



**SECOND AMENDMENT TO AGREEMENT  
BETWEEN THE CITY OF PEMBROKE PINES AND  
NCS PEARSON, INC.**

**THIS AMENDMENT ("Second Amendment")**, dated \_\_\_\_\_, is entered into by and between:

**THE CITY OF PEMBROKE PINES**, a municipal corporation organized and operating under the laws of the State of Florida, with an address of **601 City Center Way, Pembroke Pines, FL 33025**, hereinafter referred to as "CITY",

and

**NCS PEARSON, INC.**, a Foreign Profit Corporation as listed with the Florida Division of Corporations, authorized to do business in the State of Florida, and with a business address of **5601 Green Valley Drive, Bloomington, MN 55457**, hereinafter referred to as "CONTRACTOR". "CITY" and "CONTRACTOR" may hereinafter be referred to collectively as the "Parties" and individually as a "Party".

**WHEREAS**, on **October 6, 2021**, the Parties entered into an Agreement ("Original Agreement") for certification assessment and training for various industry certification and credentials programs for an initial **one (1) year period**, which naturally expired on **October 2, 2022**; and,

**WHEREAS**, the Original Agreement authorized the renewal thereof at the expiration of the initial term for additional **one (1) year** terms pursuant to written amendments to the Original Agreement; and,

**WHEREAS**, on **September 14, 2022**, the Parties executed the First Amendment to the Original Agreement to extend the term thereof for a **one (1) year** period which shall naturally expire on **October 2, 2023**; and,

**WHEREAS**, the Parties desire to extend the term of the Original Agreement, as amended, for a **one (1) year period** which shall commence on **October 3, 2023** and shall naturally expire on **October 2, 2024** and to supplement the terms contained therein as set forth in this Second Amendment.

**WITNESSETH**

**NOW, THEREFORE**, for and in consideration of the sum of the mutual covenants and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as set forth below:



**SECTION 1.** The recitations set forth in the above "WHEREAS" clauses are true and correct and incorporated herein by this reference.

**SECTION 2.** The Original Agreement, as amended, is hereby renewed for a **one (1) year** renewal period which shall commence on **October 3, 2023** and shall naturally expire on **October 2, 2024**.

**SECTION 3.** Section 4.1 of the Original Agreement, as amended, is hereby amended as set forth below:

4.1 The CITY hereby agrees to compensate CONTRACTOR for services performed by CONTRACTOR pursuant to the terms of this Agreement and in accordance with Exhibit "2-A", an annual amount not to exceed **FORTY-FIVE THOUSAND EIGHT HUNDRED SIXTY-EIGHT DOLLARS AND 00/100 CENTS (\$45,868.00)**.

**SECTION 4. Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

4.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

4.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

4.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

4.2.2 Is engaged in business operations in Syria.

**SECTION 5. Employment Eligibility.** CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

**5.1 Definitions for this Section.**

5.1.1 "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.





5.1.2 "Contractor" includes, but is not limited to, a vendor or consultant.

5.1.3 "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

5.1.4 "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

5.2 **Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

5.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

5.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and

5.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

**SECTION 6.** In the event of any conflict or ambiguity by and between the terms and provisions of this Second Amendment and the Original Agreement, as amended, the terms and provisions of this Second Amendment shall control to the extent of any such conflict or ambiguity.

**SECTION 7.** The Parties agree that in all other respects the Original Agreement, as amended, shall remain in full force and effect, except as specifically modified herein.



**SECTION 8.** Each exhibit referred to in the Original Agreement, as amended, except as repealed herein, forms an essential part of this Second Amendment. The exhibits, if not physically attached, should be treated as part of this Second Amendment and are incorporated herein by reference.

**SECTION 9.** Each person signing this Second Amendment on behalf of either Party individually warrants that he or she has full legal power to execute this Second Amendment on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this Second Amendment.

**SECTION 10.** This Second Amendment may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Second Amendment by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other Party through facsimile transmission, email, or other electronic delivery.

**SIGNATURE PAGE FOLLOWS**





IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day  
and year first written above.

**CITY:**

CITY OF PEMBROKE PINES, FLORIDA

APPROVED AS TO FORM:

 8/10/22

Print Name: Samuel E. Gured  
OFFICE OF THE CITY ATTORNEY

BY: \_\_\_\_\_

MAYOR FRANK C. ORTIS

ATTEST:


BY: \_\_\_\_\_

CHARLES F. DODGE, CITY MANAGER

\_\_\_\_\_  
MARLENE D. GRAHAM, CITY CLERK

**CONTRACTOR:**

NCS Pearson, Inc.

Signed By:  \_\_\_\_\_

Printed Name: Craig Bushman

Title: General Manager

  
JD

CERTIPORT, INC.  
 1276 South 820 East  
 Suite 200  
 American Fork, Utah 84003

## QUOTE SHEET

NO: 02152023 MOS program

DATE: July 29, 2023

## TO:

Erica Kostzer  
 Giselle Rodriguez  
 City of Pembroke Pines Charter  
 West Middle Campus

Contact Phone 954-322-3330

Main Phone:

Email: [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)  
[ekostzer@pinescharter.net](mailto:ekostzer@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90077209	Valid through November 1, 2023

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<p>***Per school site pricing***</p> <p>MOS Exam and Practice License Bundle.</p> <ul style="list-style-type: none"> <li>Exams: up to 500 exams per school site. Word, PowerPoint, Excel, SharePoint, Access, and Outlook. SKU# 1101634</li> <li>Unlimited Gmetrix Practice Tests per school site. SKU# 1102735</li> </ul>	\$5,980.00	\$5,980.00
1	<p><u>Learnkey Curriculum for MOS- School Site License</u></p> <ul style="list-style-type: none"> <li>Online Learning for Microsoft applications. Provides self-paced video education and training solutions for Microsoft programs</li> <li>Video tutorials with lesson files, and pre/post assessments, and reporting.</li> <li>Aligns to the MOS Certification</li> </ul> <p><b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b></p>	\$2,250.00	\$2,250.00
SUBTOTAL			\$8,230.00
TOTAL DUE			\$8,230.00



## TERMS AND CONDITIONS OF SALE

The Quote Sheet and these Terms and Conditions of Sale contained herein become the agreement between Certiport, a business of NCS Pearson, Inc. ("Seller") and the organization listed on this Quote Sheet ("Buyer") for the sale of goods and/or services as described in the Quote Sheet (hereinafter the "Agreement"). Seller's agreement to provide the goods and/or services is expressly conditional on Buyer's assent to this Agreement. If Buyer objects to any terms herein, such objection must be in writing and delivered to Seller within seven (7) calendar days of receipt of this document. Failure to make such timely exception or acceptance of any goods or services by Buyer shall be conclusively deemed assent to the terms and conditions herein.

**1. Order Acceptance and Complete Agreement.** All requests for goods or services received by Seller are subject to revision and rejection by Seller. Buyer's acceptance of goods and/or services evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products and/or services procured hereunder (including any made or implied past dealings). No additional or different terms and conditions stated in or attached to Buyer's order or Buyer's communications to Seller, including, but not limited to, Buyer's orders, purchase order or other communication to Seller are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

**2. Implementation of Services.** Seller cannot commit to an estimated schedule for the delivery of goods or services to Buyer until Buyer has signed and returned this Agreement to Seller.

**3. Payment, Prices and Setoff.** Payment terms are net thirty (30) days from date of invoice. Prices stated on the order exclude shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. All payments are due in U.S. Dollars unless otherwise agreed by Seller in writing. In addition, Buyer waives any rights of setoff.

**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

**6. Parental Consent Form.** Before allowing an examinee under the age of 18 to register and take an Exam, Buyer shall require the parent/legal guardian of the examinee to complete and sign a Parental Consent Form. Buyer shall be responsible for collecting any consent to transmit examinee data to Seller and Seller's clients, where applicable. Completed Parental Consent Forms must be retained by Company and made available to Certiport upon request.

**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement then Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

**15. Force Majeure.** The obligations of the parties under this Agreement (including all obligations of Seller relating to time limits and deadlines for implementation and updating under this Agreement) shall be suspended, to the extent a party is hindered or prevented from complying therewith and for a reasonable time thereafter because of acts beyond a party's control. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

**16. General.** It is mutually agreed that any provisions of this Agreement, which, by their nature, should reasonably survive termination or expiration of this Agreement will survive. Buyer agrees that the goods and services outlined in this Agreement are commercial items and not subject to cost accounting principles, including but not limited to Federal Acquisition Regulation Part 30 entitled "Cost Accounting Standards Regulation". Seller's relationship to Buyer is that of an independent contractor. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Minnesota without giving effect to the principles of conflicts law thereof, unless otherwise required by law. Both Parties to this Agreement consent to the interpretation of laws, jurisdiction, and venue in the state and federal courts sitting in the State of Minnesota, Hennepin County, unless otherwise required by law. If a provision of this Section is found to be invalid, illegal or unenforceable in any respect, the court may modify it to make such provision enforceable. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to create any rights in, be deemed to have been executed for the benefit of, nor confer upon any other person or entity not a party hereto any remedy, claim, liability, reimbursement, cause of action or other rights.

CONFIDENTIAL AND PROPRIETARY



CERTIPORT, INC.  
1276 South 820 East  
Suite 200  
American Fork, Utah 84003

## QUOTE SHEET

NO: 02152023ESBESB

DATE: July 29, 2023

TO: Pembroke Pines Charter  
City of Pembroke Pines- Academic Village Campus  
Attn: Giselle Rodriguez and Erica Kostzer  
Email: [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)  
[ekostzer@pinescharter.net](mailto:ekostzer@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90037293	Quote valid through 11/1/2023

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	ESB Site License Bundle: Exams, Gmetrix Practice Tests and 1 Educator Resource Guide. Pricing for one site testing center.  <b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b>	\$3,550.00	\$3,550.00
SUBTOTAL			\$3,550.00
SALES TAX			N/A
SHIPPING & HANDLING			N/A
TOTAL DUE			\$3,550.00

Please email purchase order to Mindy Howa at [mindy.howa@pearson.com](mailto:mindy.howa@pearson.com)



## TERMS AND CONDITIONS OF SALE

The Quote Sheet and these Terms and Conditions of Sale contained herein become the agreement between Certiport, a business of NCS Pearson, Inc. ("Seller") and the organization listed on this Quote Sheet ("Buyer") for the sale of goods and/or services as described in the Quote Sheet (hereinafter the "Agreement"). Seller's agreement to provide the goods and/or services is expressly conditional on Buyer's assent to this Agreement. If Buyer objects to any terms herein, such objection must be in writing and delivered to Seller within seven (7) calendar days of receipt of this document. Failure to make such timely exception or acceptance of any goods or services by Buyer shall be conclusively deemed assent to the terms and conditions herein.

**1. Order Acceptance and Complete Agreement.** All requests for goods or services received by Seller are subject to revision and rejection by Seller. Buyer's acceptance of goods and/or services evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products and/or services procured hereunder (including any made or implied past dealings). No additional or different terms and conditions stated in or attached to Buyer's order or Buyer's communications to Seller, including, but not limited to, Buyer's orders, purchase order or other communication to Seller are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

**2. Implementation of Services.** Seller cannot commit to an estimated schedule for the delivery of goods or services to Buyer until Buyer has signed and returned this Agreement to Seller.

**3. Payment, Prices and Setoff.** Payment terms are net thirty (30) days from date of invoice. Prices stated on the order exclude shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. All payments are due in U.S. Dollars unless otherwise agreed by Seller in writing. In addition, Buyer waives any rights of setoff.

**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

**6. Parental Consent Form.** Before allowing an examinee under the age of 18 to register and take an Exam, Buyer shall require the parent/legal guardian of the examinee to complete and sign a Parental Consent Form. Buyer shall be responsible for collecting any consent to transmit examinee data to Seller and Seller's clients, where applicable. Completed Parental Consent Forms must be retained by Company and made available to Certiport upon request.

**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement than Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

**15. Force Majeure.** The obligations of the parties under this Agreement (including all obligations of Seller relating to time limits and deadlines for implementation and updating under this Agreement) shall be suspended, to the extent a party is hindered or prevented from complying therewith and for a reasonable time thereafter because of acts beyond a party's control. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

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CONFIDENTIAL AND PROPRIETARY



CERTIPORT, INC.  
1276 South 820 East  
Suite 200  
American Fork, Utah 84003  
Federal Tax ID Number: 41-0850527

## QUOTE SHEET

NO: 02152023ACA Program

DATE: July 29, 2023

TO: City of Pembroke Pines Charter  
Academic Village Campus  
Attn: Giselle Rodriguez, and Erica Kostzer

Contact Phone: 954-322-3330

Main Phone:

Email:

[grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)

[ekostzer@pinescharter.net](mailto:ekostzer@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90037293	Valid through November 1, 2023

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<p><u>ACA Campus License with Gmetrix Practice Tests-</u> Can test in more than one classroom per school site – Up to *1000 exams and unlimited Gmetrix Practice – unlimited user/seat per school site.</p> <ul style="list-style-type: none"> <li>Full Suite Bundle: CC Photoshop, Dreamweaver, Flash, Premiere Pro, Illustrator, and InDesign</li> </ul>	\$5,928.00	\$5,928.00
1	<p><u>LearnKey- Online Learning Gmetrix Platform- per school pricing- online learning courseware</u></p> <ul style="list-style-type: none"> <li>Video tutorials with lesson files, includes workbooks and pre/post assessments, reporting</li> <li>Same platform as GMetrix; uses the same admin panel and familiar navigation. This means one single sign on with Gmetrix practice exams and LearnKey curriculum!</li> <li>Aligns to ACA Certification</li> </ul> <p><b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b></p>	\$2,250.00	\$2,250.00
SUBTOTAL			\$8,178.00
SALES TAX			N/A
SHIPPING & HANDLING			N/A
TOTAL DUE			\$8,178.00

Please email purchase order to Mindy Howa at [mindy.howa@pearson.com](mailto:mindy.howa@pearson.com)



## TERMS AND CONDITIONS OF SALE

The Quote Sheet and these Terms and Conditions of Sale contained herein become the agreement between Certiport, a business of NCS Pearson, Inc. ("Seller") and the organization listed on this Quote Sheet ("Buyer") for the sale of goods and/or services as described in the Quote Sheet (hereinafter the "Agreement"). Seller's agreement to provide the goods and/or services is expressly conditional on Buyer's assent to this Agreement. If Buyer objects to any terms herein, such objection must be in writing and delivered to Seller within seven (7) calendar days of receipt of this document. Failure to make such timely exception or acceptance of any goods or services by Buyer shall be conclusively deemed assent to the terms and conditions herein.

**1. Order Acceptance and Complete Agreement.** All requests for goods or services received by Seller are subject to revision and rejection by Seller. Buyer's acceptance of goods and/or services evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products and/or services procured hereunder (including any made or implied past dealings). No additional or different terms and conditions stated in or attached to Buyer's order or Buyer's communications to Seller, including, but not limited to, Buyer's orders, purchase order or other communication to Seller are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

**2. Implementation of Services.** Seller cannot commit to an estimated schedule for the delivery of goods or services to Buyer until Buyer has signed and returned this Agreement to Seller.

