

**Amendment Five  
to the  
CERTIPOINT AUTHORIZED TEST CENTER™ AGREEMENT**

This Amendment No. Five to the Certiport Authorized Test Center™ Agreement dated with an Effective Date of March 25, 2019 (the “Agreement”), by and between Certiport, a business of NCS Pearson, Inc., with offices at 5601 Green Valley Drive, Bloomington, MN 55437 (“Certiport”) and Poudre School District R-1, organized under the laws of the State of Colorado, having its principal offices at 2407 LaPorte Avenue Fort Collins, CO 80521-2297 (“Company”).

Capitalized terms not otherwise defined herein shall have the same meanings as those assigned to them in the Agreement.

**WHEREAS**, the parties entered into the Agreement effective March 25, 2019;

**WHEREAS**, the parties amended the Agreement pursuant to Amendment One, effective February 21, 2020, to extend the term of the Agreement for the first of up to four (4) additional one-year terms;

**WHEREAS**, the parties amended the Agreement pursuant to Amendment Two, effective April 23, 2021, to extend the term of the Agreement for the second of up to four (4) additional one-year terms;

**WHEREAS**, the parties amended the Agreement pursuant to Amendment Three, effective June 13, 2022, to extend the term of the Agreement for the third of up to four (4) additional one-year terms; and

**WHEREAS**, the parties amended the Agreement pursuant to Amendment Four, effective April 10, 2023, to extend the term of the Agreement for the fourth of up to four (4) additional one-year terms.

**WHEREAS**, the parties now wish to amend the Agreement pursuant to this Amendment Five to extend the term of the Agreement for an additional one-year term.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The term of the Agreement shall be extended through October 31, 2025.
2. The extension mutually agreed upon in this Amendment is an additional one-year term.

Except as provided in this Amendment Five, all terms and condition of the above-referenced Agreement, as amended, shall remain in full force and effect and cannot be rendered void by this Amendment Five. If there is a conflict between this Amendment Five and the Agreement, or any earlier Amendment, the terms of this Amendment Five will prevail.

**POUDRE SCHOOL DISTRICT R-1**

Signature: Julie Chaplain

Name: Julie Chaplain, PhD

Title: Assistant Superintendent

Date: Dec 10, 2024

**NCS Pearson, Inc.:**

Signature:   
Eldon Lechtenberg (Dec 10, 2024 08:10 MST)

Name: Eldon Lechtenberg

Title: Vice President of Sales, Americas

Date: 12/10/2024

HMC  
HMC

Signature: R David Montoya

R. David Montoya  
Chief Finance Officer/  
Chief Operations Officer

# Exhibit



Clear Form

### STUDENT DATA INFORMATION REQUEST FOR SOFTWARE SERVICES

Colorado’s Student Data Transparency and Security Act [C.R.S. Section 22-16-101 et seq.] requires Poudre School District (PSD) to set forth certain contractual requirements before agreeing to the use of products that share student data. Due to the specificity of this language, PSD has opted to use its own contract to ensure compliance and alignment with the law and U.S. Department of Education recommendations regarding National Institutes of Standards and Technology Guidelines for Media Sanitization.

The law defines Student Identifiable Data as all items which are collected, maintained, generated, or inferred through use of the service, which includes metadata. This means any data element in the software’s data table that can be connected to a student must be transparently identified along with how the data will be used. Because this may be different from what the company has reported under the Family Educational Rights and Privacy Act (FERPA), the District recommends pulling the data table to include all data elements.

Please provide the following information to facilitate the contracting process:

1. Detailed, formal description of product and scope of work to be completed.
  - Descriptions should not include wording such as “most used” or “used by X number of schools.”
  - Service descriptions should be detailed and free of sales language so it’s clear what’s being purchased.

2. What student data is collected through use of the system?
  - List all student data that’s collected, maintained, generated, or inferred through use of the service; this includes information created or collected by the company.

All Users: Last Name, First Name, Middle Name, UserName, Password, Security Questions & Answers, Employer, National / Student ID, Preferred Language, Phone, Email, Address, Shipping Address, Requires ADA provisions or accommodations, Is Contact Permitted, Birth Date, Optional Demographics - School, Employment

<i>Student</i>	<i>Teacher</i>	<i>Admin</i>	<i>Meta Data</i>

3. What is the purpose of collecting student data?

Accurately deliver exams to Candidates  
Associate Candidates with their achievements such as certifications.

4. What third parties does the company partner with who may receive student data in any format?

- *This includes storage and vendors receiving encrypted data.*

Storage: Azure Cloud services

Exam Delivery integrations: ITS

Third party Data Feeds: Microsoft, Cisco, Alpine, Adobe, Intuit, Autodesk, Apple, Unity, Project Management

5. What is the purpose of the third-party partners?

Storage is provided by Azure Cloud, hosting our apps.

ITS is part of our exam delivery infrastructure

The Third Party data feeds are for our clients to get data about the exams for their products. For example, Microsoft will get a data with information about the Microsoft exams that are taken using Certiport systems.

6. Please provide:

- Current quote (if available)
  
- Tiered pricing for future purchases
  
- Name and email for contract notices
  
- Name and title of person who will sign the contract
  
- Does the system allow integration for rostering?  
 Yes  No

If the above answer is yes, how is it completed?

The following pages contain an example that will serve as a guide for the company's IT team; these items are known as data tables or data dictionaries.

PSD must have specific information from the company in a separate document, which will become an exhibit to the contract. Links to online privacy policies will not be accepted; these policies must be transparently identified in a static document.

## What Student Data is collected through the use of the system?

Data Collected	General Purpose of Data Collection
Access Time	User research to improve the experience & provide technical support
Assessment Scores	Used for teacher data collection
Badges Earned	Used for teacher data collection
Browser Type	User research to improve the experience & provide technical support
Browser Version	User research to improve the experience & provide technical support
Contest Points	Used for teacher data collection
Device ID	User research to improve the experience & provide technical support
Device Type & OS	User research to improve the experience & provide technical support
Game Time Earned	Used for teacher data collection
IEP Progress Percentage	Used for teacher data collection
IEP Standards Passed	Used for teacher data collection
IP Address	User research to improve the experience & provide technical support
Lesson Questions Correct/Incorrect	Used for teacher data collection
Lesson Scores	Used for teacher data collection
Machine Model	User research to improve the experience & provide technical support
Operating System	User research to improve the experience & provide technical support
Placement test scores	Used for teacher data collection
School Address	Required to support product functionality
School Fax Number	Optional
School Leader Email Address	Optional
School Leader First & Last Name	Optional
School Leader Password	Optional
School Leader Role	Optional
School Name	Required to support product functionality
School Phone Number	Required to support product functionality
Standard Mastery Percentage	Used for teacher data collection
Standards Mastered	Used for teacher data collection
Student Answers on Lesson	Used for teacher data collection
Student First & Last Name	Required to support product functionality
Student Grade Level	Required to support product functionality
Student ID number	Optional

