

OPERATING AGREEMENT FOR A PROMETRIC INTERNET-BASED TESTING (IBT) CENTER

THIS OPERATING AGREEMENT FOR A PROMETRIC INTERNET-BASED TESTING (IBT) CENTER (this “Agreement”) is made by and between **Prometric LLC** (“Prometric”) and the Operator identified in Section 17.0 herein (“Operator”) (together the “Parties”) and is effective as of the date of acceptance by Operator (the “Effective Date”).

This Agreement establishes the terms and conditions for the administration of tests via internet-based testing (“IBT”) at a testing facility provided by the Operator located at the address in Section 14.0 of this Agreement.

Prometric and Operator agree as follows:

- 1.0 DEFINITIONS.** For purposes of this Agreement, the following terms shall have the meaning indicated below:
- 1.1 Candidate.** Any individual who registers for and receives or takes any Test offered at the Testing Facility.
 - 1.2 Candidate Data.** Any data provided to Operator by Prometric or its client or collected by Operator from a Candidate in connection with this Agreement and including, but not limited to, personal identification data, test results, test registrations, and any other data about or provided by a Candidate.
 - 1.3 Fixed Administration.** A schedule of specific test dates and start times.
 - 1.4 IBT Tests.** Tests delivered on behalf of Prometric or its clients via the internet.
 - 1.5 Item.** A single question or problem that may appear on a Test.
 - 1.6 Item Bank.** A pool or group of Items, any one or more of which in combination comprise a Test.
 - 1.7 Manual.** The most-current version of any documentation required for the operation of a Test Center which is available to Operator through the Prometric website and incorporated herein by reference. The Manual shall be deemed confidential information in accordance with Section 13.1.
 - 1.8 Multiple Site Testing Centers** means Operator will operate multiple Test Centers under this Agreement. Each Test Center will be eligible for the pricing and services contained in the Agreement. Operator warrants that each Test Center listed is an Affiliate and that Operator will obligate each Affiliate to the terms of this Agreement. Operator further warrants that it has the authority to bind the Affiliate to the obligations and the ability to enforce compliance of the terms of the Agreement. An **Affiliate** is either: i) wholly owned by Operator; ii) a wholly owned subsidiary of Operator; or iii) a company or test center that Operator has the legal authority to bind to the terms and conditions of this Agreement. Additional Test Centers will be listed on Exhibit A.
 - 1.9 Test.** A set of Items from an Item Bank selected according to Test specifications provided by a Prometric Client.
 - 1.10 Test Center or Testing Facility** means a facility provided by Operator that is convenient for access by Candidates (including those who are disabled) and suitable for secure testing purposes, as specified by Prometric in the Manual and approved by Prometric. The Operator and Testing Facility shall conform, at a minimum, to the standards set forth in the "Americans with Disabilities Act of 1991", where applicable.
 - 1.11 Test Center Administrator (TCA).** An individual who has been trained to proctor Tests and to operate the Prometric hardware and software and has met all Test Center Administrator requirements.
 - 1.12 Prometric Client.** An organization that is engaged in the promulgation of standardized or occupation-related tests and who has agreed to offer one or more of its tests through the Test Center.
 - 1.13 Testing System Software.** The data communications, registration, scheduling, and testing systems and software that are proprietary to Prometric or licensed to Prometric on a non-restricted basis, and all changes, enhancements, improvements, modifications and upgrades thereto and derivative works therefrom including all the software and systems necessary to or used by Prometric to register Candidates, schedule a Test, check in a Candidate, administer a Test, process results, and communicate with the data center, Global Contact Center, Candidates, and Testing Clients.

2.0 LICENSE. Subject to the terms of this Agreement, Prometric grants Operator, for the term of this Agreement and Operator accepts from Prometric, a non-exclusive, non-transferable, limited license to use the Prometric Testing System Software for the sole purpose of operating a Prometric IBT Test Center to be located at the address set forth in Section 14.0 below.

