

STATE OF COLORADO
Colorado Department of Education
Contract with
SimplyDigi.com, Inc.

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I. PARTIES

This Contract, is entered into by and between the State of Colorado, for the use and benefit of the Colorado Department of Education, 201 East Colfax, Denver, Colorado 80203, hereinafter referred to as CDE, and SimplyDigi.com, Inc., P.O. Box 90157, Albuquerque, New Mexico 87199-0157 hereinafter referred to as the Contractor.

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

In December of 2012, Colorado was awarded \$29.9 million in federal funding over the next four years to help accelerate the state's plans to improve school readiness for Colorado's children (Race to the Top Early Learning Challenge Fund Grant). Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Contract.

C. Purpose

The purpose of this Contract is to provide a secure web-based workforce registry and course management system to be utilized by early childhood professionals in Colorado.

D. References

All references in this Contract to sections, 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:

"Administrator" or "Program Administrator" means a person administering programs for the care and education of young children ages birth to 8.

"Competency" means a set of defined behaviors providing structure for appropriate job performance including both theoretical and practical knowledge, commonly defined as what an Early Childhood Professional "knows and can do" in order to function in their position appropriately.

"Competency level" means the ability to perform in one's role based on specific types of knowledge and skills.

“Confidential Information” means any software provided by Contractor under this Contract, the SimplyDigi Materials (defined below), the logon identifiers and/or passwords provided to each authorized User, User data, CDE content and any other materials marked confidential or proprietary by Parties.

“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 Contractor pursuant to this Contract.

“Early Childhood Professionals” means persons working directly with or in support of young children from birth to age eight.

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

“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.

“Professional Development Information System (PDIS)” means an online system supporting professional development of Colorado’s early learning workforce.

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

“Sharable Content Object Reference Model (SCORM)” means a collection of standards and specifications for web-based e-learning which defines communications between client side content and a host system, which is commonly supported by a learning management system.

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

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

“Training” means both credit and non-credit coursework. The term is used throughout this Contract to indicate formalized education as well as training hours specific to Early Childhood Professionals.

“User” means an individual using the Professional Development Information System (PDIS) classified by one of several work-related roles. Each role includes attributes identifying the User’s access within the PDIS.

“Work” means the tasks and activities 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 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. The Simplydigi Materials are specifically excluded as Work Product.

V. TERM AND EARLY TERMINATION

A. Initial Term-Work Commencement

The Parties’ respective performances under this Contract shall commence on the later of either the Effective Date or January 20, 2014. This Contract shall terminate on December 31, 2016 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.

VI. BACKGROUND

CDE is entering into this Contract for the hosting of a workforce registry and learning / course management system and customization of an Early Childhood Professional Development Information System (PDIS). The system will be a secure web-based system to be utilized by Early Childhood Professionals in Colorado to house contact and demographic information, education and training data by competency area, and employment information. Training will be developed, administered, delivered and tracked through the PDIS.

VII. STATEMENT OF WORK

A. Contractor shall:

1. Based on the mutually defined tiered implementation, provide and host a Professional Development Information System (PDIS)) to be used by up to 50,000 early childhood professionals across Colorado.
2. Provide a web-based PDIS, workforce registry and learning management system (LMS) to support professional development services through a Software as a Service (SaaS) cloud based model with unlimited courses, initial and ongoing

hardware, network architecture, bandwidth, technical expertise, backup and disaster recovery. Users will have unlimited access to the site.

3. Provide annual renewable enterprise LMS licenses to CDE to support up to 50,000 PDIS users.
4. Provide security and architecture as follows:
 - a. Software:
 - 1) Platform: Microsoft Windows 2008 Server R2
 - 2) Web Server/Container: Microsoft Internet Information Services (IIS) version 7.5
 - 3) Data Storage: relational database management system (RDBMS); Microsoft structured query language (SQL) Server 2005/2012
 - 4) Programming Languages & Technologies: ASP.Net 4.5, MVC4, C#, VB.Net and Javascript
 - 5) Application Programming Interface (API): Web Services (RESTful, MVC4, SML, and JSON)
 - b. System Authentication and Security Overview: The Learning Management System utilizes Forms-Based Authentication utilizing a SQL Server data source for storage and configuration of User and Permission/Role information. User authentication information is encrypted using an SHA-512 algorithm.
 - c. Data Center Overview: Redundant UPS systems and back-up generators ensure against loss of power. Tier one connectivity from multiple providers provides speed and connectivity.
 - d. Power:
 - 1) N+1 redundant power and power feeds
 - 2) Up to 150 watts/square foot
 - 3) Automatic transfer switches designed for seamless cutovers
 - 4) 3.7 mW of building power capacity over two utility feeds
 - 5) N+1 redundant UPS systems
 - 6) 4.5 mW of generator capacity; 36+ hours of fuel capacity

- 7) Generators housed in dedicated, secure enclosures
- 8) Over 6,000 gallons of onsite available fuel
- 9) Redundant power delivered via patch panels and PDUs

e. Cooling

- 1) N+1 HVAC redundant cooling system
- 2) 20 Liebert System 3 30 ton computer room air conditioners
- 3) Temperature maintained at 70°F (+/- 4°)
- 4) Humidity maintained at 40% (+/- 5%)
- 5) 12-inch raised floor for efficient airflow

f. Bandwidth

- 1) Redundancy and automatic failover to ensure continual connectivity
- 2) Ten gigabyte (GB) redundant capacity delivered from two major POPs
- 3) Eight GB committed transit from four separate providers
- 4) Engineered to greater than 200% peak utilization
- 5) Fully meshed routing and switching architecture
- 6) Connectivity via multiple backbone providers
- 7) Network boasts multi-homed bandwidth
- 8) Two points of entry and two diverse paths

g. Security

- 1) Facility security includes keycard access, biometric hand scanner and on-site operation personnel
- 2) Video surveillance via both interior and exterior cameras
- 3) Video data retained for 60 days

4) Staffed, 24x7x365 NOC and remote hands assistance

5) Security corridor with tailgating prevention features

h. Other

1) Robust backup and disaster recovery infrastructure.

