

APPENDIX C-2 TESTING ON A COMPUTER – Terms, Conditions and Release of Liability for Testing on a Computer for a Remote Examination

By completing an application for admission to Tennessee by remotely-administered Uniform Bar Examination (the “remote UBE”), an applicant agrees to test by computer.

To take a remote UBE, you must register for and download the following Software onto the computer that you will use to take the remote UBE: Exemplify, the secure examination testing software; Exam ID, the photo identification software used to identify the test-taker; and ExamMonitor, the software that records the video and audio of all test sessions. The computer on which you choose to test must have an operating camera and microphone. All applicants will be sent an email from ExamSoft to register for the online, remotely proctored testing. The Software every applicant is required to download and use for remote administration of the UBE limits access to anything other than the word processing function provided by the Software, and the Software facilitates essential administrative functions.

Taking the remote UBE requires that you pay a software license fee directly to ExamSoft at the time of online registration and prior to downloading the Software. The Software registration fee is a NON-REFUNDABLE fee. The license is a one-time test license and is good only for the current administration of the remote UBE, and previously installed versions of the Software will not work for the current remote UBE. Thus, even if you took previously took a bar examination or admissions assessment using the Exemplify software package, you must obtain a new license for the remote UBE.

In order to take the remote UBE, you must:

- Review items A. Terms, Conditions for Use of Computer below, for the UBE in Tennessee;
- Review and agree to the terms in B. Release of Liability, below; and
- Download the required Software during the open registration dates and pay the required fee.

A. Terms and Conditions for Use of Computer for a Remote UBE

By downloading the Software, you certify that you have read, understand, and agree to the following:

- (1) You must pay the Software license fee and install the Software during dates specified for registration and downloading. If you fail to download and pay for the Software during that registration period, you will not be permitted to take the Remote UBE.
- (2) If you withdraw from the remote UBE after downloading the Software, you will not receive a refund of the Software registration and licensing fees.
- (3) You must use a computer that meets the System Requirements. Please see the links at the top of the ExamSoft home page for the TNBar: www.examsoft.com/TNBar or <https://bar.examsoft.com/system-requirements/>.

- (4) You must take and upload two mock exams to test the Software's compatibility with your computer, to make sure that your computer passes the security check, and to familiarize yourself with the Software and keyboard functions.
- (5) You must agree to the use of biometric data collected during the mock exam and used to identify you on exam days.
- (6) You must download the Software and exam files prior to taking the remote UBE on or before the deadline established by the Board. The exam files are separate from the download of the Software and mock exams. You cannot take the remote UBE if you do not download the exam files by the deadline.
- (7) You must use your computer for all portions of the February 2021 examination. You are NOT allowed to use an iPad or other tablet-type device to take the Assessment. Virtual system software, which is a computer file that mimics a computer operating system, is not supported, and cannot be used to take the remote UBE. An internet connection is required to start the exam and to upload answer files but is not required during the testing session.
- (8) Internal/integrated webcams, microphones, keyboards, and mice are recommended, but if you must use an external device in lieu of the integrated device, you must set this up by selecting your device during the first mock exam.
- (9) If you do not own the computer you intend to use, you must verify that there are no restrictions in place for that computer which will prevent you from downloading and running the Software. You must verify that you will have access to the computer after the remote UBE has concluded and until grades are released.
- (10) If you are testing on a laptop computer, you are not permitted to take the remote UBE while powering your laptop only by means of your laptop battery, although the battery must be fully charged on the day of the exam and plugged in throughout the remote UBE. You must have your laptop plugged in to an electrical outlet during the Assessment so that you may power your laptop in the event of a power failure.
- (11) The Software was designed for use on a laptop but you may register the software on a desktop computer. The Software might operate differently on a desktop computer and it is recommended that you have a battery back-up or other plan in place in the event you are testing on a desktop computer and your power fails.
- (12) Neither the Board nor ExamSoft are responsible for power failures. If the power fails during a testing session and you are out of the session more than 7 minutes¹, you will not be given a resume

¹ Exemplify software is designed to close the test session when the power is turned off or otherwise disconnected after seven minutes as part of testing security measures. If you reboot or connect to a power source within 7 minutes, you will be able to continue testing.

code to log back in to that session. Your answer files will upload automatically when power resumes and you reconnect to the internet.