**3. Payment, Prices and Setoff.** Payment terms are net thirty (30) days from date of invoice. Prices stated on the order exclude shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. All payments are due in U.S. Dollars unless otherwise agreed by Seller in writing. In addition, Buyer waives any rights of setoff.

**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

**6. Parental Consent Form.** Before allowing an examinee under the age of 13 to register and take an Exam, Buyer shall require the parent/legal guardian of the examinee to complete and sign a Parental Consent Form. Buyer shall be responsible for collecting any consent to transmit examinee data to Seller and Seller's clients, where applicable. Completed Parental Consent Forms must be retained by Company and made available to Certiport upon request.

**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement than Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

**15. Force Majeure.** The obligations of the parties under this Agreement (including all obligations of Seller relating to time limits and deadlines for implementation and updating under this Agreement) shall be suspended, to the extent a party is hindered or prevented from complying therewith and for a reasonable time thereafter because of acts beyond a party's control. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

**16. General.** It is mutually agreed that any provisions of this Agreement, which, by their nature, should reasonably survive termination or expiration of this Agreement will survive. Buyer agrees that the goods and services outlined in this Agreement are commercial items and not subject to cost accounting principles, including but not limited to Federal Acquisition Regulation Part 30 entitled "Cost Accounting Standards Regulation". Seller's relationship to Buyer is that of an independent contractor. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Minnesota without giving effect to the principles of conflicts law thereof, unless otherwise required by law. Both Parties to this Agreement consent to the interpretation of laws, jurisdiction, and venue in the state and federal courts sitting in the State of Minnesota, Hennepin County, unless otherwise required by law. If a provision of this Section is found to be invalid, illegal or unenforceable in any respect, the court may modify it to make such provision enforceable. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to create any rights in, be deemed to have been executed for the benefit of, nor confer upon any other person or entity not a party hereto any remedy, claim, liability, reimbursement, cause of action or other rights.

CONFIDENTIAL AND PROPRIETARY



CERTIPORT, INC.  
1276 South 820 East  
Suite 200  
American Fork, Utah 84003

## QUOTE SHEET

NO: 02152023 MOS program  
DATE: July 29, 2023

**TO:**

Erica Kostzer  
Giselle Rodriquez  
City of Pembroke Pines Charter  
Academic Village Campus

Contact Phone 954-322-3330  
Main Phone:  
Email: [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)  
[ekostzer@pinescharter.net](mailto:ekostzer@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90037293	Valid through November 1, 2023

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<p>***Per school site pricing***</p> <p>MOS Exam and Practice License Bundle.</p> <ul style="list-style-type: none"> <li>Exams: up to 500 exams per school site. Word, PowerPoint, Excel, SharePoint, Access, and Outlook. SKU# 1101634</li> <li>Unlimited Gmetrix Practice Tests per school site. SKU# 1102735</li> </ul>	\$5,980.00	\$5,980.00
1	<p><u>Learnkey Curriculum for MOS- School Site License</u></p> <ul style="list-style-type: none"> <li>Online Learning for Microsoft applications. Provides self-paced video education and training solutions for Microsoft programs</li> <li>Video tutorials with lesson files, and pre/post assessments, and reporting.</li> <li>Aligns to the MOS Certification</li> </ul> <p><b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b></p>	\$2,250.00	\$2,250.00
SUBTOTAL			\$8,230.00
TOTAL DUE			\$8,230.00



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**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

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**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

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**13. Infringement by Seller.** Excepting any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement then Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

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CONFIDENTIAL AND PROPRIETARY



CERTIPORT, INC.  
1276 South 820 East  
Suite 200  
American Fork, Utah 84003

## QUOTE SHEET

NO: 02272023ESB and Ic3

DATE: July 29, 2023

TO: Pembroke Pines Charter  
City of Pembroke Pines  
Central Campus  
Attn: Amber Touhy

Email: [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)  
[ekostzer@pinescharter.net](mailto:ekostzer@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90077209	Quote valid through 11/1/2023

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	ESB Classroom (30 seat) License Bundle: Includes Exams, Gmetrix Practice Tests, and LearnKey curriculum for 30 seats	\$3,550.00	\$3,550.00
	IC3 Digital Literacy Bundle- includes exams, unlimited practice tests and LearnKey Curriculum	\$4,750.00	\$4,750.00
	<b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b>		
SUBTOTAL			\$9,450.00
SALES TAX			N/A
SHIPPING & HANDLING			N/A
TOTAL DUE			\$9,450.00

Please email purchase order to Mindy Howa at [mindy.howa@pearson.com](mailto:mindy.howa@pearson.com)



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**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement then Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

**15. Force Majeure.** The obligations of the parties under this Agreement (including all obligations of Seller relating to time limits and deadlines for implementation and updating under this Agreement) shall be suspended, to the extent a party is hindered or prevented from complying therewith and for a reasonable time thereafter because of acts beyond a party's control. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

**16. General.** It is mutually agreed that any provisions of this Agreement, which, by their nature, should reasonably survive termination or expiration of this Agreement will survive. Buyer agrees that the goods and services outlined in this Agreement are commercial items and not subject to cost accounting principles, including but not limited to Federal Acquisition Regulation Part 30 entitled "Cost Accounting Standards Regulation". Seller's relationship to Buyer is that of an independent contractor. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Minnesota without giving effect to the principles of conflicts law thereof, unless otherwise required by law. Both Parties to this Agreement consent to the interpretation of laws, jurisdiction, and venue in the state and federal courts sitting in the State of Minnesota, Hennepin County, unless otherwise required by law. If a provision of this Section is found to be invalid, illegal or unenforceable in any respect, the court may modify it to make such provision enforceable. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to create any rights in, be deemed to have been executed for the benefit of, nor confer upon any other person or entity not a party hereto any remedy, claim, liability, reimbursement, cause of action or other rights.

CONFIDENTIAL AND PROPRIETARY



CERTIPORT, INC.  
1276 South 820 East  
Suite 200  
American Fork, Utah 84003

## QUOTE SHEET

NO: 02152023 MOS program  
DATE: July 29, 2023

**TO:**

Erica Kostzer  
Giselle Rodriguez  
City of Pembroke Pines Charter  
Central Middle Campus

Contact Phone 954-322-3330  
Main Phone:  
Email: [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)  
[ekostzer@pinescharter.net](mailto:ekostzer@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90077209	Valid through November 1, 2023

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<p>***Per school site pricing***</p> <p>MOS Exam and Practice License Bundle.</p> <ul style="list-style-type: none"> <li>Exams: up to 500 exams per school site. Word, PowerPoint, Excel, SharePoint, Access, and Outlook. SKU# 1101634</li> <li>Unlimited Gmetrix Practice Tests per school site. SKU# 1102735</li> </ul>	\$5,980.00	\$5,980.00
1	<p><u>Learnkey Curriculum for MOS- School Site License</u></p> <ul style="list-style-type: none"> <li>Online Learning for Microsoft applications. Provides self-paced video education and training solutions for Microsoft programs</li> <li>Video tutorials with lesson files, and pre/post assessments, and reporting.</li> <li>Aligns to the MOS Certification</li> </ul> <p><b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b></p>	\$2,250.00	\$2,250.00
SUBTOTAL			\$8,230.00
TOTAL DUE			\$8,230.00



## TERMS AND CONDITIONS OF SALE

The Quote Sheet and these Terms and Conditions of Sale contained herein become the agreement between Certiport, a business of NCS Pearson, Inc. ("Seller") and the organization listed on this Quote Sheet ("Buyer") for the sale of goods and/or services as described in the Quote Sheet (hereinafter the "Agreement"). Seller's agreement to provide the goods and/or services is expressly conditional on Buyer's assent to this Agreement. If Buyer objects to any terms herein, such objection must be in writing and delivered to Seller within seven (7) calendar days of receipt of this document. Failure to make such timely exception or acceptance of any goods or services by Buyer shall be conclusively deemed assent to the terms and conditions herein.

**1. Order Acceptance and Complete Agreement.** All requests for goods or services received by Seller are subject to revision and rejection by Seller. Buyer's acceptance of goods and/or services evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products and/or services procured hereunder (including any made or implied past dealings). No additional or different terms and conditions stated in or attached to Buyer's order or Buyer's communications to Seller, including, but not limited to, Buyer's orders, purchase order or other communication to Seller are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

**2. Implementation of Services.** Seller cannot commit to an estimated schedule for the delivery of goods or services to Buyer until Buyer has signed and returned this Agreement to Seller.

**3. Payment, Prices and Setoff.** Payment terms are net thirty (30) days from date of invoice. Prices stated on the order exclude shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. All payments are due in U.S. Dollars unless otherwise agreed by Seller in writing. In addition, Buyer waives any rights of setoff.

**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

**6. Parental Consent Form.** Before allowing an examinee under the age of 18 to register and take an Exam, Buyer shall require the parent/legal guardian of the examinee to complete and sign a Parental Consent Form. Buyer shall be responsible for collecting any consent to transmit examinee data to Seller and Seller's clients, where applicable. Completed Parental Consent Forms must be retained by Company and made available to Certiport upon request.

**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement then Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

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CONFIDENTIAL AND PROPRIETARY





*City of Pembroke Pines*

**FIRST AMENDMENT TO AGREEMENT BETWEEN  
THE CITY OF PEMBROKE PINES AND  
NCS PEARSON, INC.**

**THIS AMENDMENT** ("First Amendment"), dated September 14, 2022, is entered into by and between:

**THE CITY OF PEMBROKE PINES**, a municipal corporation organized and operating under the laws of the State of Florida, with an address of **601 City Center Way, Pembroke Pines, FL 33025**, hereinafter referred to as "CITY",

and

**NCS PEARSON, INC.**, a Foreign Profit Corporation as listed with the Florida Division of Corporations, authorized to do business in the State of Florida, and with a business address of **5601 Green Valley Drive, Bloomington, MN 55457**, hereinafter referred to as "CONTRACTOR". "CITY" and "CONTRACTOR" may hereafter be collectively referred to as the "Parties".

**WHEREAS**, on **October 6, 2021**, the Parties entered into the Agreement for certification assessment and training for various industry certification and credentials programs ("Original Agreement") for an initial **one (1) year period**, which will naturally expire on **October 2, 2022**; and,

**WHEREAS**, the Original Agreement authorized the renewal of the Original Agreement at the expiration of the initial term for additional **one (1) year terms** pursuant to written amendments to the Original Agreement; and,

**WHEREAS**, to date the Parties have been satisfied with the performance and execution of the Original Agreement, and desire to supplement the terms therein and extend the term thereof for a **one (1) year period** which shall commence on **October 3, 2022** and naturally expire on **October 2, 2023** as set forth in this First Amendment.

**W I T N E S S E T H**

**NOW, THEREFORE**, for and in consideration of the sum of the mutual covenants and other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as set forth below:

**SECTION 1.** The recitations set forth in the above "WHEREAS" clauses are true and correct and incorporated herein by this reference.

**SECTION 2.** Any language contained in this First Amendment, or any subsequent amendment, which is in ~~strikethrough-type~~ shall be deletions from the terms of the Original



*City of Pembroke Pines*

Agreement and language in underlined type shall be additions to the terms of the Original Agreement.

**SECTION 3.** The Original Agreement is hereby renewed for a one (1) year period which shall commence on **October 3, 2022** and naturally expire on **October 2, 2023**.

**SECTION 4.** Quotes attached in Exhibit "A" of the Original Agreement are hereby repealed and replaced with the quotes attached hereto as Exhibit "1-A".

**SECTION 5. Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

5.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

5.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

5.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

5.2.2 Is engaged in business operations in Syria.

**SECTION 6. Employment Eligibility.** CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

**6.1 Definitions for this Section.**

6.1.1 "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

6.1.2 "Contractor" includes, but is not limited to, a vendor or consultant.

6.1.3 "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

6.1.4 "E-Verify system" means an Internet-based system operated by the United





*City of Pembroke Pines*

States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

**6.2 Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

6.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

6.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and

6.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

**SECTION 7.** In the event of any conflict or ambiguity by and between the terms of the Original Agreement, the terms and provisions of this First Amendment shall control to the extent of any such conflict or ambiguity.

**SECTION 8.** The Parties agree that in all other respects the Original Agreement, shall remain in full force and effect, except as specifically modified herein.

**SECTION 9.** Each exhibit referred to in the Original Agreement, except as repealed herein, forms an essential part of this First Amendment. The exhibits, if not physically attached, should be treated as part of this First Amendment and are incorporated herein by reference.

**SECTION 10.** Each person signing this First Amendment on behalf of either Party individually warrants that he or she has full legal power to execute this First Amendment on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all



City of Pembroke Pines

provisions contained in this First Amendment.

**SECTION 11.** This First Amendment may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this First Amendment by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other Party through facsimile transmission, email, or other electronic delivery.

**IN WITNESS OF THE FOREGOING,** the Parties have set their hands and seals the day and year first written above.

**CITY:**

CITY OF PEMBROKE PINES, FLORIDA

**ATTEST:**

DocuSigned by:

Marlene D. Graham September 14, 2022

E858EEEE04EEF4F3

MARLENE D. GRAHAM, CITY CLERK

Frank C. Ortis  
MAYOR FRANK C. ORTIS

DocuSigned by:

**APPROVED AS TO FORM:**

DocuSigned by:

Jacob Horowitz September 14, 2022

833DB27BB2774A7...

Print Name: Jacob Horowitz

OFFICE OF THE CITY ATTORNEY

BY:

Charles F. Dodge

September 14, 2022

47B966ECFDAD4AC...

CHARLES F. DODGE, CITY MANAGER

**CONTRACTOR:**

NCS PEARSON, INC.

