

STATE OF COLORADO
Colorado Department of Education
Contract with
Colyar Consulting Group, Inc.

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I. PARTIES

This Contract, is entered into by and between the State of Colorado, for the use and benefit of the Colorado Department of Education, 201 East Colfax, Denver, Colorado 80203, hereinafter referred to as CDE or State, and Colyar Consulting Group, Inc., 22420 N. 18th Drive, Phoenix, Arizona, 85027 hereinafter referred to as the Contractor; together the Parties.

II. EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

This Contract shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or its designee (hereinafter called the Effective Date). The State shall not be liable to pay or reimburse the 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. RECITALS

A. Authority, Appropriation, and Approval

Funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. 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 Contract.

C. Purpose

The purpose of this Contract is to provide a claims system for local education agencies to process reimbursement claims under the Child Nutrition Programs (CNP).

D. References

All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

IV. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

“Afterschool Care Snack Program” (ACSP) means the National School Lunch Program (NSLP) which offers cash reimbursement to help schools serve snacks to children in afterschool activities.

“Budget” means the budget for the Work as set forth in Exhibit A.

“Computer program” means a series of instructions for operation of a computer or manipulation of data stored in electronic form. A computer program may be written or stored in human or machine readable form, in any format, form or medium, and may be expressed in binary or any higher level language, including but not limited to flow charts showing the desired order and logical relation of operations.

“Contract” means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

“Contract Funds” means funds available for payment by the State to the Contractor pursuant to this Contract.

“Coordinated Review Effort” (CRE) means the initial comprehensive on-site evaluation by CDE of a school food authority (SFA) participating in the NSLP, and includes both critical and general areas of review.

“Data” means any information that is either input to a computer program or output from a computer program.

“Direct Certification” means the process under which SFAs certify children who are members of households receiving assistance under the Supplemental Nutrition Assistance Program (SNAP) as eligible for free school meals, without further application, based on information provided by the state/local agency administering those programs.

“Documentation” means any information about a computer program, including but not limited to manuals, notes, operating instructions, or help notes, in any format, form or medium. A computer program and any documentation relating to that computer program together constitute “Software.”

“Evaluation” means the process of examining the Contractor’s Work and rating it based on criteria established in Section VI below.

“Food and Nutrition Service” (FNS) program means the Department of Agriculture’s program that administers, among other programs, the Fresh Fruit and Vegetable Program (FFVP) at the national level.

“Goods” means tangible material acquired, produced, or delivered by the Contractor either separately, or in conjunction with, the Services the Contractor renders hereunder.

“National School Lunch Program” (NSLP) means the federally assisted meal program operating in public and nonprofit private schools and residential child care institutions to provide nutritionally balanced low-cost or free lunches to children each school day.

“Party” means the State, CDE or the Contractor and “Parties” means the State, CDE and the Contractor.

“Review” means examining the Contractor’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in Section VI below.

“School Breakfast Program” (SBP) means the program that provides cash assistance to states to operate nonprofit breakfast programs in schools and residential childcare institutions.

“Services” means the required Services to be performed by the Contractor pursuant to this Contract.

“Special Milk Program” (SMP) means a program that provides milk to children in schools and childcare institutions who do not participate in other federal meal service programs. The program reimburses schools for the milk they serve. Schools in the National School Lunch or School Breakfast Programs may also participate in the Special Milk Program to provide milk to children

in half-day pre-kindergarten and kindergarten programs where children do not have access to the school meal programs.

“Sponsor” or “School Food Authority” (SFA) means a school district or the state charter school institute, or a district charter school or an institute charter school.

“Subcontractor” means third-parties, if any, engaged by the Contractor to aid in performance of its obligations.

“Summer Food Service Program” (SFSP) means the program that serves meals to ensure children in low-income areas continue to receive nutritious meals during long school vacations, when they do not have access to school lunch or breakfast.

“Users” means all CDE and Sponsor personnel designated to enter, analyze or report on data in the system.

“Verification” means the process under which SFAs confirm eligibility for free and reduced meal benefits and report the results to the state agency.

“Work” means the tasks and activities the Contractor is required to perform to fulfill its obligations under this Contract, including the performance of the Services and delivery of the Goods.

“Work Product” means the tangible or intangible results of the Contractor’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

V. TERM

A. Initial Term-Work Commencement

The Parties’ respective performances under this Contract shall commence on the later of either the Effective Date or May 18, 2012. This Contract shall terminate on September 30, 2013, unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to the Contractor, may unilaterally extend the term of this Contract for a period not to exceed two months if the Parties are negotiating a replacement Contract (and not merely seeking a term extension) at or near the end of any initial term or renewal term. The provisions of this Contract in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two-month extension. The two-month extension shall immediately terminate when and if a replacement Contract is approved and signed by the Colorado State Controller.

C. State's Option to Extend

The State may require continued performance for a period of three years at the same rates and same terms specified in the Contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed five years.