2) Restore testing completed on a regular basis to confirm backup integrity.

3) Backups stored under vaulted conditions.

4) Multiple infrastructure software security measures to prevent system intrusions.

5) Annual 99.9% uptime on servers and access.

6) Application and database passwords encrypted.

B. Contractor shall provide an out-of-the-box system serving as the foundation for the PDIS, creating both basic and global functionality. Using this system, PDIS shall provide:

1. Access and enrollment capabilities for secure collection of demographic, training and education data as well as enrollment in training/coursework and scholarship modules.

a. This access and enrollment shall include:

1) Unlimited number of administrative accounts

2) Permission group management

3) New User self-registration (support for optional registration keys)

4) User imports to support account creation activation, updates, and termination

5) Imports from outside the system (scheduled events, course records, courses marked in progress from other LMS systems, career data sheets, course providers, credit types, occupations, professional licenses; student transcripts; organizational hierarchy)

6) Bidirectional system integration with Colorado data systems

7) Spreadsheet import enrollment

- 8) Single sign on option availability
2. Individual PDIS User navigation capabilities to provide for all aspects of a robust learning management system experience:
- a. Automatic course assignment engine
 - b. Built in instant messenger and email messaging
 - c. Continuing Education (CE) Tracking
 - d. Certificate available upon course completion
 - e. Clear and precise message aids
 - f. Cross browser support, (IE, Firefox, Chrome, Safari, Opera)
 - g. Customizable login credentials
 - h. Discussion board chat rooms and forums
 - i. Easy access with navigation designed for ease and intuitive use
 - j. E-Commerce support for on demand course content
 - k. Frequently Asked Questions
 - l. Live chat help desk
 - m. Multi-platform support (PC, Mac, Android, IOS, smart phones and tablet)
 - n. Minimal to no user training needed
 - o. Multiple levels of email notification support
 - p. Persona based functions delivered on login
 - q. Personal calendar with Outlook sync support
 - r. Professional license tracking
 - s. Reference library
 - t. Ability to set landing page on login
 - u. Student guide (online help manual)
 - v. Task assignment and homework download and upload support

- w. Transcript, course and certificate access on demand
 - x. Unlimited roles and responsibilities
 - y. Video library
3. Ease of access to catalog of training and coursework based on permission level. Functions will be used by those wishing to take coursework, those wanting to schedule coursework as well as those connecting outside coursework to the PDIS system.
- a. Capabilities shall include:
 - 1) A course catalog: standard or unique by organizational hierarchy and attributes which can create unlimited courses and produce categories, and is automatically tied to professional licenses so as to depict CE credits; CSS customizable course/product catalog; course/product catalog E-Commerce, payment processing support for Authoize.Net, Skipjack and PayPal; calendar for scheduled event registration, export Outlook ICS file; tax and shipping option support for physical merchandise and products; automated or self-enrollment for all courses; class and scheduled event reservation system (support for class capacity size, overbooking, waiting list with manual and auto enrollment from waiting list); location management; instructor approval controls for student enrollment; automated course assignment options; automated calendaring updates as registrations are complete, instructor profiles, bios, pictures linked to modules and catalogs; course catalog visibility before or after login options.
4. Options for communication and collaboration between individuals for purposes of coursework, coaching, general interest, system help desk and more. These shall include options for:
- a. Forums and chats available at two levels – general forums area and private course level; forums and chats (private or public, monitored or unmonitored); on screen indicator for new e-mail; forum post rankings; integration with social media options; live chat help desk availability; even based customized e-mail notifications; system notifications for external or internal e-mail.
5. Web conferencing capability to support course delivery, webinars and meetings.
- a. Options include integrated collaboration tool (DigiCast) webinars, embedded DigiCast within courses; support for scheduled or ad-hoc meetings; chat (private or public), white boarding, VOIP audio, webcam support, desktop (full and region sharing), application sharing, e-mail

notification support and invitations; no installation or plug-ins needed (such as Active X) integration support for both Adobe Connect and WebEx.

6. Well categorized resources for Users including a reference library with categorization and search, FAQ section with categorization and search, both search and filtering options as well as category and subcategory options.
7. Unlimited data acquisition and tracking with categories and tracking fields specified by CDE. This includes full reporting at the administrative level. Data can be populated via import.
8. Capability for private video library with unlimited streaming audio and video and the ability to create unlimited categories. Video library is fully permission based with a built in video encoder. System allows for featured videos.
9. Transcript, license and certification tracking for population of the PDIS Individual Professional Development Plan and creation of the professional credential. This will include: license and certification tracking, user identified license and certifications, licenses and certifications identified by discipline, license number, and expiration date; full e-mail notifications and color coding for expiring licenses; personalized transcripts kept for a minimum of 7 years for both inactive and active users with longer periods available on demand; course name, number and version identification; passed and failed events' search and filtering options; on-demand student certificate availability; continuing education, contact and other hour identification (including fractional); event linked to appropriate licenses/certification; ability to review course material (including archived versions); provider identification; time-in-course tracking; course price (if applicable); printable transcripts; and locked transcripts.
10. Training and course functionality for ease of use by both trainer and trainee.
 - a. Multiple options will be available for course delivery and customized support will be provided for the trainee.
 - b. Courses will include: full listing of courses User needs to take to achieve identified goal; easy and quick access for recent course access; population by self-registration or assignment; compliance and mandatory course indicators; due date indicators; color coding for easy indication of course state and viewing; search and sorting mechanism; expanded course overview, objectives and comment support; automated course bookmarking; customizable landing and dashboard pages;
 - c. User personalized calendaring option with sync export; User student guide; User language translation (if available);
 - d. User online help desk options; full worldwide Time Zone sensitive application; course status tracking; color coded identifications for

assignment and mandatory courses.