Signed By: Bill Brothers

Bill Brothers (Aug 25, 2022 15:24 MDT)

Print Name: Bill Brothers

Title: Director Finance Business Partnering

JDM  
JDM



**CERTIPORT, INC.**  
**1276 South 820 East**  
**Suite 200**  
**American Fork, Utah 84003**  
 Federal Tax ID Number: 41-0850527

**QUOTE SHEET****NO: 02282022ACA Program****DATE: February 28, 2022**

**TO:** City of Pembroke Pines Charter  
 Academic Village Campus  
 Att: Giselle Rodriguez

**Contact Phone:** 954-322-3330  
**Main Phone:**  
**Email:**  
[grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90037293	Valid through October 31, 2022

QUANTITY	DESCRIPTION	UNIT	AMOUNT
	<b><u>**per school site pricing**</u></b>		
1	<b>ACA Campus License with Gmetrix Practice Tests-</b> Can test in more than one classroom per school site – Up to *1000 exams and unlimited Gmetrix Practice – unlimited user/seat per school site. <ul style="list-style-type: none"> <li>Full Suite Bundle: CC Photoshop, Dreamweaver, Flash, Premiere Pro. Also CC Illustrator, and InDesign</li> </ul>	\$5,928.00	\$5,928.00
1	<b><u>LearnKey- Online Learning Gmetrix Platform- per school pricing- online learning courseware</u></b> <ul style="list-style-type: none"> <li>Video tutorials with lesson files, includes workbooks and pre/post assessments, reporting</li> <li>Same platform as GMetrix; uses the same admin panel and familiar navigation. This means one single sign on with Gmetrix practice exams and LearnKey curriculum!</li> <li>Aligns to ACA Certification</li> </ul>	\$2,250.00	\$2,250.00
	<b><i>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</i></b>		
SUBTOTAL			\$8,178.00
SALES TAX			N/A
SHIPPING & HANDLING			N/A
<b>TOTAL DUE</b>			<b>\$8,178.00</b>

Please email purchase order to Mindy Howa at [mindy.howa@pearson.com](mailto:mindy.howa@pearson.com)

## TERMS AND CONDITIONS OF SALE

The Quote Sheet and these Terms and Conditions of Sale contained herein become the agreement between Certiport, a business of NCS Pearson, Inc. ("Seller") and the organization listed on this Quote Sheet ("Buyer") for the sale of goods and/or services as described in the Quote Sheet (hereinafter the "Agreement"). Seller's agreement to provide the goods and/or services is expressly conditional on Buyer's assent to this Agreement. If Buyer objects to any terms herein, such objection must be in writing and delivered to Seller within seven (7) calendar days of receipt of this document. Failure to make such timely exception or acceptance of any goods or services by Buyer shall be conclusively deemed assent to the terms and conditions herein.

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**2. Implementation of Services.** Seller cannot commit to an estimated schedule for the delivery of goods or services to Buyer until Buyer has signed and returned this Agreement to Seller.

**3. Payment, Prices and Setoff.** Payment terms are net thirty (30) days from date of invoice. Prices stated on the order exclude shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. All payments are due in U.S. Dollars unless otherwise agreed by Seller in writing. In addition, Buyer waives any rights of setoff.

**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

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**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement then Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

**15. Force Majeure.** The obligations of the parties under this Agreement (including all obligations of Seller relating to time limits and deadlines for implementation and updating under this Agreement) shall be suspended, to the extent a party is hindered or prevented from complying therewith and for a reasonable time thereafter because of acts beyond a party's control. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

**16. General.** It is mutually agreed that any provisions of this Agreement, which, by their nature, should reasonably survive termination or expiration of this Agreement will survive. Buyer agrees that the goods and services outlined in this Agreement are commercial items and not subject to cost accounting principles, including but not limited to Federal Acquisition Regulation Part 30 entitled "Cost Accounting Standards Regulation". Seller's relationship to Buyer is that of an independent contractor. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Minnesota without giving effect to the principles of conflicts law thereof, unless otherwise required by law. Both Parties to this Agreement consent to the interpretation of laws, jurisdiction, and venue in the state and federal courts sitting in the State of Minnesota, Hennepin County, unless otherwise required by law. If a provision of this Section is found to be invalid, illegal or unenforceable in any respect, the court may modify it to make such provision enforceable. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to create any rights in, be deemed to have been executed for the benefit of, nor confer upon any other person or entity not a party hereto any remedy, claim, liability, reimbursement, cause of action or other rights.

CONFIDENTIAL AND PROPRIETARY



**CERTIPORT, INC.**  
**1276 South 820 East**  
**Suite 200**  
**American Fork, Utah 84003**

## QUOTE SHEET

**NO: 02282022 MOS program**

**DATE: February 28, 2022**

**TO:**

Giselle Rodruquez  
 City of Pembroke Pines Charter  
 Academic Village Campus

**Contact Phone** 954-322-3330

**Main Phone:**

**Email:** [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90037293	Valid through October 31, 2022

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<b>***Per school site pricing***</b>  MOS Exam and Practice License Bundle. <ul style="list-style-type: none"> <li>Exams: up to 500 exams per school site. Word, PowerPoint, Excel, SharePoint, Access, and Outlook. SKU# 1101634</li> <li>Unlimited Gmetrix Practice Tests per school site. SKU# 1102735</li> </ul>	\$5,980.00	\$5,980.00
1	<b><u>Learnkey Curriculum for MOS- School Site License</u></b> <ul style="list-style-type: none"> <li>Online Learning for Microsoft applications. Provides self-paced video education and training solutions for Microsoft programs</li> <li>Video tutorials with lesson files, and pre/post assessments, and reporting.</li> <li>Aligns to the MOS Certification</li> </ul>	\$2,250.00	\$2,250.00
	<b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b>		
SUBTOTAL			\$8,230.00
TOTAL DUE			<b>\$8,230.00</b>

## TERMS AND CONDITIONS OF SALE

The Quote Sheet and these Terms and Conditions of Sale contained herein become the agreement between Certiport, a business of NCS Pearson, Inc. ("Seller") and the organization listed on this Quote Sheet ("Buyer") for the sale of goods and/or services as described in the Quote Sheet (hereinafter the "Agreement"). Seller's agreement to provide the goods and/or services is expressly conditional on Buyer's assent to this Agreement. If Buyer objects to any terms herein, such objection must be in writing and delivered to Seller within seven (7) calendar days of receipt of this document. Failure to make such timely exception or acceptance of any goods or services by Buyer shall be conclusively deemed assent to the terms and conditions herein.

**1. Order Acceptance and Complete Agreement.** All requests for goods or services received by Seller are subject to revision and rejection by Seller. Buyer's acceptance of goods and/or services evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products and/or services procured hereunder (including any made or implied past dealings). No additional or different terms and conditions stated in or attached to Buyer's order or Buyer's communications to Seller, including, but not limited to, Buyer's orders, purchase order or other communication to Seller are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

**2. Implementation of Services.** Seller cannot commit to an estimated schedule for the delivery of goods or services to Buyer until Buyer has signed and returned this Agreement to Seller.

**3. Payment, Prices and Setoff.** Payment terms are net thirty (30) days from date of invoice. Prices stated on the order exclude shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. All payments are due in U.S. Dollars unless otherwise agreed by Seller in writing. In addition, Buyer waives any rights of setoff.

**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

**6. Parental Consent Form.** Before allowing an examinee under the age of 18 to register and take an Exam, Buyer shall require the parent/legal guardian of the examinee to complete and sign a Parental Consent Form. Buyer shall be responsible for collecting any consent to transmit examinee data to Seller and Seller's clients, where applicable. Completed Parental Consent Forms must be retained by Company and made available to Certiport upon request.

**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

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CONFIDENTIAL AND PROPRIETARY



**CERTIPORT, INC.**  
**1276 South 820 East**  
**Suite 200**  
**American Fork, Utah 84003**

## QUOTE SHEET

**NO: 02282022 MOS program**

**DATE: February 28, 2022**

**TO:**

Giselle Rodruquez  
 City of Pembroke Pines Charter  
 Central Campus

**Contact Phone** 954-322-3330

**Main Phone:**

**Email:** [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90077209	Valid through October 31, 2022

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<p><b>***Per school site pricing***</b></p> <p>MOS Exam and Practice License Bundle.</p> <ul style="list-style-type: none"> <li>Exams: up to 500 exams per school site. Word, PowerPoint, Excel, SharePoint, Access, and Outlook. SKU# 1101634</li> <li>Unlimited Gmetrix Practice Tests per school site. SKU# 1102735</li> </ul>	\$5,980.00	\$5,980.00
		\$2,250.00	\$2,250.00
1	<p><b><u>LearnKey Curriculum for MOS- School Site License</u></b></p> <ul style="list-style-type: none"> <li>Online Learning for Microsoft applications. Provides blended learning education and training solutions for Microsoft programs</li> <li>Video tutorials with lesson files, includes workbooks, and pre/post assessments, and reporting.</li> <li>Aligns to the MOS Certification</li> </ul> <p><b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b></p>		
SUBTOTAL			\$8,230.00
TOTAL DUE			<b>\$8,230.00</b>

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**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

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**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

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CONFIDENTIAL AND PROPRIETARY



**CERTIPORT, INC.**  
**1276 South 820 East**  
**Suite 200**  
**American Fork, Utah 84003**

## QUOTE SHEET

**NO: 02282022 MOS program**

**DATE: February 28, 2022**

**TO:**

Giselle Rodruquez  
 City of Pembroke Pines Charter  
 West Campus

**Contact Phone** 954-322-3330

**Main Phone:**

**Email:** [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa				Valid through October 31, 2022

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<p><b>***Per school site pricing***</b></p> <p>MOS Exam and Practice License Bundle.</p> <ul style="list-style-type: none"> <li>Exams: up to 500 exams per school site. Word, PowerPoint, Excel, SharePoint, Access, and Outlook. SKU# 1101634</li> <li>Unlimited Gmetrix Practice Tests per school site. SKU# 1102735</li> </ul>	\$5,980.00	\$5,980.00
		\$2,250.00	\$2,250.00
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SUBTOTAL			\$8,230.00
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## TERMS AND CONDITIONS OF SALE

The Quote Sheet and these Terms and Conditions of Sale contained herein become the agreement between Certiport, a business of NCS Pearson, Inc. ("Seller") and the organization listed on this Quote Sheet ("Buyer") for the sale of goods and/or services as described in the Quote Sheet (hereinafter the "Agreement"). Seller's agreement to provide the goods and/or services is expressly conditional on Buyer's assent to this Agreement. If Buyer objects to any terms herein, such objection must be in writing and delivered to Seller within seven (7) calendar days of receipt of this document. Failure to make such timely exception or acceptance of any goods or services by Buyer shall be conclusively deemed assent to the terms and conditions herein.

**1. Order Acceptance and Complete Agreement.** All requests for goods or services received by Seller are subject to revision and rejection by Seller. Buyer's acceptance of goods and/or services evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products and/or services procured hereunder (including any made or implied past dealings). No additional or different terms and conditions stated in or attached to Buyer's order or Buyer's communications to Seller, including, but not limited to, Buyer's orders, purchase order or other communication to Seller are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

**2. Implementation of Services.** Seller cannot commit to an estimated schedule for the delivery of goods or services to Buyer until Buyer has signed and returned this Agreement to Seller.

**3. Payment, Prices and Setoff.** Payment terms are net thirty (30) days from date of invoice. Prices stated on the order exclude shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. All payments are due in U.S. Dollars unless otherwise agreed by Seller in writing. In addition, Buyer waives any rights of setoff.

**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

**6. Parental Consent Form.** Before allowing an examinee under the age of 18 to register and take an Exam, Buyer shall require the parent/legal guardian of the examinee to complete and sign a Parental Consent Form. Buyer shall be responsible for collecting any consent to transmit examinee data to Seller and Seller's clients, where applicable. Completed Parental Consent Forms must be retained by Company and made available to Certiport upon request.

**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement then Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

**15. Force Majeure.** The obligations of the parties under this Agreement (including all obligations of Seller relating to time limits and deadlines for implementation and updating under this Agreement) shall be suspended, to the extent a party is hindered or prevented from complying therewith and for a reasonable time thereafter because of acts beyond a party's control. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

**16. General.** It is mutually agreed that any provisions of this Agreement, which, by their nature, should reasonably survive termination or expiration of this Agreement will survive. Buyer agrees that the goods and services outlined in this Agreement are commercial items and not subject to cost accounting principles, including but not limited to Federal Acquisition Regulation Part 30 entitled "Cost Accounting Standards Regulation". Seller's relationship to Buyer is that of an independent contractor. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Minnesota without giving effect to the principles of conflicts law thereof, unless otherwise required by law. Both Parties to this Agreement consent to the interpretation of laws, jurisdiction, and venue in the state and federal courts sitting in the State of Minnesota, Hennepin County, unless otherwise required by law. If a provision of this Section is found to be invalid, illegal or unenforceable in any respect, the court may modify it to make such provision enforceable. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to create any rights in, be deemed to have been executed for the benefit of, nor confer upon any other person or entity not a party hereto any remedy, claim, liability, reimbursement, cause of action or other rights.

CONFIDENTIAL AND PROPRIETARY





# City of Pembroke Pines, FL

601 City Center Way  
Pembroke Pines, FL  
33025  
www.ppines.com

## Agenda Request Form

**Agenda Number: 15.**

**File ID:** 22-0694

**Type:** Agreements/Contracts

**Status:** Passed

**Version:** 1

**Agenda  
Section:**

**In Control:** City Commission

**File Created:** 08/30/2022

**Short Title:** Contracts Database Report - September 7th, 2022

**Final Action:** 09/07/2022

**Title:** **MOTION TO APPROVE THE DEPARTMENT RECOMMENDATIONS  
FOR THE FOLLOWING ITEMS LISTED ON THE CONTRACTS  
DATABASE REPORT:**

(A) NCS Pearson, Inc. (Certiport) - Certification Assessment & Training -  
Renewal

(B) Emilio's BBQ Catering Services Corp. - Gift Shop/food services at the  
Senior Center - Renewal

(C) Miramar-Pembroke Pines Regional Chamber of Commerce, Inc. -  
Trustee Partnership Agreement - Renewal

(D) Civic Plus, Inc. - City Website, Schools Subsite, Intranet, Recreation &  
Audio-Eye Services - Renewal

**ITEM (E) WILL EXPIRE WITH NO RENEWAL TERMS AVAILABLE,  
THEREFORE, NO COMMISSION ACTION IS REQUIRED AS IT IS  
PRESENTED FOR NOTIFICATION PURPOSES ONLY PURSUANT TO  
SECTION 35.29 (F) OF THE CITY'S PROCUREMENT CODE:**

(E) Mulch CO-OP Agreement (Adwood, Inc. and Eastcoast Mulch) - Mulch  
CO-OP - Non-Renewal

**\*Agenda Date:** 09/07/2022

**Agenda Number:** 15.

### Internal Notes:

**Attachments:** 1. Contract Database Report - September 7th, 2022, 2. A. NCS Pearson-Certiport Agreement-Microsoft Training for Charter Schools (AB), 3. B. Emilios BBQ Catering Services - Lease and Operation Agreement (AB), 4. C. MPPRCC - Partnership Agreement - (AB), 5. D. Civic Plus, Inc. - City Website etc. (ABD), 6. E. Mulch Co-Op Agreement (AB) Part 1, 7. E. Mulch CO-OP Agreement (AB) Part 2

**Agenda Request Form Continued (22-0694)**

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1	City Commission	09/07/2022	approve	Pass
<b>Action Text:</b> A motion was made to approve on the Consent Agenda				
Aye: - 5 Mayor Ortis, Vice Mayor Schwartz, Commissioner Castillo, Commissioner Siple, and Commissioner Good Jr.				
Nay: - 0				

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**SUMMARY EXPLANATION AND BACKGROUND:**

1. Pursuant to Section 35.29(F) "City Commission notification" of the City's Code of Ordinances, "The City Manager, or his or her designee, shall notify the Commission, in writing, at least three months in advance of the expiration, renewal, automatic renewal or extension date, and shall provide a copy of the contract or agreement and a vendor performance report card for the contract or agreement to the City Commission."
2. On May 17, 2017, Commission approved the motion to place all contracts from the Contract Database Reports on consent agendas as they come up for contractual term renewal so that City Commission affirms directions to administration whether to renew or to go out to bid.
3. The Agreements shown below are listed on the Contracts Database Reports for renewal.

