

CONTRACT AMENDMENT NO. 2

1. PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the "Contract") is entered into by and between Arisant, LLC, 383 Inverness Parkway, 383 Inverness Parkway, Suite 175, Englewood, CO 80112, (hereinafter called "Contractor"), and the STATE OF COLORADO, acting by and through the Colorado Department of Education, 201 East Colfax, Denver, Colorado 80203 (hereinafter called "Department" or "State.")

2. 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 Department 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.

3. FACTUAL RECITALS

The Parties entered into the Contract to purchase hardware, software and services to replace the current legacy Oracle database server infrastructure with the Oracle Exadata platform. The purpose of this Amendment is to provide funding for Contractor's continued managed services of the Oracle Exadata platform for State Fiscal year 2016-2017 and to add additional privacy and security language.

4. CONSIDERATION

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.

5. 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.

6. MODIFICATIONS

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

- A. Paragraph VII. shall be amended by adding the following:

Managed Services (as defined in Paragraph VI, Statement of Work, Section C. Managed Support Services)

July 1, 2016 to June 30, 2017: \$10,000 a month x 12 months = \$120,000.00.

Paragraph VII.A. shall be amended by increasing the maximum amount payable under the Contract by \$120,000.00 from \$1,014,450.89 to \$1,134,450.89.

- B. Section X, Confidential Information – State Records, Paragraph D. Protection, is hereby deleted in its entirety and replaced with the following:

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 in the Contract. Contractor shall provide the State with access, subject to Contractor's reasonable access security requirements, seven (7) days a week, twenty-four (24) hours a day, 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, accesses, 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, accesses, 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") and to CDE. 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. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its delegate. Contractor shall follow, and shall cause its Subcontractors to follow, the State's Data Handling and Disposal policy, which can be found at www.colorado.gov/oit/security_policies. Contractor shall perform, and shall cause its Subcontractor's to perform, in a form reasonably acceptable to the State, current background checks on all of its respective employees and agents performing services or having access to State Confidential Information and/or State Data and Records provided under this Contract. A background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access shall be deemed to be current.

- C. Section X, Confidential Information – State Records, Paragraph K. Non-Disclosure, is hereby added as follows:

K. Non-Disclosure

In consideration of CDE disclosing either directly or indirectly to Contractor certain Confidential Information, Contractor agrees as follows:

1. Contractor shall institute special precautions to protect CDE's Confidential Information from misuse, unauthorized intrusion, duplication, transmittal, theft, alteration, modification or deletion. Contractor will not seek to subvert, alter or amend any security or privacy protections put in place by CDE for the protection of Confidential Information.
2. Contractor agrees to promptly report any unauthorized use or disclosure of Confidential Information to CDE via the notification process described in Section X. F.
3. Contractor may have access to or use the Confidential Information only for the purpose of providing the services described in this Contract. Contractor will not, at any time, use or access Confidential Information in any other fashion, form, or manner or for any other purpose.
4. Contractor agrees that any Confidential Information in whatever form is the property of CDE and shall remain so at all times. Contractor may not copy any Confidential Information for any purpose without the express prior written consent of CDE, and if consent is granted, any such copies shall contain such confidential/proprietary rights notices as appear on the original. Any copies of Confidential Information that CDE may have permitted Contractor to make, or other written materials incorporating Confidential Information, shall be the sole property of CDE and must be returned to CDE or destroyed upon the first to occur of (a) completion of Contractor's use of the same for the purpose described above or (b) the request by CDE.
5. Nothing in this Agreement shall prohibit or limit Contractor's use of Confidential Information that Contractor can demonstrate is (i) previously known to Contractor, (ii) independently developed by Contractor, (iii) acquired by Contractor from a third party not under similar nondisclosure obligations to CDE, or (iv) which is or becomes part of the public domain through no breach by Contractor of this Agreement. This will not apply to Personally Identifiable Information which will always remain confidential and protected by this Contract.
6. License to any trade secrets, copyrights, or other rights of CDE is not granted by this Agreement or to any disclosure of Confidential Information hereunder.

D. Section X, Confidential Information – State Records, Paragraph L. Transparency Requirements, is hereby added as follows:

L. Transparency Requirements

1. Contractor shall not use CDE's Confidential Information to engage in targeted advertising of students on Contractor's web site, service or application.
2. Use CDE's Confidential Information, including persistent unique identifiers, to amass a profile about a public school student, except in furtherance of a public school purpose as determined by the State.
3. Sell Confidential Information, including PII to any third party.
4. Disclose Confidential Information to any party unless the disclosure is:

- a. Reasonably necessary in furtherance of a public school purpose and the recipient of the Covered Information contractually agrees to comply with the requirements herein and to not further disclose the Covered Information,
 - b. Required by state or federal law,
 - c. Necessary to respond to or participate in a judicial or administrative proceeding,
 - d. To the extent required by law, to provide Confidential Information to law enforcement agencies or for an investigation of a matter of public safety.
5. Contractor acknowledges that the State will post this Contract to the Department's website.
 6. Report to the Department when an interested party reports an alleged violation of privacy or security laws or the provisions of this Contract.

7. START DATE

This Amendment shall take effect on the later of its Effective Date or July 1, 2016.

8. 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.

9. 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 to the Department by the federal government, state government and/or grantor.

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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
John W. Hickenlooper, GOVERNOR
Colorado Department of Education

By: KATHY ROBB
Arisant, LLC
Name of Authorized Individual

Title: MANAGING PARTNER
Official title of Authorized Individual

*Signature [Handwritten Signature]

~~Rich Crandall, CPA, MBA, SNS,~~
~~Commissioner~~
Katy Antnes, PhD, Interim Commissioner

By: Katy Antnes
Rich Crandall, CPA, MBA, SNS,
Commissioner

Date: 5-26-16
Katy Antnes, PhD, Interim Commissioner

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: [Handwritten Signature]
Dave Grier, CPA, CDE Controller

Date: 5-27-2016