VI. STATEMENT OF WORK

A. The Contractor shall provide a Contractor hosted custom off-the-shelf (COTS) child nutrition claims system using web-based technology to provide an automated, integrated food and child nutrition program claims management system.

B. The Contractor must function as the single point of contact for CDE, regardless of any subcontract arrangements for all products and services. This shall include assuming responsibility and liabilities for all problems relating to all hardware, software, and services provided under the contract.

C. Contractor shall provide a system that allows:

1. Sponsors to file claims and provide (input) other information regarding school nutrition programs.
2. Edit checks to prevent the submission of invalid data, and any invalid data will be able to be revised by all Users.
3. Interfaces with the Colorado Financial Records System (COFRS) concerning payments to Sponsors.
4. An accurate and easily retrievable audit trail to be accessed by CDE Users. Comprehensive claim summary information that displays specific detail for each claim shall be available, including the number of meals claimed by category, the rate used, the total reimbursement amount by meal type, subtotals and totals.
5. A verification report process compatible with the United States Department of Agriculture (USDA) forms and allows CDE to view and extrapolate data to upload to the USDA's reporting tools.
6. Forms required by CDE to be uploaded to, or completed/submitted on, the system by Sponsors. This function will allow for tracking and appropriate notification of Sponsors and will allow CDE to stop payment on claims until required forms are accurately submitted.
7. At least five years of archived child nutrition information to be converted and accessible by both CDE and Sponsors.
8. The submission and tracking of Food Safety Inspection reports per USDA guidance.

9. Simplicity for Users with low-level software and internet skills.
10. CDE to manage User identification and Sponsor maintenance.
11. Password security that conforms to State of Colorado security protocols as follows:
 - a. Multi-level security control including the database, network, and application levels.
 - b. The use of privileges shall include the granularity sufficient to define whether a specific field is accessible, read-only, etc.
 - c. Security sub-system shall control the access of each system component for Users authorized to access that component.
 - d. User security shall be contained within the application.
 - e. User IDs, groups, and rights shall be defined within database tables.
 - f. CDE shall have the ability to define the set of rights contained within each group.
 - g. The following security areas shall be definable from within the system as follows:
 - 1) Days before new password expires
 - 2) Days before password warning appears
 - 3) Days before password can be re-used
 - 4) Number of invalid login attempts before User is suspended
 - 5) Lock-out time interval (minutes) that the User is locked-out.
 - 6) Password encryption type
 - 7) Password minimum length
 - 8) Password must contain at least 1 numeric character
 - 9) Password must contain at least 1 special character
 - 10) Password must be different than User Name
12. Storage of online agreements between SFAs and CDE and renewal applications by SFAs. The system must allow these permanent agreements to be updated at any time and allow for review and approval at any time during the year, including

the tracking of SFAs distribution, counting and claiming, and Sponsors free / reduced pricing policy.

13. Processing claims.

- a. Sponsors shall be able to enter data on a school level, have the ability to view the data on a district level and then release/approve the claim for payment by CDE.
- b. Sponsors shall be able to upload claims for reimbursement from their district counting system.
- c. The system must ensure that claims cannot be “released” for payment until complete. “Complete” means that all NSLP, SBP, ACSP, Start Smart, PK-2, and SMP claims have been entered for all approved sites for the month. For FFVP, “Complete” means all claims have been entered for all Sponsor sites for the month and CDE has reviewed/approved those claims. This requires an additional approval step in the system.
- d. Claims payments for all programs.
 - 1) At any time, CDE must be able to upload to COFRS any claims currently in “approved” status in the system.
 - 2) Claims must be separated out/listed in groups for payment.
 - a) NSLP/SBP/ACSP/Start Smart/PK-2/SMP must be grouped together.
 - b) FFVP and grants must be listed separately.
 - 3) The system must allow CDE to view a report of pending claims, prior to uploading for payment. This report must display payment by Sponsor, program, and month. Totals for each program, federal fiscal year, and source of payment (federal and state) must be included.
 - 4) The system must include a “stop payment” feature at the CDE level.
 - 5) The system must allow for uploaded claim data from each batch to be exportable in a Microsoft Office compatible format. An upload process for site-level claim reporting is included in the core software.
 - 6) The system must notify Sponsors, by program, (via e-mail) that claims have been uploaded for payment. For specific, pre-defined system events, an automatic email shall be sent by the system.

