

CERTIPOINT AUTHORIZED TEST CENTER™ AGREEMENT

This CATC™ AGREEMENT (the “Agreement”), is entered into as of _____ (the “Effective Date”), by and between Certiport®, a business of NCS Pearson, Inc., a corporation organized under the laws of the State of Minnesota, United States of America, having its principal offices at 5601 Green Valley Drive, Bloomington, Minnesota, 55437 (“Certiport”), and _____ [insert name of contracting party] a _____ [insert type of company, e.g., LLC, Corporation, etc.] organized under the laws of _____ [insert name of state, province, country], having its principal offices at _____ [insert primary business address], (“Company” or “Licensee”) recognized hereinafter as a “CATC™.”

WHEREAS, Certiport is an independent provider of educational, assessment and certification programs and related products and services; and

WHEREAS, Company owns and operates a testing center with facilities that meet Certiport’s testing center technical requirements, as well as the CATC™ Guidelines, Policies, and Procedures described in Exhibit A and Company desires to have its facility recognized and appointed by Certiport as a “CATC™” in the Territory and/or Sector(s) as described in Exhibit B;

NOW, THEREFORE, the parties agree as follows:

1. **Definitions.** The following terms shall have the following meanings for the purpose of this Agreement:
 - 1.1. “Assessment Exam” means any test that is intended to measure the skill, knowledge, intelligence, capacity or aptitude of the Examinee with respect to the subject matter thereof.
 - 1.2. “Certification Exam” means a proctored certification examination intended, if passed, to attest to the competence of the Examinee with respect to the subject matter thereof.
 - 1.3. “CATC™” means Certiport Authorized Test Center, a party authorized pursuant to a license granted by Certiport to act as a testing center under the name “CATC™” to administer the Certiport Pathway Solutions and Methods.
 - 1.4. “CERTIPOINT AUTHORIZED TEST CENTER AGREEMENT” means the agreement between Certiport and a CATC™ authorizing the CATC™ to administer and deliver Assessment Exams and Certification Exams using the “CATC™” name.
 - 1.5. “CATC™ Policies, Guidelines and Procedures” or “the Guidelines” are minimum standards that Certiport requires all CATC™s meet and which are designed to ensure that Examinees are afforded the best possible training and examination environment, as further described in Exhibit A.
 - 1.6. “Certiport Exam Proctor” or “Proctor” means an individual who shall be trained by the CATC™ to be responsible for ensuring that Exams are conducted according to Certiport’s standards.
 - 1.7. “Certiport Authorized Partner (CAP)” or “CAP” means a company that meets the criteria for regional or sector-level in-country sales, marketing, training and support of Certiport Pathway Solutions & Methods to customers “CAP Solution Provider” or “CAP Solution”

Provider” means a company that meets the criteria for country-level sales, marketing, training and support of Certiport Pathway Solutions & Methods to Certiport Authorized Partner (CAP)s.

