

STATE OF TEXAS §  
COUNTY OF TRAVIS §

Division Number: 210	Program Name: Math Academies
Org. Code:	Legal/Funding Authority: SB 934
Speed Chart:	Rider 73, TGC 791
Payee Name: Education Service Center Region 5	Payee ID:
ISAS Contract #: 3542	PO #: 3518

## INTERLOCAL COOPERATION CONTRACT

### Section 1.0 PARTIES AND AUTHORITY

This Interlocal Cooperation Contract (ICC) is entered into by and between the Texas Education Agency (TEA) and Education Service Center Region 5 (ESC) pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Chapter 791, of the Texas Government Code which enables state local governments to contract with state agencies for governmental functions and services.

### Section 2.0 STATEMENT OF SERVICES TO BE PERFORMED:

Appendix One, Description of Services, attached hereto, is hereby incorporated by reference and made, therefore, a part of this ICC.

### Section 3.0 TERM OF CONTRACT:

This ICC is to begin April 1, 2016 and shall terminate on August 31, 2017. This ICC may be renewed for two (2) additional one-year terms thereafter by mutual agreement of the Parties in the form of a written amendment subject to appropriations of funds by the Texas Legislature for the project. .

### Section 4.0 AMOUNT:

The budget for fiscal year 2016: \$20,000.00  
The budget for fiscal year 2017: \$20,000.00  
Total \$40,000.00

Appendix Two, Budget, attached hereto, is hereby incorporated by reference and made, therefore, a part of this ICC.

### Section 5.0 PAYMENT FOR SERVICES:

TEA shall pay ESC in accordance with the approved budget for the services performed described in this ICC. TEA shall pay for services received from the appropriation item or account from which the Agency would ordinarily make expenditures for similar services or resources. Payments received by the ESC shall be credited to its current appropriation item(s) or account(s) from which the expenditure for the services or resources was made.

ESC shall bill TEA for services rendered in accordance with the attached Budget. ESC should submit invoices electronically to the following email address: [TEAAccountsPayable@tea.texas.gov](mailto:TEAAccountsPayable@tea.texas.gov) or by mail to:

Texas Education Agency  
Attn: Accounting Department  
1701 N. Congress Ave.,  
Austin, Texas 78701-1494

Purchases of food are generally prohibited and must be preapproved by the TEA Project Manager. Food purchases must be in accordance with Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200, Subpart E, §200.432. Purchases must be necessary and reasonable for the successful performance of the Contract. This applies to both federal and state funded contracts. Website to view the regulations: <http://www.ecfr.gov/cgi-bin/text-idx?SID=f61b41b94d57ed256eb46811a14d243d&mc=true&node=se2.1.200.1432&rgn=div8>

TEA follows the Federal Rate Schedule for reimbursement of meal and lodging expenditures adopted by the State of Texas. Performing Agency shall maintain receipts in accordance with paragraph F of the Contract General Provisions. The Comptroller's website for travel rules and regulations – **texttravel**: <https://fmx.cpa.state.tx.us/fmx/travel/texttravel/index.php>. Receipts must be made available for programmatic or financial audit, by TEA and by others authorized by law or regulation to make such an audit, for a period of not less than seven (7) years.

State travel expense reimbursement is not a per diem. Employees and Performing Agency s must claim the actual expenses incurred for meals and lodging not to exceed the maximum allowable rates. The maximum should not be claimed unless the actual expenditures equal or exceed the maximum allowable rate. Effective 01/01/16, the mileage rate is .54¢.

**Section 6.0 CONTRACT MANAGEMENT:**

**6.1 Notices:** Any notice relating to this ICC, which is required or permitted to be given under this ICC shall be in writing and shall be addressed to the designated point of contact at the address specified below. The notice shall be deemed to have been given immediately if delivered in person to the recipient's email address specified below. It shall be deemed to have been given on the date of certified receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address specified below. Registered or certified mail with return receipt is not required for copies.

**6.2 Points of Contact:** The parties shall direct all correspondence, notices, invoices and payments to:

<b>TEA</b> (Receiving Party)	<b>Name</b> (Performing Party)
Chelaine Marion	Kay Olds
Director Foundation Education Curriculum Division	Math Program Coordinator Curriculum
<a href="mailto:Chelaine.marion@tea.texas.gov">Chelaine.marion@tea.texas.gov</a>	<a href="mailto:kolds@esc5.net">kolds@esc5.net</a>
Texas Education Agency 1701 N. Congress Avenue Austin, Texas 78701-1494	Region 5 ESC 350 Pine Street, Suite 500 Beaumont, Texas 77701

**Section 7.0 CONTRACT AMENDMENT:**

Any modifications, additions, or deletions, to the specified deliverables or terms and conditions of this ICC, including the allocation of additional funds to the current list of proposed activities, or any extensions of the ICC shall be processed through a written amendment and executed by both parties.

**Section 8.0 ENTIRE CONTRACT:**

This ICC together with the documents mentioned herein and which are incorporated herein by this reference, contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this contract shall be of no force or effect unless contained in a subsequent amendment executed by both parties.

**8.1 Appendixes:**

**8.1.1** Appendix One, Description of Services

**8.1.2** Appendix Two, Budget

**8.2 Attachments:**

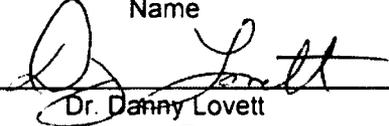
Attached hereto and made a part hereof by reference are the documents indicated below with an "X" beside each:

- General Provisions
- Special Provisions A, Program Specific
- Special Provisions B, Debarment (required if utilizing federal funds)
- Special Provisions C, Lobbying (required if utilizing federal funds & over \$100,000)
- Special Provisions D, Historically Underutilized Business Subcontracting Plan (HSP) (required for projects over \$100,000)

**Section 9.0 CERTIFICATIONS:**

**TEA** further certifies that it has the authority to receive the above services by authority granted in: Texas Government Code, Ch. 791, Interlocal Cooperation Act and Texas Education Code, Chapter 8.