**(A) NCS Pearson, Inc. (Certiport)-Certification Assessment & Training (Renewal)**

1. On October 6, 2021, the City entered into an Original Agreement with NCS Pearson, Inc. for an initial one (1) year period which commenced on October 3, 2021 and shall expire on October 2, 2022.
2. NCS Pearson, Inc. provides courseware and exams for the Microsoft Office Specialist (MOS) and the Adobe Certified Association (ACA) industry certification programs for the City's Charter Schools.
3. Section 3.2 of the Original Agreement authorizes the renewal of the Original Agreement for additional one (1) year renewal terms upon mutual consent, evidenced by written Amendments.
4. The City's Charter Schools are satisfied with the performance and execution of the Original Agreement and recommends that the City Commission approve this First Amendment for a one (1) year term which shall commence on October 3, 2022 and shall naturally expire October 2, 2023, as allowed by the agreement.

Reviewed by Commission Auditor.

**FINANCIAL IMPACT DETAIL:**

**a) Initial Cost:** \$32,868



**Agenda Request Form Continued (22-0694)**

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**b) Amount budgeted for this item in Account No:**West Middle

171-569-5052-552652-5102-369-0000-00553 \$8,230.00; Central Middle

171-569-5052-552652-5102-369-0000-00554 \$8,230.00; Academic Village Middle

172-569-5053-552652-5102-369-0000- \$8,230.00 &amp; Academic Village High

172-569-5053-552652-5103-369-0000- \$8,178.00

**c) Source of funding for difference, if not fully budgeted:** Not applicable.**d) 5-year projection of the operational cost of the project:**

	Current FY
Revenues	\$ .00
Expenditures	\$32,868.00
Net Cost	\$32,868.00

**e) Detail of additional staff requirements:** Not applicable.**FEASIBILITY REVIEW:**

*A feasibility review is required for the award, renewal and/or expiration of all function sourcing contracts. This analysis is to determine the financial effectiveness of function sourcing services.*

**a) Was a Feasibility Review/Cost Analysis of Out-Sourcing vs. In-House Labor Conducted for this service?** Not applicable.**b) If Yes, what is the total cost or total savings of utilizing Out-Sourcing vs. In-House Labor for this service?** Not applicable.**e) Detail of additional staff requirements:** Not applicable.**FEASIBILITY REVIEW:**

*A feasibility review is required for the award, renewal and/or expiration of all function sourcing contracts. This analysis is to determine the financial effectiveness of function sourcing services.*

**a) Was a Feasibility Review/Cost Analysis of Out-Sourcing vs. In-House Labor Conducted for this service?** Not applicable.**b) If Yes, what is the total cost or total savings of utilizing Out-Sourcing vs. In-House Labor for this service?** Not applicable.**(B) Emilio's BBQ Catering Services Corp. - Gift Shop/food services at the Senior Center - Renewal**

1. On February 23, 2016, the City entered into a Lease and Operation Management Agreement with Emilio's BBQ Catering Services Corporation for an initial period which expired on December 31, 2019.

Agenda Request Form Continued (22-0694)

2. Emilio's BBQ Catering Services Corporation provides the City with food and gift shop services to the clientele of the Southwest Focal Point Senior Center.
3. Section 2.1 of the Original Agreement authorizes the renewal of the Original Agreement for additional one (1) year terms upon mutual consent, evidenced by written Amendments to the Original Agreement extending the term thereof.
4. To date the Original Agreement has been renewed three (3) times extending the term to December 31, 2022.
5. The monthly base rent is being increased from \$944.37 plus taxes to \$1,035.41 plus taxes, pursuant to Consumer Price Index (CPI) rate increases, as allowed by the Agreement.
6. The Community Services Department is satisfied with the performance and execution of the Original Agreement, as amended, and recommends that the City Commission approve this Fifth Amendment to extend the term for one (1) year which shall commence on January 1, 2023, and naturally expire on December 31, 2023.

**FINANCIAL IMPACT DETAIL:**

- a) **Renewal Revenue:** \$12,424.92 (\$1,035.41 \* 12 months January 2023 - December 2023)
- b) **Revenue budgeted for this item in Account No:** Revenue Account 001-000-8001-362046-0000-000-0000 Rental Community Services. Monthly Rent \$1,035.41 monthly plus tax.
- c) **Source of funding for difference, if not fully budgeted:** Not Applicable.
- d) **2 year projection of the operational cost of the project:** Not Applicable.

	FY 2022-2023	FY 2023-2024
Revenues	\$9,318.69	\$3,106.23
Expenditures	\$.00	\$.00
Net Revenue	\$9,318.69	\$3,106.23

- e) **Detail of additional staff requirements:** Not Applicable.

**FEASIBILITY REVIEW:**

*A feasibility review is required for the award, renewal and/or expiration of all function sourcing contracts. This analysis is to determine the financial effectiveness of function sourcing services.*

- a) **Was a Feasibility Review/Cost Analysis of Out-Sourcing vs. In-House Labor Conducted for this service?** Not Applicable.
- b) **If Yes, what is the total cost or total savings of utilizing Out-Sourcing vs. In-House Labor for this service?** Not Applicable

**(C) Miramar-Pembroke Pines Regional Chamber of Commerce, Inc. - Trustee**



Agenda Request Form Continued (22-0694)**Partnership Agreement - Renewal**

1. On December 6, 2016, the City entered into a Trustee Partnership Agreement with The Miramar-Pembroke Pines Regional Chamber of Commerce, Inc. for an initial one (1) year period, which expired on November 30, 2017.
2. The Partnership Agreement allows for a relationship between the City and the Chamber to increase the level of member benefits offered by the Chamber, and facilitate the growth of the Chamber for the benefit of the residents and businesses in the regional community.
3. Section 3.1 of the Original Agreement, as amended authorizes the renewal of the Original Agreement on an annual basis upon mutual consent, evidenced by written Amendments extending the term thereof.
4. To date the Agreement has had five (5) Amendments, including five (5) additional one (1) year renewal periods which extended the term of the Original Agreement, as amended to November 30, 2022.
5. The Planning & Economic Development Department is satisfied with the performance and execution of the Original Agreement and recommends that the City Commission approve this Sixth Amendment to renew the term for one (1) year period which shall commence on December 1, 2022, and naturally expire on November 30, 2023, as allowed by the agreement.

**FINANCIAL IMPACT DETAIL:**

- a) **Initial Cost:** \$8,000.00
- b) **Amount budgeted for this item in Account No:**  
001-519-0800-554100-0000-000-0000-00000 (Memberships Dues Subscription)
- c) **Source of funding for difference, if not fully budgeted:** Not Applicable
- d) **2-year projection of the operational cost of the project:**

	FY2022-2023	FY2023-2024
Revenues	\$ .00	\$ .00
Expenditures	\$6,666.67	\$1,333.33
Net Cost	\$6,666.67	\$1,333.33

- e) **Detail of additional staff requirements:** Not Applicable

**FEASIBILITY REVIEW:**

*A feasibility review is required for the award, renewal and/or expiration of all function sourcing contracts. This analysis is to determine the financial effectiveness of function sourcing services.*

- a) **Was a Feasibility Review/Cost Analysis of Out-Sourcing vs. In-House Labor Conducted for this service?** Not Applicable
- b) **If Yes, what is the total cost or total savings of utilizing Out-Sourcing vs. In-House**

**Agenda Request Form Continued (22-0694)**

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**Labor for this service?** Not Applicable

**(D) Civic Plus, Inc. - City Website, Schools Subsite, Intranet, Recreation & Audio-Eye Services - Renewal**

1. On February 27, 2019, the City entered into a Service Agreement with Civic Plus, Inc. commencing on February 27, 2019.
2. The City of Pembroke Pines Technology Services Department utilizes Civic Plus, Inc. to provide the City Website, the City Subsite Intranet, the School Subsites and Audio Eye services. In addition, Recreation and Cultural Arts Department utilizes Civic Plus, Inc. to provide Recreation registration software.
3. Section 1 of the Original Agreement allows for the agreement to remain in effect unless terminated by either party.
4. On January 15, 2020, August 5, 2020 and August 4, 2021 the City Commission approved the continuation of the Agreement extending the term up to January 31, 2023.
5. The Technology Services is satisfied with the performance and execution of the Agreement and recommends that the City Commission approve the one (1) year continuation commencing on February 1, 2023, and ending on January 31, 2024, as allowed by the Agreement.

**FINANCIAL IMPACT DETAIL:**

**a) Initial Cost:** \$115,710.70

**b) Amount budgeted for this item in Account No:**

001-513-2002-546801-0000-000-0000- IT Maintenance Contracts

**c) Source of funding for difference, if not fully budgeted:** Not Applicable

**d) 5 year projection of the operational cost of the project** [ (1) Enter Information or "Not Applicable"; If information is entered, then (2) Provide a detailed breakdown of revenues and expenditures as an exhibit in the agenda item.]

	FY2022-2023
Revenues	\$ .00
Expenditures	\$115,710.70
Net Cost	\$115,710.70

**e) Detail of additional staff requirements:** Not Applicable

**FEASIBILITY REVIEW:**

*A feasibility review is required for the award, renewal and/or expiration of all function sourcing contracts. This analysis is to determine the financial effectiveness of function sourcing services.*



**Agenda Request Form Continued (22-0694)**

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- a) Was a Feasibility Review/Cost Analysis of Out-Sourcing vs. In-House Labor Conducted for this service?** No
- b) If Yes, what is the total cost or total savings of utilizing Out-Sourcing vs. In-House Labor for this service?** Not Applicable

**(E) Mulch CO-OP Agreement (Adwood, Inc. and Eastcoast Mulch) - Mulch CO-OP - Non-Renewal**

1. On November 14, 2017, the City of Pompano Beach approved to enter into a CO-OP Agreement with Advanced Mulch, Inc., Adwood, Inc., Eastcoast Mulch, and Superior Mulch for an initial one (1) year period which expired on November 14th, 2018.
2. The Public Services and Recreation and Cultural Arts Departments purchase various types of mulch from Adwood and Eastcoast Mulch.
3. The Original Agreement allows for four (4) additional one (1) year renewal periods upon mutual consent.
4. The Original Agreement has been renewed four (4) times extending the term to November 14, 2022.
5. The Public Services Department is satisfied with the performance and execution of the Original Agreement, but at this time there is no renewal terms available, as such, a new procurement process will be needed for these services.



**AGREEMENT BETWEEN THE CITY OF PEMBROKE PINES  
AND NCS PEARSON, INC.**

THIS IS AN AGREEMENT ("Agreement"), dated the 6<sup>th</sup> day of October, 2021 by and between:

**THE CITY OF PEMBROKE PINES**, a municipal corporation of the State of Florida with a business address of **601 City Center Way, Pembroke Pines, Florida 33025** (hereinafter referred to as the "CITY")

and

**NCS PEARSON, INC.**, a Foreign Profit Corporation, as listed with the Florida Division of Corporations, authorized to do business in the State of Florida, and with a principal address of **5601 Green Valley Drive, Bloomington, MN 55457** (hereinafter referred to as the "CONTRACTOR"). CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties."

**WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

**ARTICLE 1**  
**PREAMBLE**

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the respective Parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 The CITY desires to engage a firm to provide CITY's Charter Schools with **certification assessment and training for various industry certification and credentials programs**, as more particularly described in CONTRACTOR's proposal, attached hereto as **Exhibit "A"**, and by this reference made a part hereof.

1.3 Pursuant to CITY Code of Ordinance §35.18(C)(3), entitled "City standard, single-source and sole source commodities and services", certain sole-source services are exempt from competitive bidding. CONTRACTOR is the exclusive distributor of the services herein required, as more particularly described in Exhibit "A". The CITY desires to procure the services herein required from CONTRACTOR pursuant to CITY Code of Ordinances §35.48(C)(3).





1.4 Negotiations pertaining to the services to be performed by the CONTRACTOR were undertaken and this Agreement incorporates the results of such negotiation.

## **ARTICLE 2**

### **SERVICES AND RESPONSIBILITIES**

2.1 CONTRACTOR hereby agrees to appoint CITY as the Certiport Authorized Test Center, as more particularly described in Exhibit "A", attached hereto and by this reference made a part hereof, in accordance with the scope of services outlines in the specifications, attached hereto and made a part hereof as Exhibit "A". The Parties agree to do everything required by this Agreement, Addenda to this Agreement, and Commission award complete with proposal form.

2.2 CONTRACTOR shall furnish all services, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.3 CITY owns and operates a testing center with facilities that meet CONTRACTOR's testing center technical requirements, as well as CATC™ Guidelines, Policies, and Procedures described in Exhibit "A" and desires to have its facility recognized and appointed by Certiport as a "CAC™" in the Territory and/or Sector(s) as described in Exhibit "B".

2.4 CONTRACTOR hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONTRACTOR, that CONTRACTOR has the professional expertise, experience and manpower to perform the services to be provided by CONTRACTOR pursuant to the terms of this Agreement.

2.5 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services under this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement. If CONTRACTOR's license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.

2.6 **Compliance with Laws.** CONTRACTOR hereby warrants and agrees, that at all times material to the Agreement, CONTRACTOR shall perform its obligations in compliance with all applicable federal, state, local laws, rules and regulations, including §§ 501.171, 1002.22, 1002.221, and 1002.222, Florida Statutes, the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g ("FERPA"), its implementing regulations (34 C.F.R. Part 99), and the Children's Online Privacy Protection Act (15 U.S.C. §§ 6501-6506), as may be applicable. Non-compliance may constitute a material breach of Agreement. Specifically, CONTRACTOR agrees as follows:

2.6.1 The CITY shall retain all rights, including intellectual property rights, title, and interest in education records created, accessed, or utilized during the performance of Agreement. CONTRACTOR shall utilize the education records solely for the purposes of providing services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party. The CITY grants



to CONTRACTOR and authorized third-parties a limited, non-exclusive license to use, access, and process education records solely for the purpose of providing and supporting the functions and use of CONTRACTOR services herein required.

2.6.2 CONTRACTOR agrees to hold any education records in strict confidence and not use or disclose, except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age eighteen (18) or older whose education records are to be shared provides prior written consent for their release.

2.6.3 CONTRACTOR shall ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to CITY upon request.

2.6.4 CONTRACTOR shall safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements. CONTRACTOR shall notify CITY immediately upon discovery of a breach of confidentiality of education records by telephone and email pursuant to Section 19.6 herein, and shall take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by §501.171, Florida Statutes.

2.6.5 CONTRACTOR shall fully cooperate with appropriate CITY staff to resolve any privacy investigations and concerns in a timely manner and prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse CITY any direct costs incurred by CITY for doing so, including, but not limited to, those required by §501.171, Florida Statutes.