(13) You will be permitted to log in to the Software during a time frame before and after the posted start time and your time in the testing session will begin after you enter the password to open the test session. The time frame and methods for accessing passwords will be posted to the Tennessee ExamSoft home page at www.examsoft.com/TNBar.

(14) Most technical problems that occur during an exam (e.g., a screen freeze, etc.) can be resolved easily and quickly. If your computer freezes or your camera stops working, for example, you can reboot your computer by turning off your device (press and hold power button), waiting 5 seconds and then restarting your computer. Once ExamSoft restarts, it will return to within 59 seconds of where you left off in the exam. Once you are back in the test, announce to the camera that your computer froze and you had to reboot, then continue your exam. If the reboot does not fix the problem, retrieve your phone and call ExamSoft for technical support. Once you are back in the testing program, announce that you have been on the phone with ExamSoft support, and put your phone out of reach. You will be required to close your exam if you have been out of your exam for more than 7 minutes².

(15) You are required to be familiar with the functioning of your computer, including the process of uploading a file via the internet. You will need access to an internet connection before the exam for ExamID and after the exam in order to upload answer files, and audio and video files.

(16) The deadline for uploading answer files and video/audio files will be **9:00 p.m. CT on the day following the last session of the remote UBE**.

(17) You understand that for any answer file not uploaded by the upload deadline, you will receive a score of zero on the missing answer(s). If an audio or video file is not uploaded, your score on that session will be disqualified and you may have to appear before the Board to explain why the audio or video files were not uploaded.

(18) You must follow the Exam Day Instructions for the remote UBE and type within the designated answer space. All editing of your answers must be done on your computer screen. You are responsible for ensuring that your answers correspond with the applicable questions in the text of the remote UBE. The TBLE will not search for your answers or make changes to incorrectly formatted or numbered answers resulting from your failure to follow the Exam Day Instructions (examples of failures include, without limitation, typing an answer in the wrong space or deleting, adding, editing, or renumbering the preloaded dividers between questions).

(19) Your answers will be uploaded to a website, printed, and provided to the TBLE for grading. Your uploaded MPT and MEE answers will be printed out after the remote UBE and will be given to the grader assigned to grade the question indicated on the cover sheet of the answer. If your

² A typical reboot or restart of a laptop or desktop computer takes a few seconds to a few minutes, but rarely more than 7 minutes. . See fn 1, above, for further explanation.

answer does not match the question or is blank, you will receive a zero. You acknowledge that you will not receive a printed copy of your essay answers

(20) For the MBE, you will be given the option to use a “cross out” feature to eliminate answer choices. However, eliminating all but one answer does not constitute an answer to the question. If you opt to use the “cross out” function to eliminate multiple choice options but do not select an answer in the manner required to record your response, you will not have an answer to that question recorded for grading.

(21) If testing on a laptop computer, you must remove your laptop from any computer bag, case, backpack, sleeve, hard case cover, or other carrying case (collectively, “laptop case”) prior to beginning the examination, and you must leave the laptop case outside of your testing area. Laptop cases may not be accessed during any testing session.

B. Release of Liability

By downloading the Software, Applicant acknowledges that the use of Applicant’s computer is subject to the following terms, conditions, and warnings, which Applicant accepts:

(1) Applicant certifies that Applicant has carefully read the Terms and Conditions for Use of Computer (“Terms and Conditions”) above and that Applicant fully understands and accepts all of the Terms and Conditions.

(2) Applicant is responsible for supplying the computer to be used for the remote UBE. Applicant certifies that Applicant will make the computer available to the TBLE staff upon request before, during, and after the administration of the bar examination. Further, Applicant authorizes the TBLE staff to inspect the entire contents of the computer upon request before, during, or after the Assessment.

(3) Applicant certifies that the computer Applicant will use for the Assessment meets the minimum requirements and the specifications set forth on the website at www.examssoft.com/TNBar or <https://bar.examssoft.com/system-requirements/>, and understands that in addition to the system requirements for Exemplify, there are additional requirements for ExamID and ExamMonitor that must be met. Further, Applicant understands that for the Software to function most effectively the minimum recommended RAM and available disc space should be available on the computer.

