

STATE OF TEXAS §

COUNTY OF TRAVIS §

Division/Org Code:	<u>211</u>	Program Name:	Student Success Initiative Support Programs
Speed Chart:	_____	Legal/Funding Authority:	_____
Payee Name:	Think Through Learning Inc.	Contract #:	<u>3462</u>
Payee ID ISAS	<u>100468465</u>	PO #:	<u>35029</u>

1030468465

TEXAS EDUCATION AGENCY STANDARD CONTRACT

ARTICLE I. PARTIES TO CONTRACT

This agreement is entered into by and between the Texas Education Agency ("TEA"), a Texas State Agency and Think Through Learning Inc. ("Contractor").

ARTICLE II. PERIOD OF CONTRACT

TEA shall pay Contractor for the reasonable and approved costs incurred by Contractor in connection with the Contract Project during the period beginning December 15, 2015 and ending August 31, 2017 unless extended or terminated as otherwise provided for this contract. TEA, at its own discretion, may extend the contract awarded for up to two additional fiscal years under the same or different terms subject to appropriation of funds by the Texas Legislature for this project. If renewed, the 1st renewal period shall be from September 1, 2017, through August 31, 2018 and the 2nd renewal period shall be September 1, 2018, through August 31, 2019.

ARTICLE III. PURPOSES OF CONTRACT

Contractor shall perform all of the functions and duties set described herein and in the appendices to this Contract, which are attached hereto and incorporated by reference.

ARTICLE IV. PAYMENT UNDER CONTRACT

Subject to the availability to TEA of funds for the purpose(s) of this contract, TEA shall pay to Contractor by State of Texas warrant(s) the amount of for year one is \$6,975,000.00 and the total amount of the contract shall not exceed \$14,859,782.00 for the performance, satisfactory to the TEA, of Contractor's functions and duties under this Contract. Payment to Contractor by TEA will be made in accordance with Exhibit A the Budget Summary and Expenditure Report (Attachment E), which is attached hereto and incorporated herein by reference. are attached. Payment shall be monthly upon completion of designated tasks/activities.

Year One December 15, 2015 – August 31, 2016 Amount:	\$6,975,000.00
Year Two September 1, 2016 – August 31, 2017 Amount:	\$7,884,782.00
Total Cumulative Contract Amount:	\$14,859,782.00

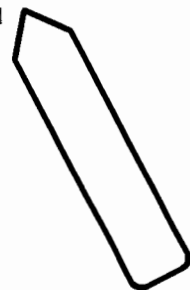
ARTICLE V. GENERAL AND SPECIAL PROVISIONS OF CONTRACT

Attached hereto and incorporated herein by reference are the General Provisions and the Special Provisions indicated below with an "X" beside each:

- 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 \$100,000.00)

Texas Government Code §2252.901 prohibits the agency into entering into an employment contract, a professional services contract, or a consulting services contract with a former or retired TEA employee before the first anniversary of their last date of regular employment. If TEA enters into a "professional services" contract with a corporation, firm, or other business entity that employs a former or retired employee during the first year of the past employee's departure from the agency, the former or retired employee is restricted from performing services on projects that the employee worked on while employed at TEA.

Texas Government Code §572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED. A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.



ARTICLE VI. ENTIRE CONTRACT

This contract together with the documents including but not limited to Appendices, Attachments, Exhibits, Proposal Responses, mentioned herein and incorporated by 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.

AGREED and accepted on behalf of Contractor effective beginning on the date of the Contract as specified above and as indicated by signature below of a person authorized to bind Contractor.

Typed name: Kevin McAilley
Typed title: President


Authorized Signature

This section reserved for TEA use.

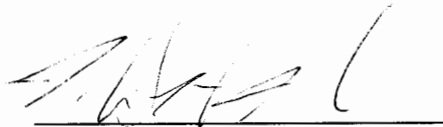
I, an authorized official of the Texas Education Agency, hereby certify that this contract is in compliance with the authorizing program statute and applicable regulations and authorize the services to be performed as written above.

AGREED and accepted on behalf of Agency on February 4 2016 (month/day/year) by a person authorized to bind Agency.

Return three (3) copies with original signature to:
Norma Barrera
Texas Education Agency
Purchasing, Contracts and Agency Services Division

1701 North Congress Avenue Rm. 2-125
Austin, Texas 78701-1494

Or
Electronic version may be submitted to:
TEAContracts@tea.state.tx.us



Mike Morath
Commissioner

APPENDIX 1

- A. The definitions of terms in the General Provisions are incorporated herein.
- B. The TEA Contract consists of the following documents: the Texas Education Agency's Standard Contract including General Provisions, and all Appendices and Attachments;
1. Attachment One, the Contractor's Proposal entitled Student Success Initiative Support Programs (Texas SUCCESS);
 2. Attachment Two, Request for Proposal No. 701-16-010, Student Success Initiative Support Programs (Texas SUCCESS), released August 3, 2015 including Addendums;
 3. Exhibit A the Budget Summary and Expenditure Report (Attachment E) dated January 25, 2016;
 4. Exhibit B the Schedule of Task Completion (Attachment F) dated January 25, 2016; and
 5. Exhibit C the Contractor's Task Activity Plan Student Success Initiative Program dated January 25, 2016.

Attachments One and Two as well as Exhibits A, B, and C are incorporated herein by reference and are therefore made part of this Contract.

- C. If there is a conflict or ambiguity between or among the terms of the documents that constitute this Contract, and if that conflict or ambiguity cannot be resolved by construing the terms so as to harmonize all their terms, then the conflict or ambiguity shall be resolved with the following Contract documents prevailing in the following order of priority:
1. Special Provision A, Program Specific Provisions;
 2. General Provisions of the Standard Contract;
 3. The Standard Contract, inclusive of all appendices and attachments;
 4. Contractor's Best and Final Offer dated January 25, 2016 (includes Attachment E, Attachment F and the Task Activity Plan revised on January 25, 2016);
 5. Contractor's Proposal entitled Student Success Initiative Support Programs (Texas SUCCESS);
 6. Documents received from the Contractor's Oral Presentations and Negotiation Meeting dated November 9, and December 9, 2015; and
 7. The Request for Proposal No. 701-16-010, Student Success Initiative Support Programs (Texas SUCCESS), released August 3, 2015 including Addendums.

D. Description of Services/Activities:

Contractor has been awarded to provide scientifically validated and research-based online programs that target the prevention of academic failure in mathematics. Each program must include diagnostic tool(s) and other tools with which the impact and effectiveness of the program may be assessed.

The programs must provide an opportunity for supplemental computer-based mathematics instruction to all students in grades or courses for which accelerated instruction is required. The selected providers must serve students statewide in one or more of the following service categories:

- a. Grades 3–5 mathematics
- b. Grades 6–8 mathematics
- c. Algebra I

Requirements and specifications for the system are outlined in Section 1.1 Purpose of the Request for Proposal and Section 1.5 Project Description and Requirements of the Request for Proposal. The method and manner in which the Contractor will provide services can be found in pages 1 - 79 of the proposal.

The TEA is clarifying in more detail some specific requirements from Section 1.5:

1. Ensure materials and services are available statewide from the Contract start date through August 31, 2017.
2. Provide that the online services made available by Contractor will be operational and accessible at a 99.9% monthly uptime.
 - a. If Contractor fails to provide a 99.9% uptime to Customers in accordance with this Contract, the parties stipulate that Contractor's default would cause damages to the TEA and that the damages to the TEA would be difficult to ascertain and measure. For this reason, the parties further stipulate that in the event of such default, Contractor shall be liable to the TEA for liquidated damages in the amount of \$1,000 for each day (each day defined as the 24 hour period or any portion thereof between 12:01 AM and 12:00 PM) that its default continues, up to a maximum amount equal to the

value of all items ordered and not delivered as required by this Contract. This amount is intended to be fair and reasonable estimate of the damages to the TEA reasonably expected to result from Contractor's breach and is not intended to be a penalty.

