

**STATE OF COLORADO  
DEPARTMENT OF HIGHER EDUCATION  
PERFORMANCE CONTRACT**

This Performance Contract is by and between the Department of Higher Education (hereinafter referred to as the "Department") and the University of Denver (hereinafter referred to as the "Institution").

**RECITALS**

**WHEREAS**, the General Assembly enacted the College Opportunity Fund Act, Title 23, Article 18, Section 101 *et seq.*, Colorado Revised Statutes (hereinafter "COF program"), in which it found and 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.

**WHEREAS**, the General Assembly has further determined that it is appropriate to support programs that are designed to encourage participation in postsecondary education, that increase citizens' awareness of the value of and need for a postsecondary education, and that make citizens aware of the financial support provided to them through the General Assembly to students and institutions of higher education.

**WHEREAS**, Title 23, Article 18, Section 201, Colorado Revised Statutes, provides that an eligible undergraduate student of a private, non-for-profit, college or university that maintains its primary place of business in the state of Colorado, shall be eligible to participate in the COF program only if the private institution has agreed to participate in the program by establishing a performance contract with the Department pursuant to Title 23, Article 5, Section 129, Colorado Revised Statutes.

**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, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Performance Contract; and

**WHEREAS**, the 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:

**GENERAL PROVISIONS**

1. Effective Date and Term of Contract. This Performance Contract shall be effective after execution by the Institution and the Department and on the date the Performance Contract is approved by the Colorado Commission on Higher Education (hereinafter referred to as the "Commission") and shall remain in effect until June 30, 2017, subject annually to available appropriations and subject to earlier termination as provided for herein.

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

3. Authority to enter Performance Contracts. The Institution is a private institution of higher education pursuant to Title 23, Article 5, section 129(1)(a), Colorado Revised Statutes, and this Performance Contract is authorized by Title 23, Article 5, section 129(2)(b).

4. Prior Agreements. This Performance Contract supersedes and replaces any previously executed Performance Contract, including amendments and modifications thereto, entered into by the Parties.

5. Eligibility to Participate in the COF Program.

a. Institution. The Department has determined that as of the effective date of this Performance Contract, the Institution meets all the requirements set forth in Title 23, Article 18, section 102(9), Colorado Revised Statutes, for participation in the COF program. The Institution agrees that in the event that it no longer satisfies any statutory requirements for participation in the COF program, the Institution shall immediately notify the Department and the parties shall follow the procedures for termination of the Performance Contract as set forth in paragraph 14.

b. Department. The Department agrees that except for a material breach of this Performance Contract by the Institution, the Institution's failure to meet the stated statutory requirements, or the failure of the General Assembly to appropriate funds to the COF program, the Department will continue to list the Institution as an institution eligible to receive stipends on behalf of Eligible Undergraduate Students, as defined in Title 23, Article 18, section 102(5)(a), Colorado Revised Statutes (hereinafter "Eligible Undergraduate Student").

c. Students. The Institutions 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, as defined in Title 23, Article 18, section 102(1), Colorado Revised Statutes (hereinafter "COF"), for students who meet these requirements. Further, the Institution shall maintain appropriate documentation for each student who it determines is eligible to participate in the COF program and shall make these documents available to the Department or its representative upon request. Such documentation shall include the 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 Grant eligibility.

d. Stipend Amount. Eligible Undergraduate Students attending the Institution may receive financial assistance as set forth in Title 23, Article 18, section 202(2)(e), Colorado Revised Statutes.

e. Credit Hour Limit. The Institution agrees that it shall not request and/or accept a stipend from the COF for more than one hundred forty-five academic semester hours or the equivalent for each Eligible Undergraduate Student as reported by College Assist, except as provided for in Title 23, Article 18, section 202(5)(c) and (e), Colorado Revised Statutes.

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

g. Credit Hour Conversion. The Institution's undergraduate programs are presently conducted on the basis of academic quarters. In calculating "credit hours" for the purposes of this contract, the parties agree that quarter hours of credit will be converted to semester hours of credit using the factor customary in making such conversions in higher education. Specifically, the Department shall treat 1.5 "academic quarter hours" as the equivalent of 1.0 "academic semester hour."

h. 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. An Eligible Undergraduate Student may also include a student enrolled at the Institution while participating at a foreign institution of higher education under its Cherrington Global Scholars program, so long as such program is conducted substantially as presently conducted and approved by the Commission.

6. Performance Standards. The Institution agrees to make those efforts and implement the performance goals and expectations set forth in Addendum A, within the time frames established in Addendum A. The Institution agrees and understands that its progress towards those performance goals and expectations shall be evaluated based on the measurements set forth in Addendum A.

7. 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 COF, 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.

8. 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), 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 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.

9. Data Retention. The parties agree that the 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 College Assist and the Department by providing the information, in the form and manner required by College Assist, that reflects the number of credit hours take at the Institution for which Eligible Undergraduate Students receive stipends from the COF.

10. Performance Report. Performance on this Performance Contract shall be reported by the Department to the Governor and General Assembly pursuant to Title 23, Article 5, Section 129(5).

11. Payments.

a. The Department shall pay the Institution a stipend on behalf of all Eligible Undergraduate Students, in the amount set by the General Assembly during the annual budget process. Stipend payments made pursuant to this Performance Contract shall be made from such funds as annually appropriated by the General Assembly. This Performance 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 College Assist). If for any reason a student is denied eligibility of 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 shall be made by the Institution on the following basis for an Eligible Undergraduate Student who withdraws from courses:

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

(ii) 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.