- e. Course functionality will include: time zone tracking; course overview, objectives, and additional information; course file attachment support for downloads; forums and chats; on-screen message notifications; full blended training options; blended training courses owned and managed by specific instructors; capability for online instruction modules as well as an internal course authoring tool and the option for external design tools producing SCORM, AICC, HTML5 HTML or TinCan files; course modules which can be weighted toward an overall course score; options for classroom instruction (instructor led, classroom, seminars, breakout sessions, webinars); exams/quizzes (with weighting for scores); surveys/evaluations; live training via webinar; confirmation and attestation (digital signature); tasks (homework, essay testing, observations with attachments from instructor and student with full comments, grading options); course programs (succession planning, career paths, competency planning, discounting, bundling); interactive simulations (advanced style of course delivery); automated content bookmarking; ability to require certain amount of time in modules; full grading options; drop course options; unlimited course design options; linked courses can be rolled up for overall course grading; automated presentation of certificate upon completion (if made available by permissioned course designer/instructor); automated transcript update upon completion or failure.
11. Broad administrative management capability at system administrator level. System administrator User will be able to manage individual Users, user groups, teams, permission groups, occupational lists, user attributes, occupational lists, as well as manage data imports.
- a. User management to include: administrative enrollment of Users (add, edit, inactivate), a full search engine, and user management based on demographic and parameter based properties including: login credentials, demographics, optional apply attributes, identify status, optional hire or enrollment date, internal unique user ID, optional set term of inactive date and activate date trigger, set user organizational hierarchy node, optional administrative organizational hierarchy node, set appropriate permission groups, flex fields for self-registration entry, automated dropping of in progress and not viewed courses upon inactivation of user.
 - b. Group management to include: search capability; creating, editing or deleting unlimited number of groups for use throughout the LMS; a filter process to establish which group a user belongs to; status, dates, organizational hierarchy, attributes, licenses and certification; notes for archive purposes; flex fields for self-registration entry; group usage display for where group is utilized. All group management will be tightly coupled with organizational hierarchy.

- c. Team management to include: search capability; creating, editing or deleting teams; notes for archive purposes; team usage display for where group is utilized. All team management will be tightly coupled with organizational hierarchy.
 - d. Permission group management to include: unlimited permission group levels for roles and responsibilities; establishing cascading permission groups; a-la-carte menu to establish which tab and functions within tabs will be displayed; multiple permissions which can be added to individual User. All permission group management will be strongly connected to organizational hierarchy.
 - e. Occupational management to include: search capability and creation of license and certification lists (Early Childhood Professional Credential).
 - f. User attribute management provides capability to add attribute levels for further segmentation as well as add descriptors for each level. User attribute management is coupled with organizational hierarchy and can be used in locations throughout the PDIS system.
 - g. System administrator data import to include importing from: scheduled events, course records, courses marked in progress, career data sheets, course providers, credit types, occupations, professional licenses (continuing education), student transcripts, organizational hierarchy. Maintains a historical log and record of prior imports.
12. Individual Professional Development Plan (IPDP) setup. Basic functionality will be provided for tracking of CDE identified fields and categories. "Canned" reports can be created from the IPDP.
 13. Merge capability for duplicate user records.
 14. Organizational hierarchy nodes and types. System has capability to provide for organization permission spanning for complex organization structures where permissions and accesses may be needed across several organization nodes. Organization features will include: support for several structures; permission spanning for organization; course/product catalog by organization/node; create unique home pages by organization, division or node; unique web addresses by organization, division, node. Other organizational features include: unlimited organizational levels, establishment of a unique logo, home page, color scheme and catalog within a node; option to establish keys for self-registration modules; multi-tier permission levels; drag and drop capabilities; creation of unlimited custom fields for each node (address, phone number, etc.) and a shared hierarchy node (second permission based hierarchy).
 15. Customizable event-driven e-mail function. Specific dynamic variables as well as notification groups determined by CDE.

16. Fully integrated learning management system which allows for content and video management, surveys, exams, gradebook, homework capabilities as well as ability for course creation.
- a. Content management options using WYSIWYG or HTML content management editor; completion certificate creation tools; personalized certificate creation; ability to combine and/or bundle courses; assignment of providership information to content for credentialing purposes; ability to tie provider information to various credit types; custom creation of credit types, descriptions and names; custom home page built in content editor with templates available for use; creation of unlimited web pages, creation of a custom reference library by category; FAQ's by category; ability to upload files for web-page links; upload and encode videos; create course catalog categories; create course page templates for use in course creation.
 - b. Video management options including support for permission groupings and categories (featured videos, video size output, generated or custom video library thumbnail splash screen); support for video formats to include wmv, flv, avi and others; videos available in both coursework and library; permission-based viewing options.
 - c. Survey module options to include customizable header and instructions; unlimited statement pool, both active and inactive; statement options to include images, text, HTML, HTML5, multimedia moves, Flash, links, etc.; statement options to include open ended comment boxes; automatic loading of next module; prerequisite controls and access delay factors.
 - d. Customizable exam modules with options for unlimited question pool; questions including a variety of file types and a variety of formats (multiple choice, true/false – with other alternatives for essays and fill-in-the-blank); options for missed question explanations; active and inactive question pools; support for randomized delivery of questions; set number of exam attempts; set mandatory questions for question pool; timed tests; passing score for test; test weighting factor across course container; number of questions delivered per test; variety of grading options; reporting of exam details and summary.
 - e. Live gradebook for instructor use which details items such as name, number, registration date, status, progress, completion dates and scores. Gradebook is fully searchable and includes a drop course option.
 - f. Homework or task module to include options for format (essay, fill-in-the-blank, gathering information, observations); description/instruction printable by user; unlimited attachment files for download; pre-requisite control; optional access delay controls; ability to attach unlimited files for storage and/or review; approval process available; support for comments;

instructor ability to review, reject, pass, score, and add note or comment.