- b. In no event shall Contractor be deemed to be in failure to provide uptime as a result of any user's (including the State, Districts, and Authorized Users) failure or inability to access the services resulting from events within the control of such user or attributable to such user (including the failure of such user's hardware, software, or internet service provider).
3. For purposes of this Contract, "Excusable Downtime" is defined as that period of time when the licensed services are not available to the Authorized Users due to State approved scheduled network, hardware or service maintenance and/or Updates or Upgrades.
4. Except in cases of emergency, the State, Districts and Authorized Users shall be provided a minimum of two (2) Business Days advance notification of the Contractor's need to schedule Excusable Downtime. In cases of emergency, Contractor shall use its best efforts to notify the State, Districts and Authorized User of a planned Downtime as soon as practicable.
5. Excusable Downtime for maintenance, Updates or Upgrades shall not exceed thirty-six (36) hours in duration in a single month and shall not occur Monday through Friday, between the hours of 7:00 a.m. and 10:00 p.m. Central Time.
6. Excusable Downtime shall not include:
 - a. A failure of Contractor's electronic hardware;
 - b. A failure in the Contractor's Application;
 - c. An electric utility failure at Contractor's facility where the Application is Hosted; and
 - d. A failure of Contractor's network up to, but not including, the interconnection point of the Contractor's network to the public switched telephone network.
7. Contractor shall provide sufficient customer support throughout the term of the Contract, and Contractor shall maintain help desk processes and documentation. Contractor's help desk should be available to TEA and any Technical Assistance Provider that TEA identifies. The Contractor's help desk shall coordinate help desk responses with the TEA Technical Assistance Provider. Help desk documentation shall include but is not limited to, the hours that Contractor's help desk shall be available and the system features used to record, monitor and handle problem calls.
8. Contractor shall ensure that the site is on a regular maintenance schedule in the following areas: publishing, quality assurance, feedback monitoring, performance monitoring, infrastructure monitoring and change control. Contractor shall use commercially reasonable efforts to update new content as appropriate and necessary and to cause such content to remain current.
9. Provide reasonable tracking and reporting on website analytics related to student enrollment and usage.
10. Include a plan for reporting analytics to the TEA and individual districts regarding usage and student progress.

E. Budget:

Exhibit A the Budget Summary and Expenditure Report (Attachment E) are attached. Payment shall be monthly upon completion of designated tasks/activities.

F. Project Deliverables:

Section 1.6 of the RFP states the TEA's deliverables. Contractor shall provide Project Deliverables as stated in the Schedule of Task Completion (Attachment F), labeled Exhibit B and the Contractor's Task Activity Plan, labeled Exhibit C.

G. Performance Measures:

Contractor must provide to the TEA:

1. the number of students enrolled in the Contractor's mathematics program;
2. customized reporting, as mutually agreed to by the TEA and Contractor, including but not limited to: reports regarding the number of students enrolled, adaptive placement test, and specifics of usage of the program;
3. aggregate progress made by student's in acquiring skills and knowledge; and
4. client satisfaction surveys.

H. Invoicing:

Contractor shall submit a copy of the invoice and status reports electronically to the following two (2) email addresses: TEAAccountsPayable@tea.texas.gov and Kerry.Ballast@tea.texas.gov. Invoices and status reports must be submitted at the same time in order for payment to be approved. Payment under this Contract is contingent upon satisfactory completion of service. The final invoice is due within 45 days of the completion of the project.

All invoices shall include:

1. the vendor's mailing and e-mail (if applicable) address;
2. the vendor's telephone number;
3. the name and telephone number of a person designated by the vendor to answer questions regarding the invoice;
4. the Contract number;
5. the purchase order number;
6. the Texas Comptroller of Public Accounts Payee Identification Number (PIN); and
7. the month payment services are for and the agreed upon monthly amount.

Detailed project status reports coinciding with the tasks as written in the Contract must accompany the invoice submitted to the TEA Project Manager. The TEA Project Manager will approve invoices based upon project progress, task completion, reasonable use of project funds, and/or satisfactory performance of services as outlined in the project status report.

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 federally 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

Contractor will make a good faith effort to comply with the State of Texas Travel Guidelines. TEA may at its discretion approve requests for reimbursement of travel which exceed the State of Texas Travel Guidelines. Contractor shall maintain receipts in accordance with item H of the Terms and Conditions. The Comptroller's website for travel rules and regulations – textravel: <https://fmx.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. Contractors 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.

CONTRACT TERMS AND CONDITIONS

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

- *Contract* means the entire document, and all of TEA's attachments, appendices, schedules (including but not limited to the Terms and Conditions and the Special Provisions), amendments and extensions of or to the Standard Contract;
- *Receiving Agency, Party, Owner or TEA* means the Texas Education Agency;
- *Proposer or Respondent* may be used interchangeably in the competitive solicitation. Contractor and Respondent infer pre RFP award status and Contractor infers to post RFP award status;
- *Contractor or Performing Agency* means the party or parties to this Contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants;
- *Project Manager/Administrator* means the respective person(s) representing TEA or Contractor, 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 that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto;
- *Major Contract* means any contract over \$10 million cumulative over the life of the contract.
- *Works* means all tangible or intangible material, products, ideas, documents or works of authorship prepared or created by Contractor 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.) this does not include any pre-existing materials of Contractor, or any licensed third party materials provided by Contractor; and,
- *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.

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 Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.

C. Indemnification:

Acts or Omissions

Contractor shall indemnify and hold harmless the State of Texas and the Texas Education Agency, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringements

- 1) Contractor shall indemnify and hold harmless the State of Texas and the Texas Education Agency, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND

CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- 2) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to TEA's specific instructions, (iv) any intellectual property right owned by or licensed to TEA, or (v) any use of the product or service by TEA that is not in conformity with the terms of any applicable license agreement.
- 3) If Contractor becomes aware of an actual or potential claim, or TEA provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against TEA, shall), at Contractor's sole option and expense; (i) procure for the TEA the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TEA's use is non-infringing.

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR 'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE TEA AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS TEA, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- D. **Subcontracting and Substitutions:** Contractor 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 Contractor. TEA reserves the right to request changes in personnel assigned to the project. The TEA Project Manager must pre-approve any changes in key personnel throughout the contract term. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated. 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 Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- F. **Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to a Request for Proposal is incorporated in this Contract by reference. The provisions of this Contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this Contract or is attached as a separate document.
- G. **Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the Request for Proposal, in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although the current Terms and Conditions shall prevail in the event of conflict.
- H. **Records Retention and the Right to Audit:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts shall be retained by Contractor 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 Contractor'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 Government Code, the state auditor may conduct an audit or investigation of the contractor 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 the Contractor 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, the Contractor 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

Contractor 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. Contractor, 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.

- I. **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 School Districts and Nonprofit Organizations: The foregoing Intellectual Property Ownership provisions apply to any school districts, nonprofit organizations, and their employees, agents, representatives, consultants and subcontractors.

For Education Service Centers (ESCs): The foregoing Intellectual Property Ownership provisions apply to an Education Service Center (ESC) and its employees, agents, representatives, consultants, and subcontractors. If an ESC or any of its subcontractor(s) wish to obtain a license agreement to use, advertise, offer for sale, sell, distribute, publicly display, publicly perform or reproduce the Works, or make derivative works from the Works, then express written permission must first be obtained from TEA Legal Division.

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.

- J. **Time Delays; Suspension; Sanctions for Failure to Perform; Noncompliance:**

Time is of the Essence.

Contractor's timely performance is essential to this Contract.

Suspension

If this Contract is suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this Contract prior to suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible. TEA shall not be required to pay any standby hourly rates during a suspension of Work, if TEA suspends performance of the Work because the Work is defective, or Contractor fails to supply sufficiently skilled workers or suitable materials or equipment, or fails to provide required insurance coverage, or fails to furnish or perform the Work in such a way that the completed Work will conform to this Contract.

Sanctions

If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.

- K. Information Security Requirements: Access to Confidential TEA Information.** Contractor 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. 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 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:

- a. Date and time of sanitization/destruction;
- b. Description of the item(s) and serial number(s) if applicable;
- c. Inventory number(s); and
- d. 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.

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; and
- (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; and
- (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 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.

