



CANDIDATE AGREEMENT

THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE IN SECTION 9.

The following terms and conditions of this Candidate Agreement (hereinafter, “this Agreement”) constitute a legally binding contract between me as a candidate (“Candidate,” “me,” or “I”) and The National Board of Examiners in Optometry, Inc. (“NBEO”). My execution of this Agreement is a precondition in order for me to (a) register for and take any examination provided by NBEO, and (b) access or use any materials or information provided by NBEO. In consideration of the foregoing, I agree to and acknowledge that I understand that I am bound to all of the following terms and conditions:

1. **Ethics Policy.** By executing this Agreement, I certify that I have read and that I understand the NBEO Ethics Policy in its entirety as set forth on the NBEO website (the “Ethics Policy”). I agree that I am subject to all of the terms of such Ethics Policy and that all such terms are hereby incorporated into this Agreement by reference. To the extent there is any conflict or inconsistency between the Ethics Policy and this Agreement, the terms of this Agreement shall control. The Ethics Policy may be updated from time to time, and it is my responsibility to regularly review such Ethics Policy.
2. **Exams.**
 - a. **Types of Exams.** I certify that I am registering for and will take the NBEO Part I ABS®, Part II PAM®, Part III PEPS®, standalone TMOD®, ISE®, LSPE®, ACOMO®, and any other written or skills examination that may be provided by NBEO from time to time (“NBEO Examination(s)”) for the sole purpose for which it is being administered and not for any other purpose.
 - b. **Rules.**
 - (i) When taking a NBEO Examination, I will follow all test day rules and policies that NBEO or a third-party administrator provides including those test day rules set forth on the Ethics Policy in Section 4. If I am taking Part I ABS®, Part II PAM®, standalone TMOD®, or ACOMO® of the NBEO Examination(s), then the administration of such NBEO Examination may be with a third-party administrator at their testing facility and may be administered through the use of a computer. I will abide by any rules or policies provided by NBEO or a third-party administrator in connection with the administration of such NBEO Examination. Any violation of these additional rules or policies shall be considered a violation of this Candidate Agreement, and any violation of this Candidate Agreement may be deemed “Improper Conduct” as defined under the Ethics Policy in the NBEO’s sole discretion. NBEO may investigate any suspected violation by me of this Agreement, and I may be subject to certain consequences as further described in Section 5.
 - (ii) During the test day, I may also be subject to additional review by an administrator and proctor. Exam proctors have been instructed to adhere strictly to the Agreement and Ethics Policy to prevent collaborative or disruptive behavior and to detect and report it if it occurs. I acknowledge, understand, and agree that NBEO may use audio- and video-recording devices within certain areas of its testing facility (including at entries/exits and in exam rooms) to

promote the safety and security of its facility, staff, and candidates; monitor candidate testing; and score portions of a NBEO Examination.

3. **Scoring.**

a. **Discretion.**

- (i) NBEO maintains discretion in the type, content, scoring, and administration of NBEO Examination(s). The performance of candidates is monitored and may be analyzed to detect irregularities, abnormalities, aberrancies, or other information that raises questions about the validity of results from a NBEO Examination. NBEO reserves the right to revise the types of NBEO Examination(s), the content of NBEO Examination(s), the scoring of NBEO Examination(s), and the administration of NBEO Examination(s), if NBEO questions whether results from a NBEO Examination represent a valid measure of knowledge or competence as assessed by such NBEO Examination. Without limitation, such questions about score validity may result from Improper Conduct, irregular behavior, improper access to NBEO Content, statistical anomalies, or other factors.
- (ii) Without limiting the foregoing section, NBEO may investigate and/or review the validity of scores and the performance of candidates or other consequences as set forth in Section 5 in the following circumstances:
 - (1) If NBEO determines or believes that the validity, integrity, or confidentiality of a NBEO Examination or NBEO Content or any part or component thereof may be compromised or was compromised;
 - (2) If a candidate does not complete the NBEO Examination in accordance with the instructions provided or if a candidate or third party engages in Improper Conduct; or
 - (3) If NBEO detects anomalous performance, unusual testing history, or other irregularities in scoring or performance using statistical analysis, third-party consultants, technology or applications, or evaluating other factors that may or may not actually result from or be due to Improper Conduct.

b. **Disclosure.**

- (i) My NBEO Examination testing information and data, including my personally identifiable information, may be collected from me by NBEO and shared with third parties or collected by third parties for the purpose of reporting my scores; to assist with scoring; or for research, exam security, statistical, and other purposes. If NBEO collects such information, then such information and data are held by NBEO in accordance with the NBEO Privacy Policy, which also applies to information found in or provided by way of NBEO accounts. Any third party collecting, storing, or receiving personal information on behalf of NBEO is subject to the terms and conditions of the privacy policy of such third party. For the avoidance of doubt, NBEO may always share any of my results or scores of a NBEO Examination with state regulatory boards.
- (ii) De-identified results from candidates may be included in aggregated data reports. NBEO Examination data (including performance information) may be used by NBEO or made available to third parties for research and other purposes in accordance with the NBEO Privacy Policy.