- g. Full course creation capability including course creation wizards and support for both internal and external (SCORM, AICC, HTML 5, HTML and TinCan formats) course creation. Options to include: authoring tools; ability to search for courses and modules; viewing of course publishing history; multiple listing views for courses; ability to change course ownership; course configuration options; version control; ability to copy courses or modules for inclusion in other courses; ability to arrange course module order; course editing protection and permissions; spell checking; ability to support multiple image types (png, jpg, gif, tiff, bmp); HTML, DHTML, HTML5, multimedia movies, Flash, links interactive simulations all supported; course creation templates and ability to create course template. Ability to download external course if file extension is supported.
 - h. Confirmation/attestation ability for customized acceptance options.
 - i. Ability to support Instructor Led Modules/Scheduled Events with scheduling, class lists, registration options, description and/or overview of event, grading options.
- 17. Course program module to support career tracks and competency models.
 - 18. A variety of options for publishing of credentials and transcripts.
 - 19. Training documentation options for both internal and external training. Documentation will become a part of user's Individual Professional Development Plan/Portfolio and used in credential calculation. Documentation to include details available (name of training, dates and times of start and end, optional certificate creation, overview and objectives, training hours, participant list, minutes in training, automatic updating of course registration). This feature is available for historical input.
 - 20. Event management options for coursework and training. Includes unlimited instructor led classes or events, the ability to schedule events, viewing of both list and calendar view with searchable fields (course name, instructor name, waiting list, location, registration status, class start and end times, prerequisites, multi-day events, competency, format). Syllabus and other information available as provided by instructor. Registration status available along with score (if applicable) and completion status.
 - 21. Options for course assignment rules based on organizational hierarchy.
 - 22. Options for approving and declining completed tasks providing administrator ability to delete courses or groups, approve submitted training applications with capability to communicate decisions to user.

23. Full range of options for reporting on coursework and training; availability of 24 “canned” reporting options and ability to create query reports. All reports are permission sensitive and organizational hierarchy sensitive. Reports delivered by e-mail with extracts available in HTML or CSV with download options available for CSV. Automated date incremental available for scheduled reports with ability to adjust scheduling as needed. Report options may be deleted. All reports have a series of parameters available to focus reports on the specific data desired. Drill down reports available.
 24. Website setup to include customized logo Banner and color schemes. Optional templates available along with a full calendaring color scheme set up. Customizable menu bar icons and functions with navigation permission based and organizational hierarchy sensitive. Custom icons available for association. Menu includes sub level options. Search tool available. Master setup of site includes options for session timeout values, editable registration, flex field, site credentials, meta data setup for search engines, self-enrollment options, visibility settings, language controls, world country settings, customizable announcement banner messages, landing page setup, site name, copyright information, academic timing.
 25. Unlimited scalability with guaranteed 99.9% uptime availability, multiple portals or URL access, SaaS cloud based technologies, multiple levels of redundancy, versioning/site rollback, active directory integration for single sign on, web hosting, section 508 (ADA) compliance, and login SSL encryption.
 26. A variety of options for e-commerce.
 27. Options for multi-lingual support for students.
 28. Conformance compliance with SCORM 1.2; SCORM 2004 v. 1, 2, 3; Tin-can; AICC; HTML; HTML5; all extension types of file formats; multimedia enabled; streaming audio video enabled; compatibility with external systems; examples; custom HRMS/HRIS applications; CRM; employee database; LDAP, ADS/custom directory; skills dictionary.
- C. Contractor shall customize the system and enhance details as mutually agreed upon by Contractor and CDE.
1. Customization and enhancement are necessary to complete the following projects: Early Childhood Professional Development Plan and Portfolio aligning with National Registry Data Standards (workforce registry) and resulting Early Childhood Credential, Data systems integration to include, but not be limited to, TRAILS/CCCLS, Quality Rating Improvement System (QRIS), RISE, CDPHE, Early Intervention Database, Oracle Identity Management System; Early Childhood Professional Development Plan and Portfolio and resulting Early Childhood Credential; trainer approval module; scholarship module; additional customization may be requested and agreed to using a change order process described below.

2. To accomplish the customization and enhancement process, Parties shall:
 - a. Mutually agree upon, and generate a CDE PDIS Requirements Document (CDERD), that clearly states the objective of the PDIS and defines its scope, determines what it should (and should not) focus on, and resolves any constraints identified during said joint Review process. Upon completion, this document will be added to the Contract as an addendum by amendment.
 - b. Mutually agree upon, and generate information to support generation of a CDE PDIS Design Document identifying the customization and enhancement deliverables required to complete project. Using this information, contractor shall generate a CDE PDIS Design Document detailing individual enhancement deliverables along with scheduling and implementation as well as pricing for this Work. At completion, and after approval by both parties, this document shall serve as a change order and be added to the Contract as an addendum by amendment.
- D. Contractor shall provide a Project Management Work Plan to detail tasks and due dates, and to be used as a monitoring tool by CDE.
 1. Parties shall work in collaboration to prepare a detailed Project Management Work Plan using CDE's online project management tool (SmartSheet).
 2. CDE will provide Contractor with necessary access, accounts and training on the SmartSheet project management tool.
 3. The Project Management Work Plan will include outcomes and subtasks for each deliverable to avoid any disruption of Services and provide explicit requirements for deliverables.
 4. The Project Management Work Plan shall outline by task, phases, and due dates, the activities to be performed, describing all activities related to the specifications, development and implementation of each task, including stage of production, providing due dates for each activity, and indicating completion responsibility for the Parties.
 5. The Project Management Work Plan shall serve as a monitoring document to be used by CDE to assure timely completion of tasks as scheduled.
 6. Parties will work to establish the Project Management Work Plan as soon as possible after the execution of the Contract. Subsequently, the Parties will manage discussions, updates, and due dates during regularly established meetings between CDE's Early Childhood Professional development staff and Contractor.
 7. Adjustments and changes to the Project Management Work Plan may result in changes in scope, phases, potential delay in deliverables by Parties, specification changes, cost and time impacts.

