

**STATE OF COLORADO**  
**Colorado Department of Education**  
**Contract with**  
**ThomasKelly Software Associates, LP**

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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 ThomasKelly Software Associates, LP, 1 Sugar Creek Center Boulevard, Suite 410, Sugar Land, Texas 77478 hereinafter referred to as the Contractor together referred to as 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 designee (hereinafter called the Effective Date). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

## **III. 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 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 State Department of Education (USDOE).

### **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:

“21st Century Community Learning Centers program” (21<sup>st</sup> CCLC) means part of the No Child Left Behind (NCLB) Act of 2001 established under Title IV Part B to provide students with out-of-school-time academic enrichment opportunities that are specifically designed to help them achieve local and state achievement goals in primary academic subjects and a broad array of additional activities that, while different from school-day activities, complement and reinforce school-day learning; and to provide adult family members of 21st CCLC students with

opportunities in language-learning, literacy, and related educational activities. The 21st CCLC program is designed to serve students attending high-poverty and low-performing schools.

“Centers” means an administrative entity within a 21<sup>st</sup> CCLC subgrantee award.

“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.

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

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

"Intellectual Property" means any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, test results, knowledge, techniques, discoveries, works of authorship or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the foregoing, whether or not registered as of the Effective Date or at any later date.

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

“Profile and Performance Information Collection System” (PPICS) means a web-based data collection system funded by USDOE designed to collect comprehensive information on program characteristics, services, and performance data across a broad range of outcomes from state-administered 21st CCLC programs.

“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.

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

“Site” means the facility at which 21<sup>st</sup> CCLC services are rendered to students and families of students enrolled in the grant program.

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

“Subgrantee” means an entity that has been awarded a 21<sup>st</sup> CCLC grant by the State of Colorado.

“Users” means all personnel designated to enter, analyze or report on data in the EZReports database system.

“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 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 April 2, 2012. This Contract shall terminate on December 31, 2012, unless sooner terminated or further extended as specified elsewhere herein.

### **B. Two Month Extension**

The State, at its sole discretion upon written notice to 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 four years at the same rates and same terms specified in the Contract.

## **VI. STATEMENT OF WORK**

### **A. Contractors shall use the EZReports off the shelf web-based software for data collection, management and reporting of 21<sup>st</sup> CCLC after school programs in Colorado.**

- B. The off-the-shelf software shall be customized to store student identifying data in an encrypted format.
- C. Software shall be customized to add a master student roster with a column for daily transportation routing for each student.
- D. Contractor shall implement the EZReports data collection system and program management software system to provide:
  - 1. One common and consistent data collection and management system for the 21st CCLC grantees throughout the State.
  - 2. Annual upload into the Profile and Performance Information Collection System (PPICS) following and accepting Learning Point Associates/AIR conditions regarding instructions and requirements related to uploading files to PPICS.
    - a. Grantees are responsible for entering data for students, activities and attendance into EZReports.
    - b. Contractor is not responsible for the completeness or accuracy of data entered by the Grantees.
    - c. CDE will notify Contractor when the data is complete and ready to be uploaded into PPICS.
    - d. Contractor shall upload the data within two weeks of receiving notification from CDE that the data is complete and ready to be uploaded.
  - 3. Implementation of a flexible, sustainable system to accommodate multiple grant cycles.
  - 4. Collection and record keeping for all Annual Performance Report (APR) data required for annual PPICS reporting.
  - 5. A system for managing a 21st CCLC grant program, including staff, centers, feeder schools, transportation, activities, sessions, individual student and family data.
  - 6. A reporting system that will allow:
    - a. CDE to view and run reports on available data throughout the year using canned reports and report wizard.
    - b. Users to run canned reports and / or to use reports wizard,
- E. Contractor shall not add, delete or alter any subgrantee data records.