**ESC** further certifies that it has authority to perform the above services by authority granted in: Texas Government Code, Chapter 791, Interlocal Cooperation Act.

SUBJECT TO APPROVAL, the authorized representatives of the undersigned parties bind themselves to the faithful performance of this ICC. It is mutually understood that this ICC will be effective on the earliest date shown in Section 3.0.	
<b>TEXAS EDUCATION AGENCY</b>	<b>EDUCATION SERVICE CENTER</b>
Name	Name
By: <u></u>	By: <u></u>
Shirley Beaulieu Associate Commissioner Finance/ CFO	Dr. Danny Lovett Executive Director
<u>5-25-16</u>	<u>3-24-16</u>
Date	Date
Return one (1) signed copy to: <a href="mailto:TEAcontracts@tea.texas.gov">TEAcontracts@tea.texas.gov</a> Or by mail to: Norma Barrera, Director Purchasing, Contracts and Agency Services Texas Education Agency 1701 North Congress Avenue, Room 2-125 Austin, Texas 78701-1494	

## Appendix One

### DESCRIPTION OF SERVICES

#### Purpose and Objectives:

Performing Party shall assist the Agency to implement research-based mathematics achievement academies for Kindergarten through grade 3. The Kindergarten through grade 3 mathematics achievement academies will enhance teachers' knowledge and skills so they can effectively teach students in primary elementary grades to achieve mathematical proficiency. The academies will deepen teachers understanding of research-based effective and systematic instructional practices in mathematics that they can use to help students develop problem-solving skills and a strong foundation of number sense and fluency.

For the initial term of the contract in fiscal year 2016, the ESC will implement grade 2 and grade 3 mathematics achievement academies. For the second term of the contract in fiscal year 2017, the ESC will implement Kindergarten and grade 1 mathematics achievement academies and as needed additional Kindergarten and grade 1 academies.

The ESC will train approximately the following number of teachers per grade level:

Grade level	Number of Teachers	Fiscal Year
Kindergarten	73	2017
Grade 1	138	2017
Grade 2	129	2016
Grade 3	116	2016

- The ESC must identify an appropriate number of trainers to successfully implement academies for the number of teachers indicated in the chart above.
- The ESC must submit the name and resume of each trainer to TEA for review and approval. If the ESC needs assistance identifying qualified trainers, TEA will provide assistance.
- The ESC must send all identified trainers to training of trainers sessions in June 2016 and as scheduled in 2017.
- The trainers the ESC identifies must have:
  - significant expertise in mathematics education;
  - experience in providing instruction directly related to the mathematics TEKS, specifically in kindergarten - grade 5;
  - knowledge of developmentally appropriate strategies for students in Kindergarten - grade 3; and
  - significant experience in differentiating instruction for various student populations, including students with disabilities, English language learners, and gifted students.
- Academy trainers do not have to be ESC employees.
- The ESC should implement a sufficient number of three-day grade 2 and grade 3 academies in fiscal year 2016 and a sufficient number of Kindergarten – grade 1 academies in fiscal year 2017 to serve the number of teachers in the region eligible for stipends.
- The ESC must consider available capacity including room size, configuration and staffing when scheduling academies. A grade level academy should not exceed a maximum of 50 attendees.
- Academies must be conducted in July and August 2016 and as scheduled in 2017.
- The ESC must provide dates and locations of all academies to the agency.
- The ESC must offer the academies in a sufficient number of locations to minimize the distance teachers must travel in order to attend academies.
- The ESC must coordinate with district administrators to identify and register teachers for participation in academies based on guidelines provided by the agency.
- The ESC must obtain feedback from all academy participants using tools developed by the agency following completion of academies and must report all results to the agency.
- The ESC must track and report successful completion of academies by teachers and coordinate with the content developer to process payment of stipends.
- The ESC must coordinate with the agency and content developer to ensure academy participants have access to follow-up resources and support following completion of academies.

**II. Timeline of Major Activities**

<b>Month</b>	<b>Activity</b>	<b>Completion Date</b>	
April 2016	Work with administrators to identify first year academy participants	May 13, 2016	
May 2016	Identify trainers and obtain TEA approval	June 3, 2016	
June 2016	Training of trainers sessions	July 1, 2016	
July – August 2016	Implementation of mathematics achievement academies	August 31, 2016	
August 2016	Solicit feedback from participants and report to TEA	August 31, 2016	
February 2017	Identify trainers and obtain TEA approval	March 3, 2017	
March 2017	Work with administrators to identify second year academy participants	March 31, 2017	
May 2017	Training of trainers sessions	May 26, 2017	
June – August 2017	Implementation of mathematics achievement academies	August 31, 2017	
August 2017	Solicit feedback from participants and report to TEA	August 31, 2017	

Appendix Two

BUDGET

<u>Cost Categories</u>		<u>Budgeted Amount</u>
<b>A. <u>Services</u></b>		
<b>1. Payroll</b>	<b>Subtotal</b>	<b>\$ 6900.00</b>
<b>2. Fringe Benefits</b>	<b>Subtotal</b>	<b>\$ 1432.00</b>
<b>3. Travel</b>	<b>Subtotal</b>	<b>\$ 8200.00</b>
<b>4. Contracted Services</b>		<b>\$ 9600.00</b>
<b>5. Indirect Costs @ <i>8%</i></b>		<b>\$ 2963.00</b>
<b>6. Training Reimbursement</b>		
	<b><u>Subtotal of Services</u></b>	<b><u>\$29,095.00</u></b>
<b><u>B. Resources</u></b>		
<b>1. Equipment (Room Rental)</b>		<b>\$ 4800.00</b>
<b>2. Supplies and Materials</b>	<b>Subtotal</b>	<b>\$ 2105.00</b>
Consumable supplies		
Communication costs		
<b>3. Other operating costs (Printing)</b>	<b>Subtotal</b>	<b>\$4000.00</b>
	<b><u>Subtotal of Resources</u></b>	<b><u>\$10,905.00</u></b>
		<b>Total Budget: \$ 40,000.00</b>

