

CONTRACT AMENDMENT NUMBER 3

VI. PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between ThomasKelly Software Associates, LP, 1 Sugar Creek Center Boulevard, Suite 410, Sugar Land, Texas 77478 (hereinafter called Contractor), and the State of Colorado (hereinafter called the State) acting by and through the Colorado Department of Education (hereinafter called CDE), 201 East Colfax, Denver, Colorado 80203.

VII. EFFECTIVE DATE AND ENFORCEABILITY

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

VIII. FACTUAL RECITALS

The Parties entered into the Contract to implement a state-wide data collection and management system in a web-enabled format for the 21st Century Community Learning Centers (21st CCLC) grant program and automate the annual reporting process to the United States Department of Education (USDOE).

IX. CONSIDERATION-COLORADO SPECIAL PROVISIONS

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

X. LIMITS OF EFFECT

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

XI. MODIFICATIONS

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

A. Paragraph IV. shall be amended by adding the following definitions:

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

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

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

B. Paragraph V.A. shall be amended to extend the performance period through December 31, 2015.

C. Paragraph VI.F.1 shall be deleted and replaced with the following:

1. Contractor shall make the system for the 2014-2015 school year available to all Users continuously through December 31, 2015 without any breaks in service.

D. Paragraph VI.L.10. shall be deleted and replaced with the following:

Contractor shall assist CDE with annually uploading all Colorado data into the federal reporting system, no later than the last day of October after the annual reporting period has ended, or on a mutually agreed upon alternate date.

E. Paragraph VI.M.5. shall be deleted and replaced with the following:

Contractor shall host the 2014-2015 system through December 31, 2015. For 2015-2016, the system will be set up prior to summer 2015 based on a date to be specified by CDE. CDE Users and Subgrantees will have read only access to data and the ability to save or print reports for the 2014-2015 system.

F. Paragraph VI.P.I. shall be deleted and replaced with the following:

Contractor shall maintain the data collected under this Contract for the duration of the Contract. CDE Users will have read only access to the 2014-2015 system through December 31, 2015, with the ability to save or print reports.

G. Paragraph VII.C. shall be amended by adding the following new paragraph:

11. Payment in the amount of \$2,966 to cover the cost of the privacy insurance required under paragraph XIII.B.8. for calendar year 2015.

H. Paragraph VII.D. shall be amended to increase the maximum amount payable by \$10,980 for future customization.

I. Paragraph VII.D. shall be amended by adding a new paragraph VII.D.2. as follows:

Contractor shall directly invoice 21st CCLC Subgrantees and Subgrantees shall pay for the license fee in the amount of \$750.00 per site for the period beginning January 1, 2015 and ending December 31, 2015, up to a maximum of \$87,750 for 117 sites.

J. Paragraph X. shall be deleted and replaced with the following new Paragraph X.:

X. CONFIDENTIAL INFORMATION-STATE RECORDS

Contractor shall comply with and shall cause each of its Subcontractors and any other party performing Work under this Contract to comply with the provisions of this Section

if it becomes privy to Confidential Information and/or State Data and Records in connection with its performance hereunder.

A. Confidentiality

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

B. Notification

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

C. Use, Security, and Retention

Confidential Information and/or State Data and Records of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Contract or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all Confidential Information and/or State Data and Records wherever located. Confidential Information and/or State Data and Records shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Contract or approved in writing by the State. All Confidential Information and/or State Data and Records of any kind shall be stored, processed, or transferred only in or to facilities located within the United States.

D. Protection

If Contractor provides physical or logical storage, processing or transmission of Confidential Information and/or State Data and Records, Contractor shall provide, and shall cause its Subcontractors to provide, physical and logical protection for State hardware, software, applications and data that meet or exceed industry standards and requirements as set forth in the Contract. Contractor shall provide the State with access, subject to Contractor's reasonable access security requirements, seven (7) days a week, twenty-four (24) hours a day, for the purpose of inspecting and monitoring access and use of Confidential Information, State Data and Records, maintaining State systems, and evaluating physical and logical security control effectiveness. Contractor, if it retains, stores, or is given Confidential Information and/or State Data and Records, at all times shall maintain, and shall cause its Subcontractor's to maintain, network, system, and application security, which includes network firewalls, intrusion detection, and annual security testing. Contractor, if it retains, stores, or is given Confidential

