

STATE OF TEXAS §  
COUNTY OF TRAVIS §

Division Number:	213- College, Career & Military Prep	Program Name:	ECHS Application Reporting & Scoring System
Speed Chart:	7P027	Legal/Funding Authority:	TX Gov't Code § 771 Rider 64 and 57 Appropriations Act, Article III 84 <sup>th</sup> Texas Legislature, 2015
Payee Name:	University of Texas - Austin	Contract #:	<u>3711</u>
Payee ID:	37217217217	PO #:	36460

## INTERAGENCY CONTRACT

### **Section 1.0 AGENCIES AND AUTHORITY:**

This Interagency Contract (IAC) is entered into by and between the **Texas Education Agency** (Receiving Agency) and **University of Texas at Austin, The Center for STEM Education**, (Performing Agency) pursuant to the authority granted and in compliance with the provisions of the **Interagency Cooperation Act, Chapter 771, of the Texas Government Code** which enables state agencies to contract with other 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 IAC.

### **Section 3.0 TERM OF CONTRACT:**

This IAC is to begin on May 1, 2017, and shall terminate on August 31, 2017. Contract may be renewed for up to two, two-year terms, under the same or different conditions, as mutually agreed upon by both Agencies and subject to appropriation of funds by the Texas Legislature for this project. If renewed, the first renewal would be from September 1, 2017 to August 31, 2019, and the second renewal from September 1, 2019 to August 31, 2021.

### **Section 4.0 AMOUNT:**

The total amount of this IAC shall not exceed \$ 150,000.00, for the initial term of the IAC. APPENDIX TWO, BUDGET, attached hereto, is hereby incorporated by reference and made, therefore, a part of this IAC.

### **Section 5.0 PAYMENT FOR SERVICES:**

Texas Education Agency (TEA) shall pay Performing Agency accordance with the approved budget to provide the services and/or resources described in this IAC. TEA shall pay for services received from the appropriation item or account from which the TEA would ordinarily make expenditures for similar services or resources. Payments received by the Performing Agency shall be credited to its current appropriation item(s) or account(s) from which the expenditure for the services or resources were made.

Performing Agency shall bill the TEA monthly for services rendered in accordance with the provisions of the IAC. Performing Agency may submit invoices electronically to the following email address: [TEAAccountsPayable@tea.texas.gov](mailto:TEAAccountsPayable@tea.texas.gov) or the Performing Agency can direct invoices to:

Texas Education Agency  
Attn: Accounting Department  
1701 N. Congress Avenue, Suite 2-125  
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](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 – **textravel**: <https://fm.x.cpa.state.tx.us/fmx/travel/textravel/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 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 01/01/17, the mileage rate is 53.5¢ the previous rate (1/1/16-12/31/16) was .54¢.

#### **Section 6.0 CONTRACT MANAGEMENT:**

**6.1 Notices:** Any notice relating to this IAC, which is required or permitted to be given under this IAC by one Agency to the other Agency shall be in writing and shall be addressed to the Receiving Agency at the email address specified below.

**6.2 Points of Contact:** Agencies shall direct all correspondence and notices related to the contract to:

<b>TEA</b> (Receiving Agency)	<b>UNIVERSITY OF TEXAS AT AUSTIN</b> (Performing Agency)
Stacy Avery	Carol Fletcher
Director, High School Programs	Deputy Director
College, Career and Military Prep	The Center for STEM Education
Texas Education Agency	University of Texas
<a href="mailto:Stacy.Avery@tea.texas.gov">Stacy.Avery@tea.texas.gov</a>	<a href="mailto:Carol.Fletcher@utexas.edu">Carol.Fletcher@utexas.edu</a>
1701 N. Congress Avenue	1912 Speedway, STOP 5500
Austin, Texas 78701	Austin, TX 78712

#### **Section 7.0 CONTRACT AMENDMENT:**

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

#### **Section 8.0 ENTIRE CONTRACT:**

This contract together with the documents mentioned herein and which are incorporated herein by this reference, contains the entire agreement between the Agencies 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 Agencies.

##### **8.1 Appendixes:**

**8.1.1** APPENDIX ONE, DESCRIPTION OF SERVICES

**8.1.2** APPENDIX TWO, BUDGET

**8.1.2** APPENDIX THREE, PROJECT ESTIMATE

##### **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 - AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING Between THE TEXAS EDUCATION AGENCY ("TEA") and THE UNIVERSITY OF TEXAS SYSTEM ("UTS") Regarding Copyrights in Works Created by UTS Component Institutions with TEA Funding



☐ Special Provisions B – Debarment and Suspension Certification

☐ Special Provisions C – Lobbying Certification

**Section 9.0 CERTIFICATIONS:**

**RECEIVING AGENCY** further certifies that it has the authority to receive the above services by authority granted in: Texas Government Code, Chapter 771, Interagency Cooperation Act.

**PERFORMING AGENCY** further certifies that it has authority to perform the above services by authority granted in: Texas Government Code, Chapter 771, Interagency Cooperation Act.