2.6.6 CONTRACTOR shall only use, access, and process education records for the time necessary to render the services required by the Agreement. CONTRACTOR and authorized third-parties shall within thirty (30) days of termination of the relationship between the parties, transfer (if requested) or destroy any education records in their possession and thereafter cease to access and process education records. CONTRACTOR's limited license to use education records shall cease ninety (90) days after termination of the relationship between the parties.

2.6.7 The CITY may request from time to time access to Data possessed by CONTRACTOR, and may request to delete certain Data in CONTRACTOR database, such request by the CITY shall be made in writing, the CITY shall honor such request within a reasonable time.

2.7 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the





work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.

### **ARTICLE 3**

#### **TERM AND TERMINATION**

3.1 CONTRACTOR shall perform the services associated with this Agreement, as identified in **Exhibit "A"** attached hereto and made part hereof, for an initial **one (1) year** period commencing on **October 3, 2021** and ending on **October 2, 2022**.

3.2 This Agreement may be renewed for **additional one (1) year terms** upon mutual consent of the Parties, evidenced written amendments to this Agreement extending the term thereof.

3.3 **Post Contractual Obligations.** In the event that the term of this agreement expires, the CONTRACTOR agrees to continue providing services, at the current rates, on a month to month basis until the CITY establishes a new contract for services.

3.4 **Termination for Convenience.** This Agreement may be terminated by CITY for convenience, upon **thirty (30) days** of written notice by the terminating party to the other party for such termination in which event CONTRACTOR shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.

3.5 **Default by CONTRACTOR.** In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONTRACTOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by CONTRACTOR of written notice of such neglect or failure.

### **ARTICLE 4**

#### **COMPENSATION AND METHOD OF PAYMENT**

4.1 The CITY hereby agrees to compensate CONTRACTOR for services performed by CONTRACTOR pursuant to the terms of this Agreement and in accordance with Exhibit A, an annual amount not to exceed **THIRTY-TWO THOUSAND, EIGHT HUNDRED SIXTY-EIGHT DOLLARS AND 0/100 CENTS (\$32,868.00)**.

4.2 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

4.3 **Method of Billing and Payment.** The CITY shall within thirty (30) days, from the date the Director of Innovative Learning approves the Application for Payment, pay the CONTRACTOR the amount approved by the Director of Innovative Learning or his/her assignees. Payment will be made to CONTRACTOR at:



**Certiport, a business of NCS Pearson, Inc.  
1276 South 820 East Suite 200  
American Fork, UT 84003**

**ARTICLE 5  
CHANGES IN SCOPE OF WORK**

5.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in **Exhibit "A"**, to be provided pursuant to this Agreement. These changes may affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

5.2 In no event will the CONTRACTOR be compensated for any services which have not been described either herein or in a separate written agreement executed by the Parties hereto.

**ARTICLE 6  
INDEMNIFICATION**

6.1 The CONTRACTOR shall indemnify and hold harmless the CITY, its trustees, elected and appointed officers, agents, servants, assigns and employees, consultants, separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against claims, demands, or causes of action whatsoever, and the resulting losses, damages, costs and expenses, including but not limited to attorneys' fees, including paralegal expenses, liabilities, damages, orders, judgments, or decrees, sustained by the CITY arising out of or resulting from performance of the services herein required or the failure of the CONTRACTOR to take out and maintain insurance as required under this Agreement. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon.

6.2 Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

6.3 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR or the CITY may select counsel from the insurance carrier panel.

6.4 Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time.





## **ARTICLE 7** **INSURANCE**

7.1 The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

7.2 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

7.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

7.4 ~~Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states.~~ If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONTRACTOR or their Insurance Broker must agree to provide notice.

7.5 The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

7.6 REQUIRED INSURANCE. CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

✓ ☐ 7.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000



Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement. **The City of Pembroke Pines must be included as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No



7.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident  
\$500,000 Disease – Policy Limit  
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption for CITY to exempt CONTRACTOR.

Yes No



7.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)  
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)  
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)  
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

Yes No



7.6.3.1 If CONTRACTOR requests reduced limits under a Personal Auto Liability Policy and it is agreed to by the CITY, coverage shall include Bodily Injury limits of \$100,000 per person/\$300,000 per occurrence and Property Damage limits of \$300,000 per occurrence

Yes No





- ☐ ☒ 7.6.4 Umbrella/Excess Liability Insurance in the amount of \$\_\_\_\_\_ as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

- ☐ ☒ 7.6.5 Professional Liability/Errors & Omissions Insurance with a limit of liability no less than \$1,000,000 per wrongful or negligent act. This coverage shall be maintained for a period of no less than three (3) years after the delivery of goods/services final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY.

Yes No

- ☐ ☒ 7.6.6 Environmental/Pollution Liability insurance shall be required with a limit of no less than \$1,000,000 per wrongful act. Coverage shall include: CONTRACTOR's completed operations, sudden, accidental and gradual pollution conditions. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

- ☒ ☐ 7.6.7 Cyber Liability including Network Security and Privacy Liability with a limit of liability no less than \$1,000,000 per loss. Coverage shall include liability arising from: theft, dissemination and/or use of confidential information stored or transmitted in electronic form, unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, and the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon. If vendor is collecting credit card information, it shall cover all PCI breach expenses. Coverage is to include the various state monitoring and state required remediation as well as meet the various state notification requirements. This coverage shall be maintained for a period of no less than the later of three (3) years after delivery of goods/services or final payment of the Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. **The City of Pembroke Pines must be included as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

- ☐ ☒ 7.6.8 Crime Coverage shall include employee dishonesty, forgery or alteration, and computer fraud in an amount of no less than \$1,000,000 per loss. If CONTRACTOR is physically located on CITY's premises, a third-party fidelity coverage extension shall apply.





Yes No

- ☐ ☒ 7.6.9 Garage Liability & Garage-keepers Legal Liability for those that manage parking lots for the CITY or service CITY vehicles. Coverage must be written on an occurrence basis, with limits of liability no less than \$1,000,000 per Occurrence, including products & completed operations. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

- ☐ ☒ 7.6.10 Liquor Liability for those in the business of selling, serving or furnishing of any alcoholic beverages, whether licensed or not, shall carry a limit of liability of no less than \$1,000,000 per occurrence. Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

- ☐ ☒ 7.6.11 Sexual Abuse & Molestation for any agreement involving a vulnerable population. Limits shall be no less than \$500,000 per occurrence. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment of this Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

- ☐ ☒ 7.6.12 Builder's Risk Insurance shall be "All Risk" for one hundred percent (100%) of the completed value of the project that is the subject of this Agreement with a deductible of not more than five percent (5%) for Named Windstorm and \$20,000 per claim for all other perils. The Builder's Risk Insurance shall include interests of the CITY, the CONTRACTOR and subcontractors of the project. The CONTRACTOR shall include a separate line item for all costs associated with the Builder's Risk Insurance Coverage for the project. The CITY reserves the right at its sole discretion to utilize the CONTRACTOR's Builder's Risk Insurance or for the CITY to purchase its own Builder's Risk Insurance for the Project. Prior to the CONTRACTOR purchasing the Builder's Risk insurance for the project, the CONTRACTOR shall allow the CITY the opportunity to analyze the CONTRACTOR's coverage and determine who shall purchase the coverage. Should the CITY utilize the CONTRACTOR's Builder's Risk Insurance, the CONTRACTOR shall be responsible for all deductibles. If the CITY chooses to purchase the Builder's Risk Coverage on the project, the CONTRACTOR shall provide the CITY with a change order deduct for all premiums and costs associated with the Builder's Risk insurance in their schedule. Should the CITY choose to utilize the CITY's Builder's Risk Program, the CITY shall be responsible for the Named Windstorm Deductible and the CONTRACTOR shall be responsible for the All Other Perils Deductible.

If and when 100% is not available or reasonable, the CITY Risk Manager is to make the





determination as to what limits are appropriate for the given project.

Yes No



7.6.13 Other Insurance

## 7.7 REQUIRED ENDORSEMENTS

7.7.1 The City of Pembroke Pines shall be included as an Additional Insured on each of the Liability Policies required herein.

7.7.2 Waiver of all Rights of Subrogation against the CITY.

7.7.4 CONTRACTOR's policies, excluding E&O / Cyber liability, shall be Primary & Non-Contributory.

7.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.

7.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

7.8 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including including the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

7.9 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

7.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.

## ARTICLE 8

### NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT

During the performance of the Agreement, neither the CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to



employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that CONTRACTOR will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

## **ARTICLE 9**

### **INDEPENDENT CONTRACTOR**

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, or United States policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

## **ARTICLE 10**

### **AGREEMENT SUBJECT TO FUNDING**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

## **ARTICLE 11**

### **UNCONTROLLABLE FORCES**

11.1 Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, acts of God, war, riot, civil disturbance, sabotage, and





governmental actions.

11.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

## **ARTICLE 12**

### **GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

## **ARTICLE 13**

### **RESERVED**

## **ARTICLE 14**

### **DEFAULT OF CONTRACT & REMEDIES**

14.1 **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by CONTRACTOR:

14.3.1. The abandonment of the services herein required by CONTRACTOR for a period of seven (7) business days.

14.3.2 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the Director of Innovative Learning relative thereto.

14.3.3. The failure by CONTRACTOR to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONTRACTOR, where such failure shall continue for a period of seven (7) days after written notice thereof by CITY to CONTRACTOR; provided, however, that if the nature of CONTRACTOR's default is such that more than seven (7) days are reasonably required for its cure, then CONTRACTOR shall not be deemed to be in default if CONTRACTOR commences such cure within said seven (7) day period and thereafter diligently prosecutes such cure to completion.

14.3.4. The assignment and/or transfer of this Agreement or execution or attachment thereon by CONTRACTOR or any other party in a manner not expressly permitted hereunder.



14.3.5. The making by CONTRACTOR of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONTRACTOR, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where possession is not restored to CONTRACTOR within thirty (30) days; for attachment, execution or other judicial seizure of substantially all of CONTRACTOR's assets, or for CONTRACTOR's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

## **ARTICLE 15**

### **BANKRUPTCY**

It is agreed that if CONTRACTOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

## **ARTICLE 16**

### **MERGER; AMENDMENT**

This Agreement constitutes the entire Agreement between CONTRACTOR and CITY, and all negotiations and oral understandings between the Parties are merged herein. This Agreement can be supplemented or amended only by a written document executed by both CONTRACTOR and CITY with the same formality and equal dignity herewith.

## **ARTICLE 17**

### **EMPLOYMENT ELIGIBILITY**

17.1 CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

#### **17.1.1 Definitions for this Section.**

17.1.1.1 "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, a vendor or consultant.

17.1.1.2 "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.





17.1.1.3 "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

17.1.2 **Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

17.1.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

17.1.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and

17.1.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

## **ARTICLE 18**

### **PUBLIC RECORDS**

18.1 The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:

18.1.1 Keep and maintain public records required by the CITY to perform the service;



18.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

18.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after the CONTRACTOR transfers the records in its possession to the CITY; and

18.1.4 Upon completion of the contract, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

18.2 The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the CITY shall enforce the Default in accordance with the provisions set forth herein.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
601 CITY CENTER WAY, 4<sup>th</sup> FLOOR  
PEMBROKE PINES, FL 33025  
(954) 450-1050  
[mgraham@ppines.com](mailto:mgraham@ppines.com)**

**ARTICLE 19  
MISCELLANEOUS**

19.1 **Ownership of Documents.** Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of CITY, whether or not the project for which they are made is completed.

19.2 **Legal Representation.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly,





the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

19.3 **Records.** CONTRACTOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of five (5) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries.

19.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

19.5 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

19.6 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

CITY:	Charles F. Dodge, City Manager City of Pembroke Pines 601 City Center Way, 4 <sup>th</sup> Floor Pembroke Pines, Florida 33025 Telephone No. (954) 450-1040
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Copy To: Samuel S. Goren, City Attorney



Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone No. (954) 771-4500  
Facsimile No. (954) 771-4923

CONTRACTOR: Certiport, a business of NCS Pearson, Inc.  
Attention: VP Channel Operations  
1276 South 820 East Suite 200  
American Fork, Utah 84003  
Telephone No. (801) 847-3100  
Facsimile No. (801) 492-4118

Copy To: Certiport, a business of NCS Pearson, Inc.  
Attention: Legal  
5601 Green Valley Drive Bloomington,  
Minnesota 55437  
Telephone No. (952) 681-3406  
Telephone No. (952) 681-3140

19.7 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

19.8 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

19.9 **Exhibits.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

19.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

19.11 **Extent of Agreement.** This Agreement represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

19.12 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or





relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

19.13 **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

19.14 **Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

19.15 **Compliance with Statutes.** It shall be the Contractor's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, City, state, and federal agencies as applicable.

19.15.1 **Compliance with Jessica Lunsford Act** CONTRACTOR shall comply with Chapter 1012, Florida Statutes, which requires Level II background screening for vendors performing services at a Florida public school or for a public school district, if applicable.

19.16 **Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

19.16.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

19.16.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

19.16.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

19.16.2.2 Is engaged in business operations in Syria.



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HAS BEEN INTENTIONALLY LEFT BLANK**





IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

CITY:

CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

MARLENE D. GRAHAM, CITY CLERK

BY:

MAYOR FRANK C. ORTIS

APPROVED AS TO FORM:

BY:

CHARLES F. DODGE, CITY MANAGER

Print Name: SAMUEL S. GARY

OFFICE OF THE CITY ATTORNEY

CONTRACTOR:

NCS PEARSON, INC.

Signed By: Bill Brothers  
Bill Brothers (Sep 18, 2021 10:04 MDT)

JED  
JED

Name: Bill Brothers

Title: Director Finance Business Partnering



## **EXHIBIT A**

### **CERTIPOINT AUTHORIZED TEST CENTER**

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 <sup>TM</sup>”** means Certipoint Authorized Test Center, a party authorized pursuant to a license granted by Certipoint to act as a testing center under the name “CATC <sup>TM</sup>” to administer the Certipoint Pathway Solutions and Methods.
  - 1.4. **“Certipoint”** shall have the same meaning as CONTRACTOR in the main agreement.
  - 1.5. **“Certipoint Authorized Test Center Agreement”** means the agreement between Certipoint and a CATC <sup>TM</sup> authorizing the CATC <sup>TM</sup> to administer and deliver Assessment Exams and Certification Exams using the “CATC <sup>TM</sup>” name.
  - 1.6. **“CATC <sup>TM</sup> Policies, Guidelines and Procedures”** or **“the Guidelines”** are minimum standards that Certipoint requires all CATC <sup>TM</sup>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.
  - 1.7. **“Certipoint Exam Proctor”** or **“Proctor”** means an individual who shall be trained by the CATC <sup>TM</sup> to be responsible for ensuring that Exams are conducted according to Certipoint’s standards.
  - 1.8. **“Certipoint 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 Certipoint 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 Certipoint Pathway Solutions & Methods to Certipoint Authorized Partner (CAP)s.
  - 1.9. **“Certipoint Pathway Solutions & Methods”** or **“Pathway Solutions & Methods”** means the Certipoint Products and Services as well as the training materials, systems training, operation and installation methodologies related to the Programs and/or Certipoint Products and Services.
  - 1.10. **“Certipoint 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 Certipoint from time to time.
  - 1.11. **“Certipoint Technology”** is defined as, without limitation, all intellectual property including patents, trademarks, media, software, business plans or methods, customer lists, Training Materials and Certipoint Products and Services developed and owned or licensed by Certipoint. As between the parties, Certipoint has and shall retain exclusive ownership of all rights, title and interest in and to Certipoint Technology. To the extent that Company may be deemed to have any ownership interest in or to the Certipoint Technology, Company hereby assigns and transfers to Certipoint 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 Certipoint



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.

