

## TERMS OF USE AND ACCESS AGREEMENT

This Access Agreement (“Agreement”) is between Western Legal Press, Inc. dba Bar in a Flash and BrainFlips (known collectively as “Providers”), and Licensee for access to Bar in a Flash’s electronic flashcards.

You may print this Agreement for Your reference, and a link to this Agreement is provided on the Bar in a Flash website ([www.barinaflash.com](http://www.barinaflash.com)) so that You may view this Agreement at any time.

1. Definitions. As used in this Agreement, when capitalized the following words shall have the meanings ascribed below:

1.1. “**Content**” means all indexes, scans, text, outlines, headings, charts, graphics, photographs, animations, scripts, icons, audio, video, data and all other non-Software components of the Product, whether created by the Providers or licensed from third parties.

1.2. “**Licensee**” or “**You**” or “**Your**” means You, the user, who agrees to the terms of this Agreement by clicking on the “I Agree” icon.

1.3. “**Product**” means Content and Software, and any portion thereof, that are accessible through the Internet at [www.barinaflash.com](http://www.barinaflash.com).

1.4. “**Software**” means all computer code (both source and object), applets, interfaces, commands, syntax, and expressions of ideas that operate, cause, create, direct, manipulate, access, or otherwise affect the Content in the Product, whether created by the Providers or licensed from third parties.

1.5. “**Use**” means accessing, displaying, or performing the Product, or reproducing the Product in limited portions as authorized under this Agreement.

1.6. “**Website**” means [www.barinaflash.com](http://www.barinaflash.com), and all subsequent Web pages made available by any server of the Providers.

2. Rights to Use the Service.

2.1 Product and Software. The Product comprises original works of authorship that are both proprietary and intellectual properties of the Providers or its suppliers and are protected by the terms of this Agreement as well as domestic and foreign contractual and intellectual property laws, including, but not limited to, copyright, trademark, and patent laws. To the extent that You download Software from the Providers, such Software is deemed part of the Product.

2.2 Rights granted to Licensee. The Providers grant to You a non-exclusive, non-transferable, and revocable license to: (a) Use the Product as provided herein, until Your subscription is terminated as provided in this Agreement; (b) Access, load, store, and operate the Product with browser Software; (c) Access the Product, including the Content, via the Internet;

and (d) Display or print portions of the Product on an ad hoc basis for Your own personal, academic, non-commercial use, subject to the limitations in this Agreement.

2.3 Prohibited Actions. Notwithstanding any Use permitted above, You shall **NOT**, without the express prior written consent of the Providers: (a) Decompile, reverse engineer, disassemble, or create derivative works from the Product; (b) Remove or obscure any proprietary notices, including, but not limited to, any and all copyright, trademark, and patent designations contained in the Product or on the Website; (c) Upload, post, e-mail, transmit, publish, re-publish, distribute, create abstracts from, display, or otherwise make the Product available to any third parties including posting any Content to newsgroups, mail lists, or electronic bulletin boards; (d) Use the Product for any commercial or financial, including, but not limited to, advertising, exploitation, rental, lease, license, sale, or resale of the Product; (e) Assign, rent, lend, lease, sell, sublicense, transfer, export from the United States, copy, reproduce, modify, adapt, translate, reverse engineer, decompile, disassemble, extract components from, or create derivative works of the Product; (f) Remove, modify, hide, or otherwise make unreadable or non-viewable any notice, legend, advice, watermark, or other designation contained on the Product, component thereof, or output there from.; (g) Knowingly or intentionally allow transmission into the Product of any harmful code which shall include but not be limited to any virus, worm, Trojan horse, spoof, time bomb, trap door or other code that may halt, modify or otherwise interfere with the operation or use of the Product; (h) Use any robot, spider, other automatic device, or manual process to monitor or copy any Content in the Product.

2.4 Further Prohibited Actions. You shall not interrupt, or attempt to interrupt, the operation of the Website in any way. The Website includes technological protection measures that effectively control access, reproduction, or distribution of the Product. Any attempt to tamper or dismantle these protections is a breach of this Agreement and may be a violation of the Digital Millennium Copyright Act of 1998, which violation may subject the violator to civil and criminal penalties.