- L. Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within thirty (30) days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
- M. Capital Outlay:** If Contractor purchases capital outlay (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor 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 Contractor's accounting record. This provision is applicable when federal funds are utilized for the Contract.
- N. TEA Property (terms):** In the event of loss, damage or destruction of any property owned by or loaned by TEA while in the custody or control of Contractor, Contractor shall indemnify TEA and pay to TEA the full value of or the full cost of repair or replacement of such property, whichever is the greater, within thirty (30) days of Contractor's receipt of written notice of TEA's determination of the amount due. This applies whether the property is developed or purchased by Contractor pursuant to this Contract or is provided by TEA to Contractor for use in the Contract Project. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset or counterclaim against any money otherwise due to Contractor by TEA.
- O. State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to laws or rules of the State of Texas pertaining to and or governing this Contract and the Contract Project. This Contract constitutes the entire agreement between TEA and Contractor for the accomplishment of the Contract Project. This Contract shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this Contract.
- P. 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/textidx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- Q. Federal Rules, Laws, and Regulations That Apply to all Federal Programs:** Contractor 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. Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. sec. 12101, and the regulations effectuating its provisions contained in 28 CFR Parts 35 and 36, 29 CFR Part 1630, and 47 CFR Parts 0 and 64;
 2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 CFR Part 100;
 3. Title IX of the Education Amendments 1972, as amended (prohibition of sex discrimination in educational institutions) and the regulations effectuating its provisions contained in 34 CFR Part 106, if Contractor is an educational institution;

4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on the basis of handicapping condition), and the regulations effectuating its provisions contained in 34 CFR Parts 104 and 105.
5. The Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and the implementing regulations contained in 34 CFR, Part 110;
6. 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;
7. Section 509 of H.R. 5233 as incorporated by reference in P.L. 99-500 and P.L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress);
8. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103-382, Title XIV, Terms and Conditions of the Elementary and Secondary Education Act, as amended; and
9. General Education Provisions Act, as amended.

- R. 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 below or their successors in office. 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.

TEA	CONTRACTOR
Kerry Ballast Director, Educational Technology Instructional Materials and Educational Technology Texas Education Agency William B. Travis Building 1701 N. Congress Avenue Austin, Texas 78701	Louis A. Piconi Executive Vice President & Company Founder Think Through Math 116 Federal Street, Floor 2 Pittsburgh, PA 15212

- S. Forms, Assurances, and Reports:** Contractor shall timely make and file with the proper authorities all forms, assurances and reports required by federal laws and regulations. TEA shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations coming to TEA's attention, and may deny payment or recover payments made by TEA to Contractor in the event of Contractor's failure so to comply. Contractor who is indebted or owes delinquent taxes to the state will have any payments under the Contract applied toward the debt or delinquent taxes owed the state until the account is paid in full, regardless of when the debt or delinquency was incurred. This provision does not apply if the warrant or transfer results in payments being made in whole or in part with money paid to the state by the Federal Government. Pursuant to 34 TAC 201.14 -18 and TGC 2161, Contractors shall maintain business records documenting compliance with the HUB subcontracting plan (HSP) and shall submit a compliance report to the contracting agency monthly, in the format required by the Agency. The compliance report submission shall be required as a condition for payment. If the Contractor subcontracts any part of the contract in a manner that is not consistent with its HUB subcontracting plan, the selected respondent must submit a revised HUB subcontracting plan before subcontracting any of the work under the contract.

If the Contractor subcontracts any of the work without prior authorization and without complying with this section, the Contractor is deemed to have breached the contract and is subject to any remedial actions provided by Government Code, Chapter 2161, and other applicable state law.

- T. Signature Authority; Final Expression; Superseding Document:** Contractor 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 Contractor.
- U. Antitrust:** By signing this Contract, Contractor, represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.
- V. Family Code Applicability:** By signing this Contract, Contractor, if other than a state Party, certifies that under Section 231.006, Family Code, that Contractor is not ineligible to receive specified grant, loan, or payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. TEA reserves the right to terminate this Contract if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the Contract is terminated,

Contractor is liable to TEA for attorney's fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.

- W. Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract. The parties may agree to mediation of their dispute at any time. However, if all issues in dispute are not completely resolved through direct negotiations between the parties within 180 days after the Agency receives Contractor's notice of claim, then the parties must submit the dispute to mediation before a mutually acceptable mediator in Travis County, Texas. The mediation must be completed on or before 270 days after the Agency receives Contractor's notice of claim. Completion of the mediation is a condition precedent to the filing of a contested case hearing under Chapter 2260. The Agency's participation in mediation or any other dispute resolution process shall not waive any of the Agency's contractual or legal rights and remedies, including but not limited to sovereign immunity.
- X. Interpretation:** In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, Appendices, Terms and Conditions, Special Provisions, Exhibits, and Attachments or other documents, the TEA Contract and its Terms and Conditions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this Contract.
- Y. Education Service Center:** No funds transferred to Regional Education Service Centers or to school districts may be used to hire a registered lobbyist.
- Z. Compliance with Laws:** Contractor 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 Contractor's performance, including if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. For the entire duration of the Contract, Contractor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. When required or requested by the Agency, Contractor shall furnish TEA with satisfactory proof of its compliance with this provision.
- AA. Public Information:** The TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the TEA under this Contract constituting a record under the Act is received by the TEA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. Contractor authorizes the TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be exempt from public disclosure under the Act. If the TEA does not have a good faith belief that information may be subject to an exception to disclosure, the TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Contractor waives any claim against and releases from liability the TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

Contractor is required to make any information created or exchanged with the state pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. The TEA Project Manager will provide the specific format by which the Contractor is required to make the information accessible by the public.

- BB. Gratuities:** By signing this Contract, Contractor represents and warrants that the Contractor has not given, offer 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 submitted response.
- CC. Venue and Jurisdiction:** Subject to and without waiving any of the Agency's rights, including sovereign immunity, this Contract is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this solicitation and any resulting contract or purchase order shall be in a court of competent jurisdiction in Travis County, Texas.
- DD. Protests:** Any actual or prospective Bidder, Respondent, or Contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by the Texas Education Agency may submit a formal protest to the Director of the Agency's Contracts and Purchasing Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of the Agency's contracting process. The Agency will not be required to consider the merits of any protest unless the written protest is submitted within ten (10) working days after such aggrieved person knows, or reasonably should have known, of the occurrence of the action which is protested. The protest document must meet with all requirements in applicable law and Agency's rules (Title 19 of the Texas Administrative Code, at § 30.2002) <http://ritter.tea.state.tx.us/rules/tac/index.html>.

If the protest procedure results in a final determination by the Agency that a violation of law has occurred in its contracting process in a case in which a contract has been awarded, then the Agency may declare the contract

void at inception. In that event, the party who had been awarded the contract shall have no rights under the contract and no remedies under the law against the Agency

- EE. Liability for and Payment of Taxes:** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. TEA shall not be liable for any taxes resulting from this Contract.
- FF. 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.
- GG. Conformance:** The Contractor warrants that all goods and services furnished shall conform in all respects to the terms of this Contract, including any drawings, specifications or standards incorporated herein, and any defects in materials, workmanship, and free from such defects in design. In addition, contractor warrants that goods and services are suitable for and will perform in accordance with the purposes for which they are intended.
- HH. Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not and Contractor's employees assigned to TEA projects have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TEA as to the facts and circumstances surrounding the conviction.
- II. 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.
- JJ. Assignment of Contract:** This Contract may not be assigned, sold, or transferred without the express written consent of the TEA Purchasing, Contracts, and Agency Services (PCAS) Division. An attempted assignment after Contract award without the TEA approval will constitute a material breach of contract.
- KK. Buy Texas:** In accordance with Government Code, Section 2155.444, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state. This provision does not apply if Contractor receives any federal funds under this Contract.
- LL. Excluded Parties List System:** The Texas Education Agency and the Contractor 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, which may be viewed at <http://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders>. 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>.
- MM. Suspension and Debarment:** Contractor certifies 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, state or local government entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.
- NN. 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.
2. WG 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.