- 1.12. “Company” shall have the same meaning as CITY in the main agreement.
- 1.13. “Data Processor” means Certiport and Company.
- 1.14. “Dispute” has the meaning set forth in Section 18.
- 1.15. “CATC <sup>TM</sup> Requirements” means minimum technical standards required by Certiport to be possessed by CATC <sup>TM</sup>s in order to ensure an appropriate and effective education and testing environment for Examinees. Certiport reserves the right to change the CATC<sup>TM</sup> Requirements, set forth at [www.Certiport.com](http://www.Certiport.com) under Support Center from time and shall notify Company of said changes.
- 1.16. “Day(s)” means business days and not calendar days, unless expressly stated.
- 1.17. “Effective Date” means the date set forth in the first paragraph above.
- 1.18. “Exam Expiration Date” means the last date on which an Exam within a particular Program may be administered by a CATC <sup>TM</sup>.
- 1.19. “Examinee” means the end user of the Certiport Pathway Solutions & Methods.
- 1.20. “Exams” means Certification Exam(s) and/or Assessment Exam(s).
- 1.21. “Personal Data” or “Examinee Personal Data” means any information relating to an identified or identifiable Examinee.
- 1.22. “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.
- 1.23. “Processing” means any operation or set of operations which is performed upon Examinee Personal Data, whether or not by automatic means, such as collection, use, recording, organization, storage, retrieval, or disclosure by transmission, (“Process”, “Processes” and “Processed” shall have the same meaning).
- 1.24. “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.
- 1.25. “Programs Sponsors” or “Data Controller” means any company or organization which Certiport represents, including Certiport itself, for the purposes of developing and/or selling Certiport Products and Services. Program Sponsors or Data Controllers are the organizations that determine the purpose and means of the Processing of Examinee Personal Data and have established certain levels of education, training and/or testing experience necessary to qualify for a specified certification and who have contracted with Certiport to provide electronic testing services to Examinees who are seeking to demonstrate those qualifications. In addition, Certiport delivers computer-based Exams on behalf of itself and may from time to time be the Program Sponsor or Data Controller and a Data Processor.
- 1.26. “Sector” means the market sectors described in Exhibit B attached thereto and hereby incorporated by this reference.
- 1.27. “Software” means all software provided by Certiport to the Certiport Authorized Distributor, or to CATC <sup>TM</sup>s<sup>TM</sup> in the Territory, including without limitation, Certiport

iQSystem™, Certification Pathways System, and other software related to the delivery and administration of Certiport Products and Services.

1.28. “Support Staff” has the meaning set forth in Section 7.

1.29. “Territory” means the geographic area described in Exhibit B attached hereto and hereby incorporated by this reference.

1.30. “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

1.31. “Data Incident” The loss of, or attempted or successful unauthorized access, use, disclosure, modification, or destruction of, any Examinee Personal Data, other Certiport materials, or any information system that hosts or otherwise processes Examinee Personal Data.

2. **License.** Certiport hereby grants to Company a limited, non-exclusive, non-transferable, non-sublicenseable, 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 Branding Guidelines, and in the event that certain Program Sponsors require Company to do so,

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 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 breach and shall entitle Certiport to terminate this Agreement pursuant to Section 16.1 below.

4.2. **Territory and Sector Restrictions.** Company understands and agrees that it shall serve as a CATC™ only in 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 16.1 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. If changes are made to Guidelines, Certiport and Company agree to amend this Agreement to reflect the changes. Company’s failure to comply with the Guidelines shall entitle Certiport to terminate this Agreement pursuant to Section 16.1.
- 4.4. Initial Purchase Requirement. [Intentionally Left Blank]
- 4.5. Subsequent Purchase(s). [Intentionally Left Blank]
- 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 Company’s designated Certiport Authorized Distributor recognized by Certiport as operating within the territory and/or sector(s) in which Company operates. Once purchased, Company is not entitled to a refund of the purchase price of any Exam.
- 4.7. Identification. In all materials generated and published by the Company to market Certiport Products and Services, and in all physical locations used by Company to deliver Certiport Services, 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.
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. Should Company wish to use Program Sponsor logos, Company shall notify Certiport and shall sign the Logo License Agreement provided by Program Sponsor prior to using any such logos. Company warrants that it will not use Program Sponsor Logo’s without first executing a logo license agreement. Failure to abide by these terms will constitute a breach and result in termination as set forth in Section 16.1.
6. **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:
- 6.1. 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 <sup>TM</sup> is located.

- 6.2. 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 <sup>TM</sup> is located. The Certiport Exam Proctor agreement can be found at [www.certiport.com](http://www.certiport.com).
- 6.3. CATC <sup>TM</sup> Support. Company agrees to maintain Support Staff that are competent to answer and to use its best efforts to answer all inquiries from Examinees regarding the Software and/or Certiport Products and Services.
- 6.4. 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.
- 6.5. Parental Consent Form. Before allowing an Examinee under the age of 18 to register and take an Exam, Company shall require the parent/legal guardian of the Examinee to complete and sign a Parental Consent Form. Completed Parental Consent Forms must be retained by Company and made available to Certiport upon request. The parental consent form can be found at [www.Certiport.com](http://www.Certiport.com) by selecting "Exam Policies" under the "Testing Centers" menu item and then selecting the link for "Parental Consent Form".
7. **Processing of Examinee Personal Information.** Certiport and Company have agreed to the following requirements for the processing of Examinee Personal Data in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer of Examinee Personal Data by the Company to Certiport and for the transfer of Examinee Personal Data by Certiport to the Company.
  - 7.1. Company agrees and warrants:
    - i. On behalf of the Program Sponsor and Certiport (when acting in the capacity as the Program Sponsor), Certiport instructs Company to process Examinee Personal Data (as applicable) for the purposes of (a) Examinee test registration and scheduling, and (b) transmission of Examinee Personal Data to Certiport. Such processing shall continue for the duration of the CATC Agreement. Types of Examinee Personal Data may include Examinee name, address, identification, test scores; and all other Examinee Personal Data as directed by Certiport.
    - ii. Company will process the Examinee Personal Data only on behalf of Certiport and its Program Sponsors in compliance with Certiport's instructions and as set forth in this Agreement; if Company cannot comply



for whatever reasons, Company agrees to promptly inform Certiport of its inability to comply, in which case Certiport may suspend all Services provided by Company.

- iii. Company confirms that it has no reason to believe that it is prevented, for any reason, from fulfilling its obligations under the Agreement. In the event that Company becomes aware that it is prevented from fulfilling its obligations under the Agreement, Company will promptly notify Certiport, and Certiport may have the right to immediately suspend all Services being provided by Company and Certiport may, in its sole discretion, terminate this Agreement.
- iv. Notwithstanding anything in the Agreement, Company confirms that it has implemented and will maintain appropriate organizational, administrative, physical, and technical security measures (collectively “technical and organizational security measures”) for the protection of Examinees Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access and against all other unlawful forms of processing. Such implementation shall include privacy policies that are consistent with, and no less restrictive and protective of personal data than the principles and policies set forth in the Pearson VUE Privacy and Cookies Policy posted at <http://www.pearsonvue.com/legal/privacy>, as such Pearson policy may be amended by Pearson from time to time. In addition, for Exams delivered in the United States, Company shall comply with the Student Privacy Pledge in the delivery of Certiport Exams.
- v. Company shall ensure that all Company personnel authorized to Process Examinee Personal Data are obligated to keep Examinee Personal Data confidential.
- vi. To work in good faith and respond properly to all inquiries from Certiport relating to Company’s processing of Examinee Personal Data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the Examinee Personal Data transferred.
- vii. Where requested, the Company shall provide assistance as requested by Certiport and the Program Sponsor in connection with this Agreement, including but not limited to notifying the appropriate parties of a Examinee Personal Data breach, or, carrying out a data protection impact assessment.

The parties agree that on the termination of its data-processing services, the Company shall, at the choice of the Certiport, return, if any, all Examinee Personal Data transferred and any and all copies thereof to Certiport or Company shall destroy all of the Examinee Personal Data and certify to Certiport that it has done so, unless legislation imposed upon Company prevents it from returning or destroying all or part of the Examinee Personal Data

transferred. In that case, the Company warrants that it will guarantee the confidentiality of the Examinee Personal Data transferred and will not actively process Examinee Personal Data transferred anymore.

- viii. The Company shall comply with all applicable data privacy and data protection laws relating to Company's obligations under the Agreement.
- ix. Notify Certiport immediately of any Data Incident or any other breach of the requirements herein, including details regarding the measures Company has taken to promptly remedy the breach and any further information and support that Certiport may reasonably require. Company shall further take all such measures and actions as are necessary to remedy or mitigate the effects of the Data Incident and shall keep Certiport up-to-date about all developments in connection with the Data Incident.
- x. Certiport adheres to the principles of the EU-U.S. Privacy Shield Framework as written by the U.S. Department of Commerce and Certiport complies with the U.S. Department of Commerce U.S.-Swiss Safe Harbor principles. In addition, Company agrees to follow the principles of the EU U.S. Privacy Shield Framework and the U.S.-Swiss Safe Harbor principles.

8. **Compliance with Law.** Company agrees:

- i. to conduct its business operations in accordance with all applicable United States and local laws and regulations, including without limitation the U.S. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., any local laws, and the United Kingdom Bribery Act.
- ii. it shall (a) conduct business in conformance with sound ethical standards of integrity and honesty; (b) conduct business in such a way as to not give the appearance of impropriety, even when the behavior or activity is in compliance with the law; (c) not achieve business results by illegal acts or unethical conduct; (d) prohibit Company's Support Staff and other employees, agents and subcontractors from offering, paying or authorizing financial, and/or any other item of value or other advantage to be given to any official or employee of any government or political party, political candidates, employees of government enterprises or any other person or entity, with knowledge or a reason to believe that such payment or promise to pay will be made to any government official (each, an Official) for the purposes of (i) obtaining an improper business advantage; (ii) influencing such Official to take, or not to take, any action or decision; or (iii) inducing such Official to use his or her influence to affect any act or decision of a government.



- iii. it will not improperly influence, directly or indirectly, the sale of Certiport Products and Services by payments or other actions contrary to law or regulation.
- iv. that no government official who is a principal, owner, officer, employee or agent of any entity in which Company has an interest will be involved in or used to influence the sale or purchase of the Certiport Products and Services, and no government official has any financial interest in the sale or purchase of the Certiport Products and Services.
- v. to provide employees and any contracted individuals engaged by Company with a work environment free of coercion and harassment.
- vi. to comply with the Export Administration Act which: (a) requires a license from the United States government prior to export or re-export of any materials, product or technical information; (b) requires compliance with destination restrictions; and (c) prohibits certain acts in furtherance of foreign boycotts.
- vii. to comply with all applicable laws, regulations and standards (including but not limited to the United States Office of Foreign Asset Control (“OFAC”) regulations, Specially Designated Nationals or Blocked Persons (“SDN”) list or similar federal, state or other countries legislation on international trade law, and the Americans with Disabilities Act or similar federal, state or other countries disability or human rights laws.

In the event of any demonstrable breach by Company of any of its representations, warranties, or provisions of Section 9, Certiport may, in its sole discretion, in addition to any other remedy provided herein or otherwise provided by law, immediately terminate this Agreement without notice or indemnity.

9. **Competition; Circumvention.** During the term of this Agreement, , 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, 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.

10. **No Purchase or Sales Outside Territory or Sector(s).** RESERVED

11. **License of Software.** Certiport hereby grants to Company a limited, non-transferable, non-exclusive, license to use the Software for the sole purpose of operating its CATC <sup>TM</sup> 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.

12. **Protection of Certiport Technology.** Company shall not re-engineer, reverse engineer, or manipulate in any way, Certiport Technology without express prior written permission from 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 13 shall constitute a breach of this Agreement and result in termination pursuant to Section 16.1.

13. **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.

14. **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.

14.1. **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 thirty (30) days after receipt by the other party of written notice thereof. Within fifteen (15) 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 thirty (30) day time frame provided above. Should the breaching party fail to provide the written response within fifteen (15) 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.

14.2. By Either Party. Either party may terminate this Agreement at any time for convenience, by providing thirty (30) days' written notice to the other party. In the event that Company terminates the Agreement under this provision, Certiport shall allow Company to use any unused inventory during the remaining active term of the Agreement..

14.3. 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 5.6.2, 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.

15. **Confidentiality.** To the extent permitted by Florida law, 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 Company that is marked "confidential" or "proprietary" or that Certiport informs Company 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 Company 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) is considered a public record pursuant to Chapter 119, Florida Statutes. In the event of a breach or threatened breach of this Section by a party, the

other party may seek to obtain injunctive and other equitable relief therefore, in addition to any other applicable remedies at law.

16. **Background Screening.** Certiport agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by Company in advance of Certiport or its personnel providing any services under the conditions described in the previous sentence. Certiport shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Certiport and its personnel. The parties agree that the failure of Certiport to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling Company to terminate immediately with no further responsibilities or duties to perform under this Agreement. Certiport agrees to indemnify and hold harmless Company, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Certiport's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. The parties acknowledge that Certiport will not have access to school grounds and will not have direct contact with students during the term of this Agreement. Should Certiport require access to school grounds under this Agreement, then Certiport shall be escorted by Company staff at all times.

17. **Inspection of Certiport's Records by Company.** Certiport shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by Company under this Agreement. All Certiport's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by Company's agent or its authorized representative to permit Company to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by Certiport or any of Certiport's payees pursuant to this Agreement. Certiport's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. Certiport's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **Certiport's Records Defined.** For the purposes of this Agreement, the term "Certiport's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating



worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, Company's agent or authorized representative shall have access to Certiport's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by Company to Certiport pursuant to this Agreement.

(c) Notice of Inspection. Company's agent or its authorized representative shall provide Certiport reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. Company's agent or its authorized representative shall have access to Certiport's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by Certiport to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by Company for cause and shall be grounds for the denial of some or all of any Certiport's claims for payment by Company.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to Company by Certiport in excess of two percent (2%) of the total billings under this Agreement, the actual cost of Company's audit shall be paid by Certiport. If the audit discloses billings or charges to which Certiport is not contractually entitled, Certiport shall pay said sum to Company within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. Certiport shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by Certiport to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by Company for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by Company to Certiport pursuant to this Agreement and such excluded costs shall become the liability of Certiport.