<p>Subject to approval, the authorized representatives of the undersigned Agencies bind themselves to the faithful performance of this IAC. It is mutually understood that this IAC will be effective on the date shown in Section 3.0 or upon signature of TEA whichever is later.</p>	
<p><b>RECEIVING AGENCY</b></p> <p><b>TEXAS EDUCATION AGENCY</b></p>	<p><b>PERFORMING AGENCY</b></p> <p><b>UNIVERSITY OF TEXAS AT AUSTIN</b></p>
<p>By: </p> <p>Kara Belew Deputy Commissioner Finance Administration</p>	<p>By: </p> <p>Linda Shaunessy Business Contracts Administrator</p>
<p><u>5-8-17</u></p> <p>Date</p>	<p><u>4/28/2017</u></p> <p>Date</p>
<p>Submit Electronic Copy to <a href="mailto:TEAContracts@tea.texas.gov">TEAContracts@tea.texas.gov</a> Or by mail to: Norma Barrera Purchasing, Contracts and Agency Services Texas Education Agency 1701 North Congress Avenue, Room 2-125 Austin, Texas 78701-1494</p>	

## APPENDIX ONE – DESCRIPTION OF SERVICES

### A. Purpose and Objectives:

Maintain, revise, and host the online designation application for T-STEM Academies and Early College High Schools (ECHS) Provide technical support for TEA staff, applicants and reviewers during the designation process. The contractor will perform the following tasks as part of the maintenance, revision, hosting, and technical assistance responsibility for the online application portal:

- Maintenance and hosting
  - Applications will be accessible through standard web browsers without the need for unique software installations.
  - Applications will be accessible 24/7
  - Solution will allow TEA staff and/or external reviewers to review and score all applications online without the need for any additional software
- Revisions
  - Modify application based on the necessary application revisions provided by TEA on a timeline, jointly agreed upon, based on the depth and complexity of the revisions
  - Modify the reviewer interface based on the necessary revisions provide by TEA on a timeline, jointly agreed upon, based on the depth and complexity of the revisions
- Technical support
  - Provide application support during traditional business hours by phone and email
  - Provide TEA with summary reports that may include, but are not limited to:
    - Exports of application data including
      - Copies of electronic documents such as: full and abbreviated applications and required uploaded documents
      - Exports of reviewers scores and comments
  - Monitor system to make minor modifications to the applications as necessary based on specific requests from TEA to improve functionality

### B. Tasks and Schedule of Major Activities

TASK/ACTIVITY		COMPLETION DATE	ESTIMATED HOURS
<b>TASK 1: ANALYSIS AND DESIGN</b>			<b>70 hours</b>
1.1	Initial Discovery	8/31/17	
1.2	Feature and Entity Planning	8/31/17	
1.3	Sketch Prototypes	8/31/17	
1.4	Product Prototypes	8/31/17	
<b>TASK 2: DATABASE DEVELOPMENT</b>			<b>72 hours</b>
2.1	Tables	8/31/17	
2.2	Relationships	8/31/17	
2.3	Fields	8/31/17	
2.4	User Permissions Modeling	8/31/17	
<b>TASK 3: USER INTERFACES</b>			<b>252 hours</b>
3.1	Application End-User Base Layout Design	8/31/17	
3.2	Scoring End-User Base Layout Design	8/31/17	
3.3	TEA User Panel	8/31/17	
3.4	Admin User Panel	8/31/17	
<b>TASK 4: FEATURES</b>			<b>136 hours</b>
4.1	Application Completion Tracker	8/31/17	
4.2	Scoring Completion Tracker	8/31/17	
4.3	Document Upload	8/31/17	
4.4	Front-End Pre-Validation Alerts	8/31/17	
4.5	Back-end Validation Alerts	8/31/17	
4.6	Dynamic PDF Generation	8/31/17	

## APPENDIX ONE – DESCRIPTION OF SERVICES

4.7	Automated Report Generation	8/31/17	
4.8	Automated Email Generation	8/31/17	
4.9	Prior Year Data Auto-Completion	8/31/17	
<b>TASK 5: OTHER INTERFACE DEVELOPMENT</b>			<b>110 hours</b>
5.1	Application Testing and Bug Resolution	8/31/17	
5.2	Scoring Testing and Bug Resolution	8/31/17	
5.3	Client-Developer Final Product Feature and Function Negotiations	8/31/17	
<b>TASK 6: SECURITY</b>			<b>72 hours</b>
6.1	Cross-site scripting (XSS) and SQL Injection Prevention	8/31/17	
6.2	Front-end Validation	8/31/17	
6.3	Back-end Validation	8/31/17	
6.4	User Account Privilege Authentication	8/31/17	
<b>TASK 7: APPLICATION DEVELOPMENT SUPPORT</b>			<b>35.60 hours</b>
7.1	Lead Sponsor Time and Effort	8/31/17	
<b>TOTAL ESTIMATED HOURS</b>			<b>747.60 hours</b>

### C. Deliverables and Acceptance Requirements

The contractor will deliver complete online application by the end of the contract period. Contractor and TEA program staff will develop interim timelines based on TEA anticipated public release of each application. The project schedule may be amended upon agreement by both UT Austin and TEA's program manager.

### D. Reporting

Contractor will deliver monthly invoices that detail the work completed for the time period. TEA will continually test the system prior to and during the designation window to determine functionality. If the application is determined to not be functioning correctly, a report will be requested on the status and length of time necessary for full functionality.