E. Security

1. Contractor shall implement technical controls as they apply to the PDIS environment, based on industry best practices in accordance with the State of Colorado Cyber Security Policies. Those policies can be found at <http://www.colorado.gov/cs/Satellite/OIT-Cyber/CBON/1251575408771> and are incorporated herein by this reference.
2. Contractor shall propose detailed, standardized security procedures that CDE shall review and approve. Approved security procedures shall be included in the Annual Work Plan. The security procedures will:
 - a) Include a NIST Special Publication 800-18, or equivalent, compliant system security plan.
 - b) Define a secure architecture that protects processing, storing, and reporting environments from network-based attacks.
 - c) Ensure that electronic files and data are developed, used, and maintained in a secure manner to protect the confidentiality of all personally identifiable information ("PII")
 - d) Utilize encryption to ensure security of all director/supervisor/school information entered through all online programs.
3. PDIS shall be a fully secured with a SSL site which meets governmental and SOC 3 compliance.
4. The PDIS shall operate in a class 7 datacenter, directly connected to the internet, with full environmental protection including at a minimum, triplicate levels of; physical, auxiliary power, full Sonnet Ring network protection, unlimited bandwidth capacity, mirrored and balanced servers, data backup and fire suppression.
5. PDIS data shall be maintained in its own virtual environment to provide a firewall between data sources.
6. Backups shall be maintained at a daily, weekly, monthly and annual level including any nonvolatile backups held off site in vaulted, password protected files and environmentally conditioned storage.

F. Operations Management Activities

1. Project Management and Personnel Qualifications. The Parties shall assign project management "Team Members" as follows:
 - a. The Contractor will be responsible for project management, including Training, workshops, timetables, schedules, invoicing, and communication

and coordination with CDE. The Contractor's Project Manager is Ron Nolan. Mr. Nolan has signature authority. Mr. Nolan's contact information is 505-880-9737.

- b. The Contractor's Account Manager is Bruce Stabile. All Contract addendums and negotiations will be processed through Mr. Stabile. Mr. Stabile's contact information is 505-880-9737. Mr. Stabile shall be available both during and outside of normal business hours to assist with any urgent problems.
- c. With respect to Parties' Team Members identified herein and hereafter:
 - 1) Parties will have the responsibility and authority to assign appropriate personnel to the project as required or needed.
 - 2) Contractor may propose replacements for Team Members that have qualifications which meet or exceed those of the Contractor's employees holding the position previously, who shall be approved by CDE in advance.
 - 3) Contractor shall not remove or reassign Team Members (including: Contractor's Project Manager, Software Project Manager, Lead Software Developer, and other personnel in Lead or Director level positions) without CDE's prior written approval.
 - 4) Contractor shall promptly propose qualified replacements in the event that any of Contractor's Team Members become unavailable to provide Services due to resignation, illness, or other factors outside the Contractor's control.
 - 5) Contractor shall provide written notice immediately upon learning of the need for replacement personnel.
 - 6) Contractor shall provide the resume or curriculum vitae of all personnel proposed as Team Members for review and written approval by CDE.
 - 7) Contractor shall not change Team Members, especially the Project Manager, through the end of the term of the Contract, including before completion and delivery of all Services and Goods.
 - 6) Notwithstanding any other provision herein, CDE may demand immediate removal of any of Contractor's Team Members, employees, agents, or Subcontractors whom CDE deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed contrary to the public interest or the State's best interests.

Following any such removal, Contractor shall propose a replacement as otherwise provided herein. Parties understand that requesting the removal of Team Members may impact deliverable time lines and schedules. In such event, Contractor shall make adjustments accordingly, based on business reasonable timeframes, and such adjustments will not be deemed a breach of this Contract by the Contractor.

2. Management Meetings

a. Contractor shall:

- 1) Participate in weekly meetings with CDE. These meetings will include review of the Project Management Work Plan and provide an opportunity to discuss task implementation and status.
- 2) Produce quarterly progress reports, with progress on relevant tasks and activities from the Project Management Work Plan noted. Progress reports will include a summary of activities completed during the prior quarter.
- 3) Provide a list of significant, operational problems needing corrective action and for each problem shall:
 - a) Identify the problem.
 - b) Assign responsibility for taking corrective action.
 - c) Evaluate the importance of the problem.
 - d) Investigate possible causes of the problem.
 - e) Analyze the problem.
 - f) Recommend actions to prevent recurrence of this or similar problems.
 - g) Implement new process controls as necessary.
 - h) Determine what to do with any failed Work Product.
 - i) Record permanent changes in process documentation.
- 4) Include in each quarterly progress report:
 - a) A section that summarizes questions or complaints from any User.

- b) A section that addresses issues or problems raised by the Parties.
 - c) A section that addresses current status of previously reported problems.
 - d) A section that details the invoices submitted and paid.
 - e) An executive summary that provides an informative and substantive description of the then current major problems and recommendations.
- 5) Report and address issues or problems as they occur. Contractor will submit all progress reports via email in a CDE-approved format and layout in Microsoft Word or Microsoft Excel.

G. Acceptance Criteria

1. Following delivery, CDE will review all deliverables identified in **Section VIII** below. Once CDE is satisfied with each deliverable, CDE will sign a "User Acceptance Form" required for payment on that deliverable.
2. Acceptance protocols will include a review period, not to exceed 22 business days, for CDE acceptance. During the review, CDE will indicate in writing the unsatisfactory deliverables, if any, that CDE will review, based upon specification outlined in the Project Management Work Plan. If CDE fails to provide written concerns associated with a deliverable during its review, such failure will constitute automatic CDE acceptance of the deliverable, which will be logged and subsequently acknowledged by the Parties as accepted. Following delivery of all deliverables under the Contract, the Contractor shall provide CDE a final report on all Work completed during this Contract. The Contractor and CDE shall jointly verify that all required documentation has been completed and submitted to CDE. Thereafter, CDE shall sign off upon final review and acceptance of all the Work.

H. Sign-off Procedures at Completion

1. Contractor shall coordinate with CDE for the sign-off on completion of each deliverable.
2. CDE will review Contractor's final report on all completed deliverables and sign the final User Acceptance Form if all requirements under this Contract have been met. Acceptance of Contractor's final report will constitute CDE's acceptance of the PDIS.
3. Completion acceptance protocols will include a review period, not to exceed 22 business days, for CDE final acceptance. During the review, CDE will indicate in writing any unsatisfactory deliverables based upon specifications outlined in the

Project Management Work Plan. If CDE fails to provide written concerns associated with any deliverables during the review, such failure will constitute automatic CDE acceptance of the deliverables, which will be logged and subsequently acknowledged by the Parties.