## Contract Terms and Conditions

- A. Definitions as used in these Contract Terms and Conditions:
- *Contract, Interlocal Cooperation Contract, ICC* means the entire document, and all of TEA's attachments, appendices, schedules, exhibits (including but not limited to the Terms and Conditions and Attachments), amendments and extensions of or to the Interlocal Cooperation Contract
  - *Receiving Agency* means the Texas Education Agency, TEA or Party other than Performing Agency
  - *Performing Agency* means the Party to this Contract or Contractor other than TEA
  - *Project Manager/Administrator* means the respective person(s) representing TEA or Performing Agency, as indicated by the Contract, for the purposes of administering the Contract Project
  - *Contract Project* means the purpose intended to be achieved through the Contract
  - *Amendment* means a contract document used to formalize revisions to the Contract mutually agreed to by both Parties
- B. **Contingency:** The Contract, including any amendments, extensions or subsequent contracts are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this Contract or any other document, this Contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this Contract may be terminated by TEA at any time for any reason upon notice to Performing Party. Expenditures and/or activities for which Performing Party may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.
- C. **Indemnification:** For local educational agencies (LEAs), regional education service centers (ESCs), institutions of higher education (IHEs), and state agencies: Performing Party, to the extent permitted by law, shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising from, or in connection with, any acts of Performing Party in performance of the Contract Project.
- D. **Subcontracting and Substitutions:** Performing Party shall not assign, transfer or subcontract any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Performing Party. Substitutions are not permitted without written approval of the TEA Project Manager.
- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Performing Party to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- F. **Records Retention and the Right to Audit:** Performing Party shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Performing Party in connection with the Contract Project. These records and accounts shall be retained by Performing Party and made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit for a period of not less than seven (7) years from the date of completion of the Contract Project or the date of the receipt by TEA of Performing Party's final claim for payment or final expenditure report in connection with this Contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed.
- The Parties acknowledge the state Auditor's authority to conduct audits of state agencies under Chapter 321, Texas Government Code. TEA reserves the right to monitor and audit the Performing Party's compliance with the requirements of this Contract.
- G. **Information Security Requirements: FERPA. Access to Confidential TEA Information.** Performing Party represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard Confidential Information and to protect it from unauthorized disclosure. Whenever communications with Performing Party necessitate the release of Confidential TEA Information, additional TEA Confidential forms will need to be signed by each individual who will require access to or may be exposed to that information. If Contractor discloses any TEA confidential information to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor. Whenever communications with Contractor necessitate the release of Confidential TEA Information, additional TEA Confidential forms will need to be signed by each individual who will require access to or may be exposed to that information. Contractor shall access TEA's systems or Confidential TEA Information only for the purposes for which it is authorized. TEA reserves the right to review the Contractor's security policy to ensure that any data that is on the Contractor's servers is secure. Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).
- Contractor shall ensure that any TEA Confidential Information in the custody of Contractor is properly sanitized or destroyed when the information is no longer required to be retained by TEA or Contractor in accordance with this Contract. Electronic media used for storing any Confidential TEA Information must be sanitized by clearing, purging or destroying in accordance with such standards established by the National Institute of Standards and

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Technology and the Center for Internet Security. These standards are also required if the Contractor is collecting, maintaining, or analyzing data gathered, collected, or provided under this Contract. Contractor must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

- 1) Date and time of sanitization/destruction
- 2) Description of the item(s) and serial number(s) if applicable
- 3) Inventory number(s)
- 4) Procedures and tools used for sanitization/destruction

No later than sixty (60) days from contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of the data and provide to TEA all sanitization documentation.

### **FERPA**

All information gathered, produced, derived, obtained, analyzed, controlled or Accessed by Performing Party in connection with this Contract ("Confidential Information") shall be and remain Confidential Information and shall not be released or disclosed by Performing Party without the prior written consent of the TEA, which consent must specifically identify the Confidential Information to be disclosed by Performing Party and the nature of the disclosure for which consent is sought.

Performing Party, its employees and subcontractor's, agree that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within sixty (60) days of project completion. Performing Party also agrees not to disclose any information to which it is privy under this Contract without the prior consent of the agency.

### **Access to Internal TEA Network and Systems**

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures. TEA's remote access request procedures will require Contractor to submit TEA Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. TEA reserves the right to audit the security measures in effect on Contractor's connected systems without prior warning. TEA also reserves the right to immediately terminate network and system connections not meeting such requirements.

### **Disclosure of Security Breach**

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential Comptroller information ("Security Incident"). Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

- 1) Description of the nature of the Security Incident
- 2) The type of TEA information involved
- 3) Who may have obtained the information
- 4) What steps Contractor has taken or will take to investigate the Security Incident
- 5) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident
- 6) A point of contact for additional information

Each day thereafter until the investigation is complete, Contractor shall provide TEA's Information Security Officer with a written report regarding the status of the investigation and the following additional information as it becomes available:

- 1) Who is known or suspected to have gained unauthorized access to TEA information
- 2) Whether there is any knowledge if TEA information has been abused or compromised
- 3) What additional steps Contractor has taken or will take to investigate the Security Incident
- 4) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident
- 5) What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements

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of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TEA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within thirty (30) days of TEA's written request, then TEA shall have the right to collect such costs.