3.0 TERM AND TERMINATION. The Term of this Agreement shall begin on the Effective Date and terminate by one Party providing notice to the other in accordance with this Section 3.0 that the Agreement will end. Either Party may terminate the Agreement for convenience by providing thirty (30) days prior written notice to the other Party.

4.0 PROMETRIC'S RESPONSIBILITIES. Prometric will provide the following services:

- 4.1 Administration Guide.** Prometric will provide an administration guide, the *IBT Test Administration Guide* for TCAs and Proctors who will administer Tests at Operator's Testing Facility.
- 4.2 Manage TCA/ IBT Access.** Prometric will manage TCA/Proctor access to the IBT system by facilitating the username and password process for the TCAs/Proctors at the Testing Facility.
- 4.3 Access to Test.** Prometric shall grant Operator access to the Tests to use for the specific purpose of administering the Test(s) to Candidates in the Testing Facility.
- 4.4 Technical Assistance.** Prometric will provide technical assistance to the Testing Facility and TCAs/Proctors during Test administrations as outlined in the *IBT Test Administration Guide*.
- 4.5 Lockdown Browser.** Prometric will provide Lockdown Browser instructions *in the IBT Test Administration Guide* to Operator to access the Tests via the Internet and to close a testing event following completion of testing.

5.0 OPERATOR'S RESPONSIBILITIES. Operator agrees that it will provide at Operator's sole expense all of the following:

- 5.1 Operational Requirements.** Operator shall, at its expense, comply with the IBT facilities and equipment requirements in accordance with the requirements set forth in the *IBT Test Administration Guide*, including a minimum commitment of at least 16 hours per month or a minimum of 2 days per month.
- 5.2 Software Security.** Operator agrees to maintain and utilize Prometric's required software security mechanisms, which will be used to maintain the security of all proprietary and confidential information, Tests and Test Items. Operator agrees to accept and implement within thirty (30) days of notification all changes to security procedures that Prometric deems necessary.
- 5.3 Physical Security.** The Testing Facility within which testing is conducted must meet the following standards:

- Operator agrees to install physical security measures that Prometric deems appropriate to ensure that security breaches do not occur;
- Must be an enclosed room, not allowing through traffic;
- Workstations must be placed such that a Candidate cannot view another Candidate's computer screen, or the Operator must install privacy panels and/or partitions; and
- Testing Room shall not have drawers or cabinets accessible by Candidates inside the Testing Room.
- Testing will be monitored by at minimum one (1) TCA at all times using at least one (1) of the following methods:
 - Direct viewing of testing area;
 - Video monitoring with audio

Additionally, the following security procedures must be followed:

- Operator agrees to ensure the confidentiality of the Tests' contents and that security breaches (e.g. coaching, any form of copying, attempt to access Item Banks for other than for testing, etc.) do not occur;
 - Operator agrees to provide secure storage of Candidate's belongings, which cannot be brought into the Testing Room(s) (e.g. purses, briefcases, cell phones, pagers, Palm Pilots, Personal Digital Assistants, etc.);
 - Operator agrees to maintain and institute any new security procedures as instructed by Prometric within thirty (30) days; and
 - Operator agrees to notify Prometric of any breach of security, any attempted cheating, any flaw in the physical or software security systems or any other security breach that it becomes aware of. Such notice shall be given to Prometric as set forth in the *IBT Test Administration Guide* immediately upon discovery, and confirmed in writing the next business day after such breach is discovered.
- 5.4 Technical Requirements.** Operator will meet all technical requirements as described in the *IBT Test Administration Guide*.
 - 5.5 Site Readiness Process.** Operator agrees to comply with the site readiness process provided by Prometric.