At a minimum, Performing Agency must provide a detailed narrative report with each invoice with to Stacy Avery at [Stacy.Avery@tea.texas.gov](mailto:Stacy.Avery@tea.texas.gov). The report must describe the specific work completed during the invoice period and cumulative completion status of all tasks. The report must provide sufficient detail to provide evidence of the reasonable use of project funds and satisfactory performance of services.

## APPENDIX TWO - BUDGET

Activity	Hours	Cost
1. Analysis and Design	70	\$10,500
2. Database Development	72	\$10,800
3. User Interfaces	252	\$37,800
4. Features	136	\$20,400
5. Interface Development	110	\$16,500
6. Security	72	\$10,800
7. Application Development Supt & Other fees	35.6	\$18,200
<b>TOTAL</b>	<b>747.6</b>	<b>\$125,000</b>
Servicing fee		\$25,000
<b>TOTAL BUDGET</b>		<b>\$150,000</b>

Category Hourly Totals							
Analysis and Design	Database Development	User Interfaces	Features	Interface Development	Security	Other Fees	Total Hours
			8				
			8				
			8				
			8				
			8				
		120	32		8		
	24	80	40	40	24		
	40	40	16	30	24		
	8	12	8	40	16		
<b>70</b>	<b>72</b>	<b>252</b>	<b>136</b>	<b>110</b>	<b>72</b>	<b>35.6</b>	<b>747.6</b>

## APPENDIX THREE - PROJECT ESTIMATE



The University of Texas at Austin  
Center for STEM Education  
College of Education



# Texas Education Agency APPLICATION REPORTING & SCORING SYSTEM For Early College High Schools Project Estimate

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## Overview

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### 1. General Information

This proposal details the billed line items found in the application line item breakdown document. The application reporting and scoring system to be built for the TEA is intended for use by school representatives, third-party reviewers, the TEA, and the University of Texas at Austin College of Education Center for STEM Education technical support team. The application will be built using a modern web framework, hosted by the University of Texas at Austin, and will be accessible via any modern web browser. No third-party software will be required to access the application or any of its features.

## Analysis & Design

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### 1. Feature Planning

- 1.1. Initial Discovery – Site and phone meetings with TEA leaders to delineate project objectives, deliverables and other requirements.
- 1.2. Feature and Entity Planning -- Subject to some revision as new facts emerge during development.
- 1.3. Sketch Prototypes -- Models for project design interface.
- 1.4. Product Prototypes – Working product prototypes with basic functionality.

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## Analysis & Design

Total Hours:	70.00
Total Price:	\$10,500.00



## APPENDIX THREE - PROJECT ESTIMATE

### Development

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#### 1. Database Development

Tables are data structures used to collect record data in the form of fields. Many of these fields are attributes that support the purpose of the table. These fields include text, dates, calculations and other data types.

1.1. Tables – 6--8 Primary Tables, 8--12 Secondary tables, 6--8 Supporting tables	12.00
1.2. Relationships – 25--35 Relationship Structures – relating tables to one another	12.00
1.3. Fields – Approximately 600 Fields added to tables	40.00
1.4 User Permissions Modeling – Limit table access based on user permission types	8.00

Total Hours:	72.00
Total Price:	\$10,800.00

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#### 2. User Interfaces

There are four core components planned for this user interface with two distinct end--user facing applications. The application interface, scoring interface, TEA user panel, and admin user panel will all be accessed by different sets of people.

2.1. Application End--User Base Layout Design – the functional base layout includes pieces such as main navigation, secondary navigation, data views, page footers, control panel menus, action menus, and site mapping. Pages are built on top of the base layout to create dynamic web pages	120.00
2.2. Scoring End--User Base Layout Design – the functional base layout includes pieces such as main navigation, secondary navigation, data views, page footers, control panel menus, action menus, and site mapping. Pages are built on top of the base layout to create dynamic web pages	80.00
2.3. TEA User Panel – Basic panel to access created applications, export reports, and send automated emails	40.00
2.4. Admin User Panel – Basic panel to access created applications, export reports, and send automated emails built on top of TEA User Panel	12.00

Total Hours:	252.00
Total Price:	\$37,800.00

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#### 3. Features

Below is a list of planned features for the application. Features are built on top of the application after all base elements are designed and implemented.

3.1. Application Completion Tracker – A feature to show an application end user what parts of their application are completed.	8.00
3.2. Scoring Completion Tracker – A feature to show a scoring end user what parts of their application are scored.	8.00
3.3. Document Upload – The capability for applicants to upload documents to secure UT storage.	8.00
3.4. Front--end Pre--Validation Alerts – Alerts application and scoring end--users when entered data will not be accepted by the server.	8.00
3.5. Back--end Validation Alerts – Alerts application and scoring end--users when entered data has not been accepted by the server for reasons other than incorrect entry.	8.00
3.6. Dynamic PDF Generation – Push--button creation of application in PDF format.	32.00
3.7. Automated Report Generation – Export of reporting data from TEA User Panel and Admin User Panel	40.00
3.8. Automated Email Generation – Emails sent out by the server for account creation, password retrieval, and application status updates	16.00
3.9 Prior Year Data Auto--Completion – Auto--fill contact information data from prior application years	8.00

Total Hours:	136.00
Total Price:	\$20,400.00



## APPENDIX THREE - PROJECT ESTIMATE

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### 4. Other Interface Development

After the initial creation of user interfaces and features for the ECHS application, the application will need to be tested and cleared of all identifiable bugs. Additionally, final negotiations between the TEA and the development team concerning application function will need to be completed with adjustments to the application made where necessary.

