

**CERTIPOINT AUTHORIZED PARTNER AGREEMENT**

**This CERTIPOINT AUTHORIZED PARTNER 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 \_\_\_\_\_, a Company organized under the laws of \_\_\_\_\_, having its principal offices at \_\_\_\_\_ (“Company” or “Licensee”), recognized hereinafter as a “Certiport Authorized Partner.”

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

**WHEREAS**, Company has expertise relating to operations in the Territory and Sector(s) as described in Exhibit “A”;

**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, and includes, among others, Certiport's certification exams as set out in Exhibit A.
  - 1.3 “Certiport Authorized Testing Center™” means a party authorized pursuant to a license granted by Certiport to act as a testing center under the name “Certiport Authorized Testing Center™” to administer the Certiport Products and Services.
  - 1.4 “Certiport Authorized Testing Center™ Agreement” means the agreement between Certiport and a Certiport Authorized Testing Center™ authorizing the Certiport Authorized Testing Center™ to administer and deliver Assessment Exams and Certification Exams using the “Certiport Authorized Testing Center™” name.
  - 1.5 “Certiport Authorized Partner” or “Certiport Authorized Solution Provider” means a company that meets the criteria for country-level sales, marketing, training and support of Certiport Pathway Solutions & Methods to Certiport Resellers.

- 1.6 “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.
- 1.7 “Certiport Products and Services” or “Products or Services” means the Training Materials, the Certification Exams, the Assessment Exams, the Practice Tests and related products and services developed or distributed by Certiport from time to time.
- 1.8 “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.
- 1.9 “Dispute” has the meaning set forth in Section 13.1.
- 1.10 “Effective Date” means the date set forth in the first paragraph above.
- 1.11 “Examinee” means the end user of the Certiport Pathway Solutions & Methods.
- 1.12 “Material Breach” means a breach of a significant term or terms in this Agreement.
- 1.13 “Practice Tests” means Certiport-owned or licensed products that prepare Examinees for Certification Examinations by simulating the look, feel, timing and scoring of Certification Examinations.
- 1.14 “Programs” means any set of developed and sold Certiport Products and Services that represents Certiport Pathway Solutions & Methods associated with a specific Program Sponsor.
- 1.15 “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.

- 1.16 “Renewal Term” has the meaning set forth in Section 12.
- 1.17 “Sector” means the market sectors described in Exhibit A attached thereto and hereby incorporated by this reference.
- 1.18 “Software” means all software provided by Certiport to the Certiport Authorized Partner or to Certiport Authorized Testing Centers™ in the Territory, including without limitation, Certiport iQSystem™, CPS, and other software related to the delivery and administration of Certiport Products and Services.
- 1.19 “Supported Certiport Resellers” shall mean all those Certiport Authorized Partners and Certiport Authorized Testing Centers™ that are registered with Certiport as Company’s accounts.
- 1.20 “Support Staff” has the meaning set forth in Section 5.1.
- 1.21 “Support Standards” has the meaning set forth in Section 5.3.
- 1.22 “Territory” means the geographic area described in Exhibit A attached hereto and hereby incorporated by this reference.
- 1.23 “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 Certiport Authorized Partner employees how to effectively use and incorporate Certiport Pathway Solutions & Methods.
2. **Appointment.** Certiport hereby appoints Company as a non-exclusive distributor of Certiport Products and Services in the Territory and Sector(s) designated in Exhibit A, for the Programs designated in Exhibit A, to Certiport Authorized Testing Centers™, Certiport Resellers, and Examinees as directed by Certiport from time to time, and to perform other duties as set forth herein, subject to the terms and conditions hereof. Company hereby accepts such appointment.
- 2.1 **Company Designation.** Unless Company is in Material Breach of this Agreement, Certiport agrees to designate Company as the entity within the Territory and Sector(s) described in Exhibit A from which all Supported Certiport Resellers and Certiport Authorized Testing Centers™ must purchase Certiport Products and Services.
- 2.2 **Registration of Accounts.** On a monthly basis, and as it relates to Territory assignment in Exhibit A, Company will submit to Certiport those accounts within its assigned Territory that it wishes to register as Supported Certiport Resellers. Certiport may deny Company account assignment in the event that multiple Certiport Authorized Partners have been assigned to the Territory and that another Certiport Authorized Partner has already registered the desired account. Certiport may re-assign a registered account to another Certiport Authorized Partner or to itself in the event of assigned Company’s failure to develop business activity

within a registered account after one hundred eighty (180) days. Such determination of failure and re-assignment shall be made in Certiport's sole discretion and shall not be subject to challenge by Company.

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 or unethical conduct that is or might be detrimental to Certiport or to the Products or Services. Should Company 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 12.2.1 below.