- 5.6 Lockdown Browser.** Operator agrees to comply with the Lockdown Browser instructions and the Lockdown Browser closure instructions as described in the *IBT Test Administration Guide*. Operator agrees to ensure that all Lockdown Browser steps are completed prior to launching a Test, and Operator will ensure that the Lockdown Browser is closed following the completion of each Test.
- 5.7 Operating Hours.** The test center is being established to serve the testing needs of local students and community. It is expected that the operator provide enough testing stations and a testing schedule that will allow candidates reasonable access to exam delivery. Additional hours, including weekends and evenings are encouraged.
- 5.8 Candidate Registration and Scheduling.** Candidates shall register for Tests as directed by Prometric prior to taking a Test at the Test Center. Once a Candidate receives his/her authorization to test, Candidate will contact a Test Center to schedule an appointment to take the Test. Operator will follow procedures outlined in the *IBT Test Administration Guide* for scheduling Candidate testing times and dates.
- 5.9 Data Privacy.** Operator agrees that it will only use Candidate names or Candidate-related personal information obtained through the registration or testing process solely for the purpose of fulfilling its obligations under this Agreement. Operator will not use Candidate names or Candidate-related personal information obtained under this Agreement in any mailing or marketing-related activities, or provide or sell such names or personal information to any third party or use Candidate names or information for any other purpose without Prometric's prior written approval. Additionally, Operator agrees to abide by the terms and conditions of the Prometric Privacy Statements located at www.prometric.com, as it is communicated and updated from time to time.
- 5.10 TCAs.** Operator agrees to be certified as a TCA and to require all Test Center staff who will manage and/or perform check-in, proctoring and Test administration services to be certified by Prometric as a TCA. Operator shall, at its expense, adhere to the IBT Test Center staffing requirements as detailed on Prometric's website. TCAs are required to re-certify on an annual basis. Operator will provide staff and train them as TCAs to administer the Tests. TCA requirements include:
- Must be 18 years of age or older.
 - Must be full- or part-time permanent staff employed at the Testing Facility by the Operator.
 - Must complete training for Test administration activities prior to administering the Test.
 - Must not provide access to a Test or administer a Test to any family member or member of household.
 - Must not sit for or take a Test while employed as a TCA, and must not take a Test for a time period specified by Prometric's Client after Prometric has been notified that the TCA's/Proctor's employment has ended.
 - Must not assist Candidates by disclosing Test questions, including, but not limited to the following methods: copying, photographing, screen view printing, digital transfer, transfer by handwritten use, audio or video recording, any electronic means or technology, or relay by word of mouth.
 - Must not administer Tests to any Candidate who does not follow standard procedures as outlined in the *IBT Test Administration Guide*.
- Under- or non-performing TCAs may be required to receive additional training at Prometric's request and Prometric reserves the right to require replacement of an under- or non-performing TCA.
- 5.11 Test Access.** Operator will ensure that Tests are accessed and used only for the specific purpose of administering the Test(s) to Candidates in the Testing Facility.
- 5.12 Test Administration.** Operator will assume responsibility for administering the Tests in accordance with proper procedures outlined in this Agreement and the *IBT Test Administration Guide*.
- 5.13 Relocation of Testing Facility:** Operator shall notify Prometric in writing no less than thirty (30) days prior to the relocation of the Test Center.

6.0 COMPENSATION. For Tests delivered by Operator at the Test Center, an hourly fee will be paid based on the scheduled test hours for each Test. The number of scheduled test hours for each Test is determined by Prometric based upon the time needed for the delivery of that Test in the Test Center for which the Operator is to be compensated. The scheduled test hours Test may be changed by Prometric at any time.

\$4.00 per Scheduled Test Hour

Every test delivered shall be counted for the scheduled test hours of testing as provided by Prometric regardless of the test's actual duration.

By way of example: Assuming Operator delivers the following sample tests in January 2015:

# of Tests Delivered	Exam Name	Scheduled Test Hours per Test	Total Test Hours Eligible for Compensation
21	Exam #1	1	21
17	Exam #2	1.5	25.5
9	Exam #3	2	18
Total Test Hours Eligible for Compensation			64.5
Total Compensation earned for January 2015 is \$4.00 x 64.5 = \$258.00			