Student Password	Required to support product functionality
Student Username	Required to support product functionality
Teacher Email Address	Required to support product functionality
Teacher First & Last Name	Required to support product functionality
Teacher Password	Required to support product functionality
Time on Lesson	Used for teacher data collection
Time Spent in Subjects	Used for teacher data collection
Time Spent on individual problems	Used for teacher data collection

**What third-parties does the vendor partner with? Who may receive Student Data in any format?**

Vendor	URL	Description
Rackspace	rackspace.com	Web hosting
Amazon AWS	aws.amazon.com	Web hosting
Wormly	wormly.com	Alerts and monitoring
Realtime	framework.realtime.com	Cloud based realtime messaging
Twilio	twilio.com	SMS messaging
Sendgrid	sendgrid.com	Email delivery
Mailchimp	mailchimp.com	Email list management
Clever	clever.com	Student rostering
Edmodo	edmodo.com	Student rostering
Oneroster	oneroster.com	Student rostering
Freshdesk	freshdesk.com	Customer support
Google Classroom	developers.google.com/classroom	Student rostering
Salesforce	salesforce.com	CRM

All Users: Last Name, First Name, Middle Name, UserName, Password, Security Questions & Answers, Employer, National/Student ID, Preferred Language, Phone, Email, Address, Shipping Address, Requires ADA provisions or accommodations, Is Contact Permitted, Birth Date, Optional Demographics - School, Employment

Candidates: Exam Starts, Exam Details, Exam Results, Certificates

Teachers / Administrators: School and Test Center, Role & Permissions



# Exhibit B



Prepared By Matt Johnson  
 Email [matt.johnson1@pearson.com](mailto:matt.johnson1@pearson.com)  
 Created Date 9/13/2024  
 Expiration This quote is valid until 10/25/2024  
 Quote Number 00157331  
 Certiport ID 90044960

\*\*\* This is not an Invoice. Please do not send payment from this quote. \*\*\*

**Mailing Address**

Certiport, a business of NCS Pearson, Inc.  
 1633 W. Innovation Way, 5th Floor  
 Lehi, UT 84043  
 USA

**Corporate Address**

5601 Green Valley Drive  
 Bloomington, MN 55437  
 USA  
 Federal Tax ID Number: 41-0850527  
 Sales (888) 222-7890 Fax (801) 492-4118

Please email POs if possible. Otherwise send them to the mailing address above.

[matt.johnson1@pearson.com](mailto:matt.johnson1@pearson.com)

Bill To Name Fort Collins High School  
 Bill To 2407 Laporte Ave  
 Fort Collins, CO 80521  
 USA

Ship To Name Fort Collins High School  
 Ship To 3400 Lambkin Way  
 Fort Collins, CO 80525  
 USA

Prepared For

[stevenj@psdschools.org](mailto:stevenj@psdschools.org)

Product ID	Product	Quantity	Sales Price	Total Price
1101634	MOS License - US K-12	1.00	\$3,894.00	\$3,894.00

\*\* All Certification exams and licenses expire one year from purchase date, or as agreed upon by the parties, at time of purchase, if the purchase is for a future start date. No extensions, no refunds or exchanges.

Grand Total \$3,894.00  
 Grand Total does not include applicable taxes which may be charged.

**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. Buyer acknowledges that Buyer may be required to sign a Certiport Authorized Test Center agreement prior to any goods or services delivered under this Agreement being deliverable from Buyer to end users.

**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



Prepared By	Matt Johnson
Email	<a href="mailto:matt.johnson1@pearson.com">matt.johnson1@pearson.com</a>
Created Date	9/13/2024
Expiration	This quote is valid until 10/25/2024
Quote Number	00157331
Certiport ID	90044960

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 Buyer 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.** 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,



Prepared By	Matt Johnson
Email	<a href="mailto:matt.johnson1@pearson.com">matt.johnson1@pearson.com</a>
Created Date	9/13/2024
Expiration	This quote is valid until 10/25/2024
Quote Number	00157331
Certiport ID	90044960

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.

**Amendment Four  
to the  
CERTIPOINT AUTHORIZED TEST CENTER™ AGREEMENT**

This Amendment No. Four to the Certiport Authorized Test Center™ Agreement dated with an Effective Date of March 25, 2019 (the “Agreement”), by and between Certiport, a business of NCS Pearson, Inc., with offices at 5601 Green Valley Drive, Bloomington, MN 55437 (“Certiport”) and Poudre School District R-1, organized under the laws of the State of Colorado, having its principal offices at 2407 LaPorte Avenue Fort Collins, CO 80521-2297 (“Company”).

Capitalized terms not otherwise defined herein shall have the same meanings as those assigned to them in the Agreement.

**WHEREAS**, the parties entered into the Agreement effective March 25, 2019;

**WHEREAS**, the parties amended the Agreement pursuant to Amendment One, effective February 21, 2020, to extend the term of the Agreement for the first of up to four (4) additional one-year terms;

**WHEREAS**, the parties amended the Agreement pursuant to Amendment Two, effective April 23, 2021, to extend the term of the Agreement for the second of up to four (4) additional one-year terms;

**WHEREAS**, the parties amended the Agreement pursuant to Amendment Three to extend the term of the Agreement for the third of up to four (4) additional one-year terms; and

**WHEREAS**, the parties now wish to amend the Agreement pursuant to this Amendment Four to extend the term of the Agreement for the fourth of up to four (4) additional one-year terms.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The term of the Agreement shall be extended through June 30, 2024.
2. The extension mutually agreed upon in this Amendment is the fourth of up to four (4) additional one-year terms contemplated by the Agreement.
3. This Amendment to the Agreement conforms with the requirements set forth in the Agreement, specifically with Section 1.1 of the Services Addendum to the Agreement.

Except as provided in this Amendment Four, all terms and condition of the above-referenced Agreement, as amended, shall remain in full force and effect and cannot be rendered void by this Amendment Four. If there is a conflict between this Amendment Four and the Agreement, or any earlier Amendment, the terms of this Amendment Four will prevail.

**POUDRE SCHOOL DISTRICT R-1**

Signature: *Kelly Williams*  
Kelly Williams (Apr 10, 2023 09:17 MDT)

Name: Kelly Williams

Title: Futures Lab Director

Date: Apr 10, 2023

**NCS Pearson, Inc.:**

Signature: *Bill Brothers*  
Bill Brothers (Mar 27, 2023 10:20 MDT)

Name: Bill Brothers

Title: Director Finance Business Partnering

Date: 03/27/2023

*JDM*  
JDM

**Amendment Three  
to the  
CERTIPOINT AUTHORIZED TEST CENTER™ AGREEMENT**

This Amendment No. Three to the Certiport Authorized Test Center™ Agreement dated with an Effective Date of March 25, 2019 (the “Agreement”), by and between Certiport, a business of NCS Pearson, Inc., with offices at 5601 Green Valley Drive, Bloomington, MN 55437 (“Certiport”) and Poudre School District R-1, organized under the laws of the State of Colorado, having its principal offices at 2407 LaPorte Avenue Fort Collins, CO 80521-2297 (“Company”).