- OO. Collusion:** Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a Contractor's bid or proposal is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- PP. Social Security Numbers Withheld:** TEA will not provide Social Security Numbers (SSNs) to any Contractor under this contract unless specifically specified as part of the project requirements. TEA, its Contractors and their subcontractors, will not require or request school districts to provide SSNs under this contract. Contractor agrees 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 to TEA within thirty (30) days of project completion. An authorized officer of the company must certify that ALL records have either been properly destroyed or returned to the Agency in order to close out the contract.
- QQ. Proprietary; Confidential Information; Nondisclosure; Press Releases:** All information gathered, produced, derived, obtained, analyzed, controlled or Accessed by Contractor in connection with a contract resulting from this RFP ("Confidential Information") shall be and remain Confidential Information and shall not be released or disclosed by Contractor without the prior written consent of the TEA, which consent must specifically identify the Confidential Information to be disclosed by Contractor and the nature of the disclosure for which consent is sought. Contractor, its employees and subcontractors, 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 thirty (30) days of project completion. Contractor also agrees not to disclose any information to which it is privy under this Contract without the prior consent of the agency. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and TEA, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its Contractors of information held by the State of Texas.
- Except when defined as part of the Work under this Contract, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor 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.
- RR. Independent Contractor:** Contractor shall serve as an independent Contractor in providing services under this Contract. Contractor's employees are not and shall not be construed as employees or agents of the State of Texas.
- SS. Contractor Performance:** All state agencies must report unsatisfactory Contractor performance on purchases over \$25,000. Contractors who are in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for award of this contract. A Contractor's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Contractor s may fail this selection criterion for any of the following conditions: A score of less than 90% in the Contractor Performance System, currently under a Corrective Action Plan, having repeated negative Contractor performance reports for the same reason, having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e.

late delivery, etc.). TEA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Contractor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), TEA may examine other sources of Contractor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TEA, and any negative findings, as determined by TEA, may result in non-award to the Contractor.

Agencies report satisfactory and exceptional Contractor performance to assist in determining best value. In accordance with Texas Government Code, §2155.074 and §2155.75, Contractor performance may be used as a factor in future contract awards.

Contractor performance information is located on the CPA website at http://www.cpa.state.tx.us/procurement/prog/vendor_performance/

TT. 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 Contractor 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 Contractor that are permitted, properly performed under this Contract and were incurred prior to the effective termination date.
2. **Termination for Cause/Default:** If the Contractor 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 Contractor, 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 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 Contractor in writing prior to the exercise of such remedy.

The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor 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 Contractor under the Contract.
5. **Survival of Terms:** Termination of the Contract for any reason shall not release the Contractor 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.
6. **Contract Transition:** In the event a subsequent competitive solicitation is awarded to a New Contractor, the Outgoing Contractor shall hand-over to the New Contractor all "Works" including but not limited to the following: data, materials, database access, intellectual property, source code, training materials, access to websites, asset transfer, and maintenance of service commitments. The purpose of transition planning is to ensure a seamless and continuous service when changing from one contract to another. The Outgoing Contractor will begin shipping, transmitting or providing access to all appropriate materials and data to the New Contractor within 10 days of announcement of award at the New Contractor's expense for data processing and production, packing and shipping. The Outgoing Contractor will be responsible for providing the services identified in the Contract until all records have been completely transferred to the New Contractor. The Outgoing Contractor is responsible for performing due diligence to ensure that all the transition activities are identified and completed during the Contract Transition.

The Outgoing Contractor shall submit to TEA requested reports and data. TEA will not release the final invoice until all materials are returned to TEA or their designee. The TEA Project Manager shall approve the Transition Plan prior to its implementation. The Transition Plan must minimize the impacts on

continuity of operations and maintain communication with the TEA Project Manager and the New Contractor.

UU. 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 STANDARD 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.

If the initial major contract (defined as expected value of \$10M or more) solicitation document submitted to the CPA Contract Advisory Team (CAT) changes substantially, agencies are required to resubmit their solicitation documents(s) for CAT review. Changes in the major contract solicitation are considered substantial when: 1) the solicitation change caused the estimated value for the original term of the contract, not including renewal periods, to increase by 25% or more; 2) or there are significant revisions, deletions and/or additions to the specifications, statement of work (SOW), set(s) of deliverables, performance measures, payment methodology, etc.

1. The Contractor is 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 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 (regardless of whether there is an associated budget revision requiring prior approval) additionally increases of 25% or more for Major Contracts must be approved by the Comptroller;
 - 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.

All Amendments must be signed by both parties.

VV. Payment: Payment for goods or services purchased with appropriated funds will be issued by electronic Direct Deposit from the State Treasury. Direct Deposit is the preferred method of payment. Any payment owed by an Agency must be transmitted electronically to the Contractor no later than 30 days after the later of:

- (1) Day on which the Agency received the goods;
- (2) Date the performance of the service under the contract is completed; or
- (3) Day on which the Agency received the complete and correct invoice for goods or services.

Invoices must be submitted to TEAAccountsPayable@tea.texas.gov, the TEA Project Manager and when applicable the designated Contract Manager.

Additional information and a Direct Deposit Authorization application may be found at: <https://fmx.cpa.state.tx.us/fm/payment/index.php>.

1. Payment for service(s) described in this Contract is contingent upon satisfactory completion of the **Deliverables and Services Review and Acceptance Process**. The Contractor must submit final deliverables to TEA for review and approval prior to invoicing. These include test items developed under the contract. "Final" deliverable means a deliverable that, in the belief and testimony of the Contractor, is in final completed form and in compliance with all required specifications as defined by project documentation and this contract. TEA will review each deliverable, including test items, submitted by the Contractor for quality and alignment to the deliverable definition agreed to under the "Deliverables and Services Definition Process". TEA will have fifteen (15) working days to approve a deliverable or request revisions to the deliverable. TEA must review and approve any deliverable before it may be invoiced by the Contractor. If TEA finds a submitted deliverable to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process", the Contractor will have ten (10) working days to address the quality or other compliance requirement and resubmit the deliverable. Additional costs incurred by the Contractor that result from repeated submissions and revising of substandard deliverables will be borne solely by the Contractor and not charged against the contract or to TEA. This process will apply to all deliverables and requirements of

the Contract, including test items developed. This does not preclude an arrangement that allows the Contractor to bill against a deliverable as progress is made toward completing that deliverable, so long as documentation of such progress in a form and nature satisfactory to TEA is provided and is approved by TEA. It is up to the Contractor to request incremental billing based on progress towards a deliverable, and such a request must be approved by TEA prior to submission of any invoice by the Contractor. TEA reserves the right to reject and not provide payment for deliverables found to be substandard or not in compliance with the deliverable definition agreed to under the "Deliverables and Services Definition Process", including test items developed under the Contract. The Contractor is strongly encouraged to collaborate with TEA on draft versions of any deliverables or services and request review(s) of such draft versions before submitting a final version.

2. Retainage: TEA may withhold 5% or less of each payment as retainage for certain projects. Retainage fees shall be documented in the Contract and may not be arbitrarily imposed after execution of the Contract. The release of retainage may be requested in the final invoice.
3. Unless otherwise stated, payment under this Contract will be made upon performance of services based upon submission of an expenditure report/invoice, properly prepared and certified, outlining expenditures by cost category. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Texas Identification Number (TIN) on all invoices/expenditure reports. The cost categories provided in the expenditure report/invoice must coincide with the cost categories detailed in the approved budget. A list of tasks/activities performed during the invoice period must accompany the expenditure report/invoice. The final expenditure report/invoice is due within forty-five days after the end of the Contract. Payment on the final expenditure report is contingent upon receipt of all reports/products required by this Contract.
4. An encumbrance, accounts payable, and expenditure, as with all other contract accounting terms, will be as defined in the *Financial Accounting and Reporting Module of the TEA Financial Accountability System Resource Guide*. All goods must have been received and all services rendered by the ending date of this Contract in order for Contractor to include these costs as either expenditures or as accounts payable and, thereby, recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
5. Contractor who is indebted or owes delinquent taxes to the State will have any payments under the Contract applied toward the debt or delinquent taxes owed the State until the amount is paid in full, regardless of when the debt or delinquency was incurred. TEA shall determine whether a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer to a person before TEA enters into a written contract with that person.

Contractor may verify their account status by accessing the Comptroller's website at https://fmx.cpa.state.tx.us/fm/pubs/purchase/restricted/index.php?section=indebted&page=persons_indebted

WW. Prohibition of text messaging and emailing while driving during official federal grant business:

Contractors and their staff, subcontractors, consultants etc. are prohibited from texting messaging while driving a government owned vehicle or while driving their own privately owned vehicle during official 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.