I. Employees

All persons employed by 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.

VIII. PAYMENTS TO CONTRACTOR

The State shall, in accordance with the provisions of this **Section VIII**, pay Contractor in the amounts and using the methods set forth below:

System customization and enhancement details will become a part of the mutually agreed upon process between Contractor and CDE. Customization and enhancement are necessary to complete the following projects: Data systems integration to include, but not be limited to, TRAILS/CCCLS, Quality Rating Improvement System (QRIS), RISE, CDPHE, Early Intervention Database, Oracle Identity Management System; Early Childhood Professional Development Plan and Portfolio and resulting Early Childhood Credential; trainer approval module; scholarship module; additional customization requested and agreed to using a change order process.

CONTRACTOR DELIVERABLES	TIMELINE	PAYMENT DETAIL	COST (not to exceed)
1. Project Launch Activities:	February 21, 2014		\$89,217
- Project launch meetings in Denver		\$3,000	
- One time site setup fee		\$2,467	
- SSL Wild Card		\$3,000	
- Project management		\$20,000	
- 5,500 User license level 2 and pilot		\$57,750	
- Admin/course creator support		\$3,000	
2. Professional Development	March 7, 2014	\$15,000	\$15,000

CONTRACTOR DELIVERABLES	TIMELINE	PAYMENT DETAIL	COST (not to exceed)
Information System Design Phase Requirements document and first cycle of the Project Management Work Plan. : On delivery of documentation			
3. Phase 1 Level 2 deployment of courseware activated	February 14, 2014		Milestone
4. Phase II System Customization and Enhancement. Release 1 cycle of development outlined by Project Management Work Plan. Priority Customization includes: Early Childhood Professional Development Plan and portfolio aligning with National Registry Data Standards (workforce registry) and resulting Early Childhood Credential. Cost based on functionality enhancements being provided	April 4, 2014		Deliverables 4 to 9 not to exceed \$106,833 (\$17,805.50 per deliverable)
5. Phase II System Customization and Enhancement Delivery and Acceptance. Release 1 Cycle of Development outlined by Project Management Work Plan. Cost based on functionality enhancements being provided.	May 2, 2014		
6. System Customization and Enhancement. Release 2 Cycle of Development outlined by Project Management Work Plan. Priority Customization includes: trainer approval module. Cost based on Functionality enhancements being provided.	May 9, 2014		

CONTRACTOR DELIVERABLES	TIMELINE	PAYMENT DETAIL	COST (not to exceed)
7. System Customization and Enhancement Delivery and Acceptance. Release 2 Cycle of Development outlined by Project Management Work Plan. Cost based on Functionality enhancements being provided.	June 6, 2014		
8. System Customization and Enhancement. Release X Cycle of Development outlined by Project Management Work Plan. Priority Customization includes: scholarship module. Cost based on Functionality enhancements being provided.	June 6, 2014		
9. System Customization and Enhancement Delivery and Acceptance. Release X Cycle of Development outlined by Project Management Work Plan. Cost based on Functionality enhancements being provided	July 7, 2014		
10. Phase III: Automated interfaces, SSO, Ecommerce Data systems integration to include, but not be limited to, TRAILS/CCCLS, Quality Rating Improvement System (QRIS), RISE, CDPHE, Early Intervention Database, Oracle Identity Management System	July 31, 2014	\$15,750 \$8,000 \$1,100	\$24,850
11. Phase IV: Pilot of PDIS: Develop process for testing and feedback; train professional development staff to manage pilot	July 31, 2014		Milestone
12. Phase V: Full launch and Maintenance:	November 28, 2014	December 2014	

CONTRACTOR DELIVERABLES	TIMELINE	PAYMENT DETAIL	COST (not to exceed)
Annual user fees Enterprise 50,000 users	January 1, 2015 to December 31, 2016	\$125,000	
Admin and CC Tech Support		\$3,000	
Interface, SSO Annual Maintenance.		\$5,000	
		\$133,000 annually for 2015 and 2016 (payable on January 1, 2015 and 2016)	\$266,000
TOTAL			\$501,900

A. Maximum Amount

The maximum amount payable under this Contract to Contractor by the State is \$501,900 as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract.

B. Payment

1. Advance, Interim and Final Payments

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

2. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts 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, 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 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 Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and 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.

5. Use of Funds

Contract Funds shall be used only for eligible costs identified herein.

IX. REPORTING – NOTIFICATION

Reports, Evaluations, and Reviews required under this **Section IX** 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 Contractor's performance and the final status of Contractor's obligations hereunder.

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 Contractor's ability to perform its obligations hereunder, Contractor shall notify the State of such action and

deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Deputy Commissioner of CDE.

C. Noncompliance

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

D. Subcontracts

Copies of any and all subcontracts entered into by 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.

X. 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 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 Contractor to bring the Work into conformity with Contract requirements, and Contractor will use commercially reasonable efforts 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 commercially reasonable 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, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder and shall not interfere with Contractor's ability to conduct business.

D. Final Audit Report

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

XI. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. Confidentiality

1. 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 Contractor shall be immediately forwarded to the State's principal representative.
2. Each Party acknowledges and agrees that: (a) it will use Confidential Information solely in accordance with the provisions of this Contract; and (b) it will not disclose, or permit to be disclosed, to any third party the Confidential Information of the other Party without the other Party's prior written consent.
3. Each party will take commercially reasonable precautions necessary to safeguard the confidentiality of the other Party's Confidential Information including, at a minimum, those precautions taken by such Party to protect its own Confidential Information, which will in no event be less than a reasonable degree of care. Confidential Information will not include information that is: (a) publicly

available or later becomes available other than as a result of a breach of the terms of this Contract; (b) already in the other Party's possession and not subject to a confidentiality obligation; (c) lawfully obtained by the other Party from any source without any obligation of confidentiality; (d) independently developed by a Party without reference to the other Party's Confidential Information; (e) required to be disclosed by order of a court or other governmental entity, provided that reasonable written notice is given to the Party owning such Confidential Information so that such party may seek to obtain a protective order or other equitable relief or (f) subject to the Colorado Open Records Act. .

