees and expenses) from any third party claim or action to the extent such claim or action (i) arises from any breach

or alleged breach by NBVME of any of its representations, warranties or covenants set forth in this Agreement, (ii) is based on an allegation that any NBVME Preexisting Test Item or NBVME Mark infringes or misappropriates any Proprietary Right of a third party, or (iii) arises from the gross negligence or willful misconduct of NBVME.

16.2 **By NBME.** Subject to the provisions of Section 15, NBME shall indemnify, defend and hold harmless NBVME, its affiliates, and their respective officers, directors, members, employees, agents, and representatives, against any liability, loss or expense (including reasonable attorneys' fees and expenses) from any third party claim or action to the extent such claim or action (i) arises from any breach or alleged breach by NBME of any of its representations, warranties or covenants set forth in this Agreement, (ii) is based on an allegation that any NBME Preexisting System or NBME Mark infringes or misappropriates any Proprietary Right of a third party, or (iii) arises from the gross negligence or willful misconduct of NBME.

16.3 **Indemnification Procedures.** With respect to any claim or action for which indemnity may be sought from the other Parent under this Section 16, the Parent seeking indemnification (the "Claimant") shall promptly notify the indemnifying Parent in writing, specifying the nature of the claim or action and the total monetary amount sought or other such relief as is sought therein. The Claimant shall cooperate with the indemnifying Parent at the indemnifying Parent's expense in all reasonable respects in connection with the defense and/or settlement of the claim or action. The indemnifying Parent shall have the right to undertake the control and conduct of all proceedings or negotiations in connection therewith and to assume and control the defense thereof. The Claimant shall have the right to employ separate counsel to provide input into the defense, at Claimant's own cost. The indemnifying Parent shall keep the Claimant reasonably informed of the progress of its defense and settlement of the claim or action. The indemnifying Parent shall not settle the claim or action on the Claimant's behalf without first obtaining the written approval of the Claimant, which approval will not be unreasonably withheld or delayed; provided, however, that if Claimant withholds or unreasonably delays approval of indemnifying Parent's settlement offer, the Claimant shall defend that claim or action at its own expense and the Claimant hereby waives any right to indemnity hereunder from the indemnifying Parent in excess of the settlement offer amount. The Claimant may settle any claim or action hereunder, but the indemnifying Parent will not be responsible for any such settlement unless it shall have approved the settlement, in writing and in advance, which approval will not be unreasonably withheld or delayed. Each Parent agrees not to publicize any settlement without first obtaining the other Parent's written permission, which permission will not be unreasonably withheld.

16.4 **Notification Requirements.**

(a) **Claims.** Each Parent shall promptly notify the other Parent in writing of (i) any claims made, formally or informally, by third parties against either Parent hereto relating to the matters that are the subject of this Agreement, and (ii) any circumstances that are reasonably likely to result in any such claims or other material liabilities arising from the matters that are the subject of this Agreement.

(b) **Business Opportunities.** Each Parent agrees that if it has the opportunity to create other veterinary medicine products during the Term of this Agreement, it will notify the other Parent and negotiate in good faith to determine whether the Parents will collaborate on the opportunity.

17. **Confidentiality.**

17.1 **Obligation of Confidentiality and Non-Use.** Each Parent acknowledges and agrees that a duty is owed to the other Parent to maintain in strict confidence all Confidential Information (as defined below) of the other Parent provided to or learned by such Parent in connection with this Agreement. Each Parent shall take all steps reasonably necessary to prevent the unauthorized disclosure or dissemination of such Confidential Information for any reason and to any Person, except with the prior written consent of the other Parent, which consent shall be in the sole discretion of the owner of such Confidential Information. In addition, each Parent shall not use or copy any such Confidential Information, or authorize or permit others to use any such Confidential Information, for any purpose other than in connection with performing its obligations or exercising its rights hereunder. The Parents also agree to keep the terms of this Agreement (including any drafts) confidential except where it is necessary either to communicate certain information so that it can perform its responsibilities under this Agreement or where disclosure is required by law. The Parents acknowledge and agree that they may (a) share information about this Agreement with their respective staff on a need-to-know basis and with their respective governing bodies and (b) share pertinent Confidential Information with members of certain CVA committees but only if such members agree to maintain the confidentiality of such information on terms satisfactory to the Parents.

17.2 **Definition of Confidential Information.** The term “Confidential Information” means all strategies; plans and procedures; examination techniques and procedures; financial information relating to CVA; proprietary information, data and trade secrets of a Parent (including Joint Property); as well as any other information and materials that are deemed confidential or proprietary to or by a Parent.