(h) Inspector General Audits. Certiport shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

18. **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.
19. **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.
20. **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.
21. **Annual Appropriation.** The performance and obligations of Company under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If Company does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by Company at the end of the period for which funds have been allocated. Company shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to Company in the event this provision is exercised, and Company shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.
22. **Excess Funds.** Any party receiving funds paid by Company under this Agreement agrees to promptly notify Company of any funds erroneously received from Company upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to Company.
23. **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with Company under this Agreement shall, as applicable, fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and

records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless Company and its officers and employees for any violation of this section, including, without limitation, defending Company and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon Company, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon Company arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or subcontractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

24. **Suspension / Deactivation.** If Certiport determines, or has a reasonable basis to believe that Company, or its representatives, have committed or permitted misconduct or failed to comply with responsibilities, specifications, technical specifications, or other requirements in this Agreement or the Guidelines, Certiport may suspend testing, account access and Company's status as a CATC until it is resolved to Certiport's satisfaction.

25. **Miscellaneous.**

25.1. **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.

25.2. **Authority.** Each person signing this Agreement on behalf of either party represents and warrants to the other party that he or she has the full power and authority to enter into this Agreement, to bind and obligate such party 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 between the party and a third party, any federal, state, or local law or regulation to which the party is subject or any right of any third party.

25.3. **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.



- 25.4. Headings. The headings to the sections hereof are for convenience only and have no legal effect.
- 25.5. 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.
- 25.6. 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.
- 25.7. 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.
- 25.8. 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.
- 25.9. 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.
- 25.10. Language. Written in English, this Agreement shall be construed and interpreted in accordance with this language regardless of any translation required for execution.
- 25.11. Publicity. Company shall not issue any press release or publicity that relates to this Agreement without the express written consent of Certiport.
- 25.12. 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.

## **EXHIBIT A**

### **Certiport Authorized Testing Center (CATC) Policies, Guidelines and Procedures**

Certiport is committed to ensuring that its Certification Exams are respected and valued in the marketplace. Accordingly, Certiport takes appropriate measures to ensure that the integrity of its Exams is not compromised. Certiport also holds CATCs accountable for taking steps to prevent and detect fraud and breaches of Exam security.

#### **1. CATCs are required to strictly enforce the following rules:**

- 1.1 The CATC must verify at least one form of Examinee identification bearing a photograph and the Examinee's signature. An example of an acceptable form of identification is a government issued identification or student identification issued by an academic institution.
- 1.2 The CATC must not allow recording devices, including paper, pens, pencils, cameras, computers, handheld computers or communication devices, such as telephones or pagers, in the testing area.
- 1.3 The CATC may permit an Examinee to take a break during testing if requested, but must inform the Examinee that the testing clock cannot be stopped during the break. Examinees must not be permitted to conduct activities during a break that may compromise Exam security, to include using a telephone and communicating with other candidates.
- 1.4 The CATC must ensure that Examinees are seated a distance of no less than four (4) feet or (1.25 meters) apart from one another in the testing area to minimize distractions and prevent cheating.
- 1.5 Use of equipment such as printers, facsimile machines, copiers, or telephones is not permitted in the testing room while testing is in progress.
- 1.6 CATCs must ensure that each Exam is actively proctored and that Proctors have an unobstructed view of each examinee in the testing area.
- 1.7 Proctors may answer questions regarding the functionality of the Exam software, but may not answer questions related to Exam content or provide instruction of any kind.
- 1.8 If a Proctor observes an Examinee cheating, the Proctor must immediately terminate the Exam. The Proctor must inform the Examinee that his/her exam results will be nullified and that he/she will receive no refund or certificate.

## **2. Retest Policy**

CATC System Administrators are required to enforce the State of Florida’s retake policies for K12 and Charter Schools. This policy can be found at the FLDOE website ([www.fldoe.org](http://www.fldoe.org)) or by contacting the DOE CAPE Industry Certification Manager, Kathryn Wheeler [kathryn.wheeler@fldoe.org](mailto:kathryn.wheeler@fldoe.org) for information regarding retake policy in Florida for industry certifications.

## **3. Ensuring Exam Validity**

Certiport conducts periodic data forensics to identify patterns of aberrance in Exam results that help detect cheating or content piracy. For example, forensic indicators such as types of responses, latency, pass rates and retakes may reveal patterns of cheating, collusion or piracy. However, prevention and early detection are critical elements that require the close cooperation of CATCs. Therefore, in addition to relying on CATCs to provide industry standard monitoring during testing, Certiport requires that CATCs ensure that Certiport System Administrators (“Administrators”) and Certiport Exam Proctors (“Proctors”) are sufficiently trained to provide good quality oversight of testing. Training must include familiarizing staff with prevalent methods used to cheat, learning what measures to implement to prevent cheating and how to identify cheating when it does occur.

Administrators and Proctors who observe violations of rules must immediately document and report all relevant facts supporting the conclusion that a violation occurred to the appropriate Certiport Reseller or to Certiport’s customer services representatives. Reports should include date, time and location of the incident, name of Examinee, and the name and version of the Exam taken.

## **4. Accommodation of Disabilities**

As a worldwide provider of Certification Exams, Certiport is committed to ensuring that those persons with the desire to certify their proficiency in the use of computers should have the opportunity to do so. As a result, Certiport Products and Services are being designed to comply the internationally supported Web Content Accessibility Guidelines (WCAG), version 2.0, Level AA. Accessibility statutes in various countries are aligning their requirements with WCAG, as evidenced by the recent revision of Section 508 of the Rehabilitation Act in the United States. CATCs are required to comply with local laws requiring the reasonable provision of access to Examinees with disabilities.

In keeping with this commitment, Certiport will expand and refine its Products and Services to enable greater numbers of Examinees with documented disabilities to register for, schedule and take Exams.

Certiport and CATCs require advance notification of requests for accommodation(s) as well as a reasonable amount of time to review and implement such requests. CATCs are obligated to provide accommodations that Certiport has approved.

### **Requests for Accommodations of Disabilities**

Further information can be found at [www.certiport.com](http://www.certiport.com) by selecting “Exam Policies” under the “Test Candidates” menu item and then selecting the link for “Accommodation of Disabilities”. Examinees who wish to request accommodations may do so by following the directions under the “Process to Apply” section of the *Accommodation of Disabilities* page.



Test accommodations are individualized and Certiport will consider accommodations on a case-by-case basis. Examinees who have been notified that their request for an accommodation has been approved by Certiport must notify the CATC of the accommodation when scheduling the exam. Examinees should allow for additional time when requesting and scheduling accommodations.

CERTIPORT, INC.  
1276 South 820 East  
Suite 200  
American Fork, Utah 84003

## QUOTE SHEET

NO: 02122021 MOS program

DATE: February 12, 2021

**TO:**

Giselle Rodruquez  
City of Pembroke Pines Charter  
Academic Village Campus

**Contact Phone** 954-322-3330

**Main Phone:**

**Email:** [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90037293	Valid through October 31, 2021

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<b>***Per school site pricing***</b>  MOS Exam and Practice License Bundle. <ul style="list-style-type: none"><li>Exams: up to 500 exams per school site. Word, PowerPoint, Excel, SharePoint, Access, and Outlook. SKU# 1101634</li><li>Unlimited Gmetrix Practice Tests per school site. SKU# 1102735</li></ul>	\$5,980.00	\$5,980.00
1	<b>Jasperactive Curriculum for MOS- School Site License</b> <ul style="list-style-type: none"><li>Online Learning for Microsoft applications. Provides self-paced video education and training solutions for Microsoft programs</li><li>Video tutorials with lesson files, and pre/post assessments, and reporting.</li><li>Aligns to the MOS Certification</li></ul> <b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b>	\$2,250.00	\$2,250.00
SUBTOTAL			\$8,230.00
TOTAL DUE			\$8,230.00

## TERMS AND CONDITIONS OF SALE

The Quote Sheet and these Terms and Conditions of Sale contained herein become the agreement between Certiport, a business of NCS Pearson, Inc. ("Seller") and the organization listed on this Quote Sheet ("Buyer") for the sale of goods and/or services as described in the Quote Sheet (hereinafter the "Agreement"). Seller's agreement to provide the goods and/or services is expressly conditional on Buyer's assent to this Agreement. If Buyer objects to any terms herein, such objection must be in writing and delivered to Seller within seven (7) calendar days of receipt of this document. Failure to make such timely exception or acceptance of any goods or services by Buyer shall be conclusively deemed assent to the terms and conditions herein.

**1. Order Acceptance and Complete Agreement.** All requests for goods or services received by Seller are subject to revision and rejection by Seller. Buyer's acceptance of goods and/or services evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products and/or services procured hereunder (including any made or implied past dealings). No additional or different terms and conditions stated in or attached to Buyer's order or Buyer's communications to Seller, including, but not limited to, Buyer's orders, purchase order or other communication to Seller are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

**2. Implementation of Services.** Seller cannot commit to an estimated schedule for the delivery of goods or services to Buyer until Buyer has signed and returned this Agreement to Seller.

**3. Payment, Prices and Setoff.** Payment terms are net thirty (30) days from date of invoice. Prices stated on the order exclude shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. All payments are due in U.S. Dollars unless otherwise agreed by Seller in writing. In addition, Buyer waives any rights of setoff.

**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

**6. Parental Consent Form.** Before allowing an examinee under the age of 18 to register and take an Exam, Buyer shall require the parent/legal guardian of the examinee to complete and sign a Parental Consent Form. Buyer shall be responsible for collecting any consent to transmit examinee data to Seller and Seller's clients, where applicable. Completed Parental Consent Forms must be retained by Company and made available to Certiport upon request.

**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement then Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

**15. Force Majeure.** The obligations of the parties under this Agreement (including all obligations of Seller relating to time limits and deadlines for implementation and updating under this Agreement) shall be suspended, to the extent a party is hindered or prevented from complying therewith and for a reasonable time thereafter because of acts beyond a party's control. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

**16. General.** It is mutually agreed that any provisions of this Agreement, which, by their nature, should reasonably survive termination or expiration of this Agreement will survive. Buyer agrees that the goods and services outlined in this Agreement are commercial items and not subject to cost accounting principles, including but not limited to Federal Acquisition Regulation Part 30 entitled "Cost Accounting Standards Regulation". Seller's relationship to Buyer is that of an independent contractor. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Minnesota without giving effect to the principles of conflicts law thereof, unless otherwise required by law. Both Parties to this Agreement consent to the interpretation of laws, jurisdiction, and venue in the state and federal courts sitting in the State of Minnesota, Hennepin County, unless otherwise required by law. If a provision of this Section is found to be invalid, illegal or unenforceable in any respect, the court may modify it to make such provision enforceable. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to create any rights in, be deemed to have been executed for the benefit of, nor confer upon any other person or entity not a party hereto any remedy, claim, liability, reimbursement, cause of action or other rights.

CONFIDENTIAL AND PROPRIETARY



CERTIPORT, INC.  
1276 South 820 East  
Suite 200  
American Fork, Utah 84003

## QUOTE SHEET

NO: 02122021 MOS program

DATE: February 12, 2021

**TO:**

Giselle Rodruquez  
City of Pembroke Pines Charter  
West Campus

**Contact Phone** 954-322-3330

**Main Phone:**

**Email:** [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa				Valid through October 31, 2021

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<p>***Per school site pricing***</p> <p>MOS Exam and Practice License Bundle.</p> <ul style="list-style-type: none"> <li>Exams: up to 500 exams per school site. Word, PowerPoint, Excel, SharePoint, Access, and Outlook. SKU# 1101634</li> <li>Unlimited Gmetrix Practice Tests per school site. SKU# 1102735</li> </ul>	\$5,980.00	\$5,980.00
		\$2,250.00	\$2,250.00
1	<p><b><u>Jasperactive Curriculum for MOS- School Site License</u></b></p> <ul style="list-style-type: none"> <li>Jasperactive Online Learning for Microsoft applications. Provides self-paced video education and training solutions for Microsoft programs</li> <li>Video tutorials with lesson files, includes workbooks, and pre/post assessments, and reporting.</li> <li>Aligns to the MOS Certification</li> </ul> <p><b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b></p>		
SUBTOTAL			\$8,230.00
TOTAL DUE			<b>\$8,230.00</b>

## TERMS AND CONDITIONS OF SALE

The Quote Sheet and these Terms and Conditions of Sale contained herein become the agreement between Certiport, a business of NCS Pearson, Inc. ("Seller") and the organization listed on this Quote Sheet ("Buyer") for the sale of goods and/or services as described in the Quote Sheet (hereinafter the "Agreement"). Seller's agreement to provide the goods and/or services is expressly conditional on Buyer's assent to this Agreement. If Buyer objects to any terms herein, such objection must be in writing and delivered to Seller within seven (7) calendar days of receipt of this document. Failure to make such timely exception or acceptance of any goods or services by Buyer shall be conclusively deemed assent to the terms and conditions herein.

**1. Order Acceptance and Complete Agreement.** All requests for goods or services received by Seller are subject to revision and rejection by Seller. Buyer's acceptance of goods and/or services evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products and/or services procured hereunder (including any made or implied past dealings). No additional or different terms and conditions stated in or attached to Buyer's order or Buyer's communications to Seller, including, but not limited to, Buyer's orders, purchase order or other communication to Seller are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

**2. Implementation of Services.** Seller cannot commit to an estimated schedule for the delivery of goods or services to Buyer until Buyer has signed and returned this Agreement to Seller.

**3. Payment, Prices and Setoff.** Payment terms are net thirty (30) days from date of invoice. Prices stated on the order exclude shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. All payments are due in U.S. Dollars unless otherwise agreed by Seller in writing. In addition, Buyer waives any rights of setoff.

**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

**6. Parental Consent Form.** Before allowing an examinee under the age of 18 to register and take an Exam, Buyer shall require the parent/legal guardian of the examinee to complete and sign a Parental Consent Form. Buyer shall be responsible for collecting any consent to transmit examinee data to Seller and Seller's clients, where applicable. Completed Parental Consent Forms must be retained by Company and made available to Certiport upon request.

**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement then Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

**15. Force Majeure.** The obligations of the parties under this Agreement (including all obligations of Seller relating to time limits and deadlines for implementation and updating under this Agreement) shall be suspended, to the extent a party is hindered or prevented from complying therewith and for a reasonable time thereafter because of acts beyond a party's control. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

**16. General.** It is mutually agreed that any provisions of this Agreement, which, by their nature, should reasonably survive termination or expiration of this Agreement will survive. Buyer agrees that the goods and services outlined in this Agreement are commercial items and not subject to cost accounting principles, including but not limited to Federal Acquisition Regulation Part 30 entitled "Cost Accounting Standards Regulation". Seller's relationship to Buyer is that of an independent contractor. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Minnesota without giving effect to the principles of conflicts law thereof, unless otherwise required by law. Both Parties to this Agreement consent to the interpretation of laws, jurisdiction, and venue in the state and federal courts sitting in the State of Minnesota, Hennepin County, unless otherwise required by law. If a provision of this Section is found to be invalid, illegal or unenforceable in any respect, the court may modify it to make such provision enforceable. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to create any rights in, be deemed to have been executed for the benefit of, nor confer upon any other person or entity not a party hereto any remedy, claim, liability, reimbursement, cause of action or other rights.