2.5 Log Off Procedures. The Providers reserve the right to log off subscribers who are inactive for an extended period of time ..

2.6 Fees or Charges by Internet Service Providers. You are responsible for any fees or charges made by an Internet service provider or other third party service incurred by You to access the Product.

### 3. Modifications.

3.1 Modifications to the Agreement. The Providers reserve the right to modify this Agreement and any policies affecting the Product at any time. Any such modification shall be effective immediately upon posting to the Website or distribution via electronic mail or conventional mail. Your continued access to the Product after any such modification to this Agreement shall be conclusively deemed an acceptance of all such modifications, regardless whether You have notice of such modifications. Your only right with respect to any dissatisfaction with any modifications made pursuant to this provision, or any policies or practices of the Providers in providing the Product, including, but not limited to (a) any change

in the Content or (b) any change in the amount or type of fees associated with the Product, is to terminate Your subscription in accordance with the provisions of this Agreement.

3.2 Modifications to the Website. The Providers reserve the right to modify, suspend, or discontinue the Website or any portion thereof at any time, including the availability of any area of the Website, including, but not limited to, the availability of the Product. The Providers may also impose limits on certain features and services or restrict Your access to parts or the entire Website without notice or liability. Your sole recourse in such event shall be to terminate Your subscription as provided in this Agreement.

4. Privacy Policy. The Providers' Privacy Policy is available on the Website. Any changes, modifications, or updates to the Providers' Privacy Policy will be posted on the Website.

5. Your Representations and Warranties. You represent, warrant, and covenant that: (a) You will use the Product in accordance with the terms of this Agreement; (b) The information that You have provided to the Providers is true and accurate; (c) You shall at all times comply with all applicable laws, rules, and regulations with respect to Your Use of the Product; (d) You shall not use the Product to infringe, misappropriate, or violate the rights of the Providers or third parties; (e) You shall not knowingly or otherwise introduce to or through the Product any viruses or other items of a destructive nature; (f) You shall comply at all times with this Agreement, including any modifications to this Agreement in accordance with this Agreement.

6. Disclaimer of Warranties. YOU AGREE THAT YOUR ACCESS TO AND USE OF THE PRODUCT AND THE CONTENT AVAILABLE THROUGH THE PRODUCT IS ON AN "AS IS," "AS AVAILABLE" BASIS, AND THE PROVIDERS SPECIFICALLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY STATUTORY WARRANTY OF NON-INFRINGEMENT. YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. ANY INFORMATION, CONTENT OR OTHER DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS USED AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES OR LOSS THAT RESULTS FROM YOUR USE OF THE SERVICE. ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE PROVIDERS OR THROUGH OR FROM THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. THE PRODUCT IS DISTRIBUTED SUBJECT TO YOUR UNDERSTANDING THAT THE PROVIDERS DO NOT RENDER ANY LEGAL, ACCOUNTING, OR OTHER PROFESSIONAL ADVICE OR SERVICES. ATTORNEYS OR OTHER LEGAL PROFESSIONALS USING THE PRODUCT IN CONNECTION WITH CLIENT OR PERSONAL LEGAL MATTERS SHOULD ALSO RESEARCH ALL APPLICABLE STATUTES, RULES, REGULATIONS, COURT DECISIONS, AND OTHER ORIGINAL SOURCES OF AUTHORITY.