- 7) The system must allow for an electronic funds transfer, as applicable, by CDE Accounting and the State Controller's Office.
 - 8) The system must include a feature disallowing the submission of claims outside of the approved timeframe.
 - 9) The system shall allow for one-time late claim exception processing by CDE and the administration and tracking of such exceptions.
 - 10) The system must allow for the submission and tracking of revised claims / adjustments, within an allowable timeframe.
 - 11) The system must ensure that claims cannot be entered by a Sponsor for a given program until the Sponsor has been given approval for that program by the CDE.
- e. NSLP/SBP/ACSP/Start Smart/pre-kindergarten to grade 2 (PK-2) claims programs must include the following:
- 1) Ability by Sponsors to enter fields including: number of days served, free meals served, reduced meals served, paid meals served, total meals served, participants approved for free meals, participants approved for reduced meals, and participants approved for paid meals.
 - 2) An edit check function for ensuring that the number of meals served for each category (free, reduced, paid) does not exceed the students approved for each category times the number of days served times an attendance factor. Warnings will appear for Sponsors, prompting the correction of any errors before completing the claim.
 - 3) Ability for the system to capture the number of reduced breakfast meals served and allow for payment of an additional \$0.30 (in state funds) for each Start Smart meal.
 - 4) Ability for the system to allow for the entry of a subset of data along with the lunch data. For example, the number of reduced lunches served to children in grades PK-2. The system will allow for payment of an additional \$0.40 (in state funds) for these meals.
 - 5) Ability for the system to perform a calculation to arrive at the correct reimbursement, multiplying the number of meals for each category (free, reduced, and paid) by the appropriate rate for each category and adding the amount for each program (NSLP, SBP, ACSP, Start Smart, PK-2, and SMP) together for the site. Total reimbursement for the month for the Sponsor will reflect all sites'

total reimbursement. Sponsors and the CDE will be able to view amounts claimed by month, category, program, site, and Sponsor.

f. SMP claims program must include the following:

- 1) Fields including days served, highest daily enrollment, paid milk (participants approved for paid milk and total ½ pints served), free milk (participants approved for free milk, total ½ pints served), and average cost per ½ pint of milk.
- 2) Ability for the system to perform a calculation, multiplying the average cost per ½ pint of milk by the total ½ pints served for free milk, and multiplying the total ½ pints served by the reimbursement rate for paid milk.
- 3) Ability for the system to provide an edit check function for ensuring that the number of ½ pints served does not exceed the days served times the participants enrolled/approved, for both paid and free milk. The system will also ensure that the number approved for free and paid does not exceed the highest daily enrollment.

g. FFVP claims program shall allow:

- 1) FFVP recipients to file individual site reimbursement requests online in the following categories: food, operating supplies, administrative costs, and administrative supplies.
- 2) CDE to enter by site the total award amount, and the system must compare claims to the awarded amount and stop payment on any claims above the award amount.
- 3) CDE to review, adjust, and release claims for payment.

D. Annual program maintenance (creating/opening process for the new school/fiscal year) must include the following:

1. The capability to update reimbursement rates.
2. The capability to determine on an annual basis which Sponsors/sites are eligible for severe need rates without CDE involvement.
3. A mechanism to allow the Healthy Hunger Free Kids Act additional reimbursement amount to qualifying SFAs, as required pursuant to USDA regulatory changes becoming effective October 1, 2012. The system shall be updated to provide for payment of the additional reimbursement amount.

4. The 60- and 90-day deadlines to be applied to claims as applicable throughout all child nutrition programs, CDE to make exceptions to these deadlines, and mechanisms to account for calendar changes such as leap year.
5. CDE to review and approve sites under Provision Types 1, 2 or 3, and community eligibility (USDA special provisions allowing for claiming based on previous year data).
6. CDE to enter and modify an attendance factor for each site.
7. CDE to add, delete, and realign Sponsors and sites, relating them to Sponsor agreement and site identification numbers. The system must ensure that each site can be claimed under only one Sponsor.

E. Reports

1. Reports – General
 - a. All reports shall have the capability to download data to Microsoft Office products.
 - b. The system shall generate standardized reports for a User-defined time period and allow for customizable reports to be created on an ad-hoc basis. The Contractor shall implement a Data Warehouse to provide CDE the ability to perform ad hoc reporting.
2. The Contractor shall include specifications for any third party reporting software needs, if applicable.
3. Financial Reports to include:

Reimbursement amounts by program, Sponsor, site, meal type, date (specific and range), county, annual, state fiscal year, federal fiscal year, and grant award document/letter of credit (GAD/LOC) reports (to track these amounts against claim payments to compare to USDA/CDE estimates)
4. USDA required reports.
5. State required reports.
 - a. PK-2 (Child Nutrition School Lunch Protection Program).
 - b. Annual State Matching report (SFA meal count data).
 - c. Start Smart Nutrition Program.

F. The system must include the following communication functionality:

1. E-mail communication to all Sponsors for broadcast messages and a mechanism for Sponsors to be able to send e-mail communication to the CDE staff.

2. A mechanism for CDE to easily and quickly e-mail individual Sponsors or groups of Sponsors based on specified criteria.
3. CDE query capability to retrieve selected Sponsors based on specific data criteria. For example, identify and notify via e-mail all Sponsors using NSMP as their menu planning option or all Sponsors that have not submitted a Wellness Policy.
4. CDE maintained multiple contact lists, with demographic information, and meeting certain criteria. Contact lists shall be exportable in Microsoft Office formats and shall be compatible with creating mail merges and labels. The system must also include pre-defined mechanisms for communicating to the Sponsors, such as bulletin boards, automated emails, targeted notifications, and mailing lists.