4.1. Application Testing and Bug Resolution – Time spent testing to discover bugs and time to fix them	40.00
4.2. Scoring Testing and Bug Resolution – Time spent testing to discover bugs and time to fix them	30.00
4.3. Client–Developer Final Product Feature and Function Negotiations – The development team will work with the TEA to make sure all features function as expected and make changes where necessary.	40.00

Total Hours:	110.0
Total Price:	\$16,500.00

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### 5. Security

Multiple levels of security will be implemented across the application to ensure data and user integrity.

1.1. Cross–site scripting (XSS) and SQL Injection Prevention	8.00
1.2. Front–end Validation – Security check at every input opportunity to check for malicious entry	24.00
1.3. Back–end Validation – Security measures at a sever level to prevent entry of malicious entries into the database	24.00
1.4. User Account Privilege Authentication – Authenticate access to each part of the site with the type of user privilege set	16.00

Total Hours:	72.00
Total Price:	\$10,800.00

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## APPENDIX THREE PROJECT ESTIMATE

### **Application Development Support**

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#### **1. Other Fees**

1.1. Hardware – Procure new hardware for new staff to develop application	
\$2,028.00	
1.2. Initial Server Acquisition Fee -- The server is where the actual application sits and is backed up, physically secured on	
The University of Texas at Austin's property.	\$10,832.00
1.3. Lead Sponsor Time and Effort 5% Time @ 150/hr-- 35.60 Hours	\$5,340.00
<b>Total Price:</b>	<b>\$18,200.00</b>

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### **Analysis, Development and Support Total**

<b>Total Hours:</b>	<b>747.60</b>
<b>Total Price:</b>	<b>\$125,000.00</b>

### **Servicing Fee**

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#### **1. College of Education Servicing Fee**

1.1. College of Education Servicing Fee @ 20%	\$25,000.00
<b>Total Price:</b>	<b>\$25,000.00</b>

### **Summary**

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<b>Total Estimated Project Hours:</b>	<b>747.60</b>
<b>Total Estimated Project Price:</b>	<b>\$125,000.00</b>
<b>UT College OF Education Servicing Fee (20%)</b>	<b>\$25,000.00</b>
<b>TOTAL</b>	<b>\$150,000.00</b>

### **Schedule**

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#### **Project Development Stages**

THE PROJECT IS PLANNED TO BE COMPLETED IN FIVE MONTHS

<b>Task</b>	<b>Time Line</b>
<b>APPLICATION</b>	
<i>Application Development</i>	<i>4/1 – 8/31</i>
<i>Meetings with TEA</i>	<i>Monthly</i>

## APPENDIX THREE PROJECT ESTIMATE

<i>Completed Beta Version for Review</i>	<i>7/31</i>
<i>Delivery of Application</i>	<i>8/31</i>

### DELIVERABLES

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#### 6. Project Deliverables

6.1 Application and scoring system developed for ECHS designation.

6.2 Components of the system will include

6.2a Applications

6.2b Scoring

6.2c System reports for TEA

6.2d Field reports from schools

6.2e Tech support for TEA and end users

6.3 Authentication will be provided so applicants will be driven to the correct application based on Campus ID.

## CONTRACT TERMS AND CONDITIONS

### A. Definitions as used in these Contract Terms and Conditions:

1. *Contract, Interagency Contract, IAC* means the document entered into between TEA and Performing Agency including 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 Interagency Contract;
2. *TEA, Receiving Agency* means the Texas Education Agency;
3. *Performing Agency* means the party to this Contract or Contractor other than TEA;
4. *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;
5. *Contract Project* means the purpose intended to be achieved through the Contract;
6. *Amendment* means a contract document used to formalize additions or changes to the Contract mutually agreed to by both Parties;
7. *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Performing Agency for or on behalf of TEA at any time after the beginning date of the Contract. "Works" includes but is not limited to computer software, data, information, images, illustrations, designs, graphics, drawings, educational materials, assessment forms, testing materials, logos, trademarks, patentable materials, etc. "Works" does not include any pre-existing materials of Performing Agency, or any licensed third party materials provided by Performing Agency;
8. *Intellectual Property Rights* means the worldwide intangible legal rights or interests evidenced by or embodied in: (a) any idea, design, concept, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (b) any work of authorship, including any copyrights, moral rights or neighboring rights; (c) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (d) domain name registrations; and (e) any other similar rights. The Intellectual Property Rights of a party include all worldwide intangible legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses;
9. *TEA Confidential Information* means information that is confidential under the provisions of the Family Educational Rights and Privacy Act (FERPA), the Texas Public Information Act, or other applicable state or federal laws. Examples of TEA Confidential Information include: (a) personally identifiable student information; (b) social security numbers; (c) driver's license numbers; (d) criminal background checks; (e) e-mail address of a member of the public, unless the individual waives his or her right to e-mail confidentiality by affirmatively consenting to disclose the e-mail address or the individual seeks to contract or has a contract with TEA; (f) certain personnel information concerning a TEA employee including home address, home telephone number, emergency contact information, and family member information (if the employee elects in writing to keep this information confidential), personal medical information, and information reflecting personal financial decisions such as the employee's choice of insurance carrier or choice to contribute money to a 401(k); (g) biometric identifiers such as fingerprints; (h) information about security vulnerabilities in TEA systems; and (i) SAS data sets.