Capitalized terms not otherwise defined herein shall have the same meanings as those assigned to them in the Agreement.

**WHEREAS**, the parties entered into the Agreement effective March 25, 2019;

**WHEREAS**, the parties amended the Agreement pursuant to Amendment One, effective February 21, 2020, to extend the term of the Agreement for the first of up to four (4) additional one-year terms;

**WHEREAS**, the parties amended the Agreement pursuant to Amendment Two, effective April 23, 2021, to extend the term of the Agreement for the second of up to four (4) additional one-year terms; and


**WHEREAS**, the parties now wish to amend the Agreement pursuant to this Amendment Three to extend the term of the Agreement for the third of up to four (4) additional one-year terms.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The term of the Agreement shall be extended through June 30, 2023.
2. The extension mutually agreed upon in this Amendment is the third of up to four (4) additional one-year terms contemplated by the Agreement.
3. This Amendment to the Agreement conforms with the requirements set forth in the Agreement, specifically with Section 1.1 of the Services Addendum to the Agreement.

Except as provided in this Amendment Three, all terms and condition of the above-referenced Agreement, as amended, shall remain in full force and effect and cannot be rendered void by this Amendment Three. If there is a conflict between this Amendment Three and the Agreement, or any earlier Amendment, the terms of this Amendment Three will prevail.

**POUDRE SCHOOL DISTRICT R-1**

Signature: 

Name: davem@psdschools.org davem@psdschools.org

Title: Executive Director Finance

Date: Jun 7, 2022


  
Scott Elias (Jun 7, 2022 10:07 MDT)

Scott Elias

Director, Career & Innovation

Jun 7, 2022

**NCS Pearson, Inc.:**

Signature:   
Bill Brothers (Jun 13, 2022 07:45 MDT)

Name: Bill Brothers

Title: Director Finance Business Partnering

Date: 06/13/2022

  
JDM



**Amendment No. Two  
to the  
CERTIPOINT AUTHORIZED TEST CENTER™ AGREEMENT**

This Amendment No. Two to the Certiport Authorized Test Center™ Agreement dated with an Effective Date of March 25, 2019 (the “Agreement”), by and between Certiport, a business of NCS Pearson, Inc., with offices at 5601 Green Valley Drive, Bloomington, MN 55437 (“Certiport”) and Poudre School District R-1, organized under the laws of the State of Colorado having its principal offices at 2407 LaPorte Avenue Fort Collins, CO 80521-2297 (“Company”).

Capitalized terms not otherwise defined herein shall have the same meanings as those assigned to them in the Agreement.

**WHEREAS**, the parties entered into the Agreement effective March 25, 2019; and

**WHEREAS**, the parties now wish to amend the Agreement pursuant to this Amendment No. Two to extend the term of the Agreement for the second of up to four (4) additional one-year terms.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The term of the Agreement shall be extended through June 30, 2022.
2. The extension mutually agreed upon in this amendment is the second of up to four (4) additional one-year terms contemplated by the Agreement.
3. This amendment to the Agreement conforms with the requirements set forth in the Agreement, specifically with Section 1.1 of the Services Addendum to the Agreement.

Except as provided in this Amendment No. Two, all terms and condition of the above-referenced Agreement as amended shall remain in full force and effect and cannot be rendered void by this Amendment No. Two. If there is a conflict between this Amendment No. Two and the Agreement or any earlier Amendment, the terms of this Amendment No. Two will prevail.

**POUDRE SCHOOL DISTRICT R-1**

Signature: *Scott Elias*  
Scott Elias (Apr 22, 2021 12:25 MDT)

Name: Scott Elias

Title: Director, Career & Innovation

Date: Apr 22, 2021

*Scott Elias*

Executive Director Finance

**NCS Pearson, Inc.:**

Signature: *Bill Brothers*  
Bill Brothers (Apr 23, 2021 11:41 MDT)

Name: Bill Brothers

Title: Director Finance Business Partnering

Date: 04/23/2021

*JED*  
JED

**Amendment No. One  
to the  
CERTIPOINT AUTHORIZED TEST CENTER™ AGREEMENT**

This Amendment No. One to the Certiport Authorized Test Center™ Agreement dated with an Effective Date of March 25, 2019 (the "Agreement"), by and between Certiport, a business of NCS Pearson, Inc., with offices at 5601 Green Valley Drive, Bloomington, MN 55437 ("Certiport") and Poudre School District R-1, organized under the laws of the State of Colorado having its principal offices at 2407 LaPorte Avenue Fort Collins, CO 80521-2297 ("Company").

Capitalized terms not otherwise defined herein shall have the same meanings as those assigned to them in the Agreement.

WHEREAS, the parties entered into the Agreement effective March 25, 2019; and

WHEREAS, the parties now wish to amend the Agreement pursuant to this Amendment No. One to extend the term of the Agreement for the first of up to four (4) additional one-year terms.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The term of the Agreement shall be extended through June 30, 2021.
2. The extension mutually agreed upon in this amendment is the first of up to four (4) additional one-year terms contemplated by the Agreement.
3. This amendment to the Agreement conforms with the requirements set forth in the Agreement, specifically with Section 1.1 of the Services Addendum to the Agreement.

Except as provided in this Amendment No. One, all terms and condition of the above-referenced Agreement as amended shall remain in full force and effect and cannot be rendered void by this Amendment No. One. If there is a conflict between this Amendment No. One and the Agreement or any earlier Amendment, the terms of this Amendment No. One will prevail.

**POUDRE SCHOOL DISTRICT R-1**

Signature: Tanya Alcaraz

Name: Tanya Alcaraz

Title: CTE Coordinator

Date: 2/17/20

**NCS Pearson, Inc.:**

Signature: Bill Brothers

Name: Bill Brothers

Title: Finance Manager

Date: February 21, 2020

### **CERTIPOINT AUTHORIZED TEST CENTER™ AGREEMENT**

This CATC™ AGREEMENT (the "Agreement"), is entered into as of the last date signed below (the "Effective Date"), by and between Certiport®, a business of NCS Pearson, Inc., a corporation organized under the laws of the State of Minnesota, United States of America, having its principal offices at 5601 Green Valley Drive, Bloomington, Minnesota, 55437 ("Certiport"), and Poudre School District, organized under the laws of the State of Colorado having its principal offices at 2407 LaPorte Avenue Fort Collins, CO 80521-2297 ("Company" or "Licensee") recognized hereinafter as a "CATC™."

