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38789-04

**2ND AMENDMENT TO CONTRACT BETWEEN
NCS PEARSON, INC.**

AND

**NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION
OF CHILDREN AND FAMILY SERVICES**

This is the second amendment ("2nd Amendment") to the contract by and between NCS Pearson, Inc. ("hereinafter "Contractor"), and Nebraska Department of Health and Human Services, a Division of Children and Family Services (hereinafter "DHHS") executed April 9, 2009 and effective April 1, 2009, as amended on January 28, 2010 (collectively, the "Contract"), related to the purchase of on-line Watson-Glaser Critical Thinking Appraisal tests. This 2nd Amendment to the Contract is effective July 1, 2010.

WHEREAS: The Contract will expire on June 30, 2010 and DHHS would like to extend its term;

Now therefore, the parties agree to amend the Contract as follows:

1. The term is hereby extended such that the Contract expires on June 30, 2011.

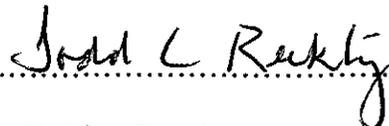
Except as modified herein, all other terms and conditions of the Contract will continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

FOR THE CONTRACTOR:

FOR THE DHHS:

By: 

By: 

Name: Aurelio Prifitera, Ph.D.
Title: Group President and CEO
Clinical Assessment

Name: Todd L. Reckling
Title: Director, Division of Children
and Family Services

Date: 8-2-10

Date: 07/13/2010

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CONTRACT
BETWEEN THE
NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF CHILDREN AND FAMILY SERVICES
AND
NCS PEARSON, INC.

AMENDMENT ONE, DECEMBER 2009

This contract is entered into by and between the Nebraska Department of Health and Human Services, **DIVISION OF CHILDREN AND FAMILY SERVICES** (hereinafter "DHHS"), and **NCS PEARSON, INC.** (hereinafter "Contractor").

The Contract between the parties dated April 9, 2009 is hereby amended as follows:

Article I. A. **TERM AND TERMINATION** is amended to read:

A. Term. This contract is in effect from April 1, 2009 until June 30, 2010.

Article II. A. **CONSIDERATION** is amended to read:

A. The Department agrees to pay the Contractor a maximum amount not to exceed a total expenditure of \$15,300.00 (fifteen thousand three hundred dollars) for the services described herein.

All other terms and conditions remain in full force and effect.

IN WITNESS THEREOF, the parties have duly executed this contract hereto, and each party acknowledges the receipt of a duly executed copy of this contract with original signatures.

FOR THE DHHS:

FOR THE CONTRACTOR:


Signature


Signature

Name Todd L. Reckling
Title Director
Department of Health and Human Services
Division of Children and Family Services

Name Aurelio Prifitera, Ph.D.
Title Group President and CEO
Contractor name Clinical Assessment
NCS Pearson, Inc.

DATE: 01/13/2010

DATE: 1/28/10

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CONTRACT
BETWEEN THE
NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF CHILDREN AND FAMILY SERVICES
AND
NCS PEARSON, INC.

This contract is entered into by and between the Nebraska Department of Health and Human Services, **Division of Children and Family Services** (hereinafter the "Department"), and **NCS Pearson, Inc.** (hereinafter the "Contractor").

PURPOSE. The purpose of this contract is: For Department to purchase the on-line Watson-Glaser Critical Thinking Appraisal test from Contractor, to be used in the employment selection process for Child and Family Services Specialists.

I. TERM AND TERMINATION

- A. TERM. This contract is in effect from April 1, 2009 until December 31, 2009.
- B. TERMINATION. This contract may be terminated at any time upon mutual written consent or by either party for any reason upon submission of written notice to the other party at least 30 (Thirty) days prior to the effective date of termination. The Department may also terminate this contract in accord with the provisions designated "AVAILABILITY OF FUNDING" and "BREACH OF CONTRACT."

II. CONSIDERATION

- A. The Department agrees to pay the Contractor a maximum amount not to exceed a total expenditure of \$7,650 for the services described herein.
- B. The Department agrees to pay the Contractor **\$17.00** per test ordered.
- C. All costs are included in the established rate. No additional costs will be billed to the Department.
- D. The Contractor understands and agrees that this Contract does not guarantee that the Department shall request such services. Furthermore, the Contractor understands and agrees that no minimum number of requests for tests from the Department shall be expected.