4.2 **Purchase Commitment.** Company shall purchase the Certiport Products and Services from Certiport and shall sell the Certiport Products and Services in its own name and for its own account. Company agrees to use its best efforts to sell the Certiport Products and Services to Certiport Resellers, Certiport Authorized Testing Centers™ and Examinees in the Territory and Sector(s) set forth in Exhibit A and to meet the purchase commitments set forth in Exhibit A, Section 5.1. In Territory(s) and Sector(s) where local Certiport Resellers are present, Company may only sell to those Certiport Resellers and not to Examinees without the express written consent of Certiport.

4.3 **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 "Certiport Authorized Partner." Locations and publications as referenced herein include but are not limited to: commercial listings, directories, stationery, collateral, websites, business cards, advertisements, and office facilities, 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 B hereto.

- 4.4 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, MCT, MMI, 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.
- 4.5 Recruitment of Certiport Authorized Testing Centers and Certiport Resellers. Company will actively solicit and, recruit Certiport Authorized Testing Centers™ (see Exhibit A, Section 6 for required center sign-up quotas), and help Certiport to manage entities that will, pursuant to agreements with Certiport, act as Certiport Authorized Testing Centers™ in the Territory and Sector(s) to sell, market, and deliver Certiport Products and Services in the Territory and Sector(s), including, but not limited to, training Certiport Authorized Testing Centers™ on Certiport Pathway Solutions & Methods. Company has no authority to enter into any such agreement on behalf of Certiport, and shall not represent to any party that it has any such authority.
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 B 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 12.2.1.
- 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:
- i. Certiport Authorized Testing Center™ and Certiport Reseller Support. Company agrees to maintain Support Staff that is competent to answer and to use its best efforts to answer, all inquiries from Certiport Authorized Testing Centers™ or Certiport Resellers located in the Territory, regarding the Software and/or Certiport Products and Services.

- ii. 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 Certiport Authorized Testing Centers™, Certiport Resellers or Examinees of Certiport Authorized Testing Centers™, and others about the Software and/or Certiport Products and Services.

5.2 Compliance Reports. Company agrees to provide Certiport, within fifteen (15) days after the end of the prior quarter, each quarter during the term hereof, written reports with respect to the most frequently asked ten (10) questions during the previous quarter from Certiport Authorized Testing Centers™, and results from a satisfaction survey based on questions provided by Certiport, intended to measure the satisfaction level of all Certiport Authorized Testing Centers™ in the Territory, and all persons taking Assessment Exams, Certification Exams, or using other Certiport Products and Services, at those Certiport Authorized Testing Centers™. (see Exhibit E for form and submission process.)

5.3 Support Standards. Company agrees to use its best efforts to meet the following standards ("Support Standards") in answering all inquiries from Certiport Resellers and Certiport Authorized Testing Centers™ in the Territory and from candidates for examinations at those Certiport Resellers and Certiport Authorized Testing Centers™, compiled as separate pools: (a) no more than two per cent (2 %) of calls in any day on average will be disconnected prior to being answered by a live person; and (b) at least ninety per cent (90%) of calls in any day on average will be answered by a live person within thirty (30) seconds. Company agrees to use its best efforts to respond to all support inquiries in a way that satisfies Certiport's goal of meeting customer expectations at least ninety five per cent (95%) of the time.

5.4 Company Website. If Company has a website, then it shall maintain its website in its local language. To fulfill its obligations hereunder, such website shall contain general information regarding the Certiport Products and Services, will be consistent in look and feel with Certiport's website, and will otherwise conform to messages presented on the Internet by Certiport. Company's website shall also (a) contain a clearly referenced and readily accessible link to the Certiport website at [www.certiport.com](http://www.certiport.com); (b) shall display Certiport's "Validated Certification Exams Delivered" ticker graphic; and (c) shall display Certiport's authorized "globe" graphic. Each of (a), (b), and (c) shall be featured on the "home page" of Company's website, if any.

5.5 Monitor Certiport Agreement Compliance. Company agrees to use best efforts and otherwise assist Certiport upon its request to cause each Certiport Authorized Testing Center™ to which Company sells Products or Services to comply with the terms and conditions of the Certiport Authorized Testing Center™ Agreement. Company shall promptly notify Certiport if it becomes aware of any breach by a

Certiport Authorized Testing Center™ of its obligations under its Certiport Authorized Testing Center™ Agreement. Company shall also assist Certiport upon its request to cause each Certiport Reseller with whom Company does business to comply with Certiport corporate policies and procedures.

- i. Certiport Authorized Testing Center Audits. Company agrees to perform compliance audits at the volume of ten (10) or two per cent (2%), whichever is larger, of the Certiport Authorized Testing Centers™ in the Territory and Sector(s) each year during the term of this Agreement, and where twenty five per cent (25%) of the total number of audits is performed quarterly. Company agrees to provide the compliance audit data to Certiport upon request and in a timely manner, no later than two weeks after audit completion. Company agrees to use the authorized audit forms available on the Certiport web site, as reproduced in Exhibit D of this Agreement, or as directed and produced by Certiport.
- ii. Authorized Audit Language. Company agrees to use English on the forms in which audit results are submitted.