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

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

NOW, THEREFORE, the parties agree as follows:

1. **Definitions.** The following terms shall have the following meanings for the purpose of this Agreement:
  - 1.1. "Assessment Exam" means any test that is intended to measure the skill, knowledge, intelligence, capacity or aptitude of the Examinee with respect to the subject matter thereof.
  - 1.2. "CATC™" means Certiport Authorized Test Center, a party authorized pursuant to a license granted by Certiport to act as a testing center under the name "CATC™" to administer the Certiport Pathway Solutions and Methods.
  - 1.3. "CATC™ Policies, Guidelines and Procedures" or "the Guidelines" are minimum standards that Certiport requires all CATC™s meet and which are designed to ensure that Examinees are afforded the best possible training and examination environment, as further described in Exhibit A.
  - 1.4. "CATC™ Requirements" means minimum technical standards required by Certiport to be possessed by CATC™s in order to ensure an appropriate and effective education and testing environment for Examinees. Certiport reserves the right to change the CATC™ Requirements, set forth at the [www.Certiport.com](http://www.Certiport.com) under Support Center.
  - 1.5. "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.
  - 1.6. "Certiport Authorized Distributor" or "Distributor" means Certiport Authorized Resellers and/or Certiport Authorized Solution Providers.
  - 1.7. "Certiport Authorized Reseller" means a company that meets the criteria for country-level sales, and marketing of Certiport Pathway Solutions & Methods to customers.
  - 1.8. "Certiport Authorized Solution Provider" means a company that meets the criteria for country-level sales, marketing, training and support of Certiport Pathway Solutions & Methods to customers.

## Certiport Authorized Test Center (CATC™) Agreement

- 1.9. "Certiport Authorized Test Center Agreement" means the agreement between Certiport and a CATC™ authorizing the CATC™ to administer and deliver Assessment Exams and Certification Exams using the "CATC™" name.
- 1.10. "Certiport Exam Proctor" or "Proctor" means an individual who shall be trained by the CATC™ to be responsible for ensuring that Exams are conducted according to Certiport's standards.
- 1.11. "Certiport Pathway Solutions & Methods" or "Pathway Solutions & Methods" means the Certiport Products and Services as well as the training materials, systems training, operation and installation methodologies related to the Programs and/or Certiport Products and Services.
- 1.12. "Certiport Products and Services" or "Products or Services" means the Training Materials, the Certification Exams, the Assessment Exams, the Practice Tests, and related products and services developed or distributed by Certiport from time to time.
- 1.13. "Certiport Technology" is defined as, without limitation, all intellectual property including patents, trademarks, media, software, business plans or methods, customer lists, Training Materials and Certiport Products and Services developed and owned or licensed by Certiport. As between the parties, Certiport has and shall retain exclusive ownership of all rights, title and interest in and to Certiport Technology. To the extent that Company may be deemed to have any ownership interest in or to the Certiport Technology, Company hereby assigns and transfers to Certiport all such rights, title and interest that Company may have in such materials. Company acknowledges and agrees that it does not have any right, title or interest, and will not claim any, in or to the Certiport Technology or any derivative work based thereon, and that this Agreement does not create or vest in it any right, title or interest in the Certiport Technology, or any derivative work based thereon. Certiport expressly reserves all rights in the Certiport Technology not expressly granted to Company in this Agreement.
- 1.14. "Data Processor" means Certiport and Company.
- 1.15. "Dispute" has the meaning set forth in Section 18.
- 1.16. "Effective Date" means the date set forth in the first paragraph above.
- 1.17. "Exam Expiration Date" means the last date on which an Exam within a particular Program may be administered by a CATC™.
- 1.18. "Examinee" means the end user of the Certiport Pathway Solutions & Methods.
- 1.19. "Exams" means Certification Exam(s) and/or Assessment Exam(s).
- 1.20. "Personal Data or Examinee Personal Data" means any information relating to an identified or identifiable Examinee.
- 1.21. "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.
- 1.22. "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).
- 1.23. "Programs" means the Certification Exam and/or Assessment Exam product groupings that Company has elected to participate in through Certiport's internet application process.
- 1.24. "Program 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.

- 1.25. "Renewal Term" has the meaning set forth in Section 2.
- 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™s™ 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 & Methods.
- 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. Term. See addendum.

3. License. Certiport hereby grants to Company a limited, non-exclusive, non-transferable, non-sublicensable, non-assignable 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 attached hereto as Exhibit C, and in the event that certain Program Sponsors require Company to do so, Company agrees to execute and abide by that Program Sponsor's logo license agreement.

4. 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

## Certiport Authorized Test Center (CATC™) Agreement

(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.

### 5. Duties of Company.

- 5.1. General Business Conduct. Company agrees to conduct business in a manner that reflects favorably at all times on the Certiport Products and Services and the reputation of Certiport and, in connection therewith, not to engage in deceptive, misleading, illegal, or unethical conduct that is or might be detrimental to Certiport or to the Products or Services. Should Company fail to abide by the Guidelines, and/or engage in conduct that reflects unfavorably upon and threatens the name, goodwill, reputation or image of Certiport or any of its affiliates, such conduct shall constitute a breach and shall entitle Certiport to terminate this Agreement pursuant to Section 16.1.
- 5.2. Territory and Sector Restrictions. Company understands and agrees that it shall serve as a CATC™ only in the Territory and Sector(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.
- 5.3. Compliance with CATC™ Policies. Company understands and agrees that it must meet the standards set forth in "CATC™ Policies, Guidelines and Procedures" attached hereto as Exhibit A and incorporated herein by reference. Company understands that the Guidelines are designed by Certiport to ensure an appropriate environment for delivery of the Certiport Products and Services and to protect the reputation of Certiport, and Company's agreement to obey the Guidelines is a material inducement to Certiport to enter into this Agreement with Company. Company understands and agrees that Certiport has the right, in its sole discretion, to amend the Guidelines from time to time and shall inform Company of any changes via email. Company's failure to comply with the Guidelines shall entitle Certiport to terminate this Agreement pursuant to Section 16.1.
- 5.4. Initial Purchase Requirement. Within thirty (30) days after the Effective Date of this Agreement, Company must purchase a minimum of ten (10) Exams. Purchases may be made from Certiport, or Company's designated Certiport Authorized Distributor. Failure of Company to satisfy this initial purchase requirement within thirty (30) days from execution shall result in a termination by Certiport of this Agreement but shall not relieve Company of its obligation to pay Certiport for all Exams purchased prior to termination. Notwithstanding the foregoing, no initial purchase requirement is required for U.S. federal, state and local government entities.
- 5.5. Subsequent Purchase(s). After satisfying its initial purchase requirement, Company may purchase additional Certiport Products and Services directly from Certiport, or Company's designated Certiport Authorized Distributor. In order to remain an active CATC, Company agrees to make an annual minimum purchase of ten (10) Exams. Notwithstanding the foregoing, no annual minimum purchase requirement is required for U.S. federal, state and local government entities.