Distribution of Compensation: Prometric will calculate the number of Tests results received each month and will pay to Operator the per Scheduled Test Hour fees for the month just completed and will pay Operator the calculated fees within forty-five (45) days of the month just completed. Prometric will pay Operator by automatic deposit/electronic funds transfer (EFT), excluding locations where it is not available. Where EFT is available, Prometric will provide Operator, within 45 days of the month just ended, a statement detailing the compensation paid. This statement may be mailed, posted on a secure Website, or transmitted electronically, at Prometric's option. **Service fees assessed against Prometric.** Should a change occur to the bank account information used for EFT payment of compensation, it is Operator's responsibility to notify Prometric of the changes in a timely manner so as to not cause Prometric to be charged service fees for attempts to make payment to a closed or otherwise changed account. Should Prometric incur services fees assessed by a financial institution, including Prometric's financial institution, for attempting to make payment to an account that is no longer valid, Prometric shall offset Operator's compensation for the cost of those service fees.

All compensation amounts are inclusive of applicable sales, use, excise, Value Added Tax (VAT), Goods and Services Tax (GST), or any other taxes. Operator agrees to be responsible for and to pay any associated bank fees, charges and taxes related to the compensation earned for the services performed under the MSA and Schedule. Operator shall not invoice Prometric for any bank fees, charges or taxes related to the compensation herein.

7.0 OWNERSHIP. Operator acknowledges and agrees that Prometric and/or Prometric Client holds all proprietary and ownership rights, including, but not limited to, copyright, trade secret and patent in the Prometric Systems, all Test forms, individual Test Items, the manuals, forms and materials, and any other software, manuals, documentation, secure test administration or operational procedures which were previously developed or will be developed by Prometric and which will be provided to the Operator to perform its responsibilities under this Agreement.

8.0 PRICING OF SERVICES. Prices for Tests are set by Prometric Clients. Operator will not collect any fees from Candidates for testing services.

9.0 TESTING FACILITY VISITS/AUDITS. Operator will permit Testing Facility visits and will permit the Testing Facility to be audited for the purpose of determining causes of irregularities in operational procedures, TCA performance, Testing Facility performance, and security requirements. Prometric and Prometric Clients also reserves the right to send independent investigators acting as Candidates to observe administration of Tests, and to verify security arrangements, at any time during the term of this Agreement.

10.0 SUSPENSION OR DISCONTINUATION OF TESTING SERVICES. The Operator agrees that either Prometric or a Prometric Client may withdraw its Tests from any Test Center, suspend the use of their Tests by the Test Center, or discontinue the use of their Tests by the Test Center at any time, with or without cause, and without any prior written notice.

11.0 DEFAULT AND TERMINATION. Except as otherwise provided herein, this Agreement may be terminated immediately by Prometric if Operator breaches a material provision of this Agreement or breaches any of the requirements or standards of the *IBT Test Administration Guide*.

12.0 THIRD PARTY BENEFICIARY. Operator acknowledges each Prometric Client is a third party beneficiary of this Agreement and has a vested interest in assuring that all obligations of Operator under this Agreement are being satisfactorily performed.