- 1.8. “Certiport Pathway Solutions & Methods” or “Pathway Solutions & Methods” means the Certiport Products and Services as well as the training materials, systems training, operation and installation methodologies related to the Programs and/or Certiport Products and Services.
- 1.9. “Certiport Products and Services” or “Products or Services” means the Training Materials, the Certification Exams, the Assessment Exams, the Practice Tests, Solution Pak(s) and related products and services developed or distributed by Certiport from time to time.
- 1.10. “Certiport Technology” is defined as, without limitation, all intellectual property including patents, trademarks, media, software, business plans or methods, customer lists, Training Materials and Certiport Products and Services developed and owned or licensed by Certiport. As between the parties, Certiport has and shall retain exclusive ownership of all rights, title and interest in and to Certiport Technology. To the extent that Company may be deemed to have any ownership interest in or to the Certiport Technology, Company hereby assigns and transfers to Certiport all such rights, title and interest that Company may have in such materials. Company acknowledges and agrees that it does not have any right, title or interest, and will not claim any, in or to the Certiport Technology or any derivative work based thereon, and that this Agreement does not create or vest in it any right, title or interest in the Certiport Technology, or any derivative work based thereon. Certiport expressly reserves all rights in the Certiport Technology not expressly granted to Company in this Agreement.
- 1.11. “CATC™ Requirements” means minimum technical standards required by Certiport to be possessed by CATC™s in order to ensure an appropriate and effective education and testing environment for Examinees. Certiport reserves the right to change the CATC™ Requirements, set forth at (<http://www.certiport.com/portal/common/pagelibrary/techRequirements.htm>) from time from time and shall notify Company of said changes.
- 1.12. “Dispute” has the meaning set forth in Section 11.1.
- 1.13. “Effective Date” means the date set forth in the first paragraph above.
- 1.14. “Examinee” means the end user of the Certiport Pathway Solutions & Methods.
- 1.15. “Exams” means Certification Exam(s) and/or Assessment Exam(s).
- 1.16. “Exam Expiration Date” means the last date on which an Exam within a particular Program may be administered by a CATC™.
- 1.17. “Material Breach” means a breach of a significant term or terms in this Agreement.
- 1.18. “Practice Tests” means Certiport-owned or licensed products that prepare Examinees for Certification Exams by simulating the look, feel, timing and scoring of Certification Exams.
- 1.19. “Programs” means the Certification Exam and/or Assessment Exam product groupings that Company has elected to participate in through Certiport’s internet application process. Such Program(s) is/are described in the Program Addendum(s), which is/are attached hereto as Exhibit A and incorporated herein by reference.

- 1.20. “Programs Sponsors” means any company or organization which Certiport represents, including Certiport itself, for the purposes of developing and/or selling Certiport Products and Services.
 - 1.21. “Sector” means the market sectors described in Exhibit B attached thereto and hereby incorporated by this reference.
 - 1.22. “Software” means all software provided by Certiport to the CAP Solution Provider or to CATC™s™ in the Territory, including without limitation, Certiport iQSystem™, CPS, and other software related to the delivery and administration of Certiport Products and Services.
 - 1.23. “Solution Pak(s)” means a combination of Certiport Products and Services combined together as one product to assist in selling a complete certification solution.
 - 1.24. “Support Staff” has the meaning set forth in Section 5.1.
 - 1.25. “Territory” means the geographic area described in Exhibit B attached hereto and hereby incorporated by this reference.
 - 1.26. “Training Materials” means any materials in electronic or paper format used for either teaching Examinees the skills covered in Certiport Products and Services, or for training CATC™ employees how to effectively use and incorporate Certiport Pathway Solutions & Methods.
2. **License.** Certiport hereby grants to Company a limited, non-exclusive, non-transferable, non-assignable limited license and right to hold itself out to the general public as a CATC™, subject to the terms and conditions of this Agreement. Company agrees to, in all instances, abide by the terms of Certiport’s logo license agreement attached hereto as Exhibit C, and in the event that certain Certiport Program Sponsors require Company to do so, Company agrees to execute and abide by that Company’s logo license agreement.
 3. **No Authority of Company.** This Agreement does not constitute and shall not be construed as constituting a partnership, franchise, agency or joint venture between Company and Certiport. No party shall have any right to obligate or bind the other party in any manner whatsoever. All personnel of Company, including full and part-time employees and independent contractors, are and shall be considered employees or agents of Company, as applicable. Company assumes sole and full responsibility for their acts and omissions as such acts and omissions may impact Certiport. Company shall at all times during the term of this Agreement maintain such supervision, direction and control over its personnel and shall be solely responsible for the payment to its personnel of the salaries and other compensation and matters relating thereto (including, if applicable, the withholding and/or payment of all Federal, State and local income, unemployment, social security and other payroll taxes), workers’ compensation, disability benefits and all other additional legal requirements of like nature applicable to such personnel.
 4. **Duties of Company.**
 - 4.1. **General Business Conduct.** Company agrees to conduct business in a manner that reflects favorably at all times on the Certiport Products and Services and the reputation of Certiport and, in connection therewith, not to engage in deceptive, misleading, illegal, or unethical conduct that is or might be detrimental to Certiport or to the Products or

Services. Should Company fail to abide by the Guidelines, and/or engage in conduct that reflects unfavorably upon and threatens the name, goodwill, reputation or image of Certiport or any of its affiliates, such conduct shall constitute a Material Breach and shall entitle Certiport to terminate this Agreement pursuant to Section 10.2.1 below.