- 5.6. **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.
- 5.6.1. **Price.** The price for all Certiport Products and Services shall be as stated on the Certiport web portal. Certiport may modify, in its sole discretion, pricing of Certiport Products and Services upon thirty (30) days' advance notice to Company.
- 5.6.2. **Payment Terms.** When ordering from Certiport directly, Company shall pay for Certiport Products and Services Company shall pay the purchase price for Certiport Products and Services in U.S. Dollars. Company shall pay for all Certiport Products and Services upon purchase, unless Certiport, in its sole discretion, has granted other payment terms to Company. If Company fails to pay said amounts when due, Company shall pay to Certiport a late fee equal to two per cent (2%) per month of the unpaid amount. Certiport may deny Company access to Certiport Products and Services for which payment is past due whether purchased from Certiport, or Company's designated Certiport Authorized Distributor.
- 5.7. **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, as amended by Exhibit C hereto. Locations and publications as referenced herein include but are not limited to: commercial listings, directories, stationery, collateral, websites, business cards, advertisements, and office facilities.
- 5.8. **Organizational Summary.** Within the first two weeks of each calendar quarter, and immediately upon responsible party contact changes, Company shall update any organizational and contact details that may have changed and which include, but are not limited to: corporate name, corporate owners, address, main telephone number, website URL, iQcenter administrator, IT manager, marketing manager, sales manager, Certified Professional Instructor, or Authorized Instructor, and any additional relevant employee names and their responsibilities as appropriate. (The complete set of required organizational data is found on the Certiport website under the "Contacts" sub-tab found in the "Org Profile" tab while logged in using the Organization Administrator role.) Furthermore, Company agrees to add the contact details of new full-time employees who will be organizational contact points to Company's organizational details on the Certiport website upon their hire.
6. **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

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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.

7. **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:
  - 7.1. **Certiport Systems Administrator.** Company agrees, when the resource to train individuals in the Company's primary local language is made available by Certiport, to have at least one Certiport System Administrator trained and certified in the primary local language of the Territory in which the CATC™ is located. The Certiport System Administrator certification can be obtained by passing the Certiport System Administrator Exam found at [www.certiport.com](http://www.certiport.com).
  - 7.2. **Certiport Exam Proctor.** Company agrees, when the resource to train individuals in the Company's primary local language is made available by Certiport, to have at least one Certiport Exam Proctor trained and certified in the primary local language of the Territory in which the CATC™ is located. The Certiport Exam Proctor certification can be obtained by passing the Certiport Proctor Exam found at [www.certiport.com](http://www.certiport.com).
  - 7.3. **CATC™ 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.
  - 7.4. **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.
  - 7.5. **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".
8. **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.
  - 8.1. Company agrees and warrants:



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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. Company understands, acknowledges, and agrees that Examinees will be entitled to take action, against Company, as limited to Company's own processing activities, and to receive compensation from Company arising out of (i) a breach by Company due to Company's violation for not complying with instructions received by Company from Certiport, (ii) Company's violation of applicable international and data protection laws; (iii) failure by Company to implement or maintain technical and organizational security measures as described in the Agreement; (iv) failure by Company to promptly notify Certiport about any legally binding request for disclosure of Personal Data by law enforcement unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation; (v) any accidental or unauthorized access to Examinee Personal Data; and (vi) failure by Company to disclose promptly to Certiport a request received directly from an Examinee, unless Company has been otherwise authorized to handle (collectively "third party beneficiary rights").

viii. The Company agrees that if the Examinee invokes against it third-party beneficiary rights and/or claims compensation for damages under the Agreement, the Company will accept the decision of the Examinee: (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority; (b) to refer the dispute to the courts of Colorado in which the Program Sponsor or Certiport (in the role of the Program Sponsor) is established. The parties agree that the choice made by the Examinee will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

ix. 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.

x. 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.

xi. The Company shall provide all reasonable and timely assistance (including by appropriate technical and organisational measures) to Certiport (at its own expense) to enable Certiport to respond to:

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(i) any request from a data subject to exercise any of its rights under any applicable data protection laws (including its rights of access, correction, objection, erasure and data portability, as applicable); and

(ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Examinee Personal Data.

(iii) In the event that any such request, correspondence, enquiry or complaint is made directly to the Company, the Company shall promptly inform Certiport providing full details of the same;

xii. The Company shall comply with all applicable data privacy and data protection laws (including but not limited to the EU General Data Protection Regulation) relating to Company's obligations under the Agreement.

xiii. 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.

xiv. 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 Swiss-U.S. Privacy Shield Framework principles. In addition, Company agrees to follow the principles of the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework principles.

**9. 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

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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 and in such event, Company shall forever forfeit all rights to all fees and commissions which shall accrue and/or have been earned but which have not been paid as of the date of such termination.

10. **Competition; Circumvention.** During the term of this Agreement, and for six (6) months after this Agreement is terminated, Company agrees that it will not, directly or indirectly, develop, administer, sell or license products or services that compete with the Certiport Products and Services to any person or entity for any purpose, in the Territory and Sector described in Exhibit B. Further, during the term of this Agreement and for six (6) months thereafter, Company agrees that it will not, directly or indirectly, buy or lease, as the case may be, any products or services that are the same as or similar to the Certiport Products and Services, from any of the Program Sponsors or third-party vendors for which Certiport provides the Certiport Products and Services to Company pursuant to this Agreement, and will take no action, whether directly or indirectly, by any medium of contact whatsoever, to

circumvent or interfere in any manner with any relationship, opportunity or advantage that Certiport may have established with the Program Sponsors or third-party vendors, or interfere in any manner whatsoever with the business of Certiport.

11. **No Purchase or Sales Outside Territory or Sector(s)**. Company shall not purchase or sell Certiport Products or Services outside the Territory, or Sector(s) specified in Exhibit B as described in Section 5.2 above.
12. **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™ 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.
13. **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. Company shall not provide access to Certiport Technology to any other party for the purposes of re-engineering, reverse engineering, copying or manipulation in any manner. Other than as licensed herein, Certiport shall retain all right, title and interest to Certiport Technology and any modification, enhancement, localization or extension of the Certiport Technology developed by Company during the term of this Agreement. Certiport hereby prohibits Company from disassembling, reproducing, modifying, or creating derivative works based on the Certiport Technology. Company shall not be entitled to use Certiport Technology for internal purposes except as specifically permitted by this Agreement. Certiport also prohibits sublicensing or assigning the rights of the Certiport Technology without the written consent from Certiport. Any violation of this Section 13 shall constitute a breach of this Agreement and result in termination pursuant to Section 16.1.
14. **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.
15. **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.