- B. Funding Out Clause:** This Contract is contingent upon the availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, 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 Agency. Expenditures and/or activities for which Performing Agency may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.
- C. Indemnification:** For public institutions of higher education (IHEs), and state agencies: Performing Agency, 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 Agency in performance of the Contract.
- D. Assignments, Transfers, Subcontracting and Substitutions:** Performing Agency shall not assign, transfer, subcontract or substitute any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Performing Agency. Substitutions are not permitted without written approval of the TEA Project Manager. Performing Agency shall also create and maintain a monitoring report to document that it is diligently monitoring and enforcing subcontractor compliance with the Contract. When requested by TEA, Performing Agency shall furnish TEA with satisfactory proof of its compliance with this provision.
- 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 Agency 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 Agency shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Performing Agency in connection with the Contract Project. These records and accounts shall be retained by Performing Agency 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 Agency'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.

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of Performing Agency or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Performing Agency or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Performing Agency or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Performing Agency will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Performing Agency and the requirement to cooperate is included in any subcontract it awards.

Performing Agency further agrees that acceptance of funds under this Contract acts as acceptance for TEA to conduct an audit or investigation in connection with those funds. Performing Agency, subcontractors, and any entities receiving funds through this Contract shall cooperate fully with TEA in the conduct of the audit or investigation, including providing all records pertaining to this Contract that are requested.

- G. Intellectual Property Ownership:** Performing Agency 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, Performing Agency 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. Performing Agency agrees to maintain written agreements with all officers, directors, employees, agents, representatives and subcontractors engaged by Performing Agency for the Contract Project, granting Performing Agency rights sufficient to support the performance and grant of rights to TEA by Performing Agency. Copies of such agreements shall be provided to TEA promptly upon request.

Performing Agency 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 Performing Agency 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, Performing Agency 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. Performing Agency agrees to notify TEA on delivery of the Works if they include any such preexisting rights. On request, Performing Agency will provide TEA with documentation indicating a third party's written approval for Performing Agency to use any preexisting rights that may be embodied or reflected in the Works.

Performing Agency agrees, at Performing Agency'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's Office of Deputy Commissioner for Finance.

- H. Information Security Requirements, FERPA and Confidential Information:**  
Access to TEA Confidential TEA Information

Performing Agency represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard TEA Confidential Information and to protect it from unauthorized disclosure. Whenever communications with Performing Agency necessitate the release of TEA Confidential 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 Performing Agency discloses any TEA Confidential Information to a subcontractor or agent, Performing Agency will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Performing Agency. Whenever communications with Performing Agency necessitate the release of TEA Confidential 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. Performing Agency shall access TEA's systems or TEA Confidential Information only for the purposes for which it is authorized. TEA reserves the right to review the Performing Agency's security policy to ensure that any data that is on the Performing Agency's servers is secure. Performing Agency shall cooperate fully by making resources, personnel, and systems access available to TEA and TEA's authorized representative(s).

Performing Agency shall ensure that any TEA Confidential Information in the custody of Performing Agency is properly sanitized or destroyed when the information is no longer required to be retained by TEA or Performing Agency in accordance with this Contract. Electronic media used for storing any TEA Confidential Information must be sanitized by clearing, purging or destroying in accordance with such standards established by the National Institute of Standards and Technology and the Center for Internet Security. These standards are also required if the Performing Agency is collecting, maintaining, or analyzing data gathered, collected, or provided under this Contract. Performing Agency 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); and
4. Procedures and tools used for sanitization/destruction.

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

#### Access to Internal TEA Network and Systems

As a condition of gaining remote access to any internal TEA network and systems, Performing Agency must comply with TEA's policies and procedures. TEA's remote access request procedures will require Performing Agency to submit TEA Applicable Access Request forms for TEA's review and approval. Remote access technologies provided by Performing Agency 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. Performing Agency 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 Performing Agency'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

Performing Agency shall provide notice to TEA's Project Manager and TEA's Information Security Officer as soon as possible following Performing Agency's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or TEA Confidential Information ("Security Incident"). Within 24 hours of the discovery or reasonable belief of a Security Incident, Performing Agency 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 Performing Agency has taken or will take to investigate the Security Incident;
5. What steps Performing Agency has taken or will take to mitigate any negative effect of the Security Incident; and
6. A point of contact for additional information.

Each day thereafter until the investigation is complete, Performing Agency 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 Performing Agency has taken or will take to investigate the Security Incident;

4. What steps Performing Agency has taken or will take to mitigate any negative effect of the Security Incident; and
5. What corrective action Performing Agency has taken or will take to prevent future similar unauthorized use or disclosure.

Performing Agency 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, Performing Agency 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, Performing Agency, at its own cost, shall provide notice that satisfies the requirements 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 Performing Agency. If Performing Agency does not reimburse such costs within 30 days of TEA's written request, then TEA shall have the right to collect such costs.