4. **NBEO Content.**

a. **Definitions.**

- (i) "NBEO Content" means any (1) NBEO Examination item such as questions, answers, case scenarios, images, standardized patient data, scripts, or other materials contained in a past,

current, or future NBEO Examination; (2) NBEO Examination content under any stage of development by NBEO, including without limitation any question or stem, in whole or in part; any answer option; any case scenario; any image; and any PEPS data scripts or other scoreable material; (3) any item in the NBEO Part I ABS Practice Items Databank, any item in the NBEO Part II PAM Practice Items Databank, or any item released by NBEO prior to the establishment of NBEO's item database in 1981; (4) examination forms, examination booklets, answer sheets, examination materials, grading materials, unpublished clinical skills exam materials, and all processes used in a NBEO Examination; (5) items and materials, including test questions and documents provided by a proctor during the administration of a NBEO Examination; and (6) NBEO Public Content.

(ii) "NBEO Public Content" means all content that NBEO makes available to candidates on the NBEO website, including exam content outlines, exam content matrices, sample exam items, and candidate guides.

- b. **NBEO Content**. As part of a NBEO Examination, certain NBEO Content may be made available to a candidate. I may not use or access any NBEO Content other than during the administration of my NBEO Examination as provided by a proctor for the sole purpose of taking such NBEO Examination, and such use and access shall terminate after the end of the NBEO Examination. NBEO Content is considered NBEO's Confidential Information. Any misuse, misappropriation, copying, reproducing, or disclosing of NBEO Content is considered Improper Conduct under the Ethics Policy.
- c. **NBEO Public Content**. Notwithstanding the foregoing section, I may use NBEO Public Content for the sole purpose of individually preparing for a NBEO Examination and will not distribute such NBEO Public Content to third parties or use or access it in a way that is deemed Improper Conduct under the Ethics Policy. NBEO makes no guarantee that review of NBEO Public Content guarantees a candidate's successful performance for the actual NBEO Examination, and such NBEO Public Content is only provided for convenience.
- d. **Intellectual Property Rights**. All NBEO Content is copyrighted material owned and controlled by NBEO. NBEO is and will remain the owner of all right, title, and interest in and to a NBEO Examination and NBEO Content, including all data, information, reports, outputs, insights, and associated features, functionality, content, materials, and services made available by us, including all revisions, derivative works, improvements, and modifications of any of the foregoing, the ideas, methods, and concepts underlying or embedded in any of the foregoing, and all related intellectual property rights (collectively, the "NBEO Intellectual Property"). Nothing in this Agreement shall be interpreted to give any third party any rights in and to NBEO Intellectual Property other than the limited right to use NBEO Public Content subject to the restrictions and obligations set forth herein. NBEO reserves all other rights in and to the NBEO Intellectual Property.
- e. **Confidentiality**. In connection with receiving NBEO Content or participating in a NBEO Examination, NBEO may disclose to me proprietary or confidential information of NBEO (collectively, "Confidential Information"). During the term of this Agreement and thereafter, I will not disclose such Confidential Information to any third party nor use the Confidential Information for any purpose except for taking such NBEO Examination pursuant to the limitations under this Agreement. All NBEO Content is and shall be deemed Confidential Information.