Information and/or State Data and Records, shall comply and shall cause its Subcontractors to comply, with State and federal regulations and guidelines related to security, confidentiality and auditing. Contractor, if it retains, stores, or is given Confidential Information and/or State Data and Records shall ensure, and shall cause its Subcontractors to ensure, that security is not compromised by unauthorized access to computers, program, software, databases, or other electronic environments and shall promptly report all breaches or attempted breaches to a representative of the Office of Information Security (“OIS”). Neither Contractor nor its Subcontractors shall have any rights to use or access any Governor’s Office of Information Technology (“OIT”) or other State agency data or information, except with the prior approval of OIT or the State. Contractor shall review, on a semi-annual basis, the Colorado Cyber Security Program (CCSP), posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>, and its related documents, including its policies and procedures to ensure compliance with the standards and guidelines published therein. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its delegate. Contractor shall follow, and shall cause its Subcontractors to follow, the State’s Data Handling and Disposal policy, which can be found at www.colorado.gov/oit/security_policies. Contractor shall perform, and shall cause its Subcontractor’s to perform, in a form reasonably acceptable to the State, current background checks on all of its respective employees and agents performing services or having access to State Confidential Information and/or State Data and Records provided under this Contract. A background check performed within thirty (30) days prior to the date such employee or agent begins performance or obtains access shall be deemed to be current.

E. Security-Notice

Contractor is responsible for the security of all Confidential Information and/or State Data and Records provided to it by the State. If Confidential Information and/or State Data and Records is provided to Contractor or any Subcontractor by the State, Contractor shall comply with and shall cause its Subcontractors to comply with the State’s Cyber Security Policies, which the OIS has promulgated pursuant to CRS §§24-37.5-401 through 406 and 8 CCR §1501-5. The Policies are posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>.

F. Security Breach Remediation

If Contractor becomes aware of a data security breach involving any Confidential Information and/or State Data and Records that Contractor has received from the State (“Security Breach”), it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the Security Breach, Contractor shall be responsible for the cost of notifying each Colorado resident and residents of

other states whose personal information may have been compromised by the Security Breach. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of the State. Contractor shall be responsible for performing an analysis to determine the cause of the Security Breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. Contractor shall present such analysis and remediation plan to the State within ten (10) days of notifying the State of the Security Breach. The State reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce the required analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis, produce a remediation plan, and Contractor shall reimburse the State for the reasonable costs thereof.

G. Disclosure-Liability

Disclosure of Confidential Information and/or State Data and Records by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Section. Notwithstanding any other provision of this Contract, Contractor shall be liable to the State for all consequential and incidental damages arising from a Security Breach. The Work under this Contract may require the State to supply data to the Contractor that contains PII. The State, in its sole discretion may securely deliver data that contains PII, Confidential Information and/or State Data and Records directly to the facility where such data is used to perform the Work. PII, Confidential Information and/or State Data and Records is not to be maintained or forwarded to or from any other facility or location except for the authorized and approved purposes of backup and disaster recovery purposes. The Contractor shall ensure that PII, Confidential Information and/or State Data and Records is not retained beyond timeframes established by the State.

H. End of Agreement Data Handling

Upon request by the State made before or within sixty (60) days after the effective date of termination of the Contract, Contractor will make available to the State a complete and secure (i.e. encrypted and appropriately authenticated), download file of all system data in CSV format, or other format as agreed to by the Parties in writing, including all schema and transformation definitions, and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. The Parties agree that on the termination of the provision of data processing services, the Contractor shall, at the choice of the State, return all data, records, PII, Confidential Information and/or State Data and Records transferred, and the copies thereof to the State, or shall destroy all the data,

records, PII, Confidential Information and/or State Data and Records and certify to the State that it has done so, unless legislation imposed upon the Contractor prevents it from returning or destroying all or part of the data, records, PII, Confidential Information and/or State Data and Records transferred. In that case, the Contractor warrants that it will guarantee the confidentiality of PII, Confidential Information and/or State Data and Records transferred and will not actively process the data transferred anymore.