**16. Termination.**

16.1. **By Either Party for 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 breach of this Agreement and if such breach continues un-remedied for a period of ten (10) days after receipt by the other party of written notice thereof. Within three (3) days after receipt of a written notice to cure a breach, the breaching party must provide non-breaching party with a written detailed response that identifies how the breaching party will cure the breach within the ten (10) day time frame provided above. Should the breaching party fail to provide the written response within three (3) days as is required; the non-breaching party shall have the right to immediately terminate this Agreement. Further, this Agreement may be terminated if either party: (i) has a receiver appointed for itself or its property; (ii) makes an assignment for the benefit of its creditors; (iii) any proceedings are commenced by, for or against either party under any bankruptcy, insolvency or debtor's relief law seeking a reorganization of such party's debts and such proceedings are not dismissed within ninety (90) days of their commencement; or (iv) either party is liquidated or dissolved.

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

16.3. **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 and shall be subject to the late payment provisions contained in Section 5.6.2.

17. **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.

18. **Disputes.** Intentionally left blank.

19. **Confidentiality.** Company acknowledges and agrees that: (a) confidentiality and security of Exams, exhibits and other materials related to Exams, and other materials related to Program Sponsor's standards, requirements and testing is highly confidential to Program Sponsor and to Certiport; and (b) information and data identifying or describing Examinees, Examinees' scores and performance, Examinees' participation in testing and other information relating to each Examinee is private, confidential information of Examinee and is highly confidential to Examinee, Program Sponsor and Certiport; and (c) the Software, applications, Exam files, manuals, CATC materials and related materials in any medium provided by Certiport are private and confidential business information of Certiport, and accordingly, Company will scrupulously maintain the security of the Exams, testing information and Examinee data and information described in (a) and (b) above, and will undertake all necessary and appropriate efforts, but never less than reasonable care, to protect the confidentiality of all of the information and materials described in this Section and to prevent any unauthorized use or disclosure. Confidential information also includes other information that should reasonably have been understood because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be confidential information. Confidential information shall expressly include any and all information derived from a party's proprietary information and the terms and conditions of this Agreement. Certiport's confidential information shall include any software provided hereunder. No information or materials provided under and pursuant to this Agreement will be used, disclosed or permitted to be used by Company for any purpose not expressly provided for in this Agreement. Company acknowledges and agrees that the requirements set forth in this Section are of the most critical importance to Certiport, Program Sponsors and Examinees and that any breach will likely result in severe damage. Each party acknowledges that it acquires only the right to use the confidential information of the other party under the terms and conditions of this Agreement for as long as this Agreement is in effect and does not acquire any rights of ownership or title in the confidential information. Each party agrees not to use such confidential information for any purpose not reasonably required by this Agreement. The requirements of this Section are perpetual and will survive the termination or expiration of this Agreement for any reason.

Notwithstanding anything herein, either party may disclose confidential information to the extent required or compelled by a court order, or local, state or federal law, or regulation, provided that the disclosing party, using best efforts, gives the other party written notice of the proposed disclosure with sufficient time to seek relief and that such disclosure, if made, is made in a fashion to maximize the protection of the confidential information from further disclosure.

Company recognizes and acknowledges that any use or disclosure of any confidential information by Company in a manner inconsistent with the provisions of this Agreement may cause Certiport irreparable damage for which remedies other than injunctive relief may be inadequate, and Company agrees that in any request by Certiport to a court of competent jurisdiction for injunctive or other equitable relief seeking to restrain such use or disclosure, Company will not maintain that such remedy is not appropriate under the circumstances. The parties further agree that in the event such equitable relief is granted in the United States, they will not object to courts in other jurisdictions granting provisional remedies enforcing such United States judgments.

**20. Audit.**

20.1. Certiport, its authorized representatives, or any Program Sponsor whose Exams are being administered at the CATC, may periodically inspect and audit the CATC operations and records during testing hours without advance notice. Company Administrators will cooperate fully with all such inspections and allow complete access to the CATC and all equipment, software, systems and records. Certiport may integrity shop or audit CATC, one or more times during each year. Company understands that it will receive no Exam delivery or registration compensation for such integrity shop.

**21. Miscellaneous.**

21.1. 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.

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

21.3. Governing Law. See addendum.

21.4. Indemnity. See addendum.

21.5. Force Majeure. Neither party shall be liable for failure to perform any obligation under this Agreement where such failure is due to fire, flood, earthquake, riot, sabotage, labor dispute, natural calamity, war, epidemic, acts of God, acts of the government or of any civil or military authority, or other causes that are beyond the reasonable control of such party.

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



Certiport Authorized Test Center (CATC™) Agreement

- 21.7. Headings. The headings to the sections hereof are for convenience only and have no legal effect.
- 21.8. Severability. If a court of competent jurisdiction finds any portion of this Agreement, including the Exhibits and Addenda hereto, to be invalid or unenforceable, such determination shall not render the entire Agreement, Exhibits or Addenda unenforceable or invalid but rather the Agreement, Exhibits or Addenda, as the case may be, shall be read and construed as if the invalid or unenforceable provision(s) are not contained therein, and the rights and obligations of the parties shall be construed and enforced accordingly.
- 21.9. No Assignment. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto. Except as may be permitted by the terms of this Agreement, Company may not assign its rights or delegate its duties hereunder without the express written consent of Certiport.
- 21.10. Waiver. Failure by a party to exercise, or any delay by a party in exercising, any right or remedy provided in this Agreement or by law shall not constitute a waiver of the particular right or remedy, or a waiver of other rights or remedies.
- 21.11. Taxes. Company shall promptly pay, and reimburse and hold Certiport harmless from and against, all taxes of any character incurred by Company and resulting from the purchase and/or sale by Company of any Products or Services.
- 21.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, all of which shall constitute the same agreement.
- 21.13. Language. Written in English, this Agreement shall be construed and interpreted in accordance with this language regardless of any translation required for execution.
- 21.14. Publicity. Company shall not issue any press release or publicity that relates to this Agreement without the express written consent of Certiport.
- 21.15. Review. Company acknowledges that it has reviewed this Agreement in its entirety and has had a full opportunity to consult with counsel regarding the Agreement's terms. Therefore, Company expressly waives any and all applicable common law and statutory rules of construction that might hold that any provision of this Agreement should be construed against the Agreement's drafter, and agree and affirm that the Agreement and all provisions thereof shall in all cases be construed as a whole, according to the fair meaning of the language used.

[Signature Page Follows]

Certiport Authorized Test Center (CATC™) Agreement

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives.

**Poudre School District**

Signature:   
Authorized Signature

Name: Scott Nielsen

Title: Asst. Superintendent

Date: March 25, 2019

**NCS PEARSON, INC.**

Signature:   
Authorized Signature

Name: Bill Brothers

Title: Finance Manager

Date: March 20, 2019



**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 examinees.
- 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 Certiport's retest policy:

Certiport provides many exams that require different retest policies. These policies must be adhered to and enforced by the CATC, and 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 "Exam Retake Policy".

Examinees participating in Exam beta-testing may take each beta-exam only once unless otherwise authorized by program administrators.