G. System Training

1. The Contractor shall provide training to CDE in Denver. The training must be of a level sufficient to enable CDE to use and manage the system, including the ability to develop and run ad-hoc reports.
2. The Contractor shall provide system “train the trainer” training for approximately ten (10) CDE staff in Denver.

H. User Guides (Federal Fiscal Year 12)

1. The Contractor shall provide a complete User guide for the system, detailed enough to enable CDE and Sponsors to operate the system and the child nutrition programs, electronically or in hard copy.
2. Updated manuals/User guides or pages within those documents will be provided to CDE at no charge within twenty business days of the effective date of the change.

I. The Contractor must respond to all inquiries within 24 hours and to emergency inquiries (those that create system stoppages) within one hour. The Contractor’s support structure can be engaged by either phone call or email. Responses are typically acknowledged the same day and emergency inquiries that create system stoppages will be responded to within one hour if not immediately. For emergency situations, the Contractor encourages a phone call to best communicate and engage in a timely manner its support staff.

J. All system enhancements and updates shall be provided to CDE as they become available for the benefit of all CDE Users. Documentation of these items will be provided within twenty business days of the effective date of the enhancement/update. CDE will review and notify the Contractor if there are enhancements CDE would like to have installed. The Contractor will not automatically install updates without prior written approval from CDE.

K. Hosting services shall include the following items:

1. Four CDE server environments allocated as follows:
 - a. Production Web Server
 - b. Production Database Server
 - c. Test Web Server
 - d. Test Database and Data Warehouse Server
2. Access to the application through a T1 bandwidth connection.
3. Firewall data protection.
4. Use of a redundant array of inexpensive disks (RAID) to provide data redundancy.
5. Regular system backup.
6. 24/7 accessibility of database backups.
7. 99% availability service level.
8. Server hardware and software support.

L. Key Personnel

Individual	Role
Jeff Colyar	Develops Data Conversion Plan Project Director Lead Business Analyst
Charlotte Stevenson / Richard Roeckner	CCG Project Manager CCG Test Lead Joint Application Design (JAD) Facilitator Change Management Lead Implementation Lead
Richard Roeckner	Project Oversight Quality Assurance Lead Training Development Lead/Support JAD Facilitator
Robin Kirkpatrick	Business Analyst (Child Nutrition Programs & Compliance Monitoring)
Scott Wynn	Development Team Manager

Individual	Role
Steve Facinelli	Systems Architect Lead Developer
Nate Aughe	Data Conversion Lead Developer
Mike Shipman	Database Administrator (DBA) Developer
Perry Nally	Developer Trainer

1. Personnel Changes

If key personnel must be changed during the duration of this Contract, resumes demonstrating comparable qualifications shall be provided by the Contractor for each person proposed. CDE reserves the right to approve replacement personnel. Such approval shall not be unreasonably withheld.

2. Personnel Replacement

The Contractor shall remove any of its employees, agents, or subcontractors whom CDE has deemed incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or not in CDE's best interest. A replacement will be suggested per Section V.K.I. above.

M. Goods and Services

The Contractor shall procure the Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

N. Employees

All persons employed by the Contractor or its Subcontractors to perform Work under this Contract shall be the Contractor's or the Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Contract.

VII. PAYMENTS TO CONTRACTOR

The State shall, in accordance with the provisions of this section, pay the Contractor in the amounts and using the methods set forth below.

A. Maximum Amount

The maximum amount payable under this Contract to Contractor by the State is \$361,286 in Federal Fiscal Year 2012 for the license and maintenance of the deliverables set forth below, and hosting costs in the amount of \$40,000 (\$4,000 per month for April and May and \$8,000 per month for June through September) for a total maximum amount payable in FFY 2012 of \$401,286, as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract.

Deliverable	Pay point	Estimated Date	Estimated Amount	Pricing	Totals
NSLP/SBP/SMP/ACSP (Federal/State)	Project Plan/Map business process	April 2012	\$120,428		
		June 2012	\$120,429		
	Start of testing	August 2012	\$120,429		
	Production implementation				
<ul style="list-style-type: none"> • Application/Renewal Process and Agreements • Claims and Payments 					
Subtotal NSLP/SBP/SMP/ACSP				\$361,286	
System Training and Documentation			Included		
Total FFY 2012					\$361,286

Hosting costs shall be billed monthly and based on the number and type of servers that utilized.

Quantity	Description	Unit Price	Monthly Total
2	Web Servers (Production & Test Environments)	\$1,800	\$3,600
1	Database Server (Production)	\$2,200	\$2,200
1	Database Server (Data warehouse & Test environments)	\$2,200	\$2,200

B. The Contractor shall submit an invoice and supporting documentation to the CDE Program Manager for payment upon completion of the deliverable tasks outlined above together with monthly invoices for hosting costs. Invoices shall include sufficient breakout as necessary to explain the total cost reimbursement requested.