13.0 GENERAL.

- 13.1 Confidentiality.** Operator shall keep confidential all confidential information provided to it pursuant to this Agreement. Operator shall hold Prometric- and Prometric Client-owned materials, all Tests delivered on behalf of Prometric and Prometric Clients, testing exhibits, business information, manuals, reference guides, and the pricing and terms of this Agreement in confidence and shall not use, disclose, copy or publish any such information without the prior written approval of Prometric, except where required by law or order of governmental authority. Operator shall safeguard such information to the same extent it safeguards its like information but in no event utilizing less than a reasonable degree of care.
- 13.2 Warranties and Indemnity.** Each Party represents and warrants that it has the right to enter into this Agreement and to perform its obligations hereunder and the performance of its obligations will not violate the rights of any third party. Each Party indemnifies the other against any claims, suits or demands of any third party from the indemnifying Party's breach of its warranties or obligations under this Agreement.
- 13.3 Relationship of the Parties.** Nothing in this Agreement is intended to create an employee or agent relationship. Neither Prometric nor the Operator shall have the power or authority to pledge or bind the other in any manner for any purpose to any third party.
- 13.4 Assignment.** Prometric may assign this Agreement without the consent or approval of Operator. Operator shall not, without prior written consent from Prometric, sell, assign, transfer or convey this Agreement or any rights or interest hereunder.
- 13.5 Trademarks and Logos.** Neither Party may use the trade name, trademark, service mark, logo or other designation of the other Party or a Prometric Client in its promotional or marking activities or for any other purpose without the prior written approval of that Party for each use.
- 13.6 Jurisdiction and Venue.** The parties agree that this Agreement shall be interpreted and enforced according to the laws of the State of Maryland, except as to those provisions of this Agreement that may not be enforceable under the laws of said state; in which event, that provisions(s) shall be interpreted and enforced according to the laws of the state in which the authorized locations herein lie.
- 13.7 Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE OTHER PARTY'S DIRECT DAMAGES, AND COSTS.
- 13.8 Notices.** Unless otherwise provided herein, any notice required or permitted by this Agreement shall be in writing, addressed at the address given on the signature page at the end of this Agreement, or to such other address as the party by notice informs the other, and shall be mailed by first-class mail, if not hand delivered or transmitted via facsimile, and shall be effective on the sooner of actual receipt or three (3) days after mailing. Any notice required or permitted by this Agreement shall be in writing addressed as follows: General Counsel, Prometric LLC, 1501 South Clinton Street, Baltimore, Maryland 21224.
- 13.9 Force Majeure.** If, as a result of an occurrence not occasioned by the conduct of Operator, or not subject to control by Operator, such as an act of God, act or failure to act by a third party, weather, riot, civil commotion, terrorism, intervention of public authorities, work stoppage, interruption of utility service, or any other comparable event (an "Extraordinary Event"), Operator is temporarily unable to perform, in whole or in part, any of Operator's provisions of this Agreement, Operator's obligation to perform or comply with this Agreement shall be correspondingly suspended or delayed, as the case may be, so long as the Extraordinary Event shall exist.
- 13.10 Insurance.** During the term of this Agreement, Operator will maintain a Commercial Liability Insurance policy. Such policy will provide for a combined limit of US\$1,000,000.00 for each occurrence. Upon request, Operator shall produce adequate proof and assurance of such coverage to Prometric during the term of the Agreement.
- 13.11 Non-Discrimination.** In carrying out its obligations under this Agreement, Operator agrees not to discriminate against any employee or applicant for employment because of race, color, religion, gender, sex, age, disability, national origin, ancestry, or veteran status.
- 13.12 Ethics.** Prometric maintains the highest ethical standards in conducting company affairs and in our relationships with customers, suppliers, employees, advisors and the communities in which our operations are located. Prometric maintains certain policies and best business practices to guide our employees and contractors with respect to standards of conduct expected in areas where improper activities could damage our reputation and otherwise result in serious adverse consequences for Prometric and to its employees and contractors involved. As a condition of conducting business with Operator, and by signing this Agreement below, Operator agrees to maintain the highest standards of ethical behavior as a

representative of Prometric in accordance with Prometric's Code of Business Conduct and Ethics located at www.prometric.com.

- 13.13 Entire Agreement.** This Agreement is the entire agreement between the Parties for IBT delivery and supersedes all prior representations and agreements, either oral or written concerning same the subject matter. The Parties may modify or amend this Agreement only in writing and must be approved by Prometric.
- 13.14 Electronic and Fax Signatures.** Electronic and facsimile signatures of the Agreement shall be binding as originals. Unless required by applicable law, no originals of this Agreement shall be provided to Operator.

Remainder of page intentionally blank

14.0 TEST CENTER LOCATION. This Agreement shall apply to the Testing Facility located at:

Name of Test Center The College of the Florida Keys Site Code: _____
Test Center Manager/Director's Name: Melissa Hertzog
Street Address 106040 Overseas Highway City Key Largo
State/Province Florida Country United States
Postal Zip 33040 Phone #: (305) 809-3147 Fax#: _____
E-Mail Address: ukctesting@cfk.edu

If Operator will administer Tests at more than one location, please enter information regarding the additional Test Centers on Exhibit A attached hereto.