- F. Contractor shall implement the system and make it available to all users within 30 days of the effective date of this contract for the 2012 – 2013 school year. See Exhibit A, Project Implementation Plan.
- G. Data shall be entered and managed by users at the grantee and site levels.
- H. At the end of each PPICS reporting year, relevant grantee, grant, site staff and student data shall be carried over to the system for the next school year. The only student data that will be carried over is student demographics.
- I. Contractor shall protect student identifying data (State Assigned Student Identification number (SASID), name, date of birth) in accordance with the Family Educational Rights and Privacy Act (FERPA). All student identifying data shall be encrypted when stored in the data system, and when transferring data between systems. Encryption of data will result in slower system performance.
- J. Ownership of the data collected in the data system is vested in CDE and in the individual users for the data entered by their centers.
- K. Contractor must house all Colorado data in the United States of America.
- L. Deliverables. Contractor will be responsible for providing the following deliverables:
  - 1. All necessary licenses to allow the Colorado 21st CCLC state office and subgrantees to use all available functionality of the selected software program.
  - 2. A data storage server or server host.
  - 3. Annual training for State and subgrantee users.
  - 4. Management of the EZReports database.
  - 5. Web-based technical assistance to all users under this Contract..
  - 6. A downloadable User Manual.
  - 7. Any customization of the program requested by CDE and made for one user will be automatically available to all users under the contract at no additional cost.
  - 8. Integrity and protection of user data.
  - 9. State level users will have access to all security levels of the EZReports system for Colorado.
  - 10. Contractor shall annually upload all Colorado data into the federal PPICS reporting system, no later than the last day of October after the annual reporting period has ended.

11. Contractor will provide documented acceptance of their upload files by Learning Point Associates/AIR into the PPICS database.

M. System Details and Requirements

1. EZReports is a complete web-based software, able to run on any computer with an internet connection using internet explorer version 6 and above and Firefox version 3 and above.
2. The EZReports System has been developed using Microsoft Web Technologies. The application software was developed using ASP, HTML, DHTML, and JavaScript on Windows 2005 platform with IIS (6.0) web server.
3. The database used for EZReports is MS SQL Server 2008.
4. EZReports uses Crystal Reports and other reporting tools for generating and displaying all reports online.
5. The system shall provide the capability to collect and store State longitudinal data on individual participants over the entire grant period and any extensions. Data will be stored based on the DOE school year. Grantees and Subgrantees will only have access to data for the current DOE year. Data for previous years will be accessible to only CDE users upon request.

N. Training

1. Contractor shall provide EZReports training to CDE users (State Level Administrator), and Subgrantees (Program Directors and Site Coordinators). EZReports training shall include User Manuals and online training videos.
2. Onsite training will be held at three locations specified by CDE.
3. The onsite training will be completed in accordance with the Training Implementation Plan in Exhibit B.
4. Initial training for all users shall be delivered within 90 days of the effective date of the Contract.

O. Technical Support

1. Contractor shall provide telephone support for two CDE users and web-based support for Grantees and subgrantees.
2. EZReports includes an integrated web-based technical support system to report issues.
3. Support issues will be responded to within 24 hours on business days (school working days).

4. The support system will be updated with the response from the technical support team. Such response can then be viewed by the requesting User.
5. CDE users shall have unlimited telephone support (school working days between 9 am and 5 pm Central Time or 8 am to 4 pm Mountain Time) and unlimited Web based support.
6. Subgrantees shall have unlimited Web based support.
7. Site Coordinators shall have unlimited Web based support for multiple users at each site.

P. Data Retention

1. Contractor shall maintain the data collected under this contract for a period of five years during which time it will be available to CDE Users upon request.

Q. Contractor Personnel

1. All the Contractors' personnel assigned to this project must be available for the duration of this project. If unforeseen circumstances require the replacement of personnel, the State reserves the right to approve any replacement personnel, which approval shall not be unreasonably withheld.
2. The project team assigned to CDE includes:
  - a. Sanjeev Yamdagni - Project Manager and technical support. Responsible for EZReports implementation, customizations and support to CDE for PPICS APR data upload.
  - b. Dhiman Bhattacharya - Database Manager.
  - c. Michigan State University staff – Training
3. Contractor shall provide confirmation of criminal records checks on all employees assigned to this project and assure that no employee has been convicted of any crime against children.
4. All Contractor personnel on this project shall adhere to existing privacy/security standards established by the Family Educational Rights and Privacy Act (FERPA). Contractor and its personnel shall protect the confidentiality of all students and their associated educational records. Except for purposes expressly approved by CDE, no information about or obtained from, any student or teacher shall be disclosed to any party other than CDE, without prior written consent.