### **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 Authorized Distributor or to Certiport customer services representatives. Reports should include date, time and location of the incident, name of Examinee, name and version of 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. Certiport, accordingly, embraces the Americans with Disabilities Act (ADA) as well as other global accommodations for disabilities designed to advance those goals. CATCs are required to comply with local laws requiring 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. Certiport and CATCs are not obligated to accommodate Examinees with language limitations unrelated to a documented disability (i.e.; English as a second language, literacy, etc.), nor to provide unlimited time for the completion of Exams that are designed to certify not only knowledge, but also efficiency in the use of desktop computers.

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

Further information 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.

**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:

Colorado, U.S.A.

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:

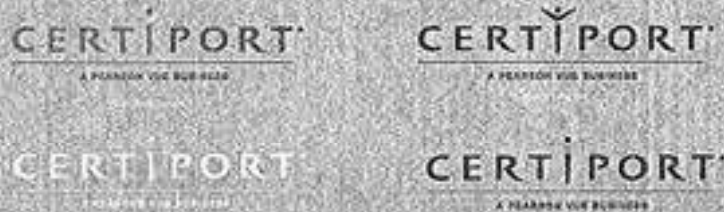
K-12

## Exhibit C - Branding Guidelines

### Certiport Authorized Test Center Agreement

#### CERTIPOINT LOGO USAGE GUIDELINES

##### LOGO



**CLEAR SPACE:**  
Clear Space (X) is equal to the height of the "C" in "Certiport".



##### MINIMUM SIZE



**INCORRECT USAGE**  
Do not redraw or modify the logo in any way. Use artwork exactly as provided.



**SERVICES ADDENDUM TO  
CERTIPORT AUTHORIZED TEST CENTER™ AGREEMENT  
BETWEEN CERTIPORT®, A BUSINESS OF NCS PEARSON, INC.  
AND POUFRE SCHOOL DISTRICT R-1**

This Services Addendum ("Addendum") is made and entered into on this \_\_\_\_ day of March 2019, by and between CERTIPORT®, a Business of NCS Pearson, Inc. (the "Contractor") and Poudre School District R-1 (the "District"). Contractor and the District are collectively referenced herein as the "parties." This Addendum is incorporated into the CERTIPORT Authorized Test Center™ Agreement dated \_\_\_\_\_, 20\_\_ between Contractor and the District (the "Agreement"). To the extent any addition to, deletion from or modification of the Agreement results in any conflict or inconsistency between the Agreement and this Addendum, this Addendum shall govern and the terms of the Agreement that conflict with this Addendum or are inconsistent with this Addendum shall be of no force or effect. In consideration of the mutual covenants, promises, understandings, releases and payments described in the Agreement and this Addendum, the parties agree to amend the Agreement by adding the following language:

**1. Term of Agreement.**

1.1. Unless earlier terminated as provided herein, the Agreement, at the option of either party, may be extended for up to four (4) additional one-year terms, upon a written mutually agreed upon addendum to the Contractor for each one-year term.

1.2. Notwithstanding any other term or provision of this Agreement, the District's obligations hereunder are expressly subject to its budgeting and appropriation of sufficient funds for each fiscal year (July 1 - June 30) an Agreement is in effect. In no event, shall the District's obligations in an Agreement constitute a multiple-fiscal year direct or indirect debt or other financial obligation under Article X, Section 20(4)(b) of the Colorado Constitution.

1.3. Notwithstanding the planned term of an Agreement and/or any extensions thereof as provided in section 1.1 and 1.2 above, the District may terminate an Agreement at any time in its sole discretion for any reason, with or without cause, upon written notice served on the Contractor no less than thirty (30) days prior to the date of termination. In the event of such early termination by the District, the Contractor shall be paid up to the date of termination for services performed under and in accordance with this Agreement.

2. **Press Contacts/News Releases.** The Contractor shall not initiate any press, media, or social media, contact nor respond to press, media or social media requests regarding this Contract and/or any related matters concerning the District without the prior written approval of the District.

3. **Invoices.** All invoices are due within thirty (30) days of receipt of Contractor's invoice. All invoices must be submitted within 45 days of fiscal year end June 30 and may not include items received by the District outside of the fiscal year July 1 – June 30.

**4. Certification Regarding Illegal Aliens.**

4.1. Contractor certifies, represents, warrants and agrees that it will not knowingly employ or contract with an illegal alien to provide services under this Agreement, and will not enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to provide services



under this Agreement. Contractor also certifies, represents, warrants and agrees that it will confirm the employment eligibility of all its employees who are newly hired for employment to provide services under this Agreement through Contractor's participation in either: (a) the E-Verify Program created under federal law and jointly administered by the Department of Homeland Security and the Social Security Administration; or (b) the Colorado Department of Labor and Employment Program ("Department Program") established pursuant to C.R.S. § 8-17.5-102(5)(c).

4.2. Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If Contractor obtains actual knowledge that a subcontractor providing services under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall notify the subcontractor and the Customer within three (3) days that Contractor has such actual knowledge, and terminate the subcontract within three (3) days of providing the notice if the subcontractor has not stopped employing or contracting with the illegal alien. Contractor shall comply with any reasonable request made by the Department of Labor and Employment in the course of an investigation undertaken pursuant to the authority of C.R.S. § 8-17.5-102(5). If Contractor participates in the Department Program, it shall: (a) notify the Customer and the Department of Labor and Employment of such participation as required by law; and (b) within twenty (20) days after hiring an employee to provide services under this Agreement, provide to the Customer a written notarized copy of an affirmation that it has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. § 1324a, and not altered or falsified the identification documents for such employee.

5. **Warranties.** Contractor warrants that all goods and/or services furnished under the Agreement shall conform to District specifications and to industry standards, and shall be free from defects in material and workmanship. Contractor warrants that all goods and/or services furnished under the purchase order shall be merchantable, and shall be safe and appropriate for the purpose for which goods and/or services of like kind are normally used. Contractor warrants that all goods furnished under the Agreement shall be new unless otherwise specified by the District. Contractor agrees to promptly replace or correct defects in any goods or services not conforming to the foregoing warranties without expense to the District, provided the District elects to allow Contractor the opportunity to do so. In the event of Contractor's failure to promptly replace or correct defects in nonconforming goods or services, the District may after reasonable notice to Contractor replace such goods and services or make such corrections and charge Contractor its costs incurred therefor.

6. **Independent Contractor.** Contractor shall provide any and all services covered by the Agreement as an independent contractor of the District, and the persons performing such services shall not be considered employees of the District. Contractor shall be exclusively responsible for: (a) all compensation, employment tax withholdings and payments, and all fringe benefits for its employees in full compliance with all applicable federal, state and local laws; (b) all insurance coverages and benefits for its employees in full compliance with all applicable federal, state and local laws, including but not limited to pension or retirement benefits, workers' compensation, unemployment compensation, and Social Security benefits; and (c) all payments to its contractors and subcontractors for goods and/or services directly or indirectly related to the Agreement.