- H. **Point of Contact and Escalation:** All notices, reports and correspondence required by this Contract shall be in writing and delivered to the TEA Project Manager listed in 6.2 of this ICC. Within thirty (30) days of execution of a contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Project Manager level.
- I. **Dispute Resolution:** The parties agree to use good-faith efforts to resolve questions, issues, or disputes of any nature that may arise under or by this Contract; provided, however nothing in this paragraph shall preclude either party from pursuing any remedies as may be available under Texas law.
- J. **Compliance with Laws:** Performing Party shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Performing Party's performance, including if applicable, prompt payment and licensing laws and regulations. For the entire duration of the Contract, Performing Party shall maintain all required licenses, certifications, and any other documentation necessary to perform this Contract. When required or requested by the Agency, Performing Party shall furnish TEA with satisfactory proof of its compliance with this provision.
- K. **Governing Law:** This Contract is governed by and construed under and in accordance with the laws of the State of Texas. Any and all obligations under this Contract are due in Travis County and venue is proper only in such county.
- L. **Federal Regulations Applicable to All Federally Funded Contracts:** The Code of Federal Regulations (CFR) annual edition is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office. Website: [http://www.ecfr.gov/cgi-bin/text-idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
- M. **Public Information:** Parties acknowledge they are subject to the provisions of the Texas Public Information Act.
- N. **Assignment:** No assignment of this Contract or of any right accruing hereunder shall be made, in whole or part, by Performing Party without prior consent of TEA.
- O. **Excluded Parties List System:** The Texas Education Agency and the Performing Party must adhere to the directions provided in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism. That Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.sam.gov>.
- P. **Press Releases:** Performing Party will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Performing Party in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of TEA.
- Q. **Independent Contractor:** Performing Party shall serve as an independent Contractor in providing services under this Contract. Performing Party's employees are not and shall not be construed as employees or agents of the Texas Education Agency.
- R. **Termination:** This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract terms and conditions.
  - 1. **Termination for Convenience:** TEA may terminate this Contract at any time, in whole or in part, without penalty, by providing fifteen (15) calendar days advance written notice to the other Party. In the event of such a termination, the Performing Party shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by the Performing Party that are permitted, properly performed under this Contract and were incurred prior to the effective termination date.
  - 2. **Termination for Cause/Default:** If the Performing Party fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to the Performing Party, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

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TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies the Performing Party in writing prior to the exercise of such remedy.

The Performing Party shall remain liable for all covenants and indemnities under the Contract. The Performing Party shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.

3. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under this Contract.
  4. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated work products and documentation obtained from the Performing Party under the Contract.
  5. **Survival of Terms:** Termination of the Contract for any reason shall not release the Performing Party from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.
- S. **Amendments:** All Amendments to this Contract will be in a manner as prescribed by the Agency Contracting Process and are, subject to Paragraph B of the Terms and Conditions and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY INTERLOCAL COOPERATION CONTRACT form. All Amendments will be initiated by the TEA Contracts staff. An Amendment to this Contract will become effective on the date of signature of TEA or the effective date shown on the Amendment document whichever is first.
1. The Contractor is permitted to reallocate up to a cumulative 10% of the total budget among direct cost categories to meet unanticipated requirements without the issuance of a written Amendment as long as the total budget amount does not change. However, a revised budget document must be preapproved by the TEA Project Manager before the making the changes. Once approved, the documents must be submitted to the Contracts office for incorporation into the Contract file. Failure to submit the budget documents will result in invoices being rejected or payment delayed.
  2. Written Amendments are required for the following Contract changes:
    - a. Any revision which would result in the need for additional funding;
    - b. Any revision to the scope of work, deliverables, or objectives of the Contract
    - c. A request to extend the period of the Contract;
    - d. Cumulative transfers among direct cost categories which exceed or are expected to exceed 25 percent of the current total approved budget category;
    - e. Any reduction of funds or reduction in the scope of work;
    - f. Whenever a line item within a class/object code is added;
    - g. An increase in the quantity of capital outlay item(s) requested; and
    - h. An increase or decrease in the number of positions charged to Contract.
- T. **Electronic and Information Resources Accessibility Standards and Reporting:** State agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic Information Resources specified in 1TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- Section 508 of the US Rehabilitation Act of 1973 has been revised and adopted. Therefore, all current and potential Contractors are hereby notified of the requirement. The current technical requirements for accessibility contained within this regulation form the basis for our Texas TAC rules on EIR Accessibility.
- This refresh of 508 uses the WCAG 2.0 AA Accessibility Guidelines (also ISO/IEC standard 40500) as the new technical standard that Federal agencies are now required to meet when procuring products and services. With the adoption of 508 requirements being adopted, DIR will be modifying the TAC rules to synchronize with it.
- Given this coming change, all Texas agencies and institutions of higher education have begun using or specifying WCAG 2.0 AA guidelines for the design of new websites or web applications. The rationale is twofold:
1. It could be technically difficult and expensive to bring these websites/applications to WCAG 2.0 AA later. WCAG 2.0 AA is a superior, more flexible standard and is in use all over the world. If a website is compliant with WCAG 2.0 AA, it will, by default comply with our current TAC rules on EIR Accessibility.

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Web development Contractors should already be familiar with designing to this standard, and their ability to meet these standards should be a strong consideration in the selection process. The free online resources listed below are available to assist developers and content producers in transitioning to these guidelines.

[WCAG 2.0 at a glance](#)

[IBM Developer Guidelines Web Checklist](#)

[Webaim.org Accessibility Checklist](#)

Contractor must employ real users with disabilities for manual testing. Contract is required to provide a report that will include the results of auto-testing, screen-by-screen assessments, pass/fail status for each of the identified compliance standards to be met and recommendations for how to repair the screens/pages that do not meet the standards. Remediation recommendations shall be provided to the code level. The report should include documentation of the experience of real users with disabilities and may recommend techniques for improving the usable accessibility of the application. Awarded Vendor shall validate, by title, if all accessibility requirements have been met.

All websites must follow Federal 508 accessibility requirements and Web Content Accessibility Guidelines (WCAG) 2.0 AA standards and be tested for accessibility before acceptance by TEA. For sites developed outside of TEA, the contractor must contract with a third party with expertise and a proven track record in accessibility testing. The third party must evaluate the site and produce a report that verifies the site is compliant to (WCAG) 2.0 AA.

- U. **Intellectual Property Ownership:** Contractor agrees that all Works are, upon creation, works made for hire and the sole property of TEA. If the Works are, under applicable law, not considered works made for hire, Contractor hereby assigns to TEA all worldwide ownership of all rights, including the Intellectual Property Rights, in the Works, without the necessity of any further consideration, and TEA can obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by Contractor for the Contract Project, granting Contractor rights sufficient to support the performance and grant of rights to TEA by Contractor. Copies of such agreements shall be provided to TEA promptly upon request.

