

**PERFORMANCE CONTRACT BY AND BETWEEN
THE STATE OF COLORADO DEPARTMENT OF HIGHER EDUCATION
AND COLORADO CHRISTIAN UNIVERSITY**

This Performance Contract, entered into this ___ day of ___ 2009, and effective as of the date of approval by the Colorado Commission on Higher Education (hereinafter referred to as the “Commission”) and the State Controller, is made by and between the State of Colorado, Department of Higher Education (hereinafter referred to as the “Department”) and Colorado Christian University (hereinafter referred to as the “Institution”).

RECITALS

WHEREAS, in enacting the College Opportunity Fund (COF) legislation, the General Assembly determined that it is imperative for more Coloradans to pursue education beyond high school; and

WHEREAS, the General Assembly has determined that a postsecondary education is essential for Coloradans and the State to compete in the global economy and to develop a new generation of leaders and active participants in state and local civic affairs; and

WHEREAS, the General Assembly has determined that it is appropriate to support programs that are designed to encourage participation in postsecondary education; and

WHEREAS, Title 23, Article 18, Section 201, Colorado Revised Statutes, provides that a student enrolled in a nonprofit private institution of higher education may be a beneficiary of the COF and eligible to participate in the COF program only if the institution has agreed to participate in the program by establishing a performance contract with the Department; and

WHEREAS, the Institution desires to enter into a performance contract with the Department in order to allow its students to participate in the COF program; and

WHEREAS, authority exists in the law and funds have been budgeted and are expected to be made available for encumbering and subsequent payment of this contract; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies.

NOW THEREFORE, in consideration of the foregoing and intending to be bound hereby, the Parties agree as follows:

1. Term of Contract. The term of this contract shall begin on May 5, 2009, or the date the State Controller, or designee, executes this contract, whichever is later, and shall expire on June 30, 2014, subject annually to available appropriations and subject to earlier termination as provided for herein and subject to intervening legislative action that may affect the duration of the COF program.

2. Scope of Contract. This contract sets forth the terms under which the Institution shall participate in the COF program.

3. Eligibility to Participate in the College Opportunity Fund Program.

a. Institution. The Department has determined that as of the effective date of this contract, the Institution meets all the currently valid requirements set forth in Title 23, Article 18, Section 102(9), Colorado Revised Statutes, for participation in the College Opportunity Fund program. The Institution agrees that in the event that it no longer satisfies any statutory requirements for participation in the College Opportunity Fund program, the Institution shall immediately notify the Department and the parties shall follow the procedures for termination of the contract set forth in Paragraph 10. The Department agrees to list the Institution as an institution eligible to receive stipends on behalf of Eligible Undergraduate Students (as hereinafter defined) under the Program except in the event of: (i) of a material breach of this contract by the Institution not cured pursuant to Section 10; (ii) of the Institution's failure to meet the stated statutory requirements; (iii) or of the failure of the General Assembly to authorize or appropriate funds for private institutions' participation in the College Opportunity Fund program.

b. Students. The Institution agrees that it shall determine student eligibility based on the requirements set forth in Title 23, Article 18, Section 102(5)(a), Colorado Revised Statutes, and only request and accept stipends from the College Opportunity Fund for students who meet these requirements ("Eligible Undergraduate Student"). Further, the Institution shall maintain appropriate documentation for each student whom it determines is eligible to participate in the COF program and shall make these documents available to the Department or its representative(s) upon request. Such documentation shall include the revised Residency Classification for Tuition/Financial Aid Purposes state form for Colorado residency, high school, GED and home schooling eligibility and the Free Application for Federal Student Aid form (FAFSA) for Pell eligibility. The Institution agrees that it shall not request or accept a stipend from the College Opportunity Fund for more than one hundred forty-five credit hours for each Eligible Undergraduate Student as reported by the Colorado Student Loan Program dba College Assist, except as provided for in Title 23, Article 18, Section 202(5)(c) and (e), Colorado Revised Statutes. The Institution shall comply with the Commission's Policy on credit hours available under the College Opportunity Fund for continuing students. Pursuant to Title 23, Article 18, Section 202(2)(e), Eligible Undergraduate Students attending the Institution may

receive COF stipend assistance in the amount of fifty percent (50%) of the stipend amount set annually by the General Assembly and subject to available funding.