5. **Consequences of Improper Conduct.**

- a. **Violations of this Agreement and Ethics Policy.** I understand that any violation of this Agreement or the Ethics Policy is considered Improper Conduct as further defined in the Ethics Policy. Any Improper Conduct may subject me or any other offending party to certain consequences. NBEO is the final authority that determines (a) whether I have committed any Improper Conduct and (b) the appropriate consequences associated with any such determination. I understand, acknowledge, and agree that the effect of such consequences may delay or prevent me from obtaining a license to practice optometry.
- b. **Investigations.** NBEO will investigate and/or review any suspicion of Improper Conduct as it deems appropriate, in its sole discretion.
 - (i) In the event NBEO undertakes to investigate or otherwise review any Improper Conduct, including any allegation or suspicion thereof, I will cooperate and participate fully and truthfully with NBEO, which cooperation may include, without limitation, participating in remote or in-person interview(s) or other discussion(s), even if such conduct is alleged or suspected to have been undertaken by myself or others. Any refusal to so cooperate and participate shall itself be deemed Improper Conduct for which I may be subject to consequences hereunder.
 - (ii) NBEO may investigate and assess Improper Conduct, regardless of the length of time that has elapsed between the occurrence of the Improper Conduct and NBEO's discovery of such conduct, and regardless of whether my score for the relevant NBEO Examination has been reported or certified and regardless of whether I already may have been licensed to practice optometry based on the reporting of such score.
- c. **Discretion.** NBEO may make its determination of the existence or occurrence of Improper Conduct in its sole discretion, and such determination may be based on any method or evidence deemed appropriate by NBEO, including without limitation statistical evidence, observation, documentation, interviews, recordings, statements, or other evidence.
- d. **Examples of Consequences.** I understand, acknowledge, and agree that NBEO has the right, in its sole discretion, to determine the appropriate consequence for any Improper Conduct or violation of this Agreement or the Ethics Policy, including, without limitation, any one or more of the following:
 - (i) readministration or delayed administration of a NBEO Examination;
 - (ii) cancellation of NBEO Examination scores;
 - (iii) inclusion of notations on NBEO Examination score reports as may be appropriate;
 - (iv) disqualifications from taking future NBEO Examination(s);
 - (v) reports or letters describing the violation and outcome sent to legitimately interested parties including state licensing boards, schools and colleges, boards of optometry, and other entities;
 - (vi) legal action for infringement or misappropriation of NBEO Intellectual Property and other civil claims;
 - (vii) legal action for breaches of confidentiality or security with respect to NBEO's Confidential Information or a NBEO Examination;
 - (viii) delete from scoring any NBEO Examination item that is determined by NBEO (by use of statistical analysis or any other evidence) to have been disclosed or compromised before or during the administration of the NBEO Examination;

- (ix) cancel a NBEO Examination administration if it has been determined that the security of the NBEO Examination is or may be compromised;
 - (x) cancel the NBEO Examination scores of all candidates within a particular candidate population base if NBEO determines that, due to widespread Improper Conduct among that candidate population (for example, widespread exposure to NBEO Examination items), the validity and integrity of the NBEO Examination results for that candidate population are compromised and therefore the scores cannot be relied upon for licensing or certification purposes, even if I have not committed any Improper Conduct myself; or
 - (xi) other consequences as NBEO may determine is appropriate given the particular circumstances.
6. **Indemnity and Release.** I understand, acknowledge, and agree that even though NBEO and its third-party agent(s) administer the NBEO Examination(s), NBEO does not make any decisions regarding licensure, certification, or other credentials, and that such decisions are solely within the province of the state licensing boards, applicable licensing bodies, or other applicable third parties. I further understand and acknowledge that NBEO's sole functions are to develop, administer, and score NBEO Examination(s) and to report those scores to the licensing boards or other relevant third parties, and that the manner in which those scores are used or interpreted by the licensing boards or other bodies is solely within the province of such licensing boards or other bodies. **Accordingly, I hereby waive and release NBEO and its officers, directors, employees, and agents from, and agree to indemnify and hold them harmless from and against, any claims or liabilities arising out of or related to my actions and any licensure or other decision by a third party.**
7. **Limitation of Liability.** IN NO EVENT WILL NBEO BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR NBEO EXAMINATION(S) UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (a) INCREASED EXPENSES, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (b) LOSS OF GOODWILL OR REPUTATION; OR (c) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF NBEO ARISING OUT OF OR RELATED TO THIS AGREEMENT OR NBEO EXAMINATION(S), WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL REGISTRATION FEES PAID TO NBEO UNDER THIS AGREEMENT IN THE YEAR GIVING RISE TO THE CLAIM.
8. **Force Majeure.** In no event will NBEO be liable or responsible to a candidate for any cancellation or delay in administering a NBEO Examination or for any related costs that a candidate may incur, when and to the extent such cancellation or delay is caused by any circumstances beyond NBEO's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, earthquake or explosion, natural disasters or inclement weather, transportation delays or cancellations, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing a restriction or prohibition or any complete or partial government shutdown, or shortage or outage of power or telecommunications or transportation. In the event of any failure or delay caused by a Force Majeure Event, NBEO will give candidates prompt notice of such circumstances and use commercially reasonable and diligent efforts to mitigate the cancellation or delay, provided that NBEO in its sole discretion may cancel or delay

the administration of a NBEO Examination. **For the avoidance of doubt, NBEO reserves the right to discontinue examination services at any time in order to maintain the security and integrity of NBEO's examination program.**