- E. The Contractor is expected to issue an invoice, at the time of purchase by the Department, that includes the number of tests ordered statewide. The invoice shall be submitted to Central Office, Division of Children and Family Services, Attn: Rachel West, PO Box 95026, Lincoln, NE 68509. The Contractor understands and agrees that any bills submitted for payment that are over one year from the date of service will not be paid.

III. SCOPE OF SERVICES

The Contractor agrees to sell the Watson-Glaser Critical Thinking Appraisal on-line test to the Department.

IV. DEPARTMENT RESPONSIBILITIES

1. The Department is responsible for ensuring that tests are requested for appropriate individuals.

V. GENERAL PROVISIONS

A. ACCESS TO RECORDS.

All Contractor books, records, and documents regardless of physical form, and including data maintained in computer files or on magnetic, optical or other media, relating to work performed or monies received under this contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by the Department. These records shall be maintained as follows: all records shall be maintained for five (5) years from the date of final payment and records that fall under the provisions of HIPAA shall be maintained for six (6) full years from the date of final payment. In addition to the foregoing retention periods, all records shall be maintained until all issues related to an audit, litigation or other action are resolved to the satisfaction of the Department. All records shall be maintained in accordance with generally accepted accounting principles.

- B. AMENDMENT. This contract may be modified only by written amendment, duly executed by both parties. No alteration or variation of the terms and conditions of this contract shall be valid unless made in writing and signed by the parties hereto. Every amendment shall specify the date on which its provisions shall be effective.

- C. ASSIGNMENT. The Contractor agrees not to assign or transfer any interest, rights, or duties under this contract to any person, firm, or corporation without prior written consent of the Department. In the absence of such written consent, any assignment or attempt to assign shall constitute a breach of this contract.

- D. AVAILABILITY OF FUNDING. Due to possible future reductions in appropriations, the Department cannot guarantee the continued availability of funding for this

contract notwithstanding the consideration stated above. In the event funds to finance this contract become unavailable either in full or in part due to such reductions in appropriations, the Department may terminate this contract or reduce the consideration upon notice in writing to the Contractor. The Department shall be the final authority as to the availability of funds. The effective date of such contract termination or reduction in consideration shall be specified in the notice as the date of service of said notice or the actual effective date of the funding reduction, whichever is later. Provided, that reductions shall not apply to payments made for services satisfactorily completed prior to said effective date. In the event of a reduction in consideration, the Contractor may terminate this contract as of the effective date of the reduction upon the provision of advance written notice to the Department.

E. BREACH OF CONTRACT.

1. Should the Contractor breach this contract, the Department may, at its discretion, terminate this contract immediately upon written notice to the Contractor. The Department shall pay the Contractor only for such performance as has been properly completed and is of use to the Department. The Department may, at its discretion, contract for provision of the services required to complete this contract and hold the Contractor liable for all expenses incurred in such additional contract over and above the total cost of performance set forth herein. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.
2. The waiver by the Department of a breach of any provision of this contract by Contractor shall not operate or be construed as a waiver of any subsequent breach by Contractor. No waiver shall be valid unless in writing and signed by the party.

F. CONFIDENTIALITY. The Contractor agrees that any and all information gathered in the performance of this contract, either independently or through the Department, shall be held in the strictest confidence and shall be released to no one other than the Department without the prior written authorization of the Department, provided, that contrary contract provisions set forth herein shall be deemed to be authorized exceptions to this general confidentiality provision. This provision shall survive termination of this contract.

G. CONFLICTS OF INTEREST. In the performance of this contract, the Contractor agrees to avoid all conflicts of interest and all appearances of conflicts of interest; the Contractor will notify the Department of any such instances encountered in the course of his/her work so that other arrangements can be made to complete the work.

H. DATA OWNERSHIP. All data collected as a result of this project shall be the property of the Department. This provision shall survive termination of this contract.

