

CONTRACT AMENDMENT NUMBER 2

I. PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between NCS Pearson, Inc. (hereinafter called Contractor), 2510 North Dodge Street, Iowa City, Iowa 52245 and the State of Colorado (hereinafter called the State) acting by and through the Colorado Department of Education (hereinafter called CDE), 201 East Colfax, Denver, Colorado 80203.

II. EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the Effective Date). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

III. FACTUAL RECITALS

The Parties entered into the Contract for the provision of the required services and deliverables for the development, administration, scoring, and reporting of science and social studies for the Colorado summative and alternate assessments with the option to add services related to ELA and Math.

IV. CONSIDERATION-COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this Amendment.

V. LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

VI. MODIFICATIONS

The Amendment and all prior amendments thereto, if any, are modified as follows:

- A. Paragraph IV., Definitions, shall be amended by deleting the definition of “Exhibits” and replacing it with the following:

“Exhibits and other Attachments” means: Exhibit A, Statement of Work, Attachment 1: Organizational Structure, Attachment 2: Time allocation of key personnel, Attachment 3: Researchers list, Exhibit B, Summative and Alternate Assessment Schedule, Exhibit C, Liquidated Damages Dates, Exhibit C-1, Liquidated Damages Dates (September 1, 2014 to October 31, 2014), Exhibit D Summative and Alternate Materials List, Exhibit E Payment Schedule and Exhibit F, Colorado - Summative and Alternate Assessment Pricing Data.

- B. Paragraph V.A. shall be amended by extending the performance period through October 31, 2014.

- C. Paragraph VII.A. shall be amended by increasing the maximum amount payable under this Contract to Contractor by the State in State Fiscal Year 2015 by \$1,970,170 as determined by the State from available funds.

- D. Paragraph XX.I.S. shall be deleted and replaced with the following:

Liquidated Damages

The late delivery or untimely performance of this contract by Contractor will cause irreparable harm to CDE in light of its obligations under state and federal laws. CDE shall have the right to assess liquidated damages in the amount set forth in Exhibits C and C-1 if Contractor fails to meet the deliverable dates set forth in Schedules A and B and as result of this failure CDE incurs actual harm or damage. The parties agree that the damages from breach of this contract are difficult to prove or estimate, and the amount of liquidated damages specified herein represents a reasonable estimation of damages that will be suffered by CDE from late performance, including costs of additional oversight, staff commitment and time allocation. The right to assess Liquidated Damages will end upon substantial completion of the deliverable. Substantial completion is defined as the moment when the deliverable is capable of being used for its intended purpose. The parties agree that this is a reasonable anticipated calculation of damages and is not intended as a penalty. Liquidated damages shall not exceed 5% of the annual contract

value. CDE shall not assess liquidated damages when the delay in delivery or performance is due to the actions of CDE or otherwise arises out of causes beyond the control and without the fault or negligence of the Contractor. Assessment of liquidated damages shall not be exclusive of or in any way limit remedies available to CDE at law or equity for Contractor breach.

VII. START DATE

This Amendment shall take effect on the later of its Effective Date or September 1, 2014.

VIII. ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

IX. AVAILABLE FUNDS

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

CONTRACTOR

STATE OF COLORADO

NCS Pearson, Inc.

John W. Hickenlooper, GOVERNOR

By: James M. Hill, III
Name of Authorized Individual

Colorado Department of Education
Robert Hammond, Commissioner

Title: Vice President, Pearson State Services
Official title of Authorized Individual

By: [Signature]
Robert Hammond, Commissioner

[Signature]
*Signature

Date: 8.26.14

ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

By: [Signature]
Dave Grier, CDE Controller

Date: 8-27-2014

Exhibit C-1: Liquidated Damages Dates (9/1/2014 – 10/31/2014)

Schedule A: Summative Assessment Deliverables Subject to Liquidated Damages

Deliverable	Deliverable Date	Dollar Amount
Non-secure Materials In District	10/20/2014	\$ 250 per day
Secure Materials In District	10/20/2014	\$1,000 per day
Pearson Online Testing Training Center Available for District Use	09/08/2014	\$500 per day
Online Test Delivery System Demonstration	09/08/2014	\$250 per day
Forms Available for Online Test Delivery System/Proctor Caching	10/20/2014	\$1,000 per day

Schedule B: Alternate Assessment Deliverables Subject to Liquidated Damages

Deliverable	Deliverable Date	Dollar Amount
Non-secure Materials Available to Districts	10/20/2014	\$100 per day
Secure Materials In District:	10/20/2014	\$1,000 per day
Pearson Online Scorer Entry Training Center Available for District Use	09/08/2014	\$500 per day
Online scoring system ready for CDE review	10/11/2014	\$100 per day