- 4.2. Territory and Sector Restrictions. Company understands and agrees that it shall serve only the Territory and Sectors(s) referenced in Exhibit B and no other without the prior written consent of Certiport. Breach of this provision shall entitle Certiport to terminate this Agreement pursuant to Section 10.2.1 below.
- 4.3. Compliance With CATC™ Policies. Company understands and agrees that it must meet the standards set forth in “CATC™ Policies, Guidelines and Procedures” attached hereto as Exhibit A and incorporated herein by reference. Company understands that the Guidelines are designed by Certiport to ensure an appropriate environment for delivery of the Certiport Products and Services and to protect the reputation of Certiport, and Company’s agreement to obey the Guidelines is a material inducement to Certiport to enter into this Agreement with Company. Company understands and agrees that Certiport has the right, in its sole discretion, to amend the Guidelines from time to time and shall inform Company of any changes via email. Company’s failure to comply with the Guidelines shall entitle Certiport to terminate this Agreement pursuant to Section 10.2.1 below.
- 4.4. Initial Purchase Requirement. Within thirty (30) days after the Effective Date of this Agreement, Company must purchase the minimum number Exams or Solution Paks of Programs specified in Exhibit B, the terms of which are incorporated herein by reference. Purchases may be made from Certiport, a Certiport Authorized Partner (CAP) or a CAP Solution Provider. Failure of Company to satisfy this initial purchase requirement within thirty (30) days from execution shall result in a termination by Certiport of this Agreement but shall not relieve Company of its obligation to pay Certiport for all Exams purchased prior to termination.
- 4.5. Subsequent Purchase(s). After satisfying its initial purchase requirement, Company may purchase additional Certiport Products and Services directly from Certiport, from a Certiport Authorized Partner (CAP) or from a CAP Solution Provider. Once purchased, Company is not entitled to a refund of the purchase price of any Exam.
- 4.6. Order Procedure, Price, Payment. Company shall purchase Certiport Products and Services only from Certiport via the Certiport web portal, or if the Certiport web portal is not accessible, by telephone or by email or from designated Certiport Authorized Partner (CAP)s or from CAP Solution Providers recognized by Certiport as operating within the territory and/or sector(s) in which Company operates.
 - 4.6.1. Price. The price for all Certiport Products and Services shall be as stated on the Certiport web portal. Certiport may modify, in its sole discretion, pricing of Certiport Products and Services upon thirty (30) days’ advance notice to Company.
 - 4.6.2. Payment Terms. When ordering from Certiport directly, Company shall pay for Certiport Products and Services by authorizing Certiport to charge a credit card of

Company, or by wire transfer of funds to a bank selected by Certiport. Company shall pay the purchase price for Certiport Products and Services in U.S. Dollars. Company shall pay for all Certiport Products and Services upon purchase, unless Certiport, in its sole discretion, has granted other payment terms to Company. If Company fails to pay said amounts when due, Company shall pay to Certiport a late fee equal to two per cent (2%) per month of the unpaid amount. Certiport may deny Company access to Certiport Products and Services for which payment is past due whether purchased from Certiport or a Certiport Authorized Partner (CAP).