Contractor warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest to the Works or Intellectual Property Rights that would conflict with its obligations under the Contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any intellectual property rights of any other person or entity. These warranties will survive the termination of the Contract. If any preexisting rights are embodied in the Works, Contractor grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Contractor will provide TEA with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

Contractor agrees, at Contractor's expense, to indemnify, hold harmless and defend TEA and the State from claims involving infringement of third parties' licenses, trademarks, copyrights or patents.

**For Colleges and Universities:** The foregoing Intellectual Property Ownership provisions apply to any colleges and universities and their employees, agents, representatives, consultants, and subcontractors; provided, that for all Works created or conceived by colleges or universities under the Contract, they are granted a non-exclusive, non-transferable, royalty-free license to use the Works for their own academic and educational purposes only. Colleges and universities are prohibited, however, from advertising, offering for sale, selling, distributing, publicly displaying, publicly performing, or reproducing the Works, or making derivative works from the Works that are created or conceived under this Contract, without the express written permission of TEA Legal Division.

- V. **Criminal Background Checks:** If during the term of this Contract, Contractor, and/or Contractor staff, or subcontractor have access to Texas public school campuses, all Contractor and/or Contractor's staff must submit to a national criminal history record information review (includes fingerprinting) and meet all eligibility standards and criteria as set by Agency before serving in assignments on behalf of the Agency. This requirement applies to all individuals who currently serve or will serve in Agency assignments that have the possibility of direct contact with students. Assignments are contingent upon meeting Agency eligibility standards. Contractor and/or any staff member of Contractor who may perform services under this contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor is not eligible for assignment, this Contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.

**Special Provisions – A**  
**Program – Specific Provisions**

(Optional -- Type here any specific program provisions or assurances derived from the authorizing statute that apply to the activities to be conducted under this Contract.)

**Special Provisions – B**  
**Debarment and Suspension Certification**

(Required for all federally-funded contracts)

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This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, §85.510, Participants' Responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19,160-19,211). Copies of the regulations may be obtained by contacting the Division of Grants Administration of the Texas Education Agency at (512) 463-9269.

**READ INSTRUCTIONS ON NEXT PAGE BEFORE COMPLETING CERTIFICATION**

**CERTIFYING STATEMENT**

- (1) The prospective lower tier participant certifies, by submission of this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Contract.

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Organization Name

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Name and Title of Authorized Representative

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Signature

Date

Dept. of Education Form ED GCS-009

12/88

## **General Instructions for Special Provisions – B Debarment and Suspension Certification**

### **Definitions:**

*Lower Tier Participant* - Any organization or person receiving a grant or contract. This also includes subsequent subgrants and subcontracts.

*Covered Transaction* - The act of applying for federal funds or submitting a contract for federal funds.

*Lower Tier Transaction* - The making of a (1) subgrant to another entity or person or (2) procurement contract by a Lower Tier Participant to some other entity or person for goods or services, regardless of type, expected to equal or exceed a cumulative value of \$25,000.

*Principals* - An administration head, key project/grant management person, officer, director within the Lower Tier Participant's organization or within a sub-organization or subcontractor (i.e., superintendents and the key person in the school district who will exert control or management influence over this project. At a university, it would be the president and principal investigator).

### **INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this Contract, the prospective lower tier participant is stating that it is neither debarred nor suspended.
2. This certification is a material representation of fact upon which reliance was placed when this certification was signed. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment from federal funds participation.
3. The prospective lower tier participant shall provide immediate written notice to the organization to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "contract," and "voluntarily excluded," as used in this certification, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the organization to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include the two-paragraph "CERTIFYING STATEMENT" without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Special Provisions – C**  
**Part A**  
**Lobbying Certification**

(Required for all federally-funded contracts greater than \$100,000)

Submission of this certification is required by the U.S. Department of Education and Section 1352, Title 31 of the United States Code. It is a prerequisite for making or entering into a subgrant or subcontract over \$100,000 with any organization. (See next page of this schedule for further instructions.)

**The undersigned certifies, to the best of his or her knowledge and belief, that:**

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, Special Provisions D Part B "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

**This certification is a material representation of fact on which the U.S. Department of Education and the Texas Education Agency relied when it made or entered into this grant or Contract. Any organization that 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.**

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Organization Name

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Name and Title of Authorized Representative

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Signature

Date

Dept. of Education Form ED 80-0008

11/89

**General Instructions for Special Provisions – C**  
**Part A**  
**Lobbying Certification**

This is a Congress of the United States and the U. S. Department of Education requirement. The Contractor must submit this schedule to TEA for a federal-funded contract(s) with an approved amount in excess of \$100,000. TEA will be unable to pay for any obligations established by the Contractor unless this schedule is submitted.

- (1) In addition, if the Contractor makes a subgrant or subcontract in excess of \$100,000 to another organization of any type, then the Contractor shall require this form to be filed with and retained by the Contractor. According to federal law, failure to obtain the certification subjects the Contractor to civil penalties.
- (2) This certification states that the Contractor is prohibited from using federal funds for influencing or attempting to influence any member of Congress or its employees or any federal agency employee concerning the making or awarding of a federal grant.
- (3) This certification also states that if the Contractor pays or has paid any funds other than federal funds to any one person or organization for influencing or attempting to influence any member of Congress or its employees, or any federal agency employee concerning the making or awarding of a federal grant, that the Contractor will disclose to whom payments were made, how much money was involved and the type of work involved. The Contractors must use Special Provisions D Part B, Disclosure of Lobbying Activities for complying with this disclosure requirement. The Contractor shall require this form to be filed with the Contractor on any subgrants or subcontracts it makes in excess of \$100,000 if funds have been spent as stipulated in this paragraph. The Contractor will then forward a legible copy of Special Provisions D Part B, Disclosure of Lobbying Activities to the Texas Education Agency.

Additionally, this certification requires the Contractor to incorporate the language of this certification into any award or Contract documents for awarding subgrants or subcontracts that exceed \$100,000 and that sub-grantees and subcontractors shall certify and disclose accordingly.