- I. **Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Performing Agency pursuant to this Contract, Performing Agency shall pay the money due to TEA within 30 days of Performing Agency's receipt of written notice that such money is due to TEA. If Performing Agency fails to make timely payment, TEA may obtain such money from Performing Agency by any means permitted by law.
- J. **Capital Outlay:** If Performing Agency purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Performing Agency for the period of the Contract. TEA reserves the right to transfer capital outlay items for Contract noncompliance during the Contract period or as needed after the ending date of the Contract. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Performing Agency's accounting record. This provision is applicable when federal funds are utilized for the Contract.
- K. **Governing Law, Venue, and Jurisdiction:** 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 Travis County.
- L. **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 IAC. Within 30 days of execution of this 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.

TEA	CONTRACTOR
Quentin Suffren	Linda Shaunessy
Texas Education Agency	University of Texas at Austin
1701 N. Congress Ave	PO Box 8179
Austin, Texas 78701	Austin, Texas 78713-8179
<a href="mailto:Quentin.Suffren@tea.texas.gov">Quentin.Suffren@tea.texas.gov</a>	<a href="mailto:shaunessy@austin.utexas.edu">shaunessy@austin.utexas.edu</a>

- M. **Federal Rules, Laws, and Regulations That Apply to all Federal Programs:** Performing Agency shall be subject to and shall abide by all federal laws, rules, and regulations, pertaining to the Contract Project, including, but not limited to:
  1. Family Educational Rights and Privacy Act of 1975, as amended, and the implementing regulations contained in 34 CFR, Part 99, if Contractor is an educational institution;
  2. General Education Provisions Act, as amended.

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)

- N. **Signature Authority, Final Expression, and Superseding Document:** Performing Agency certifies that the person signing this Contract has been properly delegated this authority. The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended only by formal written amendment properly executed by both TEA and Performing Agency.



- O. **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.
- P. **Compliance with Laws:** Performing Agency 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 Agency's performance, including if applicable, prompt payment and licensing laws and regulations. For the entire duration of the Contract, Performing Agency shall maintain all required licenses, certifications, and any other documentation necessary to perform this Contract. When required or requested by the Agency, Performing Agency shall furnish TEA with satisfactory proof of its compliance with this provision.
- Q. **Public Information:** The Parties acknowledge they are subject to the provisions of the [Texas Public Information Act](#).
- R. **Gratuities:** By signing this Contract, Performing Agency represents and warrants that Performing Agency has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the project.
- S. **Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- T. **Criminal Background Checks:** If during the term of this Contract, Performing Agency, and/or Performing Agency's staff, or subcontractor have access to Texas public school campuses, all Performing Agency and/or Performing Agency's staff must submit to a national criminal history record information review (includes fingerprinting) and meet all eligibility standards and criteria as set by TEA before serving in assignments on behalf of TEA. This requirement applies to all individuals who currently serve or will serve in TEA assignments that have the possibility of direct contact with students. Assignments are contingent upon meeting TEA eligibility standards. Performing Agency and/or any staff member of Performing Agency 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 Performing Agency is not eligible for assignment, this Contract will be terminated effective immediately or the date of notice of non-eligibility, whichever is earliest.
- U. **Assignment:** No assignment of this Contract or of any right accruing hereunder shall be made, in whole or part, by Performing Agency without prior consent of TEA.
- V. **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 [1 TAC 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.
2. 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.

- W. Excluded Parties List System:** The Texas Education Agency and the Performing Agency 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>.
- X. Social Security Numbers (SSNs) Withheld:** TEA will not provide SSNs to any Performing Agency under this Contract unless specifically specified as part of the Contract Project requirements. TEA, Performing Agency and its subcontractors, will not require or request school districts to provide SSNs under this Contract. Performing Agency agrees that in executing tasks on behalf of 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 to TEA within 30 days of project completion. An authorized officer of the Performing Agency must certify that ALL records have either been properly destroyed or returned to TEA in order to close out the Contract.
- Y. Nondisclosure and Press Releases:** All information gathered, produced, derived, obtained, analyzed, controlled or Accessed by Performing Agency in connection with this Contract shall be and remain confidential and shall not be released or disclosed by Performing Agency without the prior written consent of the TEA, which consent must specifically identify the confidential information to be disclosed by Performing Agency and the nature of the disclosure for which consent is sought. Performing Agency, its employees and subcontractor's, agree that in executing tasks on behalf of the TEA. Performing Agency also agrees not to disclose any information to which it is privy under this Contract without the prior consent of the agency. Performing Agency will not make any press releases, public statements, or advertisement referring to the Contract Project or the engagement of Performing Agency in connection with the Contract Project, or release any information in relation to the Contract Project for publication, advertisement or any other purpose without the prior written approval of TEA.
- Z. Independent Contractor:** Performing Agency or Performing Agency's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any purchase order resulting from this Contract. Performing Agency or Performing Agency's employees, representatives, agents and any subcontractors shall not be employees of TEA. Should Performing Agency subcontract any of the services required in this Contract, Performing Agency expressly understands and acknowledges that in entering into such subcontract(s), TEA is in no manner liable to any subcontractor(s) of Performing Agency. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Contract.
- AA. 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 15 calendar days' advance written notice to the Performing Agency. In the event of such a termination, the Performing Agency 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 Agency 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 Agency 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 Agency, 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.

TEA may exercise any other right, remedy or privilege which may be available to it under applicable law. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies the Performing Agency in writing prior to the exercise of such remedy.