R. Scope of Work Modifications



1. CDE reserves the right to make minor changes in scope through a Contract Amendment by mutual agreement with the Contractor.

S. Goods and Services

Contractor shall procure 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.

T. Employees

All persons employed by the Contractor or Subcontractors to perform Work under this Contract shall be Contractor's or 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. All travel expenses for training sessions are included in the cost.
- B. Contractor shall submit an invoice and supporting documentation to the CDE Program Manager for payment. Invoices shall include breakout as necessary to explain the total cost reimbursement requested.
- C. Payment Details
  1. Initial payment of annual subscription fees for CDE, up to 56 Grantees and up to 122 sites is due within 30 days of the effective date of the contract and upon receipt of a valid invoice in the amount of up to \$76,250.00.
  2. Payment for EZReports training at three sites is due upon completion of training according to the training implementation plan in Exhibit B, and upon receipt of a valid invoice in the amount of \$9,000.00.
  3. Contractor will provide EZReports technical support at no additional cost to CDE.
  4. Customization of EZReports software for CDE as specified in the TKSA proposal will be done at no cost.
  5. Future customization will be undertaken at a cost of \$90.00 per hour, not to exceed 122 hours.
- D. Maximum Amount

The maximum amount payable under this Contract to the Contractor by the State is \$96,250.00 as determined by the State from available funds. Payments to Contractor are

limited to the unpaid obligated balance of the Contract.

E. 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. 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 previously accepted and State approved Contractor performance. 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, interest shall not accrue on unpaid amounts that are subject to a good faith dispute. 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. Therefore, the Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. If federal funds are used to fund this Contract, in whole or in part, 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, payments made to the Contractor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by 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**

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 Contractor's obligations hereunder. In addition, Contractor shall comply with all reporting requirements, if any, set forth in Section X.

### **B. Litigation Reporting**

Within 10 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 all 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**

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

### **D. Subcontracts**

Copies of any and all subcontracts entered into by 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 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**

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. 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**

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 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 promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

**C. Monitoring**

Contractor shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, 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 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**

Should the Contractor be privy to confidential information in connection with its performance hereunder, the Contractor shall comply with the provisions of this Section.. 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**

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**

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 them to access 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. Contractor shall provide and maintain a secure environment that ensures 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. 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**

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. 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 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**

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**

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**

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 Contractor to its terms. If requested by the State, the Contractor shall within 15 days of receiving such request, provide the State with proof of Contractor's authority to enter into this Contract

### **C. Licenses, Permits, Etc.**

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. 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. 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**

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 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. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. 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 Contractor is not a "public entity" within the meaning of the GIA, 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

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 Contractor or subcontractor 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. 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.

5. Primacy of Coverage

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

6. Cancellation

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

7. Subrogation Waiver

All insurance policies in any way related to this Contract and secured and maintained by 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 Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Contractor and all 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, Contractor and each 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 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 XVI. 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 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. 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 right, title, and interest 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 Contractor only for accepted performance up to the date of termination. If, after termination by the State, it is determined that 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. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

4. Reimbursement from Contractor

If the State terminates this Contract for cause or breach prior to the end of the licensing period, Contractor shall refund to the State pro-rated licensing fees paid at the beginning of the Contract term.

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 the Contractor, which shall be governed by Section XV.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, 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 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. 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 whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the State's best interest.

5. Intellectual Property

If the Contractor infringes 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 (a) obtain for the State or the Contractor the right to use such products and services; (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 therefore 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 per this Contract 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:

Tom Denning  
Department of Education  
201 East Colfax  
Denver, Colorado 80203

Contractor:

Felix Thomas  
ThomasKelly Software Associates  
1 Sugar Creek Center Boulevard, Suite 410  
Sugar Land, Texas 77478

**XVII. RIGHTS IN DATA AND DOCUMENTS**

A. Any research, reports, studies, data, photographs, negatives or other documents,

drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Contractor upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State.

- B. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Contractor's obligations under the Contract, without the prior written consent of the state. The rights of the state with respect to such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such property.
- C. The State shall be the owner of all licenses to third party proprietary operating and software packages provided by the Contractor.