XX. Insurance: Contractor represents and warrants that it will, within five (5) business days of being requested by the TEA, provide TEA with current certificates of insurance or other proof acceptable to TEA of the following insurance coverage:

Workers Compensation & Employers Liability: Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Workers Compensation: Statutory Limits
Employers Liability: Each Accident \$1,000,000
Disease- Each Employee \$1,000,000
Disease-Policy Limit \$1,000,000

This state of Texas website (Coverage starts with 406 of the Labor code) addresses what Texas requires may be found at: <http://www.tdi.texas.gov/wc/act/index.html>

Commercial General Liability: Occurrence based:
Bodily Injury and Property Damage
Each occurrence limit: \$1,000,000;
Aggregate limit: \$2,000,000;
Medical Expense each person: \$5,000;
Personal Injury and Advertising Liability: \$1,000,000;
Products /Completed Operations Aggregate Limit: \$2,000,000; and
Damage to Premises Rented to You: \$50,000

Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from A.M. Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TEA. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide TEA with an executed copy of the policies immediately upon request.

- YY. Force Majeure:** Neither Contractor nor Texas Education Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in any Contract resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
- ZZ. Drug Free Workplace Policy:** The Contractor shall comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place requirements under the Code of Federal Regulations incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments or revisions that may hereafter be issued.
- AAA. Abandonment or Default:** If the Contractor defaults on the Contract, TEA reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Contractor. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the Agency based on the seriousness of the default.

The Texas Government Code and Family Code sites referenced in this document may be viewed at: <http://www.statutes.legis.state.tx.us/>

The Texas Administrative Code site referenced in this document may be viewed at: [http://texreg.sos.state.tx.us/public/readtac\\$ext.viewtac](http://texreg.sos.state.tx.us/public/readtac$ext.viewtac)

Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.

SPECIAL PROVISIONS – A

Program Specific

- A. Should the Contractor determine that interviews, focus groups, or other methods requiring audio or video recordings are appropriate to employ for the purposes of determining the effectiveness and quality of services provided under this Contract, the TEA will have no access to identified audio or video recordings or to crosswalks that link de-identified recordings to identified individuals.
- B. Should the Contractor determine that surveys are appropriate to employ for the purposes of evaluating effectiveness and quality of services provided under this Contract, the TEA will have no right to access of individually identified survey data or to crosswalks that link de-identified survey data to identified individuals.
- C. Section RR controls regarding the handling of Proprietary or Confidential Information. In addition, upon termination of the contract, a corporate officer must certify, in writing, to the TEA Project Manager that all Proprietary or Confidential Data was destroyed in compliance with any applicable laws, regulations, or contract terms.
- D. Refer to the General Provisions, Section I. Intellectual Property Ownership on page 7, item number 4. Rights upon Termination or Expiration of Contract under Section UU. Termination on page 13 these clauses are deleted in its entirety and replaced with the following new provisions to Intellectual Property Ownership and Rights upon Termination or Expiration of Contract:
- I. **Intellectual Property Ownership:** Contractor is (and shall remain) the sole and exclusive owner of all rights (including all Intellectual Property Rights) in and to all (i) Works and (ii) all of Contractor's other tangible and intangible materials, products, ideas, documents, and works of authorship, whether pre-existing or otherwise (items (i) and (ii) are collectively the "Materials"). None of the Materials are works made for hire, and nothing in this Contract grants or transfers to TEA or anyone else any right in or to the Materials. Contractor reserves all rights in and to the Materials.

Contractor warrants that the Works will not infringe any intellectual property rights of any other person or entity. This warranty will survive the termination of the Contract.

Contractor agrees, at Contractor's expense, to indemnify, hold harmless and defend TEA and the State from claims involving infringement by the Materials of third parties' licenses, trademarks, copyrights or patents.
 - UU. **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.
- 4. Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, Contractor shall continue to retain ownership of all Materials.
- E. Refer to the General Provisions, Section C. Indemnification on page 6 this clause has been deleted in its entirety and replaced with the following new provision:
- C. **Indemnification:** Contractor shall indemnify, hold harmless, and defend TEA and the State from claims, causes of action, suits, and demands asserted by a third party for the actions or omission of actions directly related to the Contractor or any agent, employee, subcontractor, or supplier of Contractor in performance of the Contract Project.
- F. As provided for in ARTICLE IV. PAYMENT UNDER CONTRACT payments to Contractor by TEA will be made in accordance with Appendix One and Exhibit A.
- G. Refer to the General Provisions, Section J. Sanctions for Failure to Perform or for Noncompliance this clause has been deleted in its entirety and replaced with the following new provision:
- J. **Sanctions for Failure to Perform or for Noncompliance:** If Contractor fails or refuses to comply with or perform any of its obligations under this contract, TEA shall provide written notice of such failure or refusal and provide Contractor ten (10) business days, which shall commence the day after receipt of written notice, for the Contractor to correct failures listed within the written notice. TEA shall be reasonable in its determination of a failure or refusal to comply or perform. After ten (10) business days, TEA may impose reasonable sanctions as it may deem

appropriate if the Contractor has failed or refused to comply or perform. TEA must provide second written notice after the ten (10) business days that states that the Contractor has failed or refused to comply with or perform any of its obligations listed in the first written notice before TEA may impose any sanctions. Sanctions include but are not limited to the withholding of payments to Contractor until the Contractor complies; the cancellation, termination, or suspension of the Contract in whole or in part; and the seeking of other remedies as may be provided by the Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective twenty (20) business days after Contractor's receipt of written notice of its exercise of sanctions for the Contractor's failure of refusal to comply or perform. The ten (10) business days used in this Section shall not be used to extend time for a correction under Section L. Refunds Due to TEA. The ten (10) business days to correct a failure or refusal to comply or perform provided in this Section and the ten (10) business days provided to correct a reason for a refund in Section L. Refunds Due to TEA shall run concurrently for the same identified failure or refusal to comply or perform. The ten (10) business days provided to correct a failure or refusal to comply or perform in this Section may not be used with a system-wide failure that would cause downtime and that is directly related to an act or a failure to act by the Contractor.

- H. Refer to the General Provisions, Section L. Refunds due to TEA this clause has been deleted in its entirety and replaced with the following new provision:

L. **Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to Contract, TEA must provide written notice of the reasons why it is due a refund and provide Contractor ten (10) business days, which shall commence the day after receipt of written notice, for the Contractor to correct reasons within the written notice for why a refund is due. TEA shall be reasonable in its determination that a refund is due. If the Contractor has failed or refused to comply within ten (10) business days, then TEA may provide written notice the day after ten (10) business days have been completed that a refund is due. Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of notice that a refund is due. TEA may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds. The ten (10) business days used in this Section shall not be used to extend time for a correction under Section J. Sanctions for Failure to Perform or for Noncompliance. The ten (10) business days to correct a reason for refund provided in this Section and the ten (10) business days provided to correct a failure or refusal to comply or perform in Section J. Sanctions for Failure to Perform or for Noncompliance shall run concurrently for the same identified failure or refusal to comply or perform. The ten (10) business days provided to correct a reason for a refund in this Section may not be used with a system-wide failure that would cause downtime and that is directly related to an act or a failure to act by the Contractor.

- I. Refer to the General Provisions, Section B. Contingency this clause has been deleted in its entirety and replaced with the following new provision:

B. **Contingency:** The Contract(s), 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 thirty (30) days written notice to Contractor. If cancellation or termination is due to failure or refusal to comply or perform under Section J. Sanctions for Failure to Perform or for Noncompliance or in Section L. Refunds Due to TEA, the ten (10) business days used to correct failures shall run concurrent within the thirty (30) days of the original written notice of failure to perform or refund. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.

2. Termination for Cause/Default: If the Contractor 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 thirty (30) days written notice of default or failure or refusal to comply with or perform to the Contractor 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. The ten (10) business days used to correct failures to perform in Section J. Sanctions for Failure to Perform or for Noncompliance and in Section L. Refunds Due to TEA shall run concurrent within the thirty (30) days of the original written notice of failure to perform the Contract or written notice of refund.

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 Contractor in writing prior to the exercise of such remedy. The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor 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.

SPECIAL PROVISIONS – D

Historically Underutilized Business Subcontracting Plan (HSP)

- A. Contractor's HSP is attached and incorporated herein.
- B. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated.
- C. Contractor must submit monthly compliance reports (Prime Contractor Progress Assessment Report (PAR) to the TEA HUB Office, verifying their compliance with the HSP, including the use/expenditures they have made to all subcontractors. Contact the HUB Office at HUBOffice@tea.texas.gov or visit our website at: [http://tea.texas.gov/About TEA/Agency Finances/Procurement and Historically Underutilized Business Program/](http://tea.texas.gov/About%20TEA/Agency%20Finances/Procurement%20and%20Historically%20Underutilized%20Business%20Program/)



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

SECTION-1: RESPONDENT AND REQUISITION INFORM

a. Respondent (Company) Name: Think Through Learning Inc. State of Texas VID #: 10304684656
 Point of Contact: Gary Doyle, CFO Phone #: 412-894-9947
 E-mail Address: gdoyle@thinkthroughmath.com Fax #: 800-305-0693

b. Is your company a State of Texas certified HUB? - Yes - No

c. Requisition #: 701-16-010 Bid Open Date: 09/17/2015

(mm/dd/yyyy)

Enter your company's name here: Think Through Learning Inc.