9. **Agreement to Arbitrate.**

- a. NBEO and I agree that the subject matter of this Agreement involves interstate commerce, within the meaning of the Federal Arbitration Act, as NBEO is a testing agency that administers NBEO Examination(s) across state lines.
- b. NBEO and I agree that any dispute, claim, or controversy arising out of or relating in any way to the Agreement (including, without limitation, the content or administration of any NBEO Examination, scoring decisions, cancellation of scores, decisions regarding Improper Conduct, reporting of any information to third parties, the Privacy Policy, the Ethics Policy, and appeals of any matter) shall be determined by binding arbitration, instead of in a court, in accordance with the procedures set forth in this Agreement to Arbitrate. By agreeing to these terms, I waive the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of the Agreement and any other contractual relationship between NBEO and me.
- c. I agree not to commence any arbitration proceeding hereunder until I have exhausted all appeals and other procedures for review available through NBEO's ordinary processes, which may be amended from time to time.
- d. If, after exhausting all appeals and other procedures for review available through NBEO's ordinary processes, I desire to assert a claim against NBEO, I must first send to NBEO, by certified mail, a written notice of my claim ("Notice"). The Notice should be addressed to: The National Board of Examiners in Optometry, Inc., Attn: General Counsel, 7910 Microsoft Way, Suite 250, Charlotte, NC 28273 ("Notice Address"). If NBEO desires to assert a claim against me, it will send, by certified mail, a written Notice to the most recent address it has on file or otherwise in its records for me. A Notice, whether sent by NBEO or me, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If NBEO and I do not reach an agreement to resolve the claim within 30 days after the Demand is received, NBEO or I may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by NBEO or me shall not be disclosed to the arbitrator.
- e. The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. Except as expressly set forth herein, the payment of all filing, administration, and arbitrator fees will be governed by the AAA Rules. Each party shall pay for its own costs and attorneys' fees, if any. All arbitration will take place in Charlotte, North Carolina.
- f. NBEO AND I AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL OR MY CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both NBEO and I agree otherwise, the arbitrator may not consolidate more than one person's claims with my claims and may not otherwise preside over any form of a representative or class proceeding. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim.
- g. If this Agreement to Arbitrate provision is found to be unenforceable, then (a) the entirety of such provision shall be null and void, but the remaining provisions of the Agreement shall remain in full force and effect; and (b) exclusive jurisdiction and venue for any claims will be in state or federal courts located in and for North Carolina. Both NBEO and I agree to waive any and all rights to a jury trial in the event this agreement to arbitrate is found to be unenforceable.

- h. I agree not to disclose to any third party (other than my counsel), and to maintain the strict confidentiality of, any and all matters and claims submitted to arbitration. Failure to abide by the terms of this provision will constitute an irrevocable waiver of any claims I might otherwise have.
10. **Choice of Law**. All disputes will be governed by North Carolina law and federal law to the extent applicable.
11. **Equitable Relief**. I acknowledge that a breach of Section 2, 4, or 9 of this Agreement would cause NBEO irreparable harm for which monetary damages would not be an adequate remedy. In the event of such breach or threatened breach, NBEO is entitled to all available legal and equitable remedies to enforce this Agreement and to protect NBEO's proprietary rights, including, without limitation, injunctive relief. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.
12. **Pledge**.
- a. I hereby represent to NBEO that I have not engaged in any Improper Conduct prior to signing this Agreement, and I agree not to engage in any such Improper Conduct or otherwise violate the Ethics Policy or the terms of this Agreement at any time hereafter.
 - b. I further acknowledge and agree that by sitting for and taking any NBEO Examination, I will be deemed to have reaffirmed and updated my representation that:
 - (i) through the date of such NBEO Examination, I have not engaged in any Improper Conduct;
 - (ii) on the NBEO Examination date, I will not engage in any Improper Conduct; and
 - (iii) beyond the date of the NBEO Examination, I will not engage in any Improper Conduct whatsoever, whether regarding any NBEO Examination materials or otherwise.
 - c. I acknowledge and understand that if I do not agree to all of the terms and conditions of this Agreement and the Ethics Policy as part of my registration for the exam, I will not be permitted to register for or take the exam. I also understand and acknowledge that on the day of the exam, I will be required to reaffirm my agreement to all of the terms and conditions of this Agreement and the Ethics Policy and that if I do not do so, I will not be permitted to take the NBEO Examination and I will forfeit my entire NBEO Examination registration fee.

BY CHECKING THE FOLLOWING BOX AND PLACING MY NAME IN THE BOX BELOW IT, I SIGNIFY MY AGREEMENT TO THE FOLLOWING:

"I acknowledge that I have read all of the terms of the above Agreement and that I understand such terms. I further acknowledge that I have read the entire NBEO Ethics Policy referred to above and that I understand such Ethics Policy. I agree to all of the terms of the above Agreement and Ethics Policy as a condition to my registration for the exam, and I acknowledge that this Agreement by me constitutes a legally binding contract with NBEO."

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Candidate Name

Date

OE Tracker #

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