#### **XVIII. INTELLECTUAL PROPERTY INDEMNIFICATION**

- A. Contractor alone shall own all right, title and interest, including all related Intellectual Property Rights, in and to EZReports. The ThomasKelly Software Associates name, the ThomasKelly Software Associates logo, and the product names associated with the Service are trademarks of ThomasKelly Software Associates or third parties, and no right or license is granted to use them.
- B. 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 (20) 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.
- C. 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.

- D. 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:
1. 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
  2. Replace the product(s), or part thereof, with other suitable products or parts conforming to the original license and specifications or
  3. Suitably modify the products, or part thereof.
  4. Except, as otherwise expressly provided herein, the Contractor shall not be liable for any costs or expenses incurred without its prior written authorization.
- E. 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:
1. The use of an altered release if the Contractor had not consented to the alteration, or
  2. 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
  3. 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.

#### **XIX. BREACH OF SECURITY OF STATE DATA**

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 the 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.

## **XX. 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.

## **XXI. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

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

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.

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 the 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. 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 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 Contractor and prohibit Contractor from bidding on future contracts. 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 Contractor, by the Executive Director, upon showing of good cause.

## **XXII. GENERAL PROVISIONS**

### **A. Assignment and Subcontracts**

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 Contractor or the State are subject to all of the provisions hereof. 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 for convenience of reference only, and 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 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. Indemnification**

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 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.

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 all parties in an amendment to this Contract, properly executed and approved 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, as if fully set forth herein.

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. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing 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 rights for such third parties.

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. 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. This certification is a material representation of fact upon which reliance was placed when the State determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, 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 this paragraph, 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 that exceed \$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 contact 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:**

ThomasKelly Software Associates, LP

By: FELIX THOMAS

Title: PRESIDENT

Felix Thomas

\*Signature

Date: 3.28.2012

**STATE OF COLORADO**

John W. Hickenlooper, GOVERNOR

**Department of Education**  
Robert Hammond, Commissioner

Robert Hammond, Commissioner

Date: 4-4-12

**OFFICE OF INFORMATION TECHNOLOGY**

Kristin Russell, CIO

By: [Signature]  
Signature - Authorized OIT Representative

Date: 4-5-12

**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: [Signature]

Date: 4.9.2012



## EXHIBIT A

### 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 2012 – 2013 school year.
3. CDE, as the designated 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. EZReports is a hierarchical user database system with separate interfaces for each of the following three users:
  - a) **State User:** Able to set up and manage all grantees/Local Education Agencies in the system including defining user privileges for program directors. The State Level User is able to set up system wide parameters and can monitor each program or even each site by drilling down to their access level. Users at this level have the ability to run system-wide reports and can generate 21st Century Community Learning Centers (CCLC) Profile and Performance Information Collection System (PPICS) (Grantee Profile Report (GPR) and Annual Performance Report (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 into the PPICS system without individual program directors having to manually enter the information.
  - b) **Program Director:** Able to set up and manage all sites including defining user privileges for the Site Coordinators. The Program Director User 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:** Able to set up activities, register students, print completed registration forms, enroll and de-enroll students in activities/sessions, generate weekly rosters, enter attendance and print various reports. The Site Coordinator 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.

## **EXHIBIT B**

### **EZREPORTS SYSTEM USER TRAINING IMPLEMENTATION PLAN**

1. Contractor will provide onsite training at three State identified locations in Colorado during the month of May 2012.
2. All identified Users under this Contract will have received CDE assigned log in and user password before the initial Contractor provided training.
3. Training will be presented by two trainers from the University of Michigan, each of whom will spend one day in each of the three (3) identified locations. As described in Sections VII.A and C of this Contract, all expenses for the trainers are included. .
4. The onsite training shall include the following:
  - a. One 2-hour session for CDE Users (in one location only)
  - b. One 2.5-hour session for Program Director Level Users (all locations)
  - c. One 2.5-hour session for Site Level Users (all locations)
5. Arrangements for facilities and training logistics will be handled by CDE in agreement with the Contractor. Contractor will make all travel arrangements for the instructors.