Requisition #: 701-16-010

SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>).

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified** HUBs with which you have a **continuous contract*** in place with for five (5) years or less **meets** or **exceeds** the HUB goal the contracting agency identified on page 1 in the "**Agency Special Instructions/Additional Requirements**".

- *Yes* (If *Yes*, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: Think Through Learning Inc. Requisition #: 701-16-010

SECTION 2: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)

a. This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

**Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: Think Through Learning Inc.Requisition #: 701-16-010**SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)**

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

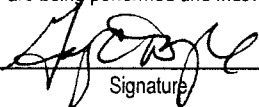
- Yes (If *Yes*, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If *No*, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

As the TEA is aware, for the past three years Think Through Learning has been providing services to all Texas 3-8th graders under the Student Success Qualified Providers Program (Texas Success). Over the past three years TTL has built up a staff of professionals to handle all of our technology, marketing, implementation services and teaching services in order to be able to provide our quality Think Through Math program as well as quality services to the TEA and participating schools. In addition, in building our staff of instructional coaches and teachers in Texas we were able to hire women and/or minorities to fill a majority of our staffing needs. In reviewing the list of subcontractors available to us from the Comptrollers Centralized Master Bidders List (CMBL)/HUB Directory, we were not able to identify and subcontractors that would provide to us services that we can't currently complete with our own staff and resources. However, as part of our HSP Good Faith Efforts, we are currently engaging with active HUB vendors such as Affinity Printing Solution Vendor ID#1760797108600, Beehive Specialty Vendor #1742922519000 and Westgate Computers Vendor #1752804151400 in order to purchase equipment, supplies and other services that are needed to continue our servicing of the Texas Success Program.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.



Signature

Gary Doyle

Printed Name

CFO

Title

09/06/2015

Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

ATTACHMENT ONE

The Contractor's Proposal entitled Student Success Initiative Support Programs (Texas SUCCESS) from Think Through Learning Inc. is here incorporated by reference

ATTACHMENT TWO

**Request for Proposal No. 701-16-010, Student Success Initiative Support Programs
(Texas SUCCESS), released August 3, 2015 including Addendums is here
incorporated by reference**

EXHIBIT A

**Budget Summary and Expenditure Report (Attachment E) dated January 25, 2016
from Think Through Learning Inc. is here incorporated by reference**

APPENDIX 20 - SCHEDULE OF TASK COMPLETION & BUDGET - REVISED 1/25/2016
 BUDGET SUMMARY AND EXPENDITURE REPORT FOR GRADES 3- ALG, YEAR 1

ATTACHMENT E

FISCAL YEAR 2015-2016
 ISAS CONTRACT
 ISAS PO
 VENDOR ID 10304684656
 PROJECT ID STUDENT SUCCESS INITIATIVE SUPPORT PROGRAMS
 BILLING PERIOD DEC. 2015 - AUG. 2016
 INVOICE #
 SCENARIO TTM GR 3 - ALG

TASK	SUB-TASK	TASK DESCRIPTION	START DATE	END DATE	ORIGNIAL BUDGET	TEA ADJUSTMENTS	% CHANGE	APPROVED ADJ BUDGET	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	YEAR TO DATE	BUDGET BALANCE	
STUDENT ACCOUNT ENROLLMENT	1.2, 1.4, 1.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 4.1, 4.2, 4.3, 4.8,	ENROLMENT AT 1,120,000 ACCTS	15-Dec-15	31-Aug-16	\$ 225,000	\$ -		\$ 225,000						\$ 225,000								\$ 225,000	
STUDENT ACCOUNT ENROLLMENT	1.2, 1.4, 1.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 4.1, 4.2, 4.3, 4.8,	ENROLLMENT AT 1,400,000 ACCTS	15-Dec-15	31-Aug-16	\$ 80,000	\$ -		\$ 80,000							\$ 80,000							\$ 80,000	
STUDENT ACCOUNT ENROLLMENT	1.2, 1.4, 1.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 4.1, 4.2, 4.3, 4.8,	ENROLLMENT AT 1,680,000 ACCTS	15-Dec-15	31-Aug-16	\$ 43,750	\$ -		\$ 43,750								\$ 43,750						\$ 43,750	
PROJECT ACTIVITIES	1.1, 1.3, 1.6, 1.7, 2.1, 2.2, 2.3, 2.4, 3.9, 3.10, 5.1, 5.2, 5.3, 5.4, 5.5	MONTHLY OPERATIONAL ACTIVITIES	15-Dec-15	31-Aug-16	\$ 2,615,625	\$ -		\$ 2,615,625					\$ 326,953	\$ 326,953	\$ 326,953	\$ 326,953	\$ 326,953	\$ 326,953	\$ 326,953	\$ 326,953	\$ 326,954	\$ 2,615,625	
STUDENT USAGE	3.6, 3.8, 4.5, 4.6, 4.7	STUDENTS WITH 5+ LESSONS COMPLETED = 84,000	15-Dec-15	31-Aug-16	\$ 750,000	\$ -		\$ 750,000						\$ 750,000								\$ 750,000	
STUDENT USAGE	3.6, 3.8, 4.5, 4.6, 4.7	STUDENTS WITH 5+ LESSONS COMPLETED = 168,000	15-Dec-15	31-Aug-16	\$ 500,000	\$ -		\$ 500,000						\$ 500,000								\$ 500,000	
STUDENT USAGE	3.6, 3.8, 4.5, 4.6, 4.7	STUDENTS WITH 5+ LESSONS COMPLETED = 252,000	15-Dec-15	31-Aug-16	\$ 500,000	\$ -		\$ 500,000							\$ 500,000							\$ 500,000	
STUDENT USAGE	3.6, 3.8, 4.5, 4.6, 4.7	STUDENTS WITH 5+ LESSONS COMPLETED = 336,000	15-Dec-15	31-Aug-16	\$ 250,000	\$ -		\$ 250,000							\$ 250,000							\$ 250,000	
STUDENT USAGE	3.6, 3.8, 4.5, 4.6, 4.7	STUDENTS WITH 5+ LESSONS COMPLETED = 420,000	15-Dec-15	31-Aug-16	\$ 250,000	\$ -		\$ 250,000								\$ 250,000						\$ 250,000	
STUDENT USAGE	3.6, 3.8, 4.5, 4.6, 4.7	STUDENTS WITH 5+ LESSONS COMPLETED = 504,000	15-Dec-15	31-Aug-16	\$ 250,000	\$ -		\$ 250,000								\$ 250,000						\$ 250,000	
STUDENT USAGE	3.6, 3.8, 4.5, 4.6, 4.7	STUDENTS WITH 5+ LESSONS COMPLETED = 588,000	15-Dec-15	31-Aug-16	\$ 150,000	\$ -		\$ 150,000									\$ 150,000					\$ 150,000	
STUDENT USAGE	3.6, 3.8, 4.5, 4.6, 4.7	STUDENTS WITH 5+ LESSONS COMPLETED = 672,000	15-Dec-15	31-Aug-16	\$ 140,000	\$ -		\$ 140,000										\$ 140,000				\$ 140,000	

APPENDIX 20 - SCHEDULE OF TASK COMPLETION & BUDGET - REVISED 1/25/2016
 BUDGET SUMMARY AND EXPENDITURE REPORT FOR GRADES 3- ALG, YEAR 1

ATTACHMENT E

FISCAL YEAR 2015-2016
 ISAS CONTRACT
 ISAS PO
 VENDOR ID 10304684656
 PROJECT ID STUDENT SUCCESS INITIATIVE SUPPORT PROGRAMS
 BILLING PERIOD DEC. 2015 - AUG. 2016
 INVOICE #
 SCENARIO TTM GR 3 - ALG