- 4.7. Identification. In all materials generated and published by the Company to market Certiport Products and Services, and in all physical locations occupied by the Company, Company agrees to identify itself as a “CATC™” with clarity and in accordance with the reasonable instructions of Certiport, and abiding by all logo usage provisions of this Agreement, as amended by Exhibit C hereto. Locations and publications as referenced herein include but are not limited to: commercial listings, directories, stationery, collateral, websites, business cards, advertisements, and office facilities.
- 4.8. Organizational Summary. Within the first two weeks of each calendar quarter, and immediately upon responsible party contact changes, Company shall update any organizational and contact details that may have changed and which include, but are not limited to: corporate name, corporate owners, address, main telephone number, web site URL, iQcenter administrator, IT manager, marketing manager, sales manager, Certified Professional Instructor, or Authorized Instructor, and any additional relevant employee names and their responsibilities as appropriate. (The complete set of required organizational data is found on the Certiport web site under the “Contacts” sub-tab found in the “Org Profile” tab while logged in using the Organization Administrator role.) Furthermore, Company agrees to add the contact details of new full-time employees who will be organizational contact points to Company’s organizational details on the Certiport web site upon their hire.
5. **Promotional Material; Advertising**. Company agrees to use, in advertising and promoting the Certiport Products and Services, only those materials approved by Certiport in compliance with Program Sponsor marketing and logo usage guidelines set forth in Exhibit C to the Agreement, and to use the same in accordance with instructions from Certiport. Failure to abide by these terms will constitute a Material Breach and result in termination as set forth in Section 10.2.1.
 - 5.1. Support Functions. Company agrees to ensure that personnel having appropriate skills (“Support Staff”) are provided to fulfill Company’s duties hereunder. Support Staff may include employees of Company and/or independent contractors of Company. In particular:
 - 5.1.1. Certiport Systems Administrator. Company agrees, when the resource to train individuals in the Company’s primary local language is made available by Certiport, to have at least one Certiport System Administrator trained and certified in the primary local language of the Territory in which the CATC™ is located. The

Certiport System Administrator certification can be obtained by passing the Certiport System Administrator Exam found at www.certiport.com.

- 5.1.2. **Certiport Exam Proctor.** Company agrees, when the resource to train individuals in the Company's primary local language is made available by Certiport, to have at least one Certiport Exam Proctor trained and certified in the primary local language of the Territory in which the CATC™ is located. The Certiport Exam Proctor certification can be obtained by passing the Certiport Proctor Exam found at www.certiport.com.
- 5.1.3. **CATC™ Support.** Company agrees to maintain Support Staff that is competent to answer and to use its best efforts to answer, all inquiries from Examinees regarding the Software and/or Certiport Products and Services.
- 5.1.4. **Advice to Certiport.** Company agrees to advise and escalate to Certiport promptly concerns about any material information that may come to Company's attention regarding the Certiport Products and Services, including without limitation, charges, complaints, or claims by Examinees and others about the Software and/or Certiport Products and Services.
- 5.2. **Compliance with Law.** Company agrees to conduct its business operations in accordance with all applicable U.S. and local laws and regulations, including without limitation the U.S. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., and will not improperly influence, directly or indirectly, the sale of Products or Services by payments or other actions contrary to law or regulation.
- 5.3. **Competition; Circumvention.** During the term of this Agreement, and for six (6) months after this Agreement is terminated, Company agrees that it will not, directly or indirectly, develop, administer, sell or license products or services that compete with the Certiport Products and Services to any person or entity for any purpose, in the Territory and Sector described in Exhibit B. Further, during the term of this Agreement and for six (6) months thereafter, Company agrees that it will not, directly or indirectly, buy or lease, as the case may be, any products or services that are the same as or similar to the Certiport Products and Services, from any of the Program Sponsors or third-party vendors for which Certiport provides the Certiport Products and Services to Company pursuant to this Agreement, and will take no action, whether directly or indirectly, by any medium of contact whatsoever, to circumvent or interfere in any manner with any relationship, opportunity or advantage that Certiport may have established with the Program Sponsors or third-party vendors, or interfere in any manner whatsoever with the business of Certiport.
- 5.4. **No Purchase or Sales Outside Territory or Sector(s).** Company shall not purchase or sell Products or Services outside the Territory, or Sector(s) specified in Exhibit B as described in Section 4.6 above.
6. **License of Software.** Certiport hereby grants to Company a non-transferable, non-exclusive license to use the Software for the sole purpose of operating its CATC™ in accordance with

this Agreement. Company shall, upon expiration or termination of this Agreement, promptly return or destroy all copies of the Software and all related documentation in its possession.