I. DEBARMENT, SUSPENSION OR DECLARED INELIGIBLE. The Contractor

certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

- J. DOCUMENTS INCORPORATED BY REFERENCE. All references in this contract to laws, rules, regulations, guidelines, directives, and attachments which set forth standards and procedures to be followed by the Contractor in discharging its obligations under this contract shall be deemed incorporated by reference and made a part of this contract with the same force and effect as if set forth in full text, herein.
- K. DRUG-FREE WORKPLACE. The Contractor hereby assures the Department that it will operate a drug-free workplace in accordance with State guidelines and has implemented a drug-free workplace policy, which is available to the Department on request.
- L. FORCE MAJEURE. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of this contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under this contract which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume performance as soon as possible. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under this contract.
- M. GOVERNING LAW. This contract shall be subject to, governed by, and construed according to the laws of the State of Nebraska, without regard to principles of conflict of laws.
- N. HOLD HARMLESS.
1. The Contractor agrees to assume all risk of loss and hold the Department, its employees, agents, assignees, and legal representatives harmless from all liabilities, demands, claims, suits, losses, damages, causes of action, fines, or judgments and expenses incident thereto, for injuries to persons and for loss of, damages to, or destruction of property proximately caused by the negligent or intentional acts or omission of the Contractor, its officers, employees, assignees, or agents.
 2. The Department's liability is limited to the extent provided by the Nebraska Tort Claims Act, the Nebraska Contract Claims Act, and the Nebraska Miscellaneous Claims Act; and any other applicable provisions of law. The Department does not assume liability for the action of its Contractors.
- O. INDEPENDENT CONTRACTOR. The Contractor is an Independent Contractor and neither it nor any of its employees shall for any purpose be deemed employees of

the Department. The Contractor shall employ and direct such personnel as it requires to perform its obligations under this contract, exercise full authority over its personnel, and comply with all workers' compensation, employer's liability and other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer providing services as contemplated by this contract.

- P. **INTEGRATION.** This written contract represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this contract.
- Q. **NEBRASKA TECHNOLOGY ACCESS STANDARDS.** The Contractor shall review the Nebraska Access Technology Standards, found at <http://www.nitc.state.ne.us/standards/accessibility/tacfinal.html> and ensure that products and/or services provided under the Contract comply with the applicable standards or alternatively, the Department is able to modify or replace the information technology product with one that will accommodate the needs of individuals with disabilities. In the event such standards change during the Contractor's performance, the State may create an amendment to the Contract to request that Contract comply with the changed standard at a cost mutually acceptable to the parties.
- R. **NON-DISCRIMINATION.** The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; the Americans With Disabilities Act of 1990, Public Law 101-336; and the Nebraska Fair Employment Practice Act, as amended, in that there shall be no discrimination against any employee who is employed in the performance of this contract, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex or marital status. This provision shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor further agrees to insert similar provisions in all sub-contracts for services allowed under this contract under any program or activity.
- S. **PROMPT PAYMENT.** Payment will be made in conjunction with the State of Nebraska Prompt Payment Act. The Department may request that payment be made electronically instead of by State warrant.
- T. **SEVERABILITY.** If any term or condition of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this contract did not contain the particular provision held to be invalid.

NOTICES. Notices shall be in writing and shall be effective upon receipt. Written notices, including all reports and other written communications required by this contract shall be sent to the following addresses:

FOR THE DEPARTMENT:

Mark Mitchell
Division of Children & Family Services
PO Box 95026
Lincoln, NE 68509
402-471-3121

FOR THE CONTRACTOR:

Name: Karen Chiang
Organization: Pearson
Address: 19500 Bulverde Road
City, State, Zip: San Antonio, TX 78259
Phone: 210-339-5079

IN WITNESS THEREOF, the parties have duly executed this contract hereto, and each party acknowledges the receipt of a duly executed copy of this contract with original signatures.

FOR THE DEPARTMENT:

Todd L. Reckling
Signature

Todd L. Reckling
CFS Policy Section Administrator
Department of Health and Human Services
Division of Children & Family Services

DATE: 03/31/2009

FOR THE CONTRACTOR:

Karen Chiang
Signature

KAREN CHIANG
Print Name
GENERAL MANAGER
Title

DATE: 4/9/09