I. Disposition of Data

The State retains the right to use the established operational services to access and retrieve Confidential Information and/or State Data and Records stored on Contractor's infrastructure at its sole discretion. The Contractor and Subcontractor warrant that upon request of the State and/or of the supervisory authority, the Contractor will submit its data processing facilities for an audit of the measures referred to in §IX.D. The State reserves all right, title and interest, including all intellectual property and proprietary rights, in and to system data, Confidential Information, State Data and Records and content.

J. Safeguarding Personal Identifiable Information (PII)

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

K. Exhibit A-2 shall be deleted and replaced with Exhibit A-3, attached hereto and incorporated herein by reference.

XII. START DATE

This Amendment shall take effect on the later of its Effective Date or February 20, 2015.

XIII. ORDER OF PRECEDENCE

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

XIV. AVAILABLE FUNDS

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

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

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

CONTRACTOR

ThomasKelly Software Associates, LP

By: FELIX THOMAS
Name of Authorized Individual

Title: PRESIDENT
Official Title of Authorized Individual

Felix Thomas

*Signature

STATE OF COLORADO

John W. Hickenlooper, GOVERNOR

Colorado Department of Education
Robert Hammond, Commissioner

[Signature]
By: Robert Hammond, Commissioner

Date: 2-20-15

ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER

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

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

By: [Signature]
Dave Grier, CDE Controller

Date: 2-25-2015

EXHIBIT A - 3

EZREPORTS SYSTEM IMPLEMENTATION PLAN

1. Contractor shall create a master roster report showing all students and including each student's daily afterschool class schedule and transportation routing using the attached sample.
2. Contractor shall implement the system for Colorado and make it available to all users within 30 days of the effective date of this contract for the 2014 – 2015 school year.
3. CDE, the State Level User, shall enter all grant directors and set their privileges in EZReports.
4. CDE shall set up the State level Assessments in EZReports.
5. An explanation of TKSA EZReports user levels is included herein as a part of this contract:
6. EZReports is a hierarchical user database system. EZReports has separate interfaces for the following three users:
 - a) **State User** is able to setup and manage all grantees/LEA in the system including defining user privileges for program directors. The state level user is able to setup system wide parameters and can monitor each program or even each site by drilling down to their level. Users at this level have the ability to run system-wide reports and can generate 21st CCLC PPICS (GPR and APR) reports for all 21st CCLC funded programs/sites. The PPICS reports are generated in excel format and can be sent to Learning Points for uploading them in PPICS system without individual program directors having to manually enter all the information.
 - b) **Program Director** can setup and manage all sites including defining the user privileges for the Site Coordinators. The Program Director can monitor the activities and attendance data for all sites. Several Reports can be generated in real time at the Program Director's discretion.
 - c) **Site Coordinators** can setup activities, register students, print completed registration forms, enroll and de-enroll students in activities/sessions, generate weekly rosters, enter attendance and print various reports. They can monitor attendance and performance of each student and submit monthly attendance to the Program Director. EZReports enables Site Coordinators to spend less time administering & reporting data and more time focusing on site activities.

SAMPLE MASTER ROUTER REPORT

| SASID | District ID Number | Last Name | First Name | Grade | Home Room Teacher | Transportation | Monday | Tuesday | Wednesday | Thursday | Friday |
|-------|--------------------|-----------|------------|-------|-------------------|----------------|------------------|---------------|----------------|----------------|----------------|
| | 12345 | Apple | Dan | 4 | Reid, David | PT | Sports Arena | Global Crafts | | Lego Robotics | 4th Grade Help |
| | 98754 | Drum | Eddy | 1 | Home, Amanda | 3 | Magic Tree House | Dreamers | Sports Arena | Krazy Krafters | Sports Arena |
| | 65412 | Frank | Amy | 3 | Jones, Elizabeth | BASE | Project Discover | Dreamers | Knitting | Strategy Games | Poudre Tutors |
| | 98752 | Combs | Kathleen | 5 | Smith, Brenda | Walk | Poudre Tutors | Global Crafts | Strategy Games | Lego Robotics | Sports Arena |