**Texas Education Agency  
Disclosure of Lobbying Activities**

Complete this form to disclose lobbying activities for lobbying services procured (pursuant to Title 31 U.S.C. §1352). This disclosure form is required for any federal grant/contract received in excess of \$100,000 and on any subgrant/subcontract made by the grantee/contractor. (Read the instructions for this schedule for further information.) **Do not complete and sign this disclosure form unless lobbying activities are being disclosed.**

Federal Program Name: \_\_\_\_\_

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> Contract</p> <p><input type="checkbox"/> Grant</p>	<p>2. Status of Federal Action</p> <p><input type="checkbox"/> Bid/Offer/Application</p> <p><input type="checkbox"/> Initial Award</p> <p><input type="checkbox"/> Post-award</p>	<p>3. Report Type</p> <p><input type="checkbox"/> Initial Filing</p> <p><input type="checkbox"/> Material Change</p> <p>For Material Change Only: Year _____ Quarter _____ Date of Last Report: _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Subawardee Tier _____, <i>if known</i>:</p> <p>Congressional District, if known: _____.</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p style="text-align: center;">Texas Education Agency 1701 N. Congress Avenue Austin, Texas 78701</p> <p>Congressional District: 10</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, <i>if applicable</i>: _____</p>	
<p>8. Federal Action Number, <i>if known</i>:</p>	<p>9. Award Amount, <i>if known</i>:</p> <p>\$ _____</p>	
<p>10. A) Name and Address of Lobbying Registrant</p> <p><i>(If individual, Last name, First name, MI):</i></p>	<p>B) Individuals Performing Services (include address, if different from 10 A)</p> <p><i>(Last name, First name, MI):</i></p>	
<p>11. Information requested through this form is authorized by Title 31 U.S.C. §1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31 U.S.C. §1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		
<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____</p> <p>Date: _____</p>		
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form—LLL

(STCONT)

**General Instructions for Special Provisions – C**  
**Part B**  
**Disclosure of Lobbying Activities**

The filing of this form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

Each organization shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such organization. An event that materially affects the accuracy of the information reported includes:

- (a) Cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (b) Change in the organization(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - (c) Change in the officer(s), employee(s), or Member(s) of Congress contacted to influence or attempt to influence a covered Federal action
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include congressional district, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards, include but are not limited to, subcontracts, subgrants and contract awards under grants.
  5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include congressional district, if known.
  6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
  7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
  8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
  9. For a covered Federal action where there has been an award by the Federal agency, enter the Federal amount of the award for the prime entity identified in item 4 or 5.
  10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
  11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

## Contract Terms and Conditions

- A. Definitions as used in these Contract Terms and Conditions:
- *Contract, Interlocal Cooperation Contract, ICC* means the entire document, and all of TEA's attachments, appendices, schedules, exhibits (including but not limited to the Terms and Conditions and Attachments), amendments and extensions of or to the Interlocal Cooperation Contract
  - *Receiving Agency* means the Texas Education Agency, TEA or Party other than Performing Agency
  - *Performing Agency* means the Party to this Contract or Contractor other than TEA
  - *Project Manager/Administrator* means the respective person(s) representing TEA or Performing Agency, as indicated by the Contract, for the purposes of administering the Contract Project
  - *Contract Project* means the purpose intended to be achieved through the Contract
  - *Amendment* means a contract document used to formalize revisions to the Contract mutually agreed to by both Parties
- B. **Contingency:** The Contract, including any amendments, extensions or subsequent contracts are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this Contract or any other document, this Contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this Contract may be terminated by TEA at any time for any reason upon notice to Performing Party. Expenditures and/or activities for which Performing Party may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.
- C. **Indemnification:** For local educational agencies (LEAs), regional education service centers (ESCs), institutions of higher education (IHEs), and state agencies: Performing Party, to the extent permitted by law, shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising from, or in connection with, any acts of Performing Party in performance of the Contract Project.
- D. **Subcontracting and Substitutions:** Performing Party shall not assign, transfer or subcontract any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Performing Party. Substitutions are not permitted without written approval of the TEA Project Manager.
- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Performing Party to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- F. **Records Retention and the Right to Audit:** Performing Party shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Performing Party in connection with the Contract Project. These records and accounts shall be retained by Performing Party and made available for programmatic or financial audit by TEA and by others authorized by law or regulation to make such an audit for a period of not less than seven (7) years from the date of completion of the Contract Project or the date of the receipt by TEA of Performing Party's final claim for payment or final expenditure report in connection with this Contract, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed.
- The Parties acknowledge the state Auditor's authority to conduct audits of state agencies under Chapter 321, Texas Government Code. TEA reserves the right to monitor and audit the Performing Party's compliance with the requirements of this Contract.
- G. **Information Security Requirements: FERPA. Access to Confidential TEA Information.** Performing Party represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard Confidential Information and to protect it from unauthorized disclosure. Whenever communications with Performing Party necessitate the release of Confidential TEA Information, additional TEA Confidential forms will need to be signed by each individual who will require access to or may be exposed to that information. If Contractor discloses any TEA confidential information to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor. Whenever communications with Contractor necessitate the release of Confidential TEA Information, additional TEA Confidential forms will need to be signed by each individual who will require access to or may be exposed to that information. Contractor shall access TEA's systems or Confidential TEA Information only for the purposes for which it is authorized. TEA reserves the right to review the Contractor's security policy to ensure that any data that is on the Contractor's servers is secure. Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).
- Contractor shall ensure that any TEA Confidential Information in the custody of Contractor is properly sanitized or destroyed when the information is no longer required to be retained by TEA or Contractor in accordance with this Contract. Electronic media used for storing any Confidential TEA Information must be sanitized by clearing, purging or destroying in accordance with such standards established by the National Institute of Standards and

## **Contract Terms and Conditions**

Technology and the Center for Internet Security. These standards are also required if the Contractor is collecting, maintaining, or analyzing data gathered, collected, or provided under this Contract. Contractor must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

- 1) Date and time of sanitization/destruction
- 2) Description of the item(s) and serial number(s) if applicable
- 3) Inventory number(s)
- 4) Procedures and tools used for sanitization/destruction

No later than sixty (60) days from contract expiration or termination or as otherwise specified in this Contract, Contractor must complete the sanitization and destruction of the data and provide to TEA all sanitization documentation.