C. Payment

1. Advance, Interim and Final Payments

Any advance payment allowed under this Contract shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. The Contractor shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

2. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Contractor previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts subject to a good faith dispute. The Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

3. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. As such, the Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in Colorado's Special Provisions. If federal funds are used, in whole or in part, to fund this Contract the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

4. Erroneous Payments

At the State's sole discretion, erroneous payments made to the Contractor for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Contractor, may be recovered from the Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and the Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

VIII. REPORTING – NOTIFICATION

Reports, Evaluations, and Reviews required under this Section shall be in accordance with the

procedures, of and in such form as, prescribed by the State.

A. Performance, Progress, Personnel, and Funds

The Contractor shall submit a report to the State upon expiration or sooner termination of this Contract, containing an Evaluation and Review of the Contractor's performance and the final status of the Contractor's obligations hereunder. In addition, the Contractor shall comply with all reporting requirements, if any, set forth in Sections X and IX.

B. Litigation Reporting

Within ten days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect the Contractor's ability to perform its obligations hereunder, the Contractor shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Deputy Commissioner of CDE.

C. Noncompliance

The Contractor's failure to provide reports and notify the State in a timely manner in accordance with this Section may result in the delay of payment of funds and/or termination as provided under this Contract.

D. Subcontracts

Copies of any and all subcontracts entered into by the Contractor to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by the Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

IX. CONTRACTOR RECORDS

A. Maintenance – Record Retention Period

The Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. The Contractor shall maintain such records until the last to occur of: (i) a period of three years after the date this Contract expires or is sooner terminated, or (ii) final payment is made hereunder, or (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or the Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the Record Retention Period).

B. Inspection

The Contractor shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Contractor's records related to this Contract during the Record Retention Period for a period of three years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the State may require the Contractor to promptly bring the Work into conformity with Contract requirements, at the Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and to exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

C. Monitoring

The Contractor shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by the Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with the Contractor's performance hereunder.

D. Final Audit Report

If an audit is performed on the Contractor's records for any fiscal year covering a portion of the term of this Contract, the Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

X. CONFIDENTIAL INFORMATION-STATE RECORDS

The Contractor shall comply with the provisions of this Section if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any State records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, C.R.S. Section 24-72-101, *et seq.*

A. Confidentiality

The Contractor shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Contractor shall be immediately forwarded to the State's principal representative.

B. Notification

The Contractor shall notify its agent, employees, Subcontractors and assigns who may

come into contact with State records and 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 access to such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by the Contractor or its agents in any way, except as authorized by this Contract or approved in writing by the State. The Contractor shall provide and maintain a secure environment ensuring confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Contractor or its agents, except as permitted in this Contract or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by the Contractor for any reason may be cause for legal action by third parties against the Contractor, the State or their respective agents. The 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 the Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Section.

XI. CONFLICTS OF INTEREST

The Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Contractor's obligations hereunder. The Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, The Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Contractor's obligations to the State hereunder. If a conflict or appearance of a conflict exists, or if the Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, the Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Contract.

XII. REPRESENTATIONS AND WARRANTIES

The Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Contract.

A. Standard and Manner of Performance

The Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the Contractor's industry, trade, or profession and

in the sequence and manner set forth in this Contract.

B. Legal Authority – Contractor Signatory

The Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind the Contractor to its terms. If requested by the State, the Contractor shall provide the State with proof of the Contractor's authority to enter into this Contract within 15 days of receiving such request.

C. Licenses, Permits, Etc.

The Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. The Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of the Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. The Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Contractor to properly perform the terms of this Contract is a material breach by the Contractor and constitutes grounds for termination of this Contract.

XIII. INSURANCE

The Contractor and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Contractor and the State.

A. Contractor

1. Public Entities

If the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, *et seq.*, as amended (the GIA), then the Contractor shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. The Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. The Contractor

shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

2. Non-Public Entities

If the Contractor is not a "public entity" within the meaning of the GIA, the Contractor shall obtain and maintain during the term of this Contract insurance coverage and policies meeting the same requirements set forth in Section XIII.B with respect to subcontractors that are not "public entities."

B. Contractors – Subcontractors

The Contractor shall require each contract with subcontractors other than those that are public entities, providing Goods or Services in connection with this Contract, to include insurance requirements substantially similar to the following:

1. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of the Contractors or Subcontractors employees acting within the course and scope of their employment.

2. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Contractor a certificate or other document satisfactory to the Contractor showing compliance with this provision.

3. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

4. Technology Errors & Omissions

Such insurance shall cover any and all acts, errors, omissions or negligence in the delivery, performance or non-performance of products and/or services under this Contract. Such Technology Errors & Omissions insurance shall include, at a minimum, coverage for claims and losses with respect to network or data risks

and intellectual property infringement, such as copyrights, trademarks, services makes and trade dress. Minimum coverage shall be \$1,000,000.00.