15.0 FINANCIAL ADMINISTRATOR. The Operator designates the following individual as its financial administrator and authorizes him/her to act on behalf of the Operator regarding financial matters and forms relating to this Agreement and required by Prometric. Operator shall update Prometric with any changes to this information. **(Please note: This section must be completed in its entirety in order for this Agreement to be accepted by Prometric.)**

Name: Julia Patterson Title: Senior Director, Business Office
Phone: (305) 809-3239 Email: julia.patterson@cfk.edu

16.0 COMPLIANCE. By signing this Agreement, the Operator agrees to follow the requirements as set forth herein and in written procedures and operations manuals provided by Prometric.

17.0 TEST CENTER OWNERSHIP INFORMATION

LEGAL NAME OF COMPANY THAT OWNS THE TEST CENTER:

The College of the Florida Keys (“Operator”)

[Must match Operator's name entered on the W-9 or W-8 Form, as appropriate]

Business Structure: Corporation LLC Partnership ☒ Sole Proprietorship Other _____

PARENT COMPANY OR INDIVIDUAL THAT OWNS AT LEAST 50% OF OPERATOR AND REGISTERED LOCATION OR DOMICLE:

Name: _____ Location: _____

Check here if Operator's headquarters address is the same as the address for the Testing Facility in Section 23.0 above.

Street Address 5901 College Road City Key West
State/Province Florida Postal Code 33040 E-mail testing@cfk.edu
Telephone # (305) 809-3185 Fax # _____

18.0 ACCEPTANCE OF AGREEMENT

By placing your electronic signature below, you agree to provide the services described and to the terms and conditions of the Agreement. Prometric agrees to provide the compensation outlined in the Agreement according to the payment terms and conditions. Provided you have not made changes or altered the Agreement (other than providing the information requested by Prometric), this offer and your acceptance below shall create a binding agreement between you and Prometric, and no further signature on the part of Prometric shall be required.

BY SIGNING BELOW, THIS AGREEMENT IS HEREBY ACCEPTED BY OPERATOR

The College of the Florida Keys (“Operator”)

Signature of Operator’s authorized signer

Date of Acceptance: _____ (“Effective Date”)

Name of Authorized Signer: **Dr. Brittany Snyder** Title: Executive Vice President and CFO

Site Code: _____

Exhibit A

MULTIPLE TESTING CENTER LOCATIONS

This Exhibit A is incorporated by reference and made a part of the Agreement between the Operator and Prometric. The Operator shall operate at multiple Test Center locations as defined in Section 1.0 of the Agreement. Each Test Center will be eligible for the pricing and services contained in the Agreement. Operator warrants that each Test Center listed is an Affiliate as defined in the Agreement. Operator further warrants that it has the authority to bind the Affiliate to the obligations of the Agreement and the ability to enforce compliance of the terms of the Agreement

Does this Agreement cover at least 2 Test Centers?

Name of Test Center _____ **IBT Site Code:** _____

Test Center Manager/Director's Name: _____

Street Address _____ City _____

State/Province _____ Country _____

Postal Zip _____ Phone #: _____ Fax#: _____

E-Mail Address: _____

Does this Agreement cover at least 3 Test Centers?

Name of Test Center _____ **IBT Site Code:** _____

Test Center Manager/Director's Name: _____

Street Address _____ City _____

State/Province _____ Country _____

Postal Zip _____ Phone #: _____ Fax#: _____

E-Mail Address: _____

Does this Agreement cover at least 4 Test Centers?

Name of Test Center _____ **IBT Site Code:** _____

Test Center Manager/Director's Name: _____

Street Address _____ City _____

State/Province _____ Country _____

Postal Zip _____ Phone #: _____ Fax#: _____

E-Mail Address: _____

Please contact Prometric if additional space is needed to list all test center locations. Additional sheet(s) will be attached as Exhibit A.