Notwithstanding the foregoing paragraph, “Confidential Information” does not include any information or materials that: (a) are or become known to the general public through no act or omission of the receiving Parent or any other person with an obligation of confidentiality to the receiving Parent, or (b) are required to be disclosed pursuant to applicable law (provided, however, that prior to any disclosure of Confidential Information as required by applicable law, the receiving Parent shall advise the other Parent of such required disclosure promptly upon learning thereof and shall cooperate with the other Parent in order to afford it a reasonable opportunity to contest or limit such disclosure).

17.3 **Return or Destruction of Confidential Information.** Upon the termination or expiration of this Agreement, or at any other time upon the written request of either Parent, the other Parent shall promptly return to such Parent all Confidential Information in the other Parent’s possession or control, together with all copies, summaries and analyses thereof, regardless of the format in which such information exists or is stored. Within fifteen (15) days following the termination of this Agreement, or any written request as set forth above, each Parent shall provide to the other a written certification of such Parent’s compliance with the provisions of this paragraph.

18. **Non-Competition.** During the Term of this Agreement, neither Parent shall: (a) independently engage in the development or operation of any veterinary licensure programs of the type described in Section 1 hereof or otherwise compete directly or indirectly with CVA, except as otherwise expressly agreed to by the Parents; (b) act as an advisor or consultant to any such program conducted by a third party, except as otherwise expressly agreed to by the Parents; or (c) directly or indirectly employ or engage, either on a full-time or part-time basis, any employee, agent or independent contractor of such other Parent who is or was involved in CVA activities, or any person who, within the six (6) months prior

to the new employment or engagement, was an employee, agent or independent contractor of such other Parent and was involved in CVA activities.

19. **References.** In this Agreement and the Appendices to this Agreement:

- (a) The Appendices to this Agreement are incorporated into and deemed part of this Agreement and all references to this Agreement include the Appendices to this Agreement;
- (b) References to any law, legislative act, rule or regulation mean references to such law, legislative act, rule or regulation in changed or supplemented form or to a newly adopted law, legislative act, rule or regulation replacing a previous law, legislative act, rule or regulation; and
- (c) References to the word “including” mean “including, without limitation.”

20. **Force Majeure.** Neither Parent shall be liable for failure to perform any of its duties or obligations hereunder during any period in which such performance is adversely affected by fire, flood, war (declared or undeclared), acts of terrorism, riot, embargo, organized labor stoppage, earthquake, acts of civil and military authorities or any other acts beyond its reasonable control, provided that the Parent suffering such event promptly notifies the other Parent, and uses all reasonable efforts to promptly mitigate the effect of such event on the performance of its duties and obligations under this Agreement. The other Parent shall have the right to terminate this Agreement upon sixty (60) days’ prior written notice if such event substantially impairs the ability of a Parent to perform its duties and obligations hereunder for a period of three (3) months or more.

21. **Miscellaneous.**

21.1 **No Agency.** Nothing contained herein shall be deemed to create an agency, joint venture, partnership or similar relationship between the Parents. Notwithstanding any of the provisions of this Agreement, neither Parent shall at any time enter into, incur, or hold itself out to any third parties as having authority to enter into or incur, on behalf of the other Parent, any commitment, expense, or liability whatsoever, and all contracts, expenses and liabilities undertaken or incurred by one Parent in connection with or relating to the performance of its obligations under this Agreement shall (except to the extent expressly provided otherwise herein) be undertaken, incurred or paid exclusively by that Parent, and not as an agent or representative of the other Parent.

21.2 **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the Pennsylvania without reference to any principles governing conflicts of law.

21.3 **Jurisdiction and Venue; Service of Process.** The Parents agree that in the state and federal courts in and for Philadelphia County, Pennsylvania, namely the Philadelphia County Court of Common Pleas and the U.S. District Court for the Eastern District of Pennsylvania, shall be the courts of exclusive jurisdiction and venue for any actions or proceedings which may be brought under or in connection with this Agreement, or which may concern the subject matter of this Agreement, and each Parent hereby irrevocably accepts the exclusive jurisdiction and venue of such courts. Each Parent further irrevocably consents to the service of process by registered mail, return receipt requested, at the address for notices to such Parent specified hereunder, or by any other method permitted under applicable law.

21.4 **Headings.** The Section and Appendix headings and the Table of Contents are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

21.5 **Consents, Approvals and Requests.** Except as specifically set forth in this Agreement, all consents and approvals to be given by either Parent under this Agreement shall not be unreasonably withheld or delayed.

21.6 **Entire Agreement.** This Agreement, including all Appendices hereto, constitutes the entire agreement and understanding of the Parents with respect to its subject matter, and shall supersede all oral negotiations and prior writings with respect thereto. This Agreement may be amended, modified or supplemented only by a written instrument duly executed by each of the Parents.

21.7 **Covenant of Further Assurances.** The Parents covenant and agree that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each Parent shall execute and deliver any further legal instruments and perform any acts which are or may become necessary to effectuate the purposes of this Agreement.