(iii) 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.

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

13. 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 Performance Contract. In connection herewith, the parties shall meet to resolve problems associated with this Performance 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.

14. 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 Performance Contract, the Department shall notify the Institution of the failure in writing (the "Performance Failure"). The notice shall indicate the nature of the Performance Failure and request that

the Institution take appropriate action 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 Performance Contract for default.

15. Notice and Representatives. For the purposes of this Performance Contract, notices required under this Performance Contract shall be in writing and shall be sent by prepaid certified mail, return receipt requested, by facsimile, with confirmation of transmission, by overnight delivery such as Federal Express, or by hand delivery, with confirmation of receipt, to the individuals identified below who are hereby designated as the official representatives of the respective Parties. Either Party may from time to time designate in writing a new or substitute representative or address.

For the Department:

Lt. Gov. Joseph A. Garcia, Executive Director  
Executive Director  
Colorado Department of Higher Education  
1560 Broadway, Suite 1600  
Denver, CO 80202

For the University of Denver:

Robert Coombe  
Chancellor  
University of Denver  
2199 S. University Blvd.  
Denver, CO 80208

16. No Third-Party Beneficiary. Nothing in this Performance Contract shall be construed or implied to confer third-party beneficiary status on any person or entity. Any services or benefits which third parties receive as a result of this Agreement are incidental and do not create rights for such third parties.

17. Waiver. The waiver of any breach of a term, provision, or requirement of this Performance 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.

18. Assignment. The rights and obligations of each Party hereunder are personal to such Party and may not be transferred, assigned or subcontracted without the prior, written consent of the other Party.

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

20. Governmental Immunity / Limitation of Liability. No term or condition of this Performance 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," Title 24, Article 10, sections 101, *et seq.*, Colorado Revised Statutes, 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 Colorado Governmental Immunity Act and the risk management statutes, Title 24, Article 30, sections 1501, *et seq.*, Colorado Revised Statutes, as now or hereafter amended. Any liability of the Department created under any other provision of this Performance 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.

21. Renewal of Agreement. The Institution and the Department may agree to renew this Performance Contract prior to its expiration. Any such renewal must be approved by the Commission.

22. Withdrawal. The Institution may terminate this Performance Contract and cease participation in the COF program upon sixty (60) days prior written notice to the Department.

23. 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 Performance Contract.

24. Modification. This Performance Contract shall be subject to such modifications as may be required by changes in federal or state law or regulations or as may be agreed to by the parties and approved by the Commission. Any such modifications shall automatically be incorporated into and made a part of this Performance Contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of, or addition to, this Performance Contract shall be effective unless agreed to in writing by both parties in an amendment to this Performance Contract that is properly executed and approved in accordance with applicable law, and shall not become effective until approved by the Commission.

25. Entire Agreement. This Performance 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 Performance Contract and the Commission.

26. Force Majeure. Neither party shall be considered to have materially failed to perform its obligations under this Performance Contract, 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 the fault or negligence of the party.

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS PERFORMANCE CONTRACT

<p>UNIVERSITY OF DENVER</p> <p>BY: <u>Robert A. Coombe</u> Robert Coombe, Chancellor</p> <p>Date: <u>March 20, 2013</u></p> <p>Attest (Seal)</p> <p>BY: <u>Claire Brounell</u> Corporate Secretary</p> <p>Date: <u>3/21/13</u></p>	<p>DEPARTMENT COLORADO DEPARTMENT OF HIGHER EDUCATION</p> <p>BY: <u>Joseph A. Garcia</u> Lt. Gov. Joseph A. Garcia, Executive Director</p> <p>Date: <u>3/26/2013</u></p> <p>APPROVED</p> <p>BY: <u>Richard Kaufman</u> Richard Kaufman, Chair, Colorado Commission on Higher Education</p> <p>Date: <u>4-5-2013</u></p>
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## Addendum A

This Addendum A sets forth those goals, standards and requirements upon which the Department and the Governing Board have mutually agreed.

The Institution agrees to make those efforts and implement the performance goals and expectations set forth in this Addendum A, within the time frames established in Addendum A. The Institution agrees and understands that its progress towards those performance goals and expectations shall be evaluated based on the measurements set forth in Addendum A. NOW THEREFORE, the Parties agree as follows.

### Goal #1: Increasing Attainment

<b>Metric</b>	<b>Weight</b>
Maintain four, five and six year graduation rates for underserved students at or above the same rates of the general student population.	25%

### Goal #2: Improving Student Success

<b>Metric</b>	<b>Weight</b>
Maintain persistence rates for underserved students at or above persistence rates of general student population.	25%

### Goal #3: Reducing Gaps

<b>Metric</b>	<b>Weight</b>
Maintain excellence by annually increasing underserved student enrollments at or above their current levels.	25%

### Goal #4: Restoring Fiscal Balance

<b>Metric</b>	<b>Weight</b>
Maintain excellence by continuing to increase institutional merit and financial aid for underserved students while continuing the policy of stacking all College Opportunity Funds on top of institutional funds. That is, no College Opportunity Funds will replace institutional dollars in meeting an eligible student's financial need.	25%