7. **Protection of Certiport Technology.** Company shall not, re-engineer, reverse engineer, or manipulate in any way, Certiport Technology without express prior written permission from the Certiport. Company shall not provide access to Certiport Technology to any other party for the purposes of re-engineering, reverse engineering, copying or manipulation in any manner. Other than as licensed herein, Certiport shall retain all right, title and interest to Certiport Technology and any modification, enhancement, localization or extension of the Certiport Technology developed by Company during the term of this Agreement. Certiport hereby prohibits Company from disassembling, reproducing, modifying, or creating derivative works based on the Certiport Technology. Company shall not be entitled to use Certiport Technology for internal purposes except as specifically permitted by this Agreement. Certiport also prohibits sublicensing or assigning the rights of the Certiport Technology without the written consent from Certiport. Any violation of this Section 8 shall constitute a Material Breach of this Agreement and result in termination pursuant to Section 10.2.1.
8. **Limited Warranty; Limited Remedies.** Certiport makes no warranty concerning the Software or the Certiport Products and Services or any other services or goods provided under this Agreement, and Certiport hereby disclaims all implied warranties with respect thereto, including without limitation any implied warranty of merchantability, fitness for a particular purpose or non-infringement. Certiport shall not be liable to the Company for any indirect, incidental, or consequential damages or damages from lost profits or lost use, even if Certiport is advised as to the prospect of the same. Further, Certiport shall not be liable to Company for any damages arising out of a breach of this Agreement for any amount greater than the average monthly amount paid during the term hereof to Certiport by Company.
9. **Ownership, Use, and Protection of Examination Data.** As between Certiport and its Program Sponsors and Company, Certiport and its Program Sponsors shall be the sole owners of all results of all Certification Exams and Assessment Exams, all data regarding Examinees and all compilations of the foregoing, and Company shall not have any interest therein. Company shall, at the request of Certiport, surrender to Certiport any such results and information. Company shall not use any such results, data or compilations, or disclose the same, for any purpose. Company shall also be responsible for protection of Examinee's personal data and Certiport specifically disclaims any liability for breaches of Company's obligations to protect such personal data. Certiport suggests that Company not request that Examinees provide Company with national identity numbers (such as Social Security numbers) but instead create unique identifying numbers for Examinees.

10. **Term and Termination.**

- 10.1. **Term.** This Agreement shall commence on the Effective Date and, subject to Company satisfying its initial purchase requirement as detailed in Section 4.4 and unless sooner terminated pursuant to provisions herein, continue for a term of twelve (12) months from the Effective Date.

10.2. Termination.

10.2.1. By Either Party for Material Breach. This Agreement may be terminated for cause at any time, without limiting any party's other rights or remedies, upon written notice identifying with specificity the cause if either party commits a Material Breach of this Agreement and if such breach continues un-remedied for a period of ten (10) days after receipt by the other party of written notice thereof. Within three (3) days after receipt of a written notice to cure a Material Breach, the breaching party must provide non-breaching party with a written detailed response that identifies how the breaching party will cure the Material Breach within the ten (10) day time frame provided above. Should the breaching party fail to provide the written response within three (3) days as is required; the non-breaching party shall have the right to immediately terminate this Agreement. Further, this Agreement may be terminated if either party: (i) has a receiver appointed for itself or its property; (ii) makes an assignment for the benefit of its creditors; (iii) any proceedings are commenced by, for or against either party under any bankruptcy, insolvency or debtor's relief law seeking a reorganization of such party's debts and such proceedings are not dismissed within ninety (90) days of their commencement; or (iv) either party is liquidated or dissolved.

10.2.2. By Certiport. Certiport may terminate this Agreement at any time, on thirty (30) days' written notice to Company. In addition, Certiport may, upon written notice to Company, terminate or alter this Agreement at any time as to any Products or Services, if any agreement between Certiport and any third party relating to the Certiport Products and Services is terminated, substantially changed, or modified.

10.2.3. Duties of Company Upon Termination. Upon termination, Company shall immediately cease holding itself out as a CATC™, stop administering any Exams, remove all references to images and logos representing or relating to Certiport or to the Certiport Products and Services from any Company website, printed material, or retail storefront operated by Company. Further, if prior to termination Certiport has, pursuant to Section 4.6.2, granted payment terms to Company which permitted Company to avoid paying for the Certiport Products and Services at the time of ordering, all payments due to Certiport from Company shall immediately become due and payable and shall be subject to the late payment provisions contained in Section 4.6.2.