### **FERPA**

All information gathered, produced, derived, obtained, analyzed, controlled or Accessed by Performing Party in connection with this Contract ("Confidential Information") shall be and remain Confidential Information and shall not be released or disclosed by Performing Party without the prior written consent of the TEA, which consent must specifically identify the Confidential Information to be disclosed by Performing Party and the nature of the disclosure for which consent is sought.

Performing Party, its employees and subcontractor's, agree that in executing tasks on behalf of the TEA, they will not use any student-identifying information in any way that violates the provisions of FERPA, and will destroy or return all student-identifying information within sixty (60) days of project completion. Performing Party also agrees not to disclose any information to which it is privy under this Contract without the prior consent of the agency.

### **Access to Internal TEA Network and Systems**

As a condition of gaining remote access to any internal TEA network and systems, Contractor must comply with TEA's policies and procedures. TEA's remote access request procedures will require Contractor to submit TEA Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Contractor must be approved by TEA's Information Security Officer. TEA, in its sole discretion, may deny network or system access to any individual that does not complete the required forms. Contractor must secure its own connected systems in a manner consistent with TEA's requirements. TEA reserves the right to audit the security measures in effect on Contractor's connected systems without prior warning. TEA also reserves the right to immediately terminate network and system connections not meeting such requirements.

### **Disclosure of Security Breach**

Contractor shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Contractor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential Comptroller information ("Security Incident"). Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, Contractor shall provide a written report to TEA's Information Security Officer detailing the circumstances of the incident which includes at a minimum:

- 1) Description of the nature of the Security Incident
- 2) The type of TEA information involved
- 3) Who may have obtained the information
- 4) What steps Contractor has taken or will take to investigate the Security Incident
- 5) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident
- 6) A point of contact for additional information

Each day thereafter until the investigation is complete, Contractor shall provide TEA's Information Security Officer with a written report regarding the status of the investigation and the following additional information as it becomes available:

- 1) Who is known or suspected to have gained unauthorized access to TEA information
- 2) Whether there is any knowledge if TEA information has been abused or compromised
- 3) What additional steps Contractor has taken or will take to investigate the Security Incident
- 4) What steps Contractor has taken or will take to mitigate any negative effect of the Security Incident
- 5) What corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure

Contractor shall confer with TEA's Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. TEA reserves the right to conduct an independent investigation of any Security Incident, and should TEA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s). Subject to review and approval of TEA's Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements

## Contract Terms and Conditions

of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TEA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TEA by Contractor. If Contractor does not reimburse such costs within thirty (30) days of TEA's written request, then TEA shall have the right to collect such costs.

- H. **Point of Contact and Escalation:** All notices, reports and correspondence required by this Contract shall be in writing and delivered to the TEA Project Manager listed in 6.2 of this ICC. Within thirty (30) days of execution of a contract, the respective Parties will designate the next level of personnel within each organization to address conflicts or ambiguity that cannot be resolved at the Project Manager level.
- I. **Dispute Resolution:** The parties agree to use good-faith efforts to resolve questions, issues, or disputes of any nature that may arise under or by this Contract; provided, however nothing in this paragraph shall preclude either party from pursuing any remedies as may be available under Texas law.
- J. **Compliance with Laws:** Performing Party shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting Performing Party's performance, including if applicable, prompt payment and licensing laws and regulations. For the entire duration of the Contract, Performing Party shall maintain all required licenses, certifications, and any other documentation necessary to perform this Contract. When required or requested by the Agency, Performing Party shall furnish TEA with satisfactory proof of its compliance with this provision.
- K. **Governing Law:** This Contract is governed by and construed under and in accordance with the laws of the State of Texas. Any and all obligations under this Contract are due in Travis County and venue is proper only in such county.
- L. **Federal Regulations Applicable to All Federally Funded Contracts:** The Code of Federal Regulations (CFR) annual edition is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office. Website: [http://www.ecfr.gov/cgi-bin/text-idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
- M. **Public Information:** Parties acknowledge they are subject to the provisions of the Texas Public Information Act.
- N. **Assignment:** No assignment of this Contract or of any right accruing hereunder shall be made, in whole or part, by Performing Party without prior consent of TEA.
- O. **Excluded Parties List System:** The Texas Education Agency and the Performing Party must adhere to the directions provided in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism. That Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.sam.gov>.
- P. **Press Releases:** Performing Party will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Performing Party in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of TEA.
- Q. **Independent Contractor:** Performing Party shall serve as an independent Contractor in providing services under this Contract. Performing Party's employees are not and shall not be construed as employees or agents of the Texas Education Agency.
- R. **Termination:** This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract terms and conditions.
  - 1. **Termination for Convenience:** TEA may terminate this Contract at any time, in whole or in part, without penalty, by providing fifteen (15) calendar days advance written notice to the other Party. In the event of such a termination, the Performing Party shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by the Performing Party that are permitted, properly performed under this Contract and were incurred prior to the effective termination date.
  - 2. **Termination for Cause/Default:** If the Performing Party fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to the Performing Party, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

## Contract Terms and Conditions

TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies the Performing Party in writing prior to the exercise of such remedy.

The Performing Party shall remain liable for all covenants and indemnities under the Contract. The Performing Party shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.

3. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under this Contract.
4. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated work products and documentation obtained from the Performing Party under the Contract.
5. **Survival of Terms:** Termination of the Contract for any reason shall not release the Performing Party from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

**S. Amendments:** All Amendments to this Contract will be in a manner as prescribed by the Agency Contracting Process and are, subject to Paragraph B of the Terms and Conditions and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY INTERLOCAL COOPERATION CONTRACT form. All Amendments will be initiated by the TEA Contracts staff. An Amendment to this Contract will become effective on the date of signature of TEA or the effective date shown on the Amendment document whichever is first.