5. Additional Insured

The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of the Contractor and any subcontractors hereunder.

6. Primacy of Coverage

Coverage required of the Contractor and subcontractor shall be primary over any insurance or self-insurance program carried by the Contractor or the State.

7. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to the Contractor and the Contractor shall forward such notice to the State in accordance with Section XVI (Notices and Representatives) within seven days of the Contractor's receipt of such notice.

8. Subrogation Waiver

All insurance policies in any way related to this Contract and secured and maintained by the Contractor or its subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

The Contractor and all its Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Contract. No later than 15 days prior to the expiration date of any such coverage, the Contractor and each of its Subcontractors shall deliver to the State or the Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Contract or any sub-contract, the Contractor and each of its Subcontractors shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this Section.

XIV. BREACH

A. Defined

In addition to any breaches specified in other sections of this Contract, the failure of

either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against the Contractor, or the appointment of a receiver or similar officer for the Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in Section XV. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

XV. REMEDIES

If the Contractor is in breach under any provision of this Contract, the State shall have all of the remedies listed in this Section in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in Section XIV.B. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

The State may terminate this entire Contract or any part of this Contract. Exercise by the State of this right shall not be a breach of its obligations hereunder. The Contractor shall continue performance of this Contract to the extent not terminated, if any.

1. Obligations and Rights

To the extent specified in any termination notice, the Contractor shall not incur further obligations, or render further performance hereunder, past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, the Contractor shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the State, the Contractor shall assign to the State all of the Contractor's rights, titles, and interests under such terminated orders or subcontracts. Upon termination, the Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest. All materials owned by the State in the possession of the Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Contractor to the State and shall become the State's property.

2. Payments

The State shall reimburse the Contractor only for accepted performance up to the date of termination. If, after termination by the State, it is determined that the Contractor was not in breach or that the Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

3. Damages and Withholding

Notwithstanding any other remedial action by the State, the Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Contract by the Contractor and the State may withhold any payment to the Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Contractor is determined. The State may withhold any amount that may be due the Contractor as the State deems necessary to protect the State against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. The Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by Section XIV.A or as otherwise specifically provided for herein.

1. Method and Content

The State shall notify the Contractor of such termination. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

2. Obligations and Rights

Upon receipt of a termination notice, the Contractor shall be subject to and comply with the same obligations and rights set forth in Section XV.A.1.

3. Payments

If this Contract is terminated by the State pursuant to this Section XV.B, the Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as the Contractor's obligations that were

satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, the State may reimburse the Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor which are directly attributable to the uncompleted portion of the Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Contractor hereunder.

C. Remedies Not Involving Termination

The State, its sole discretion, may exercise one or more of the following remedies in addition to its other available remedies:

1. Suspend Performance

Suspend the Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without entitling the Contractor to an adjustment in price/cost or performance schedule. The Contractor shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by the Contractor after the suspension of performance under this provision.

2. Withhold Payment

Withhold payment to the Contractor until corrections in the Contractor's performance are satisfactorily made and completed.

3. Deny Payment

Deny payment for those obligations not performed, that due to the Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

4. Removal

Notwithstanding any other provision herein, the State may demand immediate removal of any of the Contractor's employees, agents, or Subcontractors the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the best interests of the public or the State.

5. Intellectual Property

Should the Contractor infringe on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, the Contractor shall, at the State's option either: (a) obtain for the State or the Contractor the right to use such products and services; or (b) replace any

Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid to the State.

XVI. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required, or sent by certified or registered mail, to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice, substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State:

Lynn Warner
Department of Education
201 East Colfax
Denver, Colorado 80203
Warner_l@cde.state.co.us

Contractor:

Jeff Colyar, President and Chief
Executive Office
Colyar Consulting, Inc.
22420 N. 18th Drive
Phoenix, Arizona, 85027

XVII. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

- A. All Data collected for, or furnished by CDE to the Contractor, in the course of the performance of Work under this Contract shall remain the property of CDE, and the Contractor shall neither have nor acquire any rights or licenses to such data by virtue of this Contract. Only a limited license to use the Data for purposes reasonably required for the performance under the terms of this Contract shall be excepted and will be and subject to confidentiality requirements with respect to the Data.
- B. All Software provided by the Contractor to CDE pursuant to this Contract shall be and remain the property of the Contractor (or the entity from whom the Contractor has a license) and CDE shall neither have nor acquire any rights or licenses to such data by virtue of this Agreement. Only a license specifically granted CDE by the Contractor under Section XVII.C. shall be excepted.
- C. The Contractor hereby grants to CDE a license, in perpetuity, to use, modify, and prepare derivative works from any Software provided by the Contractor to CDE, pursuant to this

Contract. The license granted in this section includes the right to make any copies reasonably necessary for any permitted purpose, but does not include the right to sublicense or distribute the software to other governmental agencies outside the geographic jurisdiction of CDE, or to any private person or entity.