The Performing Agency shall remain liable for all covenants and indemnities under the Contract. The Performing Agency 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 Agency under the Contract.
5. **Survival of Terms:** Termination of the Contract for any reason shall not release the Performing Agency 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.

**BB. 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 the AMENDMENT TO TEA INTERAGENCY CONTRACT form. All Amendments will be initiated by the TEA Purchasing and 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. All amendments must be signed by both parties.

1. The parties are permitted to re-budget among direct cost categories within the approved budget to meet unanticipated requirements and to make limited changes to the approved budget 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 TEA Purchasing and 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.

**CC. Payment:** Payment for goods or services purchased with state-appropriated funds will be issued by electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Invoices must be submitted to [TEAAccountsPayable@tea.texas.gov](mailto:TEAAccountsPayable@tea.texas.gov) and the TEA Project Manager. Any payment owed by TEA must be transmitted electronically to Contractor no later than 30 days after the later of:

1. Day on which TEA received the goods;
2. Date the performance of the service under the Contract is completed; or
3. Day on which TEA received the complete and correct invoice for goods or services.

Prior to authorizing payment to Performing Agency, TEA shall evaluate Performing Agency's performance using the performance standards set forth in all documents constituting this Contract. Performing Agency shall provide invoices to TEA for deliverables or services provided/performed. Invoices must be submitted not later than the 15th day of the month after the deliverables are completed. No payment whatsoever shall be made under this Contract without the prior submission of detailed, correct invoices. Subject to the foregoing, TEA must make all payments in accordance with the Texas Prompt Payment Act, [Texas Government Code Chapter 2251](#). Payments

under this Contract are subject to the availability of appropriated funds. Performing Agency acknowledges and agrees that payments for services provided under this Contract are contingent upon TEA's receipt of funds appropriated by the Texas Legislature.

**DD. Prohibition of text messaging and emailing while driving during official federal grant business:** Federal grant recipients and their grant personnel are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," effective October 1, 2009.

**EE. Applicable Law and Conforming Amendments:** Performing Agency must comply with all laws, regulations, requirements and guidelines applicable to a Performing Agency providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TEA reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TEA or Performing Agency's compliance with all applicable State and federal laws, and regulations.

## **SPECIAL PROVISIONS A - PROGRAM SPECIFIC**

### **AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING Between THE TEXAS EDUCATION AGENCY ("TEA") and THE UNIVERSITY OF TEXAS SYSTEM ("UTS") Regarding Copyrights in Works Created by UTS Component Institutions with TEA Funding**

#### **PURPOSE:**

The purpose of the Memorandum of Understanding (MOU) is to establish the respective responsibilities and roles of each participating agency with respect to ownership and use of copyrights in works created with funding through TEA.

#### **BACKGROUND:**

The parties have previously entered into one or more agreements detailing how copyrights in materials created by a UTS component institution with funding through TEA would be owned and managed. They now desire to consolidate and amend the terms of their earlier agreements. This document describes their consolidated and amended agreement, and hereby terminates the earlier agreements, superseding the earlier terms.

#### **PARTICIPATING AGENCIES:**

UTS and TEA are the participants in this MOU regarding copyright.

#### **BINDING:**

All aspects of this agreement regarding copyrights are binding upon TEA, UTS and UTS's component institutions.

#### **AREAS OF AGREEMENT IDENTIFIED IN DETAIL BELOW:**

- Ownership of existing copyrights
  - Copyright of new course content
  - Distribution and pricing
  - Licensing
  - Dispute resolution
  - Royalties
  - Revisions
  - Enforcement
  - Audit rights; records; reports
- 
- FURTHER DETAILS REGARDING THE ABOVE AREAS OF AGREEMENT:

- **Ownership of Existing Copyrights**

UTS or its component institutions shall maintain exclusive ownership of their pre-existing content, including but not limited to the materials described in any funding agreement or amendment thereto executed by a component institution and TEA.

- **Copyright and Use of New Course Content, Materials, and Products**

All course content, materials and products created by a UTS component, its employees, agents, consultants or subcontractors arising out of a contract project as may be specifically described in any funding agreement or amendment thereto executed by a UTS component institution and TEA shall be the joint property of UTS or its component and TEA, and any use thereof must be licensed as set forth herein. Unless otherwise provided, UTS shall be responsible for all administrative responsibilities associated with the activities set forth herein. UTS shall be responsible for filing all copyright and trademark, etc. registrations for materials jointly owned by the parties.

- **Faculty and Graduate Student Research Results**

In accordance with UTS's mission to publish the results of its research and its Intellectual Property Policy, which allocates ownership of publications containing research results to their authors, the faculty and students who conduct research pursuant to this agreement shall own and be free to publish the results.

- **Commercial Activity Not Expected**

UTS and TEA do not anticipate any use for the deliverables hereunder outside the work-scope. The parties agree, however, that they shall jointly own the copyright therein and that if it appears likely that a work whose creation was funded through this contract may be commercialized by either of them, in consideration of the funding provided hereunder by TEA and the work performed by UTS, they will agree upon royalty-sharing and other provisions as set forth in this MOU. For purposes of this section, commercialized shall mean commercial sales or licenses of a work product to entities for their independent use outside the scope of uses contemplated by the project receiving TEA funding.