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 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 Contractor or its agents, except as permitted in this Contract or approved in writing by the State.

D. Disclosure-Liability

1. Disclosure of State records or other Confidential Information by Contractor 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.
2. Notwithstanding any other provision of the Contract, unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the breach, Contractor shall be liable to the State for all consequential and incidental damages arising from a data security breach. The Work under the Contract may require the State to supply data to the Contractor that contains PII. The data is not to be maintained or forwarded to or from any other facility or location except for the authorized and approved purposes of backup disaster, recovery or as specified by the authorized system design. The Contractor shall ensure that the data is not retained beyond timeframes established by the State.

E. Protection

1. If Contractor provides physical or logical storage, processing or transmission of confidential or sensitive State data, Contractor shall provide, and shall cause its Subcontractors to provide physical and logical protection for State applications and data that meet or exceed industry standards and requirements as set forth in the Contract.
2. Contractor shall provide the State, upon request, with access seven days a week, twenty-four hours a day, subject to Contractor's reasonable access security requirements, for the purpose of inspecting and monitoring access and use of State data, maintaining State systems, and evaluating physical and logical security control effectiveness.
3. Contractor, if it retains, stores, or is given protected or confidential information, 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.
4. Contractor, if it retains, stores, or is given protected or confidential information, shall comply and shall cause its Subcontractors to comply, with state and federal regulations and guidelines related to security, confidentiality and auditing, including but not limited to regulations and guidelines issued by the Federal Bureau of Investigation (FBI), the U.S. Department of Homeland Security (DHS), the Governor's Office of Homeland Security (DHS), the Colorado Bureau of Investigation (CBI), the Governor's Office of Information Security (OIS), or related to the Health Insurance Portability and Accountability Act (HIPAA) Guidelines, 45 C.F.R. Parts 160, 162, and 164, the Health Information Technology for Economic and Clinical Health Act (HITECH), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009), codified at 42 U.S.C. Sections 300jj et seq.; Section 17901 et seq., the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and 34 C.F.R. Part 99.
5. Contractor, if it retains, stores, or is given protected or confidential information shall ensure, and shall cause its Subcontractors to take commercially reasonable efforts 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 OIS.
6. Neither Contractor nor its Subcontractors shall have any rights to use or access any OIT or other State agency data or information, except with the prior approval of the State.

7. 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.
8. Contractor shall cooperate, and shall cause its Subcontractors to cooperate with the performance of security audit and penetration tests by OIS.
9. 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.
10. 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 provided under the Contract. A background check performed prior to the date such employee or agent begins performance or obtains access shall be deemed to be current.

F. Security-Notice

Contractor is responsible for the security of all information provided to it by the State. If information 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 C.R.S Sections 24-37.5-401 through 406 and 8 C.C.R. Section 1501-5. The Policies are posted at <http://www.colorado.gov/cs/Satellite/Cyber/CISO/1207820732279>.

G. Security Breach Remediation

1. If Contractor becomes aware of a data 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. State acknowledges authorized access is controlled and managed by the State and is not the responsibility of the Contractor, which the Contractor cannot be held responsible or in breach for inappropriate allocations of State defined authorized access.
2. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the 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. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of the State.
3. 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.

4. Contractor shall present such analysis and remediation plan to the State within ten (10) days of notifying the State of the data security breach. The State reserves the right to commercially reasonably adjust this plan, in its sole discretion.
5. 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 commercially reasonable costs thereof.
6. The State shall stipulate based on the PDIS application and system integration what data fields it considers as PII,
7. A breach of PII shall have occurred when there has been unauthorized acquisition of unencrypted PII data (electronic or otherwise) used in performance of the Contract, or any subcontract from the Contractor's or any Subcontractors possession which compromises security, confidentiality, or integrity of such PII. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the breach, Contractor agrees to be liable for any unauthorized disclosure of PII in its possession or in the possession of its Subcontractors as if Contractor was the owner of the data.
8. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the breach, Contractor acknowledges that any breach of PII is a material breach of the Contract. Contractor shall notify the State immediately of any breach or suspected breach, but in no event later than twenty-four hours after Contractor learns of suspected breach.
9. The State may establish required remediation procedures and Contractor shall comply without limitation as directed by the State. Contractor shall bear commercially reasonable costs of such remediation.

H. End of Agreement Data Handling

1. Upon request by the State made before or within sixty 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 state owned system data in XML format, with the appropriate documented file and field definitions.
2. 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 the personal data transferred, and the copies thereof to the State, or shall destroy all the personal data and certify to the State that it has done so, 65 days after the effective date of the termination of the contract, unless legislation imposed upon the Contractor prevents it from returning or destroying all or part of the data transferred. In that case, the Contractor warrants that it will guarantee the confidentiality of the data 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 State data content stored on Contractor's infrastructure, within 65 days after the effective date of the termination or up to the date of data destruction, whichever occurs sooner, at its sole discretion. The Contractor and Subcontractor warrant that upon request of the State and/or of the supervisory authority, the Contractor will comply with an audit of the measures referred to in Section XI.D. The State reserves all right, title and interest, including all intellectual property and proprietary rights, in and to the States application system data and content.

J. Safeguarding Personal Identifiable Information (PII)

1. If Contractor or any of its Subcontractors will or may receive PII under the Contract, Contractor shall provide commercially reasonable efforts 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.
2. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the breach, 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 as outlined in XVII.A.3.

XII. 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 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, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the State hereunder. If a conflict or appearance thereof exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, 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.

XIII. 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.

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

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 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 Contractor to properly perform the terms of this Contract is a material breach by Contractor and constitutes grounds for termination of this Contract.