1. The Contractor is permitted to reallocate up to a cumulative 10% of the total budget among direct cost categories to meet unanticipated requirements without the issuance of a written Amendment as long as the total budget amount does not change. However, a revised budget document must be preapproved by the TEA Project Manager before the making the changes. Once approved, the documents must be submitted to the Contracts office for incorporation into the Contract file. Failure to submit the budget documents will result in invoices being rejected or payment delayed.
2. Written Amendments are required for the following Contract changes:
  - a. Any revision which would result in the need for additional funding;
  - b. Any revision to the scope of work, deliverables, or objectives of the Contract
  - c. A request to extend the period of the Contract;
  - d. Cumulative transfers among direct cost categories which exceed or are expected to exceed 25 percent of the current total approved budget category;
  - e. Any reduction of funds or reduction in the scope of work;
  - f. Whenever a line item within a class/object code is added;
  - g. An increase in the quantity of capital outlay item(s) requested; and
  - h. An increase or decrease in the number of positions charged to Contract.

**T. Electronic and Information Resources Accessibility Standards and Reporting:** State agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic Information Resources specified in 1TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

[Section 508 of the US Rehabilitation Act of 1973](#) has been revised and adopted. Therefore, all current and potential Contractors are hereby notified of the requirement. The current technical requirements for accessibility contained within this regulation form the basis for our Texas TAC rules on EIR Accessibility.

This refresh of 508 uses the [WCAG 2.0 AA Accessibility Guidelines](#) (also ISO/IEC standard 40500) as the new technical standard that Federal agencies are now required to meet when procuring products and services. With the adoption of 508 requirements being adopted, DIR will be modifying the TAC rules to synchronize with it.

Given this coming change, all Texas agencies and institutions of higher education have begun using or specifying WCAG 2.0 AA guidelines for the design of new websites or web applications. The rationale is twofold:

1. It could be technically difficult and expensive to bring these websites/applications to WCAG 2.0 AA later. WCAG 2.0 AA is a superior, more flexible standard and is in use all over the world. If a website is compliant with WCAG 2.0 AA, it will, by default comply with our current TAC rules on EIR Accessibility.

Web development Contractors should already be familiar with designing to this standard, and their ability to meet these standards should be a strong consideration in the selection process. The free online resources listed below are available to assist developers and content producers in transitioning to these guidelines.

[WCAG 2.0 at a glance](#)

[IBM Developer Guidelines Web Checklist](#)

[Webaim.org Accessibility Checklist](#)

Contractor must employ real users with disabilities for manual testing. Contract is required to provide a report that will include the results of auto-testing, screen-by-screen assessments, pass/fail status for each of the identified compliance standards to be met and recommendations for how to repair the screens/pages that do not meet the standards. Remediation recommendations shall be provided to the code level. The report should include documentation of the experience of real users with disabilities and may recommend techniques for improving the usable accessibility of the application. Awarded Vendor shall validate, by title, if all accessibility requirements have been met.

All websites must follow Federal 508 accessibility requirements and Web Content Accessibility Guidelines (WCAG) 2.0 AA standards and be tested for accessibility before acceptance by TEA. For sites developed outside of TEA, the contractor must contract with a third party with expertise and a proven track record in accessibility testing. The third party must evaluate the site and produce a report that verifies the site is compliant to (WCAG) 2.0 AA.

- U. Intellectual Property Ownership:** Contractor agrees that all Works are, upon creation, works made for hire and the sole property of TEA. If the Works are, under applicable law, not considered works made for hire, Contractor hereby assigns to TEA all worldwide ownership of all rights, including the Intellectual Property Rights, in the Works, without the necessity of any further consideration, and TEA can obtain and hold in its own name all such rights to the Works. Contractor agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by Contractor for the Contract Project, granting Contractor rights sufficient to support the performance and grant of rights to TEA by Contractor. Copies of such agreements shall be provided to TEA promptly upon request.

Contractor warrants that (i) it has the authority to grant the rights herein granted, (ii) it has not assigned or transferred any right, title, or interest to the Works or Intellectual Property Rights that would conflict with its obligations under the Contract, and Contractor will not enter into any such agreements, and (iii) the Works will be original and will not infringe any intellectual property rights of any other person or entity. These warranties will survive the termination of the Contract. If any preexisting rights are embodied in the Works, Contractor grants to TEA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such preexisting rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing. Contractor agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Contractor will provide TEA with documentation indicating a third party's written approval for Contractor to use any preexisting rights that may be embodied or reflected in the Works.

Contractor agrees, at Contractor's expense, to indemnify, hold harmless and defend TEA and the State from claims involving infringement of third parties' licenses, trademarks, copyrights or patents.

**For Colleges and Universities:** The foregoing Intellectual Property Ownership provisions apply to any colleges and universities and their employees, agents, representatives, consultants, and subcontractors; provided, that for all Works created or conceived by colleges or universities under the Contract, they are granted a non-exclusive, non-transferable, royalty-free license to use the Works for their own academic and educational purposes only. Colleges and universities are prohibited, however, from advertising, offering for sale, selling, distributing, publicly displaying, publicly performing, or reproducing the Works, or making derivative works from the Works that are created or conceived under this Contract, without the express written permission of TEA Legal Division.

- V. Criminal Background Checks:** If during the term of this Contract, Contractor, and/or Contractor staff, or subcontractor have access to Texas public school campuses, all Contractor and/or Contractor's staff must submit to a national criminal history record information review (includes fingerprinting) and meet all eligibility standards and criteria as set by Agency before serving in assignments on behalf of the Agency. This requirement applies to all individuals who currently serve or will serve in Agency assignments that have the possibility of direct contact with students. Assignments are contingent upon meeting Agency eligibility standards. Contractor and/or any staff member of Contractor who may perform services under this contract must complete this criminal history review before the beginning of an assignment. If said individuals have not completed this requirement or the review results in a determination that Contractor is not eligible for assignment, this Contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.