CONFIDENTIAL AND PROPRIETARY

**CERTIPORT, INC.**  
1276 South 820 East  
Suite 200  
American Fork, Utah 84003  
Federal Tax ID Number: 41-0850527

## QUOTE SHEET

**NO: 02122021ACA Program**

**DATE: February 12, 2021**

**TO:** City of Pembroke Pines Charter  
Academic Village Campus  
Att: Giselle Rodriguez

**Contact Phone:** 954-322-3330  
**Main Phone:**  
**Email:**  
[grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90037293	Valid through October 31, 2021

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<p><b><u>**per school site pricing**</u></b></p> <p><b>ACA Campus License with Gmetrix Practice Tests-</b> Can test in more than one classroom per school site – Up to *1000 exams and unlimited Gmetrix Practice – unlimited user/seat per school site.</p> <ul style="list-style-type: none"> <li>Full Suite Bundle: CC Photoshop, Dreamweaver, Flash, Premiere Pro. Also CC Illustrator, and InDesign</li> </ul>	\$5,928.00	\$5,928.00
1	<p><b><u>LearnKey- Online Learning Gmetrix Platform- per school pricing- online learning courseware</u></b></p> <ul style="list-style-type: none"> <li>Video tutorials with lesson files, includes workbooks and pre/post assessments, reporting</li> <li>Same platform as GMetrix; uses the same admin panel and familiar navigation. This means one single sign on with Gmetrix practice exams and LearnKey curriculum!</li> <li>Aligns to ACA Certification</li> </ul> <p><b><i>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</i></b></p>	\$2,250.00	\$2,250.00
SUBTOTAL			\$8,178.00
SALES TAX			N/A
SHIPPING & HANDLING			N/A
TOTAL DUE			<b>\$8,178.00</b>

Please email purchase order to Mindy Howa at [mindy.howa@pearson.com](mailto:mindy.howa@pearson.com)



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**1. Order Acceptance and Complete Agreement.** All requests for goods or services received by Seller are subject to revision and rejection by Seller. Buyer's acceptance of goods and/or services evidences Buyer's acceptance of these terms and conditions. This Agreement may not be altered or modified except in writing duly executed by both parties. Except as set forth herein, the parties agree there are no other contracts or agreements between them, oral or written, with respect to the products and/or services procured hereunder (including any made or implied past dealings). No additional or different terms and conditions stated in or attached to Buyer's order or Buyer's communications to Seller, including, but not limited to, Buyer's orders, purchase order or other communication to Seller are applicable to this transaction in any way, and are hereby rejected and shall not be considered as Buyer's exceptions to these terms and conditions. Trade custom, trade usage and past performance are hereby superseded and shall not be used to interpret these terms and conditions.

**2. Implementation of Services.** Seller cannot commit to an estimated schedule for the delivery of goods or services to Buyer until Buyer has signed and returned this Agreement to Seller.

**3. Payment, Prices and Setoff.** Payment terms are net thirty (30) days from date of invoice. Prices stated on the order exclude shipping and handling charges, sales, use, excise, VAT or similar taxes or duties. All payments are due in U.S. Dollars unless otherwise agreed by Seller in writing. In addition, Buyer waives any rights of setoff.

**4. Title.** Unless stated elsewhere in this Agreement, all shipment of goods shall be delivered F.O.B. Seller's facility, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

**5. Termination or Cancellation of this Agreement.** This Agreement, and all rights, and if applicable any licenses granted herein by Seller to Buyer, may be terminated by either party for a material breach of an obligation imposed upon a party by this Agreement, but only after written notice by the non-breaching party has been given to the breaching party. Such notice must provide for an opportunity to cure such material breach of at least thirty (30) days following receipt of the notice by the breaching party. If the breaching party has not cured the breach by the cure date stated in the notice, only then may the non-breaching party giving the notice terminate this Agreement (and all rights and if applicable any licenses granted herein). In the event of termination for breach, the breaching party will be liable to the other party for reasonable wind-up and program management costs.

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**7. Legal Compliance.** Buyer, at all times, shall comply with all applicable federal, state, and local laws and regulations. Export of the goods covered by this Agreement may be subject to export license control by the United States government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the United States including the Export Administration Act and regulations promulgated thereunder.

**8. Intellectual Property.** Seller shall retain all rights to pre-existing ideas, processes, procedures, and materials used by Seller in developing or providing products and/or services to Buyer (Seller's Materials). Buyer shall own all title and interest in any materials created under this Agreement unless those materials are based on Seller's Materials. Buyer grants Seller a non-exclusive, royalty-free, worldwide license to use Buyer's Trademarks or provided materials in the provision of goods or services hereunder.

**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

**10. Limitation of Liability.** In no event will Seller be liable, in breach of warranty, contract, tort, strict liability, or under any other legal theory, for any indirect, special, incidental, consequential, punitive and/or exemplary damages, losses or expenses, or for loss of profit, revenue or data, regardless of whether Buyer was informed about the possibility of such damages, and in no event will Seller's total liability exceed an amount equal to the price of the goods or services giving rise to the liability even if Seller has knowledge of the possibility of the potential loss or damage.

**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement then Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

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CONFIDENTIAL AND PROPRIETARY

CERTIPORT, INC.  
1276 South 820 East  
Suite 200  
American Fork, Utah 84003

## QUOTE SHEET

NO: 02122021 MOS program

DATE: February 12, 2021

**TO:**

Giselle Rodruquez  
City of Pembroke Pines Charter  
Central Campus

**Contact Phone** 954-322-3330

**Main Phone:**

**Email:** [grodriguez@pinescharter.net](mailto:grodriguez@pinescharter.net)

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	CERTIPORT ID	TERMS
Mindy Howa			90077209	Valid through October 31, 2021

QUANTITY	DESCRIPTION	UNIT	AMOUNT
1	<p>***Per school site pricing***</p> <p>MOS Exam and Practice License Bundle.</p> <ul style="list-style-type: none"> <li>Exams: up to 500 exams per school site. Word, PowerPoint, Excel, SharePoint, Access, and Outlook. SKU# 1101634</li> <li>Unlimited Gmetrix Practice Tests per school site. SKU# 1102735</li> </ul>	\$5,980.00	\$5,980.00
		\$2,250.00	\$2,250.00
1	<p><b><u>Jasperactive Curriculum for MOS- School Site License</u></b></p> <ul style="list-style-type: none"> <li>Online Learning for Microsoft applications. Provides blended learning education and training solutions for Microsoft programs</li> <li>Video tutorials with lesson files, includes workbooks, and pre/post assessments, and reporting.</li> <li>Aligns to the MOS Certification</li> </ul> <p><b>**All Certification exams and licenses expire one year from purchase date and no extensions, no refunds, or exchanges. **</b></p>		
SUBTOTAL			\$8,230.00
TOTAL DUE			<b>\$8,230.00</b>



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**9. Limited Warranty.** Seller warrants that it will perform the services in a professional and workmanlike manner. **THE WARRANTIES IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY SELLER.**

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**11. Buyer Specifications Indemnity.** Where allowed by law, Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract,

against Buyer and/or Seller (including reasonable Attorney's fees, expenses and costs), arising out of the application of Seller's goods or services to Buyer's specifications, designs, or statement of work, if applicable.

**12. Confidentiality.** Each party agrees that (i) all data or information which is submitted by one party to the other, which is confidential and is designated or characterized as secret, confidential, or proprietary ("Confidential Information") will be kept in confidence by the other party hereto and shall not be used, published, revealed, provided, disclosed, or made available to any third party, whether directly or indirectly without the prior written consent of the disclosing party; (ii) it will use the other party's Confidential Information only as may be necessary in the course of performing its duties, receiving services or exercising its rights under this Agreement; (iii) it will treat such information as confidential and proprietary; (iv) it will take all reasonable precautions to protect the other party's Confidential Information, including, but not limited to, such precautions exercised by the receiving party to protect its own confidential information; and (v) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Each party will be liable to the other only in the event of a willful and material disclosure of such confidential data or information. The terms and conditions of this Agreement shall be deemed confidential in accordance with this Section.

**13. Infringement by Seller.** Excluding any claims that fall under Section 10 or 13 below, Seller agrees to indemnify, defend and hold Buyer and Buyer's directors, officers, employees, successors, and assigns from and against any and all third party claims that any goods and/or services supplied by Seller to Buyer constitute direct infringement of any United States trademark, patents, copyrights and Seller agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Buyer, provided that Seller has been promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and Seller is given authority, information and assistance (at Seller's expense) necessary to defend or settle said claim.

**14. Infringement by Buyer.** Buyer agrees to indemnify, defend and hold Seller and Seller's directors, officers, employees, successors, and assigns from and against any and all claims that the information, content, trademarks, specifications or materials furnished by Buyer to Seller under this Agreement infringe any trademark, patents, copyrights, or other intellectual property right and Buyer agrees to pay all damages and costs finally awarded thereunder by a court of competent jurisdiction against Seller, provided that Seller furnished notice to Buyer relating to the claim and Buyer is given information about the claim. It is Buyer's responsibility and expense to defend or settle said claim. If the content of the information or materials furnished by Buyer under this Agreement is proven to infringe a trademark, patent, copyright, or other intellectual property right or Buyer determines that the content of any information or materials furnished to Seller under this Agreement will infringe such rights, or Buyer is enjoined from using the information or materials furnished by Buyer to Seller under this Agreement then Buyer, at Buyer's sole discretion and expense shall (i) procure for Seller the right to continue using such information or material, (ii) replace the information or material with a non-infringing product, or (iii) modify the information or product so it becomes non-infringing.

**15. Force Majeure.** The obligations of the parties under this Agreement (including all obligations of Seller relating to time limits and deadlines for implementation and updating under this Agreement) shall be suspended, to the extent a party is hindered or prevented from complying therewith and for a reasonable time thereafter because of acts beyond a party's control. In the event of such delay, the date of delivery or time of completion will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

**16. General.** It is mutually agreed that any provisions of this Agreement, which, by their nature, should reasonably survive termination or expiration of this Agreement will survive. Buyer agrees that the goods and services outlined in this Agreement are commercial items and not subject to cost accounting principles, including but not limited to Federal Acquisition Regulation Part 30 entitled "Cost Accounting Standards Regulation". Seller's relationship to Buyer is that of an independent contractor. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Minnesota without giving effect to the principles of conflicts law thereof, unless otherwise required by law. Both Parties to this Agreement consent to the interpretation of laws, jurisdiction, and venue in the state and federal courts sitting in the State of Minnesota, Hennepin County, unless otherwise required by law. If a provision of this Section is found to be invalid, illegal or unenforceable in any respect, the court may modify it to make such provision enforceable. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to create any rights in, be deemed to have been executed for the benefit of, nor confer upon any other person or entity not a party hereto any remedy, claim, liability, reimbursement, cause of action or other rights.

CONFIDENTIAL AND PROPRIETARY



January 5, 2021

To Whom It May Concern:

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- Adobe® Certified Association (ACA) Program
- Apple® App Development with Swift Certification Level 1
- Autodesk® Certified User (ACU) Program
- Certiport® Entrepreneurship and Small Business (ESB) program
- Certiport® IC3 Spark
- Certiport® Internet and Computing Core Fundamentals (IC3) Programs
- Coding in Minecraft
- Communication Skills for Business (CSB)
- EC-Council® Associate
- Intuit® QuickBooks Certified User (QBCU) Program
- Microsoft® Certified Educator (MCE) Program
- Microsoft Certified Fundamentals
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Thank you for your interest in our programs.

Sincerely,



[Bill Brothers \(Jan 5, 2021 14:01 MST\)](#)

Bill Brothers

Finance Manager

Certiport, a Pearson VUE Business

## **EXHIBIT B**

### **Territory and Sectors**

1. **Company Participation:** Company and Certiport agree that Company shall participate in and only in the following:

All “Certiport Products and Services”

2. **Territory:** As described in the CATC™ Agreement, Company is appointed as a CATC™ authorized to provide Certiport Products and Services only in the Territory described below:

Florida

3. **Sectors:** Within the Territory described above, Company is appointed as a CATC™ authorized to provide Certiport Products and Services solely in the Sectors that are indicated below:

K-12

# **EXHIBIT C/PARENTAL CONSENT FORM**





Certiport, A Pearson VUE Business  
1276 South 820 East, Suite 200  
American Fork, UT 84003 USA

Telephone: 1-888-999-9830  
International: (801) 847-3100  
[www.certiport.com](http://www.certiport.com)

### Parent/Legal Guardian Consent Form

I am the parent/legal guardian of \_\_\_\_\_ (please print) (the "Certiport Candidate") and I understand that my permission and authorization is required for the collection, use, and disclosure of the Certiport Candidate's personal information by Certiport, a business of NCS Pearson, Inc. ("Certiport"). I further understand that the Certiport Candidate will not be permitted to register for or take a Certiport exam unless I provide my permission by signing this form.

I understand and acknowledge that all individuals, including the Certiport Candidate, planning to take a Certiport exam are required to:

- A) Provide to Certiport, personal information, such as his or her, first and last name, street address, e-mail address, and demographic information ("Candidate Information"); and
- B) Agree to all of the terms and conditions contained on the Certiport website at [www.certiport.com](http://www.certiport.com) and in Certiport's test registration and delivery system and that these terms and conditions are legally binding.

In my capacity as the parent/legal guardian of the Certiport Candidate, I hereby understand, agree, authorize, and provide my consent, as the case may be:

- 1) To allow the Certiport Candidate to take or retake any Certiport exam(s); and
- 2) That I have had an opportunity to review the Certiport terms and conditions and privacy policy available at [www.certiport.com](http://www.certiport.com), including, but not limited to, those provisions relating to testing; privacy policies; and the collection, processing, use and transmission to the United States of the Certiport Candidate's personally identifiable information and that I and the Certiport Candidate understand and agree to abide by these terms and conditions and policies; and
- 3) To Certiport for the retention and disclosure any of the Candidate's personal information to the Certiport exam sponsor(s), its authorized third parties and service providers, and others as may be necessary to prevent unlawful activities or as required by law; and
- 4) To Certiport and the Certiport exam sponsor(s) to be the sole owners of all results of all Certiport exams, all data collected regarding the Certiport Candidate, and all compilations of the foregoing; and
- 5) That the Certiport Candidate and I will comply with any of the Certiport testing rules and procedures.

I, the undersigned, certify that I am the parent or legal guardian of the child/legal ward (named above) and that I have the right to make decisions for my child/legal ward that effect his/her well-being.

I CERTIFY THAT I AM 18 YEARS OF AGE OR OLDER AND THAT I HAVE READ, FULLY UNDERSTAND AND AGREE TO THE TERMS OF THIS AGREEMENT, AND I SIGN IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE.

**Name of Parent/Legal Guardian**

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**Signature of Parent/Legal Guardian**

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**Date (MM/DD/YYYY)**

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