- **Distribution and Pricing**

All course content for which TEA and UTS or its component institutions hold joint copyright ownership shall be distributed within the State of Texas in accordance with instructions set forth in the funding agreement for that particular project.

- **Royalties**

TEA and UTS shall share Net Royalties (defined below) from the licensing

of all materials for which TEA and UTS hold joint copyright ownership evenly (50/50); provided that such royalty-sharing percentage shall be equitably adjusted by mutual agreement of the parties when TEA funding supports the further development, significant modification or improvement of preexisting materials that were created with non-TEA funding.

Net Royalties shall mean gross royalties received by UTS from the sale or license of products covered hereunder, less amounts UTS actually paid or allowed for direct costs to manufacture, distribute, print or otherwise create the product sold or licensed, direct costs for intellectual property protection and enforcement and costs to service licensees, if any.

- **Licensing**

Parties acknowledge that UTS or its component institutions may provide course content to secondary school students or students enrolled in a degree program at a UT System component institution, and charge tuition and fees. Such tuition does not constitute commercial activity to which royalty-sharing provisions would apply. Any transfer of materials, including but not limited to course content, jointly owned by TEA and UTS or a component institution to a third party giving that party the right to provide access to such content to said students independently of the component institution, would constitute commercial activity to which the royalty sharing provisions below would apply. UTS shall exclusively hold the right to license rights to materials for which TEA and UTS or a component institution hold joint copyright ownership. UTS, in its discretion, may grant back to TEA a limited right to license rights in jointly owned materials. Final authority with respect to decisions affecting licensing shall remain with UTS.

- **Dispute Resolution**

Disputes between TEA and UTS relating to contract interpretation or performance shall be resolved by a committee with one member appointed by TEA, one member appointed by UTS, and one member agreed upon by TEA and UTS.

- **Revisions**

UTS shall retain the right to revise the materials for which TEA and UTS hold joint copyright ownership in accordance with academic standards. UTS further agrees to update materials for which TEA and UTS or a component institution hold joint copyright ownership upon the receipt of a written request and appropriate funding. In the event that UTS agrees that the revision of jointly owned materials is needed in order to maintain the academic integrity of the materials, but is unable or unwilling within a reasonable time specified by TEA to provide the revision after TEA has requested it, TEA may arrange for such revisions and may display, in the revised work and in any promotional materials, the name of the person or persons who performed the revision. All revisions to materials that will be



distributed to Texas public and charter schools must be approved by UTS and TEA.

For purposes of this section, a revision subject to the provisions of this section includes changes to the jointly owned course materials based on research findings that update or modify it to keep it current, accurate and appropriate for its intended purpose. Revisions expressly do not include changes to UTS's or a component's pre-existing content, including but not limited to the materials described in a funding agreement or amendment thereto as pre-existing, or changes that would create a work fundamentally different from the materials originally created pursuant to this contract, or that change the character of the work, its overall scope or its philosophical basis.

- **Enforcement**

UTS shall enforce the copyrights in the materials for which TEA and UTS hold joint copyright ownership. If UTS refuses or fails to enforce a copyright in the materials, TEA may take legal action to enforce the copyright.

- **Audit Rights; Records; Reports**

The parties anticipate that UTS, as the party with the exclusive right to license the materials, will likely be the party that would commercialize the materials subject to royalty-sharing provisions, but it is possible that TEA could do so also, if permitted by UTS. Regardless of who commercializes materials, during the term of this Agreement and for 3 years thereafter, the Licensing Party agrees to keep complete and accurate records of its and its sublicense(s)' sales of products covered by this Agreement in sufficient detail to enable the amounts payable hereunder to be determined. Licensing Party agrees to permit the party receiving a share of royalty income ("Royalty Recipient") or its representatives, at Royalty Recipient's expense, to periodically examine Licensing Party's books, ledgers, and records during regular business hours, with 14 days advance notice, for the purpose of and to the extent necessary to verify any report required under this Agreement. Licensing Party agrees to make available to Royalty Recipient the Licensing Party's personnel who are familiar with the books and records to explain the books and records as needed for audit or inspection. If the amounts due to Royalty Recipient are determined to have been underpaid by three percent (3%) or more, Licensing Party will pay the cost of the examination up to a maximum amount of \$5000.00, and accrued interest at three percent (3%) above the current Prime Rate or, if not permissible under state law, that amount that is permissible under state law.

Beginning immediately after the effective date of this Agreement, Licensing Party will deliver to Royalty Recipient true and accurate written reports, even if no payments are due, within 60 days after Licensing Party receives sales reports from its sublicensee(s) (in most cases, quarterly), giving the

particulars of the business conducted by Licensing Party and its sublicensee(s), if any exist, as are pertinent to calculating payments hereunder. This report will include at least:

- a. the total sales of products covered by this Agreement;
- b. the calculation of Net Royalties, as set forth above;
- c. the calculation of Royalty Recipient's royalty share based on Net Royalties.

Simultaneously with the delivery of each report, Licensing Party will pay to Royalty Recipient the amount, if any, due for the period of each report.

In witness whereof, the parties have caused their duly authorized representatives to sign this Agreement.

The Texas Education Agency

  
Adam Jones  
Associate Commissioner  
Finance and Information Technology

Date: 08/30/06

The University of Texas System

  
Scott C. Kelley  
Executive Vice Chancellor for  
Business Affairs

Date: 8/18/06