5.6 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.

5.7 Competition; Circumvention. During the term of this Agreement, and for eighteen (18) 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 A. Further, during the term of this Agreement and for eighteen (18) 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.

5.8 No Sales Outside Territory or Sector(s). Company shall not sell Products or Services outside the Territory or Sector(s) specified in Exhibit A.

6. **Duties of Certiport.** During the term hereof Certiport shall: (a) on a regular basis and not less than quarterly inform and consult with Company with respect to Company's obligations; (b) provide information to Company about changes to Certiport Products and

Services; (c) from time to time thereafter, advise Company as to the type and configuration of equipment necessary, in Certiport's judgment, to operate a facility at which Certiport Products and Services can be offered; (d) if Company has a website, maintain a clearly referenced link on the Certiport website to the Company's website; and (e) provide Company the training materials necessary to become proficient in Certiport Pathway Solutions & Methods when such are determined by Certiport to be appropriate to the needs of Certiport Resellers in the Territory and Sector(s). To assist Company in satisfying the Support Standards, Certiport shall provide two (2) days of training to Company's Support Staff at Certiport or at a mutually agreed upon location.

7. **Order Procedure, Price, Payment, Purchase Plan.** Company and Certiport agree that the quantities of Certiport Products and Services set out in Exhibit A represent the parties' good faith estimate of future sales under this Agreement.

7.1 **Order Procedure.** Company shall purchase Certiport Products and Services from Certiport via the Certiport web portal or, if the Certiport web portal is not accessible, by telephone or by e-mail.

7.2 **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.

7.3 **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, or the maximum amount permitted by law of the unpaid amount.

8. **License of Software.** Certiport hereby grants to Company a non-transferable, non-exclusive license to use the Software for the sole purpose of selling Certiport Products and Services to Certiport Authorized Testing Centers™ and Certiport Resellers in the Territory and Sector(s). Company agrees, upon termination of this Agreement, at the direction of Certiport, to immediately return or destroy all copies of the Software and all related documentation in its possession.

9. **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 9 shall constitute a Material Breach of this Agreement and result in termination pursuant to Section 12.2.1.

10. **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.
11. **Ownership, Use, and Protection of Examination and Examinee 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 examination candidates 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.

11.1 Examinee Personal Data (hereinafter "Examinee Personal Data") may include, but is not limited to, names, addresses, national identification number, e-mail addresses, telephone number, financial profiles, credit card information, driver's license information, medical data, or information identifiable to an individual that relates to any of these types of information. Certiport, its Program Sponsors, and Company agree to hold Examinee Personal Data in the strictest of confidence and to release it only to Authorized employees or Subcontractors requiring such information for the purposes of carrying out this contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without candidate's express written consent or as provided by law.

## 12. Term and Termination.

12.1 Term. This Agreement shall commence on the Effective Date and have an initial term of three (3) years. This Agreement shall automatically renew for successive one (1) year terms (each a “Renewal Term”) unless terminated in accordance with this Agreement.

### 12.2 Termination.

- i. 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.
- ii. 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. Company shall, within ten (10) days from receipt of a notice under this Section 12.2.2., notify all Certiport Authorized Testing Centers™ to whom it has sold Products or Services of the termination of this Agreement unless otherwise directed by Certiport.
- iii. Duties of Company Upon Termination. Upon termination, Company shall 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 7.3, 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 7.3.

### 13. **Disputes.**

- 13.1 **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 arbitrators, one selected by each party, and a third selected by the first two. 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.
- 13.2 **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.
- 13.3 **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.
- 13.4 **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.

14. **Confidentiality**. Company agrees to abide by the terms and conditions of Exhibit C.
15. **Industry Affiliation**. Company represented that it has disclosed to Certiport, and that it will disclose to Certiport during the term hereof, information about any products or services it offers other than the Certiport Products and Services, and the means by which those Certiport Products and Services are offered. This shall include exams, assessments, courseware, practice tests, e-learning, etc., and the technology used for their delivery, including the sponsors and administrators of the products, services and the delivery mechanisms.
16. **Miscellaneous**.
  - 16.1 **Entire Agreement**. The terms and provisions of this Agreement 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.
  - 16.2 **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.
  - 16.3 **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.
  - 16.4 **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, 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.

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

16.6 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:

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

16.8 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. .

- 16.9 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.
- 16.10 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.
- 16.11 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.
- 16.12 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.
- 16.13 Language. Written in English, this Agreement shall be construed and interpreted in accordance with this language regardless of any translation required for execution.
- 16.14 Publicity. Certiport Authorized Partner shall not issue any press release or publicity that relates to this Agreement without the express written consent of Certiport.
- 16.15 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 \_\_\_\_\_