21.8 **No Waiver.** No term or provision of this Agreement will be considered waived and no breach consented to by either Parent unless such waiver or consent is in writing signed on behalf of the Parent against whom it is asserted. No consent to or waiver of a breach of this Agreement by either Parent, whether express or implied, will constitute a consent to, waiver of, or excuse for any other, different, or subsequent breach of this Agreement by such Parent.

21.9 **Severability.** Any provisions of this Agreement which are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction. If a court of competent jurisdiction declares any provision of this Agreement to be invalid or unenforceable, the Parents hereto shall request that such court reduce the scope, duration, or area of the provision, delete specific words or phrases from the provision, or to replace the provision with a provision that is valid and enforceable and that comes closest to expressing the original intention of the Parents hereto, and this Agreement shall be enforceable as so modified in the jurisdiction in which the provision was declared invalid or unenforceable. Notwithstanding the foregoing, the limitations of liability in Section 15 are considered by the Parents to be integral to this Agreement and may not be modified or severed from this Agreement.

21.10 **Assignment.** Neither Parent may assign this Agreement or any of its rights or obligations hereunder, nor delegate any of its duties, without the other Parent's express, prior written consent. Any purported assignment in violation of this Section shall be null and void.

21.11 **Survival.** The following Sections will survive termination or expiration of this Agreement: Section 12 (Representations and Warranties); Section 15 (Limitation of Liability); Section 16 (Indemnification); Section 17 (Confidentiality); and, to the extent applicable, the provisions of this

Section 21, and any other provision which by its nature extends beyond termination or expiration of this Agreement.

21.12 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the Parents.

[Rest of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parents have executed this Agreement as of the date first written above:

NATIONAL BOARD OF VETERINARY MEDICAL EXAMINERS

John R. Boyce, DVM, PhD
Executive Director

Date: _____

NATIONAL BOARD OF MEDICAL EXAMINERS

Donald E. Melnick, MD, MACP
President

Date: _____

Appendix A

<u>Tasks Necessary for the NAVLE</u>	NBVME	NBME	Joint Responsibility	Comments
1. Examination Definition				
A. Define goals and objectives			X	
B. Blueprint			X	
C. Test design			X	
1. form specifications			X	
2. number of items			X	
3. nature of items			X	
D. Standard setting			X	
2. Operations				
A. Defining requirements			X	
B. Info/descriptive materials for examinees			X	Includes NBVME website containing candidate information
C. Registration & scheduling			X	
1. candidate				
a. database	X			Development and maintenance
b. application and fee payment	X			Includes payment to credit card processor
c. transferring eligibility data			X	
d. registration	X			
1. credentialing for eligibility	X			
2. issuance of scheduling permit			X	NBME prepares the permits; NBVME notifies candidates when they are available
e. scheduling				
1. on-line			X	
2. telephone			X	
D. Applicant services				
1. applicant inquiries (directions)	X			
2. accommodations				
a. determination of entitlement	X			
b. determining nature	X			
c. providing			X	Costs of approved accommodations that involve unusual and significant expenses will be billed to NAVLE

Tasks Necessary for the NAVLE	NBVME	NBME	Joint Responsibility	Comments
3. troubleshooting candidate issues			X	Includes test center availability issues, technical problems, rescheduling and eligibility resets, and responding to candidate grievances. Receive input from Prometric as needed
E. Annual licensing board agreements	X			
3. Item/Test Development				
A. Item writer selection	X			Includes item writer agreements and payment of honorarium. NBME provides NBVME with item writer performance information.
B. Item writer training			X	
C. Item writing	X			
D. Item editing			X	
E. Coding and monitoring of exam item pool			X	
F. Item review meetings			X	
G. Form assembly		X		
H. Form review meetings			X	
I. Quality control			X	
J. Computer composition of examination forms		X		
K. Review and pre-production of pictorial materials			X	
L. Key validation			X	
M. French form translation			X	
N. Monitoring item retirement and pool size			X	
O. Examination Development Advisory Board	X			
4. Scoring and Reporting				
A. Defining requirements			X	
B. Develop, monitor and update scoring and equating strategies		X		
C. Develop documentation regarding scoring, standard setting, score reporting and interpretation			X	
D. Data based score generation		X		