d. Course Location and Modality. The Department agrees that an Eligible Undergraduate Student under this contract includes all students meeting the conditions set forth in Title 23, Article 18, Section 102(5)(a), Colorado Revised Statutes.

e. Courses. The Institution agrees that it shall not request or accept stipends from the College Opportunity Fund for students enrolled in those courses identified in Title 23, Article 18, Section 202(5)(d), Colorado Revised Statutes.

4. Performance Standards. The Institution agrees to provide educational services that are consistent with its mission and with the Commission's mission to provide access to high-quality, affordable education for all Colorado residents. Specifically, the Institution shall achieve the following performance goals during the term of this contract:

a. Access. The Institution agrees to expand and intensify its efforts to attract students who will fall within the definition of Eligible Undergraduate Students. The Institution further agrees to utilize its reasonable good-faith efforts during the period of this contract to increase its enrollment of such Students by not less than three percentage points over its baseline average, which shall be the enrollment number for these students as calculated in the Fall of 2008 as certified by the Institution to the department within thirty days after the term of this Contract begins. Specifically, the Institution shall focus its efforts on increasing enrollment of underserved students, including low-income individuals, males and minorities.

b. Retention. The Institution agrees to expand and intensify its efforts to retain Eligible Undergraduate Students who receive COF stipends. The Institution further agrees to increase its fall-to-fall retention rate for first-time, full-time Eligible Undergraduate Students who receive a COF stipend and are defined as "underserved" pursuant to Title 23, Article 5, Section 129(2)(e), Colorado Revised Statutes, in accordance with the following provisions:

1. Low-Income Students: The Institution agrees that, by June 30, 2014, its retention rate of first-time, full-time Eligible Undergraduate Students who receive a stipend from the College Opportunity Fund will meet or exceed the Institution's overall retention rate for first-time full-time students. In calculating the Institution's overall retention rate for first-time full-time students under this performance standard, Eligible Undergraduate Students who receive a stipend from the College Opportunity Fund will be excluded.

2. Low-Income, Underserved Male Students: The Institution agrees that, by June 30, 2014, its retention rate of first-time, full-time Eligible

Undergraduate Students who receive a stipend from the College Opportunity Fund and who are males will meet or exceed the Institution's overall retention rate for first-time full-time students. In calculating the Institution's overall retention rate for first-time full-time students under this performance standard, Eligible Undergraduate Students who receive a stipend from the College Opportunity Fund will be excluded.

3. Low-Income, Minority Students: The Institution agrees that, by June 30, 2014, its retention rate of first-time, full-time Eligible Undergraduate Students who receive a stipend from the College Opportunity Fund and who are members of a minority group will meet or exceed the Institution's overall retention rate for first-time full-time students. In calculating the Institution's overall retention rate for first-time full-time students under this performance standard, Eligible Undergraduate Students who receive a stipend from the College Opportunity Fund will be excluded.

c. Other State Needs. The Commission has determined that it is a highest State priority to ensure that highly qualified teachers are in every K-12 classroom. In furtherance of this goal, the Institution agrees to transmit to the Department on or before August 15th of each year, the student identification numbers and endorsement areas for all teacher candidates. The Department agrees that the information is provided for statistical purposes only and will not form the basis for a modification of this contract with respect to the content of the Institution's teacher education programs.

5. Disclosure. The Institution agrees that pursuant to Title 23, Article 18, Section 202(5)(b), Colorado Revised Statutes, if it accepts a COF stipend payment on behalf of an Eligible Undergraduate Student, it shall note as a line item on the student's account or bill that the moneys came from the College Opportunity Fund. Further, pursuant to Title 23, Article 18, Section 204, Colorado Revised Statutes, if the Institution advertises, in the form of direct mail, print, radio, television, or via the internet, a student's ability to receive a stipend from the College Opportunity Fund, the Institution shall include in the advertisement the total cost of attending the Institution, including total tuition costs, room and board, books, supplies and fees.