7. **Notices and Communications.** All notices and communications required or permitted under this Agreement shall be in writing and shall be: (a) sent via certified mail, return receipt requested and postage prepaid, to the address of the other party set forth below; or (b) sent via e-mail to the other party via the e-mail address set forth below.

Poudre School District R-1  
Attn: Tracy Stibitz  
2407 LaPorte Avenue  
Fort Collins, CO 80521  
E-mail: [tstibitz@psdschools.org](mailto:tstibitz@psdschools.org)

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

With copy to:

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

8. **General Provisions.**

8.1. **No Assignment.** Except with respect to its affiliates or a successor entity that may result from corporate merger, the Contractor shall not assign this Agreement or any of its rights, interests or obligations under this Agreement without the prior written consent of the District, which consent may be withheld for any reason or no reason as determined by the District in its sole discretion.

8.2. **No Waiver.** The parties agree that no assent or waiver, express or implied, to any breach of any one or more of the covenants of this Agreement shall be construed as or deemed to be an assent to or a waiver of any subsequent breach.

8.3. **Conflict of Terms.** In the event of any conflict of terms found between this Agreement or any other terms and conditions, end user license agreements or privacy policies, the terms of this Agreement shall prevail.

8.4. **Amendment or Modification.** No amendment or modification of this Agreement shall be valid unless set forth in writing and executed by the District and the Contractor in the same manner and with the same formality as was done for this Agreement.

8.5. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

8.6. **Insurance.** Contractor shall procure and maintain the required insurance specified below for the duration of this Agreement, which insurance shall be written for not less than the amounts specified or greater if required by law. Specified coverage and amounts may be provided by a combination of a primary policy plus an umbrella or following form excess policy. If not otherwise required by law, lower amounts may be acceptable upon review and

written approval by the District's Director of Records and Risk Management. All insurance shall be with a carrier licensed in the state of Colorado and shall have a minimum A.M. Best rating of A- VII. Contractor shall furnish the District's Director of Records and Risk Management with certificates of the required insurance prior to the District's approval and signing of this Agreement, and with renewal certificates as soon as reasonably practical following the expiration of any required insurance that expires during the term of this Agreement. Any insurance and/or self-insurance carried by the District is excess of the coverage extended to the District by Contractor. Contractor shall provide at least thirty (30) days' advance written notice to the District prior to cancellation or change of coverage. The insurance requirements specified in this section 8.6, shall not reduce the indemnification liability that Contractor has assumed in section 8.7 below.

Commercial General Liability

- a. Each Occurrence Bodily Injury & Property Damage \$1,000,000
- b. Personal Injury \$1,000,000
- c. Products/Completed Operations Aggregate \$1,000,000
- d. General Aggregate \$2,000,000
- e. Coverage must be written on an "occurrence" basis
- f. Poudre School District and its elected officials and employees shall be included as additional insureds; copy of policy endorsement must be attached to the Certificate of Insurance.

Technology Errors & Omissions Liability including Network Security and Privacy Liability

- a. Per Loss \$3,000,000
- b. Aggregate Limit \$3,000,000
- c. If policy is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Agreement and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is complete. Contractor shall also maintain such insurance for an additional period of three (3) years following termination of the Agreement.
- d. If policy is written on an occurrence form basis, Contractor shall maintain such insurance for an additional period of one (1) year following termination of the Agreement.

8.7. **Indemnification.** Within the limits of the law, the Contractor shall indemnify and hold harmless the District and the District's Board members, employees, representatives and agents from and against any and all liability arising from any suit, action, grievance, charge or proceeding brought in connection with or related to: (a) the Contractor's operations; (b) the Contractor's provision of the Services; (c) the Contractor's actual or alleged infringement of any third party's patent or copyright; and/or (d) the conduct of any of the Contractor's employees, volunteers, agents or representatives. The indemnification and hold

harmless obligation hereunder shall include all attorney fees, costs and expenses incurred by the District and/or the District's Board members, employees, representatives and/or agents in defense of said suits, actions, grievances, charges and/or proceedings. Nothing in this section 8.7 or otherwise in this Agreement shall be construed in any way or applied in any manner as a compromise or waiver of the District's rights and protections under the Colorado Constitution or the Colorado Governmental Immunity Act.

8.8. **No Third-Party Beneficiary.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person other than the District or the Contractor. It is the express intent of the parties that any third person receiving services or benefits pursuant to this Agreement shall be deemed an incidental beneficiary only.

8.9. **Attorney Fees and Costs.** In the event it becomes necessary for either party to institute litigation or mutually agreed-upon arbitration proceedings to enforce any provision of this Agreement, the substantially prevailing party in such litigation or arbitration shall receive, as part of any judgment or award entered, its reasonable attorney fees and costs, including expert witness fees.

8.10. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns.

8.11. **Headings.** The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

8.12. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties regarding the subject matter addressed herein and supersedes all prior agreements, whether oral or written, pertaining to said subject matter.

8.13. **Signatures.** This Agreement may be executed and delivered via portable document format (pdf), and the pdf signature of any party shall be considered valid, binding, effective and an original for all purposes.


8.14. **Warranty of Authority.** The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of their respective organizations and bind their respective organizations to the terms of this Agreement.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the District and the Contractor have signed this Agreement as of the date first set forth above.

CERTIPORT, A BUSINESS OF  
NCS PEARSON, INC.

POUDRE SCHOOL DISTRICT R-1

By:   
Bill Brothers  
Finance Manager

By:   
David Montoya  
Executive Director of Finance



By:   
Scott Nielson  
Assistant Superintendent of  
Secondary Schools

Signature: *Julie Chaplain*  
Email: jchaplain@psdschools.org

Signature: *R David Montoya*  
Email: davem@psdschools.org









# CertiPort - Fifth Amendment - 2024-2025 - Final - Vendor Signed

Final Audit Report

2024-12-10

Created:	2024-12-10
By:	Becky Hall (rehall@psdschools.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGeGLpE3h3NmFTctq_P8Rbyw-16QUUMa3

## "CertiPort - Fifth Amendment - 2024-2025 - Final - Vendor Signed" History

-  Document created by Becky Hall (rehall@psdschools.org)  
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-  Document emailed to Julie Chaplain (jchaplain@psdschools.org) for signature  
2024-12-10 - 4:21:49 PM GMT
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-  Document e-signed by Julie Chaplain (jchaplain@psdschools.org)  
Signature Date: 2024-12-10 - 4:25:13 PM GMT - Time Source: server- IP address: 24.8.68.162
-  Document emailed to Dave Montoya (davem@psdschools.org) for signature  
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-  Document e-signed by Dave Montoya (davem@psdschools.org)  
Signature Date: 2024-12-10 - 6:35:15 PM GMT - Time Source: server- IP address: 164.104.10.1
-  Agreement completed.  
2024-12-10 - 6:35:15 PM GMT