11. Disputes.

11.1. Arbitration. If the parties fail to resolve any dispute, controversy, or claim between them arising out of, relating to, or concerning, this Agreement (a "Dispute") within forty-five (45) days after one party notifies the other that a Dispute exists, then such Dispute shall be settled exclusively by final and binding arbitration in the State of Utah, U.S.A., which arbitration may be initiated at the request of either party. The arbitration shall be conducted in accordance with the commercial rules of the American Arbitration

Association. There shall be three (3) arbitrators, one selected by each party, and a third arbitrator selected by the first two arbitrators. The arbitration panel shall have no authority to award punitive or exemplary damages and the parties expressly waive their rights to any such damages. Notwithstanding the foregoing provisions, neither party shall be precluded from applying to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm pending the issuance of a ruling by the panel of arbitrators. The written decision of the majority of the three (3) arbitrators shall be binding on both parties. The resulting arbitration award may be enforced by all lawful remedies, including, without limitation, injunctive or other equitable relief, in any court of competent jurisdiction and the agreement of the parties with respect to the arbitration of claims, controversies, or disputes under this contract is stipulated to be specifically enforceable under the provisions of the 1958 U.N. Convention of the Recognition and Enforcement of Foreign Arbitral Awards, to which the parties agree to be bound.

11.2. Timing. The parties are desirous of avoiding expensive and time-consuming proceedings, and desire that the entire process of arbitration, including issuance of award, be completed within ninety (90) days from receipt of request for arbitration. However, failure by the arbitrators to issue an award within the ninety (90) day time period shall not deprive the arbitrators of jurisdiction over the Dispute.

11.3. Expenses. Each party agrees to bear its own expenses and an equal share of the expenses of the arbitrators and the fees of the body administering the arbitration.

11.4. Awards. Any award rendered in such arbitration proceedings shall be payable in U.S. dollars, and judgment upon such award may be entered in any court of competent jurisdiction, or application may be made to any such court for a judicial acceptance of the award and an order of enforcement as the case may be, and may be payable to the winning party, at its option, in cash, by way of an offset against the winning party's accrued but unpaid royalties, fees, or dividend under any agreement with the losing party, or by any combination of the above.

12. Confidentiality. Neither party shall use or disclose to any third party any Confidential Information of the other for any purpose other than the performance of its obligations under this Agreement. "Confidential Information" as it applies to Certiport includes all software and codes and materials related thereto, all Certification Exams, Assessment Exams, and the contents thereof, and any other information or material provided by Certiport to Participant that is marked "confidential" or "proprietary" or that Certiport informs Participant in writing it regards as confidential, proprietary or a trade secret of Certiport. "Confidential Information" as it applies to Company includes all information and material provided by Company to Certiport that is marked "confidential" or "proprietary" or that Participant informs Certiport in writing it regards as confidential, proprietary or a trade secret of Company. Notwithstanding the foregoing, the obligations imposed hereunder shall not apply to Confidential Information that (a) is made public by the disclosing party, (b) is or hereafter becomes part of the public domain through no wrongful act, fault or negligence on the part of the recipient, (c) the recipient can reasonably demonstrate was in the possession of the

recipient prior to its disclosure by the disclosing party other than as a consequence of any breach of any duty of confidentiality, (d) or the recipient is required to disclose pursuant to law, provided, however, that the recipient shall first give written notice to the disclosing party of the disclosure and shall give the disclosing party a reasonable opportunity to interpose an objection an appropriate protective order. In the event of a breach or threatened breach of this Section by a party, the other party shall be entitled to obtain injunctive and other equitable relief therefore, in addition to any other applicable remedies at law.

13. **Miscellaneous.**

13.1. **Entire Agreement.** The terms and provisions of this Agreement, together with any exhibits or addenda, constitute the entire agreement in relation to the subject matter hereof between the parties. This Agreement shall supersede all previous communications, whether oral or written, between the parties with respect to the subject matter hereof and no agreement varying or extending any of the terms and provisions of this Agreement shall be binding on either party unless in writing, signed by a duly authorized officer or representative of each of the parties.

13.2. **Authority.** Each party represents and warrants to the other party that it has the power and authority to enter into this Agreement, to perform all of its obligations hereunder and to provide all rights and materials granted hereunder and that neither the execution and delivery of this Agreement, nor the performance of its obligations or provision of any rights or materials hereunder, will violate any agreement to which it is a party, any federal, state, or local law or regulation to which it is subject or any right of any third party.