6. Data Reporting Requirements. The Institution shall provide to the Department in accordance with the Student Unit Record Data System (SURDS) record layout methods and data collection calendar, the student unit record data for all currently enrolled students, including undergraduate applicant records, enrollment records, financial aid records and degrees granted records. Further, as required by Title 23, Article 18, Section 201(2), Colorado Revised Statutes, the Institution shall reimburse the Department for any costs related to including the Institution in the SURDS system, which may include computer hardware, software, and staff time and charges. The Department shall notify the Institution of such costs, if any, at the end of each fiscal year. The Institution shall remit payment to the Department within thirty (30) days of receipt of notification thereof. The Department shall handle all data in accordance with Federal and State privacy laws.

7. Data Retention. The parties agree that Colorado Student Loan Program (CSLP) dba College Assist will maintain the central database containing the information required by Title 23, Article 18, Section 203, Colorado Revised Statutes. The Institution agrees that it will cooperate with CSLP and the Department by providing the information, in the form and manner required by CSLP, that reflects the number of credit hours taken at the Institution for which Eligible Undergraduate Students receive stipends from the College Opportunity Fund.

8. Payments.

a. Beginning in the academic year 2009-2010, the Department shall pay the Institution a stipend on behalf of all students determined to be eligible for the College Opportunity Fund as set forth in Paragraph 3, above, in the amount set by the General Assembly during the annual budget process. Stipend payments pursuant to this contract shall be made from such funds as appropriated by the General Assembly. The liability of the Department, at any time, for such payment shall be limited to the unexpended amount remaining of such funds. This contract is subject to and contingent upon the continuing availability of State funds for the purposes hereof. The Department shall notify the Institution of the availability and amount of stipend payments for each subsequent fiscal year

b. The parties agree that stipends for Eligible Undergraduate Students will be made by the Department to the Institution within ten (10) days of the invoice file date (as that date is defined by CSLP). If for any reason a student is denied eligibility or the Department fails to pay the stipend to the Institution, the Institution shall be allowed to pursue collection of any amount owing to it from the student, the Department or both in accordance with applicable law.

c. The calculation of an Eligible Undergraduate Student's credit hours for an Eligible Undergraduate Student who withdraws from a course shall be made by the Institution on the following basis. If withdrawal occurs:

1. Prior to the Institution's census date (add/drop period), the Institution will reimburse College Access Network on behalf of the Eligible Undergraduate Student any stipend received for any courses that student withdraws from and the hours will not be counted against that student's life-time-credit-hour limitation .

2. During the Institution's refund period, the Institution will not reimburse any stipend received on behalf of the Eligible Undergraduate Student related to withdrawn courses and the hours related to those courses will be counted against that student's life-time-credit-hour limitation.

3. After the tuition refund period, the Institution will not reimburse any stipend received on behalf of the Eligible Undergraduate Student related to withdrawn courses and the hours related to those courses will be counted against that student's life-time-credit-hour limitation.

9. Legal Authority. The Institution warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and applicable law to exercise that authority, and to authorize its undersigned signatory to execute this contract and to bind the Institution to its terms. The person executing this contract on behalf of the Institution warrants that he has full authorization to execute this contract.

10. Termination for Failure to Perform. If the Institution fails to comply with applicable statutory requirements or substantially fails to satisfy or perform in any material respect any portion of this contract, the Department shall notify the Institution of the failure in writing (a "Performance Failure"). The notice shall indicate the nature of the Performance Failure and request that the Institution take appropriate action(s) to address the Performance Failure. If the Institution refuses or fails to correct the Performance Failure within a reasonable period of time, the Performance Failure shall first be referred to the chief financial officers of the Department and the Institution. Failing resolution by the chief financial officers, the dispute shall be referred to the chief executive officers of the Department and the Institution. Failing resolution by the chief executive officers, the Department may exercise either or both of the following remedial actions.