(4) Applicant agrees to install the testing Software (“Software”) on the computer. Applicant understands and accepts that the TBLE does not warrant or guarantee that the Software will function properly on Applicant’s computer or will not affect other content or functions of the computer.

(5) Applicant understands and accepts that the authorization to use the computer during the examination entails a Software license fee that Applicant will pay to the Software provider at the time and in the manner established by that company. Applicant acknowledges and accepts that said fee is nonrefundable and that it is separate from and in addition to the bar examination application fee required by the TBLE.

- (6) Applicant understands that anti-virus software that is not on the list of acceptable [anti-virus programs](#) must be disabled during the examination for the Software to run. Further, Applicant assumes the obligation to keep the Software installed on the provided computer until after the results of the remote UBE have been released.
- (7) Applicant assumes the obligation to ensure that the computer to be used on the days of the remote UBE is in good working order.
- (8) Applicant understands that Applicant will be required to consent to the collection and use of biometric data by ExamSoft as part of the operation of the ExamID process.
- (9) Applicant warrants that Applicant has sufficient experience and practice using the computer to know how to operate it during the remote UBE. Applicant agrees to obtain sufficient experience and practice with the Software before taking the remote UBE, including taking the two mock exams.
- (10) Applicant understands that the TBLE will not search for answers or make changes to incorrectly formatted or numbered MPT or MEE answers resulting from Applicant's failure to follow the computer testing instructions, including typing an answer in the wrong space or deleting, adding, editing, or renumbering the preloaded dividers. The answer, as printed after the examination, will be given to the grader assigned to grade the question indicated on the cover sheet of the answer. If the answer does not match the question or is blank, Applicant will receive a zero. Further, Applicant understands that the TBLE will not search for answers resulting from use of the cross out feature in the MBE but failing to select and record an answer.
- (11) Applicant agrees to use the Software according to the instructions and under the terms and conditions imposed by the Software provider and in accordance with the instructions provided in the Exam Day Instructions.
- (12) Applicant acknowledges that the use of a computer carries with it certain technological risks, including but not limited to computer or Software malfunction or power failure or loss of Internet connectivity. Applicant accepts that by using a computer to answer the exam, Applicant is assuming all these risks.** Applicant understands that Applicant will receive no additional time to complete the examination due to any unforeseen complications, such as power failure, lost data, and/or other technical problems. In the event there is a malfunction with the computer or software, Applicant understands that Applicant will not be able to continue that exam module and Applicant's answers up to the point of the malfunction will be graded. If Applicant is able to begin the next module, Applicant can continue testing for the remainder of the exam. If Applicant is unable to begin the other modules, Applicant understands that Applicant will not be able to complete the exam.
- (13) Applicant understands that Applicant's lack of skill or preparedness, or technical problems resulting from computer or Software malfunction, or Internet connectivity does not give rise to an exception or extension of time during which Applicant can log in to a test session.

(14) Applicant accepts that if there is a problem of any kind that would make it difficult or impossible to use a computer to take or to continue taking the remote UBE, the Applicant will not be permitted to complete the Remote UBE and will have to withdraw from the examination.

(15) Should Applicant experience any difficulty or problem during the examination or with the upload of answer, video, or audio files, Applicant is required to immediately notify the TBLE and ExamSoft and to assist them in every way in an attempt to retrieve Applicant's answers, including placing the computer used at their disposal. Applicant understands and accepts that there is no guarantee that such answers will be totally or partially recovered and understands and accepts that in the event that any or all of Applicant's answers are lost or irretrievable, only those portions retrieved, if any, will be graded. Applicant understands and accepts that there is a risk that answers may be totally or partially lost and/or irretrievable due to problems related to the use of the computer.

(16) Applicant understands and accepts that should Applicant experience any difficulties and/or problems related to the use of the computer, Applicant is not entitled to receive additional time or any other accommodation or consideration for that reason unless the issue is, as determined by the TBLE, system-wide and affects a group of or all test takers.