XV. 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 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 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 Contractor a certificate or other document satisfactory to 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. Privacy Insurance

Privacy Insurance shall include, at a minimum, coverage for claims and losses with respect to network or data risks (such as data breaches, release of confidential information, unauthorized access/use of information, identity theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) Minimum limit of coverage of \$1,000,000.00 per occurrence and \$2,000,000 aggregate.

5. Technology Errors & Omissions

Technology Errors & Omissions Insurance shall cover any and all acts, errors, omissions or negligence in the delivery, performance or non-performance of Goods and/or Services under this Contract. Such insurance shall include, at a minimum, coverage for claims and losses with respect to network or data risks and intellectual property infringement, such as copyrights, trademarks, services marks and trade dress. Minimum coverage shall be \$1,000,000.00. Additional Insured.

6. Additional Insured

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

7. Primacy of Coverage

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

8. 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 XVIII** (Notices and Representatives) within seven days of Contractor's receipt of such notice.

9. 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.

10. 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 Subcontractor shall deliver to the State or 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, 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.

XVI. BREACH

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 Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution or occurrence thereof, shall also constitute a breach.

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 XVII**. 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.

XVII. 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 XVI**. 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, 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, 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. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by 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 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, Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Contract by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due 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 up to a maximum of Contractor's insurance coverage.

B. Early Termination in the Public Interest

The State is entering into this Contract for the purpose of carrying out the public policy of

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

1. Method and Content

The State shall notify 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 XVII.A.1**.

3. Payments

If this Contract is terminated by the State pursuant to this **Section XVII.B**, Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as 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 Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to 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 remedies available to it:

1. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without entitling 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 Contractor after the suspension of performance under this provision.

2. Withhold Payment

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

3. Deny Payment

Deny payment for those obligations not performed that due to 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, CDE may demand immediate removal of any of Contractor's Team Members, employees, agents, or Subcontractors whom CDE deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed contrary to the public interest or the State's best interests. Following any such removal, Contractor shall propose a replacement as otherwise provided herein. Parties understand that requesting the removal of Team Members may impact deliverable time lines and schedules. In such event, Contractor shall make adjustments accordingly, based on business reasonable timeframes, and such adjustments will not be deemed a breach of this Contract by the Contractor.

5. Intellectual Property

- a. If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the State's option (a) obtain for the State or 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.
- b. If State infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, State shall, at the Contractor's option (a) obtain for the State or 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.

XVIII. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below.

In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State:

Nancy Linville
Department of Education
201 East Colfax
Denver, Colorado 80203
303-866-6239
Linville_n@cde.state.co.us

Contractor:

Bruce A. Stabile
SimplyDigi.com, Inc.
P.O. Box 90157
Albuquerque, New Mexico 87199-0157
505-880-9737
bruce@simplydigi.com

XIX. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

- A. CDE owns all the data, content, and records which shall be hosted by Contractor. Access to data is strictly controlled through multiple levels of security. CDE content shall remain the sole and exclusive property of CDE or CDE's licensors including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights in and to such CDE content and intellectual property.
- B. Except for the CDE content, all materials including, without limitation, any computer software (in object code, source code form), data schema, graphics, data or information developed or provided by Contractor under this Contract, and any know-how, methodologies, equipment or processes used by the Contractor to provide the client pages, the Contractor Network, the unique "look and feel" of the CDE pages and/or the Contractor Network or other deliverables or services to CDE under this Contract including, without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights related to such materials (collectively "*SimplyDigi Materials*") shall remain the sole and exclusive property of the Contractor or its third party licensors.
- C. 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. The Simplydigi Materials are specifically excluded as Work Product.

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 Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of 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 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. Force Majeure

Neither party shall have any liability to the other or to third parties for any failure or delay in performing any obligation under this Contract due to circumstances beyond its reasonable control, including, without limitation, acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances or terrorism or interruptions in power, communications, satellites, the Internet or any other network.

C. Binding Effect

Except as otherwise provided in **Section XXII.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.

D. 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.

E. Counterparts

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

F. 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.

G. Jurisdiction and Venue

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

H. Modification

1. By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by both parties in 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 Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including, but not limited to, those provided by 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 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 C.R.S. Section 24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, C.R.S. Sections 24-72-101, *et seq.*

P. Debarred or Suspended Entities.

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>

Q. Certification Regarding 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.

This certification is a material representation of fact upon which reliance was placed when the transaction was made or entered into. Submission of the certification is a requisite for making or entering into transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

R. Limitation of Liability

1. Notwithstanding anything that may be contained herein to the contrary, neither Party will be liable to the other Party or any third party claiming by or through such party for any indirect, incidental, special, punitive, exemplary or other non-direct damages of any kind arising out of or relating in any way to this Contract, whether alleged as a breach of Contract or tortious conduct, including negligence, even if a party has been advised of the possibility of such damages.
2. The warranties set forth in this Contract are the only warranties of the Parties, and no other representations or warranties, whether express, implied or statutory, will apply. Without limiting the generality of the foregoing, Contractor specifically disclaims the implied warranties of merchantability, fitness for a particular purpose and noninfringement. Contractor does not guarantee that CDE access to the CDE pages, the Contractor network or other services provided under this Contract will be uninterrupted or error free.

COLORADO SPECIAL PROVISIONS

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

1. 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.

2. 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.

3. 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 1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

4. 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.

5. 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.

6. 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.

7. BINDING ARBITRATION PROHIBITED.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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:

SimplyDigi.com, Inc.

By: Bon Nolan

Title: CEO

Bon Nolan
*Signature

Date: 1-14-2014

STATE OF COLORADO

John W. Hickenlooper, GOVERNOR

Department of Education

Robert K. Hammond, Commissioner

Robert K. Hammond
Robert K. Hammond, Commissioner of Education

Date: 1-16-14

OFFICE OF INFORMATION TECHNOLOGY

Kristin Russell, CIO

By: Brenda Berlin
Signature - Authorized OIT Representative

Date: 2/6/14

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

Robert Jaros, CPA, MBA, JD

By: Bonny Danner, Delegate

Date: 2/11/14