- a. Withhold payment of stipends to the Institution until the necessary corrections in performance are satisfactorily completed;
- b. Terminate this contract for default.

11. Withdrawal. The Institution may terminate this contract and cease participation in the College Opportunity Fund upon sixty (60) days prior written notice to the Department.

12. Force Majeure. Neither party shall be considered to have materially failed to perform its obligations under this agreement, including, for the Institution, its failure to meet a Performance Goal, to the extent that such failure arises out of causes beyond the reasonable control of a party. Such causes may include, but are not limited to, acts of God or of the public enemy, acts of the state or the United States in either its sovereign or contractual capacity, fires, floods, epidemics, strikes, and unusually severe weather, but, in every case, delay or failure to perform must be beyond the reasonable control of and without fault or negligence of the party.

13. Point of Contact and Notices. For purposes of this contract, the individuals identified below are hereby designated as the official representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives. All notices given hereunder shall be deemed given and sufficient upon delivery in writing by (i) United States mail; (ii) overnight delivery such as Federal Express; or (iii) electronic mail to the following officials or their successors:

For the Department:

David E. Skaggs
Executive Director
Colorado Department of Higher Education
1560 Broadway, Suite 1600
Denver, CO 80202
david.skaggs@dhe.state.co.us

For the Institution:

William Armstrong
President
Colorado Christian University
8787 West Alameda Avenue
Lakewood, CO 80226
warmstrong@ccu.edu

14. No Third-Party Beneficiary. The enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement shall be strictly reserved to the Department and the Institution. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Department and the Institution that any such person or entity, other than the Department or the Institution, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

15. Waiver. The waiver of any breach of a term, provision, or requirement of this contract 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.

16. Entire Agreement. This contract is intended as the complete integration of all understandings between the parties regarding performance contracts authorized by Title 23, Article 5, Section 129, Colorado Revised Statutes. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by both parties to this contract.

17. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance, or effect beyond the termination date of this contract shall survive such termination date and shall be enforceable by the Department as provided herein in the event of such failure to perform or comply by the Institution.

18. Governmental Immunity/Limitation of Liability. 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, protection, or other provisions of the “Colorado Governmental Immunity Act”, Section 24-10-101, *et seq.*, CRS, as now or hereafter amended. The parties understand and agree that the liability of the Department for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et seq.*, CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et seq.*, CRS, as now or hereafter amended. Any liability of the Department created under any other provision of this contract, whether or not incorporated herein by reference, shall be controlled by, limited to, and otherwise modified so as to conform with the above cited laws.

19. Assignment and Successors. The Institution agrees not to assign rights or delegate duties under this contract without the express, written consent of the Department. Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

20. Modification and Amendment. This contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

21. Cooperation of the Parties. The Institution and Commission agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this contract. In connection herewith, the parties shall meet to resolve problems associated with this contract. Neither party will unreasonably withhold its approval of any act or request of the other to which the party’s approval is necessary or desirable.

22. Compliance with Law. The Institution agrees to strictly adhere to and comply with all applicable Federal, State and Local laws, statutes, regulations, and executive orders, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this contract.

23. Approval Required. Pursuant to Title 23, Article 5, Section 129(3), Colorado Revised Statutes, this contract and any modification or addition thereto shall not become effective until reviewed and approved by the Commission.

24. Severability. To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative of any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

25. Special Provisions.

[Special Provisions Attached]

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

COLORADO CHRISTIAN UNIVERSITY:

**STATE OF COLORADO:
GOVERNOR BILL RITTER, JR.**

By _____
William Armstrong
President

By _____
David E. Skaggs
Executive Director
Department of Higher Education

FEIN

Attest (Seal) By _____
Corporate Secretary

LEGAL REVIEW:
JOHN W. SUTHERS
ATTORNEY GENERAL

By _____

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Institution is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

**STATE CONTROLLER:
DAVID J. McDERMOTT**

By _____
Date _____

APPROVED:

Colorado Commission on Higher Education

By: _____
James T. Polsfut Chair

Dated _____