13.3. **Governing Law.** This Agreement shall be controlled and construed solely in accordance with the jurisdiction and laws of the courts of the State of Utah, United States of America, without giving effect to principles regarding conflicts of laws, and notwithstanding the requirements of United Nations Convention on International Contracts for the Sale of Goods, if applicable.

13.4. **Indemnity.** Company shall indemnify, defend and hold harmless Certiport from any and all claims by or liability to any third party from loss, damage or injury to persons or property based on or in any manner arising out of or relating to any breach by Company of any representation, warranty or covenant set forth in this Agreement. Company shall also indemnify, defend, and hold harmless Certiport of and from any claims by or liability to any third party for any loss arising from Company's normal business operations, including, but not limited to premises liability claims as well as any loss, damage, or injury to persons or property arising from the breach of any of Company's obligations to ensure that Examinee data is kept confidential.

13.5. **Force Majeure.** Neither party shall be liable for failure to perform any obligation under this Agreement where such failure is due to fire, flood, earthquake, riot, sabotage, labor dispute, natural calamity, war, epidemic, acts of God, acts of the government or of

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any civil or military authority, or other causes that are beyond the reasonable control of such party.

- 13.6. Notices. Any notice under this Agreement shall be sent by facsimile or by recognized overnight courier and shall be deemed received (a) upon successful transmission, as evidenced by written confirmation of receipt of fax, when notice is sent by fax and a print copy is sent immediately by pre-paid, registered post; or (b) upon date of actual receipt, as evidenced by a signed courier receipt, when notice is sent by overnight courier.

If to Certiport, to:

Certiport, a business of NCS Pearson Inc.
Attention: VP Channel Operations
1276 South 820 East
Suite 200
American Fork, Utah 84003
Fax: (801) 492-4118

With Copy to:

Certiport, a business of NCS Pearson, Inc.
Attention: Legal
5601 Green Valley Drive
Bloomington, Minnesota 55437
Fax (952) 681-3140

If to Company, to:

Attention: Chief Financial Officer

- 13.7. Headings. The headings to the sections hereof are for convenience only and have no legal effect.

- 13.8. Severability. If a court of competent jurisdiction finds any portion of this Agreement, including the Exhibits and Addenda hereto, to be invalid or unenforceable, such determination shall not render the entire Agreement, Exhibits or Addenda unenforceable or invalid but rather the Agreement, Exhibits or Addenda, as the case may be, shall be read and construed as if the invalid or unenforceable provision(s) are not contained therein, and the rights and obligations of the parties shall be construed and enforced accordingly.

- 13.9. No Assignment. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto. Except as may be permitted by the terms of this Agreement, Company may not assign its rights or delegate its duties hereunder without the express written consent of Certiport.
- 13.10. Waiver. Failure by a party to exercise, or any delay by a party in exercising, any right or remedy provided in this Agreement or by law shall not constitute a waiver of the particular right or remedy, or a waiver of other rights or remedies.
- 13.11. Taxes. Company shall promptly pay, and reimburse and hold Certiport harmless from and against, all taxes of any character incurred by Company and resulting from the purchase and/or sale by Company of any Products or Services.
- 13.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, all of which shall constitute the same agreement.
- 13.13. Language. Written in English, this Agreement shall be construed and interpreted in accordance with this language regardless of any translation required for execution.
- 13.14. Publicity. Company shall not issue any press release or publicity that relates to this Agreement without the express written consent of Certiport.
- 13.15. Review. Company acknowledges that it has reviewed this Agreement in its entirety and has had a full opportunity to consult with counsel regarding the Agreement's terms. Therefore, Company expressly waives any and all applicable common law and statutory rules of construction that might hold that any provision of this Agreement should be construed against the Agreement's drafter, and agree and affirm that the Agreement and all provisions thereof shall in all cases be construed as a whole, according to the fair meaning of the language used.

IN WITNESS WHEREOF, the parties have set their hands hereto as of the date first set forth above.

[Company]

NCS PEARSON, INC.

By _____

By _____

Title _____

Title _____