Tasks Necessary for the NAVLE	NBVME	NBME	Joint Responsibility	Comments
E. Application of pass/fail decisions		X		
F. Quality control		X		
G. Score reporting		X		
1. score report creation		X		
2. delivery of score reports			X	NBME delivers scores to NBVME, AAVSB and select agencies. NBVME delivers scores to certain agencies and examinees.
H. Generation of school reports			X	
I. Generation of technical reports		X		
J. Conduct special scoring and analyses when warranted or requested		X		
5. Research & Development				
A. Defining requirements			X	
B. Research & Development		X		
1. validation studies		X		
2. alternative test models		X		
C. NAVLE pool reviews			X	NBVME selects the participants and plans the meetings, and the NBME selects the items to review and provides staff support
D. New item types			X	
E. Scaling and equating			X	
F. Security			X	
G. Standard setting exercises			X	
H. Job/practice analysis			X	
6. System Security				
A. Develop and maintain security of test item development and examination production			X	This includes physical security of examination materials.
B. Monitor security of testing centers		X		
7. Program Administration				
A. Human Resources			X	Each organization will be responsible for supporting its respective employees and accounting for the costs of their efforts. The costs of these services will be recovered through the indirect component of the NAVLE budget. Major additional non-staff costs incurred in these areas in the central offices of NBME and NBVME may be allocated to NAVLE
1. employee compensation and benefits			X	
2. time and effort accounting			X	
3. employment records			X	

<u>Tasks Necessary for the NAVLE</u>	NBVME	NBME	Joint Responsibility	Comments
4. salary/promotion reviews			X	
5. staff development			X	
6. grievances/disciplinary actions			X	
B. Accounting and Finance			X	
1. budget development			X	
2. payroll			X	
3. purchase orders			X	
4. financial reports			X	
C. Legal services			X	
1. contracts and grants			X	
2. registration of copyright on exam materials		X		
3. litigation			X	
4. irregular behavior			X	
a. identification and reporting			X	
b. adjudication			X	
8. Parent Governance				
A. Prepare for, support NBME Executive Board, NBVME Board, NBME Finance Committee and NBME Annual Meeting agenda items related to NAVLE			X	
B. Share cost for travel, honoraria for participation in governance activities related to NAVLE			X	

Appendix B

Asymmetrical Voting

Unless the issue directly has budgetary implications, Asymmetrical Voting outlined in Section 5.6(c)(ii) of the Agreement applies to the following issues:

Issues that can only be determined by content experts, including, but not limited to:

- Eligibility;
- Content blueprint;
- Setting the cut score;
- Issues related to regulatory bodies that use the NAVLE Examination System;
- Issues related to the Veterinary Licensure process; and
- Reporting of scores to candidates.

Appendix C

CVA Governance Committee Tasks

Note: The tasks for this Appendix C will be developed by the CVA Governance Committee for the Parents to review and approve.

When the task list is approved by the Parents, it will become part of this Appendix C.

Appendix D

Illustration of Section 8.7(b) Calculation

**NBVME Collaboration
Operating Results and Final Settlement
60% - 40% split**

Pro Forma - Actual results for 2012-13

	NBVME NAVLE	NBME	TOTAL
REVENUE	\$ 3,075,055	\$ -	\$3,075,055
EXPENSES	\$ 603,667	\$ 1,540,840	\$ 2,144,506
R&D EXPENSES	\$ -	\$ 300,000	\$ 300,000
Excess (Shortfall) Revenues over Expenses	<u>\$ 2,471,388</u>	<u>\$(1,840,840)</u>	<u>\$ 630,549</u>

Final Settlement Calculation

Total Transfer Required (amount needed to reach hypothetical split below)	\$(2,093,059)	\$ 2,093,059	\$ -
Net After Transfer	\$ 378,329	\$ 252,220	\$ 630,549
Contractual Margin Split	60.00%	40.00%	
Return	12.30%	8.20%	

Notes for Appendix D:

This analysis is intended to show the allocation of the excess (shortfall) of revenues over expenses using a 60% NBVME/40% NBME split under a collaboration agreement. This calculation is based on 2012-2013 fiscal year financial data for each organization.

The revenue consists of NAVLE examination fees of \$2,926,940 and NAVLE state application fees of \$148,115 for a total of \$3,075,055.

The expenses are the direct NAVLE expenses of \$392,297 plus indirect expense allocation of 53.88% for a total of \$603,667.

R&D Expenses will be determined annually by the CVA committee. Any amount set aside for R&D will reduce (increase) the excess (shortfall) that will be split.

YELLOW - Amount to be split according to the percentage agreed upon (60/40).

BLUE - Net amount each organization will have after payment of direct and indirect costs.

ORANGE - Allocation percentage

GREEN - Percentage return based upon the net amount after payment compared to share of total revenue received by each organization.

Appendix E

Master Services Agreement

Schedule 9.6(a)

Marks

National Board of Medical Examiners owned Marks:

- 1) NATIONAL BOARD OF MEDICAL EXAMINERS®
- 2) NBME®

National Board of Veterinary Medical Examiners owned Marks:

- 1) NATIONAL BOARD OF VETERINARY MEDICAL EXAMINERS
- 2) NBVME®
- 3) NORTH AMERICAN VETERINARY LICENSING EXAMINATION
- 4) NAVLE®