7. Limitations on Liability. USE OF THE PRODUCT IS AT YOUR SOLE RISK. YOU ASSUME FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM YOUR USE

OF THE PRODUCT. THE PROVIDERS AND ITS AFFILIATES, AGENTS, LICENSORS, AND ANY TELECOMMUNICATIONS OR NETWORK SERVICES FOR THE PROVIDERS SHALL NOT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE; DAMAGES FOR LOSS OF PROFITS, GOODWILL, DATA, OR OTHER INTANGIBLE LOSSES OR SIMILAR DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR FOR ANY ATTORNEY FEES. UNDER NO CIRCUMSTANCES WILL THE PROVIDERS' TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO YOUR USE OF THE SERVICE (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE MONETARY VALUE OF THE SUBSCRIPTION PAID BY YOU FOR THE PRODUCT. THIS LIMITATION OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

8. Registration and Security.

8.1 User Name and Password. As part of the registration process, You shall select a User ID and a password. You shall provide the Providers with certain registration information, all of which must be accurate and updated as appropriate. You shall not select or use the User ID and password of another person with the intent to impersonate that person, or use a User ID and password in which another person has rights, without such person's authorization and its being on the other person's behalf. Failure to comply with the foregoing shall constitute a breach of this Agreement, which may result in immediate termination of Your subscription.

8.2 Confidentiality of Your password. You shall be responsible for maintaining the confidentiality of Your password and any relevant access codes provided by the Providers.

8.3 Unauthorized Use. You shall immediately notify the Providers of any known or suspected unauthorized use(s) of Your subscription, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of Your password or access code by notifying the Providers at (888) 957-2423. You are responsible for all usage or activity with Your subscription. Only You may access the Product using Your User ID. You agree you will not provide your User ID and/or Password to any third party under any circumstances. You are also responsible for any and all unauthorized use of Your subscription. Any fraudulent, abusive, or otherwise illegal activity will be grounds for termination of Your subscription, at the Providers' sole discretion, and the Providers may refer You to appropriate law enforcement agencies.

9. Term and Termination. Your right to access the Product is for one hundred and eighty (180) days from the date that You purchase the subscription unless the Providers terminates it or You notify the Providers of Your decision to terminate Your subscription. Your subscription term may be extended if You fail to pass the bar exam immediately succeeding the date You purchased the subscription. The decision of whether to extend Your subscription term lies solely in the discretion of the Providers. The Providers reserve the right to terminate Your access to the

Product without notice if the Providers, in their sole discretion, believe that You have violated or acted inconsistently with this Agreement.

10. Providers' Trademarks. You shall not use any trademarks, service marks, logos, or other identifiers of the Providers, or properties owned, controlled, licensed, or otherwise proprietary to the Providers, without the prior written consent of the Providers. Any such permitted use of any trademarks, service marks, logos, or other identifiers shall inure to the benefit of the Providers.

11. Export Control Laws. Software available on the Website or as part of the Product may contain technology that is subject to export controls. You agree not to transfer or export such Software from the United States, or to provide such Software to any foreign person or entity in the United States.

12. Assignment. You shall not assign Your rights, duties, or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, operation of law, or otherwise, without the prior written consent of the Providers. Any attempt to do so shall be deemed null and void, and will result in termination of Your subscription rights.

13. Severability. If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Agreement, and all provisions not affected by such invalidity shall remain in full force and effect.

14. Waiver. The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power, or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

15. Notice. Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (a) if by hand delivery, upon receipt thereof; (b) if by certified mail, postage prepaid, return receipt requested, upon receipt by the sender of the return receipt; (c) if by facsimile transmission, upon electronic confirmation thereof; or (d) if by next-day delivery service, upon such delivery.

16. Force Majeure. If the performance of any part of this Agreement by the parties is prevented, hindered, delayed, or otherwise made impracticable by reason of any flood, riot, terrorism, earthquake, fire, judicial or governmental action, labor disputes, act of God, or any other causes beyond the control of either party, that party shall be excused from its performance to the extent that it is prevented, hindered, or delayed by such causes, provided, however, that if such period of force majeure lasts more than thirty (30) days, then the other party hereto may terminate this Agreement.

17. Choice of Law. This Agreement shall be governed by the laws of the State of California without regard to the principles of conflicts of laws or provisions regarding such.

18. Jurisdiction and Venue. Any controversies or claims arising out of or relating in any way to this Agreement or a breach thereof, shall be adjudicated in the courts of the State of California. If any legal action is brought by either party regarding this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief available under applicable law, reasonable attorney fees and expenses.

19. Headings. The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter.