

CONTRACT AMENDMENT NUMBER 19

I. PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between ACT, Inc., 500 ACT Drive, Iowa City, Iowa 52243,(hereinafter called Contractor or ACT), 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 to provide a curriculum-based college entrance examination for all Colorado public schools students enrolled in grade eleven.

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. Exhibit A, Section I.N and P., shall be deleted and replaced with the following:

N. 1. DEFINITIONS

“Confidential Information” means information, data, records, and documentary materials belonging to the State regardless of physical form or characteristics, including but not limited to any non-public State records, sensitive State data, protected State data, State personnel records, Personally Identifiable Information (“PII”) as defined below, and other information or data concerning individuals, which has been communicated, furnished or disclosed by the State to Contractor. Notwithstanding the foregoing, Confidential Information shall not include State Data and Records.

ACT possesses confidential information, including without limitation all curriculum, tests, manuals, administration materials, and other materials marked or identified as being confidential or that a reasonable person would understand to be confidential from the nature of the information or the circumstance of the disclosure. Because State will not have access to ACT’s confidential materials, such materials do not constitute “Confidential Information” for purposes of this Amendment. ACT’s Confidential Information does not include Personally Identifiable Information as defined below.

“Personally Identifiable Information (PII)” includes, but is not limited to information about individuals held by the State or provided to Contractor by the State as defined by FERPA, specifically the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. PII also means a dataset that is linked to a

specific individual and that would allow a reasonable person in a school community, who does not have knowledge of the relevant circumstances, to identify the individual with reasonable certainty.

“State Data and Records” means information, data, records, and documentary materials belonging to the State regardless of physical form or characteristics, including but not limited to any public State records, non-sensitive State data, and other information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to the Colorado Open Records Act, C.R.S. Sections 24-72-200.1, *et seq.*; (ii) is already known to Contractor without restrictions at the time of its disclosure by Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any Confidential Information.

“Subcontractor” means a company to which Contractor delegates performance of a substantial portion of the work for this contract, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role, such staff augmentation role includes, but is not limited to, item writers, essay scorers, printers, shippers, common carriers, vendors, suppliers, individuals or entities providing similar or related services or other de minimus roles.

N. 2. CONFIDENTIAL INFORMATION-STATE RECORDS

Contractor shall comply with and shall cause each of its Subcontractors and any other party performing Work under this Contract to comply with the provisions of this Section if it becomes privy to Confidential Information and/or State Data and Records in connection with its performance hereunder.

a. Confidentiality

Contractor shall keep all Confidential Information confidential at all times and comply with all laws and regulations concerning confidentiality of Confidential Information. Any request or demand by a third party for Confidential Information and/or State Data and Records in the possession of Contractor shall be immediately forwarded to the State’s principal representative.

b. Notification

Contractor shall notify its agent, employees, Subcontractors and assigns who may come into contact with Confidential Information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such Confidential Information.

c. Use, Security, and Retention

Confidential Information and/or State Data and Records of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Contract or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all Confidential Information and/or State Data and Records wherever located. Confidential Information and/or State Data and Records shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Contract or approved in writing by the State. All Confidential Information and/or State Data and Records of any kind shall be stored, processed, or transferred only in or to facilities located within the United States. Notwithstanding the foregoing, ACT may use PII to perform the services set forth in the Contract and may use data that is de-identified or aggregated at the state level to conduct research and analysis consistent with ACT's mission, provided that all PII is removed and a reasonable determination is made that a student's identity is not personally identifiable. See 34 C.F.R. Section 99.31.

The State shall permit ACT to disclose PII only under the following circumstances:

- 1) To Subcontractors for the purposes of fulfilling this contract;
- 2) As required by law, for subpoena or other legal processes;
- 3) As necessary to investigate, take action on, or prevent suspected or actual illegal activities, fraud, or potential threats to safety or personal physical safety; and
- 4) To schools, schools districts, state entities with authority over the student(s), as authorized by state or federal law;
- 5) If the student is under 18 years of age, to the student's parent or legal guardian. If the individual is 18 years of age or older, to the individual;
- 6) Certain state and federal scholarship programs and agencies as authorized by governing law;

- 7) The Contractor agrees to notify the State within 10 business days in the event of any request by a third party to conduct research on data specific to the State of Colorado. Further, the Contractor agrees not to release Colorado-specific data to any third party without the prior written consent of the State. In the event the Contractor releases Colorado specific data without the State of Colorado's written consent, the Contractor shall be subject to and liable for legal and financial action in accordance with the General Provisions and Exhibit A.
- 8) Upon the consent of the student or the student's parent or legal guardian, to colleges and universities, and educational or financial aid programs participating in the ACT Education Opportunity Service (EOS).

The Contractor shall provide a complete set of its data policies and procedures to the State on an annual basis and shall provide to the State any publications and/or amendments in a timely manner.

d. Protection

If Contractor provides physical or logical storage, processing or transmission of Confidential Information and/or State Data and Records, Contractor shall provide, and shall cause its Subcontractors to provide, physical and logical protection for State hardware, software, applications and data that meet or exceed industry standards and requirements as set forth by the Colorado Cyber Security Program. Contractor shall provide the State with system access, subject to Contractor's reasonable access security requirements during Contractor's business hours for the purpose of inspecting and monitoring access and use of Confidential Information, State Data and Records, maintaining State systems, and evaluating physical and logical security control effectiveness. Contractor, if it retains, stores, or is given Confidential Information and/or State Data and Records, at all times shall maintain, and shall cause its Subcontractor's to maintain, network, system, and application security, which includes network firewalls, intrusion detection, and annual security testing. Contractor, if it retains, stores, or is given Confidential Information and/or State Data and Records, shall comply and shall cause its Subcontractors to comply, with State and federal regulations and guidelines related to security, confidentiality and auditing. Contractor, if it retains, stores, or is given Confidential Information and/or State Data and Records shall ensure, and shall cause its Subcontractors to ensure, that security is not compromised by unauthorized access to computers, program, software, databases, or other electronic environments and shall promptly report all breaches or attempted breaches to a representative of the Office of

Information Security (“OIS”). Neither Contractor nor its Subcontractors shall have any rights to use or access any Governor’s Office of Information Technology (“OIT”) or other State agency data or information, except with the prior approval of OIT or the State. Contractor shall review, on a semi-annual basis, the Colorado Cyber Security Program (CCSP), posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>, and its related documents, including its policies and procedures to ensure compliance with the standards and guidelines published therein. In the event that a substantial change to the CCSP results in a change to Contractor’s costs of providing the required level of security, the State and Contractor shall discuss the additional cost and effort required to comply with such change, how to address such change, and how to allocate the costs of such change. Contractor shall bill any agreed-upon additional costs to the State, and State will pay such invoice as set forth in the Contract. In the event that the State and Contractor are unable to agree upon how to address any change or how to allocate the costs of any change, either Contractor or the State may terminate the Contract with 30 days’ notice without cause and without payment of any damages relating to the termination by either party.

- e. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit pertaining to Contractor’s security and usage of PII. Upon ten (10) days written notice, Contractor shall provide the State with access to its records and other materials pertaining to this Contract that are necessary for the State to carry out such a security audit. State shall have access to such records and materials on Contractor’s working days during working hours. State shall have no right to access, audit or examine any materials that constitute or reveal trade secrets or proprietary information of Contractor. State may conduct security audits up to two times per calendar year, unless otherwise agreed to by the parties. In lieu of penetration tests by OIS or its delegate, State agrees to accept a summary report of penetration tests conducted by ACT’s independent contractor. Contractor shall follow, and shall cause its Subcontractors to follow, the State’s Media Protection policy, which can be found at www.colorado.gov/oit/security_policies. Contractor shall perform, and shall cause its Subcontractors to perform, in a form reasonably acceptable to the State, background checks on all of its respective employees and agents performing services or having access to Confidential Information and/or State Data and Records provided under this Contract. A background check must have been performed during the pre-employment process or within thirty (30) days prior to the date such employee or agent begins performance or obtains access.
- f. Security Breach Remediation

If Contractor becomes aware of a data security breach involving any Confidential Information and/or State Data and Records that Contractor has received from the State (“Security Breach”), it shall notify the State promptly and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the Security Breach, Contractor shall be responsible for the cost of notifying each Colorado resident and residents of other states whose personal information may have been compromised by the Security Breach. Notice shall be made by ACT as soon as possible within the legitimate needs of law enforcement and according to the requirements of the State. The State and ACT shall collaborate in drafting the content of the Notice, and the method of delivery shall be consistent with CRS Section 6-1-716. Contractor shall be responsible for performing an analysis to determine the cause of the Security Breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present such analysis and remediation plan to the State within ten (10) days of notifying the State of the Security Breach. The State reserves the right to adjust this plan.

g. Disclosure-Liability

Disclosure of Confidential Information and/or State Data and Records by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Section. Notwithstanding any other provision of this Contract, Contractor shall be liable to the State for all consequential and incidental damages arising from a verified Security Breach. The Work under this Contract may require the State to supply data to the Contractor that contains PII. The State, in its sole discretion may securely deliver data that contains PII, Confidential Information and/or State Data and Records directly to the facility where such data is used to perform the Work. PII, Confidential Information and/or State Data and Records can be maintained or forwarded to or from other Subcontractor facilities or locations for the authorized and approved purposes of reporting, scoring, storing, backup and disaster recovery purposes. If transmission is electronic, data must be encrypted and transmitted in accordance with the State’s Media Protection policy, which can be found at www.colorado.gov/oit/security_policies. Such Subcontractor facilities or locations must provide physical and logical protection for Confidential Information and/or State Data and Records that meet or exceed industry standards and requirements as set

forth by the Colorado Cyber Security Program. The Contractor shall ensure that PII, Confidential Information and/or State Data and Records is not retained beyond timeframes established by the State except as otherwise provided by this Contract.

h. End of Contract Data Handling

Upon request by the State made before or within sixty (60) days after the effective date of termination of the Contract, Contractor will make available to the State a complete and secure (i.e. encrypted and appropriately authenticated) download file of all Confidential Information and State Data and Records provided to the Contractor by the State. The Parties agree that on the termination of the provision of data processing services, the Contractor shall, at the choice of the State, return all records, PII, Confidential Information and/or State Data and Records transferred, and the copies thereof to the State, or shall destroy all records, PII, Confidential Information and/or State Data and Records and certify to the State that it has done so, except (1) if legislation imposed upon the Contractor prevents it from returning or destroying all or part of the data, records, PII, Confidential Information and/or State Data and Records transferred; (2) where retention of Confidential Information and/or State Data and Records is necessary to meet Contractor's ongoing obligation to provide score reports to students (and to whom they direct) upon request; (3) where the data being retained is aggregated and de-identified at the state level without any PII, Confidential Information and/or State Data and records.

The Contractor warrants that it will guarantee the confidentiality of PII, Confidential Information and/or State Data and Records transferred and will only use and disclose the data as authorized by the student or the student's authorized representative.

i. Disposition of Data

The Contractor warrants that upon request of the State and/or of the supervisory authority, the Contractor will provide State with access to its records and other materials pertaining to this Contract that are necessary for the State to carry out such a security audit of the measures referred to in Section C(2)(d), above. The State reserves all right, title and interest, in and to system data, Confidential Information, and State Data and Records.

j. **Safeguarding Personal Identifiable Information (PII)**

If Contractor or any of its Subcontractors will or may receive PII under the Contract, Contractor shall provide for the security of such PII, in a form acceptable to the State, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits. Contractor shall take full responsibility for the security of all data in its possession or in the possession of its Subcontractors, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure of loss thereof.

VII. START DATE

This Amendment shall take effect on the later of its Effective Date or May 1, 2015.

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.**

ACT, Inc.

By: Jon Whitmore
Name of Authorized Individual

Title: Chief Executive Officer
Official title of Authorized Individual


*Signature

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Colorado Department of Education
Robert Hammond, Commissioner


By: Robert Hammond, Commissioner

Date: 5-1-15

By: Thomas J. Goedken
Name of Authorized Individual

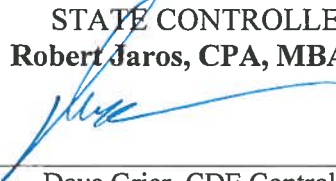
Title: Chief Financial Officer
Official Title of Authorized Individual


*Signature

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: 
Dave Grier, CDE Controller

Date: 5-1-15