XVIII. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act Section 24-10-101, *et seq.* and the risk management statutes, C.R.S. Section 24-30-1501, *et seq.*, as amended.

XIX. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the Contractor under this Contract is greater than \$100,000, either on the Effective Date or at anytime thereafter, this Section applies.

The Contractor agrees to be governed, and to abide, by the provisions of C.R.S. Section 24-102-205, Section 24-102-206, Section 24-103-601, Section 24-103.5-101 and Section 24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

The Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including C.R.S. Section 24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. The Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDE, and showing of good cause, may debar the Contractor and prohibit the Contractor from bidding on future contracts. The Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (C.R.S. Section 24-105-102(6)), or (b) under C.R.S. Section-105-102(6), exercising the debarment protest and appeal rights provided in C.R.S. Sections 24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Contractor, by the Executive Director, upon showing of good cause.

XX. GENERAL PROVISIONS

A. Assignment and Subcontracts

The Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by the Contractor or the State are subject to all of the provisions of this Contract. The Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in Section XX.A, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Contract are only for convenience of reference. The captions and headings shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Contract may be executed in multiple identical original counterparts, all of which together shall constitute one agreement.

E. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

F. General Indemnification and Intellectual Property Indemnification

1. The 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 the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, as applicable, as now or hereafter amended.
2. The Contractor shall defend, at its sole expense, any claim(s) or suit(s) brought against the State alleging that the use by the State of any product(s), or any part thereof, supplied by the Contractor under this Contract constitutes infringement of any patent, copyright, trademark, or other proprietary rights; provided, that the

State gives the Contractor written notice within twenty days of receipt by the State of claim or suit, provides reasonable assistance and cooperation to the Contractor in connection with such action, and the Contractor has sole authority to defend or settle the claim for money damages only. A proposed settlement requiring the State to act or refrain from action shall require the prior written approval of the State. The Contractor shall consult the State regarding such defense and the State may, at its discretion and expense, participate in any defense. Should the State not choose to participate, the Contractor shall keep the State advised of any settlement or defense. In the event the Contractor fails to vigorously pursue the defense and/or settlement of such claim, the State may assume the defense and settlement thereof and the Contractor shall be liable for all costs and expenses incurred by the State in the pursuit thereof.

3. The Contractor shall have liability for all such claims or suits, except as expressly provided herein, and shall indemnify the State for all liability incurred by the State as a result of such infringement. The Contractor shall pay all reasonable out-of-pocket costs and expenses, including attorneys' fees, court costs and other legal expenses, and damages finally awarded by a court of competent jurisdiction or agreed to by the Contractor regarding such claims or suits.
4. If the product(s), or any part thereof, become the subject of any claim, suit or proceeding for infringement of any patent, trademark or copyright, or in the event of any adjudication that the product(s), or any part thereof, infringes any patent, trademark or copyright, or if the sub-license or use of the product(s), or any part thereof, is enjoined, the Contractor, after consultation with the State, shall do one of the following at the Contractor's expense:
 - a. Produce for the State the right under such patent, trademark or copyright to use or sub-license, as appropriate, the product or such part thereof or
 - b. Replace the product(s), or part thereof, with other suitable products or parts conforming to the original license and specifications or
 - c. Suitably modify the products, or any part thereof.
 - d. Except, as otherwise expressly provided herein, the Contractor shall not be liable for any costs or expenses incurred without its prior written authorization.
5. The Contractor shall have no obligation to defend against or to pay any costs, damages or attorney's fees with respect to any claim based upon:
 - a. The use of an altered release if the Contractor had not consented to the alteration, or
 - b. The combination, operation or use of the product(s) with programs or data which were not furnished by the Contractor, if such infringement would have been avoided if the programs or data furnished by persons or entities other than the Contractor had not been combined, operated or used with

the product(s), or

- c. The use of product(s) on or in connection with equipment or software not permitted under this Contract, if such infringement would have been avoided by not using the product(s) on or in connection with such other equipment or software.
6. If the Contractor provides physical or logical storage, processing or transmission of confidential or sensitive data of the State or any of its State Agencies or political subdivisions as set forth under this Contract, the Contractor shall provide physical and logical protection for the CDE's hardware, software, applications and data that meet or exceed industry standards and requirements as set forth in this Contract. The Contractor shall provide CDE with access, subject to the Contractor's reasonable access security requirements, seven days a week, 24 hours a day, for the purpose of inspecting and monitoring access and use of such data, maintaining CDE systems, and evaluating physical and logical security control effectiveness.
 7. The Contractor shall be responsible for the security of all information provided to it by CDE. For the purposes of this Contract, a "Breach of Data Security" means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of information used or maintained by the Contractor in conjunction with this Contract. If the Contractor becomes aware of a Breach of Data Security, it shall notify CDE immediately and cooperate with CDE regarding recovery, remediation, and the necessity to involve law enforcement, if any. The Contractor shall be responsible for the cost of notifying each Colorado resident whose personal information may have been compromised. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of CDE. The Contractor shall be responsible for performing an analysis to determine the cause of the breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. The Contractor shall present such analysis and remediation plan to CDE within 10 days of notifying CDE of the Breach of Data Security. CDE reserves the right to adjust this plan, in its sole discretion. In the event that the Contractor cannot produce the required analysis and plan within the allotted time, CDE, in its sole discretion, may perform such analysis and produce a remediation plan, at the Contractor's cost.
 8. Notwithstanding any other provision of this Contract, the Contractor shall be liable to CDE for all consequential and incidental damages arising from a Breach of Data Security.