(17) In case Applicant does not achieve a score sufficient for admission to Tennessee, Applicant understands and accepts that Applicant is not entitled to request or be granted any reconsideration or modification of results due to problems related to the use of the computer to answer the examination and that the only recourse available for a score that does not meet the minimum required score in Tennessee is re-examination.

(18) Applicant will not reboot the computer during testing, absent a computer problem, such as a screen freeze or issue with the camera. Applicant understands and accepts that if Applicant reboots the computer without documenting a technical issue, Applicant's answers to the questions for the session in which Applicant rebooted the computer will not be graded and, consequently, will be treated as blank answers.

(19) Applicant understands that, in the event of a power failure or computer reboot related to a technical issue, Applicant must re-enter the exam within 7 minutes or that session of the exam will close. Applicant's answers will upload immediately upon connection to the internet.

(20) Applicant understands and accepts that the Software provider and its representatives do not represent the TBLE in matters related to TBLE procedures and policies.

(21) Applicant understands that passwords will be available during a time frame prior to and after the posted start time of each session, and that once Applicant has the password for the test session, Applicant may begin the remote UBE session. Applicant understands that failure to begin the remote UBE within 15 minutes of the start time will lock Applicant out of that session of the remote UBE and Applicant will receive zeros on all questions for that test session.

(22) Applicant understands and accepts that after Applicant finishes the exam, Applicant will be required to connect to the internet so that Applicant's answer, video, and audio files can upload

through the Exemplify software by the deadline of 9:00 p.m. CT, February 25, 2021. **Applicant understands and accepts that if Applicant fails to upload answers by the deadline, the answers will not be graded, and if video and audio files are not uploaded, Applicant's answers for the corresponding session will be disqualified and Applicant may be required to appear before the Board to explain the failure to upload.**

(23) Applicant understands and accepts that Applicant is not authorized to make any copy of the questions, answers, videos, or audio recordings, or to use any data storage device to record questions or answers. If Applicant is found to have copied or stored questions or answers, none of Applicant's answers will be graded and, if a violation is discovered during testing, Applicant will not be allowed to continue the examination and may be required to appear before the Board.

(24) Applicant understands and accepts that, once Applicant logs into the testing software, the Applicant's accessing of the internet and/or opening or examining any program, file, or document other than the Software is a violation of testing protocol and could result in the Applicant being required to appear before the Board.

(25) Additionally, upon suspicion that Applicant has examined any unauthorized material after logging into the Software, Applicant may be required to provide the Applicant's computer to the TBLE for analysis. Applicant understands and accepts that the computer will not be returned until after the TBLE has examined it. Applicant acknowledges and agrees that the TBLE and its agents may access and review any and all content of the computer.

(26) If Applicant is found to have examined any unauthorized material during the exam, Applicant's examination will not be graded and Applicant may have to appear before the Board.

(27) Applicant understands and accepts that the Tennessee Supreme Court and the TBLE, its members, representatives, agents, proctors, employees, and staff, in their official and personal capacities, assume no liability for the difficulties, mishaps and/or problems that may arise from the use of a computer for the Remote UBE.

(28) Applicant hereby releases, discharges, and exonerates the Tennessee Supreme Court and the TBLE, its members, representatives, agents, proctors, employees and staff, in their official and personal capacity, from any and all liabilities of every nature and kind (whether in contract, tort, or otherwise) arising from Applicant's use of a computer to take the bar examination, including, without being limited to, any damage caused by the installation and/or use of the Software;

(29) Applicant understands and accepts that Applicant has no right to sue and/or file a claim and that Applicant will not sue or file any claim against the Tennessee Supreme Court, the TBLE, its members, representatives, agents, proctors, employees and staff, in their official and personal capacity, for any difficulty, problem or event arising from Applicant's use of a computer during the remote UBE, and that download of the Software constitutes acceptance of the terms and sufficient grounds for summarily dismissing with prejudice any claim that Applicant may file in connection with Applicant's decision to use a computer to take the bar exam; and

(30) Applicant agrees to indemnify the Tennessee Supreme Court, the TBLE, its members, representatives, agents, proctors, employees and staff for the costs, expenses, and attorney's fees, and for the damage resulting from any claim Applicant may file against them in connection with Applicant's decision to take the Remote UBE.