TASK	SUB-TASK	TASK DESCRIPTION	START DATE	END DATE	ORIGINAL BUDGET	TEA ADJUSTMENTS	% CHANGE	APPROVED ADJ BUDGET	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	YEAR TO DATE	BUDGET BALANCE
STUDENT PERFORMANCE	8.1	Grade 5	15-Dec-15	31-Aug-16	\$ 43,593.75	\$ -		\$ 43,594									\$ 43,594				\$ 43,594	
STUDENT PERFORMANCE	8.1	Grade 8	15-Dec-15	31-Aug-16	\$ 43,593.75	\$ -		\$ 43,594									\$ 43,594				\$ 43,594	
STUDENT PERFORMANCE	8.1	Grades 3-5	15-Dec-15	31-Aug-16	\$ 43,593.75	\$ -		\$ 43,594											\$ 43,594		\$ 43,594	
STUDENT PERFORMANCE	8.1	Grades 6-8	15-Dec-15	31-Aug-16	\$ 43,593.75	\$ -		\$ 43,594											\$ 43,594		\$ 43,594	
STUDENT PERFORMANCE	8.2	Algebra 1	15-Dec-15	31-Aug-16	\$ 43,593.75	\$ -		\$ 43,594											\$ 43,594		\$ 43,594	
STUDENT PERFORMANCE	8.1	Grades 3-5	15-Dec-15	31-Aug-16	\$ 43,593.75	\$ -		\$ 43,594												\$ 43,594	\$ 43,594	
STUDENT PERFORMANCE	8.1	Grades 6-8	15-Dec-15	31-Aug-16	\$ 43,593.75	\$ -		\$ 43,594												\$ 43,594	\$ 43,594	
STUDENT PERFORMANCE	8.2	Algebra 1	15-Dec-15	31-Aug-16	\$ 43,593.75	\$ -		\$ 43,594												\$ 43,594	\$ 43,594	
ESC TOT SESSIONS	4.2, 4.4, 4.6	2 PD SESSIONS HELD AT EACH ESC	15-Dec-15	1-May-16	\$ 67,500	\$ -		\$ 67,500					\$ 13,500	\$ 13,500	\$ 13,500	\$ 13,500	\$ 13,500				\$ 67,500	
ONSITE TRAINING	4.2, 4.4, 4.7	ONSITE PD SCHEDULED AS NEEDED	15-Dec-15	1-Jun-15	\$ 330,000	\$ -		\$ 330,000					\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000	\$ 55,000			\$ 330,000	
COACHING SITE VISITS	4.2, 4.4, 4.8	PD OBSERVATION VISITS TO SUPPORT TEACHERS	15-Dec-15	1-Apr-15	\$ 474,375	\$ -		\$ 474,375					\$ 118,594	\$ 118,594	\$ 118,594	\$ 118,593					\$ 474,375	
					\$ 6,975,000	\$ -		\$ 6,975,000	\$-	\$-	\$-	\$-	\$ 514,047	\$ 1,989,047	\$ 1,344,047	\$ 1,057,796	\$ 632,641	\$ 521,953	\$ 457,734	\$ 457,735	\$ 6,975,000	\$ -

EXHIBIT B

Schedule of Task Completion (Attachment F) dated January 25, 2016 from Think Through Learning Inc. is here incorporated by reference

APPENDIX 20 - SCHEDULE OF TASK COMPLETION & BUDGET - REVISED 1/25/2016

ATTACHMENT F

SCHEDULE OF TASK COMPLETION FOR GRADES 3-ALG, YEAR 1
PROPOSED PROJECT: Student Success Initiative Support Program
ORGANIZATION: Think Through Learning Inc.

BEGIN DATE: December 15, 2015
 ENDING DATE: August 31, 2016

DESCRIPTION:

The Schedule of Task Completion and Budget below associates the actions in the Task Activity Plan with measurable and reportable outcomes that can be correlated with costs. This may be closely tied to contract terms and conditions. Activity Task correlations are listed on the blue lines. This document details a 8.5 month plan for year 1 (plus summer) to achieve measurable budget items. Explanations of each group of items are listed below the Activity Tasks correlated to the budget.

GRADES 3 - ALGEBRA: YEAR 1

Approximate Students Available 2,800,000

Category 1, Item 1	Dates	\$ Per Month	Projected Completion Date	Projected Cost
Project Activities (Monthly)	8.5 months	1st on month	Last Day of Each Month	\$ 326,953
		<i>Sub-Total</i>		\$ 2,615,625
Activity Plan Tasks Covered: 1.1, 1.3, 1.6, 1.7, 2.1, 2.2, 2.3, 2.4, 3.9, 3.10, 5.1, 5.2, 5.3, 5.4, 5.5				

Explanation:

The montly activites consist of the operational activities that maintain the operations of the program. This includes continuous reporting, communications, technical support, site visits, and collaboration with the TEA. 8 equal payments.

Category 1, Item 2	Type	Number	Projected Completion Date	Projected Cost
Professional Development				
	ESC ToT Full Day Sessions	30	5/1/2016	\$ 67,500
	Onsite Training	150	6/1/2016	\$ 330,000
	Coaching Site Visits	575	4/1/2016	\$ 474,375
		<i>Sub-Total</i>		\$ 871,875
Activity Plan Tasks Covered: 4.2, 4.4, 4.6				

Explanation:

TTM's team in Texas continually supports the program starting by providing 1.5 ToT days at each ESC in Texas. In Year 1 some of these days may need to be converted to onsite days due to scheduling late in the year. Additionally, the TTM Texas team provides onsite training when needed and makes coaching visits throughout the year to support sites that need extra help. This approach helps to create a highly successful implementation.

Category 2, Item 3	Percentage of Population	Student Accounts	Projected Completion Date	Projected Cost
Student Account Creation/Enrollment	40%	1,120,000	2/15/2016	\$ 225,000
	50%	1,400,000	3/15/2016	\$ 80,000
	60%	1,680,000	4/15/2016	\$ 43,750
		<i>Sub-Total</i>		\$ 348,750
Activity Plan Tasks Covered: 1.2, 1.4, 1.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 4.1, 4.2, 4.3, 4.8,				

Explanation:

Student account creation and enrollment is the basis for program success. This occurs through all activities associated with account creation, kickoff, notification, and support. The majority of the cost is recognized early in the year as campuses and districts get started. Included in these activities are SIS integrations, batch uploads PD scheduling, and planning for student kickoff. The cost of creating student accounts decreases over the course of the year as implemented accounts expand.

Category 2, Item 4	% of Accounts	Students	Projected Completion Date	Projected Cost
Dosage: Student Usage - 5+ Lessons	5%	84,000	2/1/2016	\$ 750,000
	10%	168,000	2/15/2016	\$ 500,000
	15%	252,000	3/1/2016	\$ 500,000
	20%	336,000	3/15/2016	\$ 250,000
	25%	420,000	4/1/2016	\$ 250,000
	30%	504,000	4/15/2016	\$ 250,000
	35%	588,000	5/1/2016	\$ 150,000
	40%	672,000	5/15/2016	\$ 140,000
		<i>Sub-Total</i>		\$ 2,790,000
Activity Plan Tasks Covered:	3.6, 3.8, 4.5, 4.6, 4.7			

Explanation:

Using measurable student activity metrics as the budgetary measurement of support, motivation programs, ongoing site visits, program engagement, and outreach to stakeholders on the system is logical as usage is the key outcome to these activities. From kickoff events to motivational pep rallies all activities lead to students completing lessons on TTM. The measure above looks at how many students reach the key 5+ lesson milestone where a student is fully "engaged". The cost decreases as implemented accounts expand and usage grows.

Category 2, Item 5				Projected Cost
Student Performance				
May Invoice (grade 5)				\$ 43,593.75
May Invoice (grade 8)				\$ 43,593.75
July Invoice (grades 3-5)				\$ 43,593.75
July Invoice (grades 6-8)				\$ 43,593.75
July Invoice (Alg. 1)				\$ 43,593.75
August Invoice (grades 3-5)				\$ 43,593.75
August Invoice (grades 6-8)				\$ 43,593.75
September Invoice (Alg. 1)				\$ 43,593.75
		<i>Sub-Total</i>		\$ 348,750
Activity Plan Tasks Covered:	8.1, 8.2			

Explanation:

Using measurable student gains on the STAAR testing is logical as the key outcome to the program as a whole is for an increase in the testing scores.