G. Jurisdiction and Venue

All suits or actions related to this Contract shall be filed, and proceedings held, in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

1. By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by both Parties in a properly executed and approved amendment to this Contract, in accordance with applicable Colorado State law, State Fiscal Rules.

2. By Operation of Law

This Contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change.

I. Order of Precedence

The provisions of this Contract shall govern the relationship of the State and the Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including, but not limited to, those provided by the Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions.
2. The provisions of the main body of this Contract.

J. Severability

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Contract in accordance with its intent.

K. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Contractor fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under C.R.S. Sections 39-26-101 and 201 *et seq.* Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even

though the product or service is provided to the State. The Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing the Contractor for such taxes.

M. Third Party Beneficiaries

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any third parties rights.

N. Waiver

Waiver of any breach under a term, provision, or requirement of this Contract, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, *et seq.*

P. Federal Audit Provisions

Office of Management and Budget (OMB) Circular No. A-133 Audits of States, Local Governments, and Non-Profit Organizations defines audit requirements under the Single Audit Act of 1996 (Public Law 104-156). All state and local governments and non-profit organizations expending \$500,000 or more from all sources (direct or from pass-through entities) are required to comply with the provisions of Circular No. A-133. The Circular also requires pass-through entities to monitor the activities of subrecipients and ensure that subrecipients meet the audit requirements. To identify its pass-through responsibilities, the State of Colorado requires all subrecipients to notify the State when expected or actual expenditures of federal assistance from all sources equal or exceed \$500,000.

Q. Debarment and Suspension

1. The Contractor shall not enter into any contract or subcontract in connection with this Contract with a party that has been debarred or suspended from contracting with the Federal Government or the State of Colorado. See Excluded Parties List System at <https://www.epls.gov>
2. If this is a covered transaction, or the Contract amount exceeds \$100,000, the Contractor certifies to the best of its knowledge and belief that it and its Principals and Subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency.

3. The certification described in Section XX.Q.2. is a material representation of fact upon which reliance was placed when the State determined to enter into this contractual transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, then in addition to other remedies available at law or by contract, the State may terminate this Contract for default.
4. The Contractor shall provide immediate written notice to the State if it has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency.
5. The terms “covered transaction,” “debarment,” “suspension,” “ineligible,” “lower tier covered transaction,” “principal,” and “voluntarily excluded,” as used in Section XX.Q., have the meanings set out in 2 CFR Parts 180 and 376.
6. The Contractor agrees that it will include this certification in all lower tier covered transactions and subcontracts exceeding \$100,000.

R. Lobbying

The Contractor certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Contracts except where noted in italics.

A. CONTROLLER'S APPROVAL. C.R.S. Section 24-30-202 (1).

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. C.R.S. Section 24-30-202(5.5).

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

C. GOVERNMENTAL IMMUNITY.

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. Section Section 1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any contract, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST. C.R.S. Sections 24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET. C.R.S. Sections 24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements] Subject to C.R.S. Section 24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in C.R.S. Section 39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC CONTRACTS FOR SERVICES. C.R.S. Section 8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, Sponsored projects, intergovernmental Agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Contract and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State program established pursuant to C.R.S. Section 8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. Section 8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or C.R.S. Section 8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. Section 24-76.5-101.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of C.R.S. Section 24-76.5-101 et seq., and (c) has produced one form of identification required by C.R.S. Section 24-76.5-103 prior to the effective date of this Contract.

SPs Effective 1/1/09

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** 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:

Colyar Consulting Group, Inc.

By: Jeffrey A Colyar

Title: President

*Signature: 

Date: 5-9-2012

STATE OF COLORADO

John W. Hickenlooper, GOVERNOR

Department of Education
Robert Hammond, Commissioner


Robert Hammond, Commissioner

Date: 5-10-12

OFFICE OF INFORMATION TECHNOLOGY

Kristin Russell, CIO

By: 

Signature - Authorized OIT Representative

Date: 5-15-12

LEGAL REVIEW

John W. Suthers, Attorney General

By: _____
Signature - Assistant Attorney General

Date: _____

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

David J. McDermott, CPA

By: 

Date: 5-17-2012