TOTAL	\$ 6,975,000
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TTM

Total Budget for FY16	\$6,975,000
Category 1 (50% of Total Budget)	\$3,487,500
Category 2 (50% of Total Budget)	\$3,487,500

Category 1	Amount
Item 1: Project Activities (75% of Category 1)	\$2,615,625
Item 2: Professional Development (25% of Category 1)	\$871,875
Total	\$3,487,500

Category 2	Amount
Item 3: Student Enrollment (10% of Category 2)	\$348,750
Item 4: Dosage (80% of Category 2)	\$2,790,000
Item 5: Student Performance* (10% of Category 2)	\$348,750
Total	\$3,487,500

*Item 5 amount will need to be divided according to the total number of submitted invoices as stated in the *SSI Performance Reporting* document.

Item 5: Student Performance	Possible Amount
May Invoice (grades 3–5)	\$43,593.75
May Invoice (grades 6–8)	\$43,593.75
July Invoice (grades 3–5)	\$43,593.75
July Invoice (grades 6–8)	\$43,593.75
July Invoice (Alg. I)	\$43,593.75
August Invoice (grades 3–5)	\$43,593.75
August Invoice (grades 6–8)	\$43,593.75
September Invoice (Alg. I)	\$43,593.75
Total	\$348,750.00

EXHIBIT C

Task Activity Plan Student Success Initiative Program dated January 25, 2016 from Think Through Learning Inc. is here incorporated by reference

Task Activity Plan Student Success Initiative Qualified Providers Program - REVISED 1/25/2016

Task No.	Task	Who	Start Date	End Date	Frequency
1	Project Planning				
1.1	Program Kick Off Meeting	Louis Piconi (TX Lead), Emily Robertson (Mid-West Lead)	12/15/2015	N/A	Annual
1.2	Develop plan to address technical issues such as student sign on, load test, data analytics	James Wrubel (CTO), Emily Robertson (Mid-West Lead)	12/15/2015	11/1/2016	Annual
1.3	Identify quality metrics and program monitoring and reporting procedures for School Year	Lou Piconi (TX Lead), Emily Robertson (Mid-West Lead)	12/15/2015	11/1/2016	Annual
1.4	Develop and discuss state implementation plan	Lou Piconi (TX Lead), Emily Robertson (Mid-West Lead)	12/15/2015	11/1/2016	Annual
1.5	Develop and agree on Communications procedures and plan	Louis Piconi (TX Lead), Allison Duquette (EVP Marketing)	12/15/2015	11/1/2016	Quarterly
1.6	Agree on motivational programming	Louis Piconi (TX Lead), Lisa Wise (Motivational Dir)	12/15/2015	11/1/2016	Quarterly
1.7	Establish Quarterly Meetings	Louis Piconi (TX Lead)	12/15/2015	8/31/2017	Quarterly
2	Technical Development				
2.1	Review/develop any data integration tools required for TX	James Wrubel (CTO)	12/15/2015	12/1/2016	Annual
2.2	Develop data analytic tools as required	James Wrubel (CTO)	12/15/2015	12/1/2016	Annual
2.3	Load test system and deliver results to TEA	James Wrubel (CTO)	1/15/2016	2/15/2016	Annual
2.4	Discussion of integration of alternate assessment tools in TTM (mStar & eStar)	James Wrubel (CTO)	12/15/2015	2/28/2016	Annual
3	Communication and Marketing Plan				
3.1	Social Media Campaign to create awareness of TTM in TX and on TTM website for parents and educators	Allison Duquette (EVP Marketing)	12/15/2015	8/31/2017	Daily
3.2	Monthly email campaign to schools, educators and parents promoting program	Allison Duquette (EVP Marketing)	12/15/2015	8/31/2017	Monthly
3.3	Online social media targeting educators	Allison Duquette (EVP Marketing)	12/15/2015	8/31/2017	Daily
3.4	Awareness webinars for educators and parents	Allison Duquette (EVP Marketing)	12/15/2015	6/1/2017	Bi-weekly
3.5	Distribute TTM Promo items to school sites	Allison Duquette (EVP Marketing)	12/15/2015	6/1/2017	Weekly
3.6	Motivational campaign communications begin	Allison Duquette (EVP Marketing)	12/15/2015	8/31/2017	Monthly
3.7	District/school meetings to increase awareness and promote program	Allison Duquette (EVP Marketing)	12/15/2015	6/1/2017	Weekly
3.8	Email campaign to local libraries and community centers to print posters to promote usage at their sites	Allison Duquette (EVP Marketing)	1/31/2016	6/1/2017	Monthly
3.9	Publish monthly eNewsletter	Allison Duquette (EVP Marketing)	12/15/2015	8/31/2017	Monthly
3.10	Publish Monthly State Activity Brief	Louis Piconi (TX Lead)	12/15/2015	8/31/2017	Monthly
4	Implementation, Training and Ongoing Support				
4.1	System live for TEA students	Emily Robertson (Mid-West Lead)	12/15/2015	8/31/2017	Daily
4.2	Training webinars for educators and parents	Emily Robertson (Mid-West Lead)	12/15/2015	6/1/2017	Weekly
4.3	Host periodic webinars and live chat discussions for educators to promote/support the program	Emily Robertson (Mid-West Lead)	12/15/2015	6/1/2017	Quarterly
4.4	Provide program professional development days to ESC or designated sites	Emily Robertson (Mid-West Lead)	12/15/2015	6/1/2017	Daily
4.5	Provide coaching site visits to sites across the state	Emily Robertson (Mid-West Lead)	12/15/2015	6/1/2017	Daily
4.6	Provide reporting visits to sites across the state	Emily Robertson (Mid-West Lead)	12/15/2015	8/31/2017	Daily
4.7	Host Kickoff Events for Campuses	Emily Robertson (Mid-West Lead)	12/15/2015	6/1/2017	Daily
4.8	Visit District and Campus Contacts to Support Student Upload Process	Emily Robertson (Mid-West Lead)	12/15/2015	6/1/2017	Daily
5	Analysis and Quality Improvement				
5.1	Provide Activity Briefs to TEA	Louis Piconi (TX Lead)	12/15/2015	8/31/2017	Monthly
5.2	Provide monthly project reports to TEA	Louis Piconi (TX Lead)	12/15/2015	8/31/2017	Monthly
5.3	Meet with TEA quarterly to discuss project implementation	Louis Piconi (TX Lead)	12/15/2015	8/31/2017	Quarterly
5.4	Analysis of TTM student progress and STAAR results	Louis Piconi (TX Lead)	7/1/2016	7/1/2017	Annual
5.5	Deliver Year End Report to TEA	Louis Piconi (TX Lead)	8/1/2016	8/1/2017	Annual
6	Motivational Programming				
6.1	Launch the National and Texas Motivational Contests	Lisa Wise (Motivation Lead)	12/15/2015	8/31/2017	Monthly
6.2	Launch Altruistic Donations for TX	Lisa Wise (Motivation Lead)	12/15/2015	8/31/2017	Monthly
6.3	Fulfill Classroom Goal Rewards	Lisa Wise (Motivation Lead), Emily Robertson (Mid-West Lead)	12/15/2015	8/31/2017	Weekly
6.4	Host Motivational Kickoff and Celebration Events at Campus Sites	Lisa Wise (Motivation Lead), Emily Robertson (Mid-West Lead)	12/15/2015	8/31/2017	Weekly
7	Parental Engagement Program				
7.1	Onsite Parental Information Evening Events	Emily Robertson (Mid-West Lead)	12/15/2015	8/31/2017	Monthly
7.2	Host Parent Information Webinars	Emily Robertson (Mid-West Lead)	12/15/2015	8/31/2017	Bi-weekly
7.3	Publish Motivational Information to Parent Accounts on TTM	Emily Robertson (Mid-West Lead)	12/15/2015	8/31/2017	Weekly
7.4	Delivery of electronic bilingual parent information to campuses	Emily Robertson (Mid-West Lead)	7/1/2016	7/1/2017	Weekly
8	Student Growth Reports				
8.1	Submit Student Growth Reports for Grades 3-5 and Grades 6-8	Louis Piconi (TX Lead)	3/28/2016	8/31/2017	Monthly
8.2	Submit Student Growth Reports for Algebra 1	Louis Piconi (TX Lead)	3/28/2016	8/31/2017	Bi-weekly